PHILIPPINE REPORTS

VOL. 574

APRIL 8, 2008 TO APRIL 16, 2008

VOLUME 574

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

APRIL 8, 2008 TO APRIL 16, 2008

SUPREME COURT
MANILA
2013

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2013

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

MA. VIRGINIA OLIVIA VILLARUZ-DUEÑAS
COURT ATTORNEY VI & CHIEF, RECORDS DIVISION

FE CRESCENCIA QUIMSON-BABOR
COURT ATTORNEY VI

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY V

FLOYD JONATHAN LIGOT TELAN
COURT ATTORNEY V & CHIEF, EDITORIAL DIVISION

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY IV

LEUWELYN TECSON-LAT
COURT ATTORNEY IV

DIANA DIAZ-GARRA
COURT ATTORNEY IV

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY III

SUPREME COURT OF THE PHILIPPINES

HON. REYNATO S. PUNO, Chief Justice
HON. LEONARDO A. QUISUMBING, Associate Justice
HON. CONSUELO YNARES-SANTIAGO, Associate Justice
HON. ANTONIO T. CARPIO, Associate Justice
HON. MA. ALICIA AUSTRIA-MARTINEZ, Associate Justice
HON. RENATO C. CORONA, Associate Justice
HON. CONCHITA CARPIO MORALES, Associate Justice
HON. ADOLFO S. AZCUNA, Associate Justice
HON. DANTE O. TINGA, Associate Justice
HON. MINITA V. CHICO-NAZARIO, Associate Justice
HON. PRESBITERO J. VELASCO, JR., Associate Justice
HON. ANTONIO EDUARDO B. NACHURA, Associate Justice
HON. RUBEN T. REYES, Associate Justice
HON. TERESITA J. LEONARDO-DE CASTRO, Associate Justice
HON. ARTURO D. BRION, Associate Justice

FIRST DIVISION

Chairman

Hon. Reynato S. Puno

Members

Hon. Antonio T. Carpio
Hon. Renato C. Corona
Hon. Adolfo S. Azcuna
Hon. Teresita J. Leonardo-De Castro

Division Clerk of Court

Atty. Enriqueta E. Vidal

SECOND DIVISION

Chairman

Hon. Leonardo A. Quisumbing

Members

Hon. Conchita Carpio Morales
Hon. Dante O. Tinga
Hon. Presbitero J. Velasco, Jr.
Hon. Arturo D. Brion

Division Clerk of Court

Atty. Ludichi Y. Nunag

THIRD DIVISION

Chairperson

Hon. Consuelo Ynares-Santiago

Members

Hon. Ma. Alicia Austria-Martinez
Hon. Minita V. Chico-Nazario
Hon. Antonio Eduardo B. Nachura
Hon. Ruben T. Reyes

Division Clerk of Court

Atty. Lucita A. Soriano

PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. MTJ-08-1702. April 8, 2008]
(A.M. OCA IPI No. 01-1008-MTJ)

EDWIN LACANILAO, *petitioner, vs.* **JUDGE MAXWELL S. ROSETE, and EUGENIO TAGUBA, Process Server, Metropolitan Trial Circuit Court, Branch 2, Santiago City,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT PREVAIL AGAINST STRAIGHTFORWARD TESTIMONIES NOT IMPELLED BY IMPROPER MOTIVE.— Against Judge Rosete's bare denial, the testimonies of Edwin Lacanilao and his wife, Edith, should be given more weight and credence. It is worth stressing that the OCA observed that the spouses Lacanilao were not impelled by any improper motive when they testified. Their testimonies are clear, credible, straightforward, and are thus entitled to full faith and credit.

2. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; A JUDGE WHO HABITUALLY FLOUTS JUDICIAL ETHICS AND BETRAYED JUDICIAL STANDARDS DO NOT DESERVE THE HONOR OF HIS OFFICE.— This is not the first time that respondent Judge was made to account for his actions. In a case for gross ignorance of the law, grave abuse of authority and/or discretion, and incompetence, respondent Judge was found liable as charged and penalized

with a fine of ₱2,000.00. In another administrative case, he was found guilty of dishonesty in attempting to mislead the court and was consequently meted a fine of ₱5,000.00. Respondent Judge was also reprimanded for violating Article 177 of the Revised Penal Code. He was likewise suspended for four months without salary and other benefits for violating the Anti-Graft and Corrupt Practices Act (R.A. 3019). Respondent Judge is also presently facing two other administrative cases, to wit: 1. A.M. No. 03-1465-MTJ (for violation of R.A. 3019) 2. A.M. No. 08-1984-MTJ (for conduct unbecoming of a Judge). A judge who has habitually flouted judicial ethics and betrayed judicial standards does not deserve the honor of his office. To him should be meted the severest of administrative penalties. A judge should always be a symbol of rectitude and propriety, comporting himself in a manner that will raise no doubt whatsoever about his honesty. Integrity, in a judicial office is more than a virtue, it is a necessity.

3. ID.; ID.; COURT PERSONNEL; PROCESS SERVER; SIMPLE MISCONDUCT; PRESENT IN CASE AT BAR.— Anent respondent process server Taguba, We cannot agree with the OCA recommendation that he ought to be absolved of the charges. **First**. Taguba was a willing participant in securing the money from the Spouses Lacanilao. From the records, they gave the ₱15,000.00 to Judge Rosete in his chambers. Taguba was present when the money was handed to respondent Judge. He even prepared an acknowledgment receipt for the said amount. **Second**. Taguba's eagerness to settle the matter of Lacanilao's administrative complaint belies his innocence. Per his admission, Taguba repeatedly offered the spouses Lacanilao varying amounts ranging from ₱15,000.00 to ₱25,000.00 for them to withdraw the complaint against him and Judge Rosete. He even claimed to have sold his own swine livestock to raise the said amount. Respondent Taguba is privy to the verbal agreement between Judge Rosete and complainant Lacanilao to secure a bail bond for the latter. Thus, under the circumstances, respondent Taguba is at least liable for simple misconduct punishable by suspension of one (1) month and one (1) day to six (6) months. The administration of justice is circumscribed with heavy burden of responsibility. It requires everyone involved in its dispensation – from justices and judges to the lowliest clerks – to live up to the strictest standards of competence, integrity and diligence in public service.

APPEARANCES OF COUNSEL

Emerito Agcaoili and *Kristjan Vicente T. Gargantiel* for petitioner.

D E C I S I O N

***PER CURIAM*:**

A verified letter-complaint[1] dated November 1, 1999 of complainant Edwin Lacanilao triggered this administrative case against respondents Judge Maxwell S. Rosete and Process Server Eugenio P. Taguba, of the Metropolitan Trial Circuit Court (MTCC), Branch 2, Santiago City.

Respondent Judge Rosete filed his Comment[2] to the letter-complaint on September 19, 2000, while respondent Taguba filed his Comment[3] on October 2, 2000.[4]

On February 18, 2002, the Court's Second Division referred this case to Hon. Fe Albano-Madrid, Executive Judge, Regional Trial Court (RTC), Santiago City, for investigation, report and recommendation.

Subsequently, Lacanilao asked Judge Madrid to inhibit herself from this case.[5] In a letter addressed to this Court dated June 27, 2002,[6] Judge Madrid inhibited herself from the hearing of the case and returned the records to the Supreme Court. This Court then directed Hon. Judge Isaac R. De Alban, Executive Judge, RTC, Ilagan, Isabela, to take over and continue with the

---

[1] *Rollo,* p. 1; Exhibit "B".

[2] *Id*. at 6-7; Exhibit "1".

[3] *Id*. at 6; Exhibits "4" and "4-B".

[4] *Id*. at 4. The Comments were submitted in compliance with the letter endorsement dated July 20, 2000 of the Office of the Court Administrator (OCA).

[5] *Id*. at 87-92. Letters dated April 14, May 20, and June 17, 2002.

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

investigation of the instant case. Judge De Alban proceeded with the reception of evidence for all the parties.

Meanwhile, on November 15, 2005, Lacanilao sent a letter to then Acting Chief Justice Hon. Reynato S. Puno. Lacanilao manifested that the case had dragged on for two years due to (1) the alternate absences of respondents, and (2) the failure of the judge to take action against respondents.

On November 29, 2005, Judge De Alban likewise inhibited himself from this case and returned the records to the Office of the Court Administrator (OCA).

On July 5, 2006, this Court referred the case to the OCA for the continuation of investigation and submission of report and recommendation within sixty (60) days from receipt of the resolution. Accordingly, on September 4, 2006, the OCA sent notices of hearings to the parties and the proceedings continued. Finally, the OCA submitted its investigation report and recommendation on June 25, 2007.

The evidence for complainant consists of the combined testimonies of Edwin and his wife, Edith Lacanilao.

Edith Lacanilao testified that her husband Edwin was an accused in a criminal case for reckless imprudence resulting in homicide pending before the MTCC, Cordon Isabela, presided by respondent Judge Rosete. Edwin posted a property bond, but after two (2) months, a warrant of arrest was issued against him. Because of this, Edith and her brother went to see Judge Rosete at his office in MTCC, Santiago City. They inquired why a warrant of arrest had been issued against Edwin when he had already posted a bond. Judge Rosete told her that the warrant of arrest could not be withdrawn and asked her to just put up a ₱21,600.00 bond or whatever amount she could afford.

On April 8, 1997, Edith and Edwin went to MTCC, Santiago City. They saw Judge Rosete inside his chambers. When they entered, the process server, respondent Taguba, was also there. Edith told Judge Rosete that they have only ₱15,000.00. Judge

Rosete received the money and asked Taguba to issue a receipt. Taguba issued and signed a receipt,[7] which reads:

April 8, 1997

Received the amount of Fifteen Thousand Pesos (₱15,000.00) as partial payment of bailbond of accused Edwin Lacanilao in Crim. Case #2809.

(Sgd.)
Eugenio P. Taguba[8]

After Judge Rosete was replaced by Judge Plata as presiding judge of the MTCC, Cordon, Isabela, Edwin was again arrested. The receipt issued by Taguba was not honored by the court. They filed another bond so that Edwin could be released.

In October 2000, Edwin wrote letters about the incident to the Court Administrator and the Ombudsman.[9] In January 2001, after receiving notices from the Ombudsman, Taguba talked to Edith and offered to return the money. His offer ranged from ₱15,000.00 to ₱25,000.00, but Edith refused.

On April 12, 2002, Taguba went to their house in Julia Street, San Jose City, and gave Edith ₱25,000.00. Edith accepted the money because she needed it for her operation. She asked her brother-in-law to have the money photocopied because Taguba might deny he gave the money.

Edith and Edwin, however, did not desist from pursuing the administrative charges they filed against Judge Rosete and Taguba. Soon after, Edwin started receiving death threats.[10]

On the witness stand, the letter-complaint of Edwin Lacanilao was adopted as his direct testimony. He disclosed that after being indicted for reckless imprudence resulting to homicide and physical injuries, he posted a bond. However, a warrant of

[7] *Id*. at 222; Exhibit "A".

[8] *Id*.

[9] *Id*. at 14-27.

[10] *Id*. at 129. Handwritten note.

arrest was issued against him after his failure to attend a hearing. Judge Rosete fixed the bail for his release in the amount of ₱32,000.00. He pleaded for reduction of bail and it was reduced to ₱15,000.00. He paid the amount of ₱15,000.00 to Taguba. During the trial of the case, the Philippine National Police (PNP) of Cordon, Isabela, wanted to arrest him in view of a warrant issued by Judge Rosete. He was surprised because he paid for his bond as shown by the receipt.

On cross-examination, Edwin testified that he prepared the letter-complaint and submitted it to Hon. Alfredo Benipayo.[11] His cousin Emily Gabriel typed the letter in San Jose, Nueva Ecija.

He further testified on cross-examination that there were two (2) warrants of arrest issued against him by the Municipal Trial Court (MTC), Cordon, Isabela. The second warrant of arrest was issued because he failed to attend the hearing of the case. He posted a cash bond in the MTC, Santiago City, on April 8, 1997. His wife Edith was the one who handed the amount of ₱15,000.00 to Judge Rosete.

Upon the other hand, the defense anchored on denial was presented by respondent Judge himself.

In his defense, Judge Rosete testified that he is the presiding judge of MTCC, Branch 2, Santiago City. Complainant was an accused in a criminal case in the MTC of Cordon, Isabela, when Judge Rosete was the acting presiding judge there. He only came to know of the subject complaint when the OCA required him to file his comment to the letter-complaint.[12]

Judge Rosete further declared that the allegations of Lacanilao are nothing but fabrications and lies. Lacanilao had three (3) different versions of the events: first, in the complaint, Lacanilao claimed that he gave the money to Taguba upon instruction of Judge Rosete; and second, in the supplemental affidavit,[13]

---

[11] Then Court Administrator.

[12] Exhibit "B".

[13] *Rollo,* pp. 10-12. Supplemental Letter-Affidavit dated October 11, 2000, sworn before Atty. Hereneo Martinez.

Lacanilao claimed that he personally gave Judge Rosete the amount of ₱15,000.00 by leaving it on top of the table in the chambers of MTCC, Cordon, Isabela, and that Judge Rosete pocketed the money.

According to Judge Rosete, he merely advised the spouses Lacanilao to proceed to Santiago City to secure a bail bond. According to respondent Judge, there was no bonding company operating in Cordon. He later learned that Taguba tried but failed to secure a bail bond for Edwin. The money given to Taguba was not sufficient. Taguba informed him that he returned the money to Lacanilao. He had no participation whatsoever in the acts complained of, except that he advised Lacanilao to go to Santiago City.

On cross-examination Judge Rosete said that it was unusual for Taguba who was only a process server to receive the money for the bail bond. He did not reprimand Taguba when he learned that the former accepted the sum of ₱15,000.00 from complainant.

The OCA found Judge Rosete guilty of grave misconduct for misappropriating said amount to the prejudice of complainant. In the same breath, the OCA found no basis to hold Taguba administratively liable. The pertinent portion of the OCA report and recommendation reads:

> The fact is that Edith talked to respondent judge one (1) week before 08 April 1997 in connection with the warrant of arrest the latter issued for failure of the complainant to attend a hearing. Respondent judge told Edith that her husband should post another bond, that was why on 08 April 1997, accompanied by the complainant, she returned to MTCC, Santiago City and delivered the ₱15,000.00 to the former, but the receipt was signed by Taguba.
>
> Complainant failed to prove that Taguba benefited from the ₱15,000.00 given to respondent Judge. There is no proof that Taguba conspired with respondent Judge in depriving complainant of the ₱15,000.00 which was only borrowed from a relative so that the arrest warrant issued can be recalled or set aside. While it appears on record that it was Taguba who talked to Edith and his mother and worked hard for the withdrawal of the complaint, it does not mean that he conspired with the respondent Judge in committing the illegal

act. Obedience to an order does not mean concert of design. Conspiracy must be proved clearly and convincingly as the commission of the offense itself.

The ₱15,000.00 was delivered to the respondent Judge for the purpose of paying the premium for the surety bond of the complainant who was at that time had a standing warrant of arrest for failure to attend a hearing. The money, therefore, was received by the respondent Judge on commission. When no bond was secured for any reason, it was respondent Judge's obligation to return the same without demand.

Taguba gave Edith Lacanilao ₱25,000.00 in payment for the withdrawal of the complaint on 12 April 2002 in her residence in San Jose City. Edith Lacanilao's acceptance of the ₱25,000.00 which was more than what was given to respondent Judge after almost five (5) long years (from 08 April 1997) did not extinguish the latter's administrative and criminal liabilities. It did not also divest the Supreme Court of its jurisdiction over the case to determine whether respondent Judge is guilty or innocent of the charge. The return of the money, albeit belatedly may be considered a mitigating circumstance. "Court personnel, from the Presiding Judge to the lowest clerk, are required to conduct themselves always beyond reproach circumscribed with heavy burden of responsibility to free them from any suspicion that may taint the good image of the judiciary." In *Arturo v. Peralta and Larry de Guzman,* the Court ruled:

> Employees of the judiciary should be living example of uprightness not only in the performance of their duties, but also in their personal dealings with other people, so as to preserve, at all times, the good name of the courts in the community. The administration of justice is a sacred task and by the very nature of their responsibilities, all those involved in it must faithfully to *(sic)* and hold inviolable the principle that public office is a public trust.

Respondent Judge tainted the image of the judiciary when he received the ₱15,000.00 and misappropriated it to the prejudice of the complainant. Under Section 8, Rule 140 of the Rules of Court, as amended, administrative charges are classified as Serious, Less Serious and Light. Gross Misconduct is considered a grave administrative offense. Section 11 of the same Rules provides:

Section 11. *Sanctions.* – If the respondent is guilty of a serious charge, any of the following sanctions 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 x x x;

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

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

RECOMMENDATION

WHEREFORE, premises considered, it is respectfully recommended that:

(a) Respondent Judge be penalized to pay a FINE in the amount of Thirty Thousand Pesos (₱30,000.00) for GRAVE MISCONDUCT with a WARNING that repetition of the same or similar offense shall be dealt with more severely;

(b) The charge against Eugenio P. Taguba be DISMISSED for insufficiency of evidence.[14]

We accept the findings of the OCA but find that the penalty it recommends for Judge Rosete is not commensurate to the gravity of the offense committed. Respondent Judge should be meted the penalty of dismissal from the service.

We do not find merit in the claim of Judge Rosete that Lacanilao gave three conflicting versions as to how and to whom the subject amount of ₱15,000.00 was given. Against Judge Rosete's bare denial, the testimonies of Edwin Lacanilao and his wife, Edith, should be given more weight and credence. It is worth stressing that the OCA observed that the spouses Lacanilao were not impelled by any improper motive when they testified. Their testimonies are clear, credible, straightforward, and are thus entitled to full faith and credit.

We agree with the findings of the OCA that the letter-complaint of Edwin Lacanilao, his testimony on cross-examination, and

[14] OCA Investigation Report dated June 25, 2007.

the direct testimony of his wife Edith (which corroborated Edwin's testimony), taken altogether established their contention that on April 8, 1997, they gave the sum of ₱15,000.00, to Judge Rosete in his chambers in the presence of Taguba.

The money was intended as payment of the premium of Lacanilao's bail bond. For failure to secure the bond, Judge Rosete should have returned the money to Lacanilao.

Lacanilao's claim that Taguba signed and issued a receipt for ₱15,000.00 upon instruction of Judge Rosete is consistent with the surrounding circumstances as narrated.

This is not the first time that respondent Judge was made to account for his actions. In a case for gross ignorance of the law, grave abuse of authority and/or discretion, and incompetence, respondent Judge was found liable as charged and penalized with a fine of ₱2,000.00.[15] In another administrative case, he was found guilty of dishonesty in attempting to mislead the court and was consequently meted a fine of ₱5,000.00.[16]

Respondent Judge was also reprimanded for violating Article 177 of the Revised Penal Code.[17] He was likewise suspended for four months without salary and other benefits for violating the Anti-Graft and Corrupt Practices Act (R.A. 3019).[18]

Respondent Judge is also presently facing two other administrative cases, to wit:

1. A.M. No. 03-1465-MTJ (for violation of R.A. 3019)

2. A.M. No. 08-1984-MTJ (for conduct unbecoming of a Judge)

---

[15] *De Zuzuarregui, Jr. v. Rosete,* A.M. No. MTJ-02-1426, May 9, 2002, 382 SCRA 1.

[16] *Re: Compliance of Judge Maxwell S. Rosete, Municipal Trial Court in Cities (MTCC), Santiago City, Isabela,* A.M. No. 04-5-118-MTCC, July 29, 2004, 435 SCRA 363.

[17] *Ong v. Rosete,* A.M. No. MTJ-04-1538, October 22, 2004, 441 SCRA 150.

[18] *Tan v. Rosete,* A.M. No. MTJ-04-1563, September 8, 2004, 437 SCRA 581.

A judge who has habitually flouted judicial ethics and betrayed judicial standards does not deserve the honor of his office. To him should be meted the severest of administrative penalties.[19] A judge should always be a symbol of rectitude and propriety, comporting himself in a manner that will raise no doubt whatsoever about his honesty.[20] Integrity, in a judicial office is more than a virtue, it is a necessity.[21]

Anent respondent process server Taguba, We cannot agree with the OCA recommendation that he ought to be absolved of the charges.

First. Taguba was a willing participant in securing the money from the Spouses Lacanilao. From the records, they gave the ₱15,000.00 to Judge Rosete in his chambers. Taguba was present when the money was handed to respondent Judge. He even prepared an acknowledgment receipt for the said amount.

Second. Taguba's eagerness to settle the matter of Lacanilao's administrative complaint belies his innocence. Per his admission, Taguba repeatedly offered the spouses Lacanilao varying amounts ranging from ₱15,000.00 to ₱25,000.00 for them to withdraw the complaint against him and Judge Rosete. He even claimed to have sold his own swine livestock to raise the said amount.

Respondent Taguba is privy to the verbal agreement between Judge Rosete and complainant Lacanilao to secure a bail bond for the latter. Thus, under the circumstances, respondent Taguba is at least liable for simple misconduct punishable by suspension of one (1) month and one (1) day to six (6) months.[22]

The administration of justice is circumscribed with heavy burden of responsibility. It requires everyone involved in its

---

[19] *Agpalasin v. Agcaoili,* A.M. No. RTJ-95-1308, April 12, 2000, 330 SCRA 250.

[20] *Office of the Court Administrator v. Boron*, A.M. No. RTJ-98-1420, October 8, 1998, 297 SCRA 376, 392.

[21] *Capuno v. Jaramillo,* A.M. No. RTJ-98-944, July 20, 1994, 234 SCRA 212, 232.

[22] CSC Resolution No. 991936 (Uniform Rules on Administrative Cases in the Civil Service), Rule IV, Sec. 52 B.2.

dispensation – from justices and judges to the lowliest clerks – to live up to the strictest standards of competence, integrity and diligence in public service.[23] Judge Rosete and process server Taguba failed to live up to these standards.

WHEREFORE, the Court finds respondent Judge Maxwell S. Rosete *GUILTY* of dishonesty and gross misconduct and is hereby *DISMISSED* from the service with *FORFEITURE* of all benefits, except accrued leave credits, with prejudice to reinstatement or appointment to any public office.

Respondent process server Eugenio Taguba is found *GUILTY* of simple misconduct. However, in view of the report that he is suffering from brain tumor,[24] and for humanitarian consideration, the Court opts to impose upon him a *FINE* of Two Thousand Pesos (₱2,000.00), with *WARNING* that commission of similar or graver offense shall be dealt with more severely.

SO ORDERED.

Puno, C.J. (Chairperson), Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, and *Brion, JJ.,* concur.

Quisumbing, Ynares-Santiago, Carpio, and *Leonardo-de Castro, JJ.,* on official leave.

---

[23] *In re: Report on the Judicial and Financial Audit Conducted in the Municipal Trial Circuit Court in Cities, Koronadal City*, A.M. No. 02-9-233, April 27, 2005, 457 SCRA 356, 369.

[24] See note 14, at 5.

EN BANC

[A.M. No. P-04-1765. April 8, 2008]
(Formerly OCA IPI No. 01-1174-P)

JUDGE FELIPE G. BANZON, *complainant, vs.* **RUBY B. HECHANOVA,[*] Court Stenographer III, Regional Trial Court, Branch 69, Silay City, Negros Occidental,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; STENOGRAPHER; DUTIES.— Stenographers are enjoined to faithfully comply with Section 17, paragraph 1, Rule 136 of the Rules of Court which states: Sec. 17. *Stenographer*. — It shall be the duty of the stenographer who has attended a session of a court either in the morning or in the afternoon, to deliver to the clerk of court, immediately at the close of such morning or afternoon session, all the notes he has taken, to be attached to the record of the case; and it shall likewise be the duty of the clerk to demand that the stenographer comply with the said duty. The clerk of court shall stamp the date on which such notes are received by him. When such notes are transcribed the transcript shall be delivered to the clerk, duly initiated on each page thereof, to be attached to the record of the case. Administrative Circular No. 24-90 further requires stenographers to transcribe notes 20 days from the time they were taken, thus: 2. (a) All stenographers are required to transcribe all stenographic notes and to attach the transcripts to the record of the case not later than twenty (20) days from the time the notes are taken. x x x

2. ID.; ID.; ID.; ID.; ID.; TRANSCRIPTION OF STENOGRAPHIC NOTES; PERSISTENT FAILURE TO TRANSCRIBE STENOGRAPHIC NOTES IS GROSS NEGLECT OF DUTY PUNISHABLE BY DISMISSAL.— Repeatedly, complainant issued orders directing respondent to transcribe the stenographic notes taken by her. She obstinately refused, however, and

[*] Also referred to as "Ruby B. Hechanova-Sardiñola" in some parts of the records.

ignored orders, even those given by this Court. Respondent's persistent failure to transcribe stenographic notes as above prescribed constitutes gross neglect of duty, which is a grave offense punishable by dismissal even for the first offense. As a stenographer, she should have realized that the performance of her duty is essential to the prompt and proper administration of justice, and her inaction hampers the administration of justice and erodes public faith in the judiciary. The Court has expressed its dismay over the negligence and indifference of persons involved in the administration of justice. No less than the Constitution mandates that public officers serve the people with utmost respect and responsibility. Public office is a public trust, and respondent has without a doubt violated this trust by her failure to fulfill her duty as a court stenographer.

3. ID.; ID.; ID.; ID.; LIABILITY THEREOF CANNOT BE EXCUSED BY RESIGNATION.— The fact that she filed a resignation letter dated February 6, 2001 cannot excuse her from liability. As correctly noted by the OCA, paragraph 5 of Administrative Circular No. 24-90 clearly disallows the same. It reads: 5. No stenographer shall be allowed to resign from the service or allowed to retire optionally without having transcribed all transcript of stenographic notes taken by him. A stenograher due for compulsory retirement must submit to the Judge/Clerk all pending transcribed stenographic notes, three (3) months before retirement date. No terminal leave or retirement pay shall be paid to a stenographer without a verified statement that all his transcript of stenographic notes have been transcribed and delivered to the proper court, confirmed by the Executive Judge of the Court concerned.

R E S O L U T I O N

***PER CURIAM*:**

Judge Felipe G. Banzon (complainant) of the Regional Trial Court (RTC) Branch 69, Silay City, Negros Occidental, charges Ruby B. Hechanova, Court Stenographer III (respondent) with continued refusal to transcribe stenographic notes.[1]

[1] *Rollo*, p. 1.

In a letter dated February 1, 2001, complainant alleged: His efforts to expedite the promulgation of decisions in his sala are hampered by the indifference and refusal of respondent to perform her duty. Despite the memoranda[2] and orders[3] issued by him directing respondent to transcribe the stenographic notes taken by her with a warning that she shall be held in contempt and ordered arrested should she fail to comply therewith, respondent still refused to render due compliance. Complainant therefore filed the said letter recommending respondent's dismissal from the service.[4]

On February 6, 2001, respondent wrote a letter of resignation addressed to the Court Administrator stating that she could no longer bear the unreasonable pressure and discriminatory acts of complainant against her and that despite her efforts to transcribe the notes she had taken, she cannot cope with her task because of the pressure from complainant.[5]

In a 1st Indorsement dated August 30, 2001, the Court directed respondent to comment on complainant's letter dated February 1, 2001.[6]

On November 20, 2002, the Court received a letter from respondent stating that she had already submitted all the transcripts

---

[2] Dated September 13, 14 and October 17, 2000, directing respondent to report to work and transcribe the notes in *People of the Philippines v. Baquillos, People of the Philippines v. Belo, People of the Philippines v. Billones, People of the Philippines v. Divinagracia, People of the Philippines v. Pidoy, People of the Philippines v. Langrio, People of the Philippines v. Maquitar, People of the Philippines v. Dela Cruz, and People of the Philippines v. Bancaya*, *rollo*, pp. 2-5.

[3] Dated January 8, 2001 in *People of the Philippines v. Billones, People of the Philippines v. Langrio and People of the Philippines v. Sangrones*; dated January 24, 2001 in *People of the Philippines v. Billones, People of the Philippines v. Langrio; People of the Philippines v. Sangrones*; and dated January 25, 2001 in *People of the Philippines v. Garay, People of the Philippines v. Dela Cruz, People of the Philippines v. Samson and People of the Philippines v. Bancaya, id*. at 6-15.

[4] *Supra* note 1.

[5] *Rollo*, p. 27.

[6] *Id*. at 33.

of stenographic notes (TSNs) requested by complainant and that she had voluntarily resigned from work on February 6, 2001.[7]

Respondent failed to submit proof, however, showing that she had indeed submitted the concerned TSNs.[8] Complainant also informed the Court, through a letter dated June 24, 2003, that while respondent transcribed and submitted transcripts of court proceedings, the same were done subsequent to the court's issuance of warrants of arrest on her person and that to date, she still ignored several orders directing her to complete the TSNs of 18 other cases.[9]

In the Report dated November 6, 2003, the Office of the Court Administrator (OCA) held that respondent's acts violate paragraph 2 of Administrative Circular No. 24-90 which requires stenographers to transcribe all stenographic notes not later than 20 days from the time the notes were taken; and following paragraph 5 thereof which disallows the resignation of stenographers without having transcribed all TSNs taken by them, respondent's resignation should not be accepted.[10]

On January 26, 2004, the Court issued a Resolution directing the National Bureau of Investigation (NBI) to locate, arrest, and detain respondent until she has finished transcribing all the stenographic notes required of her.[11]

Through a letter dated March 16, 2004, respondent asked for reconsideration of the Court's Resolution stating: that she already submitted the TSNs covered by the administrative case; that complainant told her that some of the cases were already decided or dismissed, and in civil cases, the testimonies were retaken because some of the stenographic notes she took cannot be located anymore; that she had just suffered the recent death

[7] *Rollo*, p. 35.

[8] *Id*. at 36, 38, 43.

[9] *Id*. at 38-39.

[10] *Id*. at 44-45.

[11] *Id*. at 47.

of her husband and she did not want her parents, who are old and sickly, to worry about her being detained.[12]

Complainant denied respondent's assertions, in his letter dated August 6, 2004, and stated that respondent had not yet submitted all the TSNs required of her and there are new cases, which respondent handled, which she has also not yet transcribed despite orders for her to do so.[13]

In the Resolution dated November 17, 2004,[14] the Court, for humanitarian reasons, resolved to hold in abeyance for a period of 90 days, the enforcement of the directive to the NBI to arrest and detain respondent. She was given 90 days to finish and submit to the Branch Clerk of Court of RTC Branch 69 all the TSNs of 74 hearings enumerated in the Resolution. The Court also directed the immediate suspension of respondent without pay pending resolution of the administrative complaint.

After the lapse of 90 days from respondent's receipt of the Court's Resolution and per letter dated June 7, 2005[15] of the Clerk of Court of RTC, Branch 69 that respondent has not complied therewith, the Court through its Resolution[16] dated July 27, 2005, directed the NBI to implement the arrest order against her and detain her at the Silay City Jail until she finishes the transcription of the required stenographic notes. On December 6, 2007, the Court received NBI Agent Cortez's 1st Indorsement stating that they could not locate respondent at her given address and they have exerted efforts to locate her, to no avail.[17]

Hence, the instant resolution finding respondent guilty of gross neglect of duty.

---

[12] *Id*. at 52.

[13] *Rollo*, p. 54.

[14] *Id*. at 59-64.

[15] *Id*. at 68.

[16] *Id*. at 69.

[17] *Id*. at 94. NBI Supervising Agent Mamerto D. Cortez explained that he received the Resolution of the Court only on July 23, 2007; thus, the late compliance. *Id*. at 80-81.

Stenographers are enjoined to faithfully comply with Section 17, paragraph 1, Rule 136 of the Rules of Court which states:

> Sec. 17. *Stenographer*. — It shall be the duty of the stenographer who has attended a session of a court either in the morning or in the afternoon, to deliver to the clerk of court, immediately at the close of such morning or afternoon session, all the notes he has taken, to be attached to the record of the case; and it shall likewise be the duty of the clerk to demand that the stenographer comply with the said duty. The clerk of court shall stamp the date on which such notes are received by him. When such notes are transcribed the transcript shall be delivered to the clerk, duly initialed on each page thereof, to be attached to the record of the case.

Administrative Circular No. 24-90[18] further requires stenographers to transcribe notes 20 days from the time they were taken,[19] thus:

> 2. (a) All stenographers are required to transcribe all stenographic notes and to attach the transcripts to the record of the case not later than twenty (20) days from the time the notes are taken. x x x

Repeatedly, complainant issued orders directing respondent to transcribe the stenographic notes taken by her. She obstinately refused, however, and ignored orders, even those given by this Court. Respondent's persistent failure to transcribe stenographic notes as above prescribed constitutes gross neglect of duty,[20] which is a grave offense punishable by dismissal even for the first offense.[21]

As a stenographer, she should have realized that the performance of her duty is essential to the prompt and proper

---

[18] Revised Rules on Transcription of Stenographic Notes and Their Transmission to Appellate Courts, effective August 1, 1990.

[19] *Alcover v. Bacatan*, A.M. No. P-05-2043, December 7, 2005, 476 SCRA 607, 612.

[20] *Reyes v. Bautista*, A.M. No. P-04-1873, January 13, 2005, 448 SCRA 95, 102; *Ceniza-Guevarra v. Magbanua*, 363 Phil. 454, 459 (1999).

[21] Rule IV Section 52, A2 of the Revised Uniform Rules on Administrative Cases in the Civil Service, Civil Service Commission Memorandum Circular No. 19, s. 1999.

administration of justice, and her inaction hampers the administration of justice and erodes public faith in the judiciary.[22] The Court has expressed its dismay over the negligence and indifference of persons involved in the administration of justice.[23] No less than the Constitution mandates that public officers serve the people with utmost respect and responsibility.[24] Public office is a public trust, and respondent has without a doubt violated this trust by her failure to fulfill her duty as a court stenographer.[25] The fact that she filed a resignation letter dated February 6, 2001 cannot excuse her from liability. As correctly noted by the OCA, paragraph 5 of Administrative Circular No. 24-90 clearly disallows the same. It reads:

> 5. No stenographer shall be allowed to resign from the service or allowed to retire optionally without having transcribed all transcript of stenographic notes taken by him. A stenographer due for compulsory retirement must submit to the Judge/Clerk all pending transcribed stenographic notes, three (3) months before retirement date.
>
> No terminal leave or retirement pay shall be paid to a stenographer without a verified statement that all his transcript of stenographic notes have been transcribed and delivered to the proper court, confirmed by the Executive Judge of the Court concerned.

For displaying gross neglect of duty, the Court has no recourse but to dismiss respondent from the service.

WHEREFORE, Ruby B. Hechanova, Court Stenographer III of the Regional Trial Court, Branch 69 of Silay City, Negros Occidental is found *GUILTY of GROSS NEGLECT OF DUTY* and is hereby *DISMISSED* from the service, with forfeiture of all benefits and privileges except accrued leave credits, if any, with prejudice to re-employment in any branch or agency of the government, including government-owned and controlled corporations.

---

[22] *Judge Ibay v. Lim*, 394 Phil. 415, 421 (2000).

[23] *Supra* note 20.

[24] *Id*.

[25] *Id*.

SO ORDERED.

Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Nachura, Reyes, and *Brion, JJ.,* concur.

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

Quisumbing, Ynares-Santiago, Carpio, and *Leonardo-de Castro, JJ.,* on official leave.

THIRD DIVISION

[G.R. No. 155806. April 8, 2008]

TIBLE & TIBLE COMPANY, INC., HEIRS OF EMILIO G. TIBLE, JR., namely: ALMABELLA MENLA VDA. DE TIBLE, EMILIO M. TIBLE IV, MA. MYLENE TIBLE, VICTOR M. TIBLE, ERIC M. TIBLE, ALLAN M. TIBLE, NORMAN M. TIBLE and JOHANN EMIL M. TIBLE, *petitioners, vs.* **ROYAL SAVINGS AND LOAN ASSOCIATION (now assigned to COMSAVINGS BANK) and GODOFREDO E. QUILING, Deputy Provincial Sheriff of Calamba, Laguna,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* NOT PROPER WHEN APPEAL IS AVAILABLE. — The RTC decision is a judgment from which an appeal may be taken in accordance with Section 1, Rule 41 of the Rules of Court, which states: "SECTION 1. *Subject of appeal*. – An appeal may be taken from a judgment or final order that completely disposes of the case or of a particular matter therein when declared by these Rules to be appealable." The CA was, therefore,

correct when it dismissed outright the petition for *certiorari*. This Court has invariably upheld dismissals of *certiorari* petitions erroneously filed, appeal being the correct remedy. It is a very basic rule in our jurisprudence that *certiorari* cannot be availed of when the party has adequate remedy such as an appeal. Section 1, Rule 65 of the 1997 Rule of Civil Procedure explicitly states when a petition for *certiorari* may be availed of, to wit: "SECTION 1. *Petition for certiorari*. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and **there is no appeal**, or 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." xxx [T]he two remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive. Where appeal is available, *certiorari* will not prosper, even if the ground availed of is grave abuse of discretion.

2. ID.; CIVIL PROCEDURE; APPEAL; PROPER REMEDY IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION AND WHEN ISSUES ARE BASED ON FACTUAL CONSIDERATIONS. — x x x We find no grave abuse of discretion here. Applying the settled jurisprudence on the matter, appeal would have been an adequate remedy, especially since the dismissal by the RTC was mainly based on factual considerations.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ELUCIDATED.— After a thorough review of all the arguments of petitioners, We are unconvinced that the alleged errors referred to are acts of "grave abuse of discretion" that would fall under the definition of this phrase. As We explained in *Pilipino Telephone Corporation v. Pilipino Telephone Employees Association*: "For a petition for *certiorari* under Rule 65 of the Rules of Court to prosper, the tribunal, board or officer exercising judicial or quasi-judicial functions must be proven to have acted without or in excess of its or his jurisdiction, or with grave abuse of discretion

amounting to lack or excess of jurisdiction. 'Grave abuse of discretion' has been defined as 'a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough, it must be so grave as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law.' It should be stressed that it is not sufficient that a tribunal, in the exercise of its power, abused its discretion; such abuse must be grave.

4. ID.; CIVIL PROCEDURE; REQUIREMENTS ON NON-FORUM SHOPPING AND ON SERVICE OF PLEADINGS AND OTHER PAPERS MUST BE FAITHFULLY COMPLIED WITH.— Even assuming, *arguendo*, that the petition for *certiorari* filed with the CA is the correct remedy, still, petitioners' defective verification and affidavit of non-forum shopping as required by Section 3, Rule 46, as well as the absence of any written explanation to justify service by mail in lieu of personal service, as required by Section 11, Rule 13 of the 1997 Rule of Civil Procedure, are fatal to their cause. In *Athena Computers, Inc. v. Reyes*, the Court stressed that "*certiorari*, being an extraordinary remedy, the party who seeks to avail of the same must strictly observe the rules laid down by the law." x x x [I]t must be noted that subsequent compliance with the requirements on the certificate of non-forum shopping does not *ipso facto* entitle a party to a reconsideration of the dismissal order. x x x Moreover, petitioners failed to include any written explanation to justify service by mail in lieu of the required personal service of copies of the petition upon respondents. Section 11, Rule 13 of the Rules of Court states: "SEC. 11. *Priorities in modes of service and filing.* – Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes **must be** accompanied by a **written explanation** why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed." In *Solar Team Entertainment v. Ricafort*, the Court has unequivocally stated that "**for the guidance of the Bench and the Bar, strictest compliance with Section 11, Rule 13 is mandated x x x.**" The Court finds no cogent reason not

to apply the same strict standard to petitioners.

5. ID.; LIBERAL APPLICATION OF THE RULES; AN EXCEPTION TO THE GENERAL REQUIREMENT OF STRICT COMPLIANCE.— Much reliance is placed on the rule that "*Courts are not slaves or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on balance, technicalities take a backseat against substantive rights, and not the other way around*." This rule must always be used in the right context, lest injustice, rather than justice would be its end result. It must never be forgotten that, generally, the application of the rules must be upheld, and the suspension or even mere relaxation of its application, is the exception. xxx For the exception to come into play, first and foremost should be the party litigant's plausible explanation for non-compliance with the rules he proposes to be exempted from. Absent any acceptable explanation, the party's plain violation of the rules will not be countenanced. x x x Too, the party litigant must convince the Court that the outright dismissal of the petition would defeat the administration of justice. Recapitulating, the two pre-requisites for the relaxation of the rules are: (a) justifiable cause or plausible reason for non-compliance; and (b) compelling reason to convince the court that outright dismissal of the petition would seriously impair the orderly administration of justice.

APPEARANCES OF COUNSEL

Menla Malanyaon Atienza Law Office for petitioners.
Office of the Government Corporate Counsel for respondents.

D E C I S I O N

REYES, R.T., *J.*:

THE remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive. *Certiorari* being an extraordinary remedy, the party which seeks to avail of it must observe the Rules strictly.

This is a Rule 45 petition for review on *certiorari* of the Resolution[1] of the Court of Appeals (CA) which dismissed a Rule 65 petition for *certiorari* on procedural flaws.

The Facts

The facts, as reflected in the petition and its annexes, are as follows:

Sometime in June 1997, petitioners Tible & Tible Company, Inc. (TTCI) and Emilio G. Tible, Jr. (now deceased), jointly and severally, obtained a loan and/or credit accommodation from respondent Royal Savings and Loan Association (RSLA) in the total amount of one million five hundred thousand and eighty pesos (₱1,500,080.00). The loan amount was released to petitioner TTCI in four instalments, as follows:

Date Released		Amount	Due Date
June 6, 1977	₱	750,000.00	June 6, 1980
July 30, 1977		250,040.00	June 30, 1980
September 21, 1977		250,040.00	September 9, 1980
February 21, 1978		250,000.00	February 21, 1980
TOTAL		**₱1,500,080.00**	

Securing the loan were the following mortgages:

(a) Chattel Mortgage executed on June 2, 1977 over 64 units/pieces of logging, heavy, and sawmill equipment, their accessions and accessories, all valued at ₱3,123,035.00; and

(b) Chattel Mortgage on 2,243 pieces of logs, with total volume of 683,818 board feet.

The loan was intended to finance the logging and lumber business of petitioner TTCI. Unfortunately, between 1977 to 1980, TTCI did not come up to its projected capacity of 12,000 board feet per 8-hour operation due to mechanical and design

[1] *Rollo*, pp. 45-46. Dated July 11, 2002. Penned by Associate Justice B.A. Adefuin-dela Cruz (now retired), with Associate Justices Eliezer R. de los Santos (now deceased) and Regalado E. Maambong, concurring.

deficiencies. Despite remedial measures undertaken, it was unsuccessful in its efforts to rehabilitate the sawmill. TTCI was thus able to pay only ₱418,317.40 through *dacion en pago* by delivery of its lumber products.

In a Decision dated February 4, 1980 in **Civil Case No. 2893**, then Judge Luis L. Victor of the Court of First Instance (CFI) of Cavite, Branch 2, approved the compromise agreement between respondent RSLA, as then plaintiff on the one hand, and petitioners TTCI and Emilio Tible, Jr., as then defendants, on the other. TTCI expressly admitted to be indebted to RSLA in the sum of ₱2,428,290.20, inclusive of interests, attorney's fees service charges, stamps collection costs and expenses of suit, to be restructured for 18 months commencing January 12, 1980.[2]

Also stipulated in said compromise agreement is the mode of payment, to wit:

> 2. That defendants, after having fully examined and verified the said sum of ₱2,428,290.20 to be correct and/or untainted by any illegality or any imperfection in law and in fact, do hereby expressly propose to pay the said sum of ₱2,428,290.20 strictly according to the following schedule:
>
> a. ₱156,176.58 – on or before March 30, 1980;
>
> b. ₱156,176.58 – on or before April 30, 1980 and every 30th day of the immediately succeeding months thereafter until the account is paid in full, it being expressly understood that all unpaid instalments shall bear fourteen per cent (14%) interest per annum from their respective dates of default until full payment.[3]

The compromise agreement further stated that "failure on the part of the defendants to pay any one of the installments as and when the same is due and payable, shall make the whole obligation immediately due and payable and **shall entitle the**

---

[2] *Id*. at 80.

[3] *Id.*

plaintiff to immediately execute without further verbal or written notice to the defendants x x x."[4]

After TTCI defaulted in its monthly payments, RSLA moved for immediate execution of the February 4, 1980 Decision based on the compromise in Civil Case No. N-2893, without furnishing TTCI any copy of such motion. CFI granted the motion and issued the order dated July 16, 1980 stating as follows:

> For failure of the defendants to comply with the decision rendered by the Court on February 4, 1980, the omnibus *ex parte* motion for appointment of special sheriff to enforce the same, dated July 1, 1980, filed by the plaintiff is granted.
>
> WHEREFORE, in view thereof, let a writ of execution be issued in this case and the same be implemented by the City Sheriff of Naga City.
>
> SO ORDERED.[5]

In its manifestation with *ex parte* motion dated August 17, 1981 in the said civil case, RSLA sought the issuance of an alias writ of execution, which was again granted by the CFI, as follows:

> Considering the manifestation with *ex parte* motion, dated August 17, 1981, filed by counsel for the plaintiff, to be well-taken, the motion is granted and an alias writ of execution is hereby issued in this case and to implement the same, Deputy Provincial Sheriff of Laguna Godofredo Quiling is hereby appointed as a special sheriff for the purpose.
>
> SO ORDERED.[6]

Accordingly, an alias writ of execution[7] was issued.

In a public auction sale conducted on December 12, 1983 by Godofredo E. Quiling, then Deputy Sheriff of the Province of

---

[4] *Id.* at 81. (Emphasis supplied)

[5] *Id.* at 82.

[6] *Id.* at 84.

[7] *Id.* at 85.

Laguna, twenty-three (23) parcels of land[8] were awarded to RSLA as highest bidder for the total bid price of ₱950,000.00.

On November 5, 1993, almost ten years after the supposed public auction sale, Quiling, now Sheriff IV of Calamba, Laguna, issued the final deed of sale[9] in favor of RSLA (now Comsavings Bank).

Upon another *ex parte* motion by now respondent Comsavings Bank, the former CFI of Cavite, now Regional Trial Court (RTC), Branch 16, in Cavite City, issued an Order[10] for: (a) the Register of Deeds of Naga City to cancel Transfer Certificate of Title (TCT) No. 9061; (b) the Register of Deeds of Camarines Sur to cancel seven original and transfer certificates of title; (c) the Provincial Assessor of Camarines Sur to cancel eight tax declarations; and (d) the City Assessor of Naga City to cancel two tax declarations and (e) all of them to issue in lieu thereof new certificates of title and tax declarations in the name of respondent Comsavings Bank, upon payment of corresponding fees and subject to subsisting encumbrances.

Aggrieved by these developments, petitioners filed an action for "*Annulment of Execution Sale, and TCT Nos. 27994, 24002, 24003, 24004, 24005 and other related Documents, and/or Reconveyance of Real Property with prayer to Preliminary Injunction and Restraining Order with Damages*" initially with the RTC, Branch 24, Naga City which was docketed as **Civil Case No. RTC-96-3626**, considering that the subject matter in litigation are located within the territorial jurisdiction of the said court.

In an Order[11] dated October 13, 1997, however, RTC, Branch 24, in Naga City dismissed the complaint for want of jurisdiction and suggested that the complaint be filed in Cavite

---

[8] Ten (10) parcels of land were covered only by tax declarations, while thirteen parcels of land were covered by eight (8) transfer certificates of titles.

[9] *Rollo,* pp. 86-94.

[10] *Id*. at 95-96. Dated February 16, 1995 in Civil Case No. N-2893.

[11] *Id*. at 128-130.

City instead. It cited *Philippine National Bank v. Javelana*[12] which held that the rule which prohibits a judge from interfering with the actuations of the judge of another branch of the same court is not infringed when the judge who modifies or annuls the order issued by the other judge acts in the same case and belongs to the same court.[13]

Opting against elevating the said order of dismissal to the appellate court, petitioners filed the same complaint, which is now the case involved in the present petition, with the RTC in Cavite City as suggested by the RTC in Naga City. This was considered as a new case, docketed as **Civil Case No. N-6619**, raffled to the same RTC, Branch 16 in which Civil Case No. N-2893 was docketed.

Instead of filing an answer, respondent Comsavings bank filed a motion to dismiss on the ground that petitioners' claim or demand has been waived, abandoned or otherwise extinguished.

RTC and CA Dispositions

On February 6, 2002, the RTC dismissed the complaint in **Civil Case No. N-6619** for want of proof. The RTC likewise dismissed the counterclaim. Petitioners' motion for reconsideration of said dismissal was also denied by the RTC in its Order dated March 26, 2002, stating that:

> Acting on the motion for reconsideration dated February 22, 2002 and finding no new and cogent reason which would warrant a reversal of the decision dated February 6, 2002 considering that the issues raised have already been passed upon and dealt with adequately, the same is DENIED.
>
> SO ORDERED.[14]

Petitioners elevated the case to the CA on May 15, 2002 via petition for review under Rule 42. On May 20, 2002, after allegedly realizing that the decision of RTC, Branch 16, Cavite

---

[12] 92 Phil. 525 (1953).

[13] *Rollo*, p. 130. Cited in RTC Order dated October 13, 1997.

[14] *Id*. at 25.

City was not rendered in the exercise of appellate jurisdiction, petitioners filed a motion to withdraw petition for review. The CA granted the motion to withdraw.

On May 23, 2002, petitioners filed a petition for *certiorari* with the CA.

On July 11, 2002, the CA dismissed outright the petition for *certiorari* on procedural grounds, *viz.*:

(1) the "Verification Affidavit of Non-Forum Shopping" was signed by one Almabella Menla *Vda. de* Tible, but there is no Special Power of Attorney, Board Resolution nor Secretary's Certificate was attached thereto authorizing said signatory to sign the Verification and Affidavit of Non-Forum Shopping in behalf of the other petitioners; (Sec. 3, Rule 46 of the 1997 Rules of Civil Procedure as amended)

(2) there is no written explanation to justify service by mail in lieu of the required personal service of copies of the petition upon the respondents was made (Section 11, Rule 13, *Id.*; *Solar Team Entertainment, Inc. vs. Hon. Ricafort, et al.*, 293 SCRA 661).

Further, even a perfunctory reading of the petition reveals that the same is seriously infirmed in that it is not the proper remedy from the assailed decision dismissing petitioners' complaint for "Annulment of Execution Sale and T.C.T. Nos. 27994, 24002, 24003, 24005 and other related documents, and/or Reconveyance of Real Property with prayer for Preliminary Injunction and Restraining Order with Damages" in Civil Case No. N-6619 before the Regional Trial Court of Cavite City, Branch 16, but ordinary appeal therefrom under Rule 41 of the 1997 Rules of Civil Procedure.[15]

On August 5, 2002, petitioners filed a motion for reconsideration and motion to admit petitioners' special power of attorney and board resolution. In a Resolution dated October 29, 2002, the CA denied petitioners' plea for reconsideration.

Hence, the present petition for review on *certiorari*.

[15] *Id.* at 45-46.

Issues

The two main issues are both procedural in nature:

1. Is petitioners' proper remedy an ordinary appeal under Rule 41 or a petition for *certiorari* under Rule 65?

2. May the CA relax the application of the rules requiring verification and certification of non-forum shopping under Section 3, Rule 46, as well as compliance with the rule regarding priorities in modes of service and filing of pleadings under Section 11, Rule 13?

Our Ruling

The CA aptly dismissed the petition for certiorari for being an improper remedy.

In the assailed Resolution of July 11, 2002, the CA dismissed petitioners' *certiorari* petition for being the wrong remedy or mode of review of the decision dated February 6, 2002 of RTC, Branch 16, in Cavite City.

The RTC decision is a judgment from which an appeal may be taken in accordance with Section 1, Rule 41 of the Rules of Court, which states:

> SECTION 1. *Subject of appeal*. – An appeal may be taken from a judgment or final order that completely disposes of the case or of a particular matter therein when declared by these Rules to be appealable.

The CA was, therefore, correct when it dismissed outright the petition for *certiorari*. This Court has invariably upheld dismissals of *certiorari* petitions erroneously filed, appeal being the correct remedy. It is a very basic rule in our jurisprudence that *certiorari* cannot be availed of when the party has adequate remedy such as an appeal.

Section 1, Rule 65 of the 1997 Rule of Civil Procedure explicitly states when a petition for *certiorari* may be availed of, to wit:

> SECTION 1. *Petition for certiorari*. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted

without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and **there is no appeal**, or 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)

The Court has exhaustively enumerated and painstakingly discussed the differences between these two remedies in *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*,[16] *viz.*:

Appeal and Certiorari Distinguished

Between an appeal and a petition for *certiorari*, there are substantial distinctions which shall be explained below.

As to the Purpose. *Certiorari* is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. In *Pure Foods Corporation v. NLRC*, we explained the simple reason for the rule in this light:

> "When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correctable through the original civil action of *certiorari*."

The supervisory jurisdiction of a court over the issuance of a writ of *certiorari* cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court – on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of *certiorari*. Where the error is not one of jurisdiction, but of an error of law or fact –

---

[16] G.R. No. 156067, August 11, 2004, 436 SCRA 123.

a mistake of judgment – appeal is the remedy.

As to the Manner of Filing. Over an appeal, the CA exercises its appellate jurisdiction and power of review. Over a *certiorari*, the higher court uses its original jurisdiction in accordance with its power of control and supervision over the proceedings of lower courts. An appeal is thus a continuation of the original suit, while a petition for *certiorari* is an original and independent action that was not part of the trial that had resulted in the rendition of the judgment or order complained of. The parties to an appeal are the original parties to the action. In contrast, the parties to a petition for *certiorari* are the aggrieved party (who thereby becomes the petitioner) against the lower court or quasi-judicial agency, and the prevailing parties (the public and the private respondents, respectively).

As to the Subject Matter. Only judgments or final orders and those that the Rules of Court so declare are appealable.Since the issue is jurisdiction, an original action for *certiorari* may be directed against an interlocutory order of the lower court prior to an appeal from the judgment; or where there is no appeal or any plain, speedy or adequate remedy.

As to the Period of Filing. Ordinary appeals should be filed within fifteen days from the notice of judgment or final order appealed from. Where a record on appeal is required, the appellant must file a notice of appeal and a record on appeal within thirty days from the said notice of judgment or final order. A petition for review should be filed and served within fifteen days from the notice of denial of the decision, or of the petitioner's timely filed motion for new trial or motion for reconsideration. In an appeal by *certiorari*, the petition should be filed also within fifteen days from the notice of judgment or final order, or of the denial of the petitioner's motion for new trial or motion for reconsideration.

On the other hand, a petition for *certiorari* should be filed not later than sixty days from the notice of judgment, order, or resolution. If a motion for new trial or motion for reconsideration was timely filed, the period shall be counted from the denial of the motion.

As to the Need for a Motion for Reconsideration. A motion for reconsideration is generally required prior to the filing of a petition for *certiorari*, in order to afford the tribunal an opportunity

to correct the alleged errors. Note also that this motion is a plain and adequate remedy expressly available under the law. Such motion is not required before appealing a judgment or final order.[17]

With these distinctions, it is plainly discernible why a party is precluded from filing a petition for *certiorari* when appeal is available, or why the two remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.[18] Where appeal is available, *certiorari* will not prosper, even if the ground availed of is grave abuse of discretion.[19]

More than that, We find no grave abuse of discretion here. Applying the settled jurisprudence on the matter, appeal would have been an adequate remedy, especially since the dismissal by the RTC was mainly based on factual considerations.

After a thorough review of all the arguments of petitioners, We are unconvinced that the alleged errors referred to are acts of "grave abuse of discretion" that would fall under the definition of this phrase. As We explained in *Pilipino Telephone Corporation v. Pilipino Telephone Employees Association*:[20]

> For a petition for *certiorari* under Rule 65 of the Rules of Court to prosper, the tribunal, board or officer exercising judicial or quasi-judicial functions must be proven to have acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. "Grave abuse of discretion" has been defined as "a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough, it must be so grave as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an

---

[17] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation, id.* at 134-136.

[18] *Tomas Claudio Memorial College v. Court of Appeals,* G.R. No. 152568, February 16, 2004, 423 SCRA 122.

[19] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation, supra* note 16, at 136-137.

[20] G.R. No. 160058, June 22, 2007, 525 SCRA 361.

evasion of a positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law."[21]

It should be stressed that it is not sufficient that a tribunal, in the exercise of its power, abused its discretion; such abuse must be grave.[22]

Non-compliance with the rules is fatal to a petition for certiorari.

Even assuming, *arguendo*, that the petition for *certiorari* filed with the CA is the correct remedy, still, petitioners' defective verification and affidavit of non-forum shopping as required by Section 3, Rule 46, as well as the absence of any written explanation to justify service by mail in lieu of personal service, as required by Section 11, Rule 13 of the 1997 Rule of Civil Procedure, are fatal to their cause.

In *Athena Computers, Inc. v. Reyes*,[23] the Court stressed that "*certiorari,* being an extraordinary remedy, the party who seeks to avail of the same must strictly observe the rules laid down by the law." The Court further explained in *Athena*:

The acceptance of a petition for *certiorari* as well as the grant of due course thereto is, in general, addressed to the sound discretion of the court. Although the court has absolute discretion to reject and dismiss a petition for *certiorari,* it does so only (1) when the petition fails to demonstrate grave abuse of discretion by any court, agency, or branch of the government; or (2) when there are procedural errors, like violations of the Rules of Court or Supreme Court Circulars. Clearly petitioners in their petition before the Court of Appeals committed procedural errors.

The verification of the petition and certification of non-forum shopping before the Court of Appeals were signed only by Jimenez.

---

[21] *Pilipino Telephone Corporation v. Pilipino Telephone Employees Association, id.* at 376-377, citing *Salinguin v. Commission on Elections,* G.R. No. 166046, March 23, 2006, 485 SCRA 219.

[22] *Benito v. Commission on Elections*, G.R. No. 134913, January 19, 2001, 349 SCRA 705, 714.

[23] G.R. No. 156905, September 5, 2007, 532 SCRA 343.

There is no showing that he was authorized to sign the same by Athena, his co-petitioner.

Section 4, Rule 7 of the Rules states that 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 knowledge and belief. Consequently, the verification should have been signed not only by Jimenez but also by Athena's duly authorized representative.

In *Docena v. Lapesura,* we ruled that the certificate of non-forum shopping should be signed by all the petitioners or plaintiffs in a case, and that the signing by only one of them is insufficient. The attestation on non-forum shopping requires *personal knowledge* by the party executing the same, and the lone signing petitioner cannot be presumed to have personal knowledge of the filing or non-filing by his co-petitioners of any action or claim the same as similar to the current petition.[24]

As noted by the CA in its Resolution of July 11, 2002, petitioner Almabella Menla *Vda. de* Tible's signature in the verification and affidavit of non-forum shopping of the petition for *certiorari* was not ratified by any special power of attorney, board resolution nor secretary's certificate executed by her co-petitioners authorizing her to sign for and in their behalf. The CA used this as one of its basis to dismiss the petition.

The CA refused to reverse its earlier dismissal upon petitioners' motion for reconsideration despite subsequent compliance by submitting the required special power of attorney,[25] secretary's certificate,[26] and board resolution.[27]

In *Digital Microwave Corporation v. Court of Appeals*,[28] the Court affirmed the CA dismissal of a petition on the same ground, noting—

---

[24] *Athena Computers, Inc. v. Reyes, id.* at 348.

[25] *Rollo,* p. 55.

[26] *Id.* at 57.

[27] *Id.* at 58.

[28] G.R. No. 128550, March 16, 2000, 328 SCRA 286.

x x x That **petitioner did not in the first instance comply** with the requirement of Revised Circular No. 2-91 by having the certification against forum shopping signed by one of its officers, **as it did *after*** its petition before the Court of Appeals had been dismissed, **is beyond our comprehension**.[29] (Emphasis supplied)

At any rate, it must be noted that subsequent compliance does not *ipso facto* entitle a party to a reconsideration of the dismissal order. As the Court aptly observed in *Batoy v. Regional Trial Court, Br. 50, Loay, Bohol*:[30]

x x x the requirement under Administrative Circular No. 04-94 for a certificate of non-forum shopping is mandatory. The **subsequent compliance with said requirement does not excuse a party's failure to comply therewith in the first instance**. In those cases where this Court excused the non-compliance with the requirement of the submission of a certificate of non-forum shopping, it found **special circumstances** or **compelling reasons** which made the strict application of said Circular clearly unjustified or inequitable. x x x[31] (Emphasis supplied)

Moreover, petitioners failed to include any written explanation to justify service by mail in lieu of the required personal service of copies of the petition upon respondents. Section 11, Rule 13 of the Rules of Court states:

SEC. 11. *Priorities in modes of service and filing.* – Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes **must be** accompanied by a **written explanation** why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed. (Emphasis supplied)

In *Solar Team Entertainment v. Ricafort*,[32] the Court has unequivocally stated that "***for the guidance of the Bench and***

---

[29] *Digital Microwave Corporation v. Court of Appeals, id.* at 290.

[30] G.R. No. 126833, February 17, 2003, 397 SCRA 506.

[31] *Batoy v. Regional Trial Court, Br. 50, Loay, Bohol, id.* at 510.

[32] G.R. No. 132007, August 5, 1998, 293 SCRA 661.

the Bar, strictest compliance with Section 11, Rule 13 is mandated x x x."[33] The Court finds no cogent reason not to apply the same strict standard to petitioners.

The doctrine of liberal application of Procedural rules applies when there is justifiable cause for non-compliance or compelling reason to relax it.

Much reliance is placed on the rule that "*Courts are not slaves or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on balance, technicalities take a backseat against substantive rights, and not the other way around.*"[34] This rule must always be used in the right context, lest injustice, rather than justice would be its end result.

It must never be forgotten that, generally, the application of the rules must be upheld, and the suspension or even mere relaxation of its application, is the exception. This Court previously explained:

> The Court is not impervious to the frustration that litigants and lawyers alike would at times encounter in procedural bureaucracy but imperative justice requires ***correct observance of indispensable technicalities precisely designed to ensure its proper dispensation***. It has long been recognized that strict compliance with the Rules of Court is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business.
>
> ***Procedural rules are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party***. Adjective law is important in ensuring the effective enforcement of substantive rights through the orderly and speedy administration of justice. These rules are not intended to hamper litigants or complicate litigation but, indeed to provide for a system under which a suitor

---

[33] *Solar Team Entertainment v. Ricafort, id.* at 670.

[34] *Grand Placement Services Corporation v. Court of Appeals,* G.R. No. 142358, January 31, 2006, 481 SCRA 189, 199.

may be heard in the correct form and manner and at the prescribed time in a peaceful confrontation before a judge whose authority they acknowledge.

It cannot be overemphasized that procedural rules have their own wholesome rationale in the orderly administration of justice. Justice has to be administered according to the Rules in order to obviate arbitrariness, caprice, or whimsicality. We have been cautioned and reminded in *Limpot vs. CA, et al.,* that:

> "Rules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings. It is a mistake to propose that substantive law and adjective law are contradictory to each other or, as often suggested, that enforcement of procedural rules should never be permitted if it will result in prejudice to the substantive rights of the litigants. This is not exactly true; the concept is much misunderstood. As a matter of fact, the policy of the courts is to give both kinds of law, as complementing each other, in the just and speedy resolution of the dispute between the parties. Observance of both substantive rights is equally guaranteed by due process, whatever the source of such rights, be it the Constitution itself or only a statute or a rule of court.
>
> xxx xxx xxx
>
> "x x x (T)hey are required to be followed except only when for the most persuasive of reasons them may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. x x x While it is true that a litigation is not a game of technicalities, this does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. Justice eschews anarchy."[35]

For the exception to come into play, first and foremost should be the party litigant's plausible explanation for non-compliance with the rules he proposes to be exempted from. Absent any

---

[35] *Republic v. Hernandez,* G.R. No. 117209, February 9, 1996, 253 SCRA 509, 529-531.

acceptable explanation, the party's plain violation of the rules will not be countenanced.

Thus, in *Suzuki v. De Guzman*,[36] the Court held:

> As a general rule, these requirements are mandatory, meaning, non-compliance therewith is a sufficient ground for the dismissal of the petition. While the Court is not unmindful of exceptional cases where this Court has set aside procedural defects to correct a patent injustice, concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least **explain his failure to comply with the rules**. There must be at least a reasonable attempt at compliance with the Rules. Utter disregard of the Rules cannot justly be rationalized by harking on the policy of liberal construction.[37] (Emphasis supplied)

In *Ortiz v. Court of Appeals*,[38] the CA dismissed the petition for review outright for failure of petitioners to sign the certification of non-forum shopping. The certification was signed only by their lawyer. In affirming the dismissal of the petition, the Court said:

> Regrettably, we find substantial compliance will not suffice in a matter involving strict observance as provided for in Circular No. 28-91. The attestation contained in the certification on non-forum shopping requires personal knowledge by the party who executed the same. **To merit the Court's consideration, petitioner here must show reasonable cause for failure to personally sign the certification**. The petitioners must convince the court that the outright dismissal of the petition would defeat the administration of justice. However, the petitioner did not give any explanation to warrant their exemption from the strict application of the rule. Utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.[39] (Emphasis supplied)

Too, the party litigant must convince the Court that the outright dismissal of the petition would defeat the administration of

---

[36] G.R. No. 146979, July 27, 2006, 496 SCRA 651.

[37] *Suzuki v. De Guzman, id.* at 662.

[38] G.R. No. 127393, December 4, 1998, 299 SCRA 708.

[39] *Ortiz v. Court of Appeals, id.* at 711-712.

justice.[40] The Court's pronouncements in *Pet Plans, Inc. v. Court of Appeals*[41] are illustrative:

> x x x In *Loquias vs. Office of the Ombudsman* (338 SCRA 62, 68 [2000]), we held that failure of one of the petitioners to sign the verification and certificate against forum shopping constitutes a defect in the petition, which is a ground for dismissing the same. While we have held in rulings subsequent to *Loquias* that this rule may be relaxed, petitioners must comply with two conditions: *first,* petitioners must show justifiable cause for their failure to personally sign the certification, and; *second,* they must also be able to prove that the outright dismissal of the petition would seriously impair the orderly administration of justice. x x x[42]

Recapitulating, the two pre-requisites for the relaxation of the rules are: (a) justifiable cause or plausible reason for non-compliance; and (b) compelling reason to convince the court that outright dismissal of the petition would seriously impair the orderly administration of justice.

Perusing the records, We find neither justifiable cause nor compelling reason to relax the rules in petitioners' favor.

Petitioners do not have any plausible reason for non-compliance. In their motion for reconsideration[43] of the CA dismissal, petitioners claimed that co-petitioners of Almabella *Vda. de* Tible, who signed the verification in their behalf, had executed a Special Power of Attorney (SPA) way back in November 22, 1997, but offered **no acceptable explanation** why they did not attach a copy of said SPA to their petition for *certiorari*. The same is true with the lack of a board resolution. Supposed "oversight and/or inadvertence committed by petitioners' counsel" which may easily be alleged, do not *per se* constitute an acceptable explanation for non-compliance.

---

[40] *United Paragon Mining Corporation v. Court of Appeals,* G.R. No. 150959, August 4, 2006, 497 SCRA 638, 648.

[41] G.R. No. 148287, November 23, 2004, 443 SCRA 510.

[42] *Pet Plans, Inc. v. Court of Appeals, id.* at 520.

[43] *Rollo,* p. 69.

Also, the Court finds nothing on record which constitutes compelling reason for a liberal application of procedural rules.

WHEREFORE, the petition is *DENIED* for lack of merit.

SO ORDERED.

Austria-Martinez (Acting Chairperson),[*] *Tinga,*[**] *Chico-Nazario,* and *Nachura, JJ.,* concur.

THIRD DIVISION

[G.R. No. 158271. April 8, 2008]

CHINA BANKING CORPORATION, *petitioner, vs.* **ASIAN CONSTRUCTION and DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY TO ASSAIL RESOLUTIONS WHICH ARE INTERLOCUTORY IN NATURE.— Considering that the herein assailed CA Resolutions are interlocutory in nature as they do not dispose of the case completely but leave something to be done upon the merits, the proper remedy should have been by way of petition for *certiorari* under Rule 65, as provided for in Section 1 (b), Rule 41 of the Rules of Court, as amended by A.M. No. 07-7-12-SC, which provides: Section 1. *Subject of appeal.* - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular

---

[*] Vice Associate Justice Consuelo Ynares-Santiago, Chairperson, who is on official leave per Special Order No. 497 dated March 14, 2008.

[**] Designated as additional member per Special Order No. 497 dated March 14, 2008.

matter therein when declared by these Rules to be appealable. No appeal may be taken from: x x x (b) An interlocutory order; x x x In any of the foregoing instances, the aggrieved party may file an **appropriate special civil action as provided in Rule 65.** The present petition for review on *certiorari* should have been dismissed outright.

2. ID.; ID.; ID.; WHERE PETITION FOR REVIEW TREATED AS PETITION FOR *CERTIORARI*; NOT APPLICABLE IN THE CASE AT BAR.— In many instances, the Court has treated a petition for review on *certiorari* under Rule 45 as a petition for *certiorari* under Rule 65 of the Rules of Court, such as in cases where the subject of the recourse was one of jurisdiction, or the act complained of was perpetrated by a court with grave abuse of discretion amounting to lack or excess of jurisdiction. The present petition does not involve any issue on jurisdiction, neither does it show that the CA committed grave abuse of discretion in denying the motion to sell the attached property.

3. ID.; PROVISIONAL REMEDIES; ATTACHMENT; WHEN ATTACHED PROPERTY MAY BE SOLD AFTER LEVY ON ATTACHMENT AND BEFORE ENTRY OF JUDGMENT.— Section 11, Rule 57 of the Rules of Court provides: **Sec. 11.** *When attached property may be sold after levy on attachment and before entry of judgment.*- Whenever it shall be made to appear to the court in which the action is pending, upon hearing with notice to both parties, that the property attached is perishable, **or that the interests of all the parties to the action** will be subserved by the sale thereof, the court may order such property to be sold at public auction in such manner as it may direct, and the proceeds of such sale to be deposited in court to abide the judgment in the action. Thus, an attached property may be sold after levy on attachment and before entry of judgment whenever it shall be made to appear to the court in which the action is pending, upon hearing with notice to both parties, that **the attached property is perishable or that the interests of all the parties to the action will be subserved by the sale of the attached property.** Sale of attached property before final judgment is an equitable remedy provided for the convenience of the parties and preservation of the property.

4. ID.; ID.; ID.; ID.; PERISHABLE PROPERTIES; VEHICLES, OFFICE MACHINES AND FIXTURES; FOREIGN LAWS

AND JURISPRUDENCE ON THE MATTER, EXAMINED.— The issue hinges on the determination whether the vehicles, office machines and fixtures are "perishable property" under Section 11, Rules 57 of the Rules of Court, which is actually one of first impression. No local jurisprudence or authoritative work has touched upon this matter. This being so, an examination of foreign laws and jurisprudence, particularly those of the United States where some of our laws and rules were patterned after, is in order. In *Mossler Acceptance Co. v. Denmark,* an order of the lower court in directing the sale of attached properties, consisting of 20 automobiles and 2 airplanes, was reversed by the Supreme Court of Louisiana. In support of its contention that automobiles are perishable, *Mossler* offered testimony to the effect that automobile tires tend to dry-rot in storage, batteries to deteriorate, crankcases to become damaged, paint and upholstery to fade, that generally automobiles tend to depreciate while in storage. Rejecting these arguments, the Supreme Court of Louisiana held that while there might be a depreciation in the value of a car during storage, depending largely on existing economic conditions, there would be no material deterioration of the car itself or any of its appurtenances if the car was properly cared for, and therefore it could not be said that automobiles were of a perishable nature within the intendment of the statute, which could only be invoked when the property attached and seized was of a perishable nature. With respect to the determination of the question on whether the attached office furniture, office equipment, accessories and supplies are perishable properties, the Supreme Court of Alabama in *McCreery v. Berney National Bank* discussed the "perishable" nature of the attached properties, consisting of shelving, stock of drygoods and a complete set of store fixtures, consisting of counters iron safe, desk and showcases, to be within the meaning of "perishable" property under the Alabama Code which authorizes a court, on motion of either party, to order the sale, in advance of judgment, of perishable property which had been levied on by a writ of attachment. In *McCreery,* the Supreme Court of Alabama rejected the argument that the sale of the attached property was void because the term "perishable" property, as used in the statute, meant only such property as contained in itself the elements of speedy decay, such as fruits, fish, fresh meats, *etc*. The Supreme Court of Alabama held that whatever may be the character of the property,

if the court is satisfied that, either by reason of its perishable nature, or because of the expense of keeping it until the termination of the litigation, it will prove, or be likely to prove, fruitless to the creditor, and that the purpose of its original seizure will probably be frustrated, the sale of the attached property is justified. *McCreery* applied the doctrine in *Millard's Admrs. v. Hall* where the Supreme Court of Alabama held that an attached property is perishable "if it is shown that, by keeping the article, it will necessarily become, or is likely to become, worthless to the creditor, and by consequence to the debtor, then it is embraced by the statute. It matters not, in our opinion, what the subject matter is. It may be cotton bales, live stock, hardware provisions or dry goods." Although the statute under which *Millard's* was decided used the words "likely to waste or be destroyed by keeping," instead of the word "perishable," the reasons given for the construction placed on the statute apply equally to the Alabama Code which uses the term "perishable."

5. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; FACTUAL ISSUES, NOT PROPER; MORE SO FOR ISSUE AND EVIDENCE RAISED FOR THE FIRST TIME IN COURT.— The determination on whether the attached vehicles are properly cared for, and the burden to show that, by keeping the attached office furniture, office equipment and supplies, it will necessarily become, or is likely to become, worthless to China Bank, and by consequence to ACDC, are factual issues requiring reception of evidence which the Court cannot do in a petition for *certiorari.* Factual issues are beyond the scope of *certiorari* because they do not involve any jurisdictional issue. As a rule, only jurisdictional questions may be raised in a petition for *certiorari,* including matters of grave abuse of discretion which are equivalent to lack of jurisdiction. The office of the writ of *certiorari* has been reduced to the correction of defects of *jurisdiction* solely and cannot legally be used for any other purpose. Moreover, the Court held in *JAM Transportation Co., Inc. v. Flores* that it is well-settled, too well-settled to require a citation of jurisprudence, that this Court does not make findings of facts specially on evidence raised for the first time on appeal. The Court will not make an exception in the case at bar. Hence, the photographs of the attached properties presented before the Court, for the first time on appeal, cannot be considered by the Court.

6. ID.; ID.; ID.; PROPRIETY THEREOF.— *Certiorari* is truly an extraordinary remedy and, in this jurisdiction, its use is restricted to truly extraordinary cases - cases in which the action of the inferior court is wholly void; where any further steps in the case would result in a waste of time and money and would produce no result whatever; where the parties, or their privies, would be utterly deceived; where a final judgment or decree would be nought but a snare and delusion, deciding nothing, protecting nobody, a judicial pretension, a recorded falsehood, a standing menace. It is only to avoid such results as these that a writ of *certiorari* is issuable; and even here an appeal will lie if the aggrieved party prefers to prosecute it.

7. ID.; PROVISIONAL REMEDIES; ATTACHMENT; CONDITION OF APPLICANT'S BOND; APPLICATION OF RULE IN THE CASE AT BAR.— Section 4, Rule 57 of the Rules of Court provides: Section 4. *Condition of applicant's bond.* - The party applying for the order must thereafter give a bond executed to the adverse party in the amount fixed by the court in its order granting the issuance of the writ, conditioned that the latter will pay all the costs which may be adjudged to the adverse party and all the damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto. It is clear from the foregoing provision that the bond posted by China Bank answers only for the payment of all damages which ACDC may sustain if the court shall finally adjudge that China Bank was not entitled to attachment. The liability attaches if "the plaintiff is not entitled to the attachment because the requirements entitling him to the writ are wanting," or "if the plaintiff has no right to the attachment because the facts stated in his affidavit, or some of them are untrue." Clearly, ACDC can only claim from the bond for all the damages which it may sustain by reason of the attachment and not because of the sale of the attached properties prior to final judgment.

APPEARANCES OF COUNSEL

Lim Vigilia Alcala Dumlao & Orencia for petitioner.

Castillo Lamantan Pantaleon & San Jose 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 filed by petitioner China Banking Corporation (China Bank) seeking to annul the Resolution[1] dated October 14, 2002 and the Resolution[2] dated May 16, 2003 of the Court of Appeals (CA) in CA-G.R. CV No. 72175.

The facts of the case:

On July 24, 1996, China Bank granted respondent Asian Construction and Development Corporation (ACDC) an Omnibus Credit Line in the amount of ₱90,000,000.00.[3]

On April 12, 1999, alleging that ACDC failed to comply with its obligations under the Omnibus Credit Line, China Bank filed a Complaint[4] for recovery of sum of money and damages with prayer for the issuance of writ of preliminary attachment before the Regional Trial Court (RTC) of Makati, Branch 138, docketed as Civil Case No. 99-796. In the Complaint, China Bank claimed that ACDC, after collecting and receiving the proceeds or receivables from the various construction contracts and purportedly holding them in trust for China Bank under several Deeds of Assignment, misappropriated, converted, and used the funds for its own purpose and benefit, instead of remitting or delivering them to China Bank.[5]

On April 22, 1999, the RTC issued an Order[6] granting China Bank's prayer for writ of preliminary attachment. Consequently,

---

[1] Penned by Justice Remedios A. Salazar-Fernando and concurred in by now Presiding Justice Conrado M. Vasquez, Jr. and Justice Regalado E. Maambong; *rollo,* pp. 10-13.

[2] *Id*. at 15-16.

[3] Annex "A", *rollo*, p. 84.

[4] Annex "D", *id*. at 54-74.

[5] *Id*. at 333.

[6] Annex "E", *id*. at 182-183.

as shown in the Sheriff's Report[7] dated June 14, 1999, the writ of preliminary attachment was implemented levying personal properties of ACDC, *i.e.*, vans, dump trucks, cement mixers, cargo trucks, utility vehicles, machinery, equipment and office machines and fixtures.

On March 27, 2000, upon motion of China Bank, the RTC issued a Summary Judgment[8] in favor of China Bank. ACDC filed its Notice of Appeal[9] dated April 24, 2000.

On June 15, 2000, China Bank filed a Motion to Take Custody of Attached Properties with Motion for Grant of Authority to Sell to the Branch Sheriff[10] with the RTC, praying that it be allowed to take custody of ACDC's properties for the purpose of selling them in an auction.[11] On June 20, 2000, ACDC filed its Opposition[12] to the June 15, 2000 Motion arguing that there can be no sale of the latter's attached properties in the absence of a final and executory judgment against ACDC.

On August 25, 2000, China Bank partially appealed the Summary Judgment for not awarding interest on one of its promissory notes.[13] Records of the case were elevated to the CA.[14]

On April 18, 2002, China Bank filed a Motion for Leave for Grant of Authority to Sell Attached Properties[15] which the CA denied in the herein assailed Resolution dated October 14, 2002.

According to the CA, selling the attached properties prior to final judgment of the appealed case is premature and contrary to the intent and purpose of preliminary attachment for the

---

[7] Annex "F", *id*. at 184-185.

[8] Annex "I", *id*. at 228-231.

[9] Annex "J", *id*. at 232-233.

[10] Annex "K", *id*. at 234-238.

[11] *Id*. at 237.

[12] Records, vol. II, pp. 651-656.

[13] Annex "L", *rollo,* pp. 239-240.

[14] CA *rollo*, p. 3.

[15] *Rollo,* pp. 241-245.

following reasons: *first,* the records reveal that the attached properties subject of the motion are not perishable in nature; and *second,* while the sale of the attached properties may serve the interest of China Bank, it will not be so for ACDC. The CA recognized China Bank's apprehension that by the time a final judgment is rendered, the attached properties would be worthless. However, the CA also acknowledged that since ACDC is a corporation engaged in a construction business, the preservation of the properties is of paramount importance; and that in the event that the decision of the lower court is reversed and a final judgment rendered in favor ACDC, great prejudice will result if the attached properties were already sold.

China Bank filed a Motion for Reconsideration[16] which was denied in the herein assailed CA Resolution[17] dated May 16, 2003.

Hence, the present petition for review on *certiorari*, on the following ground:

> THE HONORABLE COURT OF APPEALS RENDERED THE QUESTIONED RESOLUTIONS (*ANNEXES "A" and "B")* IN A MANNER NOT IN ACCORD WITH THE PROVISIONS OF SECTION 11, RULE 57 OF THE RULES OF CIVIL PROCEDURE, AS IT SHELVED THE DEMANDS OF EQUITY BY ARBITRARILY DISALLOWING THE SALE OF THE ATTACHED PROPERTIES, UPHOLDING ONLY THE INTEREST OF RESPONDENT, IN UTTER PARTIALITY.[18]

Considering that the herein assailed CA Resolutions are interlocutory in nature as they do not dispose of the case completely but leave something to be done upon the merits,[19] the proper remedy should have been by way of petition for *certiorari* under Rule 65, as provided for in Section 1 (b), Rule 41 of the Rules of Court, as amended by A.M. No. 07-7-12-SC,[20] which provides:

---

[16] *Id*. at 48-53.

[17] *Id*. at 15-16.

[18] *Rollo*, p. 26.

[19] *De Leon v. Court of Appeals,* 432 Phil. 775, 787 (2002).

[20] Effective December 27, 2007.

Section 1. *Subject of appeal.* - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

xxx xxx xxx

(b) An interlocutory order;

xxx xxx xxx

In any of the foregoing instances, the aggrieved party may file an **appropriate special civil action as provided in Rule 65.** (Emphasis supplied).

The present petition for review on *certiorari* should have been dismissed outright. However, in many instances, the Court has treated a petition for review on *certiorari* under Rule 45 as a petition for *certiorari* under Rule 65 of the Rules of Court, such as in cases where the subject of the recourse was one of jurisdiction, or the act complained of was perpetrated by a court with grave abuse of discretion amounting to lack or excess of jurisdiction.[21] The present petition does not involve any issue on jurisdiction, neither does it show that the CA committed grave abuse of discretion in denying the motion to sell the attached property.

Section 11, Rule 57 of the Rules of Court provides:

Sec. 11. *When attached property may be sold after levy on attachment and before entry of judgment.*- Whenever it shall be made to appear to the court in which the action is pending, upon hearing with notice to both parties, that the property attached is perishable, **or that the interests of all the parties to the action** will be subserved by the sale thereof, the court may order such property to be sold at public auction in such manner as it may direct, and the proceeds of such sale to be deposited in court to abide the judgment in the action. (Emphasis supplied)

[21] See *Estandarte v. People of the Philippines,* G.R. Nos. 156851-55, February 18, 2008; *Longos Rural Waterworks and Sanitation Association, Inc. v. Desierto,* 434 Phil. 618, 624 (2002); *Fortich v. Corona*, 352 Phil. 461, 477 (1998).

Thus, an attached property may be sold after levy on attachment and before entry of judgment whenever it shall be made to appear to the court in which the action is pending, upon hearing with notice to both parties, that **the attached property is perishable or that the interests of all the parties to the action will be subserved by the sale of the attached property.**

In its Memorandum,[22] China Bank argues that the CA's notion of perishable property, which pertains only to those goods which rot and decay and lose their value if not speedily put to their intended use,[23] is a strict and stringent interpretation that would betray the purpose for which the preliminary attachment was engrafted.[24] Citing *Witherspoon v. Cross,*[25] China Bank invokes the definition of "perishable property" laid down by the Supreme Court of California as goods which decay and lose their value if not speedily put to their intended use; but where the time contemplated is necessarily long, the term may embrace property liable merely to material depreciation in value from other causes than such decay.

As stated in the Sheriff's Report[26] and Notices of Levy on Properties,[27] all of ACDC's properties which were levied are personal properties consisting of used vehicles, *i.e.,* vans, dump trucks, cement mixers, cargo trucks, utility vehicles, machinery, equipment and office machines and fixtures. China Bank insists that the attached properties, all placed inside ACDC's stockyard located at Silang, Cavite and the branch office in Mayamot, Antipolo City, are totally exposed to natural elements and adverse weather conditions.[28] Thus, China Bank argues, that should the attached properties be allowed to depreciate, perish or rot while the main case is pending, the attached properties will

---

[22] *Rollo,* pp. 296-318.

[23] *Id*. at 310.

[24] *Id*.

[25] 135 Cal. 96, 67 Pac. 18 (Dec. 14, 1901).

[26] Annex "F", *rollo,* pp. 184-185.

[27] *Id*. at 186-194.

[28] *Id*. at 307.

continue losing their worth thereby rendering the rules on preliminary attachment nugatory.

The issue hinges on the determination whether the vehicles, office machines and fixtures are "perishable property" under Section 11, Rules 57 of the Rules of Court, which is actually one of first impression. No local jurisprudence or authoritative work has touched upon this matter. This being so, an examination of foreign laws and jurisprudence, particularly those of the United States where some of our laws and rules were patterned after, is in order.[29]

In *Mossler Acceptance Co. v. Denmark,*[30] an order of the lower court in directing the sale of attached properties, consisting of 20 automobiles and 2 airplanes, was reversed by the Supreme Court of Louisiana. In support of its contention that automobiles are perishable, *Mossler* offered testimony to the effect that automobile tires tend to dry-rot in storage, batteries to deteriorate, crankcases to become damaged, paint and upholstery to fade, that generally automobiles tend to depreciate while in storage.[31] Rejecting these arguments, the Supreme Court of Louisiana held that while there might be a depreciation in the value of a car during storage, depending largely on existing economic conditions, there would be no material deterioration of the car itself or any of its appurtenances if the car was properly cared for, and therefore it could not be said that automobiles were of a perishable nature within the intendment of the statute, which could only be invoked when the property attached and seized was of a perishable nature.[32]

With respect to the determination of the question on whether the attached office furniture, office equipment, accessories and supplies are perishable properties, the Supreme Court of Alabama in *McCreery v. Berney National Bank*[33] discussed the "perishable"

---

[29] *Republic of the Philippines v. Sandiganbayan,* 453 Phil. 1059, 1121(2003).

[30] 211 La. 1078, 31 So. 2d 216 (1947).

[31] *Id*.

[32] *Id*.

nature of the attached properties, consisting of shelving, stock of drygoods and a complete set of store fixtures, consisting of counters iron safe, desk and showcases, to be within the meaning of "perishable" property under the Alabama Code which authorizes a court, on motion of either party, to order the sale, in advance of judgment, of perishable property which had been levied on by a writ of attachment.[34]

In *McCreery,* the Supreme Court of Alabama rejected the argument that the sale of the attached property was void because the term "perishable" property, as used in the statute, meant only such property as contained in itself the elements of speedy decay, such as fruits, fish, fresh meats, *etc*.[35] The Supreme Court of Alabama held that whatever may be the character of the property, if the court is satisfied that, either by reason of its perishable nature, or because of the expense of keeping it until the termination of the litigation, it will prove, or be likely to prove, fruitless to the creditor, and that the purpose of its original seizure will probably be frustrated, the sale of the attached property is justified.

McCreery applied the doctrine in *Millard's Admrs. v. Hall*[36] where the Supreme Court of Alabama held that an attached property is perishable "if it is shown that, by keeping the article, it will necessarily become, or is likely to become, worthless to the creditor, and by consequence to the debtor, then it is embraced by the statute. It matters not, in our opinion, what the subject matter is. It may be cotton bales, live stock, hardware provisions or dry goods." Although the statute under which *Millard's* was decided used the words "likely to waste or be destroyed by keeping," instead of the word "perishable," the reasons given for the construction placed on the statute apply equally to the Alabama Code which uses the term "perishable."[37]

---

[33] 116 Ala. 224, 22 So. 577 (1897).

[34] *Id*.

[35] *Id*.

[36] 24 Ala. 209 (1854).

[37] *McCreery v. Berney National Bank*, *supra* note 33.

In the Motion for Leave for Grant of Authority to Sell Attached Properties[38] filed before the CA, China Bank alleged that the attached properties are placed in locations where they are totally exposed to the natural elements and adverse weather conditions since their attachment in 1999;[39] that as a result, the attached properties have gravely deteriorated with corrosions eating them up, with weeds germinating and growing thereon and their engines and motors stock up;[40] and that the same holds true to the office furniture, office equipment, accessories and supplies.[41] No evidence, however, were submitted by China Bank to support and substantiate these claims before the CA.

Notably, in the Petition filed before the Court, China Bank, for the first time, included as annexes,[42] photographs of the attached properties which were alleged to be recently taken, in an attempt to convince the Court of the deteriorated condition of the attached properties.

The determination on whether the attached vehicles are properly cared for, and the burden to show that, by keeping the attached office furniture, office equipment and supplies, it will necessarily become, or is likely to become, worthless to China Bank, and by consequence to ACDC, are factual issues requiring reception of evidence which the Court cannot do in a petition for *certiorari.* Factual issues are beyond the scope of *certiorari* because they do not involve any jurisdictional issue.[43]

As a rule, only jurisdictional questions may be raised in a petition for *certiorari,* including matters of grave abuse of discretion which are equivalent to lack of jurisdiction.[44] The

---

[38] CA *rollo,* pp. 24-28.

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

[40] *Id*. at 26.

[41] *Id*.

[42] Annex "N", *rollo,* pp. 266-273.

[43] *Ongpauco v. Court of Appeals,* G.R. No. 134039, December 21, 2004, 447 SCRA 395, 401; see *Militante v. People of the Philippines,* G.R. No. 150607, November 26, 2004, 444 SCRA 465, 476.

[44] *De Castro v. Delta Motor Sales Corp.,* 156 Phil. 334, 337 (1974).

office of the writ of *certiorari* has been reduced to the correction of defects of *jurisdiction* solely and cannot legally be used for any other purpose.[45]

Certiorari is truly an extraordinary remedy and, in this jurisdiction, its use is restricted to truly extraordinary cases - cases in which the action of the inferior court is wholly void; where any further steps in the case would result in a waste of time and money and would produce no result whatever; where the parties, or their privies, would be utterly deceived; where a final judgment or decree would be nought but a snare and delusion, deciding nothing, protecting nobody, a judicial pretension, a recorded falsehood, a standing menace. It is only to avoid such results as these that a writ of *certiorari* is issuable; and even here an appeal will lie if the aggrieved party prefers to prosecute it.[46]

Moreover, the Court held in *JAM Transportation Co., Inc. v. Flores*[47] that it is well-settled, too well-settled to require a citation of jurisprudence, that this Court does not make findings of facts specially on evidence raised for the first time on appeal.[48] The Court will not make an exception in the case at bar. Hence, the photographs of the attached properties presented before the Court, for the first time on appeal, cannot be considered by the Court.

China Bank argues that if the CA allowed the attached properties to be sold, whatever monetary value which the attached properties still have will be realized and saved for both parties.[49] China Bank further claims that should ACDC prevail in the final judgment[50] of the collection suit, ACDC can proceed with the

---

[45] *Id*.

[46] *Id*., *citing Herrera v. Baretto,* 25 Phil. 245 (1913); *Fernando v. Vasquez,* G.R. No. L-26417, January 30, 1970, 31 SCRA 288, 293.

[47] G.R. No. 82829, March 19, 1993, 220 SCRA 114.

[48] *Id*. at 123.

[49] *Rollo,* p. 33.

[50] Records do not show that the CA had rendered its decision on the merits in CA-G.R. CV No. 72175.

bond posted by China Bank.[51] The Court finds said arguments to be specious and misplaced.

Section 4, Rule 57 of the Rules of Court provides:

> Section 4. *Condition of applicant's bond.* - The party applying for the order must thereafter give a bond executed to the adverse party in the amount fixed by the court in its order granting the issuance of the writ, conditioned that the latter will pay all the costs which may be adjudged to the adverse party and all the damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto.

It is clear from the foregoing provision that the bond posted by China Bank answers only for the payment of all damages which ACDC may sustain if the court shall finally adjudge that China Bank was not entitled to attachment. The liability attaches if "the plaintiff is not entitled to the attachment because the requirements entitling him to the writ are wanting," or "if the plaintiff has no right to the attachment because the facts stated in his affidavit, or some of them are untrue."[52] Clearly, ACDC can only claim from the bond for all the damages which it may sustain by reason of the attachment and not because of the sale of the attached properties prior to final judgment.

Sale of attached property before final judgment is an equitable remedy provided for the convenience of the parties and preservation of the property.[53] To repeat, the Court finds that the issue of whether the sale of attached properties is for the convenience of the parties and that the interests of all the parties will be subserved by the said sale is a question of fact. Again, the foregoing issue can only be resolved upon examination of the evidence presented by both parties which the Court cannot do in a petition for *certiorari* under Rule 65 of the Rules of Court.

---

[51] *Supra* note 49.

[52] *Rocco v. Meads,* 96 Phil. 884, 887-888 (1955).

[53] Francisco, *The Revised Rules of Court in the Philippines*, Volume IV-A, 1971, p. 101.

WHEREFORE, the petition is *DENIED*. The assailed Resolutions of the Court of Appeals dated October 14, 2002 and May 16, 2003 in CA-G.R. CV No. 72175 are hereby *AFFIRMED*.

SO ORDERED.

Tinga,[*] *Chico-Nazario, Nachura,* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 162195. April 8, 2008]

BAHIA SHIPPING SERVICES, INC., *petitioner, vs.* **REYNALDO CHUA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF THE ADMINISTRATIVE BODIES AFFIRMED BY APPELLATE COURT, RESPECTED.— Petitioner assails the ruling of the CA for being based on the faulty premise that respondent incurred tardiness only once when in fact he had done so habitually. Whether respondent had been habitually tardy prior to February 15, 1997 when he reported for work 1½ hours late is purely factual in nature. As such, the Court defers to the concurrent assessments of the LA and NLRC, as affirmed by the CA, for the evaluation of evidence and the appreciation of the credibility of witnesses fall within their expertise.

2. ID.; CIVIL PROCEDURE; APPEAL; THAT A PARTY WHO FAILED TO APPEAL FROM A JUDGMENT IS BOUND BY IT; RULE LIBERALLY CONSTRUED IN THE INTEREST OF PROTECTING SUBSTANTIVE RIGHT;

[*] In lieu of Justice Consuelo Ynares-Santiago, per Special Order No. 497 dated March 14, 2008.

CASE AT BAR.— Indeed, a party who has failed to appeal from a judgment is deemed to have acquiesced to it and can no longer obtain from the appellate court any affirmative relief other that what was already granted under said judgment. However, when strict adherence to such technical rule will impair a substantive right, such as that of an illegally dismissed employee to monetary compensation as provided by law, then equity dictates that the Court set aside the rule to pave the way for a full and just adjudication of the case. As the Court held in *St. Michael's Institute v. Santos*: On the matter of the award of backwages, petitioners advance the view that by awarding backwages, the appellate court "unwittingly reversed a time-honored doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision." We do not agree. The fact that the NLRC did not award backwages to the respondents or that the respondents themselves did not appeal the NLRC decision does not bar the Court of Appeals from awarding backwages. While as a general rule, a party who has not appealed is not entitled to affirmative relief other than the ones granted in the decision of the court below, **the Court of Appeals is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice.** Article 279 of the Labor Code, as amended, mandates that an illegally dismissed employee is entitled to the twin reliefs of (a) either reinstatement or separation pay, if reinstatement is no longer viable, and (b) backwages. Both are distinct reliefs given to alleviate the economic damage suffered by an illegally dismissed employee and, thus, the award of one does not bar the other. Both reliefs are rights granted by substantive law which cannot be defeated by mere procedural lapses. *S***ubstantive rights like the award of backwages resulting from illegal dismissal must not be prejudiced by a rigid and technical application of the rules. The order of the Court of Appeals to award backwages being a mere legal consequence of the finding that respondents were illegally dismissed by petitioners, there was no error in awarding the same.**

3. LABOR AND SOCIAL LEGISLATION; R.A. NO. 8042 FOR OVERSEAS WORKERS; THAT ILLEGALLY DISMISSED

OVERSEAS WORKER IS ENTITLED TO SALARIES FOR THE UNEXPIRED PORTION OF THE EMPLOYMENT CONTRACT OR FOR THREE MONTHS FOR EVERY YEAR OF THE UNEXPIRED TERM WHICHEVER IS LESS; APPLICATION.— Section 10 of R.A. No. 8042, entitles an overseas worker who has been illegally dismissed to "his salaries for the unexpired portion of the employment contract or for three (3) months for every year of the unexpired term, whichever is less." The CA correctly applied the interpretation of the Court in *Marsaman Manning Agency, Inc. v. National Labor Relations Commission* that the second option which imposes a three months – salary cap applies only when the term of the overseas contract is fixed at one year or longer; otherwise, the first option applies in that the overseas worker shall be entitled payment of all his salaries for the entire unexpired period of his contract. In *Skippers Pacific, Inc. v. Mira*, wherein the overseas contract involved was only for six months, the Court held that it is the first option provided under Section 10 of R.A. No. 8042 which is applicable in that the overseas worker who was illegally dismissed is entitled to payment of all his salaries covering the entire unexpired period of his contract. The CA committed no error in adhering to the prevailing interpretation of Section 10 of R.A. No. 8042.

4. ID.; ID.; ID.; "GUARANTEED OVERTIME PAY," NOT INCLUDED IN THE ABSENCE OF FACTUAL OR LEGAL BASIS THEREFOR.— The Court comes to the last issue on whether in the computation of the foregoing award, respondent's "guaranteed overtime" pay amounting to US$197.00 per month should be included as part of his salary. Petitioner contends that there is no factual or legal basis for the inclusion of said amount because, after respondent's repatriation, he could not have rendered any overtime work. This time, petitioner's contention is well-taken. The Court had occasion to rule on a similar issue in *Stolt-Nielsen Marine Services (Phils.), Inc. v. National Labor Relations Commission*, where the NLRC was questioned for awarding to an illegally dismissed overseas worker fixed overtime pay equivalent to the unexpired portion of the latter's contract. In resolving the question, the Court, citing *Cagampan v. National Labor Relations Commission*, held that although an overseas employment contract may guarantee the right to overtime pay, entitlement to such benefit must first be established, otherwise

the same cannot be allowed. Hence, it being improbable that respondent rendered overtime work during the unexpired term of his contract, the inclusion of his "guaranteed overtime" pay into his monthly salary as basis in the computation of his salaries for the entire unexpired period of his contract has no factual or legal basis and the same should have been disallowed.

APPEARANCES OF COUNSEL

Roger S. Bonifacio for petitioner.

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 wherein Bahia Shipping Services, Inc. (petitioner) assails the August 28, 2003 Decision[1] of the Court of Appeals (CA), affirming the December 23, 1998 Decision and February 15, 1999 Resolution of the National Labor Relations Commission (NLRC); and the February 19, 2004 CA Resolution,[2] denying its Motion for Reconsideration.

Petitioner adopted the following findings of fact of the CA:

Private respondent Reynaldo Chua was hired by the petitioner shipping company, Bahia Shipping Services, Inc., as a restaurant waiter on board a luxury cruise ship liner M/S Black Watch pursuant to a Philippine Overseas Employment Administration (POEA) approved employment contract dated October 9, 1996 for a period of nine (9) months from October 18, 1996 to July 17, 1997. On October 18, 1996, the private respondent left Manila for Heathrow, England to board the said sea vessel where he will be assigned to work.

On February 15, 1997, the private respondent reported for his working station one and one-half (1½) hours late. On February 17, 1997, the master of the vessel served to the private respondent an official warning-termination form pertaining to the said incident.

[1] Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Eloy R. Bello, Jr. and Jose C. Reyes, Jr., *rollo*, p. 18.

[2] *Id*. at 29.

On March 8, 1997, the vessel's master, ship captain Thor Fleten conducted an inquisitorial hearing to investigate the said incident. Thereafter, on March 9, 1997, private respondent was dismissed from the service on the strength of an unsigned and undated notice of dismissal. An alleged record or minutes of the said investigation was attached to the said dismissal notice.

On March 24, 1997, the private respondent filed a complaint for illegal dismissal and other monetary claims, which case was assigned to Labor Arbiter Manuel M. Manansala.

The private respondent alleged that he was paid only US$300.00 per month as monthly salary for five (5) months instead of US$410.00 as stipulated in his employment contract. Thus, he claimed that he was underpaid in the amount of US$110.00 per month for that same period of five (5) months. He further asserted that his salaries were also deducted US$20.00 per month by the petitioner for alleged union dues. Private respondent argued that it was his first offense committed on board the vessel. He adverted further that the petitioner has no proof of being a member of the AMOSUP or the ITF to justify its claim to deduct the said union dues [from] his monthly salary.

The petitioner disputed the said allegations of the private respondent by arguing that it received a copy of an addendum to the collective bargaining agreement (CBA) from the petitioner's principal, Blackfriars Shipping Company, Ltd. Consequently, the petitioner requested permission from the POEA through a letter dated March 17, 1997 to amend the salary scale of the private respondent to US$300.00 per month. The petitioner justified its monthly deduction made for union dues against the private respondent's salary in view of an alleged existing CBA between the Norwegian Seaman's Union (NSU, for brevity) and the petitioner's principal, Blackfriars Shipping Co., Ltd. The petitioner further asseverated that the private respondent has violated the terms and conditions of his contract as manifested in the said official warning-termination form by always coming late when reporting for duty even prior to the February 15, 1997 incident.[3]

The Labor Arbiter rendered a Decision dated March 5, 1998, holding petitioner liable to respondent for illegal dismissal and unauthorized deductions, *viz*:

WHEREFORE, premises considered, judgment is hereby rendered:

[3] Petition, *rollo*, pp. 6-7.

1. Declaring [petitioner] Bahia Shipping Services, Inc. (BSSI) and its foreign principal Blackfriars Shipping Co., Ltd. (BSCL) guilty of illegal dismissal. Accordingly, the aforenamed [petitioner] BSSI and its foreign principal BSCL are hereby directed to pay jointly and severally, [private respondent] Reynaldo Chua the sum of US$1,230.00 as earlier computed, representing his salary for the unexpired portion of the contract of employment limited to three (3) months under Republic Act 8042, and convertible to Philippine currency upon actual payment.

2. Directing the aforenamed [petitioner] BSSI and its foreign principal BSCL to pay, jointly and severally, [private respondent] Reynaldo Chua the following money claims as earlier computed:

Reimbursement/Refund of Plane Fare	---	US$ 638.99
Illegal Deductions ("Union Dues")	---	100.00
Differential Pay (Underpayment of Wages)	---	550.00
		US$1,288.99

convertible to Philippine currency upon actual payment.

3. Directing the aforenamed [petitioner] BSSI and its foreign principal BSCL to pay, jointly and severally, the [private respondent] Reynaldo Chua ten (10%) percent attorney's fees based on the total monetary award.

4. Dismissing the other money claims and/or charges of [private respondent] Reynaldo Chua for lack of factual and legal basis.

SO ORDERED.[4]

Petitioner appealed to the NLRC which issued on December 23, 1998 a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the appealed Decision is hereby MODIFIED in that the award on the unexpired portion of the contract is deducted the amount equivalent to a day's work of complainant. The other findings stand AFFIRMED.

SO ORDERED.[5]

---

[4] *Rollo*, pp. 40-41.

[5] *Id*. at 49.

Petitioner filed a Motion for Reconsideration but the NLRC denied the same in a Resolution dated February 15, 1999.[6]

Respondent did not question the foregoing NLRC decision and resolution.

Upon a petition for *certiorari* filed by petitioner, the CA rendered the August 28, 2003 Decision assailed herein, modifying the NLRC decision, thus:

> WHEREFORE, premises considered, the assailed decision dated December 23, 1998, and the resolution dated February 15, 1999, of the public respondent NLRC are hereby AFFIRMED, with the MODIFICATION that the monetary award representing the salary of the petitioner for the unexpired portion of the contract which is limited to three (3) months under Republic Act No. 8042 is DELETED.
>
> SO ORDERED.[7]

The CA denied petitioner's Motion for Reconsideration.

And so, the present petition raising the following issues:

> a) Whether or not the Court of Appeals could grant additional affirmative relief by increasing the award despite the fact that respondent did not appeal the decision of both the Labor Arbiter and the NLRC.
>
> b) Whether or not reporting for work one and one-half (1½) hours late and abandoning his work are valid grounds for dismissal.
>
> c) Whether or not respondent is entitled to overtime pay which was incorporated in his award for the unexpired portion of the contract despite the fact that he did not render overtime work, and whether or not, it is proper for the NLRC to award money claims despite the fact that the NLRC decision, and affirmed by the Court of Appeals, did not state clearly the facts and the evidence upon which such conclusions are based.[8]

---

[6] CA *rollo*, p. 54.

[7] *Rollo*, p. 27.

[8] Petition, *id*. at 7-8.

It is noted that petitioner does not question the monetary awards under Item Nos. 2 and 3 of the dispositive portion of the LA Decision, which were affirmed *in toto* by the NLRC and CA.

The issues will be resolved jointly.

The LA declared the dismissal of respondent illegal for the reason that the infraction he committed of being tardy by 1½ hour should not have been penalized by petitioner with the ultimate punishment of termination; rather, the commensurate penalty for such single tardiness would have been suspension for one or two weeks. The LA further noted that petitioner meted out on respondent the penalty of dismissal hastily and summarily in that it merely went through the motions of notifying respondent and hearing his side when, all along, it had already decided to dismiss him.[9]

The NLRC sustained the foregoing findings of the LA, noting that the claim of petitioner that respondent's tardiness was not infrequent but habitual is not supported by evidence.[10] However, the NLRC held that, although the penalty of dismissal on respondent was properly lifted, a penalty of deduction of one day's salary, the same to be subtracted from his monetary award, should be imposed on the latter for the tardiness he incurred.[11]

The CA held that the NLRC and LA did not commit any grave abuse of discretion in arriving at the factual assessments which are all supported by substantial evidence.[12]

Petitioner assails the ruling of the CA for being based on the faulty premise that respondent incurred tardiness only once when in fact he had done so habitually.[13] Whether respondent had

---

[9] LA Decision, *rollo*, pp. 36-37.

[10] NLRC Decision, *id*. at 49.

[11] *Id*.

[12] CA Decision, *id*. at 22.

[13] Petition, *id*. at 10.

been habitually tardy prior to February 15, 1997 when he reported for work 1½ hours late is purely factual in nature. As such, the Court defers to the concurrent assessments of the LA and NLRC, as affirmed by the CA, for the evaluation of evidence and the appreciation of the credibility of witnesses fall within their expertise.[14]

As the Court held in *Acebedo Optical v . National Labor Relations Commission*,[15]

> Judicial Review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which its labor officials' findings rest. As such, the findings of facts and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence.[16]

In the present case, petitioner has failed to establish a compelling reason for the Court to depart from this rule. In fact, as pointed out by the CA, petitioner's claim that respondent's tardiness was habitual lacks evidentiary support as "no other documents on record were attached to substantiate that the private respondent was forewarned for the first and second time for any infraction or offense, work-related or not, *vis-à-vis* the performance of his regular duties and functions."[17]

Such empty claim of petitioner, therefore, cannot persuade the Court to simply disregard three layers of thorough and in-depth assessments on the matter by the CA, NLRC and LA.

It being settled that the dismissal of respondent was illegal, it follows that the latter is entitled to payment of his salary for the unexpired portion of his contract, as provided under Republic Act (R.A.) No. 8042, considering that his employment was pre-

---

[14] *Ogalisco v. Holy Trinity College of General Santos City, Inc.*, G.R. No. 172913, August 9, 2007, 529 SCRA 672, 677.

[15] G.R. No. 150171, July 17, 2007, 527 SCRA 655.

[16] *Id.* at 672.

[17] *Rollo*, p. 21.

terminated on March 9, 1997 or four months prior to the expiration of his employment contract on July 17, 1997.

However, the LA limited the award to an amount equivalent to respondent's salary for three months. The NLRC affirmed said award but deducted therefrom his salary for one day as penalty for the tardiness incurred. The CA affirmed the one-day salary deduction imposed by the NLRC but removed the three months - salary cap imposed by the LA. In effect, as this particular monetary award now stands, it is to be computed based on the salary of respondent covering the period March 9, 1997 to July 17, 1997, less his salary for one day.

Petitioner questions the CA for lifting the three-month salary cap, pointing out that the LA and NLRC decisions which imposed the cap can no longer be altered as said decisions where not questioned by respondent.[18]

Indeed, a party who has failed to appeal from a judgment is deemed to have acquiesced to it and can no longer obtain from the appellate court any affirmative relief other that what was already granted under said judgment.[19] However, when strict adherence to such technical rule will impair a substantive right, such as that of an illegally dismissed employee to monetary compensation as provided by law, then equity dictates that the Court set aside the rule to pave the way for a full and just adjudication of the case. As the Court held in *St. Michael's Institute v. Santos*:[20]

> On the matter of the award of backwages, petitioners advance the view that by awarding backwages, the appellate court "unwittingly reversed a time-honored doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision." We do not agree.

---

[18] Petition, *rollo*, pp. 8-9.

[19] *Salazar v. Philippine Duplicators, Inc.*, G.R. No. 154628, December 6, 2006, 510 SCRA 288, 296, citing *Filflex Industrial & Manufacturing Corp. v. National Labor Relations Commission*, 349 Phil. 913, 925 (1998); *Coca-Cola Bottlers Phils., Inc. v. Daniel*, G.R. No. 156893, June 21, 2005, 460 SCRA 494, 506.

[20] 422 Phil. 723 (2001).

The fact that the NLRC did not award backwages to the respondents or that the respondents themselves did not appeal the NLRC decision does not bar the Court of Appeals from awarding backwages. While as a general rule, a party who has not appealed is not entitled to affirmative relief other than the ones granted in the decision of the court below, **the Court of Appeals is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice**.

Article 279 of the Labor Code, as amended, mandates that an illegally dismissed employee is entitled to the twin reliefs of (a) either reinstatement or separation pay, if reinstatement is no longer viable, and (b) backwages. Both are distinct reliefs given to alleviate the economic damage suffered by an illegally dismissed employee and, thus, the award of one does not bar the other. Both reliefs are rights granted by substantive law which cannot be defeated by mere procedural lapses. **Substantive rights like the award of backwages resulting from illegal dismissal must not be prejudiced by a rigid and technical application of the rules. The order of the Court of Appeals to award backwages being a mere legal consequence of the finding that respondents were illegally dismissed by petitioners, there was no error in awarding the same**.[21] (Emphasis supplied)

The Court has consistently applied the foregoing exception to the general rule. It does so yet again in the present case.

Section 10 of R.A. No. 8042,[22] entitles an overseas worker who has been illegally dismissed to "his salaries for the unexpired portion of the employment contract or for three (3) months for every year of the unexpired term, whichever is less."[23]

The CA correctly applied the interpretation of the Court in *Marsaman Manning Agency, Inc. v. National Labor Relations*

[21] *Id*. at 735-736.

[22] Migrant Workers and Overseas Filipino Workers Act of 1995, effective July 15, 1995.

[23] *Pentagon International Shipping, Inc. v. Adelantar*, G.R. No. 157373, July 27, 2004, 435 SCRA 342, 346.

Commission[24] that the second option which imposes a three months – salary cap applies only when the term of the overseas contract is fixed at one year or longer; otherwise, the first option applies in that the overseas worker shall be entitled payment of all his salaries for the entire unexpired period of his contract.

In *Skippers Pacific, Inc. v. Mira*,[25] wherein the overseas contract involved was only for six months, the Court held that it is the first option provided under Section 10 of R.A. No. 8042 which is applicable in that the overseas worker who was illegally dismissed is entitled to payment of all his salaries covering the entire unexpired period of his contract. The CA committed no error in adhering to the prevailing interpretation of Section 10 of R.A. No. 8042.

Finally, the Court comes to the last issue on whether in the computation of the foregoing award, respondent's "guaranteed overtime" pay amounting to US$197.00 per month should be included as part of his salary. Petitioner contends that there is no factual or legal basis for the inclusion of said amount because, after respondent's repatriation, he could not have rendered any overtime work.[26]

This time, petitioner's contention is well-taken.

The Court had occasion to rule on a similar issue in *Stolt-Nielsen Marine Services (Phils.), Inc. v. National Labor Relations Commission*,[27] where the NLRC was questioned for awarding to an illegally dismissed overseas worker fixed overtime pay equivalent to the unexpired portion of the latter's contract. In resolving the question, the Court, citing *Cagampan v. National Labor Relations Commission*,[28] held that although

---

[24] 371 Phil. 827 (1999).

[25] 440 Phil. 906 (2002).

[26] Petition, *rollo*, p. 13.

[27] 328 Phil. 161 (1996); see also *PCL Shipping v. National Labor Relations Commission*, G.R. No. 153031, December 14, 2006, 511 SCRA 44.

[28] G.R. Nos. 85122-24, March 22, 1991, 195 SCRA 533.

an overseas employment contract may guarantee the right to overtime pay, entitlement to such benefit must first be established, otherwise the same cannot be allowed.

Hence, it being improbable that respondent rendered overtime work during the unexpired term of his contract, the inclusion of his "guaranteed overtime" pay into his monthly salary as basis in the computation of his salaries for the entire unexpired period of his contract has no factual or legal basis and the same should have been disallowed.

Based on respondent's Position Paper filed with the Labor Arbiter,[29] his basic monthly salary is $213.00.

WHEREFORE, the petition is *PARTLY GRANTED*. The assailed August 28, 2003 Decision and February 19, 2004 Resolution of the Court of Appeals are *AFFIRMED* with *MODIFICATION* that in the computation of the payment to respondent Reynaldo Chua of his salaries for the entire unexpired portion of his contract, his basic monthly salary of US$213.00 shall be used as the sole basis.

No costs.

SO ORDERED.

Tinga,[*] *Chico-Nazario, Nachura,* and *Reyes, JJ.,* concur.

---

[29] LA Decision dated March 5, 1998, p. 5.

[*] In lieu of Justice Consuelo Ynares-Santiago, per Special Order No. 497 dated March 14, 2008.

THIRD DIVISION

[G.R. No. 166051. April 8, 2008]

SOLID HOMES, INC., *petitioner, vs.* **EVELINA LASERNA and GLORIA CAJIPE, represented by PROCESO F. CRUZ,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; THAT THE DECISION RENDERED MUST EXPRESS CLEARLY AND DISTINCTLY THE FACTS AND LAW ON WHICH IT IS BASED; RE: MEMORANDUM DECISIONS.— The constitutional mandate 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," **does not preclude the validity of "memorandum decisions,"** which adopt by reference the findings of fact and conclusions of law contained in the decisions of inferior tribunals. In fact, in *Yao v. Court of Appeals*, this Court has sanctioned the use of "memorandum decisions," a specie of succinctly written decisions by appellate courts in accordance with the provisions of Section 40, B.P. Blg. 129, as amended, **on the grounds of expediency, practicality, convenience and docket status of our courts.** This Court likewise declared that "memorandum decisions" comply with the constitutional mandate. This Court found in *Romero v. Court of Appeals* that the Court of Appeals substantially complied with its constitutional duty when it adopted in its Decision the findings and disposition of the Court of Agrarian Relations in this wise: "We have, therefore, carefully reviewed the evidence and made a re-assessment of the same, and We are persuaded, nay compelled, to affirm the correctness of the trial court's factual findings and the soundness of its conclusion. *For judicial convenience and expediency, therefore, We hereby adopt, by way of reference, the findings of facts and conclusions of the court a quo spread in its decision, as integral part of this Our decision.*" In *Francisco v. Permskul*, this Court similarly held that the following memorandum decision of the Regional Trial Court (RTC) of Makati City did not transgress the requirements of Section 14,

Article VIII of the 1997 Philippine Constitution: "MEMORANDUM DECISION After a careful perusal, evaluation and study of the records of this case, *this Court hereby adopts by reference the findings of fact and conclusions of law contained in the decision of the Metropolitan Trial Court of Makati, Metro Manila, Branch 63* and finds that there is no cogent reason to disturb the same. "WHEREFORE, judgment appealed from is hereby affirmed *in toto*." Hence, incorporation by reference is allowed if only to avoid the cumbersome reproduction of the decision of the lower courts, or portions thereof, in the decision of the higher court.

2. ID.; ID.; ID.; ID.; ID.; CONDITIONS FOR VALIDITY THEREOF.— In *Francisco v. Permskul,* this Court laid down the conditions for the validity of memorandum decisions, to wit: The memorandum decision, to be valid, **cannot incorporate the findings of fact and the conclusions of law of the lower court only by remote reference, which is to say that the challenged decision is not easily and immediately available to the person reading the memorandum decision. For the incorporation by reference to be allowed, it must provide for direct access to the facts and the law being adopted, which must be contained in a statement attached to the said decision.** In other words, the memorandum decision authorized under Section 40 of B.P. Blg. 129 **should actually embody the findings of fact and conclusions of law of the lower court in an annex attached to and made an indispensable part of the decision.** It is expected that this requirement will allay the suspicion that no study was made of the decision of the lower court and that its decision was merely affirmed without a proper examination of the facts and the law on which it is based. **The proximity at least of the annexed statement should suggest that such an examination has been undertaken.** It is, of course, also understood **that the decision being adopted should, to begin with, comply with Article VIII, Section 14** as no amount of incorporation or adoption will rectify its violation. The Court finds necessary to emphasize that the memorandum decision should be sparingly used lest it become an addictive excuse for judicial sloth. It is an **additional condition for the validity that this kind of decision may be resorted to only in cases where the facts are in the main accepted by both parties and easily**

determinable by the judge and there are no doctrinal complications involved that will require an extended discussion of the laws involved. The memorandum decision may be employed in simple litigations only, such as ordinary collection cases, where the appeal is obviously groundless and deserves no more than the time needed to dismiss it. x x x Henceforth, **all memorandum decisions shall comply with the requirements herein set forth both as to the form prescribed and the occasions when they may be rendered. Any deviation will summon the strict enforcement of Article VIII, Section 14 of the Constitution and strike down the flawed judgment as a lawless disobedience.**

3. ID.; ID.; ID.; ID.; APPLICATION NOT NECESSARY TO DECISIONS RENDERED IN ADMINISTRATIVE PROCEEDINGS.— It must be stated that Section 14, Article VIII of the 1987 Constitution need not apply to decisions rendered in **administrative proceedings,** as in the case at bar. Said section applies only to decisions rendered in judicial proceedings. In fact, Article VIII is titled "Judiciary," and all of its provisions have particular concern only with respect to the judicial branch of government. Certainly, it would be error to hold or even imply that decisions of executive departments or administrative agencies are oblige to meet the requirements under Section 14, Article VIII.

4. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS; REQUIREMENTS; THAT DECISION MUST EXPRESS CLEARLY AND DISTINCTLY THE FACTS AND LAW ON WHICH IT IS BASED, NOT INCLUDED.— The rights of parties in administrative proceedings are not violated as long as the constitutional requirement of due process has been satisfied. In the landmark case of *Ang Tibay v. CIR*, we laid down the cardinal rights of parties in administrative proceedings, as follows: 1) The right to a hearing, which includes the right to present one's case and submit evidence in support thereof. 2) The tribunal must consider the evidence presented. 3) The decision must have something to support itself. 4) The evidence must be substantial. 5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. 6) The tribunal or body or any of its judges must act on its or his own independent

consideration of the law and facts of the controversy and not simply accept the views of a subordinate in arriving at a decision. 7) The board or body should, in all controversial question, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered. As can be seen above, among these rights are "the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected"; and that the decision be rendered "in such a manner that the parties to the proceedings can know the various issues involved, and the reasons for the decisions rendered." Note that there is no requirement in *Ang Tibay* that the decision must express clearly and distinctly the facts and the law on which it is based. For as long as the administrative decision is grounded on evidence, and expressed in a manner that sufficiently informs the parties of the factual and legal bases of the decision, the due process requirement is satisfied.

5. ID.; ID.; ID.; RULES OF COURT, OF SUPPLETORY APPLICATION ONLY.— It bears observation that while decisions of the Office of the President need not comply with the constitutional requirement imposed on courts under Section 14, Article VIII of the Constitution, the Rules of Court may still find application, although suppletory only in character and apply only whenever practicable and convenient. There is no mandate that requires the application of the Rules of Court in administrative proceedings.

6. ID.; ID.; HLURB RULES OF PROCEDURE; DISMISSAL OF COMPLAINT OR OPPOSITION; DISCRETIONARY TO THE HLURB ARBITER.— Section 7 of the 1987 HLURB Rules of Procedure states that: **Section 7. Dismissal of the Complaint or Opposition.** – The Housing and Land Use Arbiter (HLA) to whom a complaint or opposition is assigned **may** immediately dismiss the same for lack of jurisdiction or cause of action. It is noticeable that the afore-quoted provision of the 1987 HLURB Rules of Procedure used the word "may" instead of "shall," meaning, that the dismissal of a complaint or opposition filed before the HLURB Arbiter on the ground of lack of jurisdiction or cause of action is **simply permissive and not directive.** The HLURB Arbiter has the discretion of whether to dismiss immediately the complaint or opposition

filed before him for lack of jurisdiction or cause of action, or to still proceed with the hearing of the case for presentation of evidence.

7. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; TENDER OF PAYMENT AND CONSIGNATION; WHERE THERE IS UNJUSTIFIED REFUSAL TO RECEIVE PAYMENT BUT NOT CONSIGNATION MADE, THERE IS NO DISCHARGE FROM OBLIGATION.— Based on the records of this case, respondents have tendered payment in the amount of ₱11,584.41, representing the balance of the purchase price of the subject property, as determined in the 10 August 1994 Decision of the HLURB Board of Commissioners, and affirmed by both the Office of the President and the Court of Appeals. However, the petitioner, without any justifiable reason, refused to accept the same. In *Ramos v. Sarao*, this Court held that tender of payment is the manifestation by debtors of their desire to comply with or to pay their obligation. **If the creditor refuses the tender of payment without just cause, the debtors are discharged from the obligation by the consignation of the sum due.** Consignation is made by depositing the proper amount with the judicial authority, before whom the tender of payment and the announcement of the consignation shall be proved. All interested parties are to be notified of the consignation. Compliance with these requisites is mandatory. In the case at bar, after the petitioner refused to accept the tender of payment made by the respondents, the latter failed to make any consignation of the sum due. Consequently, there was no valid tender of payment and the respondents are not yet discharged from the obligation to pay the outstanding balance of the purchase price of the subject property.

APPEARANCES OF COUNSEL

Edinburg P. Tumuran and *Melanio L. Zoreta* for petitioner.

Cruz Calupitan and Associates Law Office for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure seeking to annul, reverse and set aside (1) the Decision[1] dated 21 July 2004 of the Court of Appeals in CA-G.R. SP No. 82153, which denied and dismissed the Petition filed before it by the petitioner for lack of merit; and (2) the Resolution[2] dated 10 November 2004 of the same court, which denied the petitioner's Motion for Reconsideration.

The factual antecedents of this case are as follows:

On 1 April 1977, respondents Evelina Laserna and Gloria Cajipe, represented by their attorney-in-fact, Proceso F. Cruz, as buyers, entered into a Contract to Sell[3] with petitioner Solid Homes, Inc. (SHI), a corporation engaged in the development and sale of subdivision lots, as seller. The subject of the said Contract to Sell was a parcel of land located at Lot 3, Block I, Phase II, Loyola Grand Villas, Quezon City, with a total area of 600 square meters, more or less. The total contract price agreed upon by the parties for the said parcel of land was ₱172,260.00, to be paid in the following manner: (1) the ₱33,060.00 down payment should be paid upon the signing of the contract; and (2) the remaining balance of ₱166,421.88[4] was payable for a period of three years at a monthly installment of ₱4,622.83 beginning 1 April 1977. The respondents made the down payment and several monthly installments. When the

---

[1] Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Salvador J. Valdez, Jr. and Vicente Q. Roxas, concurring, *rollo*, pp. 10-17.

[2] *Id.* at 20-21.

[3] *Id.* at 44-47.

[4] The remaining balance of ₱166,421.88 was inclusive of 12% interest rate per annum. The said 12% interest rate per annum was payable monthly to be included in the monthly amortization for a period of three years. Thus, the ₱4,622.83 monthly installments were already inclusive of the said interest [Section 1, Contract to Sell, *rollo*, p. 44].

respondents had allegedly paid 90% of the purchase price, they demanded the execution and delivery of the Deed of Sale and the Transfer Certificate of Title (TCT) of the subject property upon the final payment of the balance. But the petitioner did not comply with the demands of the respondents.

The respondents whereupon filed against the petitioner a Complaint for Delivery of Title and Execution of Deed of Sale with Damages, dated 28 June 1990, before the Housing and Land Use Regulatory Board (HLURB). The same was docketed as HLURB Case No. REM-073090-4511. In their Complaint, respondents alleged that as their outstanding balance was only ₱5,928.18, they were already demanding the execution and delivery of the Deed of Sale and the TCT of the subject property upon final payment of the said amount. The petitioner filed a Motion to Admit Answer,[5] together with its Answer[6] dated 17 September 1990, asserting that the respondents have no cause of action against it because the respondents failed to show that they had complied with their obligations under the Contract to Sell, since the respondents had not yet paid in full the total purchase price of the subject property. In view of the said non-payment, the petitioner considered the Contract to Sell abandoned by the respondents and rescinded in accordance with the provisions of the same contract.

On 7 October 1992, HLURB Arbiter Gerardo L. Dean rendered a Decision [7] denying respondents' prayer for the issuance of the Deed of Sale and the delivery of the TCT. He, however, directed the petitioner to execute and deliver the aforesaid Deed of Sale and TCT the moment that the purchase price is fully settled by the respondents. Further, he ordered the petitioner to cease and desist from charging and/or collecting fees from

---

[5] *Id.* at 48-49.

[6] *Id.* at 50.

[7] Penned by HLURB Arbiter Gerardo L. Dean, *id.* at 69-76.

[8] Otherwise known as "The Subdivision and Condominium Buyers' Protective Decree." It was signed into law on 12 July 1976.

[9] *Rollo*, p. 76.

the respondents other than those authorized by Presidential Decree (P.D.) No. 957[8] and similar statutes.[9]

Feeling aggrieved, the petitioner appealed[10] the aforesaid Decision to the HLURB Board of Commissioners. The case was then docketed as HLURB Case No. REM-A-1298.

On 10 August 1994, the HLURB Board of Commissioners rendered a Decision,[11] modifying the 7 October 1992 Decision of HLURB Arbiter Dean. The decretal portion of the Board's Decision reads:

> WHEREFORE, in view of the foregoing, the [D]ecision of [HLURB] Arbiter Gerardo Dean dated 07 October 1992 is hereby MODIFIED to read as follows:
>
> 1. [Herein respondent][12] is hereby directed to pay the balance of ₱11,585.41 within the (sic) thirty (30) days from finality of this [D]ecision.
> 2. [Herein petitioner] is hereby **directed to execute the necessary deed of sale and deliver the TCT over the subject property immediately upon full payment**.
> 3. [Petitioner] is hereby directed to cease and desist from charging and/or collecting fees other than those authorized by P.D. 957 and other related laws.[13] (Emphasis supplied).

Petitioner remained unsatisfied with the Decision of the HLURB Board of Commissioners, thus, it appealed the same before the Office of the President, wherein it was docketed as O.P. Case No. 5919.

---

[10] *Id*. at 77.

[11] Penned by Commissioner Luis T. Tungpalan, with Commissioner and Chief Executive Officer Ernesto C. Mendiola and Assistant Secretary, Department of Public Works and Highways (DPWH) *Ex-Officio* Commissioner Joel L. Altea, concurring, *id*. at 95-98.

[12] It should be "herein respondents" [the complainants below]. In the dispositive part of the Board's Decision, what was written was "complainant is hereby…" But, a careful reading of the Board's Decision would show that there was more than one complainant in the Complaint filed before the HLURB.

[13] *Rollo*, p. 98.

After evaluating the established facts and pieces of evidence on record, the Office of the President rendered a Decision[14] dated 10 June 2003, affirming *in toto* the 10 August 1994 Decision of the HLURB Board of Commissioners. In rendering its Decision, the Office of the President merely adopted by reference the findings of fact and conclusions of law contained in the Decision of the HLURB Board of Commissioners.

Resultantly, petitioner moved for the reconsideration[15] of the 10 June 2003 Decision of the Office of the President. However, in an Order[16] dated 9 December 2003, the Office of the President denied the same.

The petitioner thereafter elevated its case to the Court of Appeals by way of Petition for Review under Rule 43[17] of the 1997 Revised Rules of Civil Procedure, docketed as CA-G.R. SP No. 82153, raising the following issues, to wit: (1) the Honorable Office of the President seriously erred in merely adopting by reference the findings and conclusions of the HLURB Board of Commissioners in arriving at the questioned [D]ecision; and (2) the Honorable Office of the President seriously erred in not dismissing the complaint for lack of cause of action.[18]

On 21 July 2004, the appellate court rendered a Decision denying due course and dismissing the petitioner's Petition for Review for lack of merit, thus affirming the Decision of the Office of the President dated 10 June 2003, *viz*:

WHEREFORE, in view of the foregoing, the instant [P]etition is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit.[19] (Emphasis supplied).

---

[14] Penned by Undersecretary Enrique D. Perez, *id*. at 99-103.

[15] *Id*. at 104-106.

[16] *Id*. at 107-108.

[17] Appeals from the Court of Tax Appeals and Quasi-judicial Agencies to the Court of Appeals.

[18] *Rollo*, p. 114.

[19] *Id*. at 17.

Petitioner moved for reconsideration of the aforesaid Decision but, it was denied by the Court of Appeals in a Resolution dated 10 November 2004.

Hence, this Petition.

Petitioner raises the following issues for this Court's resolution:

I. WHETHER OR NOT THE [HONORABLE] COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT THE DECISION OF THE OFFICE OF THE PRESIDENT, WHICH MERELY ADOPTS BY REFERENCE THE FINDINGS AND CONCLUSIONS OF THE BOARD OF COMMISSIONERS OF THE [HLURB], IS IN ACCORDANCE WITH THE MANDATE OF THE CONSTITUTION THAT THE DECISION SHOULD BE BASED ON THE FINDINGS OF FACTS AND LAW TO ARRIVE AT A DECISION; AND

II. WHETHER OR NOT THE [HONORABLE] COURT OF APPEALS SERIOUSLY ERRED IN NOT REVERSING THE DECISION OF THE OFFICE OF THE PRESIDENT CONSIDERING THAT THE COMPLAINT OF THE RESPONDENTS LACKS CAUSE OF ACTION.[20]

In its Memorandum,[21] the petitioner alleges that the Decision of the Office of the President, as affirmed by the Court of Appeals, which merely adopted by reference the Decision of the HLURB Board of Commissioners, without a recitation of the facts and law on which it was based, runs afoul of the mandate of Section 14, Article VIII of the 1987 Philippine Constitution which provides that: "No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and law on which it is based." The Office of the President, being a government agency, should have adhered to this principle.

Petitioner further avers that a full exposition of the facts and the law upon which a decision was based goes to the very essence of due process as it is intended to inform the parties of the factual and legal considerations employed to support a decision.

[20] *Id*. at 197-198.

[21] *Id*. at 191-206.

The same was not complied with by the Office of the President when it rendered its one-page Decision dated 10 June 2003. Without a complete statement in the judgment of the facts proven, it is not possible to pass upon and determine the issues in the case, inasmuch as when the facts are not supported by evidence, it is impossible to administer justice to apply the law to the points argued, or to uphold the rights of the litigant who has the law on his side.

Lastly, petitioner argues that the Complaint filed against it by the respondents stated no cause of action because the respondents have not yet paid in full the purchase price of the subject property. The right of action of the respondents to file a case with the HLURB would only accrue once they have fulfilled their obligation to pay the balance of the purchase price for the subject property. Hence, the respondents' Complaint against the petitioner should have been dismissed outright by the HLURB for being prematurely filed and for lack of cause of action.

The Petition is unmeritorious.

The constitutional mandate 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,"[22] **does not preclude the validity of "memorandum decisions," which** adopt by reference the findings of fact and conclusions of law contained in the decisions of inferior tribunals.[23] In fact, in *Yao v. Court of Appeals*,[24] this Court has sanctioned the use of "memorandum decisions," a specie of succinctly written decisions by appellate courts in accordance with the provisions of Section 40,[25] B.P. Blg. 129, as amended,[26] **on the grounds of expediency,**

[22] Section 14, Article VIII of the 1987 Philippine Constitution.

[23] *Oil and Natural Gas Commission v. Court of Appeals*, G.R. No. 114323, 23 July 1998, 293 SCRA 26, 44.

[24] G.R. No. 132428, 24 October 2000, 344 SCRA 202.

[25] **SEC. 40**. *Form of decision in appealed cases*. – Every decision or final resolution of a court in appealed cases shall clearly and distinctly state the findings of fact and the conclusions of law on which it is based, which may be contained in the decision or final resolution itself, or adopted by reference from those set forth in the decision, order or resolution appealed from.

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

practicality, convenience and docket status of our courts. This Court likewise declared that "memorandum decisions" comply with the constitutional mandate.[27]

This Court found in *Romero v. Court of Appeals*[28] that the Court of Appeals substantially complied with its constitutional duty when it adopted in its Decision the findings and disposition of the Court of Agrarian Relations in this wise:

"We have, therefore, carefully reviewed the evidence and made a re-assessment of the same, and We are persuaded, nay compelled, to affirm the correctness of the trial court's factual findings and the soundness of its conclusion. *For judicial convenience and expediency, therefore, We hereby adopt, by way of reference, the findings of facts and conclusions of the court a quo spread in its decision, as integral part of this Our decision.*" (Underscoring supplied)

In *Francisco v. Permskul,*[29] this Court similarly held that the following memorandum decision of the Regional Trial Court (RTC) of Makati City did not transgress the requirements of Section 14, Article VIII of the 1997 Philippine Constitution:

"MEMORANDUM DECISION

After a careful perusal, evaluation and study of the records of this case, *this Court hereby adopts by reference the findings of fact and conclusions of law contained in the decision of the Metropolitan Trial Court of Makati, Metro Manila, Branch 63* and finds that there is no cogent reason to disturb the same.

"WHEREFORE, judgment appealed from is hereby affirmed *in toto*." (Underscoring supplied.)

Hence, incorporation by reference is allowed if only to avoid the cumbersome reproduction of the decision of the lower courts, or portions thereof, in the decision of the higher court.[30]

---

[27] *Yao v. Court of Appeals*, *supra* note 24 at 216.

[28] No. 59606, 8 January 1987, 147 SCRA 183.

[29] G.R. No. 81006, 12 May 1989, 173 SCRA 324, 326.

[30] *Oil and Natural Gas Commission v. Court of Appeals*, *supra* note 23 at 44-45.

However, also in *Permskul*,[31] this Court laid down the conditions for the validity of memorandum decisions, to wit:

The memorandum decision, to be valid, **cannot incorporate the findings of fact and the conclusions of law of the lower court only by remote reference, which is to say that the challenged decision is not easily and immediately available to the person reading the memorandum decision.** For the incorporation by reference to be allowed, **it must provide for direct access to the facts and the law being adopted, which must be contained in a statement *attached* to the said decision**. In other words, the memorandum decision authorized under Section 40 of B.P. Blg. 129 **should actually embody the findings of fact and conclusions of law of the lower court in an annex attached to and made an indispensable part of the decision**.

It is expected that this requirement will allay the suspicion that no study was made of the decision of the lower court and that its decision was merely affirmed without a proper examination of the facts and the law on which it is based. **The *proximity* at least of the annexed statement should suggest that such an examination has been undertaken**. It is, of course, also understood **that the decision being adopted should, to begin with, comply with Article VIII, Section 14** as no amount of incorporation or adoption will rectify its violation.

The Court finds necessary to emphasize that the memorandum decision should be sparingly used lest it become an addictive excuse for judicial sloth. It is an **additional condition for the validity that this kind of decision may be resorted to only in cases where the facts are in the main accepted by both parties and easily determinable by the judge and there are no doctrinal complications involved that will require an extended discussion of the laws involved**. The memorandum decision may be employed in simple litigations only, such as ordinary collection cases, where the appeal is obviously groundless and deserves no more than the time needed to dismiss it.

xxx xxx xxx

Henceforth, **all memorandum decisions shall comply with the requirements herein set forth both as to the form prescribed**

[31] *Francisco v. Permskul, supra* note 29 at 335-337.

and the occasions when they may be rendered. Any deviation will summon the strict enforcement of Article VIII, Section 14 of the Constitution and strike down the flawed judgment as a lawless disobedience.[32]

In the case at bar, we quote *verbatim* the Decision dated 10 June 2003 of the Office of the President which adopted by reference the Decision dated 10 August 1994 of the HLURB Board of Commissioners:

> This resolves the appeal filed by [herein petitioner] Solid Homes, Inc. from the [D]ecision of the [HLURB] dated [10 August 1994].
>
> *After a careful study and thorough evaluation of the records of the case*, this Office is convinced by the findings of the HLURB, thus *we find no cogent reason to depart from the assailed [D]ecision*. Therefore, *we hereby adopt by reference the findings of fact and conclusions of law contained in the aforesaid [D]ecision, copy of which is hereto attached as "Annex A."*
>
> WHEREFORE, premises considered, judgment appealed from is hereby **AFFIRMED** *in toto*.[33] (Emphasis supplied).

It must be stated that Section 14, Article VIII of the 1987 Constitution need not apply to decisions rendered in **administrative proceedings**, as in the case at bar. Said section applies only to decisions rendered in judicial proceedings. In fact, Article VIII is titled "Judiciary," and all of its provisions have particular concern only with respect to the judicial branch of government. Certainly, it would be error to hold or even imply that decisions of executive departments or administrative agencies are oblige to meet the requirements under Section 14, Article VIII.

The rights of parties in administrative proceedings are not violated as long as the constitutional requirement of due process has been satisfied.[34] In the landmark case of *Ang Tibay v. CIR*,

---

[32] *Yao v. Court of Appeals*, *supra* note 24 at 217.

[33] *Rollo*, p. 99.

[34] Section 1, Article III of the 1987 Constitution.

we laid down the cardinal rights of parties in administrative proceedings, as follows:

1) The right to a hearing, which includes the right to present one's case and submit evidence in support thereof.

2) The tribunal must consider the evidence presented.

3) The decision must have something to support itself.

4) The evidence must be substantial.

5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.

6) The tribunal or body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy and not simply accept the views of a subordinate in arriving at a decision.

7) The board or body should, in all controversial question, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered.[35]

As can be seen above, among these rights are "the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected"; and that the decision be rendered "in such a manner that the parties to the proceedings can know the various issues involved, and the reasons for the decisions rendered." Note that there is no requirement in *Ang Tibay* that the decision must express clearly and distinctly the facts and the law on which it is based. For as long as the administrative decision is grounded on evidence, and expressed in a manner that sufficiently informs the parties of the factual and legal bases of the decision, the due process requirement is satisfied.

At bar, the Office of the President apparently considered the Decision of HLURB as correct and sufficient, and said so in its own Decision. The brevity of the assailed Decision was not the

[35] 69 Phil. 635 (1940).

product of willing concealment of its factual and legal bases. Such bases, the assailed Decision noted, were already contained in the HLURB decision, and the parties adversely affected need only refer to the HLURB Decision in order to be able to interpose an informed appeal or action for *certiorari* under Rule 65.

However, it bears observation that while decisions of the Office of the President need not comply with the constitutional requirement imposed on courts under Section 14, Article VIII of the Constitution, the Rules of Court may still find application, although suppletory only in character and apply only whenever practicable and convenient. There is no mandate that requires the application of the Rules of Court in administrative proceedings.

Even assuming *arguendo* that the constitutional provision invoked by petitioner applies in the instant case, the decision of the OP satisfied the standards set forth in the case of Permskul.

Firstly, the Decision of the Office of the President readily made available to the parties a copy of the Decision of the HLURB Board of Commissioners, which it adopted and affirmed *in toto*, because it was attached as an annex to its Decision.

Secondly, the findings of fact and conclusions of law of the HLURB Board of Commissioners have been embodied in the Decision of the Office of the President and made an indispensable part thereof. With the attachment of a copy of the Decision of the HLURB Board of Commissioners to the Decision of the Office of the President, the parties reading the latter can also directly access the factual and legal findings adopted from the former. As the Court of Appeals ratiocinated in its Decision dated 21 July 2004, "the facts narrated and the laws concluded in the Decision of the HLURB Board of Commissioners should be considered as written in the Decision of the Office of the President. It was still easy for the parties to determine the facts and the laws on which the decision were based. Moreover, through the attached decision, the parties could still identify the issues that could be appealed to the proper tribunal."[36]

---

[36] *Id*. at 14.

Thirdly, it was categorically stated in the Decision of the Office of the President that it conducted a careful study and thorough evaluation of the records of the present case and it was fully convinced as regards the findings of the HLURB Board of Commissioners.

And lastly, the facts of the present case were not contested by the parties and it can be easily determined by the hearing officer or tribunal. Even the respondents admitted that, indeed, the total purchase price for the subject property has not yet been fully settled and the outstanding balance is yet to be paid by them. In addition, this case is a simple action for specific performance with damages, thus, there are neither doctrinal complications involved in this case that will require an extended discussion of the laws involved.

Accordingly, based on close scrutiny of the Decision of the Office of the President, this Court rules that the said Decision of the Office of the President fully complied with both administrative due process and Section 14, Article VIII of the 1987 Philippine Constitution.

The Office of the President did not violate petitioner's right to due process when it rendered its one-page Decision. In the case at bar, it is safe to conclude that all the parties, including petitioner, were well-informed as to how the Decision of the Office of the President was arrived at, as well as the facts, the laws and the issues involved therein because the Office of the President attached to and made an integral part of its Decision the Decision of the HLURB Board of Commissioners, which it adopted by reference. If it were otherwise, the petitioner would not have been able to lodge an appeal before the Court of Appeals and make a presentation of its arguments before said court without knowing the facts and the issues involved in its case.

This Court also quotes with approval the following declaration of the Court of Appeals in its Decision on the alleged violation of petitioner's right to due process:

The contention of the [herein] petitioner that the said [D]ecision runs afoul to the Constitutional provision on due process cannot be

given credence. **The case already had gone through the Offices of the HLURB Arbiter and the Board of Commissioners where petitioner was given the opportunity to be heard and present its evidence, before the case reached the Office of the President which rendered the assailed [D]ecision after a thorough evaluation of the evidence presented. What is important is that the parties were given the opportunity to be heard before the [D]ecision was rendered. To nullify the assailed [D]ecision would in effect be a violation of the Constitution because it would deny the parties of the right to speedy disposition of cases**.[37]

Petitioner's assertion that respondents' complaint filed with the HLURB lacked a cause of action deserves scant consideration.

Section 7 of the 1987 HLURB Rules of Procedure states that:

Section 7. Dismissal of the Complaint or Opposition. – The Housing and Land Use Arbiter (HLA) to whom a complaint or opposition is assigned **may** immediately dismiss the same for lack of jurisdiction or cause of action. (Emphasis supplied).

It is noticeable that the afore-quoted provision of the 1987 HLURB Rules of Procedure used the word "may" instead of "shall," meaning, that the dismissal of a complaint or opposition filed before the HLURB Arbiter on the ground of lack of jurisdiction or cause of action is **simply permissive and not directive**. The HLURB Arbiter has the discretion of whether to dismiss immediately the complaint or opposition filed before him for lack of jurisdiction or cause of action, or to still proceed with the hearing of the case for presentation of evidence. HLURB Arbiter Dean in his Decision explained thus:

> This Office is well aware of instances when complainants/ petitioners fail, through excusable negligence, to incorporate every pertinent allegations (sic) necessary to constitute a cause of action. We will not hesitate to go outside of the complaint/petition and consider other available evidences **if the same is necessary to a judicious, speedy, and inexpensive settlement of the issues** laid before us or when there are reasons to believe that the [com]plaints are meritorious. "Administrative rules should be construed liberally in order to PROMOTE THEIR OBJECT AND

[37] *Rollo*, pp. 14-15.

ASSIST THE PARTIES IN OBTAINING A JUST, SPEEDY AND INEXPENSIVE DETERMINATION OF THEIR RESPECTIVE CLAIMS AND DEFENSES" (*Mangubat vs. de Castro*, 163 SCRA 608).[38] (Emphasis supplied).

Given the fact that the respondents have not yet paid in full the purchase price of the subject property so they have yet no right to demand the execution and delivery of the Deed of Sale and the TCT, nevertheless, it was still within the HLURB Arbiter's discretion to proceed hearing the respondents' complaint in pursuit of a judicious, speedy and inexpensive determination of the parties' claims and defenses.

Furthermore, the Court of Appeals already sufficiently addressed the issue of lack of cause of action in its Decision, *viz*:

The Offices below, instead of dismissing the complaint because of the clear showing that there was no full payment of the purchase price, decided to try the case and render judgment on the basis of the evidence presented. The **complaint of the respondents does not totally lack cause of action because of their right against the cancellation of the contract to sell and the forfeiture of their payments due to non-payment of their monthly amortization**.

xxx xxx xxx

The HLURB Arbiter in his [D]ecision, stated that it is undisputed that the contract price is not yet fully paid. This was affirmed by the HLURB Board of Commissioners and the Office of the President. No less than the respondents admitted such fact when they contended that they are willing to pay their unpaid balance. Without full payment, the respondents have no right to compel the petitioner to execute the Deed of Sale and deliver the title to the property. xxx.

xxx xxx xxx

Lastly, **notwithstanding such failure to pay the monthly amortization, the petitioner cannot consider the contract as cancelled and the payments made as forfeited**.

Section 24, PD 957 provides:

[38] *Id*. at 72-73.

> "**Section 24. Failure to pay installments**. - The rights of the buyer in the event of his failure to pay the installments due for reasons other than the failure of the owner or developer to develop the project shall be governed by Republic Act No. 6552. x x x."

Section 4, RA 6552 or the Realty Installment Buyer Protection Act provides:

> "**Section 4**. In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due. If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act."

It is therefore clear from the above provisions that the petitioner cannot consider the [C]ontract to [S]ell as cancelled. The requirements above should still be complied with.[39] (Emphasis supplied).

Hence, during the hearing conducted by HLURB Arbiter Dean, it became apparent that respondents' cause of action against petitioner is not limited to the non-execution and non-delivery by petitioner of the Deed of Sale and TCT of the subject property, which is dependent on their full payment of the purchase price thereof; but also the wrongful rescission by the petitioner of the Contract to Sell. By virtue thereof, there is ample basis for HLURB Arbiter Dean not to dismiss respondents' complaint against petitioner and continue hearing and resolving the case.

As a final point. Based on the records of this case, respondents have tendered payment in the amount of ₱11,584.41,[40] representing the balance of the purchase price of the subject property, as determined in the 10 August 1994 Decision of the HLURB Board of Commissioners, and affirmed by both the Office of the President and the Court of Appeals. However, the petitioner, without any justifiable reason, refused to accept

---

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

[40] *Id.* at 231-232.

the same. In *Ramos v. Sarao*,[41] this Court held that tender of payment is the manifestation by debtors of their desire to comply with or to pay their obligation. **If the creditor refuses the tender of payment without just cause, the debtors are discharged from the obligation by the consignation of the sum due**. Consignation is made by depositing the proper amount with the judicial authority, before whom the tender of payment and the announcement of the consignation shall be proved. All interested parties are to be notified of the consignation. Compliance with these requisites is mandatory.[42] In the case at bar, after the petitioner refused to accept the tender of payment made by the respondents, the latter failed to make any consignation of the sum due. Consequently, there was no valid tender of payment and the respondents are not yet discharged from the obligation to pay the outstanding balance of the purchase price of the subject property.

Since petitioner did not rescind the Contract to Sell it executed with the respondents by a notarial act, the said Contract still stands. Both parties must comply with their obligations under the said Contract. As ruled by the HLURB Board of Commissioners, and affirmed by the Office of the President and the Court of Appeals, the respondents must first pay the balance of the purchase price of the subject property, after which, the petitioner must execute and deliver the necessary Deed of Sale and TCT of said property.

WHEREFORE, premises considered, the instant Petition is hereby *DENIED*. Costs against the petitioner.

SO ORDERED.

Austria-Martinez (Acting Chairperson), Tinga, Nachura, and *Reyes, JJ.,* concur.

---

[41] G.R. No. 149756, 11 February 2005, 451 SCRA 103, 118-119.

[42] *Id*.

THIRD DIVISION

[G.R. No. 171374. April 8, 2008]

TEOFILA ILAGAN-MENDOZA and ROSARIO ILAGAN URCIA, *petitioners, vs.* **HON. COURT OF APPEALS, CALATAGAN RURAL BANK, INC., GEMINIANO T. NOCHE, as President of Calatagan Rural Bank, and REMEDIOS DE CLARO and EDMUNDO RODRIGUEZ, as Sheriffs,** *respondents.*

Spouses ALBERTO URCIA and ROSARIO ILAGAN URCIA, *petitioners, vs.* **HON. COURT OF APPEALS, CALATAGAN RURAL BANK, INC., GEMINIANO T. NOCHE, as President of Calatagan Rural Bank, and REMEDIOS DE CLARO and EDMUNDO RODRIGUEZ, as Sheriffs,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; ONLY ERRORS OF LAW PROPER; DISTINGUISHED FROM QUESTION OF FACT.— The jurisdiction of this Court in a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law. There is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts or when the query necessarily solicits calibration of the whole evidence considering mostly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and probabilities of the situation. A question of law has been defined as one that does not call for any examination of the probative value of the evidence presented by the parties. We have consistently stressed that in a petition for review on *certiorari* this Court does not sit as an arbiter of facts. As such, it is not our function to re-examine every appreciation of facts made by the trial and appellate courts unless the evidence on record does not support their findings or the judgment is based on a misappreciation of facts.

2. ID.; ID.; ID.; FINDINGS OF TRIAL COURT WHEN AFFIRMED BY THE APPELLATE COURT, RESPECTED; EXCEPTIONS.— Factual findings of the trial court, especially when affirmed by the Court of Appeals, as in this case, are generally binding and conclusive on the Supreme Court, for it is not the function of this Court to reexamine the lower courts' findings of fact. Suffice it to say that the factual findings and conclusions of the trial court and the Court of Appeals are entitled to great weight and respect and will not generally be disturbed on appeal in the absence of a clear showing that the trial court overlooked certain facts or circumstances that would warrant a different disposition of the case. Admittedly, the above rule is not absolute, as it admits of certain exceptions, to wit: (a) where there is grave abuse of discretion; (b) when the finding is grounded entirely on speculations, surmises or conjectures; (c) when the inference made is manifestly mistaken, absurd or impossible; (d) when the judgment of the Court of Appeals was based on a misapprehension of facts; (e) when the factual findings are conflicting; (f) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee; (g) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and, (h) where the findings of fact of the Court of Appeals are contrary to those of the trial court, or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioners are not disputed by the respondents, or where the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.

3. CIVIL LAW; SPECIAL CONTRACTS; LOAN; MORTGAGE SECURING A VALID LOAN CONTRACT MAY BE FORECLOSED UPON DEFAULT IN PAYMENT OF LOAN OBLIGATION.— A mortgage is a mere accessory contract to the loan obligation, thus, the validity of the mortgage depends on the validity of the loan it is supposed to secure. The debtor cannot escape the consequences of the mortgage contract once the validity of the loan is upheld. And when the principal obligation is not paid when due, the mortgagee has the right to foreclose on the mortgage, have the property seized and sold, and apply the proceeds to the balance of the loan obligation.

Foreclosure is proper if the debtor is in default in the payment of his loan obligation. In the Petition at bar, there is substantial evidence to support the facts that petitioners had existing loan obligations subject of Real Estate Mortgages executed in favor of CRBI and there was default on the payment thereof.

APPEARANCES OF COUNSEL

Roberto Diokno for petitioners.
Maritess C. Santos for private respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, with petitioners praying for the reversal of the Decision[1] dated 19 July 2005 of the Court of Appeals dismissing CA-G.R. CV No. 56688 and affirming the Decision[2] dated 3 October 1996 of Branch 10 of the Regional Trial Court (RTC) of Batangas which, in turn, dismissed Special Civil Actions No. 1701 and 1702 for lack of merit.

The following are the factual antecedents:

Petitioners are Teofila Ilagan-Mendoza (Teofila) and Rosario Ilagan-Urcia (Rosario), daughters of the late Estanislao Ilagan (Estanislao); and Alberto (Alberto) Urcia, Rosario's husband.

The respondent Calatagan Rural Bank, Inc. (CRBI) filed on 9 July 1986 with the Sheriff's Office two Applications for Extrajudicial Foreclosure of Real Estate Mortgages, pursuant to Act No. 3135 (as amended by Act No. 4110), for petitioners' unpaid loans, to wit:

(a) a Real Estate Mortgage covered by the following properties, to wit: TCT No. 11234, TCT No. 8465, TCT No. 14493,

[1] Penned by Associate Justice Edgardo P. Cruz with Presiding Justice Romeo A. Brawner and Associate Justice Jose C. Mendoza, concurring; *rollo,* pp. 37-45.

[2] Penned by Judge Elino A. Ybanez; *rollo,* pp. 112-147.

and TCT No.18772; and allegedly executed on 19 August 1974 by Teofila in favor of CRBI;[3] and

(b) a Real Estate Mortgage covered by property under TCT No. 31345, executed by Alberto, with Teofila as co-maker, to secure a ₱10,000.00 loan obtained by Alberto on 23 July 1985, maturing on 19 April 1986.[4]

On 20 August 1986, siblings Teofila and Rosario instituted Special Civil Action No. 1701 before the Regional Trial Court of Balayan, Batangas, while spouses Alberto and Rosario instituted Special Civil Action No. 1702 before the same court, both for injunction and damages, with an application for Temporary Restraining Order (TRO) and preliminary injunction, against respondents CRBI, CRBI President Geminiano Noche (Noche), and Sheriffs Remedios de Claro and Edmundo Rodriguez of the Batangas RTC, assailing CRBI's Applications for Extrajudicial Foreclosure of Real Estate Mortgages referred to in the preceding paragraph, and seeking to enjoin respondents from proceeding with the auction sale of the mortgaged properties. Special Civil Action Nos. 1701 and 1702 were consolidated by the RTC.

In Special Civil Action No. 1701,[5] Teofila and Rosario identified three crop loans obtained by their father, the late Estanislao, from CRBI in the amounts of ₱85,000.00, ₱75,000.00 and ₱25,000.00.[6] These loans, covered by a promissory note executed by and between Estanislao and CRBI, were secured by several Real Estate Mortgages[7] over the properties registered with the Registry of Deeds Batangas and covered by Transfer Certificates of Title (TCTs) No. 11234, 8465, 14493, and 18772, with Estanislao Ilagan, married to Leocadia Mercado, as mortgagors and CRBI as mortgagee.

---

[3] *Rollo,* p. 60.

[4] The same title serves as collateral for a 23 December 1983 loan due to mature on 18 September 1986; *rollo,* p. 62.

[5] *Rollo,* pp. 65-74.

[6] See Petition in Special Civil Action No. 1701.

[7] *Rollo,* pp. 66-67.

Estanislao was required to sign and submit a Deed of Assignment of all his sugar produce in favor of CRBI, as payment for the loans.[8] CRBI received the proceeds from Estanislao's sugar produce which it applied to his loans. Teofila and Rosario contend that the records of the two sugar centrals, Central Azucarera Don Pedro (CADP) and Balayan Sugar Central, Inc. (BSCI), reveal that sufficient payment had been made on the loans by Estanislao by 1979, but no document was executed to cancel the mortgages securing the same. Estanislao passed away on 23 August 1983. It is important to note that ***the petition also stated that Estanislao was required to sign promissory notes in blank for the renewal of the unpaid balances of the original loans, which procedure was followed after Estanislao died on August 1983, but this time thru Teofila.*** Thereafter, Teofila suspected overpayment of the loans and demanded an accounting from CRBI but the latter refused, constraining her and her sister Rosario to file an administrative case against the bank with the Central Bank of the Philippines. At the time of filing of the application for foreclosure of real estate mortgages, CRBI allegedly owed Teofila an outstanding amount representing the proceeds from the sugar produce for the years 1980 to 1986.

On the other hand, in Special Civil Action No. 1702,[9] spouses Alberto and Rosario Urcia admitted that Alberto obtained two commodity loans from CRBI, one for ₱10,000.00 and another for ₱8,200.00. ***Alberto stated that to cover said loans, promissory notes and trust receipts were allegedly signed by him in blank, with Teofila as co-maker.*** The ₱10,000.00 loan was covered by a promissory note dated 23 July 1985, which was to become due and payable on 19 April 1986; while the loan for ₱8,200.00 was covered by a promissory note dated 23 December 1985 to mature on 19 September 1986. The said loans were secured by a real estate mortgage on the house and lot of Alberto and Rosario, covered by TCT No. 31345 registered in the Registry of Deeds of Batangas. Believing that the loans had been fully

[8] *Id.* at 67.

[9] *Id.* at 75-80.

paid, Alberto asked for an accounting thereof, which CRBI ignored, hence, he sought the aid of the Central Bank. The CRBI further holds sugar quedans in the name of Rosario, Alberto's wife, and such sugar quedans, if negotiated, can fully answer for whatever outstanding amount they may still owe CRBI.

Purportedly in retaliation to their demands for accounting and their seeking recourse with the Central Bank, CRBI filed a criminal complaint for libel and a civil action for damages against petitioners; an administrative charge against Alberto and Rosario; and the assailed applications for extra-judicial foreclosure of the mortgaged properties.[10]

The RTC issued a TRO effective until 9 September 1986. The auction sale of the mortgaged properties, originally scheduled for 25 August 1986, was cancelled. After the lapse of the TRO, without any other injunction or restraining order having been issued, the Sheriff's Office of the RTC of Balayan, Batangas, through Deputy Sheriff Edmundo M. Rodriguez, issued another Notice of Public Auction Sale setting the public auction of the mortgaged properties for 17 September 1986. The public auction proceeded as scheduled wherein the mortgaged properties were awarded to the highest bidder, CRBI,[11] for the following amounts:

(a) ₱111,806.05 for the properties of Estanislao Ilagan; and

(b) ₱19,295.82 for the properties of Alberto Urcia.

A Certificate of Sale was issued on the same day in favor of CRBI.

Respondents filed on 15 December 1986 Motions to Dismiss Special Civil Actions No. 1701 and 1702.[12]

In an Order [13] issued on 23 December 1986, jointly resolving the two cases, RTC Executive Judge Alberto Reyes found the

[10] *Id*. at 69.

[11] The Minutes of the Auction Sale prepared by the Deputy Sheriff on 18 September 1986.

[12] *Rollo*, pp. 102-103.

[13] Issued by Executive Judge Alberto A. Reyes; *rollo*, pp. 104-106.

Motions to Dismiss meritorious and dismissed Special Civil Actions No. 1701 and 1702 for being moot and academic.

Aggrieved, petitioners in the two Special Civil Actions assailed the RTC Order dated 23 December 1986 via separate Petitions for *Certiorari*[14] filed with the Court of Appeals but these petitions were subsequently dismissed.[15]

From the appellate court's dismissal of their petitions, petitioners sought recourse from this Court by filing Petitions for *Certiorari* and *Prohibition*[16] which were granted. In a Resolution[17] dated 28 October 1987, this Court directed the RTC to proceed with the hearing of Special Civil Actions No. 1701 and 1702, to determine whether there was indeed overpayment of the loan obligations of petitioners to CRBI.

Hence, the proceedings before the RTC in Special Civil Actions No. 1701 and 1702 resumed.

The RTC summarized the issues in Special Civil Action No. 1701 as follows:

(1) whether or not the numerous withdrawals on 21 December 1983 after the death of Estanislao Ilagan were valid withdrawals;

(2) whether or not the mortgaged properties were validly foreclosed on 17 September 1986;

(3) whether or not deceased Estanislao Ilagan and his heirs had fully paid its [sic] obligation to respondent.

---

[14] CA-G.R. SP Nos. 11227-11230.

[15] 1 April 1987; records, Vol. I, pp. 161-167.

[16] G.R. Nos. 77480-77481.

[17] a) to proceed immediately with the hearing of Special Civil Action Nos. 1701 and 1072, particularly, to determine whether petitioners have overpaid their obligations to private respondent bank.

b) to cause without any delay, the registration of a notice of *lis pendens* on the certificate of title of the parcels of land sold at the auction sale held on 17 September 1986 until final termination of said Special Civil Actions. x x x. (Records, Vol. I, p. 154.)

In Special Civil Action No. 1702, the sole issue was whether or not Alberto's loans had already been paid.

After nine years of trial, the RTC dismissed Special Civil Actions No. 1701 and 1702 for lack of merit. In a Decision dated 3 October 1996, the RTC ruled in favor of CRBI and found that the mortgaged properties were validly foreclosed on 17 September 1986. The RTC held:

> WHEREFORE, petitioners instant petitions are hereby DISMISSED, for lack of merit.[18]

Petitioners filed a joint appeal with the Court of Appeals *via* Rule 45 of the Revised Rules of Court, docketed as CA-G.R. CV No. 56688. On 19 July 2005, the Court of Appeals dismissed CA-G.R. CV No. 56688 and affirmed the RTC Decision dated 3 October 1996. The Court of Appeals held:

> Appellants contend that there was no need for the bank to foreclose the mortgage on the Urcia spouses' property since it could run after either Teofila as co-maker or Rosario whose quedan was in the bank's possession and is sufficient to pay the loans. The contention is untenable.
>
> Art. 1216 of the New Civil Code gives the creditor the right to "proceed against any one of the solidary debtors or some or all of them simultaneously." The choice of the solidary debtor or against whom the solidary creditor will enforce collection is left to the latter (PNB vs. Independent Planters Association, Inc., 122 SCRA 113). Similarly, the choice of remedy to effect collection pertains to the creditor. On the other hand, the bank cannot run after Rosario's quedan because she is not indebted to it. The loan was exclusively obtained by Alberto. And Rosario did not assign her quedan to the bank as payment for Alberto's obligations.
>
> xxx xxx xxx
>
> x x x The death of the debtor does not extinguish his civil liability as his estate will answer for it (Art. 1078, Civil Code). Since the quedans belong to Estanislao, the proceeds thereof should be applied to his own obligation. In this sense, Estanislao can be considered a debtor of the bank, even after his death, concerning his unpaid loans.

[18] *Rollo,* p. 147.

xxx xxx xxx

Considering the foregoing, appellants' computation of Estanislao's loans from the bank is, at best, sketchy and self-serving and renders the purported overpayment implausible.

Consequently, We uphold the court *a quo's* finding that Estanislao is indebted to the bank in the amount of ₱67,000.00. As aptly observed by the trial court:

> "The Central Bank Report speaks for itself. It was adopted by the petitioners as their own evidence and was marked as Exhibits 'J', 'RRR-1' to 'RRR-3'. There is presumption of regularity in the performance of official duties. And the Court finds the report of the Central Bank employees as regards the computation of the loans of the late Estanislao Ilagan to be correct."

In fine, the lower court committed no error in its appealed decision.

WHEREFORE, the appealed decision of the Regional Trial Court of Batangas (Balayan, Branch 10) is AFFIRMED *in toto.*

The Court of Appeals denied the Motion for Reconsideration[19] filed by petitioners in a Resolution[20] dated 6 February 2006.

Petitioners thus filed on 20 March 2006 this Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, raising the following issues:

ISSUES FOR SPECIAL CIVIL ACTION NO. 1701

I. WHETHER OR NOT A PERSON CAN VALIDLY CONTRACTED (sic) A LOAN AFTER HIS DEATH.

II. WHETHER OR NOT THE LOAN OBTAINED AFTER THE DEATH OF A PERSON WILL FORM PART OF HIS EXISTING OBLIGATION.

III. WHETHER OR NOT THE REAL ESTATE MORTGAGE EXECUTED BY A DECEASED WILL COVER AN OBLIGATION INCURRED AFTER HIS DEATH.

---

[19] *Id*. at 47-58.

[20] *Id*. at 59.

ISSUES FOR SPECIAL CIVIL ACTION NO. 1702

I. WHETHER OR NOT THE FORECLOSURE PROCEEDINGS IS VALID AFTER DETERMINING [sic] BY THE LOWER COURT THAT THERE WAS AN OVERPAYMENT OF OBLIGATION.

II. WHETHER OR NOT THE RESPONDENT BANK CAN VALIDLY PROCEED WITH THE FORECLOSURE PROCEEDINGS WITHOUT FIRST APPLYING THE DEPOSITS IN ITS POSSESSION UNDER THE NAME OF THE PETITIONERS IN PAYMENT OF THE UNPAID OBLIGATIONS.

Petitioners pray that a decision be rendered reversing the earlier Decision of the Court of Appeals which dismissed CA-G.R. CV No. 56688; declaring the foreclosure of the mortgaged properties in Special Civil Actions No. 1701 and 1702 as null and void; and ordering the return of the Transfer Certificates of Titles in the name of the petitioners free from all liens and encumbrances.

Petitioners challenge the extra-judicial foreclosure of the real estate mortgages by CRBI for having been done with malice and bad faith.

Petitioners allege that Estanislao could not have possibly entered into a loan obligation after his death. He died on **23 August 1983.** This is in accordance with Article 42 of the New Civil Code which provides that "civil personality is extinguished by death." Thus, it would have been impossible for Estanislao to incur the loan obligation embodied in the promissory note dated **3 October 1984** for the sum of ₱44,000.00, and said promissory note should not have been included among Estanislao's obligations.

Petitioners also maintain that the loan for ₱10,000.00, covered by promissory note dated 23 July 1985 executed by Alberto, with Teofila as co-maker, was already paid, thus, making the foreclosure of real estate mortgage securing the said loan null and void. If only CRBI submitted an accounting as petitioners requested, there would have been no more need to resort to the

foreclosure proceedings since there was, in fact, an overpayment of ₱3,056.13 on the loan.[21]

Petitioners assert that the sheriffs and the trial and appellate courts failed to look into the existence and validity of the obligations secured by the mortgage properties that could have materially affected the foreclosure proceedings.

Respondents, on the other hand, contend that the real matter at issue is whether the separate loans contracted by Estanislao and Alberto still subsist as to make the foreclosure of the mortgaged properties valid; or, conversely, whether the loans were already paid, thus, making the foreclosure of the mortgaged properties null and void. They posit that these factual matters were already resolved by both the RTC and the Court of Appeals in their favor. Thus, they argue that the foreclosure of the mortgaged properties was in order and, consequently, the present Petition should be dismissed for lack of merit.

Clearly, the real issue to be resolved is whether Estanislao and Alberto still had outstanding loan obligations with CRBI that would justify the foreclosure of the mortgaged properties.

We rule in the affirmative, and find no reason to disturb the factual findings of the RTC and the Court of Appeals.

The jurisdiction of this Court in a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law.[22] There is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts or when the query necessarily solicits calibration of the whole evidence considering mostly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and probabilities of the situation.[23] A question of law has been

---

[21] Respondent Bank already has in its possession the quedans of Petitioners Urcia in the amount of Eight Thousand Pesos (₱8,000.00).

[22] Section 1, Rule 45, Revised Rules of Court.

[23] *Philippine National Bank v. Court of Appeals*, 392 Phil. 156, 171 (2000) citing *Bernardo v. Court of Appeals*, G.R. No. 101680, December 7, 1992, 216 SCRA 224, 232.

defined as one that does not call for any examination of the probative value of the evidence presented by the parties.[24]

We have consistently stressed that in a petition for review on *certiorari* this Court does not sit as an arbiter of facts. As such, it is not our function to re-examine every appreciation of facts made by the trial and appellate courts unless the evidence on record does not support their findings or the judgment is based on a misappreciation of facts.[25]

As correctly observed by CRBI, the issues raised by petitioners are purely factual. It would entail a review and evaluation of the evidence that were already presented before the trial court.

Factual findings of the trial court, especially when affirmed by the Court of Appeals, as in this case, are generally binding and conclusive on the Supreme Court, for it is not the function of this Court to reexamine the lower courts' findings of fact. Suffice it to say that the factual findings and conclusions of the trial court and the Court of Appeals are entitled to great weight and respect and will not generally be disturbed on appeal in the absence of a clear showing that the trial court overlooked certain facts or circumstances that would warrant a different disposition of the case.[26]

Admittedly, the above rule is not absolute, as it admits of certain exceptions, to wit: (a) where there is grave abuse of discretion; (b) when the finding is grounded entirely on speculations, surmises or conjectures; (c) when the inference made is manifestly mistaken, absurd or impossible; (d) when the judgment of the Court of Appeals was based on a misapprehension of facts; (e) when the factual findings are conflicting; (f) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee; (g) when the

---

[24] *Philippine National Bank v. Norman Pike*, G.R. No. 157845, 20 September 2005, 470 SCRA 328, 339-340.

[25] *Fortuna v. People*, 401 Phil. 545, 550 (2000).

[26] *American Home Assurance Company v. Chua*, 368 Phil. 555, 565 (1999).

Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and, (h) where the findings of fact of the Court of Appeals are contrary to those of the trial court, or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioners are not disputed by the respondents, or where the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[27]

Petitioners, however, have not shown that any of these circumstances are attendant herein for us to deviate from the general rule.

A mortgage is a mere accessory contract to the loan obligation, thus, the validity of the mortgage depends on the validity of the loan it is supposed to secure. The debtor cannot escape the consequences of the mortgage contract once the validity of the loan is upheld.[28] And when the principal obligation is not paid when due, the mortgagee has the right to foreclose on the mortgage, have the property seized and sold, and apply the proceeds to the balance of the loan obligation. Foreclosure is proper if the debtor is in default in the payment of his loan obligation.

In the Petition at bar, there is substantial evidence to support the facts that petitioners had existing loan obligations subject of Real Estate Mortgages executed in favor of CRBI and there was default on the payment thereof.

Special Civil Action No. 1701

It has been established by evidence on record that Estanislao obtained a total of 32 loans from the bank. Estanislao used the very same properties he mortgaged to secure his first loan in 1974 as collaterals for his subsequent loans. However, no corresponding entries on the constituted mortgages were made on TCTs No. 11234, 14493, 8465 and 18772, except that of

[27] *Almendrala v. Ngo*, G.R. No. 142408, 30 September 2005, 471 SCRA 311, 322.

[28] *Development Bank of the Philippines v. Hon. Court of Appeals*, G.R. No. 138703, 30 June 2006, 494 SCRA 25, 46.

the first loan contracted in 1974. As payments for these loans, Estanislao assigned to CRBI the proceeds from his sugar produce milled at CADP and BSCI. The said proceeds were applied to the principal, interests and charges of Estanislao's loans.

Per the Central Bank Report, Estanislao still had loans left unpaid:

> The rural bank collected from Estanislao Ilagan ₱678,848.24 which fully paid 30 of his 32 loan accounts thereby leaving 2 loans totaling ₱67,000 still unpaid (Annex II-A).[29]

Among the 32 loans charged against Estanislao by the CRBI is a loan in the amount of ₱44,000.00[30] covered by a promissory note dated 3 October 1984, more than a year after Estanislao's death on 23 August 1983, and signed by Teofila, per testimony of Geminiano Noche.

Teofila and Rosario urge that the said loan should be excluded from the obligations secured by Estanislao's four mortgaged properties.

While it is conceded that the promissory note for ₱44,000.00 was signed by Teofila from CRBI on 3 October 1984, or after the death of Estanislao, the circumstances and reasons for this are adequately explained to show that said amount represent existing loans of Estanislao contracted by him prior to his death.

First, during the RTC trial, the following testimony was elicited from Geminiano Noche:

> Estanislao died in August 1983. According to witness, he allowed Teofila Ilagan to sign the Promissory Note dated 3 October 1984, because the collateral on the loan is a property in the name of Estanislao Ilagan and because **Teofila so requested since it would take time to settle the estate of Estanislao Ilagan and inasmuch as she would inherit the property**.[31] (Emphasis ours.)

---

[29] The total amount collected includes interest and other charges.

[30] Evidenced by promissory note dated 3 October 1984.

[31] *Rollo*, p. 134.

Secondly, Teofila and Rosario were definite in their petition in Special Civil Action No. 1701 when they were deemed to have admitted therein ***that Estanislao was required to sign promissory notes in blank for the renewal of the unpaid balances of the original loans, which procedure was followed after Estanislao died on August 1983, but this time thru Teofila.***

Based on the foregoing, it can be established that the Promissory Note dated 3 October 1984 then, although signed after the death of Estanislao on 23 August 1983, reflect an unpaid balance on the loans obtained by Estanislao from CRBI prior to his death, and secured by the same properties used as collaterals by him since he obtained the first loan in 1974.

Hence, payment for said loan, upon default, can be collected by CRBI by foreclosing on the mortgaged properties.

Teofila and Rosario then raised another point by contending that withdrawals were fraudulently made from Estanislao's CRBI Savings Account No. 5659 on 21 December 1983, after his death. A study of the testimony of Teofila reveals that Estanislao maintained four passbooks with CRBI, to wit:

a. Savings Account No. 1382, under the name of Estanislao Ilagan and/or Teofila Ilagan;

b. Savings Account No. 5659, under the name Teofila Ilagan and/or Estanislao Ilagan

c. Savings Account No. 5659, under the name of Estanislao Ilagan

d. Savings Account No. 5659, under the name Estanislao Ilagan and/or Teofila Ilagan

Estanislao's passbook for Savings Account No. 5659 contained entries of withdrawals made on 21 December 1983, which Estanislao could no longer have made after his death. If the withdrawals are invalidated, then the fraudulently withdrawn amounts could be returned to Estanislao's account and applied against the balance of his loans, which could even result in overpayment.

Julita Marasigan, a former cashier of the bank, testified on the bank procedure with respect to withdrawals made in the bank. We find that the entries in Savings Account No. 5659, in the name of Estanislao, made on 21 December 1983, after his death, were made in good faith and did not represent withdrawals made on such date, but on previous dates, when Estanislao was still alive. Julita Marasigan explained that it is the standard operating procedure of CRBI to allow withdrawals even without the client presenting the passbook. The passbook is updated only later on with the appropriate entries once it is presented to CRBI.

This was further corroborated by CRBI President Germiniano Noche, who testified as follows:

Q: It appears on this page of Exhibit B that there were several withdrawals made on December 31, 1983. Will you please tell us how could these withdrawals been made?

A: These withdrawals were in accordance with the standard procedure of the bank when there is an up-dating.

Q: What do you mean by "up-dating"?

A: By "up-dating," before December 21 comes, the client go (sic) to the bank without the passbook.

Q: What did the client do without the passbook?

A: Requesting the bank in order for her to withdraw.

Q: And was the withdrawal allowed?

A: Because of the good relationship between the client and the bank, we allowed the withdrawal without the passbook.

Q: So these withdrawals made on December 21, 1983, to which withdrawal this refers?

A: This refers to withdrawal before December 21, 1983.

Q: How come that the withdrawal had entered only on December 21, 1983?

A: That had been entered only on December 21, 1983 because the representative of the client arrived on that date with the passbook.

Q: By "client", to whom are you referring to?

A: Estanislao Ilagan and Teofila Ilagan.

Q: Mr. Noche, according to the petition, Mr. Estanislao Ilagan died sometime in August, 1983. Now, according to you, she went to the bank on December 21, 1983. Will you please tell us how come Mr. Estanislao Ilagan was able to go to the bank on December 21, 1983?

ATTY. AGUJO:

Objection, you Honor. In the previous question, your Honor Mr. witness stated that Mr. Estanislao Ilagan and Teofila Ilagan. Then the next question your Honor has a conflict because the line of questioning, it appears that it was only Ms. Ilagan by using the word "she", your Honor.

COURT:

What is the question?

ATTY. CABAL:

Q: My question is: How come Mr. Estanislao Ilagan was able to go to the bank on December 21, 1983 while he died in August 1983?

COURT: May answer.

A: If there is no Estanislao Ilagan, then there (sic) Teofila Ilagan because this is "and/or".

Q: What is the meaning of "and/or"?

A: We can enter transaction to the passbook either the daughter or the father.[32]

Witnesses for CRBI have thus sufficiently explained the circumstances behind the withdrawals entered on Estanislao's passbook even after his death.

Teofila and Rosario failed to rebut the foregoing testimonies. Absent any evidence to the contrary, the Court finds that the entries made on the passbook of Estanislao were regular

[32] TSN, 22 November 1994, pp. 20-23.

and speak of the correct transactions made by the parties therein.[33]

Special Civil Action No. 1702.

The evidence on record reveals that Alberto has two unpaid loans with CRBI, particularly:

(a) loan in the amount of ₱10,000, covered by promissory note dated 23 July 1985, which would fall due on 19 April 1986; and

(b) loan in the amount of ₱8,200.00, covered by promissory note dated 23 December 1985, which would fall due on 19 September 1986.

The Central Bank Reports submitted establish an overpayment[34] by Alberto in the amount of ₱3,056.13 to CRBI. However, page 2 of Central Bank Memorandum[35] dated 1 October 1986 reads:

(a) Alberto Urcia paid to the bank ₱96,054.23 which fully paid 10 of his 12 loans thereby leaving 2 loans totaling ₱18,200 still unpaid (Annex I-A)

(b) The bank charged Mr. Urcia attorney's fees of ₱1,403.17 instead of ₱1,2221.15 or an overcharge of ₱182.02 (Annex I-A)

(c) The rural bank made a net overcharge in interest of ₱2,874.11. (Annex I-A)[36]

Jose Galit, Central Bank Examiner, testified that in computing the overpayment of ₱3,056.13 by Alberto, his second loan of ₱8,200.00 was not yet included therein:

Q: Now, I invite your attention to page two of the report which was marked as Exhibit A-1 and on the findings of the Central Bank, your department Alberto Urcia, the respondent stated and I quote "the bank charged xxx" (Please see Exhibit "A-1"

[33] Presumption of regularity.

[34] Folder of Exhibits, Exh. J.

[35] *Id*.

[36] *Id*.

record). If you total this amount the sum would be ₱3,056.13. Now Annex "1" of that report which was marked as Exhibit "A-5" for the following findings of your Department and I quote "Between the petitioner from November 18, 1980 to December 20, 1985, complaint was xxx" (NOTE: please see Exhibit "A-4" on record). Second, date granted December 23, 1985, date due, September 18, 1986. Amount ₱8,200.00. When you computed the alleged overcharge of ₱3,056.13, did you consider this (sic) outstanding loans of petitioners Alberto Urcia?

A: No, sir.

Q: What do you mean by that?

A: Because that overcharged (sic) pertains to different loans.

Q: What was the status of loan of Alberto Urcia as of June 12, 1986?

A: The two (2) loans were unpaid as of examination.[37]

A more thorough review of the Central Bank Report would disclose that the supposed overpayment refers to Alberto's other loans with CRBI, leaving two loans amounting to ₱18,000.00 with the same bank still unpaid.

The testimony of Jose Galit, taken together with the Central Bank Reports, indicate that the principal amounts pertaining to Alberto's two outstanding loans, totaling ₱18,200.00, plus interests and other charges thereon, exceed the ₱3,056.13 overpayment on his other loans with CRBI. Thus, Alberto is still indebted to CRBI for the principal, interest, and other charges on the said two loans, less the overpaid amount of ₱3,056.13 on his other loans.

Alberto further argues that while his loan matured on **19 September 1986**, the mortgaged property covered by TCT No. 31345 was foreclosed two days earlier, on **17 September 1986.** It must be stressed, however, that Alberto Urcia had two unpaid loans with CRBI: one, for ₱10,000.00, which matured

[37] TSN, 1 December 1993, pp. 97-98.

on **19 April 1986**; the other, for ₱8,200.00, which became due on 19 September 1986.

Alberto insists that the real property covered by TCT No. 32345 stands as security for the two loans, implying that the obligations are indivisible. We are not persuaded. The documents show that the loans were obtained and set to mature on two different dates. They are obviously separate and distinct from each other although secured by the same property. CRBI may collect payment on the loans as each falls due. CRBI resorted to the foreclosure of the mortgaged property when Alberto failed to pay his ₱10,000.00 loan which became due on 19 April 1986. CRBI apparently did not yet move to collect on Alberto's ₱8,200.00 loan which, at that time, had not matured.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is *DENIED*. Costs against petitioners.

SO ORDERED.

Austria-Martinez (Acting Chairperson), Tinga,[*] *Nachura* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 172470. April 8, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SAMMY RAMOS *Y* DALERE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES.— In determining the guilt or innocence of the accused in cases of rape, the courts have been traditionally guided by three settled

[*] Assigned as Special Member.

principles, namely: (a) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; (b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense. Since the crime of rape is essentially one committed in relative isolation or even secrecy, hence, it is usually only the victim who can testify with regard to the fact of the forced *coitus*. In its prosecution, therefore, the credibility of the victim is almost always the single and most important issue to deal with. If her testimony meets the test of credibility, the accused can justifiably be convicted on the basis thereof; otherwise, he should be acquitted of the crime.

2. REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONIES.— Against the damning evidence adduced by the prosecution, what appellant could only muster is a barefaced denial. Unfortunately for the appellant, his defense is much too flaccid to stay firm against the weighty evidence for the prosecution. 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. Between the self-serving testimony of appellant and the positive identification by the eyewitness, the latter deserves greater credence.

3. ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY ALLEGED UNUSUAL REACTION OF YOUNG RAPE VICTIM.— Appellant tries to discredit the victim's testimony by questioning her deportment which was not that of an "outraged woman robbed of her honor." It should be borne in mind, in this connection, that the victim was only a naive thirteen (13)-year old child when the depredation happened to her. Since childhood, she had been longing to experience the love and protection of a father. When she finally found herself under the refuge of her father, it brought the bliss of an answered prayer. This idyllic experience, however, remained a fleeting episode because the person who should shield her from harm and evil was the very same person who wrought malady upon her. Such must be a startling occurrence for her. Behavioral psychology teaches that people react to similar situations

dissimilarly. Their reactions to harrowing incidents may not be uniform. AAA's conduct of staying with her tormentor and her failure to prevent the repetition of the rape incident should not be taken against her. She was too disturbed and too young to totally comprehend the consequences of the dastardly acts inflicted on her by the appellant. Rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation. It is not proper to judge the actions of children who have undergone traumatic experience by the norms of behavior expected from adults under similar circumstances. The range of emotions shown by rape victims is yet to be captured even by calculus. It is, thus, unrealistic to expect uniform reactions from rape victims. Certainly, the Court has not laid down any rule on how a rape victim should behave immediately after she has been violated. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt. Indeed, different people act differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience. It would be insensitive to expect the victim to act with equanimity and to have the courage and the intelligence to disregard the threat made by the appellant. When a rape victim is paralyzed with fear, she cannot be expected to think and act coherently. This is especially true in this case since AAA was repeatedly threatened by appellant if ever she would tell anybody about the rape incidents. The threat instilled enormous fear in her such that she failed to take advantage of any opportunity to escape from the appellant. Also, as AAA explained, she withstood her father's lechery and stayed with him despite what he did because she wanted to complete her studies until 28 March 1992 when she graduated. Besides, getting away from appellant was a task extremely difficult for a 13-year old girl, alone with the predator in a far-away place, motherless, without any relative to turn to in an hour of need, penniless, and uninformed in the ways of the world. In fact, it was only when a Good Samaritan crossed her path that the victim was able to report to the authorities about her father's spiteful deeds.

4. **ID.; ID.; ID.; NOT AFFECTED BY DELAY OF YOUNG VICTIM IN REPORTING THE CRIME OF RAPE.—** As regards the initial delay of the victim in reporting the rape

incident, suffice it to state that the delay in revealing the commission of rape is not an indication of a fabricated charge. It is not uncommon for a young girl to conceal for some time the assault on her virtue. Her hesitation may be due to her youth, the moral ascendancy of the ravisher, and the latter's threats against her. In the case at bar, the victim's fear of her father who had moral ascendancy over her, was explicit. Such reaction is typical of a thirteen-year-old girl and only strengthens her credibility.

5. ID.; ID.; ID.; UPHELD AS AGAINST ALLEGATION OF ILL MOTIVE.— Appellant's allegation that the complaints for rapes were prompted by the victim's hatred of the appellant for abandoning her is bereft of any basis. The victim even during her tender years had been looking for her father. She was, in fact, delighted when she saw her father for the first time in May of 1991. If AAA at all nurtured ill-will against her father, it was because he, instead of acting as protector of his daughter, defiled her. Assuming *arguendo* that AAA harbored hatred against appellant, it would be unlikely for a 13-year old girl to fabricate such story. This Court has held that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subjected to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. It is highly improbable for an innocent girl, who is very naïve to the things of this world, to fabricate a charge so humiliating not only to herself but to her family. Moreover, it is doctrinally settled that testimonies of rape victims who are of tender age are credible. The revelation of an innocent child whose chastity was abused deserves full credit, as the willingness of the complainant to face police investigation and to undergo the trouble and humiliation of a public trial is eloquent testimony of the truth of her complaint.

6. ID.; ID.; ID.; FINDINGS OF TRIAL COURT THEREON IF AFFIRMED BY APPELLATE COURT, RESPECTED.— The Court finds that the RTC, as well as the Court of Appeals, committed no error in giving credence to the evidence of the prosecution and finding appellant guilty of the charges. The Court has long adhered to the rule that findings of the trial

court on the credibility of witnesses and their testimonies are accorded great respect unless it overlooked substantial facts and circumstances, which if considered, would materially affect the result of the case. In rape cases, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge whose conclusion thereon deserves much weight and respect because the judge has the direct opportunity to observe them on the stand and ascertain if they are telling the truth or not. This deference to the trial court's appreciation of the facts and of the credibility of witnesses is consistent with the principle that when the testimony of a witness meets the test of credibility, that alone is sufficient to convict the accused. This is especially true when the factual findings of the trial court are affirmed by the appellate court.

7. CRIMINAL LAW; RAPE; PENALTY; PROPER PENALTY FOR RAPES COMMITTED IN 1992 IS *RECLUSION PERPETUA*.— As to the penalty imposed, the RTC correctly sentenced appellant to *reclusion perpetua* for each count. Note that the rapes complained of in this case took place on 18 January 1992 to 28 March 1992, prior to the restoration of the death penalty for cases of qualified rape by virtue of Republic Act No. 7659 or the Death Penalty Law. The death penalty law took effect only on 31 December 1993. As thus correctly found by the RTC, Article 335 of the Revised Penal Code, before its amendment by Republic Act No. 7659, is applicable. The rapes committed by appellant are, therefore, simple, penalized by *reclusion perpetua*.

8. ID.; ID.; CIVIL PENALTIES AWARDED IN CASE AT BAR.— The RTC ordered the appellant to pay the victim the amount of ₱50,000.00 for each count of rape as civil indemnity. In accordance with prevailing jurisprudence, such award is in order. However, the award of moral damages in the amount of ₱25,000.00 for each count of rape is modified and increased to ₱50,000.00 conformably with the recent pronouncement of the Court.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CHICO-NAZARIO, *J.*:

For review is the Decision[1] dated 10 February 2006 of the Court of Appeals in CA-G.R. CR-HC No. 00003 which affirmed the Decision[2] of the Regional Trial Court (RTC) of Gubat, Sorsogon, Branch 54, finding appellant Sammy D. Ramos guilty of four (4) counts of rape but acquitted him of the other 46 charges. Appellant was sentenced to suffer the penalty of *reclusion perpetua* for each count and to pay the victim AAA[3] the amounts of ₱50,000.00 as civil indemnity and ₱25,000.00 as moral damages, for every conviction.

Appellant was charged under Article 335(1) of the Revised Penal Code before the RTC with 50 counts of rape spanning the period of 18 January 1992 to 28 March 1992 against his 13-year old daughter.

The four charges which are the subject matter of this appeal were docketed as Criminal Cases No. 1770, 1771, 1772 and 1831. The four similarly-worded Informations, except for the dates of commission, contained the following allegations, to wit:

Criminal Case No. 1770

That on or about the night of January18, 1992, at Barangay Cogon, Gubat, Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, through force and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge with his own 12-year old daughter, AAA against her will and without her consent, to her damage and prejudice.[4]

---

[1] Penned by Associate Justice Mario L Guariña III with Associate Justices Roberto A. Barrios and Santiago Javier Ranada, concurring; *rollo,* pp. 3-9.

[2] Penned by Judge Haile F. Frivaldo.

[3] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

[4] CA *rollo*, p. 42.

The three other Informations alleged that the rape was committed on 19 January 1992 (Criminal Case No. 1771);[5] on 20 January 1992 (Criminal Case No. 1772);[6] and on 28 March 1992 (Criminal Case No. 1831).[7]

Upon arraignment on 12 February 1993, appellant, assisted by counsel *de parte*, pleaded not guilty to each count of rape.[8] Thereafter, joint trial on the merits ensued.[9]

From AAA's testimony, the prosecution was able to establish the following:

AAA was born out of wedlock on 5 October 1978 to appellant Sammy Ramos and BBB in Consuelo, Santa Marcela, Kalinga, Apayao.[10] She grew up in the custody of her mother who was living with her maternal grandparents in Ballesteros, Cagayan.[11] It was there that she studied and finished her elementary education from Grade I until Grade V.[12] Sometime in May of 1991 and after finishing Grade V, she stowed away from her maternal grandparent's house because her uncle attempted to sexually molest her.[13] Wanting to experience the love and protection of a father, she proceeded to the hometown of her father in Sta. Marcela, Kalinga, Apayao. There, she stayed with her paternal grandmother for a week until she was fetched by her father's live-in-partner, Maribel Serayda. Maribel Serayda brought AAA to appellant who was then working in Cogon, Gubat, Sorsogon. It was the first time she met her father who worked there as a heavy equipment operator in a construction company allegedly owned by his uncle. While assigned in Sorsogon, AAA's father

[5] *Id*. at 44.

[6] *Id*. at 46.

[7] *Id*. at 84.

[8] Records, p. 60.

[9] *Id*. at 88.

[10] *Id*. at 233.

[11] TSN, 7 October 1993, p. 8.

[12] *Id*.

[13] *Id*. at 9.

lived with his live-in partner in one of the barracks for the company employees. When she arrived, AAA stayed with the couple in the barracks. Appellant allowed AAA to continue her studies and she was enrolled in Grade VI in June 1991. Towards the end of 1991, however, Maribel Serayda left because she could no longer bear the physical abuse done to her by the appellant.[14] From that time, AAA was left alone with appellant in the barracks. The dwelling had two bedrooms which they separately occupied.[15]

On 18 January 1992, appellant committed the first act of rape. When AAA went to sleep, at about 3:00 a.m., clad in a duster and a panty underneath, she woke up finding appellant on top of her and holding her breast.[16] He covered her mouth with a blanket and told her not to tell anybody or he would kill her. She tried to extricate herself from the appellant, but the latter proved to be too strong for her. He then removed her panty and inserted his penis into her vagina.[17] Upon realizing that her struggle to repel appellant from satisfying his bestial desire was coming to naught, AAA began to cry. Appellant switched on the light in the room and turned on the radio. It was from the radio that AAA heard the exact time of the first sexual assault.[18]

On the night of 19 January 1992, appellant repeated what he did to AAA the day before. He again forced himself into her and threatened to kill her if she would tell anybody of the incident.[19]

The following night, 20 January 1992, appellant committed the third rape at the same place. He again stayed on top of her and had sexual intercourse against her will.[20] As in the previous

---

[14] TSN, 13 October 1994, p. 9.

[15] TSN, 20 January 1994, p. 9.

[16] *Id*. at 10.

[17] *Id*. at 17.

[18] *Id*. at 19.

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

[20] TSN, 12 May 1994, p. 8.

occassions, she did not report the same because she was afraid of him.[21]

The molestation continued nightly from 21 January to 28 March 1992, except from February 1 to 14 of 1992, when appellant was assigned in Casiguran.[22]

The last rape incident, which, as mentioned earlier, occurred on 28 March 1992 coincided with the graduation exercises of AAA. During the ceremony, AAA was accompanied by the female secretary of the construction firm named Deding. The graduation program ended at around 9 p.m., after which AAA and Deding went to the barracks to eat. Appellant did not eat with the two. When Deding left, AAA went to sleep. She was again awakened from her sleep when she felt appellant was on top of her and ravished her against her will.[23]

On 4 April 1992, she related these harrowing experiences to Nelly Enaje who helped her escape from the claws of the appellant.[24] Three days after, Nelly Enaje brought her to Danilo Enaje, the Barangay Captain of Cogon.[25] Danilo Enaje accompanied the victim to the police station. The policemen had her undergo a physical examination at the Gubat District Hospital under Dr. Edna Gorospe who disclosed that the victim's hymen had old lacerations at various areas and that the labia minora had abrasion which means that the victim could have been raped several times before she was examined.[26]

AAA explained that aside from fact that she was afraid of the threat of the appellant, it took her some time to leave appellant and to report the abuses done to her because she had no other relatives in Sorsogon and that she wanted to finish her schooling which was then in its final stage.[27]

---

[21] *Id*.

[22] TSN, 20 January 1994, p. 8.

[23] TSN, 30 June 1994, p. 5.

[24] *Id*.

[25] TSN, 12 May 1994, p.

[26] TSN, 8 June 1995, pp. 19-21.

[27] TSN, 26 January 1995, p. 7.

The defense presented its only witness, the appellant, who denied having committed the charges hurled against him. He claimed that he came to Cogon, Gubat, Sorsogon, in 1991 to work with a construction company as road roller operator. The victim, whom he admitted to be his daughter, stayed with her in a bunk house provided for them by his employer. He testified that sometime in 1992, AAA, together with a friend, took his money which was kept inside the bunk house and ran away from Cogon.[28] He reported the incident to the *barangay* captain of Cogon. He looked for AAA in Abuyog, Irosin, Sorsogon and in Manila, but his search was in vain. Upon his return to Cogon, he learned that AAA and her friend were both in Abuyog. He was later called by the mayor of Gubat, Sorsogon, and was put behind bars.[29]

The RTC, in a decision dated 30 August 1998, convicted the appellant of 4 counts of rape in Criminal Cases No. 17170, 1771, 1772 and 1831 which were committed on 18 January, 19 January, 20 January, and 28 March 1992, respectively. The RTC, however, acquitted appellant of the other 46 rape charges against him for failure of the prosecution to prove his guilt beyond reasonable doubt. The decretal portion reads:

> WHEREFORE, judgment is hereby rendered finding the accused Sammy Ramos *y* Dalere GUILTY beyond reasonable doubt of the crime of rape on four (4) counts in Criminal Case Nos. 1770,1771,1772 and 1831, and hereby sentences him to *RECLUSION PERPETUA* for each and every count of the crime committed, with all the accessory penalties of the law; and to pay AAA the amount of FIFTY THOUSAND PESOS (₱50,000.00) as civil indemnity and TWENTY-FIVE THOUSAND PESOS (₱25,000.00) for moral damages, for each of the four felonies of rape, subject to the provisions of Art. 70 of the Revised Penal Code.
>
> The other cases against the accused as stated above, are hereby DISMISSED for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt.[30]

---

[28] TSN, 16 April 1998, pp. 14-15.

[29] *Id*. at 7.

[30] Records, p. 324.

In its decision dated 10 February 2006, the Court of Appeals affirmed the decision of the RTC, thus:

> IN VIEW OF THE FOREGOING, the judgment is rendered AFFIRMING the decision appealed from and DISMISSING the appeal.[31]

Hence, the instant recourse.

In his brief, the appellant assigns the following errors:

> I
>
> THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MULTIPLE RAPE NOTWITHSTANDING THE FACT THAT PRIVATE COMPLAINANT HAD HER CLOTHES ON DURING THE OCCURRENCE OF THE ALLEGED INCIDENTS.
>
> II
>
> THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT THE TIMID AND PASSIVE CONDUCT AND ACTUATION OF THE PRIVATE COMPLAINANT IMMEDIATELY AFTER THE SUPPOSED SEXUAL ASSAULT ON HER CAST SERIOUS DOUBT ON THE CRIMINAL LIABILITY OF THE ACCUSED-APPELLANT.

Appellant expresses a strong concern over the victim's account of the alleged rape incidents. He claims that the rapes could not have been committed because the offended party had her clothes on all the time when the said incidents took place. He likewise points out that the victim's timid and passive conduct during and after every incident of defloration runs counter to the normal reaction of a rape victim since it is unnatural for a victim to continue living with her tormentor and not to extricate herself from said abusive environment. Moreover, he insists that his conviction of four counts of rape is unwarranted because the victim merely gave general statements that she was raped, but she failed to disclose sufficient details to substantiate her allegations.

In determining the guilt or innocence of the accused in cases of rape, the courts have been traditionally guided by three settled

---

[31] *Rollo*, p. 8.

principles, namely: (a) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; (b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense.[32]

Since the crime of rape is essentially one committed in relative isolation or even secrecy, hence, it is usually only the victim who can testify with regard to the fact of the forced *coitus*.[33] In its prosecution, therefore, the credibility of the victim is almost always the single and most important issue to deal with.[34] If her testimony meets the test of credibility, the accused can justifiably be convicted on the basis thereof; otherwise, he should be acquitted of the crime.[35]

In this case, upon assessing the victim's testimony, the RTC found her credible, thus:

> In the case at bar, AAA did not only say she had been raped, she described in detail how she had been sexually abused by her own natural father and the testimony of the private complainant bears the earmarks of truth. No woman especially one who is of tender age would concoct a story of defloration, allow an examination of her private parts and thereafter permit herself to be subjected to a public trial, if she is not motivated solely by the desire to have the culprit punished.
>
> xxx xxx xxx
>
> On the basis of substantial evidence of culpability which the defense of denial and alibi failed to overcome, this Court is persuaded into finding and holding, as it hereby finds and holds that on four (4) occasions: (1) in the early morning of January 18, 1992; (2) in the

[32] *People v. Orquina*, 439 Phil. 359, 365-366 (2002).

[33] *People v. Quijada*, 378 Phil. 1040, 1047 (1999).

[34] *Id*.

[35] *People v. Babera*, 388 Phil. 44, 53 (2000).

evening of January 19, 1992; (3) in the evening of January 20, 1992; and (4) in the evening of March 28, 1992 in Cogon, Gubat, Sorsogon.[36]

This Court itself has assiduously scrutinized the transcripts of stenographic notes of this case and like the RTC, it finds the victim's testimony of the incident forthright and straightforward, reflective of an honest and realistic account of the tragedy that befell her. She narrated the first and the second rape incidents in this manner:

Q: Now, at the initial stage of the hearing you mentioned that your stepmother by the name of Maribel left your father in December 1991. After she left your father, who was with you together with your father in Cogon?

A: Only the two of us.

Q: Now, you were then staying in that barracks you mentioned last time-the barracks of the 642 Construction at Cogon?

A: Yes, sir.

Q: Can you still describe to us that barracks or your place of residence?

A: Yes, sir.

Q: How many bedrooms were there in that barracks?

A: Two.

Q: Those are bedrooms?

A: Yes, sir.

xxx xxx xxx

Q: After Maribel, your stepmother, had left, you and your father were using that one room as your bedroom?

A: No, sir. I was staying in one room and he was staying in the other room.

xxx xxx xxx

[36] Records, pp. 322-324.

Q: While you were alone in your room on January 18, 1992, while sleeping then, do you know of any incident that happened in your person?

A: There was.

Q: What was it, AAA?

A: I was touched "*ginalaw*" by my Papa.

Q: When you said "*Ginalaw ako ng Papa ko,*" what do you mean, AAA?

A: He abused me.

Q: In what manner?

A: (*At this juncture the witness is crying and wiping her tears with her handkerchief.*) I cannot tell of any manner why somebody entered my room while I was sleeping. And then, I sensed that somebody was on top of me. I tried to extricate myself but he was so strong. He held my breasts with his two hands and then covered my mouth with a blanket.

Q: And after your mouth was covered by the blanket, what happened next?

A: He told me that if I will tell somebody I would be killed.

Q: Have you recognized that somebody who placed himself on top of you?

A: His voice.

Q: And whose voice was that?

A: That of my Papa.

xxx xxx xxx

Q: After your father placed a blanket in your mouth, what did he do, if any?

A: His organ was in me.

Q: In going to bed that night of January 18, 1992, what were you wearing?

A: A duster and panty.

Q: You said a while ago that your father inserted his organ, where was it inserted?

A: Into my vagina.

xxx xxx xxx

Q: You said a while ago that your Papa was able to insert his organ in your vagina. What did you do when your father inserted his organ in your vagina?

A: I was crying.

Q: Why were you crying then? Or why did you cry?

A: Because he was doing that to me.

Q: And when your father was doing this act to you, was your room where you were situated not lighted with any kind of light for that matter?

A: There was.

Q: Where was the light situated?

A: Inside.

Q: What room?

A: Both rooms were lighted.

xxx xxx xxx

Q: Was it lighted when this thing was done to you by your Papa?

A: No. sir.

Q: Do you know who switched off that light?

A: Before I went to sleep I usually switched off the light.

Q: So, we are certain that at the time this thing was happening, the electric light was off then?

A: Yes, sir.

xxx xxx xxx

Q: Do you recall what hour in the night that this thing happened on January 18, 1992?

A: Early morning.

Q: Why can you say that it was early morning?

A: Because after he used me he switched on the light and he switched on the radio to have music. And in the course of the music I heard the time.

Q: And what time was it that you heard on the radio?

A: About 3:00 o'clock.

xxx xxx xxx

Q: In the night of January 19, who was with you in that barracks which you considered as your residence?

A: My Papa.

Q: Do you recall of any untoward incident again that happened in your person on the night of January 19?

A: Yes, sir.

Q: What was that again?

A: He again raped me.

Q: Why can you say that he raped you again? What was done to your person?

A: He repeated what he had done to me before.

Q: And what did you do also after he was repeating the act he had done to you?

A: I was fighting and crying.

Q: And what did he do after he had done that thing to you again on the night of January 19? What did he do next?

A: He again told me not to tell anybody because he is going to kill me.[37]

The victim recounted the third rape in this fashion:

Q: On January 20, 1992, in the evening of said date, do you recall where were you?

A: Yes, sir.

---

[37] TSN, 20 January 1994, pp. 8-22.

Q: Where were you then situated?

A: Inside the house.

Q: What were you doing on the night of January 20, 1992?

A: Sleeping.

Q: While you were sleeping, do you recall of any untoward incident that happened to you personally?

A: Yes, sir.

Q: What was that, AAA?

A: I was abused by my father.

Q: When you say abused, what do you mean?

A: My father laid on top of me.

Q: And what did you do next after laying on top of you?

A: I was crying and I was defenseless because he was strong.

Q: Why did you cry then?

A: Because something had been done to me.

Q: Please be candid and frank with us. What was done to you by accused Ramos?

A: I was raped.

Q: And what did you do when this accused raped you on the night of January 20?

A: I could do nothing, except to obey because I was afraid.

Q: Before he put himself on top of you, do you recall what he had done to you?

A: There is.

Q: What was that?

A: My mouth was shut and then both of my hands were held.[38]

As to the fourth rape, the victim testified:

[38] TSN, 12 May 1994, pp. 7-9.

Q: Now, if you can still remember, Madam witness, when was it that he last raped you?

A: March 28, 1991.

xxx xxx xxx

Q: And, according to you, March 28 was the last time that your father raped you?

A: Yes, sir.

Q: When was the graduation exercises in the elementary school where you enrolled in 1992?

A: The 28th.

xxx xxx xxx

Q: Alright, you said that the graduation exercises was on March 28, 1992. Have you participated in that graduation exercises?

A: Yes, sir.[39]

Q: x x x My question is, what time was the graduation exercises held in that school?

A: In the afternoon.

Q: Please tell us whether your father, Sammy Ramos, attended the graduation exercises?

A: No, sir.

Q: If any, do you have some companion to attend the graduation exercises?

A: I have.

Q: Please tell us the name?

A: Deding.

Q: Who is this Deding?

A: She is the secretary of 642 Construction.

xxx xxx xxx

[39] TSN, 20 January 1994, pp. 22-23.

Q: Do you still recall what time was the closing exercises finished?

A: Yes, sir.

Q: What time was it?

A: 9:00 o'clock in the evening.

Q: And after 9:00 o'clock in the evening, where did you go next?

A: I was accompanied back to Cogon.

Q: By whom?

A: The secretary of 642.

Q: Of course you reached your place in Cogon in that barracks where you and your father were residing?

A: Yes, sir.

Q: What did you do next after reaching that place from your graduation?

A: We ate.

Q: How about Deding?

A: She ate with us.

Q: And after eating, where did she go, if any?

A: She returned home at Gubat.

Q: And how about you, what did you do next?

A: I was left at the barracks.

Q: And what did you do when you were left at the barracks?

A: I went to sleep.

Q: By the way, where was your father, Sammy Ramos, when you and Deding were eating that night?

A: He was at the barracks.

Q: Did he eat with you?

A: He did not.

Q: What happened while you were sleeping that night, Madam witness?

A: I felt that he was on top of me and he repeated his abusing.

Q: When you said he, to whom do you refer?

A: My father.

Q: And how did he repeat the act against you?

A: He placed his personal organ inside my personal organ.

Q: What did you do when he was doing this act to you?

A: I was crying but I could not fight because he was strong.[40]

From the foregoing, the prosecution adequately established in graphic detail that during the incidents in question, AAA stayed with the appellant in the barracks of the 642 Construction in Cogon, Gubat, Sorsogon and that appellant ravished his 13-year old daughter in four different dates, *i.e.,* in the early morning of 18 January 1992, during the nights of 19 January 1992, 20 January 1992 and 28 March 1992. In all these deflorations, the victim resisted the bestial acts of the appellant, but the same proved fruitless as the latter was far stronger than her. Medical findings revealed that the victim's hymen had old lacerations at various areas and that her *labia minora* had abrasion which are consistent with her claim that she was molested. Against the damning evidence adduced by the prosecution, what appellant could only muster is a barefaced denial. Unfortunately for the appellant, his defense is much too flaccid to stay firm against the weighty evidence for the prosecution. 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.[41] Between the self-serving testimony of appellant and the positive identification by the eyewitness, the latter deserves greater credence.[42]

---

[40] TSN, 30 June 1994, pp. 2-5.

[41] *People v. Morales*, 311 Phil. 279, 288 (1995).

[42] *People v. Baccay*, 348 Phil. 322, 327 (1998).

Appellant's assertion that the sexual assault against the victim could not have been consummated because AAA was wearing her underwear every time appellant attempted on her chastity is not supported by evidence. During trial it was revealed by the victim that in all those four rape incidents, appellant removed her panty before inserting his penis and put it back after he satisfied his filthy desire. This was clarified by the victim when the trial court raised some clarificatory questions on this matter, thus:

Court: (to witness)

Q: Counsel for the accused had been using the word intercourse, rape and sexual intercourse and you were answering "yes". My question is: why is it that when you were asked by counsel for the accused that while the accused was on top of you holding your hands and his two feet over your two feet, your underwear were still intact, thereafter he left you and you said "yes". Do you mean to tell the Court that he left you without doing anything against your feminity?

A: There is.

Q: What was that?

A: I was abused.

Q: What do you mean by "abused"?

A: His own was placed inside me.

Q: But you said your father left with your panty still intact. How could it be possible?

xxx xxx xxx

A: **After he used me he put on again my panty.**

Q: **You mean he removed your panty before he used you and after using you he put it back, is that what you mean?**

A: Yes, sir.

Q: And that is being done by the accused every time he used you?

A: Yes, sir.[43] (Emphasis supplied.)

[43] TSN, 26 January 1995, pp. 13-14.

Appellant tries to discredit the victim's testimony by questioning her deportment which was not that of an "outraged woman robbed of her honor." It should be borne in mind, in this connection, that the victim was only a naive thirteen (13)-year old child when the depredation happened to her. Since childhood, she had been longing to experience the love and protection of a father. When she finally found herself under the refuge of her father, it brought the bliss of an answered prayer. This idyllic experience, however, remained a fleeting episode because the person who should shield her from harm and evil was the very same person who wrought malady upon her. Such must be a startling occurrence for her. Behavioral psychology teaches that people react to similar situations dissimilarly. [44] Their reactions to harrowing incidents may not be uniform. [45] AAA's conduct of staying with her tormentor and her failure to prevent the repetition of the rape incident should not be taken against her. She was too disturbed and too young to totally comprehend the consequences of the dastardly acts inflicted on her by the appellant. Rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation.[46] It is not proper to judge the actions of children who have undergone traumatic experience by the norms of behavior expected from adults under similar circumstances.[47] The range of emotions shown by rape victims is yet to be captured even by calculus.[48] It is, thus, unrealistic to expect uniform reactions from rape victims. Certainly, the Court has not laid down any rule on how a rape victim should behave immediately after she has been violated.[49] This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt. Indeed, different people act differently

---

[44] *People v. Buenviaje*, 408 Phil. 342, 352 (2001).

[45] *Id*.

[46] *People v. Remoto*, 314 Phil. 432, 444-445 (1995).

[47] *Id*.

[48] *Id*.

[49] *People v. Malones*, 469 Phil. 301, 326 (2004).

to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.[50] It would be insensitive to expect the victim to act with equanimity and to have the courage and the intelligence to disregard the threat made by the appellant. When a rape victim is paralyzed with fear, she cannot be expected to think and act coherently. This is especially true in this case since AAA was repeatedly threatened by appellant if ever she would tell anybody about the rape incidents. The threat instilled enormous fear in her such that she failed to take advantage of any opportunity to escape from the appellant. Also, as AAA explained, she withstood her father's lechery and stayed with him despite what he did because she wanted to complete her studies until 28 March 1992 when she graduated. Besides, getting away from appellant was a task extremely difficult for a 13-year old girl, alone with the predator in a far-away place, motherless, without any relative to turn to in an hour of need, penniless, and uninformed in the ways of the world. In fact, it was only when a Good Samaritan crossed her path that the victim was able to report to the authorities about her father's spiteful deeds.

As regards the initial delay of the victim in reporting the rape incident, suffice it to state that the delay in revealing the commission of rape is not an indication of a fabricated charge.[51] It is not uncommon for a young girl to conceal for some time the assault on her virtue.[52] Her hesitation may be due to her youth, the moral ascendancy of the ravisher, and the latter's threats against her. In the case at bar, the victim's fear of her father who had moral ascendancy over her, was explicit. Such reaction is typical of a thirteen-year-old girl and only strengthens her credibility.

Appellant's allegation that the complaints for rapes were prompted by the victim's hatred of the appellant for abandoning her is bereft of any basis. The victim even during her tender

---

[50] *Id*.

[51] *People v. Balmoria*, 398 Phil. 669, 675 (2000).

[52] *Id*.

years had been looking for her father. She was, in fact, delighted when she saw her father for the first time in May of 1991. If AAA at all nurtured ill-will against her father, it was because he, instead of acting as protector of his daughter, defiled her. Assuming *arguendo* that AAA harbored hatred against appellant, it would be unlikely for a 13-year old girl to fabricate such story. This Court has held that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subjected to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her.[53] It is highly improbable for an innocent girl, who is very naïve to the things of this world, to fabricate a charge so humiliating not only to herself but to her family. Moreover, it is doctrinally settled that testimonies of rape victims who are of tender age are credible.[54] The revelation of an innocent child whose chastity was abused deserves full credit, as the willingness of the complainant to face police investigation and to undergo the trouble and humiliation of a public trial is eloquent testimony of the truth of her complaint.[55]

In sum, the Court finds that the RTC, as well as the Court of Appeals, committed no error in giving credence to the evidence of the prosecution and finding appellant guilty of the charges. The Court has long adhered to the rule that findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect unless it overlooked substantial facts and circumstances, which if considered, would materially affect the result of the case.[56] In rape cases, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge whose conclusion thereon deserves much weight and respect because the judge has the direct opportunity to observe them on the stand and ascertain if they are telling the

[53] *People v. Palaña*, 429 Phil. 293, 303 (2002).

[54] *People v. Hinto*, 405 Phil. 683, 693 (2001).

[55] *Id*.

[56] *People v. Dagpin*, 400 Phil. 728, 739 (2000).

truth or not.[57] This deference to the trial court's appreciation of the facts and of the credibility of witnesses is consistent with the principle that when the testimony of a witness meets the test of credibility, that alone is sufficient to convict the accused.[58] This is especially true when the factual findings of the trial court are affirmed by the appellate court.[59]

As to the penalty imposed, the RTC correctly sentenced appellant to *reclusion perpetua* for each count. Note that the rapes complained of in this case took place on 18 January 1992 to 28 March 1992, prior to the restoration of the death penalty for cases of qualified rape by virtue of Republic Act No. 7659 or the Death Penalty Law. The death penalty law took effect only on 31 December 1993.[60] As thus correctly found by the RTC, Article 335 of the Revised Penal Code, before its amendment by Republic Act No. 7659, is applicable. The rapes committed by appellant are, therefore, simple, penalized by *reclusion perpetua*.

The RTC ordered the appellant to pay the victim the amount of ₱50,000.00 for each count of rape as civil indemnity. In accordance with prevailing jurisprudence, such award is in order.[61] However, the award of moral damages in the amount of ₱25,000.00 for each count of rape is modified and increased to ₱50,000.00 conformably with the recent pronouncement of the Court.[62]

WHEREFORE, the Decision of the Court of Appeals dated 10 February 2006, affirming the Decision dated 30 August 1998

---

[57] *People v. Digma*, 398 Phil. 1008, 1016 (2000).

[58] *People v. Cula*, 385 Phil. 742, 752 (2000).

[59] *People v. Gallego,* 453 Phil. 825, 849 (2003).

[60] The imposition of the Death Penalty has been prohibited pursuant to Republic Act No. 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines" which took effect immediately after its publication in two newspapers of general circulation, namely Malaya and Manila Times, on 29 June 2006 in accordance with Section 5 thereof.

[61] *People v. Calongui*, G.R. No. 170566, 3 March 2006, 484 SCRA 76, 88.

[62] *Id*.

of the Regional Trial Court, Branch 54, Gubat, Sorsogon, finding appellant Sammy Ramos y Dalere *GUILTY* beyond reasonable doubt of 4 counts of rape and sentencing him to suffer the penalty of *RECLUSION PERPETUA* for each count and ordering him to pay the victim ₱50,000.00 for each count as civil indemnity, is *AFFIRMED*. The award of moral damages for each of the four rapes in favor of the victim is increased to ₱50,000.00.

SO ORDERED.

Austria-Martinez (Acting Chairperson), Tinga,[*] Nachura, and Reyes, JJ., concur.

THIRD DIVISION

[G.R. No. 173918. April 8, 2008]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF ENERGY (DOE), *petitioner, vs.* **PILIPINAS SHELL PETROLEUM CORPORATION,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; THAT ADMINISTRATIVE RULES ENFORCING OR IMPLEMENTING EXISTING LAWS REQUIRE PUBLICATION, EMPHASIZED.— As early as 1986, this Court in *Tañada v. Tuvera* enunciated that publication is indispensable in order that all statutes, including administrative rules that are intended to enforce or implement existing laws, attain binding force and effect, to wit: We hold therefore that all statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different

[*] Assigned as Special Member.

effectivity date is fixed by the legislature. Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution. **Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation.** x x x These requirements of publication and filing were put in place as safeguards against abuses on the part of lawmakers and as guarantees to the constitutional right to due process and to information on matters of public concern and, therefore, require strict compliance. In *National Association of Electricity Consumers for Reforms v. Energy Regulatory Board*, this Court emphasized that both the requirements of publication and filing of administrative issuances intended to enforce existing laws are mandatory for the effectivity of said issuances. In support of its ruling, it specified several instances wherein this Court declared administrative issuances, which failed to observe the proper requirements, to have no force and effect. x x x Strict compliance with the requirements of publication cannot be annulled by a mere allegation that parties were notified of the existence of the implementing rules concerned. Hence, also in *National Association of Electricity Consumers for Reforms v. Energy Regulatory Board*, this Court pronounced: In this case, the GRAM Implementing Rules must be declared ineffective as the same was never published or filed with the National Administrative Register. To show that there was compliance with the publication requirement, respondents MERALCO and the ERC dwell lengthily on the fact that parties, particularly the distribution utilities and consumer groups, were duly notified of the public consultation on the ERC's proposed implementing rules. These parties participated in the said public consultation and even submitted their comments thereon. **However, the fact that the parties participated in the public consultation and submitted their respective comments is not compliance with the fundamental rule that the GRAM Implementing Rules, or any administrative rules whose purpose is to enforce or implement existing law, must be published in the Official Gazette or in a newspaper of general circulation.** The requirement of publication of implementing rules of statutes is mandatory and may not be

dispensed with altogether even if, as in this case, there was public consultation and submission by the parties of their comments.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision dated 4 August 2006 of the Court of Appeals in C.A. G.R. SP No. 82183.[1] The appellate court reversed the Decision[2] dated 19 August 2003 of the Office of the President in OP NO. Case 96-H-6574 and declared that Ministry of Finance (MOF) Circular No. 1-85 dated 15 April 1985, as amended, is ineffective for failure to comply with Section 3 of Chapter 2, Book 7 of the Administrative Code of 1987,[3] which requires the publication and filing in the Office of the National Administration Register (ONAR) of administrative issuances. Thus, surcharges provided under the

[1] Penned by Associate Justice Monina Arevalo-Zeñarosa with Associate Justices Renato C. Dacudao and Rosmari D. Carandang, concurring. *Rollo*, pp. 55 -74.

[2] *Id*. at 301-303.

[3] Section 3 of Chapter 2, Book VII of the Administrative Code of 1987 states that:

Filing.— (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from the date shall not thereafter be the basis of any sanction against any party or persons.

(2) The records officer of the agency, or his equivalent functionary, shall carry out the requirements of this section under pain of disciplinary action.

(3) A permanent register of all rules shall be kept by the issuing agency and shall be open to public inspection.

aforementioned circular cannot be imposed upon respondent Pilipinas Shell Petroleum Corporation.

Respondent is a corporation duly organized existing under the laws of the Philippines. It is engaged in the business of refining oil, marketing petroleum, and other related activities.[4]

The Department of Energy (DOE) is a government agency under the direct control and supervision of the Office of the President. The Department is mandated by Republic Act No. 7638 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.

On 10 October 1984, the Oil Price Stabilization Fund (OPSF) was created under Presidential Decree No. 1956 for the purpose of minimizing frequent price changes brought about by exchange rate adjustments and/or increase in world market prices of crude oil and imported petroleum products.[5]

---

[4] *Rollo*, p. 63.

[5] Section 8 of Presidential Decree No. 1956 states that:

SECTION 8. There is hereby created a Special Account in the General Fund to be designated as Oil Price Stabilization Fund for the purpose of minimizing frequent price changes brought about by exchange rate adjustments and/or an increase in world market prices of crude oil and imported petroleum products.

The Fund may be sourced from any of the following:

(a) Any increase in the tax collection from ad-valorem tax or customs duty imposed on petroleum products subject to tax under this Decree arising from exchange rate adjustment, as may be determined by the Minister of Finance in consultation with the Board of Energy;

(b) Any increase in the tax collection as a result of the lifting of tax exemptions of government corporations under Presidential Decree No. 1931, as may be determined by the Minister of Finance in consultation with the Board of Energy;

(c) Any additional tax to be imposed on petroleum products to augment the resources of the Fund through an appropriate Order that may be issued by the Board of Energy requiring payment by persons or companies engaged in the business of importing, manufacturing and/or marketing petroleum products.

The Fund created herein shall be used to reimburse the oil companies for cost increases on crude oil and imported petroleum products resulting from exchange rate adjustment and/or increase in world market prices of crude oil.

Letter of Instruction No. 1431 dated 15 October 1984 was issued directing the utilization of the OPSF to reimburse oil companies the additional costs of importation of crude oil and petroleum products due to fluctuation in foreign exchange rates to assure adequate and continuous supply of petroleum products at reasonable prices.[6]

Letter of Instruction No. 1441, issued on 20 November 1984, mandated the Board of Energy (now, the Energy Regulatory Board) to review and reset prices of domestic oil products every two months to reflect the prevailing prices of crude oil and petroleum. The prices were regulated by adjusting the OPSF impost, increasing or decreasing this price component as necessary to maintain the balance between revenues and claims on the OPSF.[7]

On 27 February 1987, Executive Order No. 137 was enacted to amend P. D. No. 1956. It expanded the sources and utilization of the OPSF in order to maintain stability in the domestic prices of oil products at reasonable levels.[8]

The Fund shall be administered by the Ministry of Energy.

[6] *Rollo*, p. 301.

[7] *Id.* at 56-57.

[8] Section 1 of Executive Order No. 137 provides that:

SECTION 1. Section 8 of Presidential Decree No. 1956 is hereby amended to read as follows:

"SECTION 8. There is hereby created a Trust Account in the books of accounts of the Ministry of Energy to be designated as Oil Price Stabilization Fund (OPSF) for the purpose of minimizing frequent price changes brought about by exchange rate adjustments and/or changes in world market prices on crude oil and imported petroleum products. The Oil Price Stabilization Fund (OPSF) may be sourced from any of the following:

a) Any increase in the tax collection from ad valorem tax or customs duty imposed on petroleum products subject to tax under this Decree arising from exchange rate adjustment, as may be determined by the Minister of Finance in consultation with the Board of Energy;

b) Any increase in the tax collection as a result of the lifting of tax exemptions of government corporations, as may be determined by the Minister of Finance in consultation with the Board of Energy;

c) Any Additional amount to be imposed on petroleum products to augment the resources of the Fund through an appropriate Order

On 4 December 1991, the Office of Energy Affairs (OEA), now the DOE, informed the respondent that respondent's contributions to the OPSF for foreign exchange risk charge for the period December 1989 to March 1991 were insufficient. OEA Audit Task Force noted a total underpayment of ₱14,414,860.75 by respondent to the OPSF. As a consequence of the underpayment, a surcharge of ₱11,654,782.31 was imposed upon respondent. The said surcharge was imposed pursuant to MOF Circular No. 1-85, as amended by Department of Finance (DOF) Circular No. 2-94,[9] which provides that:

2. Remittance of payment to the OPSF as provided for under Section 5 of MOF Order No. 11-85 shall be made not later than 20th

that may be issued by the Board of Energy requiring payment by persons or companies engaged in the business of importing, manufacturing and/or marketing petroleum products;

d) Any resulting peso cost differentials in case the actual peso costs paid by oil companies in the importation of crude oil and petroleum products is less than the peso costs computed using the reference foreign exchange rate as fixed by the Board of Energy.

The Fund herein created shall be used for the following:

1. To reimburse the oil companies for cost increases in crude oil and imported petroleum products resulting from exchange rate adjustment and/or increase in world market prices of crude oil;

2. To reimburse the oil companies for possible cost underrecovery incurred as a result of the reduction of domestic prices of petroleum products. The magnitude of the underrecovery, if any, shall be determined by the Ministry of Finance. 'Cost underrecovery' shall include the following:

i. Reduction in oil company take as directed by the Board of Energy without the corresponding reduction in the landed cost of oil inventories in the possession of the oil companies at the time of the price change;

ii. Reduction in internal ad valorem taxes as a result of foregoing government mandated price reductions;

iii. Other factors as may be determined by the Ministry of Finance to result in cost underrecovery.

The Oil Price Stabilization Fund (OPSF) shall be administered by the Ministry of Energy."

[9] *Rollo,* p. 77.

of the month following the month of remittance of the foreign exchange payment for the import or the month of payment to the domestic producers in the case of locally produced crude. **Payment after the specified date shall be subject to a surcharge of fifteen percent (15%) of the amount, if paid within thirty (30) days from the due date plus two percent (2%) per month if paid after thirty days.**[10] (Emphasis supplied.)

On 9 December 1991, the OEA wrote another letter[11] to respondent advising the latter of its additional underpayment to the OPSF of the foreign exchange risk fee in the amount of ₱10,139,526.56 for the period April 1991 to October 1991. In addition, surcharges in the amount of ₱2,806,656.65 were imposed thereon.

In a letter dated 20 January 1992 addressed to the OEA, respondent justified that its calculations for the transactions in question were based on a valid interpretation of MOF Order NO. 11-85 dated 12 April 1985 and MOE Circular No. 85-05-82 dated 16 May 1985.[12]

On 24 March 1992, respondent paid the OEA in full the principal amount of its underpayment, totaling ₱24,554,387.31, but not the surcharges.[13]

In a letter[14] dated 15 March 1996, OEA notified the respondent that the latter is required to pay the OPSF a total amount of ₱18,535,531.40 for surcharges on the late payment of foreign exchange risk charges for the period December 1989 to October 1991.

---

[10] *Id*. at 76.

[11] *Id*. at 78.

[12] Ministry of Finance (MOF) Order No. 11-85 dated 12 April 1985 provides for payment of foreign exchange risk charge "based on the actual peso value of the foreign exchange payment for the shipment" and Ministry of Energy (MOE) Circular No. 85-05-82 dated 16 May 1985 prescribing supplemental rule and regulations to MOF Order No. 11-85 which provides, among others, that the risk charge "shall cover all crude oil and imported finished petroluem fuel credits outstanding xxx." *Id*. at 79-80.

[13] *Id*. at 302.

[14] *Id*. at 81-82.

In a letter[15] dated 11 July 1996, the DOE reiterated its demand for respondent to settle the surcharges due. Otherwise, the DOE warned that it would proceed against the respondent's Irrevocable Standby Letter of Credit to recover its unpaid surcharges.

On 19 July 1996, respondent filed a Notice of Appeal before the Office of the President. The Office of the President affirmed the conclusion of the DOE, contained in its letters dated 15 March 1996 and 11 July 1996. While it admitted that the implementation of MOF Circular No. 1-85 is contingent upon its publication and filing with the ONAR, it noted that respondent failed to adduce evidence of lack of compliance with such requirements. The aforementioned Decision reads:[16]

> Given the foregoing, the DOE's implementation of MOF Circular 1-85 by imposing surcharges on Pilipinas Shell is only proper. Like this Office, the DOE is bound to presume the validity of that administrative regulation.
>
> WHEREFORE, premises considered, the Decision of the Department of Energy, contained in its letters dated 15 March 1996 and 11 July 1996, is hereby **AFFIRMED** *in toto*.

Respondent filed a Motion for Reconsideration of the Decision dated 19 August 2003 of the Office of the President, which was denied on 28 November 2003.[17]

Respondent filed an appeal before the Court of Appeals wherein it presented Certifications dated 9 February 2004[18] and 11 February 2004[19] issued by ONAR stating that DOF Circular No. 2-94 and MOF Circular No. 1-85 respectively, have not been filed before said office.

The Court of Appeals reversed the Decision of the Office of the President in O.P. CASE No. 96-H-6574 and ruled that MOF

---

[15] *Id*. at 98.

[16] *Id*. at 303.

[17] *Id*. at 304.

[18] *Id*. at 231.

[19] *Id*. at 230.

Circular 1-85, as amended, was ineffective for failure to comply with the requirement to file with ONAR. It decreed that even if the said circular was issued by then Acting Minister of Finance Alfredo de Roda, Jr. long before the Administrative Code of 1987, Section 3 of Chapter 2, Book 7 thereof specifies that rules already in force on the date of the effectivity of the Administrative Code of 1987 must be filed within three months from the date of effectivity of said Code, otherwise such rules cannot thereafter be the basis of any sanction against any party or persons.[20] According to the dispositive of the appellate court's Decision:[21]

> WHEREFORE, the instant petition is hereby **GRANTED.** The Decision dated August 19, 2003 and the Resolution dated November 28, 2003 of the Office of the President, are hereby **REVERSED.**
>
> ACCORDINGLY, the imposition of surcharges upon petitioner is hereby declared without legal basis.

On 25 September 2006, petitioner filed the present Petition for Review on *Certiorari*, wherein the following issues were raised:[22]

> I
>
> THE SURCHARGE IMPOSED BY MINISTRY OF FINANCE (MOF) CIRCULAR No. 1-85 HAS BEEN AFFIRMED BY E.O. NO. 137 HAVING RECEIVED VITALITY FROM A LEGISLATIVE ENACTMENT, MOF CIRCULAR NO. 1-85 CANNOT BE RENDERED INVALID BY THE SUBSEQUENT ENACTMENT OF A LAW REQUIRING REGISTRATION OF THE MOF CIRCULAR WITH THE OFFICE OF THE NATIONAL REGISTER
>
> II
>
> ASSUMING THAT THE REGISTRATION OF MOF NO. 1-85 IS REQUIRED, RESPONDENT WAIVED ITS OBJECTION ON THE BASIS OF NON-REGISTRATION WHEN IT PAID THE AMOUNT REQUIRED BY PETITIONER.

[20] *Id*. at 72-73.

[21] *Id*. at 73-74.

[22] *Id*. at 349.

This petition is without merit.

As early as 1986, this Court in *Tañada v. Tuvera*[23] enunciated that publication is indispensable in order that all statutes, including administrative rules that are intended to enforce or implement existing laws, attain binding force and effect, to wit:

> We hold therefore that all statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature.
>
> Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution. **Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation.** (Emphasis provided.)

Thereafter, the Administrative Code of 1987 was enacted, with Section 3 of Chapter 2, Book VII thereof specifically providing that:

> *Filing*.—(1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. **Rules in force on the date of effectivity of this Code which are not filed within three (3) months from the date shall not thereafter be the basis of any sanction against any party or persons.**
>
> (2) The records officer of the agency, or his equivalent functionary, shall carry out the requirements of this section under pain of disciplinary action.
>
> (3) A permanent register of all rules shall be kept by the issuing agency and shall be open to public inspection. (Emphasis provided.)

Under the doctrine of *Tanada v. Tuvera*,[24] the MOF Circular No. 1-85, as amended, is one of those issuances which should

---

[23] *Tañada v. Tuvera*, G.R. No. L-63915, 29 December 1986, 146 SCRA 446, 453-454.

[24] *Id*.

be published before it becomes effective since it is intended to enforce Presidential Decree No. 1956. The said circular should also comply with the requirement stated under Section 3 of Chapter 2, Book VII of the Administrative Code of 1987 – filing with the ONAR in the University of the Philippines Law Center – for rules that are already in force at the time the Administrative Code of 1987 became effective. These requirements of publication and filing were put in place as safeguards against abuses on the part of lawmakers and as guarantees to the constitutional right to due process and to information on matters of public concern and, therefore, require strict compliance.

In the present case, the Certifications dated 11 February 2004[25] and 9 February 2004[26] issued by ONAR prove that MOF Circular No. 1-85 and its amendatory rule, DOF Circular No. 2-94, have not been filed before said office. Moreover, petitioner was unable to controvert respondent's allegation that neither of the aforementioned circulars were published in the Official Gazette or in any newspaper of general circulation. Thus, failure to comply with the requirements of publication and filing of administrative issuances renders MOF Circular No. 1-85, as amended, ineffective.

In *National Association of Electricity Consumers for Reforms v. Energy Regulatory Board*,[27] this Court emphasized that both the requirements of publication and filing of administrative issuances intended to enforce existing laws are mandatory for the effectivity of said issuances. In support of its ruling, it specified several instances wherein this Court declared administrative issuances, which failed to observe the proper requirements, to have no force and effect:

---

[25] *Rollo,* p. 230.

[26] *Id*. at 231.

[27] *National Association of Electricity Consumers for Reforms v. Energy Regulatory Commission*, G.R. No. 163935, 2 February 2006, 481 SCRA 480, 519-521.

Nowhere from the above narration does it show that the GRAM Implementing Rules was published in the Official Gazette or in a newspaper of general circulation. Significantly, the effectivity clauses of both the GRAM and ICERA Implementing Rules uniformly provide that they "shall take effect immediately." These clauses made no mention of their publication in either the Official Gazette or in a newspaper of general circulation. Moreover, per the Certification dated January 11, 2006 of the Office of the National Administrative Register (ONAR), the said implementing rules and regulations were not likewise filed with the said office in contravention of the Administrative Code of 1987.

Applying the doctrine enunciated in *Tañada v. Tuvera*, the Court has previously declared as having no force and effect the following administrative issuances: (1) Rules and Regulations issued by the Joint Ministry of Health-Ministry of Labor and Employment Accreditation Committee regarding the accreditation of hospitals, medical clinics and laboratories; (2) Letter of Instruction No. 1416 ordering the suspension of payments due and payable by distressed copper mining companies to the national government; (3) Memorandum Circulars issued by the Philippine Overseas Employment Administration regulating the recruitment of domestic helpers to Hong Kong; (4) Administrative Order No. SOCPEC 89-08-01 issued by the Philippine International Trading Corporation regulating applications for importation from the People's Republic of China; (5) Corporation Compensation Circular No. 10 issued by the Department of Budget and Management discontinuing the payment of other allowances and fringe benefits to government officials and employees; and (6) POEA Memorandum Circular No. 2 Series of 1983 which provided for the schedule of placement and documentation fees for private employment agencies or authority holders.

In all these cited cases, the administrative issuances questioned therein were uniformly struck down as they were not published or filed with the National Administrative Register. On the other hand, in *Republic v. Express Telecommunications Co., Inc,* the Court declared that the 1993 Revised Rules of the National Telecommunications Commission had not become effective despite the fact that it was filed with the National Administrative Register because the same had not been published at the time. The Court emphasized therein that "publication in the Official Gazette or a newspaper of general circulation is a condition *sine qua non* before statutes, rules or regulations can take effect."

Petitioner's argument that respondent waived the requisite registration of MOF Circular No. 1-85, as amended, when it paid in full the principal amount of underpayment totaling ₱24,544,387.31, is specious. MOF Circular No. 1-85, as amended imposes surcharges, while respondents' underpayment is based on MOF Circular No. 11-85 dated 12 April 1985.

Petitioner also insists that the registration of MOF Circular No. 1-85, as amended, with the ONAR is no longer necessary since the respondent knew of its existence, despite its non-registration. This argument is seriously flawed and contrary to jurisprudence. Strict compliance with the requirements of publication cannot be annulled by a mere allegation that parties were notified of the existence of the implementing rules concerned. Hence, also in *National Association of Electricity Consumers for Reforms v. Energy Regulatory Board*, this Court pronounced:

> In this case, the GRAM Implementing Rules must be declared ineffective as the same was never published or filed with the National Administrative Register. To show that there was compliance with the publication requirement, respondents MERALCO and the ERC dwell lengthily on the fact that parties, particularly the distribution utilities and consumer groups, were duly notified of the public consultation on the ERC's proposed implementing rules. These parties participated in the said public consultation and even submitted their comments thereon.
>
> **However, the fact that the parties participated in the public consultation and submitted their respective comments is not compliance with the fundamental rule that the GRAM Implementing Rules, or any administrative rules whose purpose is to enforce or implement existing law, must be published in the Official Gazette or in a newspaper of general circulation.** The requirement of publication of implementing rules of statutes is mandatory and may not be dispensed with altogether even if, as in this case, there was public consultation and submission by the parties of their comments.[28] (Emphasis provided.)

Petitioner further avers that MOF Circular No. 1-85, as amended, gains its vitality from the subsequent enactment of

[28] *Id*. at 521.

Executive Order No. 137, which reiterates the power of then Minister of Finance to promulgate the necessary rules and regulations to implement the executive order. Such contention is irrelevant in the present case since the power of the Minister of Finance to promulgate rules and regulations is not under dispute. The issue rather in the Petition at bar is the ineffectivity of his administrative issuance for non-compliance with the requisite publication and filing with the ONAR. And while MOF Circular No. 1-85, as amended, may be unimpeachable in substance, the due process requirements of publication and filing cannot be disregarded. Moreover, none of the provisions of Executive Order No. 137 exempts MOF Circular No. 1-85, as amended from the aforementioned requirements.

IN VIEW OF THE FOREGOING, the instant Petition is *DENIED* and the assailed Decision dated 4 August 2006 of the Court of Appeals in C.A. G.R. SP No. 82183 is *AFFIRMED*. No cost.

SO ORDERED.

Austria-Martinez (Acting Chairperson), Carpio-Morales,[*] *Tinga,* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 174826. April 8, 2008]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **Engr. ALFONSO P. ESPIRITU,** *respondent.*

---

[*] Assigned as Special Member.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; NATIONAL BUILDING CODE (NBC) AND IMPLEMENTING RULES AND REGULATIONS (IRR); BUILDING PERMIT; REQUIREMENTS OTHER THAN THOSE MENTIONED IN NBC; NON-COMPLIANCE WARRANTS NON-ISSUANCE OF BUILDING PERMIT.— The issuance of building permits is governed primarily by the National Building Code and its Revised Implementing Rules and Regulations (IRR). Section 301 of the National Building Code reads: No person, firm or corporation, including any agency or instrumentality of the government shall erect, construct, alter, repair, move, convert or demolish any building or structure or cause the same to be done without first obtaining a building permit therefor from the Building Official assigned in the place where the subject building is located or the building work is to be done. The pertinent provisions in the IRR are as follows: SECTION 302. Application for Permits 1. Any person desiring to obtain a building permit and any ancillary/accessory permit/s together with a Building Permit shall file application/s therefor on the prescribed application forms. x x x 12. Clearances from Other Agencies x x x b. Whenever necessary, written clearance shall be obtained from the various authorities exercising and enforcing regulatory functions affecting buildings/structures. x x x Such authorities who are expected to enforce their own regulations are: x x x iv. Local Government Unit (LGU). Under the old IRR, provisions of similar import were also present. RULE I – BUILDING PERMIT APPLICATIONS x x x 3. *Requirements:* Any person desiring to obtain a building permit shall file an application therefor in writing and on the prescribed form. x x x 3.4 Whenever necessary, written certifications/ clearances shall be obtained from the various government authorities exercising regulatory functions affecting buildings and other related structures, such as the Human Settlements Regulatory Commission x x x. From the foregoing provisions, it is clear, however, that the requirements to be complied with for the issuance of building permits are not limited to those mentioned in the National Building Code. As can be gleaned therefrom, clearances from various government authorities exercising and enforcing regulatory functions affecting buildings/structures, like local government units, may be

required before a building permit may be issued. Thus, as long as the additional requirements being asked for by these government authorities are reasonable, we rule that the applicant must comply and submit these other requirements. Failure to do so is enough justification for the denial of the application for the issuance of the building permit.

2. ID.; ID.; ADMINISTRATIVE PROCEEDING; QUANTUM OF PROOF REQUIRED IS SUBSTANTIAL EVIDENCE.— In an administrative proceeding, the quantum of proof required for a finding of guilt is only substantial evidence, meaning that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. The complainant has the burden of proving by substantial evidence the allegations in his complaint. It is also settled that when there is substantial evidence in support of the Ombudsman's decision, that decision will not be overturned.

APPEARANCES OF COUNSEL

Office of the Legal Affairs (Ombudsman) for petitioner.
Santos Santos & Santos Law Offices for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure which seeks to set aside the Decision[1] of the Court of Appeals in CA-G.R. SP No. 85871 dated 5 January 2006 which annulled and set aside the Decision[2] dated 16 January 2003 of petitioner Office of the Ombudsman finding respondent Alfonso P. Espiritu guilty of Conduct Grossly Prejudicial to the Best Interest of the Service, and its Resolution[3] dated 21 September 2006 denying petitioner's motion for reconsideration.

---

[1] Penned by Associate Justice Godardo A. Jacinto with Associate Justices Juan Q. Enriquez, Jr. and Vicente Q. Roxas, concurring; CA *rollo*, pp. 196-214.

[2] *Rollo*, pp. 53-66.

[3] *Id*. at 51-52.

The facts are not disputed.

Complainant Archie L. Huevos (Huevos) is a licensed building contractor doing business under the style A.H. Construction and General Services (A.H. Construction) while respondent is the City Engineer and Building Official of Marikina City.

After public bidding, a contract agreement[4] was executed on 4 June 1997 between A. H. Construction and the Department of Health (DOH) for the construction of a three-storey dormitory and supply services building of the DOH-Amang Rodriguez Medical Center (DOH-ARMC) located in Marikina City.

After some adjustments with the plans, the DOH-ARMC applied for a demolition permit with the Office of the City Engineer which is headed by respondent. On 17 April 2000, a demolition permit for the structures still existing at the site of the proposed three-storey building was issued.

Subsequently, on 24 April 2000, an application for a building permit for the proposed project was filed by the DOH-ARMC with respondent's office. Huevos followed up the application for said permit *via* two letters dated 30 August 2000 and 4 September 2000.

In a letter dated 7 September 2000, respondent informed Antonio Lopez, Undersecretary of the DOH, that he did not act on the application for the building permit citing the following reasons: first, that four years ago A.H. Construction had built a structure in the same hospital without the requisite building permit and even when the structure violated the National Building Code or Presidential Decree No. 1096; second, the said illegal structure severely affected the road widening project of the city government and solicited numerous and continuous complaints from motorists and pedestrians, for which reason, it was ordered demolished but A.H. Construction did not immediately comply with said order; third, the master plan for the construction project includes a waste water plant which will obstruct the roadway, and an incinerator which is not allowed in Marikina City; and

[4] CA *rollo,* pp. 62-63.

fourth, the numerous violations committed by A.H. Construction caused it to be blacklisted by the city government.

A.H. Construction appealed the action of respondent before the Secretary of the Department of Public Works and Highways (DPWH). In a Decision dated 14 September 2001, DPWH Secretary Simeon Datumanong found the appeal meritorious, thus:

> WHEREFORE, in the light of the foregoing discussion, and finding merit on the herein appeal, ARMC/Appellant is hereby advised to refile its application for Building Permit for the subject proposed 3-storey Dormitory and Support services building with the Office of the Building Official of Marikina, which office, **upon Applicant's full compliance with all the requirements**, shall, within the period prescribed by the National Building Code and its IRR, issue the Building Permit applied for.[5] (Emphasis supplied.)

On 3 October 2001, the DOH-ARMC re-filed its application for the building permit. Respondent required the DOH-ARMC to also submit the business permit of the project contractor, A.H. Construction. In a letter dated 28 November 2001, the DOH-ARMC informed A.H. Construction of said requirement and advised it "x x x to submit to the City Engineer's Office (its) renewed Business Permit License for the immediate release of the x x x permits (applied for) x x x."[6]

In the meantime, upon learning of the decision of the DPWH Secretary, respondent sought its reconsideration. In a letter dated 13 February 2001, the DPWH Secretary denied the reconsideration sought for and said that unless restrained by higher authority, decision dated 14 September 2001, stands.

Despite being notified by the DOH-ARMC to submit its renewed business permit license to the City Engineer's Office, A.H. Construction failed to do so. On 4 June 2002, Huevos filed with petitioner Office of the Ombudsman a complaint-affidavit for Dishonesty and Conduct Prejudicial to the Best Interest of

---

[5] *Rollo,* p. 33.

[6] CA *rollo,* p. 61.

the Service against respondent. The case was docketed as OMB-CA-02-0235-F (OMB-CC-02-03387).[7]

In compliance with the order of petitioner, respondent filed a counter-affidavit[8] denying Huevos' allegations. He claimed that the denial of the application for the issuance of the building permit was with sufficient grounds and was not tainted with grave abuse of discretion.

After the parties submitted their respective memoranda, petitioner rendered its Decision dated 16 January 2003 finding respondent administratively liable for Conduct Grossly Prejudicial to the Best Interest of the Service and imposed the penalty of suspension for a period of six months and one day without pay. The dispositive portion of the Decision reads:

> WHEREFORE, above premises considered, this Office finds respondent ALFONSO P. ESPIRITU guilty as charged and is hereby meted the penalty of SIX (6) MONTHS and ONE (1) DAY SUSPENSION WITHOUT PAY pursuant to Section 22, par. 6 of Executive Order No. 292 otherwise known as the Administrative Code of 1987.
>
> The Mayor, Marikina City, is hereby directed to implement the aforesaid decision in accordance with law and upon finality thereof and to inform this office of the action taken thereon within seven (7) days from its implementation.[9]

The petitioner explained its Decision in this manner:

> From the evidence presented by both parties, this Office believes that a substantial ground exists to hold respondent Espiritu administratively liable.
>
> The alleged "blacklisting" of the complainant's construction company by the City Mayor of Marikina is not a sufficient reason to deny the issuance of the building permit. x x x.
>
> xxx xxx xxx

---

[7] *Id*. at 71-77.

[8] *Id*. at 80-83.

[9] *Rollo,* p. 65.

Thus, the act of the respondent in continuously denying the application for building permit sought by the complainant even after having been informed of the Decision of Secretary Datumanong is a showing of his manifest partiality against the applicant. It must be pointed out that the existence of the said DPWH Order for the respondent to issue the building permit left him no choice but to comply since the issuance becomes a mere ministerial act. In fact, under Section 307 of the National Building Code of the Philippines, the decision of the Secretary of DPWH is final subject only to review by the Office of the President. Thus, the respondent's continued defiance to the Order of the DPWH despite its finality is patently uncalled for and a clear defiance not only to superior authorities but also to the mandate of the law. x x x.

xxx xxx xxx

Even assuming that the reasons cited by the respondent for denying the permit are true, the same are not ground/s for the non-issuance thereof under Section 306 of the National Building Code.

Apparently, by shifting from one reason to another in order to deny the permit only shows the bias of the respondent towards the complainant.

Also, the respondent had clearly shown his arbitrariness by whimsically denying the application for building permit and yet a demolition permit for the old administration building to be affected by the proposed building had already been secured. It is not disputed that the old administration building was demolished on August 8, 2000 and as such, there is no logic in approving the demolition and denying the application for the building permit.[10]

Respondent filed a Motion for Reconsideration from the Decision which petitioner denied in an Order dated 21 January 2004.[11]

Aggrieved, respondent appealed to the Court of Appeals *via* a Petition for Review praying that the petitioner's Decision and Order dated 16 January 2003 and 21 January 2004, respectively, be annulled and set aside.

---

[10] *Id*. at 61-64.

[11] *Id*. at 67-71.

On 5 August 2005, the Court of Appeals issued a Temporary Restraining Order enjoining petitioner and the Mayor of Marikina City from implementing the Decision in OMB-CA-02-0235-F (OMB-CC-02-03387).[12]

On 5 January 2006, the Court of Appeals rendered a Decision favoring respondent. It granted the petition, annulled and set aside the assailed Decision and Order, and dismissed the complaint against respondent. In a Resolution dated 21 September 2006, the Court of Appeals denied the motions for reconsideration[13] filed by the Office of the Ombudsman and Huevos.[14]

In its Decision, the Court of Appeals ruled *inter alia* that it did not find substantial evidence to hold respondent guilty of conduct grossly prejudicial to the best interest of the service. It ratiocinated:

> The issuance of building permits are subject to laws and regulations that have grown complex. While the National Building Code and its implementing rules primarily govern such matter, there are now provisions under the Local Government Code (RA 7160) affecting it. A discussion on this dynamics is relevant to this case for the main defense of petitioner is that he was merely enforcing the laws and rules governing issuance of building permits when he refused to act on the application of DOH-ARMC.
>
> xxx xxx xxx
>
> Hence, in the processing of applications for building permit, the City Engineer cum Building Official will have to enforce the requirements of the National Building Code along with local policies, as petitioner did in this case.
>
> Petitioner twice refused to act on the application of DOH-ARMC for a building permit. On the first occasion, petitioner cited as reasons for his inaction the past infractions of respondent, the latter's blacklisting with the City Government of Marikina, and the inclusion in the master plan of a waste treatment facility and incinerator, which are not allowed in Marikina City. The DPWH Secretary declared

[12] *Id*. at 185-186.

[13] *Id*. at 216-234; 237-253.

[14] *Id*. at 54-55.

these grounds insufficient to warrant the non-issuance of the building permit. On the second occasion, however, petitioner's inaction was based on the failure of DOH-ARMC to attach the business permit of respondent.

Evidently, on both occasions, petitioner was merely enforcing local policies, along with the requirements of the National Building Code, in the matter of issuing building permits. During the first instance that he refused to act on the application, the Marikina City Government had raised objections to some aspects of the construction project of respondent which, although later found to be baseless by the DPWH and the agency *a quo*, respectively, were genuine issues at that time. It was only to be expected that petitioner, as local Civil Engineer cum Building Official, refused to act on the application for building permit in seeming deference to the sentiment of his city government about the questioned project. It would have certainly seemed irregular had petitioner otherwise issued a building permit for a project that was being objected to by his employer, the Marikina City Government. Thus, on this occasion that petitioner refused to act on the application for building permit, the Court perceives no conduct prejudicial to the best interest of the service. On the contrary, petitioner exhibited prudence and loyalty by choosing not to act on the application for building permit but to await the outcome of the controversy between the City Government of Marikina and the project proponent and contractor.

On the second occasion that petitioner refused to act on the refiled application for building permit, several significant facts must be borne in mind. First is that, while the DPWH directed petitioner to issue the building permit, this was made subject to the condition that DOH-ARMC comply with all the requirements. Second, when DOH-ARMC refiled its application, it was found to lack the business permit of respondent, a deficiency that existed only when the second application was filed. Thus, when petitioner again refused to act on the application because of that deficiency, he could have hardly been flouting the final order of the DPWH. He could not have merely been shifting from one reason to another just to withhold the permit for that deficiency existed only then.[15]

Not satisfied with the Decision of the Court of Appeals, petitioner is now before us *via* a Petition for Review on *Certiorari* arguing:

---

[15] *Id*. at 42-46.

THE FINDINGS OF THE OFFICE OF THE OMBUDSMAN ON THE ADMINISTRATIVE LIABILITY OF (RESPONDENT), AS WELL AS THE PENALTY IMPOSED, ARE IN ACCORDANCE WITH LAW AND ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.

The issue is: whether or not the non-issuance of the building permit applied for constituted Conduct Prejudicial to the Best Interest of the Service.

To our mind, in order to resolve this issue, we must answer the question: Were all the requirements for the issuance of the building permit complied with?

We rule in the negative.

The issuance of building permits is governed primarily by the National Building Code[16] and its Revised Implementing Rules and Regulations (IRR). Section 301 of the National Building Code reads:

No person, firm or corporation, including any agency or instrumentality of the government shall erect, construct, alter, repair, move, convert or demolish any building or structure or cause the same to be done without first obtaining a building permit therefor from the Building Official assigned in the place where the subject building is located or the building work is to be done.

The pertinent provisions in the IRR are as follows:

SECTION 302. Application for Permits

1. Any person desiring to obtain a building permit and any ancillary/accessory permit/s together with a Building Permit shall file application/s therefor on the prescribed application forms.

xxx xxx xxx

12. Clearances from Other Agencies

xxx xxx xxx

b. Whenever necessary, written clearance shall be obtained from the various authorities exercising and enforcing

[16] Presidential Decree No. 1096.

> regulatory functions affecting buildings/structures. x x x Such authorities who are expected to enforce their own regulations are:
>
> xxx xxx xxx
>
> iv. Local Government Unit (LGU)

Under the old IRR, provisions of similar import were also present.

> RULE I – BUILDING PERMIT APPLICATIONS
>
> xxx xxx xxx
>
> 3. Requirements:
>
> Any person desiring to obtain a building permit shall file an application therefor in writing and on the prescribed form.
>
> xxx xxx xxx
>
> 3.4 Whenever necessary, written certifications/clearances shall be obtained from the various government authorities exercising regulatory functions affecting buildings and other related structures, such as the Human Settlements Regulatory Commission x x x.

From the foregoing provisions, it is clear, however, that the requirements to be complied with for the issuance of building permits are not limited to those mentioned in the National Building Code. As can be gleaned therefrom, clearances from various government authorities exercising and enforcing regulatory functions affecting buildings/structures, like local government units, may be required before a building permit may be issued. Thus, as long as the additional requirements being asked for by these government authorities are reasonable, we rule that the applicant must comply and submit these other requirements. Failure to do so is enough justification for the denial of the application for the issuance of the building permit.

Under the National Building Code, the Building Official is appointed/designated by the DPWH Secretary.[17] Under the Local Government Code of 1991, the City/Municipal Engineer, who

[17] Section 205.

is appointed by the City/Municipal Mayor, also acts as the Local Building Official.[18] As such, he exercises powers and performs duties and functions as may be prescribed by law and ordinance.[19]

In the case at bar, respondent twice refused to grant the building permit applied for by the DOH-ARMC because he asked for compliance with the requirements of both the National Building Code and the City Government of Marikina. In the first instance, respondent did not grant the application for grounds which the DPWH Secretary found to be inadequate for the denial of the application. With this ruling by the DPWH Secretary, the latter directed the re-filing of the application subject to full compliance with all the requirements. This, notwithstanding, respondent did not act on the re-filed application for lack of the contractor's business permit which is a requirement to be complied with in the City of Marikina. The Order of the DPWH does not prevent a local government unit from imposing additional requirements in accordance with its policies. The requirements for applications for building permit in Marikina City include:

> BUILDING PERMIT
>
> No person, firm or corporation, agency or instrumentality of the government shall erect, construct, alter, repair, move, convert or demolish any building or structure (Chapter 3, Section 310 of PD 1096 or National Building Code)
>
> REQUIREMENTS
>
> 1. Applications for:
>
> a.) Building Permit
>
> b.) Electrical Permit
>
> c.) Sanitary/Plumbing Permit
>
> d.) Excavation Permit
>
> e.) Mechanical Permit
>
> f.) Signboard/Billboard

[18] Section 477 (a).

[19] Section 477 (c).

g.) Fencing Permit

h.) Demolition Permit

5 set(s) of Building Plans/Blueprints
Lot Plan
Locational Clearance
Homeowner's Association Clearance
Fire Safety Endorsement – Fire Dept – City Hall
Contractor's Business Permit/Affidavit of Undertaking.[20]
(Underscoring supplied).

There is no dispute that not all of the requirements asked for by the City of Marikina were complied with. In this case, upon being informed of the deficiency (*i.e.*, contractor's business permit), the DOH-ARMC immediately asked A.H. Construction to submit its renewed business permit but to no avail. Instead of complying, Huevos filed a complaint with the petitioner against respondent. It is very clear that the DOH-ARMC knew that it had to comply with the additional requirement of submitting contractor's renewed business permit; otherwise, it would not have notified Huevos of such requirement. In fact, if the DOH-ARMC truly believes that the action of respondent was not in accordance with law, rules or ordinance, it could have joined Huevos in complaining before the petitioner. This, it did not do.

Petitioner contends that respondent neither informed Huevos about the status of the re-filed application nor notified him as to why there was no action on the same. It further contends that it was only after Huevos filed criminal and administrative cases against respondent that the latter presented new grounds for the denial of Huevos's application.

Petitioner's contentions are untenable. Huevos was informed of the status of the application through the DOH-ARMC because it was the latter that re-filed the application. In a letter dated 28 November 2001, the DOH-ARMC notified Huevos that he is required to submit his renewed business permit. Thus, as early as 28 November 2001, Huevos knew the reason why the re-filed application for the building permit was not being acted

[20] *Rollo*, pp. 46-47.

upon. He failed to submit his renewed business permit. This letter belies his claim that it was only after he filed a letter-complaint with petitioner on 4 June 2002 that respondent presented new grounds for the denial of the re-filed application.

Huevos's non-submission of his renewed business permit is a valid reason for respondent not to grant the building permit applied for. The "agony of waiting for the result" that Huevos supposedly experienced was of his own doing. Such agony could have been prevented if he only did what was being asked of him. This, he refused to do.

In an administrative proceeding, the quantum of proof required for a finding of guilt is only substantial evidence, meaning that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[21] The complainant has the burden of proving by substantial evidence the allegations in his complaint.[22] It is also settled that when there is substantial evidence in support of the Ombudsman's decision, that decision will not be overturned.[23] In the case at bar, Huevos was not able to substantiate his allegations. Considering that petitioner's Decision is based on Huevos's evidence, said decision has no leg to stand on and must perforce be overturned.

In all, we find no substantial evidence to hold respondent guilty of Conduct Grossly Prejudicial to the Best Interest of the Service. By doing what he did, respondent merely performed his duty faithfully. His actions were justified under the circumstances obtaining. The Court of Appeals decided correctly when it annulled and set aside petitioner's Decision and ordered the dismissal of the complaint against respondent.

WHEREFORE, all the foregoing considered, the petition is *DENIED*. The decision of the Court of Appeals in CA-G.R. SP No. 85871 dated 5 January 2006 is *AFFIRMED*. No costs.

[21] *Commission on Audit v. Hinampas*, G.R. No. 158672, 7 August 2007, 529 SCRA 245, 260.

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

[23] *Morong Water District v. Office of the Deputy Ombudsman*, 385 Phil. 44, 55 (2000).

SO ORDERED.

Austria-Martinez (Acting Chairperson), Tinga,[*] *Nachura,* and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 166245. April 9, 2008]

ETERNAL GARDENS MEMORIAL PARK CORPORATION, *petitioner, vs.* **THE PHILIPPINE AMERICAN LIFE INSURANCE COMPANY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; TO THE SUPREME COURT UNDER RULE 45; FACTUAL ISSUES, NOT PROPER; EXCEPTIONS.— As a general rule, this Court is not a trier of facts and will not re-examine factual issues raised before the CA and first level courts, considering their findings of facts are conclusive and binding on this Court. However, such rule is subject to exceptions, as enunciated in *Sampayan v. Court of Appeals*. (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 [of the CA] are contrary to the trial court;** (8) when the findings are

[*] Assigned as Special Member.

conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT THEREON, RESPECTED.— Philamlife's allegation that Eternal's witnesses ran out of credibility and reliability due to inconsistencies is groundless. The trial court is in the best position to determine the reliability and credibility of the witnesses, because it has the opportunity to observe firsthand the witnesses' demeanor, conduct, and attitude. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended, or misinterpreted, that, if considered, might affect the result of the case.

3. ID.; ID.; ID.; NOT AFFECTED BY MINOR INCONSISTENCIES.— As to the seeming inconsistencies between the testimony of Manuel Cortez on whether one or two insurance application forms were accomplished and the testimony of Mendoza on who actually filled out the application form, these are minor inconsistencies that do not affect the credibility of the witnesses. Thus, we ruled in *People v. Paredes* that minor inconsistencies are too trivial to affect the credibility of witnesses, and these may even serve to strengthen their credibility as these negate any suspicion that the testimonies have been rehearsed. We reiterated the above ruling in *Merencillo v. People*: Minor discrepancies or inconsistencies do not impair the essential integrity of the prosecution's evidence as a whole or reflect on the witnesses' honesty. The test is whether the testimonies agree on essential facts and whether the respective versions corroborate and substantially coincide with each other so as to make a consistent and coherent whole.

4. COMMERCIAL LAW; INSURANCE; INSURANCE CONTRACT IS CONTRACT OF ADHESION CONSTRUED LIBERALLY IN FAVOR OF INSURED AND STRICTLY

AGAINST INSURER.— An insurance contract is a contract of adhesion which must be construed liberally in favor of the insured and strictly against the insurer in order to safeguard the latter's interest. Thus, in *Malayan Insurance Corporation v. Court of Appeals*, this Court held that: Indemnity and liability insurance policies are construed in accordance with the general rule of resolving any ambiguity therein in favor of the insured, where the contract or policy is prepared by the insurer. **A contract of insurance, being a contract of adhesion, par excellence, any ambiguity therein should be resolved against the insurer;** in other words, it should be construed liberally in favor of the insured and strictly against the insurer. Limitations of liability should be regarded with extreme jealousy and must be construed in such a way as to preclude the insurer from noncompliance with its obligations. In the more recent case of *Philamcare Health System, Inc. v. Court of Appeals*, we reiterated the above ruling, stating that: When the terms of insurance contract contain limitations on liability, courts should construe them in such a way as to preclude the insurer from non-compliance with his obligation. Being a contract of adhesion, the terms of an insurance contract are to be construed strictly against the party which prepared the contract, the insurer. By reason of the exclusive control of the insurance company over the terms and phraseology of the insurance contract, ambiguity must be strictly interpreted against the insurer and liberally in favor of the insured, especially to avoid forfeiture. To characterize the insurer and the insured as contracting parties on equal footing is inaccurate at best. Insurance contracts are wholly prepared by the insurer with vast amounts of experience in the industry purposefully used to its advantage. More often than not, insurance contracts are contracts of adhesion containing technical terms and conditions of the industry, confusing if at all understandable to laypersons, that are imposed on those who wish to avail of insurance. As such, insurance contracts are imbued with public interest that must be considered whenever the rights and obligations of the insurer and the insured are to be delineated. Hence, in order to protect the interest of insurance applicants, insurance companies must be obligated to act with haste upon insurance applications, to either deny or approve the same, or otherwise be bound to honor the application as a valid, binding, and effective insurance contract.

APPEARANCES OF COUNSEL

Santiago Arevalo & Asuncion & Associates for petitioner.
Roland B. Ebbah, Jr. for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Central to this Petition for Review on *Certiorari* under Rule 45 which seeks to reverse and set aside the November 26, 2004 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 57810 is the query: May the inaction of the insurer on the insurance application be considered as approval of the application?

The Facts

On December 10, 1980, respondent Philippine American Life Insurance Company (Philamlife) entered into an agreement denominated as Creditor Group Life Policy No. P-1920[2] with petitioner Eternal Gardens Memorial Park Corporation (Eternal). Under the policy, the clients of Eternal who purchased burial lots from it on installment basis would be insured by Philamlife. The amount of insurance coverage depended upon the existing balance of the purchased burial lots. The policy was to be effective for a period of one year, renewable on a yearly basis.

The relevant provisions of the policy are:

ELIGIBILITY.

Any Lot Purchaser of the Assured who is at least 18 but not more than 65 years of age, is indebted to the Assured for the unpaid balance of his loan with the Assured, and is accepted for Life Insurance coverage by the Company on its effective date is eligible for insurance under the Policy.

[1] *Rollo*, pp. 45-54. Penned by Associate Justice Santiago Javier Ranada and concurred in by Associate Justices Marina L. Buzon (Chairperson) and Mario L. Guariña III.

[2] Records, pp. 57-62.

EVIDENCE OF INSURABILITY.

No medical examination shall be required for amounts of insurance up to ₱50,000.00. However, a declaration of good health shall be required for all Lot Purchasers as part of the application. The Company reserves the right to require further evidence of insurability satisfactory to the Company in respect of the following:

1. Any amount of insurance in excess of ₱50,000.00.
2. Any lot purchaser who is more than 55 years of age.

LIFE INSURANCE BENEFIT.

The Life Insurance coverage of any Lot Purchaser at any time shall be the amount of the unpaid balance of his loan (including arrears up to but not exceeding 2 months) as reported by the Assured to the Company or the sum of ₱100,000.00, whichever is smaller. Such benefit shall be paid to the Assured if the Lot Purchaser dies while insured under the Policy.

EFFECTIVE DATE OF BENEFIT.

The insurance of any eligible Lot Purchaser shall be effective on the date he contracts a loan with the Assured. However, there shall be no insurance if the application of the Lot Purchaser is not approved by the Company.[3]

Eternal was required under the policy to submit to Philamlife a list of all new lot purchasers, together with a copy of the application of each purchaser, and the amounts of the respective unpaid balances of all insured lot purchasers. In relation to the instant petition, Eternal complied by submitting a letter dated December 29, 1982,[4] containing a list of insurable balances of its lot buyers for October 1982. One of those included in the list as "new business" was a certain John Chuang. His balance of payments was PhP 100,000. On August 2, 1984, Chuang died.

Eternal sent a letter dated August 20, 1984[5] to Philamlife, which served as an insurance claim for Chuang's death. Attached

[3] *Id*. at 58.

[4] *Id*. at 139.

[5] *Id*. at 160.

to the claim were the following documents: (1) Chuang's Certificate of Death; (2) Identification Certificate stating that Chuang is a naturalized Filipino Citizen; (3) Certificate of Claimant; (4) Certificate of Attending Physician; and (5) Assured's Certificate.

In reply, Philamlife wrote Eternal a letter on November 12, 1984,[6] requiring Eternal to submit the following documents relative to its insurance claim for Chuang's death: (1) Certificate of Claimant (with form attached); (2) Assured's Certificate (with form attached); (3) Application for Insurance accomplished and signed by the insured, Chuang, while still living; and (4) Statement of Account showing the unpaid balance of Chuang before his death.

Eternal transmitted the required documents through a letter dated November 14, 1984,[7] which was received by Philamlife on November 15, 1984.

After more than a year, Philamlife had not furnished Eternal with any reply to the latter's insurance claim. This prompted Eternal to demand from Philamlife the payment of the claim for PhP 100,000 on April 25, 1986.[8]

In response to Eternal's demand, Philamlife denied Eternal's insurance claim in a letter dated May 20, 1986,[9] a portion of which reads:

> The deceased was 59 years old when he entered into Contract #9558 and 9529 with Eternal Gardens Memorial Park in October 1982 for the total maximum insurable amount of ₱100,000.00 each. No application for Group Insurance was submitted in our office prior to his death on August 2, 1984.
>
> In accordance with our Creditor's Group Life Policy No. P-1920, under Evidence of Insurability provision, "a declaration of good health shall be required for all Lot Purchasers as party of the application." We cite further the provision on Effective Date of Coverage under the policy which states that "there shall be no insurance if the application is not approved by the Company."

[6] *Id*. at 162.

[7] *Id*. at 163.

[8] *Id*. at 164.

[9] *Id*. at 165.

> Since no application had been submitted by the Insured/Assured, prior to his death, for our approval but was submitted instead on November 15, 1984, after his death, Mr. John Uy Chuang was not covered under the Policy. We wish to point out that Eternal Gardens being the Assured was a party to the Contract and was therefore aware of these pertinent provisions.
>
> With regard to our acceptance of premiums, these do not connote our approval per se of the insurance coverage but are held by us in trust for the payor until the prerequisites for insurance coverage shall have been met. We will however, return all the premiums which have been paid in behalf of John Uy Chuang.

Consequently, Eternal filed a case before the Makati City Regional Trial Court (RTC) for a sum of money against Philamlife, docketed as Civil Case No. 14736. The trial court decided in favor of Eternal, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of Plaintiff ETERNAL, against Defendant PHILAMLIFE, ordering the Defendant PHILAMLIFE, to pay the sum of ₱100,000.00, representing the proceeds of the Policy of John Uy Chuang, plus legal rate of interest, until fully paid; and, to pay the sum of ₱10,000.00 as attorney's fees.
>
> SO ORDERED.

The RTC found that Eternal submitted Chuang's application for insurance which he accomplished before his death, as testified to by Eternal's witness and evidenced by the letter dated December 29, 1982, stating, among others: "Encl: Phil-Am Life Insurance Application Forms & Cert."[10] It further ruled that due to Philamlife's inaction from the submission of the requirements of the group insurance on December 29, 1982 to Chuang's death on August 2, 1984, as well as Philamlife's acceptance of the premiums during the same period, Philamlife was deemed to have approved Chuang's application. The RTC said that since the contract is a group life insurance, once proof of death is submitted, payment must follow.

Philamlife appealed to the CA, which ruled, thus:

---

[10] *Rollo*, p. 44.

WHEREFORE, the decision of the Regional Trial Court of Makati in Civil Case No. 57810 is **REVERSED and SET ASIDE,** and the complaint is **DISMISSED.** No costs.

SO ORDERED.[11]

The CA based its Decision on the factual finding that Chuang's application was not enclosed in Eternal's letter dated December 29, 1982. It further ruled that the non-accomplishment of the submitted application form violated Section 26 of the Insurance Code. Thus, the CA concluded, there being no application form, Chuang was not covered by Philamlife's insurance.

Hence, we have this petition with the following grounds:

The Honorable Court of Appeals has decided a question of substance, not therefore determined by this Honorable Court, or has decided it in a way not in accord with law or with the applicable jurisprudence, in holding that:

I. The application for insurance was not duly submitted to respondent PhilamLife before the death of John Chuang;

II. There was no valid insurance coverage; and

III. Reversing and setting aside the Decision of the Regional Trial Court dated May 29, 1996.

The Court's Ruling

As a general rule, this Court is not a trier of facts and will not re-examine factual issues raised before the CA and first level courts, considering their findings of facts are conclusive and binding on this Court. However, such rule is subject to exceptions, as enunciated in *Sampayan v. Court of Appeals*:

(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

[11] *Id*. at 54.

the appellee; **(7) when the findings [of the CA] are contrary to the trial court;** (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[12] (Emphasis supplied.)

In the instant case, the factual findings of the RTC were reversed by the CA; thus, this Court may review them.

Eternal claims that the evidence that it presented before the trial court supports its contention that it submitted a copy of the insurance application of Chuang before his death. In Eternal's letter dated December 29, 1982, a list of insurable interests of buyers for October 1982 was attached, including Chuang in the list of new businesses. Eternal added it was noted at the bottom of said letter that the corresponding "Phil-Am Life Insurance Application Forms & Cert." were enclosed in the letter that was apparently received by Philamlife on January 15, 1983. Finally, Eternal alleged that it provided a copy of the insurance application which was signed by Chuang himself and executed before his death.

On the other hand, Philamlife claims that the evidence presented by Eternal is insufficient, arguing that Eternal must present evidence showing that Philamlife received a copy of Chuang's insurance application.

The evidence on record supports Eternal's position.

The fact of the matter is, the letter dated December 29, 1982, which Philamlife stamped as received, states that the insurance forms for the attached list of burial lot buyers were attached to the letter. Such stamp of receipt has the effect of acknowledging receipt of the letter together with the attachments. Such receipt is an admission by Philamlife against its own interest.[13] The

[12] G.R. No. 156360, January 14, 2005, 448 SCRA 220, 228-229.

[13] RULES OF COURT, Rule 130, Sec. 26.

burden of evidence has shifted to Philamlife, which must prove that the letter did not contain Chuang's insurance application. However, Philamlife failed to do so; thus, Philamlife is deemed to have received Chuang's insurance application.

To reiterate, it was Philamlife's bounden duty to make sure that before a transmittal letter is stamped as received, the contents of the letter are correct and accounted for.

Philamlife's allegation that Eternal's witnesses ran out of credibility and reliability due to inconsistencies is groundless. The trial court is in the best position to determine the reliability and credibility of the witnesses, because it has the opportunity to observe firsthand the witnesses' demeanor, conduct, and attitude. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended, or misinterpreted,[14] that, if considered, might affect the result of the case.[15]

An examination of the testimonies of the witnesses mentioned by Philamlife, however, reveals no overlooked facts of substance and value.

Philamlife primarily claims that Eternal did not even know where the original insurance application of Chuang was, as shown by the testimony of Edilberto Mendoza:

Atty. Arevalo:

Q Where is the original of the application form which is required in case of new coverage?

[Mendoza:]

A It is [a] standard operating procedure for the new client to fill up two copies of this form and the original of this is submitted to Philamlife together with the monthly remittances and the second copy is remained or retained with the marketing department of Eternal Gardens.

---

[14] *People v. Jaberto*, G.R. No. 128147, May 12, 1999, 307 SCRA 93, 102.

[15] *People v. Oliquino*, G.R. No. 171314, March 6, 2007, 517 SCRA 579, 588.

Atty. Miranda:

> We move to strike out the answer as it is not responsive as counsel is merely asking for the location and does not [ask] for the number of copy.

Atty. Arevalo:

Q Where is the original?

[Mendoza:]

A As far as I remember I do not know where the original but when I submitted with that payment together with the new clients all the originals I see to it before I sign the transmittal letter the originals are attached therein.[16]

In other words, the witness admitted not knowing where the original insurance application was, but believed that the application was transmitted to Philamlife as an attachment to a transmittal letter.

As to the seeming inconsistencies between the testimony of Manuel Cortez on whether one or two insurance application forms were accomplished and the testimony of Mendoza on who actually filled out the application form, these are minor inconsistencies that do not affect the credibility of the witnesses. Thus, we ruled in *People v. Paredes* that minor inconsistencies are too trivial to affect the credibility of witnesses, and these may even serve to strengthen their credibility as these negate any suspicion that the testimonies have been rehearsed.[17]

We reiterated the above ruling in *Merencillo v. People*:

> Minor discrepancies or inconsistencies do not impair the essential integrity of the prosecution's evidence as a whole or reflect on the witnesses' honesty. The test is whether the testimonies agree on essential facts and whether the respective versions corroborate and substantially coincide with each other so as to make a consistent and coherent whole.[18]

---

[16] TSN, September 13, 1990, p. 8.

[17] G.R. No. 136105, October 23, 2001, 368 SCRA 102, 108.

[18] G.R. Nos. 142369-70, April 13, 2007, 521 SCRA 31, 43.

In the present case, the number of copies of the insurance application that Chuang executed is not at issue, neither is whether the insurance application presented by Eternal has been falsified. Thus, the inconsistencies pointed out by Philamlife are minor and do not affect the credibility of Eternal's witnesses.

However, the question arises as to whether Philamlife assumed the risk of loss without approving the application.

This question must be answered in the affirmative.

As earlier stated, Philamlife and Eternal entered into an agreement denominated as Creditor Group Life Policy No. P-1920 dated December 10, 1980. In the policy, it is provided that:

EFFECTIVE DATE OF BENEFIT.

The insurance of any eligible Lot Purchaser shall be effective on the date he contracts a loan with the Assured. However, there shall be no insurance if the application of the Lot Purchaser is not approved by the Company.

An examination of the above provision would show ambiguity between its two sentences. The first sentence appears to state that the insurance coverage of the clients of Eternal already became effective upon contracting a loan with Eternal while the second sentence appears to require Philamlife to approve the insurance contract before the same can become effective.

It must be remembered that an insurance contract is a contract of adhesion which must be construed liberally in favor of the insured and strictly against the insurer in order to safeguard the latter's interest. Thus, in *Malayan Insurance Corporation v. Court of Appeals*, this Court held that:

Indemnity and liability insurance policies are construed in accordance with the general rule of resolving any ambiguity therein in favor of the insured, where the contract or policy is prepared by the insurer. **A contract of insurance, being a contract of adhesion, *par excellence*, any ambiguity therein should be resolved against the insurer**; in other words, it should be construed liberally in favor of the insured and strictly against the insurer. Limitations of liability should be regarded with extreme jealousy and must be construed in

such a way as to preclude the insurer from noncompliance with its obligations.[19] (Emphasis supplied.)

In the more recent case of *Philamcare Health Systems, Inc. v. Court of Appeals*, we reiterated the above ruling, stating that:

> When the terms of insurance contract contain limitations on liability, courts should construe them in such a way as to preclude the insurer from non-compliance with his obligation. Being a contract of adhesion, the terms of an insurance contract are to be construed strictly against the party which prepared the contract, the insurer. By reason of the exclusive control of the insurance company over the terms and phraseology of the insurance contract, ambiguity must be strictly interpreted against the insurer and liberally in favor of the insured, especially to avoid forfeiture.[20]

Clearly, the vague contractual provision, in Creditor Group Life Policy No. P-1920 dated December 10, 1980, must be construed in favor of the insured and in favor of the effectivity of the insurance contract.

On the other hand, the seemingly conflicting provisions must be harmonized to mean that upon a party's purchase of a memorial lot on installment from Eternal, an insurance contract covering the lot purchaser is created and the same is effective, valid, and binding until terminated by Philamlife by disapproving the insurance application. The second sentence of Creditor Group Life Policy No. P-1920 on the Effective Date of Benefit is in the nature of a resolutory condition which would lead to the cessation of the insurance contract. Moreover, the mere inaction of the insurer on the insurance application must not work to prejudice the insured; it cannot be interpreted as a termination of the insurance contract. The termination of the insurance contract by the insurer must be explicit and unambiguous.

As a final note, to characterize the insurer and the insured as contracting parties on equal footing is inaccurate at best. Insurance contracts are wholly prepared by the insurer with vast amounts of experience in the industry purposefully used to its advantage.

---

[19] G.R. No. 119599, March 20, 1997, 270 SCRA 242, 254.

[20] G.R. No. 125678, March 18, 2002, 379 SCRA 356, 366.

More often than not, insurance contracts are contracts of adhesion containing technical terms and conditions of the industry, confusing if at all understandable to laypersons, that are imposed on those who wish to avail of insurance. As such, insurance contracts are imbued with public interest that must be considered whenever the rights and obligations of the insurer and the insured are to be delineated. Hence, in order to protect the interest of insurance applicants, insurance companies must be obligated to act with haste upon insurance applications, to either deny or approve the same, or otherwise be bound to honor the application as a valid, binding, and effective insurance contract. [21]

WHEREFORE, we *GRANT* the petition. The November 26, 2004 CA Decision in CA-G.R. CV No. 57810 is *REVERSED* and *SET ASIDE*. The May 29, 1996 Decision of the Makati City RTC, Branch 138 is *MODIFIED*. Philamlife is hereby *ORDERED*:

(1) To pay Eternal the amount of PhP 100,000 representing the proceeds of the Life Insurance Policy of Chuang;

(2) To pay Eternal legal interest at the rate of six percent (6%) per annum of PhP 100,000 from the time of extra-judicial demand by Eternal until Philamlife's receipt of the May 29, 1996 RTC Decision on June 17, 1996;

(3) To pay Eternal legal interest at the rate of twelve percent (12%) per annum of PhP 100,000 from June 17, 1996 until full payment of this award; and

(4) To pay Eternal attorney's fees in the amount of PhP 10,000.

No costs.

SO ORDERED.

Carpio Morales (Acting Chairperson), Tinga, Brion, and *Chico-Nazario,*[*] *JJ.,* concur.

---

[21] R. E. Keeton & A. I. Widiss, *Insurance Law – A Guide to Fundamental Principles, Legal Doctrines and Commercial Practices* 77-78.

[*] Additional member as per February 6, 2008 raffle.

EN BANC

[G.R. No. 167756. April 9, 2008]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JERRY NAZARENO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; CONTENTS OF; EXACT DATE AND TIME OF CRIME NOT NECESSARY UNLESS AN ESSENTIAL INGREDIENT OF OFFENSE.— An information is intended to inform an accused of the accusations against him in order that he could adequately prepare his defense. Verily, an accused cannot be convicted of an offense unless it clearly charged in the complaint or information. Thus, to ensure that the constitutional right of the accused to be informed of the nature and cause of the accusation against him is not violated, the information should state the name of the accused; the designation given to the offense by the statute; a statement of the acts or omissions so complained of as constituting the offense; the name of the offended party; the approximate time and date of the commission of the offense; and the place where the offense has been committed. Further, it must embody the essential elements of the crime charged by setting forth the facts and circumstances that have a bearing on the culpability and liability of the accused, so that he can properly prepare for and undertake his defense. However, it is not necessary for the information to allege the date and time of the commission of the crime with exactitude unless time is an essential ingredient of the offense. In *People v. Bugayong,* the Court held that when the time given in the information is not the essence of the offense, the time need not be proven as alleged; and that the complaint will be sustained if the proof shows that the offense was committed at any time within the period of the statute of limitations and before the commencement of the action.

2. ID.; ID.; ID.; ID.; ID.; ID.; APPLICATION IN RAPE CASE.— In *People v. Gianan,* the Court ruled that the time of the commission of rape is not an element of the said crime as it

is defined in Article 335 of the Revised Penal Code. The gravamen of the crime is the fact of carnal knowledge under any of the circumstances enumerated therein, *i.e.;* (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; and (3) when the woman is under twelve years of age or is demented. In accordance with Rule 110, Section 11 of the 2000 Rules of Criminal Procedure, as long as it alleges that the offense was committed "at any time as near to the actual date at which the offense was committed," an information is sufficient.

3. ID.; ID.; APPEALS; ISSUE OF DEFECTIVE INFORMATION CANNOT BE MADE FOR THE FIRST TIME ON APPEAL.— The Court notes that the matter of particularity of the dates in the information is being raised for the first time on appeal. The rule is well-entrenched in this jurisdiction that objections as to matter of form or substance in the information cannot be made for the first time on appeal. Appellant failed to raise the issue of defective informations before the trial court. He could have moved to quash the informations or at least for a bill of particulars. He did not. Clearly, he slumbered on his rights and awakened too late. Too, appellant did not object to the presentation of the evidence for the People contending that the offenses were committed "sometime and between January 1992 up to December 6, 1998" for Criminal Case No. 2632 and "sometime in January 1990, up to December 1998" in Criminal Case No. 2650. On the contrary, appellant actively participated in the trial, offering denial and alibi as his defenses. Simply put, he cannot now be heard to complain that he was unable to defend himself in view of the vagueness of the recitals in the informations.

4. ID.; EVIDENCE; GUIDING PRINCIPLES IN RAPE CASES.— In reviewing rape cases, the Court is guided by the following jurisprudential guidelines: (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) due to the nature of the crime of rape in which only two persons are usually involved, the testimony of complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Tersely put, the credibility of the offended

party is crucial in determining the guilt of a person accused of rape. By the very nature of this crime, it is usually only the victim who can testify as to its occurrence. Thus, in rape cases, the accused may be convicted solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things. Elsewise stated, the lone testimony of the offended party, if credible, suffices to warrant a conviction for rape.

5. **ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT THEREON, RESPECTED.—** The trial court observed that AAA's and BBB's testimonies bear the hallmarks of truth. Their testimonies are "spontaneous, convincing and highly-credible." We find no cogent reason not to apply here the oft-repeated rule that the matter of assigning values to the declaration of witnesses on the stand is a matter best left to the discretion of the trial court. The trial court has the advantage of observing the witnesses through the different indicators of truthfullness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien. This doctrine assumes greater significance when the determination of the trial court on the credibility of a witness has been affirmed by the appellate court. The Court has consistently ruled that no young girl would concoct a sordid tale of defloration at the hands of her own father, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice. A rape victim's testimony against her parent is entitled to great weight since Filipino children have a natural reverence and respect for their elders. These values are so deeply ingrained in Filipino families, and it is unthinkable for a daughter to brazenly concoct a story of rape if such were not true. Certainly, a rape victim or any other member of her family would not dare to publicly expose the dishonor of the family, more specifically, if such accusation is against a fellow member of the family, unless the crime was, in fact, committed.

6. ID.; ID.; DENIAL AND ALIBI; WEAK DEFENSES THAT CANNOT PREVAIL OVER POSITIVE TESTIMONIES.— Denial and alibi, being weak defenses, cannot overcome the positive testimonies of the offended parties and their witnesses. As this Court has reiterated often enough, denial and alibi cannot prevail over positive identification of the accused by the prosecution witnesses. The positive, consistent and straightforward testimonies of the victims and the other witnesses for the People sufficiently established appellant's culpability. In order to merit credibility, alibi must be buttressed by strong evidence of non-culpability. Verily, for the said defense to prosper, accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus criminis* or its immediate vicinity. Appellant dismally failed to discharge this *onus*.

7. ID.; CRIMINAL PROCEDURE; JUDGMENT FOR TWO OR MORE OFFENSES; ACCUSED CONVICTED IN CASE AT BAR OF AS MANY OFFENSES OF RAPE AS ARE CHARGED AND PROVED BEYOND REASONABLE DOUBT.— We find that appellant is guilty of two qualified rapes, instead of multiple rapes under Criminal Case No. 2650, and only one qualified rape, not multiple, under Criminal Case No. 2638. The legal basis for conviction for as many offenses as are charged and proved is Section 3, Rule 120 of the 2000 Rules of Criminal Procedure. It is axiomatic that each and every charge of rape is a separate and distinct crime. Verily, each of the alleged incidents of rape charged should be proven beyond reasonable doubt. x x x Applying *De la Torre*, We hold that AAA's assertion that the subsequent rapes occurred in exactly the same manner as in previous incidents is clearly inadequate and grossly insufficient to establish to a degree of moral certainty the guilt of appellant insofar as the other rape incidents are concerned. Her testimony was too general as it failed to focus on material details as to how each of the subsequent acts was committed. x x x With respect to private complainant BBB in Criminal Case No. 2638, what is extant from the records is that appellant succeeded in raping her in January 1992. BBB, like AAA, failed to give an account of the alleged rape subsequent to January 1992 when she testified in the court below. As with AAA, We hold that BBB's account of

the rapes subsequent to January 1992 but before December 6, 1998 is too general and unconvincing.

8. CRIMINAL LAW; RAPE BY SEXUAL ASSAULT; COMMITTED IN CASE AT BAR.— Likewise borne by the records is the insertion of appellant's finger into BBB's vagina on December 6, 1998. What appellant did was rape by sexual assault, punishable under Article 266-A, paragraph 2 of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353. The said law provides: "Art. 266-A. *Rape; when and how committed.* – Rape is committed – 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: (a) Through force, threat or intimidation; b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. 2) *By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person."*

9. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; DESIGNATION OF OFFENSE AND CAUSE OF ACCUSATION; NON-COMPLIANCE WITH THE RULE IS FATAL.— Rape by sexual assault was introduced into our penal system via the amendatory Anti-Rape Law of 1997 (R.A. No. 8353), which took effect on October 22, 1997. With these amendments, rape was reclassified as a crime against person and not merely a crime against chastity. Considering that the law was already in force at the time of the insertion of appellant's finger into BBB's vagina on December 6, 1998, he should have been prosecuted and tried for rape by sexual assault and not under the traditional definition of rape. The People, however, failed in this regard. That is fatal. Sections 8 and 9 of the 2000 Rules of Criminal Procedure state: "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 complained 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 for the court to pronounce judgment." Under the new rules, the information or complaint must state the designation of the offense given by the statute and specify its qualifying and generic aggravating circumstances. Otherwise stated, the accused will not be convicted for the offense proved during the trial if it was not properly alleged in the information. Although the rule took effect on December 1, 2000, the same may be applied retroactively because it is a cardinal rule that rules of criminal procedure are given retroactive application insofar as they benefit the accused.

10. CRIMINAL LAW; RAPE; PROPER PENALTY AND DAMAGES.— Appellant is liable for the rape of AAA sometime in 1990 and on March 25, 1996. He is also guilty of raping BBB in January 1992. At that time, the law penalizing rape was still Article 335 of the Revised Penal Code, as amended by R.A. No. 7659. The said law provides: "Art. 335. *When and how rape is committed.* x x x The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances: 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim." In view of the passage of R.A. No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the death penalty should be downgraded. Pursuant to Section 2 of the said law, the penalty to be meted out to appellant shall be *reclusion perpetua.* Said section reads: "Section 2. In lieu of the death penalty, the following shall be imposed: (a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or (b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code." Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole following Section 3

of the said law, which provides: "Section 3. Persons convicted of offenses punished with *reclusion perpetua,* or whose sentences will be reduced to *reclusion perpetua,* by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended." With regard to the award of damages, the x x x CA correctly increased the amount of indemnity from ₱50,000.00 to ₱75,000.00 each for AAA and BBB. Civil indemnity of ₱75,000.00 is warranted if the crime is qualified by circumstances which warrant the imposition of the death penalty. The award of additional ₱25,000.00 each by way of exemplary damages deserves affirmance due to the presence of the qualifying circumstances of minority and relationship. x x x The award of moral damages x x x should be increased to ₱75,000.00 without need of pleading or proof of basis.

APPEARANCES OF COUNSEL

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

D E C I S I O N

REYES, R. T., *J.*:

IN this rape case, the Court is confronted with remedial questions on (a) specificity of dates in the Information; (b) quantum of proof; and (c) concurrence of allegation and proof.

For Our final review is the Decision[1] of the Court of Appeals (CA) affirming with modification appellant's conviction for rape of his two minor daughters.

The Facts

In line with Our ruling in *People v. Cabalquinto*,[2] the real names of the rape victims will not be disclosed. We will instead

[1] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Remedios Salazar-Fernando and Rosmari D. Carandang, concurring; *rollo,* pp. 4-21.

[2] G.R. No. 167693, September 19, 2006, 502 SCRA 419, citing Rule on Violence Against Women and their Children, Sec. 40; Rules and Regulations

use fictitious initials to represent them throughout the decision. The personal circumstances of the victims or any other information tending to establish or compromise their identities will likewise be withheld.

Private complainants AAA and BBB are the legitimate daughters of appellant Jerry Nazareno with CCC. AAA was born on April 30, 1983.[2-a] BBB, the second child of the union, was born on June 24, 1984.[2-b] At that time, appellant and CCC were yet to wed. It was only in 1987 that the couple formally tied the knot in simple church ceremonies. Three more children sprang from the marriage since then.[3]

Sometime in 1990, AAA was inside a room in their house located at *Barangay* Codon, Municipality of San Andres, Province of Catanduanes. All of her siblings were playing in their yard. Unexpectedly, appellant entered the room, and without saying a word, held AAA tightly. He then directed AAA to crouch on the floor and raise her buttocks (*baka-bakahan*). While in that position, appellant removed the girl's short pants and underwear. He then proceeded to remove his own undergarments. Subsequently, appellant forcibly entered AAA from behind, inserting his penis into the girl's vagina. She was seven.[4]

Appellant threatened AAA not to reveal what happened to her to anyone; or else, she and the rest of her family would be killed. Expectedly, AAA suffered in silence. She feared for her life as well as that of her mother and siblings.[5]

AAA's ordeal with her father became a regular fare. Appellant would rape her whenever they were left alone in the house.[6]

Implementing Republic Act No. 9262, Rule XI, Sec. 63, otherwise known as the "Anti-Violence Against Women and their Children Act."

[2-a] Records, p. 54, Exhibit "D".

[2-b] Records, p. 53, Exhibit "B".

[3] TSN, September 7, 2000, pp. 4-5.

[4] TSN, June 29, 2000, pp. 5-6.

[5] *Id.* at 7.

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

CCC was rarely home because she attended to farm work and accepted laundry jobs from neighbors to support the family. Appellant was jobless and stayed at home.[7]

On March 25, 1996, appellant again imposed his bestial urges on AAA. AAA distinctly remembered the incident because she graduated from primary school on that day. At around 2:00 p.m., appellant and AAA were left alone in the house. He told AAA to remove her shorts and panty. Appellant then asked her to crouch on the floor and raise her buttocks. Just as he did before, appellant positioned himself behind the girl and then inserted his penis into her vagina. All that time, appellant's hands were clutching the girl's back.[8] Coincidentally, AAA's graduation from elementary school also marked the end of appellant's sexual abuses.

BBB suffered the same fate as her older sister AAA. Sometime in January 1992, appellant and BBB were left alone in their house. Suddenly, appellant told BBB to kneel on all fours (pig *baka-baka*).[9]

Appellant then removed BBB's shorts and panties. He then removed his *maong* pants. Appellant positioned himself at BBB's rear and then inserted his penis into the young girl's vagina. At the time of the rape, BBB was only seven years old and was a Grade II pupil.[10]

Appellant continued raping BBB, using the girl for his sexual gratification every other day. From BBB's account, appellant would rape her fifteen times in a month. Every time, appellant would threaten her that he would kill all of them should she tell anyone what was happening between them.[11]

On October 27, 1998, AAA and BBB found the courage to tell their mother CCC what appellant had been doing to them.

---

[7] *Id*. at 4.

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

[9] TSN, May 31, 2000, pp. 6-7.

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

[11] *Id*. at 9.

AAA accidentally found that BBB was likewise being subjected to sexual abuses by their father. Gathering strength from one another, AAA and BBB tearfully recounted to their mother their individual ordeals. CCC was devastated.[12]

On December 6, 1998, appellant again attempted to force himself on BBB. He inserted his finger into BBB's vagina. BBB felt extreme pain from the nails protruding from her father's fingers. That was the last time appellant abused BBB.[13]

On February 16, 1999, CCC, with AAA and BBB, secretly went to the Municipal Building of San Andres, Catanduanes to file a complaint against appellant for the rape of AAA and BBB. AAA and BBB were immediately attended to by personnel from the Department of Social Welfare and Development. The two were later examined at the JMA District Hospital by Dr. Erlinda H. Arcilla.

CCC testified as to the age of the victims AAA and BBB at the time of the commission of the crimes. She affirmed that AAA was born on April 30, 1983 while BBB was born on June 24, 1984.[14] CCC narrated that she was shocked when she heard her two daughters complain that they were raped by their own father. She knew appellant to be temperamental. He would hit AAA and BBB at the slightest provocation. She failed to act immediately on her daughters' plight for fear of her husband. CCC was convinced that appellant might make good his threats to kill all of them.[15]

Dr. Arcilla narrated that she examined both AAA and BBB on February 16, 1999. During her examination, she uncovered old healed hymenal lacerations on both AAA and BBB at the 3 o'clock, 6 o'clock and 9 o'clock positions. The lacerations suggested that the two girls were no longer in a virgin state.[16]

---

[12] TSN, September 7, 2000, pp. 6-7.

[13] TSN, May 31, 2000, p. 20.

[14] TSN, September 7, 2000, pp. 3-5.

[15] *Id.* at 6-12.

[16] TSN, February 18, 2000, pp. 4-6.

On March 17, 1999, appellant Jerry Nazareno was indicted for violation of Article 266-A of the Revised Penal Code in Criminal Case No. 2638 for the rape of BBB. The information reads:

> That sometime and between January 1992 up to December 06, 1998, in *Barangay* Codon, Municipality of San Andres, Province of Catanduanes, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force, violence and intimidation did then and there willfully, unlawfully, feloniously and repeatedly made sexual intercourse with his daughter BBB at the age of 7 through 14 years old against her will.
>
> CONTRARY TO LAW.[17]

On May 3, 1999, another Information docketed as Criminal Case No. 2650, for the rape of AAA, was levelled against appellant. The indictment is worded thus:

> That from sometime in January 1990 up to December 1998 in *barangay* Codon, municipality of San Andres, Catanduanes, and within the jurisdiction of the Honorable Court, the said accused, being the father of the complainant, did then and there willfully, feloniously and criminally repeatedly had sexual intercourse with her daughter AAA, then five years old up to the time when she was 15-years-old against her will.
>
> CONTRARY TO LAW.[18]

The case for the People, which portrayed the foregoing facts, revolved around the combined testimonies of AAA, BBB, CCC, and Dr. Erlinda Arcilla of the JMA District Hospital in San Andres, Catanduanes.

The defense, anchored on denial, was summed up by the trial court in this wise:

> The defense presented JERRY NAZARENO, the accused himself who testified that he is 34 years old, married, fisherman, a resident of Codon, San Andres, Catanduanes.

---

[17] *Rollo,* p. 21.

[18] Records, Vol. II, p. 18.

He denied having raped his daughters. He said that he sometimes beat his children because he is strict with them in their studies especially during weekdays. He did not want them to watch television during schooldays. Though he is strict, he could not molest the complainants because they are his daughters. He said that the reason why his daughters filed these cases against him was because his father-in-law wants him to be incarcerated for the reason that from the very start, he was opposed to his marriage to CCC, his daughter.

He also said that in December 1998, the last molestation of BBB, he was in the motor launch that plies the San Andres and Caramoran route.[19]

RTC and CA Dispositions

On October 25, 2002, the trial court handed down a joint judgment of conviction, imposing upon appellant the capital punishment of death in both cases. The *fallo* of the RTC decision reads:

WHEREFORE, in view of all the foregoing, the prosecution having proved the guilt of the accused beyond reasonable doubt, he is sentenced to suffer the extreme penalty of DEATH for raping BBB in Criminal Case No. 2638 and the same penalty for raping AAA in Criminal Case No. 2650 in accordance with Article 335 of the Revised Penal Code as amended by R.A. 7659.

The accused is further ordered to indemnify both complainants the amount of Fifty Thousand Pesos (₱50,000.00) each, to pay each of them the amount of Fifty Thousand Pesos (₱50,000.00) as moral damages and the cost of suit.

SO ORDERED.[20]

Conformably with the pronouncement in *People v. Mateo*[21] providing for an intermediate review by the CA of cases in which the penalty imposed is death, *reclusion perpetua* or life imprisonment, the Court issued a Resolution dated September 21,

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

[20] *Id*. at 54-55.

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

2004,[22] transferring the case to the appellate court for appropriate action and disposition.

On February 22, 2005, the CA affirmed with modification the RTC judgment, disposing as follows:

> WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of rape as defined and penalized under Art. 335 of the Revised Penal Code as amended by Anti Rape Law of 1997, with the aggravating circumstance of relationship and minority, the decision of the court *a quo* sentencing him to death in both Criminal Cases Nos. 2638 and 2650 is hereby AFFIRMED. The award of civil indemnity is MODIFIED and INCREASED to ₱75,000.00 each, in both cases. The award of moral damages of ₱50,000.00 for each case is AFFIRMED. We also award ₱25,000.00 as exemplary damages in each case.
>
> Let the records of this case be transmitted to the Supreme Court for appropriate action.
>
> SO ORDERED.[23]

Issues

On September 27, 2005, the Court resolved to require the parties to submit their respective supplemental briefs, if they so desired, within thirty (30) days from notice. In a manifestation dated December 6, 2005, the Public Attorney's Office, representing appellant Jerry Nazareno, informed the Court that it is adopting its main brief on record.[24] The Office of the Solicitor General, for the People, similarly opted to dispense with the filing of a supplemental brief in its manifestation dated March 9, 2006.[25]

Appellant stands by the same lone error he raised before the appellate court:

> THE TRIAL COURT ERRED (IN) NOT FINDING THAT THE INFORMATION(S) IN CRIMINAL CASE NO[S]. 2638 AND 2650

---

[22] CA *rollo*, p. 90.

[23] *Id*. at 110.

[24] *Rollo,* pp. 23-24.

[25] *Id*. at 26-28.

ARE INSUFFICIENT TO SUPPORT A JUDGMENT OF CONVICTION FOR ITS (*SIC*) FAILURE TO STATE THE PRECISE DATES OF THE COMMISSION OF THE OFFENSE CHARGED.[26] (Corrections and underscoring supplied)

Our Ruling

In the main, appellant argues that the Informations charging him with the rape of AAA and BBB are defective for failure to state with specificity the approximate date of the commission of the offenses. According to him, the twin convictions have no basis in law because the People violated his constitutional right to be informed of the nature and cause of the accusations against him.

The argument is specious. An information is intended to inform an accused of the accusations against him in order that he could adequately prepare his defense. Verily, an accused cannot be convicted of an offense unless it is clearly charged in the complaint or information. Thus, to ensure that the constitutional right of the accused to be informed of the nature and cause of the accusation against him is not violated, the information should state the name of the accused; the designation given to the offense by the statute; a statement of the acts or omissions so complained of as constituting the offense; the name of the offended party; the approximate time and date of the commission of the offense; and the place where the offense has been committed.[27] Further, it must embody the essential elements of the crime charged by setting forth the facts and circumstances that have a bearing on the culpability and liability of the accused, so that he can properly prepare for and undertake his defense.[28]

However, it is not necessary for the information to allege the date and time of the commission of the crime with exactitude

---

[26] CA *rollo,* p. 38.

[27] *People v. Quitlong,* 354 Phil. 372, 388 (1998), citing Rules of Criminal Procedure (2000), Rule 110, Secs. 6 and 8.

[28] *Id*.

unless time is an essential ingredient of the offense.[29] In *People v. Bugayong*,[30] the Court held that when the time given in the information is not the essence of the offense, the time need not be proven as alleged; and that the complaint will be sustained if the proof shows that the offense was committed at any time within the period of the statute of limitations and before the commencement of the action.

In *People v. Gianan*,[31] the Court ruled that the time of the commission of rape is not an element of the said crime as it is defined in Article 335 of the Revised Penal Code. The gravamen of the crime is the fact of carnal knowledge under any of the circumstances enumerated therein, *i.e.*: (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; and (3) when the woman is under twelve years of age or is demented. In accordance with Rule 110, Section 11 of the 2000 Rules of Criminal Procedure, as long as it alleges that the offense was committed "at any time as near to the actual date at which the offense was committed," an information is sufficient.

The doctrine was reiterated with greater firmness in *People v. Salalima*[32] and in *People v. Lizada*.[33]

In the case under review, the information in Criminal Case No. 2638 alleged that the rape of BBB transpired "sometime and between January 1992 up to December 6, 1998 in *Barangay* Codon, Municipality of San Andres, Province of Catanduanes."

---

[29] *People v. Santos,* 390 Phil. 150, 161 (2000); Rules of Criminal Procedure (2000), Rule 110, Sec. 11 reads:

Sec. 11. *Date of commission of the offense.* – It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

[30] G.R. No. 126518, December 2, 1998, 299 SCRA 528.

[31] G.R. Nos. 135288-93, September 15, 2000, 340 SCRA 477.

[32] G.R. Nos. 137969-71, August 15, 2001, 363 SCRA 192.

[33] G.R. Nos. 143468-71, January 24, 2003, 396 SCRA 62.

In Criminal Case No. 2650, the information averred that "from sometime in January 1990 up to December 1998 in *Barangay* Codon, Municipality of San Andres, Province of Catanduanes," AAA was raped by appellant. To the mind of the Court, the recitals in the informations sufficiently comply with the constitutional requirement that the accused be informed of the nature and cause of the accusation against him.

In *People v. Garcia*,[34] the Court upheld a conviction for ten counts of rape based on an Information which alleged that the accused committed multiple rapes "from November 1990 up to July 21, 1994." In *People v. Espejon*,[35] the Court found the appellant liable for rape under an information charging that he perpetrated the offense "sometime in the year 1982 and dates subsequent thereto" and "sometime in the year 1995 and subsequent thereto."

Indeed, this Court has ruled that allegations that rapes were committed "before and until October 15, 1994,"[36] "sometime in the year 1991 and the days thereafter,"[37] and "on or about and sometime in the year 1988"[38] constitute sufficient compliance with Rule 110, Section 11 of the 2000 Rules of Criminal Procedure.

More than that, the Court notes that the matter of particularity of the dates in the information is being raised for the first time on appeal. The rule is well-entrenched in this jurisdiction that objections as to matter of form or substance in the information cannot be made for the first time on appeal.[39] Appellant failed to raise the issue of defective informations before the trial court. He could have moved to quash the informations or at least for

---

[34] G.R. No. 120093, November 6, 1997, 281 SCRA 463.

[35] G.R. No. 134767, February 20, 2002, 377 SCRA 412.

[36] *People v. Bugayong, supra* note 30.

[37] *People v. Magbanua,* G.R. No. 128888, December 3, 1999, 319 SCRA 719.

[38] *People v. Santos,* G.R. Nos. 131103 & 143472, June 29, 2000, 334 SCRA 655.

[39] *People v. Razonable,* 386 Phil. 771, 780 (2000).

a bill of particulars. He did not. Clearly, he slumbered on his rights and awakened too late.

Too, appellant did not object to the presentation of the evidence for the People contending that the offenses were committed "sometime and between January 1992 up to December 6, 1998" for Criminal Case No. 2632 and "sometime in January 1990, up to December 1998" in Criminal Case No. 2650. On the contrary, appellant actively participated in the trial, offering denial and alibi as his defenses. Simply put, he cannot now be heard to complain that he was unable to defend himself in view of the vagueness of the recitals in the informations.

We now tackle appellant's convictions for the multiple rape of AAA and BBB.

In an effort to exculpate himself, appellant contends that the charges for rape are mere fabrications and lies. He insists his daughters were instigated by his father-in-law to file the complaints. According to appellant, his father-in-law has an axe to grind against him. His in-law disdained him from the very beginning and wanted him out of CCC's life.

In reviewing rape cases, the Court is guided by the following jurisprudential guidelines: (a) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) due to the nature of the crime of rape in which only two persons are usually involved, the testimony of complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[40]

Tersely put, the credibility of the offended party is crucial in determining the guilt of a person accused of rape. By the very nature of this crime, it is usually only the victim who can testify as to its occurrence. Thus, in rape cases, the accused may be convicted solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing

[40] *People v. Silvano,* G.R. No. 127356, June 29, 1999, 309 SCRA 362; *People v. Alimon,* G.R. No. 87758, June 28, 1996, 257 SCRA 658.

and consistent with human nature and the normal course of things. Elsewise stated, the lone testimony of the offended party, if credible, suffices to warrant a conviction for rape.[41]

In her testimony before the trial court, AAA narrated:

Q Why, when were you particularly raped by your father?

A Since 1990, when I was in Grade I until I was in Grade VI, Sir.

Q When you were in Grade I, how old were you then?

A Seven (7) years old, Sir.

Q Can you remember the first time, you said your father raped you in 1990?

A I could no longer remember the date, Sir.

Q But how did your father rape you, do you remember how he raped you in 1990, the first time?

A Yes, Sir.

Q Could you please tell us how he raped you for the first time?

A I was croaching with raised buttocks, Sir.

Q Do you remember where did he tell you to make that position?

A No, Sir.

Q Where particularly in your house?

A In our room, Sir.

Q Do you still remember the date, the first time he raped you?

A No, Sir.

Q Who were with you in your house during that time?

A No one, Sir, because all my other siblings are playing outside the house, and my mother was at work.

---

[41] *People v. Mercado,* G.R. No. 139904, October 12, 2001, 367 SCRA 252; *People v. Pecayo, Sr.,* G.R. No. 132047, December 14, 2000, 348 SCRA 95.

Q When you were in that position with your buttocks raised and hands and knees on the floor, what did your father do next?

A He positioned behind me and s[tar]ted raping me, Sir.

Q When you used the term "rape," what do you mean?

A He inserted his penis into my vagina, Sir.

Q You mean your father inserted his penis to your vagina?

A Yes, Sir.

Q Now after that first time, do you remember the second time that he did it to you?

A I could not remember anymore, Sir.

Q Do you remember how long the period was between the first and the second time he raped you?

A I could not longer remember, Sir.

COURT

Fiscal, we are only trying here the rape that occurred on March 25, so if you can prove to us really, maybe several times before that, the court cannot do something about that, because it is not included in the information.

AYO

Q So when was the last time that your father raped you?

A When I graduated from the elementary school, Sir.

Q When was that?

A March 24, 1996, Sir.

Q Between the first time that your father raped you and the last time that your father raped you, did you not report this to anybody, the thing that your father had been doing to you?

A I did not report this to anybody, Sir.

Q Why?

A Because I was threatened by my father that if we tell this matter to anybody, he would not only kill me but the rest of us, Sir.

Q What other things did your father do when you said that he raped you, whenever your father raped you, you said you have been raped by your father in the time that you are in Grade I up to the time that you were in Grade VI, what did your father do to you?

CABRERA

The question is vague, because there is no definite date.

COURT

Recess for ten (10) minutes.

COURT

(After ten minutes) Court session resumed.

AYO

Q Do you remember the last time that your father raped you?

A March 25, 1996, Sir.

Q Where?

A In our house, Sir.

Q How old were you then?

A Thirteen (13) years old, Sir.

Q How did he rape you?

A I was croaching with raised buttocks, Sir.

Q And what did he do again when you are in that position?

A He told me to remove my shorts and my panty, Sir.

Q And did you do it?

A Yes, Sir.

Q Then what did he do next?

A He positioned behind me and he raped me, Sir.

Q In that position while he was raping you, where was (*sic*) his hands?

A His hands were on my back, Sir.[42]

Upon the other hand, BBB testified thus:

AYO

Q Now, Miss witness, you said your first rape by your father in 1992, do you remember the specific time when he first raped you?

A I could no longer recall the date, because that has been sometime already, Sir.

Q In 1992, were you already in school then?

A Yes, Sir.

Q What grade were you in when your father first raped you?

A Grade II, Sir.

Q Do you recall the circumstances when you were first raped by your father in 1992?

A I was made to lie on top of my father, Sir.

Q When you used the term "Pig *baka-baka*," will you please demonstrate to us how it is done?

A (Witness demonstrating by kneeling and had her two hands on the floor, a position similar to four-legged animal, and she stated that her father is at her rear portion).

Q And that was the first time your father raped with that position?

A Yes, Sir.

Q And what clothes were you wearing at that time when you were at that position, if you can still remember?

A Yes, Sir, I can remember, I was wearing shorts.

Q How about your father, do you remember what clothes he was wearing in that position?

A He was wearing *maong* pants, Sir.

Q And what was your father doing aside from having that position?

---

[42] TSN, June 29, 2000, pp. 5-9.

A He removed my shorts and panty, Sir.

Q And after removing your shorts and panty, what did he do?

A My father inserted his penis in my vagina, Sir.

Q That was the first time you said he raped you?

A Yes, Sir.

Q Do you remember the date again, the first time that he raped you?

A I could no longer remember the exact date, Sir.

Q You could only remember the month and the year?

A Yes, Sir, I could not remember the date, but I remember only the month and the year.

Q How about the second time, do you remember when he raped you, the second time?

A I could not, Sir.[43]

On cross-examination, BBB stated that:

CABRERA

Q You said you were allegedly raped by your own father, sometime in 1992, will you tell us what time is that alleged incident committed to you?

A About 2:00 p.m., Sir.

Q And who were the persons in the house, at around 2:00 o'clock in the afternoon?

A The two of us only, Sir.

Q Where were your companions in the home?

A By that time, my mother is working in the farm, my *ate* is in school, and the rest of my siblings are playing outside, Sir.

Q What was your age then at the time you were allegedly raped?

A I was eight years old, Sir.

[43] TSN, May 31, 2000, pp. 6-7.

Q You were never forced to have that position of "*baka-bakahan*"?

A I was forced to do that, Sir.

Q You were only told in mild manner, correct?

A He kepts (*sic*) on telling me that I should do that position, although I don't like it, he kepts (*sic*) on prodding me, Sir.

Q At that time your father was telling you on a very low voice, because you were near to the children who are playing?

A They were playing, Sir.

Q Will you describe to us your house, what is the elevation of your house from the ground floor?

A The flooring of our house is quite elevated. (Witness is demonstrating a height of about one [1] foot).

Q Who were those children playing outside the house?

A My three (3) siblings are playing outside the house, Sir.

Q Your house has a window fronting the yard, correct?

A Yes, Sir.

Q And that yard was the playing ground of the children while your father was telling you that position of "*baka-bakahan*"?

A They were playing in our yard, but they are playing near the house of our neighbor, Sir.

Q How far is the house of your neighbor to your house?

A (Witness demonstrating a distance of one two-arms length).

Q And those children could hear what your father is saying?

A They could not have heard what my father said, because they were playing, Sir.

Q Why, what kind of game they are playing?

A They were playing hide and seek, Sir.

Q What time did you eat your lunch?

A I took my lunch at 11:00 o'clock a.m., Sir.

Q Will you tell us what was the nature of your father's work at that time you were allegedly raped?

A He is jobless, Sir.

Q Who is the one providing for your subsistence?

A My mother, Sir.

Q From where does your mother get your subsistence?

A She is doing some laundry works and works in the farm, Sir.

Q If your story is correct that you were allegedly raped, will you tell us what happened to your vagina after the alleged rape?

A My vagina became painful, Sir.

Q Was there blood that oozed in your vagina?

A I do not know if there was blood, what I could feel was the pain, Sir.

Q After the alleged intercourse, did you wear your panty?

A Yes, Sir.

Q After the rape, what time did your mother arrive in your home?

A My mother arrived at about 4:00 o'clock in the afternoon, Sir.

Q Since you were still a child, if your story is correct, why did you not tell your mother that you were allegedly raped at 2:00 o'clock in the afternoon?

A I did not tell my mother because he threatened me, Sir.

Q Were you threatened before, during, or after the rape?

A Before I was raped, Sir.

Q And you were silent after the rape, he did not threaten you anymore?

A Yes, Sir, he threatened me again after he committed the rape.

Q Would you tell us the exact words, what did your father tell you?

A He told me that if you will tell anybody, I am going to kill all of you, Sir.

Q Was there any occasion on the part of your mother and you that you were alone without the presence of your father, after the rape?

A There was none, Sir.

Q You mean your father was always in your house?

A There are times that he stays outside the house, he is jobless, he hangs around, Sir.

Q After you were allegedly raped, did you have any occasion in the evening to talk to your mother immediately after this alleged rape?

A There are, but then I could not tell my mother, because I was afraid of my father, Sir.

Q But there was an occasion that you were together with your mother and you could have told her what happened to you, is that correct?

A Yes, there were occasions and opportunities that I could tell my mother, but I could not because of the threat of my father, Sir.

Q Was there any occasion that actually happened after that threat when you were harmed by your father?

A Yes, Sir.

Q When was that?

A Right after that evening, I did not do anything wrong, he just punished us, because he is not tempered, Sir.

Q Your father is not insane, he will not do anything to you without any reason?

A Yes, because every time he has no money, he becomes ill tempered, because he wanted to gamble, Sir.

Q You are a young child then, is it not a fact that as a loving father he tried to discipline you, because of your mischievous acts?

A We do not considered that a discipline, although we feel we did not do anything wrong, he keeps on punishing us, because he is ill tempered, Sir.

Q Where was your mother when your father is trying to harm you?

A She is at work, Sir.

Q You mean he tried to harm you when your mother is out?

A When my mother is around, he punishes us every time we did something wrong, but then he does that too when my mother is not around, Sir.

Q Do you tell that to your mother that your father punished you without any reason?

A Yes, Sir.

Q Will you tell us the date, the first you were abused by your father in the year 1992?

A I could no longer remember the date, Sir.

Q But you can recall the fifteen (15) times?

A Yes, Sir.

Q What is important to you is the fifteen (15) times, but the first rape is not important to you?

A Yes, Sir.

Q You said you were last raped on February 16, 1998, is that correct?

A No, Sir, December 16, 1998. February 16 was when we reported to the police.

Q This last incident, did you tell your mother about this?

A Yes, Sir.

Q And what did your mother say?

A My mother told us that we report the matter, but we told her that we could not manage to do it, Sir.

Q How were you raped on December 6, 1998?

A He used his finger, Sir.

Q Was there any nail in the finger?

A Yes, Sir.

Q And how did you feel when your father used his finger?

A It is painful, Sir.

Q What he used is finger only?

A Yes, Sir.

Q Could it be possible that there was inside your vagina and your father is trying to remove it?

A There is none, Sir.[44] (Underscoring supplied)

The trial court observed that AAA's and BBB's testimonies bear the hallmarks of truth. Their testimonies are "spontaneous, convincing and highly-credible."[45] We find no cogent reason not to apply here the oft-repeated rule that the matter of assigning values to the declaration of witnesses on the stand is a matter best left to the discretion of the trial court. The trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.[46] This doctrine assumes greater

[44] TSN, May 31, 2000, pp. 14-20.

[45] CA *rollo,* p. 53.

[46] *People v. Rayles,* G.R. No. 169874, July 27, 2007, 528 SCRA 409; *People v. Quijada,* G.R. Nos. 115008-09, July 24, 1996, 259 SCRA 191, 212-213; *People v. Lua,* G.R. Nos. 114224-25, April 26, 1996, 256 SCRA 539, 546.

significance when the determination of the trial court on the credibility of a witness has been affirmed by the appellate court.[47]

The Court has consistently ruled that no young girl would concoct a sordid tale of defloration at the hands of her own father, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice.[48] A rape victim's testimony against her parent is entitled to great weight since Filipino children have a natural reverence and respect for their elders. These values are so deeply ingrained in Filipino families, and it is unthinkable for a daughter to brazenly concoct a story of rape if such were not true.[49] Certainly, a rape victim or any other member of her family would not dare to publicly expose the dishonor of the family, more specifically, if such accusation is against a fellow member of the family, unless the crime was, in fact, committed.[50]

We sustain the trial court and the CA's rejection of appellant's defense founded on denial and alibi. Denial and alibi, being weak defenses, cannot overcome the positive testimonies of the offended parties and their witnesses. As this Court has reiterated often enough, denial and alibi cannot prevail over positive identification of the accused by the prosecution witnesses.[51] The positive, consistent and straightforward testimonies of the victims and the other witnesses for the People sufficiently established appellant's culpability.

In order to merit credibility, alibi must be buttressed by strong evidence of non-culpability. Verily, for the said defense to prosper,

---

[47] *People v. Aguila,* G.R. No. 171017, December 6, 2006, 510 SCRA 642.

[48] *People v. Bernabe,* 421 Phil. 805, 811 (2001); *People v. De Guzman,* 333 Phil. 50, 66 (1996).

[49] *People v. Pandapatan,* G.R. No. 173050, April 13, 2007, 521 SCRA 304, citing *People v. Mangitngit,* G.R. No. 171270, September 20, 2006, 502 SCRA 560, 574.

[50] *People v. Esperanza,* 453 Phil. 54, 74-75 (2003), citing *People v. Villaraza,* G.R. Nos. 131848-50, September 5, 2000, 339 SCRA 666.

[51] *People v. Lachica,* G.R. No. 143677, May 9, 2002, 382 SCRA 162; *People v. Lozano,* G.R. No. 126149, December 7, 2001, 371 SCRA 546.

accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus criminis* or its immediate vicinity.[52] Appellant dismally failed to discharge this *onus*.

The trial court and the CA, however, both blundered in convicting appellant of multiple rape of AAA and BBB, from January 1990 to December 1998 and from January 1992 up to December 6, 1998, respectively.

The RTC and the CA convicted appellant of multiple rapes under two separate informations, Criminal Cases Nos. 2638 and 2650. However, both the trial and appellate courts erroneously sentenced him to a *single* death penalty for each information.

We find that appellant is guilty of two qualified rapes, instead of multiple rapes under Criminal Case No. 2650, and only one qualified rape, not multiple, under Criminal Case No. 2638. The legal basis for conviction for as many offenses as are charged and proved is Section 3, Rule 120 of the 2000 Rules of Criminal Procedure.[53]

It is axiomatic that each and every charge of rape is a separate and distinct crime. Verily, each of the alleged incidents of rape charged should be proven beyond reasonable doubt.[54] In *People v. Matugas*,[55] the Court aptly ruled:

---

[52] *People v. Lachica, supra*; *People v. Cana,* G.R. No. 139229, April 22, 2002, 381 SCRA 435.

[53] Section 3, Rule 120 of the 2000 Rules of Criminal Procedure states:

Sec. 3. *Judgment for Two or More Offenses*. – When two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense.

[54] *People v. Matugas,* G.R. Nos. 139698-726, February 20, 2002, 377 SCRA 434, 447; *People v. Tagud,* G.R. No. 140733, January 30, 2002, 375 SCRA 291, 309; *People v. Baring,* G.R. No. 137933, January 28, 2002, 374 SCRA 696, 712.

[55] *People v. Matugas, supra*.

This Court cannot thus sustain the conviction of accused-appellant for 29 counts of rape because only two incidents were sufficiently proven by the prosecution. While we do not doubt that she was raped on other dates, we cannot ascertain the exact number of times she was actually raped. It must be remembered that each and every charge of rape is a separate and distinct crime so that each of the 27 other alleged incidents of rape charged should be proven beyond reasonable doubt. If, as complainant claimed, the number could be more, the possibility that it could be much less than 27 cannot be discounted.[56]

In *People v. De la Torre*,[57] the Court held that:

Each and every charge of rape is a separate and distinct crime; hence, each of the eight other rape charges should be proven beyond reasonable doubt. The prosecution is required to establish, by the necessary quantum of proof, the elements of rape for each charge. Baby Jane's testimony on the first rape charge was explicit, detailing the participation of each appellant in the offense and clearly illustrating all the elements of the offense of rape. However her simple assertion that the subsequent rapes occurred in exactly the same manner as in previous incidents is clearly inadequate and grossly insufficient to establish to a degree of moral certainty the guilt of the appellants insofar as the eight rape charges are concerned. Her testimony was too general as it failed to focus on material details as to how each of the subsequent acts was committed. Even her testimony on cross-examination did not add anything to support her accusations of subsequent rape. Thus, only the rape alleged to have been committed on September 1992 was proven beyond reasonable doubt and the appellants may be penalized only for this offense.[58]

In the case under review, the evidence bear out that what were proved by the People beyond reasonable doubt in Criminal Case No. 2650 were the rapes committed by appellant on AAA sometime in 1990 and then again on March 25, 1996. AAA was categorical that she was first raped by appellant sometime in 1990. Her account of the first rape was vivid, candid and straightforward. She further disclosed that appellant repeatedly abused her. However, when asked by the court to clarify her

[56] *Id*. at 446-447.

[57] G.R. Nos. 121213 & 121216-23, January 13, 2004, 419 SCRA 18.

[58] *People v. De la Torre, id*. at 36.

claim that the sexual abuses were repeated, AAA failed to supply the details. But she was able to recount the last incident of rape on March 25, 1996. According to her, that day was of significance to her since she graduated from primary school on that day.[59]

Applying *De la Torre*, We hold that AAA's assertion that the subsequent rapes occurred in exactly the same manner as in previous incidents is clearly inadequate and grossly insufficient to establish to a degree of moral certainty the guilt of appellant insofar as the other rape incidents are concerned. Her testimony was too general as it failed to focus on material details as to how each of the subsequent acts was committed. In fine, appellant should have been convicted, in Criminal Case No. 2650, only of the qualified rape of AAA sometime in 1990 and then again on March 25, 1996.

With respect to private complainant BBB in Criminal Case No. 2638, what is extant from the records is that appellant succeeded in raping her in January 1992. BBB, like AAA, failed to give an account of the alleged rape subsequent to January 1992 when she testified in the court below.[60] As with AAA, We hold that BBB's account of the rapes subsequent to January 1992 but before December 6, 1998 is too general and unconvincing.

Likewise borne by the records is the insertion of appellant's finger into BBB's vagina on December 6, 1998. BBB testified that appellant raped her for the last time on December 6, 1998. When asked by the court to clarify what she meant, BBB disclosed that appellant inserted his finger into her vagina.[61]

What appellant did was rape by sexual assault, punishable under Article 266-A, paragraph 2 of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353. The said law provides:

Art. 266-A. *Rape; when and how committed*.– Rape is committed–

---

[59] TSN, June 29, 2000, pp. 5-9.

[60] TSN, May 31, 2000, pp. 6-7, 14-20.

[61] *Id*. at 14-20.

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.[62] (Underscoring supplied)

Rape by sexual assault was introduced into our penal system via the amendatory Anti-Rape Law of 1997 (R.A. No. 8353), which took effect on October 22, 1997. With these amendments, rape was reclassified as a crime against person and not merely a crime against chastity.[63]

Considering that the law was already in force at the time of the insertion of appellant's finger into BBB's vagina on December 6, 1998, he should have been prosecuted and tried for rape by sexual assault and not under the traditional definition of rape. The People, however, failed in this regard. That is fatal.

Sections 8 and 9 of the 2000 Rules of Criminal Procedure state:

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

---

[62] Revised Penal Code, Art. 266-A, as amended by R.A. No. 8353.

[63] *People v. Fetalino,* G.R. No. 174472, June 19, 2007, 525 SCRA 170.

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 complained 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 for the court to pronounce judgment.

Under the new rules, the information or complaint must state the designation of the offense given by the statute and specify its qualifying and generic aggravating circumstances. Otherwise stated, the accused will not be convicted for the offense proved during the trial if it was not properly alleged in the information. Although the rule took effect on December 1, 2000, the same may be applied retroactively because it is a cardinal rule that rules of criminal procedure are given retroactive application insofar as they benefit the accused.[64]

In sum, in Criminal Case No. 2638, appellant should have been convicted only of the qualified rape of BBB in January 1992. The rape by sexual assault committed on December 6, 1998, although proven, should not have been considered by the trial and appellate courts for lack of a proper allegation in the information.

We go now to the penalty and the award of damages.

Appellant is liable for the rape of AAA sometime in 1990 and on March 25, 1996. He is also guilty of raping BBB in January 1992. At that time, the law penalizing rape was still Article 335 of the Revised Penal Code, as amended by R.A. No. 7659. The said law provides:

Art. 335. *When and how rape is committed.*

xxx xxx xxx

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

[64] *People v. Vallejo,* G.R. No. 125784, November 19, 2003, 416 SCRA 193.

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

In view of the passage of R.A. No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the death penalty should be downgraded. Pursuant to Section 2 of the said law, the penalty to be meted out to appellant shall be *reclusion perpetua*. Said section reads:

Section 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole following Section 3 of the said law, which provides:

Section 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

With regard to the award of damages, the same must be modified. The CA correctly increased the amount of indemnity from ₱50,000.00 to ₱75,000.00 each for AAA and BBB. Civil indemnity of ₱75,000.00 is warranted if the crime is qualified by circumstances which warrant the imposition of the death penalty.[65] The award of additional ₱25,000.00 each by way of

[65] *People v. Barcena,* G.R. No. 168737, February 16, 2006, 482 SCRA 543, 561.

exemplary damages deserves affirmance due to the presence of the qualifying circumstances of minority and relationship.[66]

However, the CA erred in affirming the RTC award of moral damages of ₱50,000.00 which should be increased to ₱75,000.00 without need of pleading or proof of basis.[67]

WHEREFORE, the appealed judgment is *AFFIRMED WITH MODIFICATION*, as follows:

(1) In Criminal Case No. 2650, appellant Jerry Nazareno is hereby found *GUILTY* of two counts of qualified rape and is sentenced to *reclusion perpetua* for each felony, without eligibility for parole. He is further ordered to indemnify the victim in the amount of ₱75,000.00, another ₱75,000.00 in moral damages and ₱25,000.00 in exemplary damages, for each count.

(2) In Criminal Case No. 2638, appellant is found *GUILTY* of one count of qualified rape and is sentenced to *reclusion perpetua* without eligibility for parole. He is likewise ordered to pay the complainant ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, and *Brion, JJ.,* concur.

Azcuna, J., on official leave.

---

[66] *People v. Arsayo,* G.R. No. 166546, September 26, 2001, 503 SCRA 275; *People v. Bonghanoy,* G.R. No. 124097, June 17, 1999, 308 SCRA 383, 394; New Civil Code, Art. 2230.

[67] *People v. Alfaro,* 458 Phil. 942, 963 (2003).

EN BANC

[G.R. No. 180444. April 9, 2008]

FEDERICO T. MONTEBON and ELEANOR M. ONDOY, *petitioners, vs.* **COMMISSION ON ELECTIONS and SESINANDO F. POTENCIOSO, JR.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; LOCAL GOVERNMENTS; LOCAL ELECTIVE OFFICIALS DISQUALIFIED FROM SERVING MORE THAN THREE CONSECUTIVE TERMS IN THE SAME POST; ELUCIDATED.— The 1987 Constitution bars and disqualifies local elective officials from serving more than three consecutive terms in the same post. Section 8, Article X thereof states: Sec. 8. The term of office of elective local officials, except *barangay* officials, which shall be determined by law shall be three years and no such officials shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected. Section 43 of the Local Government Code also provides: Sec. 43. Term of Office. (b) No local elective official shall serve for more than three consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected. In *Lonzanida v. Commission on Elections*, the Court held that the two conditions for the application of the disqualification must concur: 1) that the official concerned has been elected for three consecutive terms in the same local government post; and 2) that he has fully served three consecutive terms. In *Borja, Jr. v. Commission on Elections*, the Court emphasized that the term limit for elective officials must be taken to refer to the right to be elected as well as the right to serve in the same elective position. Thus, for the disqualification to apply, it is not enough that the official has been elected three consecutive times; he must also have served three consecutive terms in the same position.

2. ID.; ID.; ID.; ID.; COMPUTATION OF "THREE CONSECUTIVE TERMS IN THE SAME POST" NOT INTERRUPTED BY *VOLUNTARY* RENUNCIATION OF OFFICE; THAT MUNICIPAL COUNCILOR IN CASE AT BAR SUCCEEDED AS VICE MAYOR BY OPERATION OF LAW, NOT VOLUNTARY.— Succession in local government offices is by operation of law. Section 44 of Republic Act No. 7160, otherwise known as the Local Government Code, provides that if a permanent vacancy occurs in the office of the vice mayor, the highest ranking sanggunian member shall become vice mayor. In this case, a permanent vacancy occurred in the office of the vice mayor due to the retirement of Vice Mayor Mendoza. Respondent, being the highest ranking municipal councilor, succeeded him in accordance with law. It is clear therefore that his assumption of office as vice-mayor can in no way be considered a voluntary renunciation of his office as municipal councilor. In *Lonzanida v. Commission on Elections*, the Court explained the concept of voluntary renunciation as follows: The second sentence of the constitutional provision under scrutiny states, 'Voluntary renunciation of office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which he was elected.' The clear intent of the framers of the constitution to bar any attempt to circumvent the three-term limit by a voluntary renunciation of office and at the same time respect the people's choice and grant their elected official full service of a term is evident in this provision. Voluntary renunciation of a term does not cancel the renounced term in the computation of the three term limit; conversely, **involuntary severance from office for any length of time short of the full term provided by law amounts to an interruption of continuity of service.** Thus, respondent's assumption of office as vice-mayor in January 2004 was an involuntary severance from his office as municipal councilor, resulting in an interruption in the service of his 2001-2004 term. It cannot be deemed to have been by reason of voluntary renunciation because it was by operation of law. We quote with approval the ruling of the COMELEC that – The legal successor is not given any option under the law on whether to accept the vacated post or not. Section 44 of the Local Government Code makes no exception. Only if the highest-ranking councilor is permanently unable to succeed to the post

> does the law speak of alternate succession. Under no circumstances can simple refusal of the official concerned be considered as permanent inability within the contemplation of law. Essentially therefore, the successor cannot refuse to assume the office that he is mandated to occupy by virtue of succession. He can only do so if for some reason he is permanently unable to succeed and occupy the post vacated. x x x Thus, succession by law to a vacated government office is characteristically not voluntary since it involves the performance of a public duty by a government official, the non-performance of which exposes said official to possible administrative and criminal charges of dereliction of duty and neglect in the performance of public functions. It is therefore more compulsory and obligatory rather than voluntary.

APPEARANCES OF COUNSEL

Rolando C. Tempo for petitioners.
The Solicitor General for public respondent.
Paulino B. Labrado for private respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition[1] for *certiorari* assails the June 2, 2007 Resolution[2] of the First Division of the Commission on Elections (COMELEC) in SPA No. 07-421, denying the petition for disqualification filed by petitioners Federico T. Montebon and Eleanor M. Ondoy against respondent Sesinando F. Potencioso, Jr., as well as the September 28, 2007 Resolution[3] of the COMELEC *En Banc* denying the motion for reconsideration.

Petitioners Montebon and Ondoy and respondent Potencioso, Jr. were candidates for municipal councilor of the Municipality

---

[1] *Rollo*, pp. 3-17.

[2] *Id.* at 32-35. Penned by Commissioner Romeo A. Brawner and concurred in by Presiding Commissioner Resurreccion Z. Borra.

[3] *Id.* at 18-29. Per curiam.

of Tuburan, Cebu for the May 14, 2007 Synchronized National and Local Elections. On April 30, 2007, petitioners and other candidates[4] for municipal councilor filed a petition for disqualification against respondent with the COMELEC alleging that respondent had been elected and served three consecutive terms as municipal councilor in 1998-2001, 2001-2004, and 2004-2007. Thus, he is proscribed from running for the same position in the 2007 elections as it would be his fourth consecutive term.

In his answer, respondent admitted that he had been elected for three consecutive terms as municipal councilor. However, he claimed that the service of his second term in 2001-2004 was interrupted on January 12, 2004 when he succeeded as vice mayor of Tuburan due to the retirement of Vice Mayor Petronilo L. Mendoza. Consequently, he is not disqualified from vying for the position of municipal councilor in the 2007 elections.

In the hearing of May 10, 2007, the parties were directed to file their respective memoranda.

In petitioners' memorandum, they maintained that respondent's assumption of office as vice-mayor in January 2004 should not be considered an interruption in the service of his second term since it was a voluntary renunciation of his office as municipal councilor. They argued that, according to the law, voluntary renunciation of the office for any length of time shall not be considered an interruption in the continuity of service for the full term for which the official concerned was elected.

On the other hand, respondent alleged that a local elective official is not disqualified from running for the fourth consecutive time to the same office if there was an interruption in one of the previous three terms.

On June 2, 2007, the COMELEC First Division denied the petition for disqualification ruling that respondent's assumption of office as vice-mayor should be considered an interruption in

[4] Jesus C. Mendoza, Teopisto C. Prosia, Jr., Nicolas Y. Edillon, Ernesto B. Caga, Albaerto T. Gallarde, and Eugenio M. Arigo.

the continuity of his service. His second term having been involuntarily interrupted, respondent should thus not be disqualified to seek reelection as municipal councilor.[5]

On appeal, the COMELEC *En Banc* upheld the ruling of the First Division, as follows:

> Respondent's assumption to the office of the vice-mayor of Tuburan in January 2004 during his second term as councilor is not a voluntary renunciation of the latter office. The same therefore operated as an effective disruption in the full service of his second term as councilor. Thus, in running for councilor again in the May 14, 2007 Elections, respondent is deemed to be running only for a second consecutive term as councilor of Tuburan, the first consecutive term fully served being his 2004-2007 term.
>
> Petitioner Montebon's and Ondoy's June 9, 2007 manifestation and omnibus motion are hereby declared moot and academic with the instant disposition of their motion for reconsideration.
>
> WHEREFORE, premises considered, petitioners' motion for reconsideration is hereby DENIED for lack of merit.
>
> SO ORDERED.[6]

Petitioners filed the instant petition for *certiorari* on the ground that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that respondent's assumption of office as vice-mayor in January 2004 interrupted his 2001-2004 term as municipal councilor.

The petition lacks merit.

The 1987 Constitution bars and disqualifies local elective officials from serving more than three consecutive terms in the same post. Section 8, Article X thereof states:

> Sec. 8. The term of office of elective local officials, except *barangay* officials, which shall be determined by law shall be three years and no such officials shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time

[5] *Rollo*, p. 34.

[6] *Id.* at 27-28.

shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

Section 43 of the Local Government Code also provides:

Sec. 43. Term of Office.

(b) No local elective official shall serve for more than three consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected.

In *Lonzanida v. Commission on Elections*,[7] the Court held that the two conditions for the application of the disqualification must concur: 1) that the official concerned has been elected for three consecutive terms in the same local government post; and 2) that he has fully served three consecutive terms.[8] In *Borja, Jr. v. Commission on Elections*,[9] the Court emphasized that the term limit for elective officials must be taken to refer to the right to be elected as well as the right to serve in the same elective position. Thus, for the disqualification to apply, it is not enough that the official has been elected three consecutive times; he must also have served three consecutive terms in the same position.[10]

While it is undisputed that respondent was elected municipal councilor for three consecutive terms, the issue lies on whether he is deemed to have fully served his second term in view of his assumption of office as vice-mayor of Tuburan on January 12, 2004.

Succession in local government offices is by operation of law.[11] Section 44[12] of Republic Act No. 7160, otherwise known

[7] 370 Phil. 625 (1999).

[8] *Id.* at 636.

[9] 356 Phil. 467 (1998).

[10] *Id.* at 478.

[11] See *Borja, Jr. v. Commission on Elections*, 356 Phil. 467, 476-477 (1998).

[12] SEC. 44. *Permanent Vacancies in the Offices of the Governor, Vice Governor, Mayor, and Vice Mayor.* – (a) If a permanent vacancy

as the Local Government Code, provides that if a permanent vacancy occurs in the office of the vice mayor, the highest ranking sanggunian member shall become vice mayor. Thus:

> SEC. 44. *Permanent Vacancies in the Offices of the Governor, Vice Governor, Mayor, and Vice Mayor.* – (a) If a permanent vacancy occurs in the office of the governor or mayor, the vice governor or vice mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice governor, mayor or vice mayor, the highest ranking *sanggunian* member or, in case of his permanent inability, the second highest ranking *sanggunian* member, shall become the governor, vice governor, mayor or vice mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other *sanggunian* members according to their ranking as defined herein. x x x

In this case, a permanent vacancy occurred in the office of the vice mayor due to the retirement of Vice Mayor Mendoza. Respondent, being the highest ranking municipal councilor, succeeded him in accordance with law. It is clear therefore that his assumption of office as vice-mayor can in no way be considered a voluntary renunciation of his office as municipal councilor.

In *Lonzanida v. Commission on Elections*, the Court explained the concept of voluntary renunciation as follows:

> The second sentence of the constitutional provision under scrutiny states, 'Voluntary renunciation of office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which he was elected.' The clear intent of the framers of the constitution to bar any attempt to circumvent the three-term limit by a voluntary renunciation of office and at the same time respect the people's choice and grant their elected official full service

---

occurs in the office of the governor or mayor, the vice governor or vice mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice governor, mayor or vice mayor, the highest ranking *sanggunian* member or, in case of his permanent inability, the second highest ranking *sanggunian* member, shall become the governor, vice governor, mayor or vice mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other *sanggunian* members according to their ranking as defined herein. x x x.

of a term is evident in this provision. Voluntary renunciation of a term does not cancel the renounced term in the computation of the three term limit; conversely, **involuntary severance from office for any length of time short of the full term provided by law amounts to an interruption of continuity of service**.[13] **(**Emphasis added)

Thus, respondent's assumption of office as vice-mayor in January 2004 was an involuntary severance from his office as municipal councilor, resulting in an interruption in the service of his 2001-2004 term. It cannot be deemed to have been by reason of voluntary renunciation because it was by operation of law. We quote with approval the ruling of the COMELEC that –

> The legal successor is not given any option under the law on whether to accept the vacated post or not. Section 44 of the Local Government Code makes no exception. Only if the highest-ranking councilor is permanently unable to succeed to the post does the law speak of alternate succession. Under no circumstances can simple refusal of the official concerned be considered as permanent inability within the contemplation of law. Essentially therefore, the successor cannot refuse to assume the office that he is mandated to occupy by virtue of succession. He can only do so if for some reason he is permanently unable to succeed and occupy the post vacated.
>
> xxx xxx xxx
>
> Thus, succession by law to a vacated government office is characteristically not voluntary since it involves the performance of a public duty by a government official, the non-performance of which exposes said official to possible administrative and criminal charges of dereliction of duty and neglect in the performance of public functions. It is therefore more compulsory and obligatory rather than voluntary.[14]

WHEREFORE, the petition is *DISMISSED* for lack of merit. The June 2, 2007 Resolution of the COMELEC First Division denying the petition for disqualification and the September 28,

---

[13] *Supra* note 7 at 638.

[14] *Rollo*, p. 26.

2007 Resolution of the COMELEC *en banc* denying the motion for reconsideration, are *AFFIRMED*.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-de Castro, and *Brion, JJ.*, concur.

Azcuna, J., on official leave.

EN BANC

[A.M. No. 08-1-30-MCTC. April 10, 2008]

RE: FINANCIAL REPORT ON THE AUDIT CONDUCTED IN THE MUNICIPAL CIRCUIT TRIAL COURT, APALIT-SAN SIMON, PAMPANGA

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; COLLECTION OF COURT FUNDS; DUTY TO IMMEDIATELY DEPOSIT THE SAME WITH AUTHORIZED GOVERNMENT DEPOSITORIES; DELAYED REMITTANCE IS GROSS NEGLECT OF DUTY.— Supreme Court Circulars Nos. 13-92 and 5-93 provide the guidelines for the proper administration of court funds. SC Circular No. 13-92 commands that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank." In SC Circular No. 5-93, the Land Bank was designated as the authorized government depository. Court personnel tasked with collections of court funds, such as clerks of courts and cash clerks, should deposit immediately with authorized government

depositories the various funds they have collected because they are not authorized to keep funds in their custody. Delayed remittance of cash collections constitutes gross neglect of duty. 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.

2. ID.; ID.; ID.; ID.; ID.; ID.; RESTITUTION OF SHORTAGES WILL NOT ERASE CULPABILITY.— Respondent's restitution of the shortages will not free her from the consequences of her wrongdoing and will not erase her administrative culpability. By her reprehensible act of gross dishonesty, respondent has undermined the public's faith in courts and, ultimately, in the administration of justice.

3. ID.; ID.; ID.; ACCOUNTABILITY OF PUBLIC FUNDS; VIOLATED FOR FAILURE TO ISSUE OFFICIAL RECEIPT IN COLLECTIONS AND FAILURE TO DETAIL CASH TRANSACTIONS IN MONTHLY FINANCIAL REPORT; PROPER PENALTY IS DISMISSAL.— The record shows that respondent did not issue an official receipt for Criminal Case Nos. 9308-9312 amounting to ₱8,000.00, a clear violation of Sections 61 and 113, Article VI of the Government Auditing and Accounting Manual. In addition, respondent failed to detail in her monthly report of collections and deposits all true and correct cash transactions in violation of Circular 32-93. She also falsely reported that certain withdrawals have been duly acknowledged by their respective claimants by means of signatures which respondent herself had forged. It bears emphasis that the safeguarding of funds and collections, the submission to the Court of a monthly report of collections for all funds and the proper issuance of official receipts for collections are essential to an orderly administration of justice. Hence, respondent's failure to comply with the pertinent Court Circulars and other relevant rules designed to promote full accountability for public funds constitutes gross neglect of duty and grave misconduct. Dishonesty, gross neglect of duty and grave misconduct are grave offenses punishable by dismissal. Hence, for failure to live up to the high ethical standards expected of court employees, respondent should be dismissed.

D E C I S I O N

***PER CURIAM*:**

Before us is an administrative case which arose from the Memorandum[1] submitted to Deputy Court Administrator Jose P. Perez dated 29 November 2007 prepared by Irene R. Malonzo, team leader of the Office of the Court Administrator (OCA) Financial Audit Team, charging Maria Algabre Chico (respondent), Clerk of Court II, Municipal Circuit Trial Court (MCTC) of Apalit-San Simon, Pampanga of gross dishonesty.

On 9 to 13 December 2002, a Judicial Audit Team made an inventory of cases of Judge Valentino B. Nogoy, then Presiding Judge of MCTC Apalit-San Simon, Pampanga, who was due to retire from the service on 14 February 2003. In the course of the inventory of case exhibits, the Judicial Audit Team discovered that *jueteng moneys* seized for violation of Presidential Decree No. 1602 were deposited with the ASCOM Multi-Purpose Cooperative, Inc., San Juan, Apalit, Pampanga under Savings Account No. 6562 and in the name of the MCTC with Court Stenographer Ana Marie M. Male as the authorized signatory. In view of the discovery, the Judicial Audit Team recommended the conduct of a thorough financial audit of the books of accounts of respondent.[2]

On 23 to 27 June 2003, a financial audit team (the first team) headed by Soledad R. Ho was directed to conduct the recommended audit. The first team's spot cash count revealed that the amount of ₱132,400.00 comprising the undeposited collection of the Fiduciary Fund was found in respondent's possession. At the time the Land Bank of the Philippines-San Fernando, Pampanga Branch (the Land Bank), the nearest depository bank, was fifteen (15) kilometers away from the MCTC. After the cash count, Ho requested respondent and Judge Roy Gironella, the acting presiding judge, to open a savings account for the fund with the Land Bank. The failure to maintain

---

[1] *Rollo*, pp. 3-17.

[2] *Id.* at 3.

an account with the Land Bank is violative of Circular No. 50-95 which prescribes the guidelines on proper handling of Fiduciary Fund accounts.[3]

Ho then prepared a draft report on the audit conducted but the same was not finalized and was submitted to the Court on account of respondent's failure to satisfy the requirements laid down by Ho.[4] The report remained unattended to until Presiding Judge Teodora R. Gonzales of MCTC of Apalit-San Simon, Pampanga informed the Court in her Letter-request dated 3 November 2004 of her observations after an inventory of the trial court's dockets, *viz.*: (a) the discrepancy in the amount of money which should have been deposited in the court's account; (b) at least four (4) cases, reportedly dismissed and withdrawn, were still being tried in court; (c) no withdrawals had been made but there was failure to deposit the bonds and supersedeas bonds within twenty-four (24) hours as required is noticeable; and (d) despite instructions to deposit the missing amount and to make an accurate report of the fiduciary account at a given time, respondent failed to do so.[5]

On 4 January 2007, Judge Gonzales issued a memorandum addressed to respondent directing her to explain her non-compliance with the court order for the transfer of the confiscated bonds from the Fiduciary Fund to Judiciary Development Fund (JDF) and to show proof, if any, that the orders given to her have been carried out. Judge Gonzales likewise stated that the following cash bonds were not deposited to the Fiduciary Fund:

Date of Order	Case Number/Title	Amount
08/11/04	03-13 to 03-14/*PP vs. Josefina Alfonso*	₱ 1,000.00
01/19/05	02-129/*PP vs. Albert dela Cruz*	3,000.00

[3] *Id.* at 4.

[4] *Id.*

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

09/21/05	9308, 9310 to 9312/*PP vs. Josephine Oida*	8,000.00
10/19/05	02-152 to 02-153/*PP vs. Carmelita Bicomong*	10,000.00
12/20/05	01-583/*PP vs. Claudio Sumang*	2,000.00
	Total	**₱ 24,000.00**[6]

In respondent's undated explanation, she admitted her failure to deposit the cash bonds and offered the excuse that she had used the collection to defray her family expenses. Along with the explanation was a certification dated 10 January 2007 signed by respondent to the effect that the confiscated cash bonds had been deposited to the JDF account.[7]

On 11 January 2007, Judge Gonzales assigned Emalyn J. De Leon, Court Stenographer II, to monitor the fiduciary collections.[8] Respondent, however, remained accountable for the issuance of all receipts (for SAJF, JDF, Mediation Fund, LRF, STF & FF), collections, deposits, withdrawals, and disbursement of the Court's Fiduciary Fund.[9]

On 2 February 2007, Ms. De Leon voluntarily retired from the service. Judge Gonzales then, for her security, instructed Ms. De Leon to prepare the monthly report for the fiduciary fund from the time Judge Gonzales had assigned her to do the recording and monitoring which respondent would review. If everything was in order, respondent would issue a certification to the effect that said reports were true and correct.[10]

On 6 July 2007, Judge Gonzales informed the Court Administrator that for a period of time a total of ₱63,861.20

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* at 6.

[10] *Id.*

had not been remitted to the proper accounts. As such, Judge Gonzales ordered respondent to explain her inaction.[11]

In her explanation dated 19 June 2007, respondent again admitted her infractions and explained that financial problems beset her and her family.[12]

In view of Judge Gonzales's requests, as well as her observations on the manner of collections by respondent, another team (the second team) was authorized to finalize the financial examination from 23 July 2007 to 3 August 2007.[13]

In the morning of 23 July 2007, the second team found an accountability balance or shortage of ₱10,960.40 for the period between 2 July and 19 July 2007, broken down as follows:

Denomination	***Pieces***	***Equivalent***
₱ 500.00	1	₱ 500.00
200.00	1	200.00
100.00	8	800.00
Total Cash in Hand		**₱1,500.00**

The shortage is computed as follows:

Fund	***OR Issued***	***Period***	***Amount***
JDF	6421736 to 642150, 64218011	July 2 to 29, 2007	₱5,342.80
SAJF	6421769 to 6421785	July 2 to 19, 2007	6,977.20
LRF	0557025 to 0557030	July 2 to 19, 2007	120.00
Total Collected amount for the period July 2-19, 2007			₱12,440.00
*Less: Total Cash on HAND on July 23, 2007			1,500.00
Balance of Accountability (SHORTAGE) upon demand Of the undeposited collections as of July 19, 2007 ₱ 10,940.00			

[11] *Id.*

[12] *Id.*

[13] *Id.*

The second team then required respondent to produce the missing amount for the duration of the audit period but to no avail. The amount was only deposited on 21 and 22 August 2007 for SAJF and JDF, and on 10 October 2007 for the LRF collections.

Following are the other significant audit findings by the second team contained in its Report:[14]

Particulars	**JDF**	**GF**	**SAJF**	**Mediation**
Period Covered	*March, 1985 to June 2007*	*Nov. 1990 to Nov. 2003*	*Nov. 11, 2003 to June 30, 2007*	*August 2004 to June 30, 2007*
Total Collection	*826,984.52*	*209,137.60*	*287,847.60*	*136,000.00*
Total Remittance	*816,836.70*	*203,132.20*	*250,525.80*	*125,500.00*
Balance	*10,147.82*	*6,014.40*	*37,321.80*	*10,500.00*
Less: GF coll. Erroneously remitted to JDF account	*10,566.20*	*10,566.20[?]*		
Less: SAJF Collection erroneously deposited to GF account		*(4,599.80)*	*4,599.80*	
Total	*20,714.02*		*32,722.00*	
Less: Deposit made on July 23, 2007 for June 19 to 26, 2007 collection	*2,631.20*		*5,268.80*	
Balance of Accountability (SHORTAGE) per Reconciliation	*18,082.82*		*27,453.20*	
Add: Unreceipted Marriage Solemnization	*11,026.00*		*74.00*	
Balance of Accountabilities/ SHORTAGE	***29,108.82***	***48.00***	***29,527.20***	***10,500.00***

[14] *Id.* at 3-17; Dated 29 November 2007.

For the above funds which legal fees are remitted to the Supreme Court, the team observed the following deviation to the prescribed guidelines under the Government Accounting & Auditing Manual (GAAM) and SC Circulars, to wit:

1) Delayed remittances, specifically for the period from April to June 2007, for JDF & SAJF collections:

JDF

Period	*Amount Collected*	*Amount Remitted*	*Date Remitted*	*Balance (OVER)/ UNDER*
April, 2007	9,256.00	1,683.60	04/23/07	7,572.40
May, 2007	8,280.42	3,030.40	06/20/07	5,250.02
June 2007	7,956.80	2,631.20	07/23/07	5,325.60

SAJF

Period	*Amount Collected*	*Amount Remitted*	*Date Remitted*	*Balance (OVER)/ UNDER*
April, 2007	23,494.00	4,566.40	04/23/07	18,927.60
May, 2007	4,258.00	4,258.00	06/08/07	
June 2007	13,993.20	200.00	06/20/07	13,793.20

Article 1, Section 111 of GAAM provides that all collections totaling to ₱500.00 and more should be remitted within 24 hours upon collection or when it is below ₱500.00 on a weekly basis.

2) The unreceipted Solemnization Fee which totaled ₱11,100.00 proves that no collections were received for the service rendered. It is the responsibility of the Clerk of Court/Accountable Officer to make sure that the prescribed legal fees are collected before solemnization of marriage would take place.

The team recommended the "NO RECEIPT, NO SOLEMNIZATION" policy to Ms. Chico and Judge Gonzales, to prevent the same infraction. The team also stressed that the total unreceipted and unremitted amount of ₱11,100.00 will form part of Ms. Chico's accountabilities. These were already included with the final accountabilities computed above.

3) The official Cashbook was not certified by Ms. Chico as to the correctness of the entries of transactions indicated herein at

the end of the month.

4) The term noticed the withdrawals of interest earned from Fiduciary Fund account amounting to ₱2,398.29 on May 10, 2007 for the period January to March, 2007 but *NO remittance* to JDF account was found until the duration of the audit on August 3, 2007. This amount was recognized as part of May 2007 transactions and included in the final accountability for JDF account as shown above.

Summarized below are the Accountabilities for amounts held in Trust by the Court:

Particulars	***Fiduciary Fund***	***Sheriff Trust Fund***
Period covered	*1995 to June 30, 2007*	*August 2004 to June 30, 2007*
Total collection including MTO deposit amounting to ₱823,200.00	*₱2,342,100.00*	*₱ 118,100.00*
Total Withdrawals for the same period	*1,182,000.00*	*4,186.00*
Unwithdrawn Balance as of June 30, 2007	*1,160,100.00*	*113,814.00*
Less: Adjusted Bank Balance as of June 30, 2007	*1,071,100.00*	*103,814.00*
Balance of Accountability/SHORTAGE	***89,000.00***	***10,000.00***

The two (2) trust funds are maintained by the Court in one Savings Account under LBP SA#3421-0053-10. The team advised Ms. Chico and Judge Gonzales to:

- Open an account for Sheriff Trust Fund (STF), both of them should be the signatories in an "AND" capacity;
- Have a separate cashbook for STF;
- Issue official receipts separate from fiduciary fund or use a different booklet(s) of official receipt(s) upon collection; and
- Regularly report on a monthly basis all transactions of STF to SC Revenue Section, Accounting Division, Financial Management Office, OCA.

SHERIFF TRUST FUND

1. It was also observed that release of transportation allowance to process server, Jimmy Gonzales was not authorized by Judge Teodora R. Gonzales. A mere acknowledgement receipt of Ms. Gonzales serves as proof of its disbursement. Administrative Circular No. 35-2004, Sec. 10, 13th par. states that:

x x x the Sheriff, process server or other court authorized person shall submit for its approval (by Presiding/Executive) a Statement of Estimated Travel Expense for service of summon and court processes. After service, a statement of LIQUIDATION shall be submitted to the court for approval, i.e., Presiding/Executive Judge.

The team warned Ms. Chico that she will be held accountable for the travel/transportation expenses incurred by Mr. Gonzales if the latter would not be able to submit the liquidation report. Thus, she was advised to demand from Mr. Gonzales to liquidate the cash advances made by him, otherwise she will pay for the unliquidated amounts.

The team also informed Judge Gonzales to effect the approval of the Statement of Estimated Travel Expenses (SETE) of Mr. Gonzales before a cash advance equivalent to the amount stated in SETE shall be released to him by the Clerk of Court.

2. Also, when Civil Case No. 06-06 was filed, the ₱1,000.00 due to STF account was not collected. The team advised Ms. Chico that the ₱1,000.00 to be paid from CC#06-06 is part of the shortage balance of ₱10,000.00.

3. Further, upon opening a separate savings account for STF the shortage balance of ₱10,000.00 should be restituted first, to complete the total Unwithdrawn Sheriff Trust Fund amounting to ₱113,814.00.

FIDUCIARY FUND

Aside from the computed shortage amounting to **₱89,000.00** the team was alarmed with the following observations, to wit:

I. Although actually refunded to the parties and remitted to the JDF account at the time of the audit, numerous WITHDRAWALS and CONFISCATED cash bonds were not reported to the Supreme Court enumerated below.

OR NO.	CASE NO.	NAME OF PARTY	Date Collected	Amount Collected	Date of Court Order	Amount Withdrawn	Date Refunded	Amount Confisca-ted	Date Confisca-ted
13115321	02-129	Albert dela Cruz	11/13/02	3,000.00	01/19/05			3,000.00	01/10/07
13115314	2002-89	Eliza Cariño	06/03/02	1,000.00	01/19/05			1,000.00	01/12/06
13115333	02-89	Eliza Cariño	11/05/03	2,000.00	01/19/05			2,000.00	01/12/06
13115343	02-41	Silvestre Quiambao	06/02/04	85,000.00	12/13/04	85,000.00	02/28/05		
13115340	04-55	Reynoso Capulong	03/19/04	5,000.00	09/30/04	5,000.00	10/08/04		
13115339	04-55	Flora Marcos	02/19/04	5,000.00	09/30/04	5,000.00	10/08/04		
13115307	01-601	Jesus Espinosa	01/14/02	6,000.00	03/30/05	6,000.00	04/14/05		
13115324	02-223	Roberto Lumiares	12/17/02	5,000.00	02/17/04	5,000.00	08/20/04		
13115342	03-122	Normita Cunanan	05/19/04	1,000.00	05/19/04	1,000.00	02/17/04		
9137964	9948	Rogelio Mutuc	08/09/99	3,000.00	09/10/03	3,000.00	09/11/03		
13115337	03-13 to 14	Josefina Alfonso	02/04/04	1,000.00	08/11/04			1,000.00	11/24/07
Unreceipted	9308-9312	Josephine Oida	02/08/06	8,000.00	09/21/05	3,000.00		8,000.00	01/09/07
13115317	02-152 &153	Carmelita Bicomong	07/16/02	10,000.00	03/01/04			10,000.00	03/04/04
13115335	01-583	Claudio Sumang	01/12/04	2,000.00	12/20/05			2,000.00	01/09/06
13115336	04-05	Elenita de Vera	01/14/04	6,000.00	01/19/05			6,000.00	01/16/06
13115308	01-683 & 684	Homer Caylao	01/16/02	4,000.00	09/23/04	4,000.00	01/10/05		
TOTAL				**147,000.00**		**114,000.00**		**33,000.00**	

As presented, a total of **₱147,000.00** was refunded and confiscated cash bonds were RESTITUTED by Ms. Chico. This also represents a portion of the cash collections she didn't deposit upon its receipt and admittedly used for her own *family's* benefit.

Ms. Chico admitted to the Team that these cash bonds were not deposited to the bank (LBP) when they were collected, the team

found that [these] undeposited collections ballooned to a maximum amount of ₱368,400.00 for the period September 2000 to June 30, 2007(See schedule A for details). The amount of ₱368,400.00 was reduced to ₱89,000.00 because Ms. Chico returned the amount collected to the bondsmen/accused, if there is a court order to release the same or there is an order of confiscation, broken down as follows:

Total	*Undeposited*	*Collections*
₱368,400.00		
Less: Cash found on hand during The First Audit	*₱132,400.00*	
Refunded Cash bonds as of June 30, 2007	*114,000.00*	
Confiscated Cash bonds transferred To JDF		*33,000.00*
279,400.00		
Shortage amount as of June 30, 2007		
₱ 89,000.00		

The shortage balance amounting to ₱89,000.00 was restituted on August 30, 2007. The total cash amounting to ₱132,000.00 was found on hand during the first surprise cash count by the first Audit Team which was deposited to the nearest LBP (San Fernando Branch) only on June 25, 2003. It was further revealed that the refunded cash bonds were taken from the available cash that Ms. Chico has in her possession, until the said Audit Team arrived at the subject court.

Ms. Chico failed to report the said withdrawals to the court because she did not know how to present the unlikely transactions in her Monthly Report of Collections/Deposit & Withdrawals because Judge Gonzales would scrutinize all the transactions in the report.

Since Judge Gonzales has directed Ms. Chico to present to her the Court's passbook to release the cash bonds to the accused/ bondsman amounting to ₱114,000.00 and to deposit all confiscated cash bonds to the JDF account amounting to ₱33,000.00 with court orders, she has no recourse but to restitute the said amounts which she used for personal gain, thus, leaving a shortage balance of ₱89,000.00. This shortage balance was also restituted on August 30, 2007 after the duration of the Second Audit.

II. **FORGED SIGNATURES:**

a) **CASE NO. 02-152 to 02-153**, payee, **Carmelita Bicomong,** under SC OR# 13115317 collected on July 16, 2002, amounting to **₱10,000.00** was reported to the Accounting Division, FMO-OCA to have been withdrawn and refunded on March 4, 2004 with Court Order *apparently signed* by Judge Roy Gironella, but was only ordered CONFISCATED by Judge Teodora Gonzales on **October 19, 2005.**

Attached to the Monthly Report submitted to Accounting Division, FMO-OCA when this case was *allegedly withdrawn* on March 4, 2004, were withdrawal slip, "duly signed" by Judge Roy Gironella,, copy of Judge Gironela's order marked only with "ORIGINAL SIGNED", and acknowledgement receipt allegedly signed by Carmelita Bicomong.

b) **CASE NO. 02-27 to 02-31**, payee, **Luisa Manarang**, under OR# 13115310 collected on February 2, 2002, amounting to ₱10,000.00 reported to the Accounting Division, FMO-OCA to have been withdrawn and refunded on **March 4, 2004** but the casewas actually DISMISSED only on **September 23, 2004** by Judge Gonzales.

Attached to the Monthly Report submitted to Accounting Division, FMO-OCA when this case was *allegedly withdrawn* were withdrawal slip, "duly signed" by Judge Gironela, copy of Judge Gironella's order marked only "ORIGINAL signed", and acknowledgment receipt allegedly signed by **Luisa Manarang**.

c) These two mentioned cash bonds (items a & b) were questioned by Judge Gonzales because they were already reported withdrawn but the cases were still being actively tried by the court at the time she assumed office. The bonds in both cases were eventually ordered confiscated and withdrawn on March 4, 2004.

The depository bank did not question the validity of the withdrawal slips because they were apparently signed by then Judge Gironella and the court order having stamped with "Original Signed."

Ms. Chico confided that she prepared the court orders and intentionally marked them as "original signed'

making it appear that Judge Gironella signed the withdrawals slips, she forged his signature to complete the two (2) signatories required by the bank which Clerk of Court and the Presiding/Executive Judge of the Court

To make matters worse Ms. Chico also forged the signatures of claimants, Carmelita Bicomong and Luisa Manarang to show that the said cash bonds were already acknowledged by them.

When the team learned about this anomaly, they instructed Ms. Chico and Judge Gonzales to require the claimants to submit photocopy of valid ID's to substantiate the signatures of the claimants apart from the requirements as stated by the SC Circular 50-95. The team asked Ms. Chico to execute an Affidavit that everything she disclosed to the team are true and correct.

III. TAMPERED RECEIPT:

Supreme Court O.R.# 13115334 was TWICE used for cases nos. **03-93** and **9308-9311,** amounting to **₱40,000.00** under payees' name, Tirso Lacanilao collected on January 12, 2004 and ₱8,000.00 Josephine Oida on February 18, 2004, respectively. Both collections were found to be undeposited and unreported.

The copy of O.R. No. 13115334 bearing Josephine Oida's name, amounting to ₱8,000.00 was only a facsimile copy of the supposed "Original" sheet of the receipt which was attached to the case folder. This was subsequently ordered confiscated in favor of JDF account by Judge Gonzales on September 25, 2005.

The O.R. that bears the name of Tirso Lacanilao, amounting to ₱40,000.00, Case No. 03-93 is still ACTIVE and the cash bond is still outstanding.

When team came across this, Ms. Chico voluntarily gave the information that this was actually an **UNRECEIPTED** collection. The team considered this as a **TAMPERED RECEIPT.** According to Ms. Chico when Josephine Oida posted her bond amounting to ₱8,000.00 on February 18, 2004, Ms. Chico did not issue an official receipt, and to appear that a cash bond was collected she made a photocopy of the original sheet of issued O.R. #13115334, erased the contents of it, xeroxed the same again, ALTERING its content, after which attaching the same to the case folder of Ms. Oida.

The collected amount from Ms. Josephine Oida, amounting to ₱8,000.00 is not only an example of a tampered receipt but also an unreceipted collection, with the intention of concealing the transaction.

The standard requirements to make a refund of a legitimate cash bond are (1) Court Order duly signed by a Judge; (2) acknowledgement receipt signed by the claimant; (3) a withdrawal slip signed by both the Executive/Presiding Judge and Clerk of Court; and (4) surrendered original copy of O.R. issued.

The team was appalled by the above observations that lead (sic) them to be suspicious with the entries of all records and documents which Ms. Chico has presented them. Because of what has transpired on the said cases, the team decided to collate all refunded cash bonds without proper identification and required Ms. Chico to present any Identification that will substantiate the release of the same.

A list of refunded cash bonds was provided to Ms. Chico by the team totaling to **₱380,000.00** which the team considered as DISALLOWED withdrawals until Ms. Chico can provide a proper identification for each refunded cash bond. It was stressed and emphasized to Ms. Chico by the team that this amount of ₱380,000.00 will form part of her accountability if ever she fails to present the required documents.

Judge Teodora Gonzales, Ms. Maria Chico, Ms. Ana Marie Male and the Financial Audit Team were present during the exit conference on August 3, 2007. The team discussed their examinations and initial observations and gave suggestions and precautions deemed necessary to be observed by the subject court to avoid the same repetition of Ms. Chico's misgivings. At the same time we provided Ms. Chico a letter which outlined the requirements and documents to be submitted to finalize our reconciliation before we render our report to the Honorable Court.

Ms. Chico was given ten (10) working days to strictly comply with all the requirements, so the Team can submit the necessary report to the court on time.

On August 30, 2007 Ms. Chico submitted personally all proof of payment for all funds which were found to have shortage balances totaling to **₱155,036.02** broken down as follows:

• Judiciary Development Fund	₱ 18,082.82
• Special Allowances for the Judiciary	27,453.20
• Sheriff Trust Fund	
10,000.00	
• Mediation Fund	
10,500.00	
• Fiduciary Fund	89,000.00
Total Cast Accountability	**₱ 155,036.02**

Except from the shortage incurred for General Fund amounting to ₱48.00 which she tried to deposit to the LBP for the account of General fund, but was informed by the Bank that the account was no longer active. So, the team advised Ms. Chico to pay the amount directly to the Revenue Section, Accounting Div. OCA, Supreme Court.

Together with all the proof of remittances for all restituted amounts is a letter explanation dated August 29, 2007 on the matters the team have stated in their letter dated August 3, 2007. This is to give her the venue to expound herself on what the team found to be her irregularities. Ms. Chico manifested on the:

— Delayed remittances particularly on the period April, May, June 2007 for JDF, SAJF, Mediation Fund and Sheriff Trust fund – "*humbly admitted to have been used by ME due to financial problems when her 73 year old husband got sick and has to be medically attended to, not to mention nursing her epileptic daughter who has been suffering from repeated ceasures (sic), who with her two (2) kids were abandoned by her husband and are now solely dependent on ME for support.*"

— Uncollected Solemnization Fees amounting to ₱11,160.00 – *". . . have started contacting the parties concerned and hopefully will be able to remit the said amount to its respective . . . NO RECEIPT, NO SOLEMNIZATION policy will be adhered to.*"

— Disbursing the Sheriff Trust Fund without proper authorization from the Presiding Judge Teodora Gonzales – ". . . *I admit made a mistake in allowing or giving Jimmy Gonzales, our Junior Process Server cash allowances without having prepared the necessary papers for his travel expenses in serving summons.*" *(par. 3, page 2).*

— Money Exhibits of Jueteng Cases deposited with ASCOM Multi-Purpose Cooperative, Inc. – " . . . *ALL of us, employees of this court deemed to WISE to deposit said exhibits with ASCOM,. . .*

during the period Nov. 9, 2001 to Dec. 10, 2002, we made some withdrawals in order to have cash place of our checks. This is with the knowledge of ALL of us." (par. 4, page2)

— On cash bonds that were refunded and confiscated – ". . . *the undersigned humbly admits that she did NOT deposit said cash bounds and when the cases were dismissed, she refunded the cash bond of the accused from her personal money which* ***the undersigned admit*** (sic) ***is a GROSS Violation of the rules and deeply regrets said acts."*** *(par. 6, page 2).*

— On Criminal Case Nos. 02-152 & 02-153 where the team found Ms. Chico forged Judge Gironela's and the two (2) claimants, Carmelita Bicomong & Luisa Manarang's signatures – ". . . *the undersigned in all honesty, humbly admits that she* ***was the one who caused the withdrawals of said cash bonds,*** *and that said cases were not yet dismissed. She needed money for her family…." (par. 7, page 2)*

— On the tampered official receipt (OR# 13115334) and unreceipted collection under Criminal Case No. 03-93, - ".. *undersigned ADMITS that she used the same receipt for Criminal Case No. 9308,9310 to 93120- PP vs. Josephine Oida in the amount of ₱8,000.00." (par. 8, page 2).*

draw table after 1st reading

Summary of Cash Accountabilities of Ms. Maria Chico[15]

Particulars	***Money Value***	***Requirements to be Submitted***
Refunded Cash Bonds	***₱*** *380,000.00*	*Identification for each climants to authenticate their signatures*
Marriage Solemnization	*11,100.00*	*Proof of receipt upon solemnization*
Total	***₱ 391,100.00***	

Based on the foregoing, the team recommended that:

1. The report of the team be **DOCKETED** as a regular administrative matter against **MARIA ALGABRE CHICO**, Clerk of Court II, MCTC Apalit-San Simon, Pampanga;

2. [*sic*]

[15] *Id.* at 7-15.

3. Ms. MARIA ALGABRE CHICO, Clerk of Court II:

Be **DISMISSED** from the service for gross honesty with forfeiture of all her benefits and with prejudice to reemployment in any government agency, including government-owned or controlled corporations;

Be **DIRECTED** to:

a. **SUBMIT** identifications of the claimants of all withdrawn cash bonds amounting to ₱380,000.00; otherwise **RESTITUTE** the said amount in the Fiduciary Fund Account;

b. **ACCOUNT** for the Marriage Solemnization fees amounting to ₱11,100.00, otherwise deposit the same to their respective funds.

4. Judge **TEODORA R. GONZALES**, Presiding Judge, MCTC Apalit-San Simon, Pampanga be **DIRECTED** to;

EXPLAIN why she didn't relieve Ms. Maria Chico from her duties and responsibilities when she first discovered her alleged irregularities and the succeeding examinations of her collections;

DESIGNATE a competent and honest personnel of the Court to replace Ms. Chico as collecting officer;

CAUSE the transfer and deposit of the exhibit moneys deposited with ASCOM Multi-purpose, Inc. amounting to ₱5,297.75 to SAJF account; and the net interest amounting to ₱1,053.57 to JDF account.

5. The Legal Office, OCA be **DIRECTED** to file a criminal case against Ms. MARIA A. CHICO, Clerk of Court II, MCTC Apalit-San Simon, Pampanga.[16]

In its Memorandum[17] dated 26 November 2007, the OCA adopted the recommendation of the second team and recommended the approval thereof by the Court.

The recommendation is well-taken.

---

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

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

Respondent, in her explanation,[18] admitted that she was remiss in her duties as collecting officer. She owned up, among other things, to having used some of the collections to pay for her personal expenses. She also confessed her failure to duly collect solemnization fees and to properly and immediately deposit the cash bonds. She also declared her mistake in giving the junior process server cash allowances without preparing the necessary papers for travel expenses in the service of summons.

Supreme Court Circulars Nos. 13-92 and 5-93 provide the guidelines for the proper administration of court funds. SC Circular No. 13-92 commands that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank." In SC Circular No. 5-93, the Land Bank was designated as the authorized government depository.

Court personnel tasked with collections of court funds, such as clerks of courts and cash clerks, should deposit immediately with authorized government depositories the various funds they have collected because they are not authorized to keep funds in their custody. Delayed remittance of cash collections constitutes gross neglect of duty. 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.[19]

Respondent's restitution of the shortages will not free her from the consequences of her wrongdoing[20] and will not erase her administrative culpability. By her reprehensible act of gross dishonesty, respondent has undermined the public's faith in courts and, ultimately, in the administration of justice.[21]

---

[18] *Id*. at 67-69; Dated 29 August 2007. [19] *Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City*, 26 June 2006, 492 SCRA 469, 481.

[20] *Re: Report on the Financial Audit Conducted at the Municipal Trial Courts of Bani, Alaminos and Lingayen, in Pangasinan*, 462 Phil. 535-543 (2003), 417 SCRA 107, 111.

[21] *Sollesta v. Mission*, A.M. No. P-03-1755, 29 April 2005, 457 SCRA 519, 536.

Moreover, the record shows that respondent did not issue an official receipt for Criminal Case Nos. 9308-9312 amounting to ₱8,000.00, a clear violation of Sections 61 and 113,[22] Article VI of the Government Auditing and Accounting Manual. In addition, respondent failed to detail in her monthly report of collections and deposits all true and correct cash transactions in violation of Circular 32-93.[23] She also falsely reported that

[22] ARTICLE VI - Accountable Forms

'Sec. 61. Kinds of Accountable forms -

(a) Official Receipts - For proper accounting and control of collections, collecting officers shall promptly issue official receipts for all monies received by them. These receipts may be in the form of stamps or officially numbered receipts x x x.

Sec. 113. Issuance of official receipt -For proper accounting and control of revenues, no payment of any nature shall be received by a collecting officer without immediately issuing an official receipt in acknowledgment thereof. This receipt may be in the form of stamps x x x or officially numbered receipts, subject to proper custody and accountability.

[23] 1. *Submission* of monthly report of collections for all funds should be sent to this Court not later than the 10th day of each succeeding month and should include the following:

a) Original copy of the Report of the Clerk of Court's Account indicating the current debit and credit (Judicial Form No. 20); duplicate official receipts issued; and the corresponding remittance advice slips duly validated by the Bank where collection was deposited (amount of collections per report should equal amount per remittance).

b) Duplicate copy of Sheriff's report of Collections and Account (Judicial Form No. 38-A); validated duplicate copy of official receipts and the corresponding remittance advice slips (amount of collections per report should equal amount per remittance).

(For General Fund for *Ex-Officio* Sheriff of RTC and SDC)

c) Original copy of report for deposits and withdrawals and validated duplicate copy of official receipts and deposit slips; and in cases of withdrawals, a copy of the order of the Court duly authenticated with the Court's seal and copy of acknowledgement receipt. (For Fiduciary Fund of RTC and SDC).

d) Original copy of report for deposits and withdrawals; duplicates official receipts issued and in cases of withdrawals, copy of Sheriff cash payment receipts.

(For Sheriff Trust Fund of RTC and SDC)

certain withdrawals have been duly acknowledged by their respective claimants by means of signatures which respondent herself had forged.

It bears emphasis that the safeguarding of funds and collections, the submission to the Court of a monthly report of collections for all funds and the proper issuance of official receipts for collections are essential to an orderly administration of justice. Hence, respondent's failure to comply with the pertinent Court Circulars and other relevant rules designed to promote full accountability for public funds constitutes gross neglect of duty and grave misconduct.[24] Dishonesty, gross neglect of duty and grave misconduct are grave offenses punishable by dismissal.[25] Hence, for failure to live up to the high ethical standards expected of court employees, respondent should be dismissed.

WHEREFORE, the Court finds Maria Algabre Chico, Clerk of Court II, MCTC, Apalit-San Simon, Pampanga, guilty of gross dishonesty and malversation of public funds and imposes on her the penalty of *DISMISSAL* from the service. Except for leave credits already earned, her retirement benefits are *FORFEITED*, with prejudice to reemployment in any government agency, including government-owned and controlled corporations.

---

e) Original copy of Report of Collections and Deposits; duplicate official receipts issued and a copy of the validated deposit slip or the postal money order stub if remittance is by PMO.

(For Judiciary Development Fund of RTC, SDC, Metro TC, MTCC, MTC, MCTC and SCC

[24] *Office of the Court Administrator v. Dureza-Aldevera*, A.M. No. P-01-1499, 26 September 2006, 503 SCRA 18, 49.

[25] Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (Resolution No. 9-1936, which took effect on September 27, 1999) provides:

Section 52. *Classification of Offenses*. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

1. Dishonesty – 1st Offense – Dismissal
2. Gross Neglect of Duty – 1st Offense – Dismissal
3. Grave Misconduct – 1st Offense – Dismissal

The Civil Service Commission is ordered to cancel her civil service eligibility, if any, in accordance with Section 9, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.[26]

The Court *DIRECTS* the Office of the Court Administrator to file criminal charges against respondent Maria Algabre Chico before the appropriate court.

Further, the Court *DIRECTS* Judge Teodora R. Gonzales, Presiding Judge, MCTC, Apalit-San Simon, Pampanga to:

1. **Explain** why respondent was not relieved of her duties and responsibilities upon the discovery of the irregularities and after the succeeding examinations of respondent's collections;

2. **Designate** a competent and honest personnel of the court to replace respondent as collecting officer;

3. **Cause** the transfer and deposit of the exhibit moneys deposited with ASCOM Multi-Purpose, Inc. amounting to ₱5,297.75 to the SAJF account, and of the net interest amounting to ₱1,053.67 to the JDF account.

SO ORDERED.

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

Azcuna, J., on official leave.

[26] Section 9, Rule XIV of the Civil Service Rules provides that "(t)he penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits and retirement benefits, and the disqualification for re-employment in the government service. Further, it may be imposed without prejudice to criminal or civil liability."

SECOND DIVISION

[A.M. No. P-08-2447. April 10, 2008]
(Formerly A.M. OCA I.P.I. No. 06-2447-P)

ELVISA ROSALES, *complainant, vs.* **DOMINADOR MONESIT, SR., Court Interpreter, Municipal Trial Court, Tandag, Surigao del Sur,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; ADMINISTRATIVE COMPLAINT AGAINST COURT PERSONNEL; ADMINISTRATIVE CASE TO PROCEED DESPITE DESISTANCE OF THE COMPLAINANT.— This Court's jurisdiction to proceed with an administrative case despite the desistance of the complainant is settled. In *Vilar v. Angeles,* the Court stressed: . . . [T]he withdrawal of the complaint or the desistance of a complainant does not warrant the dismissal of an administrative complaint. This Court has an interest in the conduct and behavior of all officials and employees of the judiciary and in ensuring at all times the proper delivery of justice to the people. No affidavit of desistance can divest this Court of its jurisdiction under Section 6, Article VII[I] of the Constitution to investigate and decide complaints against erring employees of the judiciary. *The issue in an administrative case is not whether the complain[ant] has a cause of action against the respondent, but whether the employees have breached the norms and standards of the courts*.

2. ID.; ID.; ID.; WILLFUL FAILURE TO PAY JUST DEBT; ADMINISTRATIVE LIABILITY NOT EXCULPATED WITH THE SETTLEMENT OF OBLIGATION DURING PENDENCY OF COMPLAINT; PROPER PENALTY.—That respondent settled his obligation with complainant during the pendency of the present complaint does not exculpate him from administrative liability. Willful failure to pay just debt amounts to conduct unbecoming a court employee. Under the *Uniform Rules on Administrative Cases in the Civil Service*, willful failure to pay just debt is classified as a light offense, punishable by reprimand for the first infraction, suspension for 1 to 30 days for the second, and dismissal for the third offense.

R E S O L U T I O N

CARPIO MORALES, *J.*:

By a sworn Afffidavit-Complaint dated June 2, 2006,[1] Elvisa Rosales (complainant) charged Dominador Monesit, Sr. (respondent), Court Interpreter of the Municipal Trial Court of Tandag, Surigao del Sur, with oppression, deceit, misconduct and violation of Republic Act (RA) No. 6713,[2] RA No. 9262[3] and Article 19, Civil Code.[4]

The Executive Judge of the Regional Trial Court, Tandag, Surigao del Sur to whom the complaint was referred for investigation, report and recommendation after respondent had filed his Comment, gave the following account reflecting the facts that gave rise to the filing of the complaint:

> Sometime in the early part of March, 2005, respondent's wife, a Tupperware dealer sold to Complainant two (2) items for ₱2,358.00 on installment basis. Because Complainant found difficulty paying the items in cash, respondent's wife accepted the former's two (2) pigs as full payment thereof.
>
> In the same month, Complainant sold to respondent's wife the former's motorcycle sidecar for ₱20,000.00, also on installment basis. The agreement was verbal. The sidecar used to be attached to the motorcycle of Complainant's live-in partner, Mario Clavero. She happened to own the [s]idecar as part of the amicable settlement

---

[1] *Rollo*, pp. 5-13.

[2] AN ACT ESTABLISHING CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES.

[3] AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE AND FOR OTHER PURPOSES.

[4] Art. 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.

of the Physical Injury Case she lodged before the Office of the Chief of Police of Tandag, Surigao del Sur, against her live-in partner (Exhibits "2" and "2-A").

Respondent's wife made a downpayment of ₱4,000.00 (Exhibit "3") and paid subsequent instal[l]ments in the total amount of only ₱5,200.00 (Exhibits "3-A", "3-B" and "3-C"). Because of respondent's wife's failure to pay the balance of the purchase price of the Sidecar, differences between her and respondent, on one hand, and Complainant and her live-in partner, on the other hand, ensued. The latter demanded full payment of the balance of the price in the amount of ₱10,200.00. In turn, the former stopped further payment.[5]

The Executive Judge noted that complainant did not present evidence. Respondent presented, however, complainant's AFFIDAVIT OF DESISTANCE, subscribed and sworn to before her counsel, Atty. Limuel L. Auza.

The Executive Judge went on to note as follows:

Apparently, Atty. Auza was able to arrange an out-of-court meeting between Complainant and Respondent and the latter's wife, during which, Respondent agreed to pay Complainant the amount of ₱25[,]000.00 as full settlement of the Sidecar account of Respondent and his wife (Exhibit "1"). By and large, therefore, the allegations of the Complain[an]t, except those admitted, expressly or impliedly, by Respondent, are not deemed proved.

However, the following are either expressly or impliedly admitted by the Respondent:

1. There was, indeed, a transaction by and between Complainant and Respondent's wife involving the sale by the former to the latter of a Motorcycle Sidecar for ₱20[,]000.00, payable [i]n instal[l]ments. There was no written contract.

2. Of the ₱20[,]000.00 consideration of the sale, only ₱9[,]200.00 was paid, leaving a balance of ₱10[,]800.00.

3. When conflict ensued due to the non-payment of the balance of the purchase price, both Respondent and Complainant's live-in partner, who reconciled with the former, intervened and thenceforth decided the respective courses of action to take in the conflict.

---

[5] *Rollo*, pp. 56-57.

4. **Respondent stopped payment,** claiming that Complainant's live-in partner demanded not only the immediate full payment of the balance of the purchase price but also ₱75.00 per day multiplied by the number of days delay in the payment.

The Undersigned believes that it was **improper** (not necessarily misconduct, which signifies "intentional wrong doing") **for Respondent to intervene in the above transaction** and take the cudgel, so to speak, for his wife, creating, in the process, the impression that he was emboldened to act in the manner that he did because of his exalted position in the Municipal Trial Court of Tandag. Indeed, it is not entirely remote that, as alleged by the Complainant in her AFFIDAVIT-COMPLAINT, at one time or another Respondent bragged about his connection with the Court, thus impress[ing] upon the Complainant that he wielded authority and influence that could prejudice the Complainant in her pending Grave Threat Case.

Likewise, it **was improper for Respondent to stop payment of the balance** of the purchase price of the Sidecar, just because Complain[ant's] live-in partner charged the penalty of ₱75.00 per day of delay in the payment. He could have paid the balance of the purchase price as a manifestation of fairness in the deal. Indeed, he was in a position to pay as he did ultimately pay the penalty charges, but only after he was apparently persuaded by Complainant's counsel, as shown in the Affidavit of Desistance of the Complainant, which he submitted as his own evidence before the undersigned Investigator (Exhibit "1").

Respondent's non-payment of just obligation, which is submitted to be wil[l]ful, is considered a light offense under the Uniform Rules on Administrative Cases in the Civil Service. The corresponding penalty for the first offense is reprimand, for the second, suspension for one (1) to thirty (30) days, and for the third, dismissal.[6] (Emphasis and underscoring supplied)

The Executive Judge thus recommended that respondent be reprimanded for willful failure to pay just debt, and warned against involving himself, directly or indirectly, in transactions, wherein he could be perceived to have used or taken advantage of his position as court personnel.[7]

---

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

[7] *Id*. at 58.

By Resolution of August 29, 2007,[8] this Court required the parties to manifest whether they were willing to submit the case for resolution on the basis of the pleadings already filed and submitted. Only respondent complied.[9]

The Court finds the OCA recommendation well-taken.

This Court's jurisdiction to proceed with an administrative case despite the desistance of the complainant is settled. In *Vilar v. Angeles,*[10] the Court stressed:

> . . . [T]he withdrawal of the complaint or the desistance of a complainant does not warrant the dismissal of an administrative complaint. This Court has an interest in the conduct and behavior of all officials and employees of the judiciary and in ensuring at all times the proper delivery of justice to the people. No affidavit of desistance can divest this Court of its jurisdiction under Section 6, Article VII[I] of the Constitution to investigate and decide complaints against erring employees of the judiciary. The issue in an administrative case is not whether the complain[ant] has a cause of action against the respondent, but whether the employees have breached the norms and standards of the courts.[11] (Underscoring supplied)

That respondent settled his obligation with complainant during the pendency of the present complaint does not exculpate him from administrative liability.[12] Willful failure to pay just debt amounts to conduct unbecoming a court employee.[13]

Under the *Uniform Rules on Administrative Cases in the Civil Service*,[14] willful failure to pay just debt is classified as

[8] *Id*. at 131.

[9] *Id*. at 132.

[10] A.M. No. P- 06- 2276, February 5, 2007, 514 SCRA 147.

[11] *Id*. at 156.

[12] *Reliways, Inc. v. Rosales*, A.M. No. P-07-2326, July 9, 2007, 527 SCRA 39, 43; *Orasa v. Seva*, A.M. No. P-03-1669, October 5, 2005, 472 SCRA 75, 85.

[13] *Hanrieder v. De Rivera*, A.M. No. P-05-2026, August 2, 2007, 529 SCRA 46, 54.

[14] Resolution No. 991936 of the Civil Service Commission dated August 31, 1999.

a light offense, punishable by reprimand for the first infraction, suspension for 1 to 30 days for the second, and dismissal for the third offense.[15]

This appears to be respondent's first infraction.

WHEREFORE, respondent Dominador Monesit, Sr., Court Interpreter, Municipal Trial Court of Tandag, Surigao del Sur is, for willful failure to pay a just debt, *REPRIMANDED*. He is further *WARNED* to be more circumspect and to avoid acts, official or otherwise, which may be perceived by the public to be taking advantage of his position as an employee of the Judiciary.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 162956. April 10, 2008]

FAUSTINO REYES, ESPERIDION REYES, JULIETA C. RIVERA, and EUTIQUIO DICO, JR., *petitioners, vs.* **PETER B. ENRIQUEZ, for himself and Attorney-in-Fact of his daughter DEBORAH ANN C. ENRIQUEZ, and SPS. DIONISIO FERNANDEZ and CATALINA FERNANDEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; ORDINARY CIVIL ACTION DISTINGUISHED FROM SPECIAL PROCEEDING.— An ordinary civil action is one by which a party sues another for the enforcement or protection

[15] Section 52 (c) (10).

of a right, or the prevention or redress of a wrong. A special proceeding, on the other hand, is a remedy by which a party seeks to establish a status, a right or a particular fact.

2. ID.; ID.; PARTIES TO CIVIL ACTIONS; REAL PARTY IN INTEREST; ELUCIDATED.— The Rules of Court provide that only a real party in interest is allowed to prosecute and defend an action in court. A real party in interest is the one who stands to be benefited or injured by the judgment in the suit or the one entitled to the avails thereof. Such interest, to be considered a real interest, must be one which is present and substantial, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest. A plaintiff is a real party in interest when he is the one who has a legal right to enforce or protect, while a defendant is a real party in interest when he is the one who has a correlative legal obligation to redress a wrong done to the plaintiff by reason of the defendant's act or omission which had violated the legal right of the former. The purpose of the rule is to protect persons against undue and unnecessary litigation. It likewise ensures that the court will have the benefit of having before it the real adverse parties in the consideration of a case. Thus, a plaintiff's right to institute an ordinary civil action should be based on his own right to the relief sought.

3. ID.; SPECIAL PROCEEDINGS; A SPECIAL PROCEEDING IS THE PROPER ACTION FOR DECLARATION OF HEIRSHIP.— In cases wherein alleged heirs of a decedent in whose name a property was registered sue to recover the said property through the institution of an ordinary civil action, such as a complaint for reconveyance and partition, or nullification of transfer certificate of titles and other deeds or documents related thereto, this Court has consistently ruled that a declaration of heirship is improper in an ordinary civil action since the matter is "within the exclusive competence of the court in a special proceeding." In the recent case of *Portugal v. Portugal-Beltran*, the Court had the occasion to clarify its ruling on the issue at hand, to wit: The common doctrine in Litam, Solivio and Guilas in which the adverse parties are putative heirs to the estate of a decedent or parties to the special proceedings for its settlement is that if the special proceedings are pending, or **if there are no special proceedings filed but there is, under the circumstances**

of the case, a need to file one, then the determination of, among other issues, heirship should be raised and settled in said special proceedings. Where special proceedings had been instituted but had been finally closed and terminated, however, or if a putative heir has lost the right to have himself declared in the special proceedings as co-heir and he can no longer ask for its re-opening, then an ordinary civil action can be filed for his declaration as heir in order to bring about the annulment of the partition or distribution or adjudication of a property or properties belonging to the estate of the deceased. In the instant case, while the complaint was denominated as an action for the "Declaration of Non-Existency[sic], Nullity of Deeds, and Cancellation of Certificates of Title, *etc*.," a review of the allegations therein reveals that the right being asserted by the respondents are their right as heirs of Anacleto Cabrera who they claim co-owned one-half of the subject property and not merely one-fourth as stated in the documents the respondents sought to annul. As correctly pointed out by the trial court, the ruling in the case of *Heirs of Guido Yaptinchay v. Hon. Roy del Rosario* is applicable in the case at bar. This Court ruled: . . . (T)he plaintiffs who claimed to be the legal heirs of the said Guido and Isabel Yaptinchay have not shown any proof or even a semblance of it – except the allegations that they are the legal heirs of the aforementioned Yaptinchays — that they have been declared the legal heirs of the deceased couple. Now, the determination of who are the legal heirs of the deceased couple must be made in the proper special proceedings in court, and not in an ordinary suit for reconveyance of property. This must take precedence over the action for reconveyance.

APPEARANCES OF COUNSEL

Sarona Labrado and Associates Law Office for petitioners.
Nicolas V. Benedicto, Jr. for respondents.

D E C I S I O N

PUNO, *C.J.*:

This case is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court from the decision of the Court of Appeals (CA) dated September 29, 2003 in CA G.R. CV

No. 68147, entitled "*Peter B. Enriquez, et al. v. Faustino Reyes, et al*., reversing the decision of the Regional Trial Court (RTC) of Cebu City, Branch XI dated June 29, 2000, which dismissed the complaint filed by the respondents herein.[1]

The subject matter of the present case is a parcel of land known as Lot No. 1851 Flr-133 with an aggregate area of 2,017 square meters located in Talisay, Cebu.[2]

According to petitioners Faustino Reyes, Esperidion Reyes, Julieta C. Rivera, and Eutiquio Dico, Jr., they are the lawful heirs of Dionisia Reyes who co-owned the subject parcel of land with Anacleto Cabrera as evidenced by Transfer Certificate of Title (TCT) No. RT-3551 (T-8070). On April 17, 1996, petitioners executed an Extrajudicial Settlement with Sale of the Estate of Dionisia Reyes (the Extra Judicial Settlement) involving a portion of the subject parcel of land. On March 21, 1997, the petitioners and the known heirs of Anacleto Cabrera executed a Segregation of Real Estate and Confirmation of Sale (the Segregation and Confirmation) over the same property. By virtue of the aforestated documents, TCT No. RT-35551 (T-8070) was cancelled and new TCTs were issued: (1) TCT No. T-98576 in the name of Anacleto Cabrera covering Lot 1851-A; (2) TCT No. T-98577 covering Lot 1851-B in the name of petitioner Eutiquio Dico, Jr.; (3) TCT No. T-98578 covering Lot 1851-C in the name of petitioner Faustino Reyes; (4) TCT No. T-98579 covering Lot 1851-D in the name of petitioner Esperidion Reyes; (5) TCT No. T-98580 covering Lot 1851-E in the name of petitioner Julieta G. Rivera; (6) TCT No. T-98581 covering Lot 1851-F in the name of Felipe Dico; and (7) TCT No. T-98582 covering Lot 1851-G in the name of Archimedes C. Villaluz.[3]

Respondents Peter B. Enriquez (Peter) for himself and on behalf of his minor daughter Deborah Ann C. Enriquez (Deborah Ann), also known as Dina Abdullah Enriquez Alsagoff, on the

---

[1] *Rollo*, p. 10.

[2] *Id.* at p. 88.

[3] *Id.* at pp. 12-13.

other hand, alleges that their predecessor-in-interest Anacleto Cabrera and his wife Patricia Seguera Cabrera (collectively the Spouses Cabrera) owned ½ pro-indiviso share in the subject parcel of land or 1051 sq. m. They further allege that Spouses Cabrera were survived by two daughters – Graciana, who died single and without issue, and Etta, the wife of respondent Peter and mother of respondent Deborah Ann – who succeeded their parents' rights and took possession of the 1051 sq. m. of the subject parcel of land. During her lifetime, Graciana sold her share over the land to Etta. Thus, making the latter the sole owner of the one-half share of the subject parcel of land. Subsequently, Etta died and the property passed on to petitioners Peter and Deborah Ann by virtue of an Extra-Judicial Settlement of Estate. On June 19, 1999, petitioners Peter and Deborah Ann sold 200 sq. m. out of the 1051 sq. m. for ₱200,000.00 to Spouses Dionisio and Catalina Fernandez (Spouses Fernandez), also their co-respondents in the case at bar. After the sale, Spouses Fernandez took possession of the said area in the subject parcel of land.[4]

When Spouses Fernandez, tried to register their share in the subject land, they discovered that certain documents prevent them from doing so: (1) Affidavit by Anacleto Cabrera dated March 16, 1957 stating that his share in Lot No. 1851, the subject property, is approximately 369 sq. m.; (2) Affidavit by Dionisia Reyes dated July 13, 1929 stating that Anacleto only owned ¼ of Lot No. 1851, while 302.55 sq. m. belongs to Dionisia and the rest of the property is co-owned by Nicolasa Bacalso, Juan Reyes, Florentino Reyes and Maximiano Dico; (3) Extra-Judicial Settlement with Sale of the Estate of Dionisia Reyes dated April 17, 1996; (4) certificates of title in the name of the herein petitioners; and (5) Deed of Segregation of Real Estate and Confirmation of Sale dated March 21, 1997 executed by the alleged heirs of Dionisia Reyes and Anacleto Cabrera. Alleging that the foregoing documents are fraudulent and fictitious, the respondents filed a complaint for annulment or nullification of the aforementioned documents and for damages.[5] They likewise

[4] *Id.* at pp. 88-89.

[5] *Id.* at pp. 89-90.

prayed for the "repartition and resubdivision" of the subject property.[6]

The RTC, upon motion of the herein petitioners, dismissed the case on the ground that the respondents-plaintiffs were actually seeking first and foremost to be declared heirs of Anacleto Cabrera since they can not demand the partition of the real property without first being declared as legal heirs and such may not be done in an ordinary civil action, as in this case, but through a special proceeding specifically instituted for the purpose.[7]

On appeal, the Court of Appeals (CA) reversed the RTC and directed the trial court to proceed with the hearing of the case.[8] The Motion for Reconsideration filed by the herein petitioners was similarly denied.[9]

Hence this petition.

The primary issue in this case is whether or not the respondents have to institute a special proceeding to determine their status as heirs of Anacleto Cabrera before they can file an ordinary civil action to nullify the affidavits of Anacleto Cabrera and Dionisia Reyes, the Extra-Judicial Settlement with the Sale of Estate of Dionisia Reyes, and the Deed of Segregation of Real Estate and Confirmation of Sale executed by the heirs of Dionisia Reyes and the heirs of Anacleto Cabrera, as well as to cancel the new transfer certificates of title issued by virtue of the above-questioned documents.

We answer in the affirmative.

An ordinary 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.[10] A special proceeding, on the other

[6] *Id.* at p. 34.

[7] *Id.* at pp. 43-44.

[8] *Id.* at pp. 20-26.

[9] *Id.* at pp. 28-29.

[10] Sec. 1 (a), Rule 1, Rules of Court.

hand, is a remedy by which a party seeks to establish a status, a right or a particular fact.[11]

The Rules of Court provide that only a real party in interest is allowed to prosecute and defend an action in court.[12] A real party in interest is the one who stands to be benefited or injured by the judgment in the suit or the one entitled to the avails thereof.[13] Such interest, to be considered a real interest, must be one which is present and substantial, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest.[14] A plaintiff is a real party in interest when he is the one who has a legal right to enforce or protect, while a defendant is a real party in interest when he is the one who has a correlative legal obligation to redress a wrong done to the plaintiff by reason of the defendant's act or omission which had violated the legal right of the former.[15] The purpose of the rule is to protect persons against undue and unnecessary litigation.[16] It likewise ensures that the court will have the benefit of having before it the real adverse parties in the consideration of a case.[17] Thus, a plaintiff's right to institute an ordinary civil action should be based on his own right to the relief sought.

In cases wherein alleged heirs of a decedent in whose name a property was registered sue to recover the said property through the institution of an ordinary civil action, such as a complaint

---

[11] *Id.* at Sec. 1(c), Rule 1.

[12] *Id.* at Sec. 2, Rule 3.

[13] *Id.*

[14] *Ibonilla v. Province of Cebu*, G.R. No. 97463, June 26, 1992 citing *Garcia v. David*, 67 Phil. 279 (1939).

[15] *Id.* citing *Lee v. Romillo, Jr.*, G.R. No. 60937, May 28, 1988, 161 SCRA 589.

[16] *Fajardo v. Freedom to Build, Inc.*, 400 Phil. 1272 (2000) citing *Moore v. Jamieson*, 45L Pa 299, 306 A2d 283.

[17] *Id.* citing *Washakie Country School Dist. v. Herschier*, (Wyo) 606 P2d 310 *cert.* den. 449 U.S. 824, 66 L. Ed. 2d 28, 101 S. Ct. 86.

for reconveyance and partition,[18] or nullification of transfer certificate of titles and other deeds or documents related thereto,[19] this Court has consistently ruled that a declaration of heirship is improper in an ordinary civil action since the matter is "within the exclusive competence of the court in a special proceeding."[20] In the recent case of *Portugal v. Portugal-Beltran*,[21] the Court had the occasion to clarify its ruling on the issue at hand, to wit:

> The common doctrine in Litam, Solivio and Guilas in which the adverse parties are putative heirs to the estate of a decedent or parties to the special proceedings for its settlement is that if the special proceedings are pending, or **if there are no special proceedings filed but there is, under the circumstances of the case, a need to file one, then the determination of, among other issues, heirship should be raised and settled in said special proceedings.** Where special proceedings had been instituted but had been finally closed and terminated, however, or if a putative heir has lost the right to have himself declared in the special proceedings as co-heir and he can no longer ask for its re-opening, then an ordinary civil action can be filed for his declaration as heir in order to bring about the annulment of the partition or distribution or adjudication of a property or properties belonging to the estate of the deceased.[22]

In the instant case, while the complaint was denominated as an action for the "Declaration of Non-Existency[sic], Nullity of Deeds, and Cancellation of Certificates of Title, *etc*.," a review of the allegations therein reveals that the right being asserted by the respondents are their right as heirs of Anacleto Cabrera who they claim co-owned one-half of the subject property and not merely one-fourth as stated in the documents the respondents sought to annul. As correctly pointed out by the trial court, the

---

[18] *Solivio v. Court of Appeals*, G.R. No. 83484, February 12, 1990, 182 SCRA 119 (1990).

[19] *Portugal v. Portugal-Beltran*, G.R. No. 155555, August 16, 2005, 467 SCRA 184.

[20] *Litam, etc., et al. v. Rivera*, 100 Phil. 364 (1956).

[21] *Supra* note 19.

[22] *Id*; emphases supplied.

ruling in the case of ***Heirs of Guido Yaptinchay v. Hon. Roy del Rosario***[23] is applicable in the case at bar. In the said case, the petitioners therein, claiming to be the legal heirs of the late Guido and Isabel Yaptinchay filed for annulment of the transfer certificates of title issued in the name of Golden Bay Realty Corporation on the ground that the subject properties rightfully belong to the petitioners' predecessor and by virtue of succession have passed on to them. In affirming the trial court therein, this Court ruled:

> ...(T)he plaintiffs who claimed to be the legal heirs of the said Guido and Isabel Yaptinchay have not shown any proof or even a semblance of it — except the allegations that they are the legal heirs of the aforementioned Yaptinchays — that they have been declared the legal heirs of the deceased couple. Now, the determination of who are the legal heirs of the deceased couple must be made in the proper special proceedings in court, and not in an ordinary suit for reconveyance of property. This must take precedence over the action for reconveyance.[24]

In the same manner, the respondents herein, except for their allegations, have yet to substantiate their claim as the legal heirs of Anacleto Cabrera who are, thus, entitled to the subject property. Neither is there anything in the records of this case which would show that a special proceeding to have themselves declared as heirs of Anacleto Cabrera had been instituted. As such, the trial court correctly dismissed the case for there is a lack of cause of action when a case is instituted by parties who are not real parties in interest. While a declaration of heirship was not prayed for in the complaint, it is clear from the allegations therein that the right the respondents sought to protect or enforce is that of an heir of one of the registered co-owners of the property prior to the issuance of the new transfer certificates of title that they seek to cancel. Thus, there is a need to establish their status as such heirs in the proper forum.

---

[23] *Heirs of Guido Yaptinchay v. Hon. Roy del Rosario*, G.R. No. 124320, March 2, 1999, 304 SCRA 18.

[24] *Id.*

Furthermore, in **Portugal**,[25] the Court held that it would be superfluous to still subject the estate to administration proceedings since a determination of the parties' status as heirs could be achieved in the ordinary civil case filed because it appeared from the records of the case that the only property left by the decedent was the subject matter of the case and that the parties have already presented evidence to establish their right as heirs of the decedent. In the present case, however, nothing in the records of this case shows that the only property left by the deceased Anacleto Cabrera is the subject lot, and neither had respondents Peter and Deborah Ann presented any evidence to establish their rights as heirs, considering especially that it appears that there are other heirs of Anacleto Cabrera who are not parties in this case that had signed one of the questioned documents. Hence, under the circumstances in this case, this Court finds that a determination of the rights of respondents Peter and Deborah Ann as heirs of Anacleto Cabrera in a special proceeding is necessary.

IN VIEW WHEREOF, the petition is *GRANTED*. The decision of the Court of Appeals is hereby *REVERSED* and the decision of the Regional Trial Court dated June 29, 2000 *DISMISSING* the complaint is *REINSTATED*.

No costs.

SO ORDERED.

Carpio, Corona, and *Leonardo-de Castro, JJ.,* concur.

Azcuna, J., on official leave.

[25] *Supra* note 19.

SECOND DIVISION

[G.R. No. 172595. April 10, 2008]

BIENVENIDO EJERCITO and JOSE MARTINEZ, *petitioners, vs.* **M.R. VARGAS CONSTRUCTION, MARCIAL R. VARGAS,** Sole Owner, **RENATO AGARAO,**[*] Project Foreman, *respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; JURISDICTION OVER THE PERSON OF THE DEFENDANT, HOW ACQUIRED.— Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When the defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, any judgment of the court, which has no jurisdiction over the person of the defendant is null and void. In an action strictly *in personam*, personal service on the defendant is the preferred mode of service, that is, by handing a copy of the summons to the defendant in person.

2. ID.; APPEALS; FACTUAL FINDING OF THE TRIAL COURT, ESPECIALLY WHEN AFFIRMED BY THE APPELLATE COURT, IS CONCLUSIVE AND SHOULD NOT BE DISTURBED.— At the outset, it is worthy to note that both the Court of Appeals and the trial court found that summons was not served on respondent enterprise. The Officer's Return stated essentially that the server failed to serve the summons on respondent enterprise because it could not be found at the address alleged in the petition. This factual finding, especially when affirmed by the appellate court, is conclusive upon this Court and should not be disturbed because this Court is not a trier of facts.

3. COMMERCIAL LAW; SOLE PROPRIETORSHIP, NEITHER VESTED WITH A PERSONALITY SEPARATE AND DISTINCT FROM THAT OF THE OWNER OF THE ENTERPRISE NOR EMPOWERED TO FILE OR DEFEND

[*] Identified in the petition as Renato Aggarao.

AN ACTION IN COURT; CASE AT BAR.— A sole proprietorship does not possess a juridical personality separate and distinct from the personality of the owner of the enterprise. The law does not vest a separate legal personality on the sole proprietorship or empower it to file or defend an action in court. Only natural or juridical persons or entities authorized by law may be parties to a civil action and every action must be prosecuted and defended in the name of the real parties-in-interest. The records show that respondent enterprise, M.R. Vargas Construction Co., is a sole proprietorship and, therefore, an entity without juridical personality. Clearly, the real party-in-interest is Marcial R. Vargas who is the owner of the enterprise. Thus, the petition for injunction should have impleaded him as the party respondent either simply by mention of his name or by denominating him as doing business under the name and style of "M.R. Vargas Construction Co." It was erroneous to refer to him, as the petition did in both its caption and body, as representing the enterprise. Petitioners apparently realized this procedural lapse when in the petition for *certiorari* filed before the Court of Appeals and in the instant petition, M.R. Vargas Construction, Marcial R. Vargas and Renato Agaro were separately named as individual respondents.

4. ID.; ID.; ID.; THE SUIT AGAINST AN ENTITY WITHOUT JURIDICAL PERSONALITY MAY BE INSTITUTED ONLY BY OR AGAINST ITS OWNER.— Agarao was not a party respondent in the injunction case before the trial court. Certainly, he is not a real party-in-interest against whom the injunction suit may be brought, absent any showing that he is also an owner or he acts as an agent of respondent enterprise. Agarao is only a foreman, bereft of any authority to defend the suit on behalf of respondent enterprise. As earlier mentioned, the suit against an entity without juridical personality like respondent enterprise may be instituted only by or against its owner. Impleading Agarao as a party-respondent in the suit for injunction would have no legal consequence. In any event, the petition for injunction described Agarao only as a representative of M.R. Vargas Construction Co., which is a mere inconsequentiality considering that only Vargas, as its sole owner, is authorized by the Rules of Court to defend the suit on behalf of the enterprise.

5. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; SERVICE OF SUMMONS UPON AN ENTITY WITHOUT JURIDICAL PERSONALITY, HOW EFFECTED.— Since respondent enterprise is only a sole proprietorship, an entity without juridical personality, the suit for injunction may be instituted only against its owner, Marcial Vargas. Accordingly summons should have been served on Vargas himself, following Rule 14, Sections 6 and 7 of the Rules of Court on personal service and substituted service. In the instant case, no service of summons, whether personal or substituted, was effected on Vargas. It is well-established that summons upon a respondent or a defendant must be served by handing a copy thereof to him in person or, if he refuses to receive it, by tendering it to him. Personal service of summons most effectively ensures that the notice desired under the constitutional requirement of due process is accomplished. If however efforts to find him personally would make prompt service impossible, service may be completed by substituted service, *i.e.*, by leaving copies of the summons at his dwelling house or residence with some person of suitable age and discretion then residing therein or by leaving the copies at his office or regular place of business with some competent person in charge thereof.

6. ID.; ID.; ID.; SERVICE OF SUMMONS; THE STATUTORY REQUIREMENTS THEREOF MUST BE FOLLOWED STRICTLY, FAITHFULLY AND FULLY, AND ANY MODE OF SERVICE OTHER THAN THAT PRESCRIBED BY THE STATUTE IS CONSIDERED INEFFECTIVE.— The modes of service of summons should be strictly followed in order that the court may acquire jurisdiction over the respondents, and failure to strictly comply with the requirements of the rules regarding the order of its publication is a fatal defect in the service of summons. It cannot be overemphasized that the statutory requirements on service of summons, whether personally, by substituted service or by publication, must be followed strictly, faithfully and fully, and any mode of service other than that prescribed by the statute is considered ineffective.

7. ID.; JURISDICTION; JURISDICTION OF THE TRIAL COURT OVER THE PERSON OF THE DEFENDANT SHALL BE UPHELD WHERE THE PARTY SHOWED INTENTION TO PARTICIPATE OR BE BOUND BY THE PROCEEDINGS

THROUGH THE FILING OF A MOTION, A PLEA OR AN ANSWER.— Despite Agarao's not being a party-respondent, petitioners nevertheless confuse his presence or attendance at the hearing on the application for TRO with the notion of voluntary appearance, which interpretation has a legal nuance as far as jurisdiction is concerned. While it is true that an appearance in whatever form, without explicitly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person, the appearance must constitute a positive act on the part of the litigant manifesting an intention to submit to the court's jurisdiction. Thus, in the instances where the Court upheld the jurisdiction of the trial court over the person of the defendant, the parties showed the intention to participate or be bound by the proceedings through the filing of a motion, a plea or an answer.

8. ID.; ID.; THE DEFENDANT'S APPEARANCE AT THE HEARING TO OBJECT TO THE JURISDICTION OF THE COURT OVER HIS PERSON CANNOT BE CONSIDERED AS APPEARANCE IN COURT.— It should be noted that when the defendant's appearance is made precisely to object to the jurisdiction of the court over his person, it cannot be considered as appearance in court. Such was the purpose of the omnibus motion, as counsel for respondent enterprise precisely manifested therein that he erroneously believed that Vargas himself had received the summons when in fact it was petitioner Martinez who signed as recipient of the summons. Noteworthy is the fact that when the counsel first appeared in court his appearance was "special" in character and was only for the purpose of questioning the court's jurisdiction over Vargas, considering that the latter never received the summons. However, the counsel was shown a copy of the summons where a signature appears at the bottom which led him to believe that the summons was actually received by Vargas when in fact it was petitioner Martinez himself who affixed his signature as recipient thereof. When the counsel discovered his mistake, he lost no time pleading that the proceedings be nullified and that petitioners and the process server be cited for contempt of court. Both the trial and appellate courts concluded that the improvident withdrawal of the defense of lack of jurisdiction was an innocuous error, proceeding on the undeniable fact that the summons was not properly served on Vargas. Thus, the Court of Appeals did not commit a reversible error when it

affirmed the trial court's nullification of the proceedings for lack of jurisdiction.

APPEARANCES OF COUNSEL

Gregorio P. Galang for petitioners.

Marcos Ochoa Serapio & Tan Law Firm for respondents.

D E C I S I O N

TINGA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, assailing the Court of Appeals' Decision[1] and Resolution[2] in CA-G.R. SP No. 89001. The appellate court's decision dismissed the petition for *certiorari*, which sought to set aside the Order[3] dated 08 November 2004 issued by Hon. Marie Christine Jacob, Presiding Judge of the Regional Trial Court (RTC) of Quezon City, Branch 100. The appellate court's resolution denied petitioners' motion for reconsideration of the decision.

As culled from the records, the following factual antecedents appear:

On 5 March 2004, the City Government of Quezon City, represented by Mayor Feliciano Belmonte, Jr., entered into a construction contract [4] with M.R. Vargas Construction, represented by Marcial Vargas in his capacity as general manager of the said business enterprise, for the improvement and concreting of Panay Avenue.[5] Pursuant to the contract, the business

---

[1] *Rollo,* pp. 8-19; dated 10 October 2005 and penned by *J*. Rebecca De Guia-Salvador and concurred in by *JJ*. Ruben T. Reyes, now Associate Justice of the Court, and Aurora Santiago-Lagman.

[2] *Id*. at 7; dated 28 April 2006.

[3] *Id*. at 65-69.

[4] CA *rollo*, pp. 116-120.

[5] *Id*. at 116.

enterprise commenced its clearing operations by removing the structures and uprooting the trees along the thoroughfare. Its foreman, Renato Agarao, supervised the clearing operations.[6]

Claiming that the clearing operations lacked the necessary permit and prior consultation, petitioners Bienvenido Ejercito and Jose Martinez, as well as a certain Oscar Baria, brought the matter to the attention of the *barangay* authorities, Mayor Belmonte, Senator Ma. Ana Consuelo A.S. Madrigal, the Department of Environment and Natural Resources and the Philippine Coconut Authority.[7]

The efforts of petitioners proved unsuccessful. Hence, on 10 September 2004, they filed a petition for injunction before the Quezon City RTC. The petition named "M.R. Vargas Construction Co., represented by herein Marcial R. Vargas and Renato Agarao," as respondent.[8]

The Petition,[9] docketed as Civil Case No. Q-04-53687, indicated that "Respondent M.R. Vargas Construction, is an entity, with office address at the 4th Floor, President Tower, Timog Avenue corner Scout Ybardaloza [*sic*] St., Quezon City, represented herein by its President Marcial Vargas and its construction foreman Renato Agarao, where they may be served with summons and other court processes."[10]

The petition was accompanied with an application for a temporary restraining order (TRO) and a writ of preliminary injunction.[11] Thus, the Office of the Clerk of Court forthwith issued summons and notice of raffle on 10 September 2004.[12] Upon service of the processes on the aforementioned address,

---

[6] *Rollo*, p. 54.

[7] *Id*. at 55.

[8] CA *rollo*, p. 65.

[9] *Id*. at 65-72.

[10] *Id*. at 55.

[11] *Id*. at 69.

[12] *Rollo*, p. 119.

they were returned unserved on the ground that respondent enterprise was unknown thereat.[13]

The petition was subsequently raffled to the sala of Judge Jacob, before which petitioners' application for a temporary restraining order was heard on 15 September 2004.[14] On the same day, when Agarao was also present in court, Judge Jacob issued a TRO directing respondent enterprise to desist from cutting, damaging or transferring the trees found along Panay Avenue.[15]

On 23 September 2004, the Mangoba Tan Agus Law Offices filed a special appearance on behalf of respondent enterprise and moved for the dismissal of the petition as well as the quashal of the temporary restraining order on the ground of lack of jurisdiction over respondent enterprise. The motion also assailed the raffle of the case for having been conducted in violation of Section 4, Rule 58 of the Rules of Court; the issuance of the TRO without requiring the posting of a bond; the failure to implead the Government of Quezon City despite its being the real party-in-interest; and petitioners' application for the injunctive writ which was allegedly grossly defective in form and substance.[16]

The motion to dismiss the petition and to quash the TRO was heard on 24 September 2004.[17] Before the hearing, a court interpreter showed to respondent enterprise's counsel a copy of the summons and of the notice of raffle in which appear a signature at the bottom of each copy, apparently indicating the receipt of the summons.[18] On the mistaken belief that the summons was received by respondent enterprise, at the hearing of the motion, its counsel withdrew two of the grounds stated

---

[13] *Id*. at 55.

[14] *Id*. at 55.

[15] *Id*.

[16] CA *rollo*, pp. 122-135.

[17] *Rollo*, p. 66.

[18] *Id*. at 57.

in the motion, to wit, lack of jurisdiction and irregularity in the raffle of the case.[19]

At the hearing of petitioners' application for a writ of preliminary injunction on 1 October 2004, the counsel for respondent enterprise manifested that he was adopting the arguments in the motion to quash the TRO.[20] On 6 October 2004, the RTC issued an Order granting petitioners' application for a writ of preliminary injunction.[21]

On 7 October 2004, counsel for respondent enterprise filed a manifestation with urgent omnibus motion to nullify the proceedings and to cite petitioners and the process server in contempt of court.[22] He argued that respondent enterprise failed to receive the summons, alleging that it was herein petitioner Jose Martinez who signed as recipient thereof as well as of the notice of raffle that was served on 10 September 2004.[23]

On 18 October 2004, the writ of preliminary injunction was issued. Subsequently, petitioners filed a motion for ocular inspection and another motion praying that respondent enterprise be ordered to restore the structures damaged by its clearing operations.[24]

On 8 November 2004, the RTC issued the assailed Order,[25] nullifying the proceedings thus far conducted in the case.[26] Petitioners sought reconsideration, but the motion was denied in an Order dated 20 December 2004.[27]

---

[19] *Rollo*, p. 56.

[20] *Id*.

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

[22] *Id*. at 73-78.

[23] *Id*. at 74.

[24] *Id*. at 29-30.

[25] *Supra* note 3.

[26] *Rollo*, p. 65.

[27] CA *rollo*, p. 16.

Thus, petitioners filed a petition for *certiorari* before the Court of Appeals assailing the 8 November 2004 Order issued by Judge Jacob.[28] This time, aside from Judge Jacob and the enterprise "M.R. Vargas Construction" itself, the petition also named Marcial R. Vargas and Renato Agarao, the enterprise's owner and foreman, respectively, as individual respondents. The separate addresses of said respondents were also indicated in the initial part of the petition.

It was argued in the petition that Judge Jacob committed grave abuse of direction in nullifying the proceedings on the ground of lack of jurisdiction in view of Agarao's presence at the hearing on petitioners' application for TRO, in failing to act on petitioners' pending motions and in directing instead the issuance of new summons on respondent enterprise.[29]

On 10 October 2005, the Court of Appeals rendered the assailed Decision dismissing the petition for *certiorari* for lack of merit.[30] In its Order dated 28 April 2006, the Court of Appeals denied petitioners' motion for reconsideration.

Hence, the instant petition attributes the following errors to the Court of Appeals:

I.

THE COURT OF APPEALS ERRED IN RULING THAT THE REGIONAL TRIAL COURT DID NOT OBTAIN JURISDICTION OVER THE RESPONDENTS, DEPSITE THE RECEIPT OF COURT PROCESSES AND VOLUNTARY APPEARANCE BEFORE THE COURTS.

II.

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE WITHDRAWAL BY PRIVATE RESPONDENTS OF THE GROUND OF ABSENCE OF JURISDICTION OVER ITS PERSON CONSTITUTED A WAIVER OF SUCH OBJECTION.[31]

---

[28] *Id*. at 2-15.

[29] *Id*. at 6.

[30] *Supra* note 1.

[31] *Rollo*, p. 31.

The instant petition—which similarly impleads the enterprise, M.R. Vargas Construction, Marcial R. Vargas and Renato Agarao as respondents—raises two issues, namely: (1) whether the trial court acquired jurisdiction over respondent enterprise and (2) whether the defense of lack of jurisdiction had been waived.

Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When the defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, any judgment of the court, which has no jurisdiction over the person of the defendant is null and void. In an action strictly *in personam*, personal service on the defendant is the preferred mode of service, that is, by handing a copy of the summons to the defendant in person.[32]

Citing the jurisdictional implications of the failure of service of summons, the Court of Appeals concluded that no grave abuse of discretion was committed by Judge Jacob in nullifying the proceedings thus far conducted in the case based on the finding that the summons had not been served on respondent enterprise and that Agarao, despite being present at the 15 September 2004 hearing, was not authorized to represent respondent enterprise in said hearing.

Petitioners take exception. They argue that the trial court acquired jurisdiction over respondent enterprise, an entity without juridical personality, through the appearance of its foreman, Agarao, at the 15 September 2004 hearing on the TRO application. Petitioners theorize that the voluntary appearance of Agarao in said hearing was equivalent to service of summons binding upon respondent enterprise, following by analogy, Section 8, Rule 14[33]

---

[32] *Manotoc v. Court of Appeals*, G.R. No. 130974, August 16, 2006, 499 SCRA 21, 33.

[33] SEC. 8. *Service upon entity without juridical personality*.—When persons associated in an entity without juridical personality are sued under the name by which they are generally or commonly known, service may be effected upon all the defendants by serving upon any one of them, or upon the person in charge of the office or place of business maintained in such name. But such service shall not bind individually any person whose connection

which allows the service of summons on any of the defendants associated to an entity without juridical personality. Furthermore, they contend that the receipt by a certain Rona Adol of the court processes was binding upon respondent enterprise because the latter did not deny the authority of Adol to receive communications on its behalf.

Petitioners' argument is untenable.

At the outset, it is worthy to note that both the Court of Appeals and the trial court found that summons was not served on respondent enterprise. The Officer's Return stated essentially that the server failed to serve the summons on respondent enterprise because it could not be found at the address alleged in the petition. This factual finding, especially when affirmed by the appellate court, is conclusive upon this Court and should not be disturbed because this Court is not a trier of facts.

A sole proprietorship does not possess a juridical personality separate and distinct from the personality of the owner of the enterprise. The law does not vest a separate legal personality on the sole proprietorship or empower it to file or defend an action in court.[34] Only natural or juridical persons or entities authorized by law may be parties to a civil action and every action must be prosecuted and defended in the name of the real parties-in-interest.[35]

The records show that respondent enterprise, M.R. Vargas Construction Co., is a sole proprietorship and, therefore, an entity without juridical personality. Clearly, the real party-in-interest is Marcial R. Vargas who is the owner of the enterprise. Thus, the petition for injunction should have impleaded him as the party respondent either simply by mention of his name or by denominating him as doing business under the name and style of "M.R. Vargas Construction Co." It was erroneous to refer to him, as the petition did in both its caption and body, as

---

with the entity has, upon due notice, been severed before the action was brought.

[34] *Mangila v. Court of Appeals*, 435 Phil. 870, 886 (2002).

[35] *Litonjua Group of Companies v. Vigan*, 412 Phil. 627, 636 (2001).

representing the enterprise. Petitioners apparently realized this procedural lapse when in the petition for *certiorari* filed before the Court of Appeals and in the instant petition, M.R. Vargas Construction, Marcial R. Vargas and Renato Agaro were separately named as individual respondents.

Since respondent enterprise is only a sole proprietorship, an entity without juridical personality, the suit for injunction may be instituted only against its owner, Marcial Vargas. Accordingly summons should have been served on Vargas himself, following Rule 14, Sections 6[36] and 7[37] of the Rules of Court on personal service and substituted service. In the instant case, no service of summons, whether personal or substituted, was effected on Vargas. It is well-established that summons upon a respondent or a defendant must be served by handing a copy thereof to him in person or, if he refuses to receive it, by tendering it to him. Personal service of summons most effectively ensures that the notice desired under the constitutional requirement of due process is accomplished. If however efforts to find him personally would make prompt service impossible, service may be completed by substituted service, *i.e.*, by leaving copies of the summons at his dwelling house or residence with some person of suitable age and discretion then residing therein or by leaving the copies at his office or regular place of business with some competent person in charge thereof.[38]

The modes of service of summons should be strictly followed in order that the court may acquire jurisdiction over the respondents, and failure to strictly comply with the requirements of the rules regarding the order of its publication is a fatal defect

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

[37] 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 copies at defendant's office or regular place of business with some competent person in charge thereof.

[38] *Sandoval II v. HRET*, 433 Phil. 290, 300-301 (2002).

in the service of summons. It cannot be overemphasized that the statutory requirements on service of summons, whether personally, by substituted service or by publication, must be followed strictly, faithfully and fully, and any mode of service other than that prescribed by the statute is considered ineffective.[39]

Agarao was not a party respondent in the injunction case before the trial court. Certainly, he is not a real party-in-interest against whom the injunction suit may be brought, absent any showing that he is also an owner or he acts as an agent of respondent enterprise. Agarao is only a foreman, bereft of any authority to defend the suit on behalf of respondent enterprise. As earlier mentioned, the suit against an entity without juridical personality like respondent enterprise may be instituted only by or against its owner. Impleading Agarao as a party-respondent in the suit for injunction would have no legal consequence. In any event, the petition for injunction described Agarao only as a representative of M.R. Vargas Construction Co., which is a mere inconsequentiality considering that only Vargas, as its sole owner, is authorized by the Rules of Court to defend the suit on behalf of the enterprise.

Despite Agarao's not being a party-respondent, petitioners nevertheless confuse his presence or attendance at the hearing on the application for TRO with the notion of voluntary appearance, which interpretation has a legal nuance as far as jurisdiction is concerned. While it is true that an appearance in whatever form, without explicitly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person, the appearance must constitute a positive act on the part of the litigant manifesting an intention to submit to the court's jurisdiction.[40] Thus, in the instances where the Court upheld the jurisdiction of the trial court over the person of the defendant, the parties showed the intention to

---

[39] *Pinlac v. Court of Appeals*, 402 Phil. 684, 706 (2001).

[40] *Herrera-Felix v. Court of Appeals*, G.R. No. 143736, 11 August 2004, 436 SCRA 87, 94.

participate or be bound by the proceedings through the filing of a motion, a plea or an answer.[41]

Neither is the service of the notice of hearing on the application for a TRO on a certain Rona Adol binding on respondent enterprise. The records show that Rona Adol received the notice of hearing on behalf of an entity named JCB. More importantly, for purposes of acquiring jurisdiction over the person of the defendant, the Rules require the service of summons and not of any other court processes.

Petitioners also contend that respondent enterprise waived the defense of lack of jurisdiction when its counsel actively demanded positive action on the omnibus motion. The argument is implausible.

It should be noted that when the defendant's appearance is made precisely to object to the jurisdiction of the court over his person, it cannot be considered as appearance in court.[42] Such was the purpose of the omnibus motion, as counsel for respondent enterprise precisely manifested therein that he erroneously believed that Vargas himself had received the summons when in fact it was petitioner Martinez who signed as recipient of the summons. Noteworthy is the fact that when the counsel first appeared in court his appearance was "special" in character and was only for the purpose of questioning the court's jurisdiction over Vargas, considering that the latter never received the summons. However, the counsel was shown a copy of the summons where a signature appears at the bottom which led him to believe that the summons was actually received by Vargas when in fact it was petitioner Martinez himself who affixed his signature as recipient thereof. When the counsel discovered his mistake, he lost no time pleading that the proceedings be nullified and that petitioners and the process server be cited for contempt of court. Both the trial and appellate courts concluded that the

---

[41] See *Domingo v. Reed*, G.R. No. 157701, 9 December 2005, 477 SCRA 227; *Herrera-Felix v. Court of Appeals*, *id*.; *Villareal v. CA*, 356 Phil. 826 (1998).

[42] *French Oil Mill Machinery Co., Inc. v. Court of Appeals*, 356 Phil. 780, 786-787 (1998).

improvident withdrawal of the defense of lack of jurisdiction was an innocuous error, proceeding on the undeniable fact that the summons was not properly served on Vargas. Thus, the Court of Appeals did not commit a reversible error when it affirmed the trial court's nullification of the proceedings for lack of jurisdiction.

WHEREFORE, the instant petition for certiorari is *DENIED*. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 89001 are *AFFIRMED in toto*. Costs against petitioners.

The temporary restraining order issued in this case is *DISSOLVED*.

SO ORDERED.

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

Quisumbing, J., on official leave.

SECOND DIVISION

[G.R. No. 175604. April 10, 2008]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SALVADOR PEÑAFLORIDA, JR.** ***y*** **CLIDORO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; APEPALS; FACTUAL FINDINGS OF THE TRIAL COURT, INCLUDING THEIR ASSESSMENT OF THE WITNESS' CREDIBILITY ARE ENTITLED TO GREAT WEIGHT AND RESPECT, PARTICULARLY

WHEN THE COURT OF APPEALS AFFIRMED THE SAME.— Prefatorily, factual findings of the trial courts, including their assessment of the witness' credibility are entitled to great weight and respect by this Court, particularly when the Court of Appeals affirm the findings. Indeed, the trial court is in the best position to assess the credibility of witnesses since it has observed firsthand their demeanor, conduct and attitude under grilling examination. After a review of the records of this case, we find no cogent reason to disregard this time-honored principle.

2. CRIMINAL LAW; THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED; THE PRESENTATION OF AN INFORMANT IS NOT ESSENTIAL FOR CONVICTION NOR IS IT INDISPENSABLE FOR A SUCCESSFUL PROSECUTION.— xxx. Prescinding from the above argument, appellant insists that the asset should have been presented in court. He invoked the court ruling in *People v. Libag,* wherein the non-presentation of the informant was fatal to the case of the prosecution. *Libag* cannot find application in this case. In that case, the crime charged was the sale of *shabu* where the informant himself was a poseur-buyer and a witness to the transaction. His testimony as a poseur-buyer was indispensable because it could have helped the trial court in determining whether or not the appellant had knowledge that the bag contained marijuana, such knowledge being an essential ingredient of the offense for which he was convicted. In this case, however, the asset was not present in the police operation. The rule is that the presentation of an informant in an illegal drugs case is not essential for conviction nor is it indispensable for a successful prosecution because his testimony would merely be corroborative and cumulative. Informants are generally not presented in court because of the need to hide their identity and preserve their invaluable service to the police.

3. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY; POSITIVE AND CATEGORICAL DECLARATIONS OF POLICE OFFICERS DESERVE WEIGHT AND CREDENCE.— Competente testified that his team caught up with appellant who was riding a bicycle. He saw the marijuana in a package which appellant was carrying inside his basket, xxx Callo also confirmed that he saw appellant transporting

and in possession of the subject marijuana: xxx. These positive and categorical declarations of two police officers deserve weight and credence in light of the presumption of regularity accorded to them and the lack of motive on their part to falsely testify against appellant.

4. ID.; CRIMINAL PROCEDURE; ARREST; WARRANTLESS ARREST JUSTIFIED WHERE THE ARREST WAS EFFECTED AFTER THE ACCUSED WAS CAUGHT IN *FLAGRANTE DELICTO*.— The police was tipped off at around 1:00 p.m. that appellant was transporting marijuana to Huyon-huyon. Certainly, they had no time to secure an arrest warrant as appellant was already in transit and already committing a crime. The arrest was effected after appellant was caught in *flagrante delicto*. He was seen riding his bicycle and carrying with him the contraband, hence, demonstrating that a crime was then already being committed. Under the circumstances, the police had probable cause to believe that appellant was committing a crime. Thus, the warrantless arrest is justified.

5. CRIMINAL LAW; THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED; ACCUSED CANNOT BE CONVICTED UNLESS IT IS SHOWN THAT HE KNOWINGLY POSSESSES THE PROHIBITED ARTICLES IN HIS PERSON, OR THAT *ANIMUS POSSIDENDI* IS SHOWN TO BE PRESENT TOGETHER WITH HIS POSSESSION OR CONTROL OF SUCH ARTICLE; BURDEN OF EVIDENCE IS UPON THE POSSESSOR TO EXPLAIN ABSENCE OF *ANIMUS POSSIDENDI*.— Appellant, in the main, asserts that he did not freely and consciously possess marijuana. In criminal cases involving prohibited drugs, there can be no conviction unless the prosecution shows that the accused knowingly possessed the prohibited articles in his person, or that *animus possidendi* is shown to be present together with his possession or control of such article. *Animus possidendi* is only *prima facie*. It is subject to contrary proof and may be rebutted by evidence that the accused did not in fact exercise power and control over the thing in question, and did not intend to do so. The burden of evidence is thus shifted to the possessor to explain absence of *animus possidendi*.

6. ID.; ID.; ID.; ID.; EXISTENCE OF *ANIMUS POSSIDENDI* MAY AND USUALLY MUST BE INFERRED FROM THE ATTENDANT EVENTS IN EACH PARTICULAR CASE;

CASE AT BAR.— Knowledge refers to a mental state of awareness of a fact. Since courts cannot penetrate the mind of an accused and thereafter state its perceptions with certainty, resort to other evidence is necessary. *Animus possidendi*, as a state of mind, may be determined on a case-to-case basis by taking into consideration the prior or contemporaneous acts of the accused, as well as the surrounding circumstances. Its existence may and usually must be inferred from the attendant events in each particular case. Appellant failed to satisfactorily establish his lack of knowledge of possession in the instant case. First, the marijuana was found in the bicycle he himself was driving. Second, the police officers first readily saw in plain view the edges of the marijuana leaves jutting out of the package. Third, it is incredulous that appellant did not ask Obias what the package contained when the latter requested him to do the delivery errand since the package was wrapped in a newspaper and weighed almost one kilogram. The same observation was reached by the trial court: xxx. Furthermore, it appeared from the cross-examination of appellant that Obias was an acquaintance. In the ordinary course of things, one is expected to inquire about the contents of a wrapped package especially when it is a mere acquaintance who requests the delivery and, more so, when delivery is to a place some distance away.

7. ID.; ID.; SECTION 4 THEREOF; TRANSPORTATION OF PROHIBITED DRUGS; IMPOSABLE PENALTY.— Finally, the lower courts correctly sentenced appellant to suffer the penalty of *reclusion perpetua* and to pay a fine of one million pesos by virtue of the amendment to Section 4, R.A. No. 6425 by R.A. No. 7659.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.

Public Attorney's Office for appellant.

D E C I S I O N

TINGA, *J.*:

Subject of this appeal is the Decision[1] of the Court of Appeals in CA-G.R. CR No. 01219, dated 31 July 2006, affirming in *toto* the judgment[2] of the Regional Trial Court of Camarines Sur, Branch 30, in Criminal Case No. T-1476. The trial court found appellant Salvador Peñaflorida *y* Clidoro guilty of transporting marijuana and sentenced him to suffer the penalty of *reclusion perpetua* and to pay a fine of one million pesos.

The Information against appellant reads:

> That on or about the 7th day of June, 1994, in the afternoon thereat, at Barangay Huyon[-]huyon, Municipality of Tigaon, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to sell, possess and to deliver with the use of a bicycle, did then and there, willfully, unlawfully and feloniously have in his possession, control and custody, [o]ne bundle estimated to be one (1) kilo more or less, of a [sic] dried marijuana leaves (Indian Hemp) without the necessary license, permit or authority to sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug from a competent officer as required by law.
>
> ACTS CONTRARY TO LAW.[3]

Upon arraignment, appellant pleaded not guilty. Trial ensued.

Two police officers and one forensic chemist testified for the prosecution.

SPO3 Vicente Competente (Competente) narrated that in his capacity as chief of the Investigation and Operation Division of the Philippine National Police (PNP) station in Tigaon, Camarines Sur, that he received a tip from an asset that a bundle of marijuana was being transported by appellant to Huyon-huyon from another

---

[1] *Rollo*, pp. 3-10. Penned by Associate Justice Edgardo P. Cruz, and concurred in by Associate Justices Monina Arevalo Zeñarosa and Ramon M. Bato, Jr., Special Fourteenth Division.

[2] CA *rollo*, pp. 19-26. Presided by Judge Alfredo A. Cabral.

[3] *Id*. at 10.

barangay in Tigaon, Camarines Sur.[4] Major Domingo Agravante (Agravante), chief of police of Tigaon, then organized a team composed of Competente as team leader, SPO2 Ricardo Callo (Callo), SPO1 Portugal, PO3 Pillos and PO2 Edgar Latam. The team boarded the police mobile car and proceeded to Sitio Nasulan in Barangay Huyon-huyon.[5] They overtook appellant who was on a bicycle. The police officers flagged appellant down and found marijuana wrapped in a cellophane and newspaper together with other grocery items. The amount of ₱1550.00 was also found in appellant's possession. The police officers confiscated these items and took photographs thereof. Appellant was then brought to the headquarters where he was booked.[6]

Callo, who was the chief intelligence officer of Tigaon PNP, recounted that at around 1:00 p.m. on 7 June 1994, he was called by Competente and was briefed about the operation. While they were in Nasulan, the members of the police team caught a man riding a bicycle who turned out to be appellant. Callo saw the marijuana wrapped in a cellophane and newspaper in the bicycle of appellant so the latter was brought to the police headquarters and turned over to the desk officer.[7]

Major Lorlie Arroyo (Arroyo), a forensic chemist at the PNP Crime Laboratory Regional Office No. V, was presented as an expert witness to identify the subject marijuana leaves. She related that after taking a representative sample from the 928-gram confiscated dried leaves, the same was tested positive of marijuana. The findings were reflected in Chemistry Report No. D-26-94 dated 9 June 1994.[8]

Appellant denied the accusations against him. Appellant, who is a resident of Huyon-huyon, Tigaon, Camarines Sur, testified that in the morning of 7 June 1994, he first went to the house

---

[4] TSN, 8 July 1997, p. 3.

[5] TSN, 8 July 1997, p. 4.

[6] TSN, 8 July 1997, p. 5.

[7] TSN, 15 September 1997, pp. 3-6.

[8] Records, p. 275.

of Igmidio Miranda (Miranda) in Sagnay, Camarines Sur. The latter accompanied appellant to the house of Arnel Dadis in San Francisco, Tigaon to buy a dog. They, however, failed to get the dog; prompting them to leave. On their way home, they met Boyet Obias (Obias) who requested appellant to bring a package wrapped in a newspaper to Jimmy Gonzales (Gonzales).[9] Appellant placed it in the basket in front of his bicycle and Gonzales proceeded to the Tiagon town proper. He and Miranda parted ways when they reached the place. Appellant dropped by the grocery store and the blacksmith to get his scythe. On his way home, he was flagged down by the police and was invited to go with them to the headquarters. Upon inspection of the package in his bicycle, the police discovered the subject marijuana. Appellant tried to explain that the package was owned by Obias but the police did not believe him. He was sent to jail.[10]

Miranda corroborated the testimony of appellant that the two of them went to San Francisco, Tigaon, Camarines Sur in the morning of 7 June 1994 to buy a dog. On their way back to the town proper of Tigaon, they met Obias who requested appellant to bring a package, which Miranda thought contained cookies, to Gonzales. Upon reaching the town proper, they parted ways.[11]

On 26 October 1998, the trial court rendered judgment finding appellant guilty beyond reasonable doubt of transporting a prohibited drug, a violation of Section 4, Article II of Republic Act (R.A.) No. 6425, otherwise known as The Dangerous Drugs Act of 1972, as amended by R.A. No. 7659. The dispositive portion of the decision reads:

> WHEREFORE, the accused Salvador Peñaflorida[,Jr.] is hereby sentenced to suffer the penalty of imprisonment of *reclusion perpetua* and to pay a fine of One Million (₱1,000,000.00) Pesos, with subsidiary imprisonment in accordance with law, in case of insolvency for the fine and for him to pay the costs.

---

[9] The return of the subpoena indicated that Boyet Obias is already dead while Jimmy Gonzales cannot be found in the given address.

[10] TSN, 28 July 1998, pp. 2-8.

[11] TSN, 29 June 1998, pp. 2-5.

The accused Salvador Peñaflorida[,Jr.] shall be entitled to full credit of his preventive imprisonment if he agreed to abide with the rules imposed upon convicted person, otherwise, he shall be entitled to four-fifth (4/5) credit thereof.

The subject marijuana consisting of 928 grams, possession thereof being *mala prohibita*, the court hereby orders its confiscation in favor of the Government to be destroyed in accordance with law.

This court, however, hereby recommends to His Excellency, the President of the Philippines, through the Honorable Secretary of Justice to commute the above penalty herein imposed, being too harsh; accordingly, the said penalty imposed to accused Salvador Peñaflorida[,Jr] shall be six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

SO ORDERED.[12]

In convicting appellant, the trial court lent credence to the testimonies of the police officers, thus:

Now going over the evidence adduced, the court is convinced that the accused Salvador Peñaflorida[,Jr.] committed the offense of illegal possession of 928 grams of marijuana, if not, of transporting it, as charged. This is so, because it appears undisputed that on June 7, 1994, at about 1:00 o'clock in the afternoon police officers Vicente Competente and his four (4) other co-police officers apprehended the accused Salvador Peñaflorida[,Jr.] on the roadside at Nasulan, Huyon-huyon, Tigaon, Camarines Sur [,] then riding on his bicycle and placed on the still structure at its front, a thing wrapped in a newspaper and found to be 928 grams of marijuana. No ill-motive has been presented by the defense against the police officers Vicente Competente and companions by falsely testifying against the accused Salvador Peñaflorida, Jr. So, the conclusion is inevitable that the presumption that the police officers were in the regular performance of their duties apply. The confiscation of the marijuana subject of the instant case and the arrest of the accused Salvador Peñaflorida[,Jr.] by the said police officers being lawful, having been caught *in flagrante delicto*, there is no need for the warrant for the seizure of the fruit of the crime, the same being incidental to the lawful arrest. Rightly so, because a person caught illegally possessing or

[12] CA *rollo*, pp. 25-26.

transporting drugs is subject to the warrantless search. Besides, object in the "plain view" of an officer who has the right to be in the position to have that view are subject to seizure and may be presented as evidence.[13] (Citations omitted)

In view of the penalty imposed, the case was directly appealed to this Court on automatic review. Pursuant to our decision in *People v. Mateo*,[14] however, this case was referred to the Court of Appeals. The appellate court affirmed appellant's conviction on 31 July 2006.

In a Resolution[15] dated 14 February 2007, the parties were given to file their supplemental briefs, if they so desire. Both parties manifested their intention not to file any supplemental brief since all the issues and arguments have already been raised in their respective briefs.[16]

Hence, the instant case is now before this Court on automatic review.

In assailing his conviction, appellant submits that there is doubt that he had freely and consciously possessed marijuana. First, he claims that the alleged asset did not name the person who would transport the marijuana to Huyon-huyon. In view of the "vague" information supplied by the asset, the latter should have been presented in court. Second, upon receipt of the information from the asset, the police officers should have first investigated and tried to obtain a warrant of arrest against appellant, instead of arbitrarily arresting him. Third, appellant maintains that he is not aware of the contents of the package. Fourth, upon arrival at the headquarters, the police did not determine the contents and weight of the package. Fifth, appellant argues that the findings of the forensic expert are questionable because there is doubt as to the identity of the package examined.[17]

---

[13] *Id*. at 23-24.

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

[15] *Rollo*, pp. 11-12.

[16] *Id*. at 13-14; 82-83.

[17] CA *rollo*, pp. 47-51.

Prefatorily, factual findings of the trial courts, including their assessment of the witness' credibility are entitled to great weight and respect by this Court, particularly when the Court of Appeals affirm the findings.[18] Indeed, the trial court is in the best position to assess the credibility of witnesses since it has observed firsthand their demeanor, conduct and attitude under grilling examination.[19] After a review of the records of this case, we find no cogent reason to disregard this time-honored principle.

We shall retrace the series of events leading to the arrest of appellant and resolve the issues raised by him.

Acting on an asset's tip, a police team was organized to apprehend appellant who was allegedly about to transport the subject marijuana. Appellant is wrong in concluding that the asset did not name appellant. As early as 16 November 1996, appellant through counsel had already conceded in his Memorandum[20] filed with the trial court that based on the tip, he was about to transport the contraband. It further cited excerpts from the result of the preliminary investigation conducted by the judge on Competente, and we quote:

> Q: Did your [a]sset tell you the place and the person or persons involved?
>
> A: Yes[,]sir.
>
> Q: Where and who?
>
> A: He said that marijuana is being transported from Tigaon town to Bgy. Huyon[-]huyon by Salvador Peñaflorida, Jr.[21]

Moreover, on cross-examination, the defense counsel even assumed that according to the asset's tip it was appellant who was assigned to deliver the contraband. And the witness under

---

[18] *Pucay v. People*, G.R. No. 167084, 31 October 2006, 506 SCRA 411, 420.

[19] *Bricenio v. People*, G.R. No. 157804, 20 June 2006, 491 SCRA 489, 496.

[20] Records, pp. 167-172.

[21] *Id*. at 169-170.

cross-examination affirmed it was indeed appellant who would be making the delivery according to the tip:

Q: Will you inform this Honorable Court who has given you the **tip that the accused was going to deliver that marijuana[?]** [W]ho is [this] person?

A: It was a confidential tip.

Q: Now, but [*sic*] on June 1 you were in your office?

A: Yes[,] sir[.] I was in the office.

Q: Since your office is just near the Municipal Trial Court of Tigaon and you were given a **tip that Salvador Peñaflorida[,Jr.] will be delivering marijuana**, why did you not get a [w]arrant of [a]rrest?

xxx xxx xxx

Q: The tip that was given to you that **it was Salvador Peñaflorida, Jr. [who] will be dealing marijuana on that date** and according to you **Salvador was to travel from a certain town to Tigaon**, is that the tip?

A: Yes[,] sir[.] That he would deliver marijuana.

Q: So, at the time that you form[ed] a team, Salvador was nowhere to be seen, you have not seen the shadow of Salvador?

A: When the tip was given to us[,] I have not seen him[.] **[B]ut the tip is he will deliver from Tigaon to Huyon[-]huyon**, that is why we chased him.[22] [Emphasis supplied]

Prescinding from the above argument, appellant insists that the asset should have been presented in court. He invoked the court ruling in *People v. Libag,*[23] wherein the non-presentation of the informant was fatal to the case of the prosecution. *Libag* cannot find application in this case. In that case, the crime charged was the sale of *shabu* where the informant himself was a poseur-buyer and a witness to the transaction. His testimony

[22] TSN, 8 July 1997, pp. 16-17.

[23] G.R. No. 68997, 27 April 1990, 184 SCRA 707.

was a poseur-buyer was indispensable because it could have helped the trial court in determining whether or not the appellant had knowledge that the bag contained marijuana, such knowledge being an essential ingredient of the offense for which he was convicted.[24] In this case, however, the asset was not present in the police operation. The rule is that the presentation of an informant in an illegal drugs case is not essential for conviction nor is it indispensable for a successful prosecution because his testimony would merely be corroborative and cumulative. Informants are generally not presented in court because of the need to hide their identity and preserve their invaluable service to the police.[25]

Competente testified that his team caught up with appellant who was riding a bicycle. He saw the marijuana in a package which appellant was carrying inside his basket, thus:

Q: And so as the team leader x x x and in connection with the instruction of Chief Domingo Agravante, what did you do?

A: We used the mobile and proceeded to the place, to the route where the marijuana was being transported.

Q: When you said we to whom are you referring to?

A: The team.

Q: Were you able to go to the place as you said?

A: Yes, sir.

Q: So, upon reaching the place, [*sic*] what place was that?

A: Sitio Nasulan, Barangay Huyon-huyon, Tigaon, Camarines Sur.

Q: And upon reaching the place together with the other member of the team, what did you find if you f[ound] any?

A: We overtook our suspect while riding in a bicycle and we stopped him.

---

[24] *Id*. at 715.

[25] *People v. Del Mundo*, G.R. No. 169141, 6 December 2006, 510 SCRA 554, 566.

Q: And did the suspect stop?

A: Yes[,] sir.

Q: Tell us the name of your suspect?

A: Salvador Peñaflorida[,] Jr. *y* Clidoro.

Q: And after stopping the accused in this case, what else did you do[,] if any[,] together with the team?

A: When we saw the marijuana and other groceries in his bicycle we invited him to the headquarters.[26]

Callo also confirmed that he saw appellant transporting and in possession of the subject marijuana:

Q: When you reached there[,] what happened next?

A: We have not reached yet [*sic*] the Huyon[-]huyon proper. [W]e are in Nasulan when we met the man who had with him the marijuana.

xxx xxx xxx

Q: After you talked with the person with marijuana[,] what happened next?

A: We saw on his bicycle a wrap[ped] marijuana.

Q: Who was in possession of that?

A: Salvador Peñaflorida[,] Jr.

Q: How is that person related to the accused in this case now?

A: He is the one, sir.

Q: Kindly describe to us the marijuana that you are able to tell that it was marijuana?

A: It was wrapped on [cellophane] and newspaper. We saw the edges of the marijuana.

Q: For the [record], kindly describe to us the edges of the marijuana[;] its appearance and color.

---

[26] TSN, 8 July 1997, pp. 4-5.

A: It was like a shape of ½ ream of coupon bond and the color is green.[27]

These positive and categorical declarations of two police officers deserve weight and credence in light of the presumption of regularity accorded to them and the lack of motive on their part to falsely testify against appellant.

Appellant resorts to a challenge on the validity of his arrest predicated on lack of a warrant of arrest. The OSG correctly justifies the failure to apply for an arrest warrant because at that point, time was of the essence in appellant's apprehension, noting in the same breath that there is no law requiring investigation and surveillance upon receipt of tips from assets before conducting police operations.[28] The police officers succinctly testified on this point when cross-examined, *viz*:

Q: Will you inform this Honorable Court who has given you the tip that the accused was going to deliver that marijuana, who is that person?

A: It was a confidential tip.

Q: Now, but [sic] on June 1 you were in your office?

A: Yes[,] sir[.] I was in the office.

Q: Since your office is just near the Municipal Trial Court of Tigaon and you were given a tip that Salvador Peñaflorida[,Jr.] will be delivering marijuana, why did you not get a [w]arrant of [a]rrest from the court?

A: There was no time to apply for a search warrant because just after the information was received, we proceeded.

xxx xxx xxx

Q: If that is true, Mr. Competente that you were given a tip, the most that you will do is first see the Judge of Tigaon in as much as you have not seen yet [*sic*] the said person carrying marijuana?

---

[27] TSN, 15 September 1997, pp. 4-5.

[28] CA *rollo*, p. 85.

A: There was no time for us to apply, because the marijuana is being delivered so we have no more time to see the Judge.

xxx xxx xxx

Q: Are you aware of the law that illegally confiscated marijuana cannot be used in court?

FISCAL SOLANO: Conclusion of law.

A: Yes, sir[.] [I]f it is illegally confiscated it cannot be used in court.

ATTY. CLEDERA: Despite that prohibition under the rules[,] you insisted in apprehending Salvador Peñaflorida[,Jr.] withou[t] [w]arrant of [a]rrest inspite of the fact that you know that restriction?

A: Our apprehension was in plain view.

Q: How can you see that it was in open view when according to you the house of Salvador is 120 meters[?] [H]ow can you see that distance?

A: I could see that because the marijuana was carried in his bicycle, we have seen it.

Q: In what street?

A: Huyon-huyon[,] Sitio Nasulan, Tigaon, Camarines Sur.

Q: About what time did you see him?

A: 1:00 o'clock sir.

xxx xxx xxx[29]

The police was tipped off at around 1:00 p.m. that appellant was transporting marijuana to Huyon-huyon. Certainly, they had no time to secure an arrest warrant as appellant was already in transit and already committing a crime. The arrest was effected after appellant was caught in *flagrante delicto*. He was seen riding his bicycle and carrying with him the contraband, hence, demonstrating that a crime was then already being committed. Under the circumstances, the police had probable cause to believe

[29] TSN, 8 July 1997, pp. 16-18.

that appellant was committing a crime. Thus, the warrantless arrest is justified.

Article II, Section 4 of R.A. No. 6425, as amended by R.A. No. 7659, states:

> SEC. 4. *Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs*. — The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as broker in any of such transactions. x x x.

Jurisprudence defines "transport" as "to carry or convey from one place to another."[30] In the instant case, appellant was riding his bicycle when he was caught by the police. He admitted that he was about to convey the package, which contained marijuana, to a certain Jimmy Gonzales.

Appellant, however, denies any knowledge that the package in his possession contained marijuana. But the trial court rejected his contention, noting that it was impossible for appellant not to be aware of the contents of the package because "marijuana has a distinct sweet and unmistakable aroma x x x would have alarmed him."[31]

Taking one step further, the appellate court went on to declare that being *mala prohibita*, one commits the crime under R.A. No. 6425 by mere possession of a prohibited drug without legal authority. Intent, motive or knowledge thereof is not necessary.[32]

Appellant, in the main, asserts that he did not freely and consciously possess marijuana.[33] In criminal cases involving prohibited drugs, there can be no conviction unless the prosecution shows that the accused knowingly possessed the prohibited articles

---

[30] *People v. Del Mundo*, 418 Phil. 740, 754 (2001), citing *People v. Jones*, 278 SCRA 345, 355 (1997).

[31] CA *rollo*, p. 25.

[32] *Rollo*, p. 7.

[33] CA *rollo*, p. 47.

in his person, or that *animus possidendi* is shown to be present together with his possession or control of such article. *Animus possidendi* is only *prima facie*. It is subject to contrary proof and may be rebutted by evidence that the accused did not in fact exercise power and control over the thing in question, and did not intend to do so. The burden of evidence is thus shifted to the possessor to explain absence of *animus possidendi*.[34]

Knowledge refers to a mental state of awareness of a fact. Since courts cannot penetrate the mind of an accused and thereafter state its perceptions with certainty, resort to other evidence is necessary. *Animus possidendi*, as a state of mind, may be determined on a case-to-case basis by taking into consideration the prior or contemporaneous acts of the accused, as well as the surrounding circumstances. Its existence may and usually must be inferred from the attendant events in each particular case.[35]

Appellant failed to satisfactorily establish his lack of knowledge of possession in the instant case. First, the marijuana was found in the bicycle he himself was driving. Second, the police officers first readily saw in plain view the edges of the marijuana leaves jutting out of the package. Third, it is incredulous that appellant did not ask Obias what the package contained when the latter requested him to do the delivery errand since the package was wrapped in a newspaper and weighed almost one kilogram. The same observation was reached by the trial court:

> Finally, it is very hard for the court to accept the claim of the accused Salvador Peñaflorida[,Jr.] that he does not know that the thing wrapped with a newspaper which Boyet Obias, now dead, requested the accused Peñaflorida[,Jr.] would deliver to a certain Jimmy Gonzales whose present whereabouts is not known, was a marijuana. Its odor is different especially from tobacco. This was observed by the court during the trial of the case, everytime the wrapper containing the subject marijuana with a volume of 928 grams is brought to court its odor is noticeable. For the accused Peñaflorida[,Jr.], not to notice it is hard to believe. Rightly so, because

[34] *Cupcupin v. People*, 440 Phil. 712, 731 (2002).

[35] *People v. Burton*, 335 Phil. 1003, 1024 (1997).

marijuana has a distinct sweet and unmistakable aroma very different from (and not nauseating) unlike tobacco. This aroma would have alarmed him.[36]

Furthermore, it appeared from the cross-examination of appellant that Obias was an acquaintance. In the ordinary course of things, one is expected to inquire about the contents of a wrapped package especially when it is a mere acquaintance who requests the delivery and, more so, when delivery is to a place some distance away.

Anent appellant's claim that the package examined by Arroyo was not the one confiscated from him, the appellate court had this to say:

> SPO3 Competente testified that marijuana was confiscated from appellant. The pictures of appellant, together with the items seized from him, depict a package containing dry leaves suspected to be marijuana. On the other hand, Forensic Chemist Arroyo testified that the specimen she examined was delivered to her by Major Agravante on June 9, 1994 or two days after the apprehension. From these series of events, it can be inferred that the package confiscated from appellant and the specimen delivered to Forensic Chemist Arroyo for laboratory examination were one and the same.[37]

Despite intense grilling from the defense counsel, Arroyo never faltered and was in fact consistent in declaring that she received the specimen from Agravante on 9 June 1994 and immediately conducted the laboratory test.

Finally, the lower courts correctly sentenced appellant to suffer the penalty of *reclusion perpetua* and to pay a fine of one million pesos by virtue of the amendment to Section 4, R.A. No. 6425 by R.A. No. 7659.[38]

---

[36] CA *rollo*, pp. 24-25.

[37] *Rollo*, p. 9.

[38] SEC. 4. *Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs*. — The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as broker in any of such transactions. x x x.

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of San Jose, Camarines Sur, Branch 30 in Criminal Case No. T-1476, finding appellant Salvador Peñaflorida *y* Clidoro guilty beyond reasonable doubt of violation of Section 4, Article II of R.A. No. 6425 (Dangerous Drugs Act) as amended, and sentencing him to suffer the penalty of *reclusion perpetua* and to pay a fine of One Million Pesos (₱1,000,000.00), is *AFFIRMED in toto*.

SO ORDERED.

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

Quisumbing, J., on official leave.

EN BANC

[A.M. No. 2007-13-SC. April 14, 2008]

RE: HABITUAL ABSENTEEISM OF MR. ERWIN A. ABDON, Utility Worker II

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHOULD AT ALL TIMES STRICTLY OBSERVE OFFICIAL TIME.— By reason of the nature and functions of their office, officials and employees of the judiciary must faithfully observe the constitutional canon that public office is a public trust. This duty calls for the observance of prescribed office hours and the efficient use of official time for public service, if only to recompense the Government, and ultimately, the people who shoulder the cost of maintaining the judiciary. Thus, to inspire public respect for the justice

system, court officials and employees should at all times strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible.

2. ID.; ID.; ID.; HABITUAL ABSENTEEISM; IMPOSABLE PENALTY.— In case of habitual absenteeism, Administrative Circular No. 14-2002 and The Uniform Rules on Administrative Cases in the Civil Service impose the penalty of suspension of six months and one day to one year for the first offense and dismissal for the second offense. However, in the determination of the penalty to be imposed, attendant circumstances such as physical fitness, habituality and length of service in the government may be considered.

3. ID.; ID.; ID.; ID.;ID.; MITIGATING CIRCUMSTANCES; WHERE A PENALTY LESS PUNITIVE WOULD SUFFICE, WHATEVER MISSTEPS MAY HAVE BEEN COMMITTED OUGHT NOT TO BE METED A CONSEQUENCE SO SEVERE.— Abdon has been with the Court since 1994. His claim that his absences were due to the severe pain from acute gouty arthritis was corroborated by the medical certificates of Drs. Bernal and Marcelo-Maclang. He admitted his infractions, asked for forgiveness and understanding and promised to reform. It also appears that he did not deliberately absent himself from work as he submitted applications for leave but they were disapproved because he had insufficient leave credits. In several cases, the Court has mitigated the imposable penalty for special reasons. We have also considered length of service in the judiciary, acknowledgment of infractions, remorse and other family circumstances, among others, in determining the proper penalty. We have also ruled that where a penalty less punitive would suffice, whatever missteps may have been committed ought not to be meted a consequence so severe. The law is concerned not only with the employee but with his family as well. Unemployment brings untold hardship and sorrow to those dependent on the wage-earner. In the present case, all relevant circumstances considered, we deem the penalty of suspension for one month recommended by the OAS as reasonable.

R E S O L U T I O N

CORONA, *J.*:

This administrative matter refers to the habitual absenteeism of Erwin A. Abdon, utility worker II detailed at the Records Division of the Office of Administrative Services (OAS).

The Chief of the Complaints and Investigation Division of the OAS received a report[1] that Abdon incurred the following unauthorized absences in the first semester of 2007: six absences in January, five absences in February and 20 absences in June.

Abdon was given five days within which to explain why he should not be held administratively liable for habitual absenteeism.

Abdon submitted his explanation[2] on July 24, 2007. He admitted incurring the unauthorized absences. He attributed them, however, to severe pain in his hands and feet due to acute gouty arthritis which prevented him from reporting for work. He submitted a medical certificate issued by Dr. Ma. Consuelo M. Bernal[3] of the Court's Clinic Services to the effect that he was examined for acute gouty arthritis on January 3 and 9, 2007 and February 7 to 10, 2007. He also submitted a medical certificate issued by Dr. Nora S. Marcelo-Maclang confirming that his absences in June 2007 were due to acute gouty arthritis.[4]

Abdon asked for compassion and understanding with the promise to make up for his infraction in the future by trying his best to report for work despite his recurring illness.

In a memorandum[5] dated November 16, 2007, the OAS, thru Atty. Eden T. Candelaria,[6] stated that while Abdon's

---

[1] Dated July 11, 2007. Prepared by Gloria P. Kasilag, SC Chief Judicial Staff Officer in the Leave Division of the OAS. *Rollo,* p. 21.

[2] *Id*., p. 14.

[3] SC Chief Judicial Staff Officer.

[4] In a letter dated October 17, 2007 (*id*., p. 7), Dr. Marcelo-Maclang confirmed the issuance of the medical certificate to Abdon.

[5] *Rollo*, pp. 1-4.

[6] Deputy Clerk of Court and Chief of OAS.

absences on January 9, 2007 and February 8, 2007 as well as his 20 absences in June 2007 were due to illness as shown by the medical certificates of Drs. Bernal and Marcelo-Maclang, these absences as well as his five other absences in January 2007 and four other absences in February were all unauthorized. The OAS also noted that Abdon had been previously reprimanded by the Court for unauthorized absences in A.M. No. 2005-17-SC.[7] Nonetheless, the OAS considered the reason for Abdon's absences (that is, his health problems) as a mitigating circumstance. It recommended that Abdon be found guilty of habitual absenteeism and suspended for one month with a warning that the commission of the same or similar infraction in the future would be dealt with more severely.

We adopt the findings and recommendation of the OAS.

By reason of the nature and functions of their office, officials and employees of the judiciary must faithfully observe the constitutional canon that public office is a public trust.[8] This duty calls for the observance of prescribed office hours and the efficient use of official time for public service, if only to recompense the Government, and ultimately, the people who shoulder the cost of maintaining the judiciary.[9] Thus, to inspire public respect for the justice system, court officials and employees should at all times strictly observe official time.[10] As punctuality is a virtue, absenteeism and tardiness are impermissible.[11]

Administrative Circular No. 14-2002 (Reiterating the Civil Service Commission's Policy on Habitual Absenteeism) provides:

1. An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the

---

[7] *Re: Erwin A. Abdon, Utility Worker I*, resolution dated July 26, 2005.

[8] *Re: Habitual Absenteeism of Mr. Fernando P. Pascual*, A.M. No. 2005-16-SC, 22 September 2005, 470 SCRA 569.

[9] *Id*.

[10] *Id*.

[11] *Id*.

allowable 2.5 days monthly leave credit under the law for at least three (3) months in a semester or at least three (3) consecutive months during the year[.]

Considering Abdon's unauthorized absences in January (six), February (five) and June (20) last year, it is clear that he was a habitual absentee.

In case of habitual absenteeism, Administrative Circular No. 14-2002 and The Uniform Rules on Administrative Cases in the Civil Service impose the penalty of suspension of six months and one day to one year for the first offense and dismissal for the second offense. However, in the determination of the penalty to be imposed, attendant circumstances such as physical fitness, habituality and length of service in the government may be considered.

Abdon has been with the Court since 1994. His claim that his absences were due to the severe pain from acute gouty arthritis was corroborated by the medical certificates of Drs. Bernal and Marcelo-Maclang. He admitted his infractions, asked for forgiveness and understanding and promised to reform. It also appears that he did not deliberately absent himself from work as he submitted applications for leave but they were disapproved because he had insufficient leave credits.

In several cases, the Court has mitigated the imposable penalty for special reasons.[12] We have also considered length of service in the judiciary, acknowledgment of infractions, remorse and other family circumstances, among others, in determining the proper penalty.[13] We have also ruled that where a penalty less punitive would suffice, whatever missteps may have been committed ought not to be meted a consequence so severe. The law is concerned not only with the employee but with his

[12] *Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semesters of 2003*, A.M. No. 00-06-09-SC, 16 March 2004, 425 SCRA 508.

[13] *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division*, A.M. No. 2001-7-SC & No. 2001-8-SC, 22 July 2005.

family as well. Unemployment brings untold hardship and sorrow to those dependent on the wage-earner.[14] In the present case, all relevant circumstances considered, we deem the penalty of suspension for one month recommended by the OAS as reasonable.

WHEREFORE, Erwin A. Abdon, utility worker II at the Records Division of the Office of Administrative Services is hereby found *GUILTY* of habitual absenteeism and is *SUSPENDED FOR ONE MONTH*. He is sternly warned that a repetition of the same or similar breach in the future shall be dealt with more severely.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr. Nachura, Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

Azcuna, J., on official leave.

THIRD DIVISION

[G.R. No. 156421. April 14, 2008]

HON. JOSE FERNANDEZ, RTC of PASIG CITY, BR. 158 and UNITED OVERSEAS BANK PHILS., *petitioners, vs.* **SPS. GREGORIO ESPINOZA and JOJI GADOR-ESPINOZA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; WRIT OF POSSESSION; WHEN MAY BE ISSUED.— A writ of possession is an order

[14] *Almira v. B.F. Goodrich Philippines, Inc.*, 157 Phil. 110 (1974).

whereby the sheriff is commanded to place a person in possession of a real or personal property. It may be issued under the following instances: (1) land registration proceedings under Sec. 17 of Act No. 496; (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; and (3) extrajudicial foreclosure of a real estate mortgage under Sec. 7 of Act No. 3135 as amended by Act No. 4118. The case at bar falls under the third instance. The issuance of a writ of possession is explicitly authorized by Act No. 3135, as amended by Act No. 4118, which regulates the manner of effecting an extrajudicial foreclosure of mortgage.

2. ID.; ID.; ID.; MAY BE ISSUED DURING THE REDEMPTION PERIOD IN FAVOR OF THE PURCHASER OF THE MORTGAGED PROPERTY IN THE FORECLOSURE SALE.— In case of default of the mortgagor in the payment of the loan obligations, the mortgagee may foreclose the mortgaged property by filing a Petition for Extrajudicial Foreclosure of Mortgage following the procedure laid down in A.M. No. 99-10-05-0. The mortgagor or his successor-in-interest may redeem the foreclosed property within one year from the registration of the sale with the Register of Deeds. During the redemption period, the buyer at public auction may file, with the RTC in the province or place where the property or portion thereof is located, an *ex parte* motion for the issuance of a writ of possession within one year from the registration of the Sheriff's Certificate of Sale, and the court shall grant the said motion upon the petitioner's posting a bond in an amount equivalent to the use of the property for a period of twelve (12) months. A writ of possession may be issued during the redemption period in favor of the purchaser of the mortgaged property in the foreclosure sale. Section 7 of Act No. 3135, as amended by Act No. 4118, provides: Section 7. Possession during redemption period. xxx. The above-quoted provision explicitly allows the purchaser in a foreclosure sale to apply for a writ of possession during the redemption period by filing a petition in the form of an *ex parte* motion under oath for that purpose. Upon the filing of such motion with the RTC having jurisdiction over the subject property and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession.

3. ID.; ID.; ID.; RIGHT OF THE PURCHASER TO THE POSSESSION OF THE FORECLOSED PROPERTY BECOMES ABSOLUTE UPON EXPIRATION OF THE REDEMPTION PERIOD; MERE FILING OF AN *EX PARTE* MOTION FOR THE ISSUANCE OF THE WRIT OF POSSESSION IS SUFFICIENT.— Upon the expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute. The basis of this right to possession is the purchaser's ownership of the property. Mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice, and the bond required is no longer necessary, since possession becomes an absolute right of the purchaser as the confirmed owner. Under the foregoing judicial pronouncement, it is clear that UOB has an absolute right to take possession of the subject property since it was the highest bidder in the foreclosure sale, and the spouses Espinoza failed to redeem the said property even after the redemption period. Act No. 3135, as amended by Act No. 4118, is categorical in stating that the purchaser must first be placed in possession of the mortgaged property pending proceedings assailing the issuance of the writ of possession.

4. ID.; ID.; ID.; ANY QUESTION REGARDING THE VALIDITY OF THE MORTGAGE OR ITS FORECLOSURE CANNOT BE A LEGAL GROUND FOR REFUSAL OF THE ISSUANCE THEREOF.— Consequently, the RTC under which the application for the issuance of a writ of possession over the subject property is pending cannot defer the issuance of the said writ in view of the pendency of an action for annulment of mortgage and foreclosure sale. The judge with whom an application for a writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure. Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for the refusal to issue a writ of possession. Regardless of whether or not there is a pending suit for the annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice, of course, to the eventual outcome of the pending annulment case.

5. ID.; ID.; ID.; PENDING ACTION FOR ANNULMENT OF MORTGAGE OR FORECLOSURE SALE DOES NOT

STAY THE ISSUANCE THEREOF.— The spouses Espinoza's position that the issuance of the writ of possession must be deferred pending resolution of Civil Case No. 66256 is therefore unavailing. As we have recounted above, this Court has long settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession.

6. ID.; ID.; ID.; THE PROCEEDING IN A PETITION FOR A WRIT OF POSSESSION IS *EX PARTE* AND SUMMARY IN NATURE; PETITION MAY BE GRANTED EVEN IN THE ABSENCE OF THE MORTGAGORS.— Indeed, the proceeding in a petition for a writ of possession is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adverse of interest. It is a proceeding wherein relief is granted without affording the person against whom the relief is sought the opportunity to be heard. Hence, the RTC may grant the petition in the absence of the mortgagors, who are, in this case, the spouses Espinoza.

7. ID.; ID.; ID.; ISSUANCE THEREOF IN FAVOR OF THE PURCHASER IN A FORECLOSURE SALE IS A MINISTERIAL ACT AND DOES NOT ENTAIL THE EXERCISE OF DISCRETION.— The RTC, Branch 158, which issued the writ of possession cannot be adjudged to have committed grave abuse of discretion, nor can its order directing the issuance of said writ be considered patently illegal for, *a fortiori,* there is no discretion involved in its issuance of such an order, it being the ministerial duty of the trial court under the circumstances. In *Mamerto Maniquiz Foundation, Inc. v. Pizarro,* we emphasized the principle that the issuance of a writ of possession in favor of the purchaser in a foreclosure sale is a ministerial act and does not entail the exercise of discretion: **This Court has consistently held that the duty of the trial court to grant a writ of possession is ministerial**. **Such writ issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the trial court.** Any question regarding regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in Section 8 of Act 3135. Such question cannot be raised to oppose the issuance of the

writ, since the proceeding is *ex parte*. The recourse is available even before the expiration of the redemption period provided by law and the Rules of Court. **The purchaser, who has a right to possession that extends after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. Hence, at any time following the consolidation of ownership and the issuance of a new transfer certificate of title in the name of the purchaser, he or she is even more entitled to possession of the property.** In such a case, the bond required under Section 7 of Act 3135 is no longer necessary, since possession becomes an absolute right of the purchaser as the confirmed owner.

8. ID.; ID.; ID.; ID.; RULING IN THE CASES OF *COMETA* (G.R. NO. 69294 30 JUNE 1987) AND *BARICAN* (G.R. NO. 79906 20 JUNE 1998), INAPPLICABLE TO CASE AT BAR.— The Court of Appeals reversed the 13 July 2000 Order of the RTC, Branch 158, granting the issuance of a writ of possession over the subject property to UOB, on the ground that there are peculiar and equitable circumstances attendant in the case which no longer made the issuance of said writ a mere ministerial duty of the trial court. Apparently, the appellate court relied on *Cometa v. Intermediate Appellate Court* and *Barican v. Intermediate Appellate Court* cited in *Vaca v. Court of Appeals* in holding that the issuance of writ of possession had ceased to be ministerial. In *Cometa,* which actually involved execution of judgment for the prevailing party in a damages suit, the subject properties were sold at the public auction at an unusually lower price, while in *Barican,* the mortgagee bank took five years from the time of foreclosure before filing the petition for the issuance of writ of possession. We have considered these equitable and peculiar circumstances in *Cometa* and *Barican* to justify the relaxation of the otherwise absolute rule. None of these exceptional circumstances, however, attended herein so as to place the instant case in the same stature as that of *Cometa* and *Barican*. Instead, the ruling in *Vaca v. Court of Appeals* on all fours with the present petition. In *Vaca,* there is no dispute that the property was not redeemed within one year from the registration of the extrajudicial foreclosure sale; thus, the mortgagee bank acquired an absolute right, as purchaser, to the issuance of the writ of possession. Similarly, UOB, as the purchaser at the auction sale in the instant

case, is entitled as a matter of right, to the issuance of the writ of possession. The Court of Appeals evidently committed reversible error in finding otherwise.

9. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT THE PROPER REMEDY WHERE THE ASSAILED ORDER WAS ISSUED BY THE TRIAL COURT PURSUANT TO ITS MINISTERIAL DUTY, AND ABSENT ANY SHOWING THAT THE SAME IS TAINTED WITH ILLEGALITY.— The order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond, if applied for by the purchaser during the redemption period; and upon the filing of the proper motion, with no more need for a bond, if applied for by the purchaser after the lapse of the redemption period. The judge issuing the order, following the express provisions of law and settled jurisprudence, cannot be charged with having acted with grave abuse of discretion. Hence, *certiorari* does not lie in instances where the RTC granted the Petition for the Issuance of the Writ of Possession, for he is mandated by the law to issue such writ and the buyer in the foreclosure sale is entitled to it as a matter of right. A special civil action for *certiorari* could be availed of only if the lower tribunal has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. However, where the assailed Order was forthwith issued by the RTC pursuant to its ministerial duty, and in the absence of any showing that the said Order is tainted with illegality, as in the case at bar, *certiorari* is not the proper remedy.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by petitioner United Overseas Bank[1] (UOB) seeking to reverse and set aside the

[1] Formerly Westmont Bank.

Decision[2] of the Court of Appeals dated 25 June 2002 and its Resolution[3] dated 28 November 2002 in CA-G.R. SP No. 60865. The assailed Decision of the Court of Appeals reversed the Orders[4] dated 10 May 2000, 10 July 2000, 13 July 2000 and 25 August 2000 of the Regional Trial Court (RTC) of Pasig City, Branch 158, in LRC Case No. R-5792.

The dispositive portion of the Court of Appeals Decision reads:

> WHEREFORE, premises considered the assailed Orders dated May 10, 2000, July 10, 2000, July 13, 2000 and August 25, 2000 are hereby ANNULED and SET ASIDE. LRC Case No. R-5792 is hereby ordered to be consolidated with Civil Case No. 66256 of Branch 164 of the Regional Trial Court of Pasig City. No Costs.[5]

The 10 May 2000 and 10 July 2000 Orders of the RTC denied the motion filed by respondent spouses Gregorio Espinoza and Joji Gador-Espinoza (spouses Espinoza) for the consolidation of the *Ex-Parte* Petition for the Issuance of Writ of Possession filed by UOB, docketed as LRC Case No. R-5792, with their Complaint for Nullification of Extrajudicial Proceedings and Certificate of Sale, docketed as Civil Case No. 66256, pending with the RTC, Branch 164. The 13 July 2000 and 25 August 2000 Orders of the RTC granted the Petition of UOB in LRC Case No. R-5792, and ordered the issuance of a writ of possession in favor of UOB over the real property covered by Transfer Certificate of Title (TCT) No. PT-108565.

UOB is a banking institution duly organized and existing as such under the Philippine laws; while Firematic Philippines, Inc. (FPI) is a domestic corporation duly organized and existing under Philippine laws represented by its President, Gregorio Espinoza.

---

[2] Penned by Associate Justice B.A. Adefuin-dela Cruz with Associate Justices Wenceslao L. Agnir, Jr. and Regalado E. Maambong, concurring; *rollo,* pp. 9-15.

[3] *Rollo,* p. 17.

[4] *Id*. at 89-94.

[5] *Id*. at 15.

On 24 March 1996, FPI was granted a revolving credit line by UOB in the amount of ₱11,000,000.00. Using the said credit line, FPI obtained on several occasions from UOB loans in different amounts, reaching the total sum of ₱4,000,000.00, as evidenced by promissory notes executed by Gregorio Espinoza. Likewise drawn against the credit line of FPI were trust receipts in the sum of ₱6,325,588.71.

As a security for the loan obligations of FPI, the spouses Espinoza executed a Deed of Real Estate Mortgage over a parcel of land located in Pasig City, with an area of 200 square meters, and covered by TCT No. PT-84838 in their names, with an area of 200 square meters and registered by the Registry of Deeds of Pasig City (subject property).[6]

Subsequently, FPI defaulted in the payment of the promissory notes and trust receipts drawn against its credit line, which prompted UOB to cause the extrajudicial foreclosure of its mortgage on the subject property, and the public auction sale thereof. The UOB was the highest bidder at the auction sale as evidenced by the Certificate of Sale[7] dated 29 July 1996.

For failure of FPI and the spouses Espinoza to redeem the subject property within the redemption period, UOB filed an Affidavit of Consolidation before the Register of Deeds of Pasig. Consequently, a new TCT covering the subject property was issued in the name of UOB, particularly, TCT No. PT-108565.

In order to retain possession of the subject property, FPI and the spouses Espinoza instituted an action for nullification of the extrajudicial foreclosure proceedings and certificate of sale, before the RTC, Branch 164, docketed as **Civil Case No. 66256.** In their Amended Complaint, FPI and the spouses Espinoza alleged that there was bad faith on the part of UOB who made them sign the Deed of Real Estate Mortgage in blank. In addition, FPI and the spouses Espinoza averred that there was already an agreement entered into by the parties to restructure the loan, but for unknown reasons, the agreement was unilaterally

[6] CA *rollo*, pp. 55-60.

[7] *Rollo,* p. 71.

rescinded by UOB. Finally, FPI and the spouses Espinoza claimed that at the time they filed their complaint, FPI already paid UOB the sum of ₱5,275,012.43. Despite their repeated requests, however, UOB still failed to give them proper accounting of their outstanding loan obligations and the payments they made thereon.

For its part, UOB filed an *Ex-Parte* Petition for Issuance of a Writ of Possession before the RTC, Branch 158, docketed as **LRC Case No. R-5792.** The spouses Espinoza opposed LRC Case No. R-5792 in view of the pendency of Civil Case No. 66256 and moved, instead, for the consolidation of the two cases

In its Order dated 10 May 2000, the RTC, Branch 158, in LRC Case No. R-5792, denied the opposition to the Petition and the motion for consolidation interposed by the spouses Espinoza, to wit:

> This resolves the opposition to the *ex-parte* issuance of writ of possession with motion for consolidation together with the reply to the opposition and the opposition to the motion.
>
> Since [UOB] has already consolidated a title in its name, the pendency of separate civil action is not a bar to the issuance of writ of possession because the same is a ministerial act of the trial court (*Vaca v. Court of Appeals, et al*., G.R. No. 109672, July 14, 1994). Being so, the proceedings of this petition is *ex-parte* that does not require the appearance nor the intervention of the [spouses Espinoza].
>
> Consequently, [the spouses Espinoza's] opposition to the issuance of writ of possession and its motion for consolidation are denied.[8]

The Motion for Reconsideration of the afore-quoted 10 May 2000 Order filed by the spouses Espinoza was denied by the RTC, Branch 158, in its subsequent Order dated 10 July 2000, which reads:

> This resolves [the spouses Espinoza's] Motion for Reconsideration, Addendum to Motion for Reconsideration together with the opposition to the motion.

---

[8] *Id*. at 89.

The motion is denied. It is merely a reiteration of their earlier opposition to their *Ex-parte* Petition for Issuance of Writ of Possession.[9]

On 13 July 2000, another Order was issued by the RTC, Branch 158, in LRC Case No. R-5792 granting UOB's *Ex-Parte* Petition for the Issuance of Writ of Possession over the subject property. The lower court decreed that UOB became the absolute owner of the subject property being the highest bidder in the public auction sale, and since the spouses Espinoza failed to redeem the subject property within one year from the registration of the certificate of sale, UOB is now entitled to possession of the same as the confirmed owner. According to the decretal portion of RTC Order:

WHEREFORE, let a writ of possession be issued in favor of petitioner United Overseas Bank Phils., directing the spouses Gregorio Espinoza and Joji Gador-Espinoza and all persons claiming rights under them to vacate the premises of the property covered by Transfer Certificate of Title No. PT-108565 under [UOB's] name and to turn to it over [UOB] within ten (10) days from receipt of this Order.[10]

A motion was filed by the spouses Espinoza seeking reconsideration and clarification of the 13 July 2000 Order of the RTC, Branch 158, underscoring the alleged irregularities in the procurement of the mortgage, accounting of the loan obligations, and conduct of the foreclosure proceedings.

The Motion for Clarification of the spouses Espinoza, however, was denied by the RTC, Branch 158, in its Order dated 25 August 2000, which states:

The motion is denied. There is really nothing to clarify on the Order of this Court dated July 13, 2000. It is an Order for the issuance of a writ of possession over a property covered by Transfer Certificate of Title No. PT-108565 formerly Transfer Certificate of Title No. PT-84838. It is an Order directing Spouses Gregorio Espinoza and Joji Gador-Espinoza and all persons claiming rights under them to vacate the premises and turn it over to [UOB].

---

[9] *Id*. at 90.

[10] *Id*. at 93.

Consequently, this Order of July 13, 2000 stays and the motion of the [the spouses Espinoza] for the consolidation of its (sic) petition with Civil Case No. 66256 pending before Branch 164, also of this Court is denied.[11]

Dissatisfied, the spouses Espinoza filed before the Court of Appeals a Petition for *Certiorari* under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 60865, averring that the foregoing RTC Orders were issued by the RTC in grave abuse of discretion and, thus, must be nullified and set aside.

On 25 March 2002, the Court of Appeals rendered a Decision in favor of the spouses Espinoza and reversed the four RTC Orders. The appellate court stressed that the duty of the trial court to issue the writ of possession after the expiration of the one-year redemption period ceased to be ministerial in view of the pressing peculiar and equitable circumstances in the instant case.

In a Resolution dated 28 November 2002, the Court of Appeals denied UOB's Motion for Reconsideration of its Decision.

Petitioner is now before this Court assailing the 25 March 2002 Decision and 28 November 2002 Resolution of the Court of Appeals *via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, raising the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GROSS AND REVERSIBLE ERROR IN GIVING DUE COURSE TO THE SPOUSES ESPINOZA'S PETITION.

II.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GROSS AND REVERSIBLE ERROR IN NOT DECLARING THAT [UOB] IS ENTITLED TO THE ISSUANCE OF THE WRIT OF POSSESSION

At the outset, it must be emphasized that what is on appeal before us is only the issuance of the writ of possession over the

[11] *Id*. at 94.

subject property issued by the RTC, Branch 158, in LRC Case No. R-5792.

A writ of possession is an order whereby the sheriff is commanded to place a person in possession of a real or personal property. It may be issued under the following instances: (1) land registration proceedings under Sec. 17 of Act No. 496;[12] (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; and (3) extrajudicial foreclosure of a real estate mortgage under Sec. 7 of Act No. 3135[13] as amended by Act No. 4118.[14] The case at bar falls under the third instance.

The issuance of a writ of possession is explicitly authorized by Act No. 3135, as amended by Act No. 4118, which regulates the manner of effecting an extrajudicial foreclosure of mortgage.

In case of default of the mortgagor in the payment of the loan obligations, the mortgagee may foreclose the mortgaged property by filing a Petition for Extrajudicial Foreclosure of Mortgage following the procedure laid down in A.M. No. 99-10-05-0.[15]

---

[12] Land Registration Act.

[13] An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages, approved 6 March 1924.

[14] *Idolor v. Court of Appeals*, G.R. No. 161028, 31 January 2005, 450 SCRA 396-402.

[15] PROCEDURE IN EXTRA-JUDICIAL FORECLOSURE OF MORTGAGE. Promulgated on August 7, 2001 and took effect on September 1, 2001. In line with the responsibility of an Executive Judge under Administrative Order No. 6, dated June 30, 1975, for the management of courts within his administrative area, included in which is the task of supervising directly the work of the Clerk of Court, who is also the *Ex-Officio* Sheriff, and his staff, and the issuance of commissions to notaries public and enforcement of their duties under the law, the following procedures are hereby prescribed in extrajudicial foreclosure of mortgages:

1. All applications for extra-judicial foreclosure of mortgage whether under the direction of the sheriff or a notary public, pursuant to Act 3135, as amended by Act 4118, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of court who is also the *Ex-Officio* Sheriff.

The mortgagor or his successor-in-interest may redeem the foreclosed property within one year from the registration of the

---

2. Upon receipt of an application for extra-judicial foreclosure of mortgage, it shall be the duty of the Clerk of Court to:

a) receive and docket said application and to stamp thereon the corresponding file number, date and time of filing;

b) collect the filing fees therefore pursuant to Rule 141, Section 7(c), as amended by A.M. No. 00-2-01-SC, and issue the corresponding official receipt;

c) examine, in case of real estate mortgage foreclosure, whether the applicant has complied with all the requirements before the public auction is conducted under the direction of the sheriff or a notary public, pursuant to Sec. 4 of Act 3135, as amended;

d) sign and issue the certificate of sale, subject to the approval of the Executive Judge, or in his absence, the Vice-Executive Judge. No certificate of sale shall be issued in favor of the highest bidder until all fees provided for in the aforementioned sections and in Rule 141, Section 9(1), as amended by A.M. No. 00-2-01-SC, shall have been paid; Provided, that in no case shall the amount payable under Rule 141, Section 9(1), as amended, exceed ₱100,000.00;

e) after the certificate of sale has been issued to the highest bidder, keep the complete records, while awaiting any redemption within a period of one (1) year from date of registration of the certificate of sale with the Register of Deeds concerned, after which, the records shall be archived. Notwithstanding the foregoing provision, juridical persons whose property is sold pursuant to an extra-judicial foreclosure, shall have the right to redeem the property until, but not after, the registration of the certificate of foreclosure sale which in no case shall be more than three (3) months after foreclosure, whichever is earlier, as provided in Section 47 of Republic Act No. 8791 (as amended, Res. of August 7, 2001).

Where the application concerns the extrajudicial foreclosure of mortgages of real estates and/or chattels in different locations covering one indebtedness, only one filing fee corresponding to such indebtedness shall be collected. The collecting Clerk of Court shall, apart from the official receipt of the fees, issue a certificate of payment indicating the amount of indebtedness, the filing fees collected, the mortgages sought to be foreclosed, the real estates and/or chattels mortgaged and their respective locations, which certificate shall serve the purpose of having the application docketed with the Clerks of Court of the places where the other properties are located and of allowing the extrajudicial foreclosures to proceed thereat.

3. The notices of auction sale in extrajudicial foreclosure for publication by the sheriff or by a notary public shall be published in a newspaper of general circulation pursuant to Section 1, Presidential Decree No. 1079, dated

sale with the Register of Deeds.[16] During the redemption period, the buyer at public auction may file, with the RTC in the province or place where the property or portion thereof is located, an *ex parte* motion for the issuance of a writ of possession within one year from the registration of the Sheriff's Certificate of Sale, and the court shall grant the said motion upon the petitioner's posting a bond in an amount equivalent to the use of the property for a period of twelve (12) months.[17]

A writ of possession may be issued during the redemption period in favor of the purchaser of the mortgaged property in the foreclosure sale. Section 7 of Act No. 3135, as amended by Act No. 4118, provides:

Section 7. Possession during redemption period. – In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be

---

January 2, 1977, and non-compliance therewith shall constitute a violation of Section 6 thereof.

4. The Executive Judge shall, with the assistance of the Clerk of Court, raffle applications for extrajudicial foreclosure of mortgage under the direction of the sheriff among all sheriffs, including those assigned to the Office of the Clerk of Court and Sheriffs IV assigned in the branches.

5. The name/s of the bidder/s shall be reported by the sheriff or the notary public who conducted the sale to the Clerk of Court before the issuance of the certificate of sale.

This Resolution amends or modifies accordingly Administrative Order No. 3 issued by then Chief Justice Enrique M. Fernando on 19 October 1984 and Administrative Circular No. 3-98 issued by the Chief Justice Andres R. Narvasa on 5 February 1998.

The Court Administrator may issue the necessary guidelines for the effective enforcement of this Resolution.

The Clerk of Court shall cause the publication of this Resolution in a newspaper of general circulation not later than August 14, 2001 and furnish copies thereof to the Integrated Bar of the Philippines.

[16] Section 6 of Act No. 3135.

[17] Under Section 7, Act 3135.

shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

The above-quoted provision explicitly allows the purchaser in a foreclosure sale to apply for a writ of possession during the redemption period by filing a petition in the form of an *ex parte* motion under oath for that purpose. Upon the filing of such motion with the RTC having jurisdiction over the subject property and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession.[18]

Upon the expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute. The basis of this right to possession is the purchaser's ownership of the property. Mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice, and the bond required is no longer necessary, since possession becomes an absolute right of the purchaser as the confirmed owner.[19]

Under the foregoing judicial pronouncement, it is clear that UOB has an absolute right to take possession of the subject property since it was the highest bidder in the foreclosure sale, and the spouses Espinoza failed to redeem the said property

[18] *Chailease Finance Corporation v. Ma*, 456 Phil. 498, 503 (2003).

[19] *Idolor v. Court of Appeals, supra* note 14 at 401.

even after the redemption period. Act No. 3135, as amended by Act No. 4118, is categorical in stating that the purchaser must first be placed in possession of the mortgaged property pending proceedings assailing the issuance of the writ of possession.[20]

Consequently, the RTC under which the application for the issuance of a writ of possession over the subject property is pending cannot defer the issuance of the said writ in view of the pendency of an action for annulment of mortgage and foreclosure sale. The judge with whom an application for a writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure.[21]

Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for the refusal to issue a writ of possession. Regardless of whether or not there is a pending suit for the annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice, of course, to the eventual outcome of the pending annulment case.[22]

The spouses Espinoza's position that the issuance of the writ of possession must be deferred pending resolution of Civil Case No. 66256 is therefore unavailing. As we have recounted above, this Court has long settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession.[23]

Indeed, the proceeding in a petition for a writ of possession is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adverse of interest. It is a proceeding wherein relief is granted without affording the person against

---

[20] *Yu v. Philippine Commercial International Bank*, G.R. No. 147902, 17 March 2006, 485 SCRA 56, 70.

[21] *Idolor v. Court of Appeals*, *supra* note 14.

[22] *Sps. Ong v. Court of Appeals*, 388 Phil. 857, 864-865 (2000).

[23] *Samson v. Rivera*, G.R. No. 154355, 20 May 2004, 428 SCRA 760, 769.

whom the relief is sought the opportunity to be heard.[24] Hence, the RTC may grant the petition in the absence of the mortgagors, who are, in this case, the spouses Espinoza.

The RTC, Branch 158, which issued the writ of possession cannot be adjudged to have committed grave abuse of discretion, nor can its order directing the issuance of said writ be considered patently illegal for, *a fortiori,* there is no discretion involved in its issuance of such an order, it being the ministerial duty of the trial court under the circumstances.

In *Mamerto Maniquiz Foundation, Inc. v. Pizarro,*[25] we emphasized the principle that the issuance of a writ of possession in favor of the purchaser in a foreclosure sale is a ministerial act and does not entail the exercise of discretion:

> **This Court has consistently held that the duty of the trial court to grant a writ of possession is ministerial**. **Such writ issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the trial court.** Any question regarding regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in Section 8 of Act 3135. Such question cannot be raised to oppose the issuance of the writ, since the proceeding is *ex parte*. The recourse is available even before the expiration of the redemption period provided by law and the Rules of Court.
>
> **The purchaser, who has a right to possession that extends after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. Hence, at any time following the consolidation of ownership and the issuance of a new transfer certificate of title in the name of the purchaser, he or she is even more entitled to possession of the property.** In such a case, the bond required under Section 7 of Act 3135 is no longer necessary, since possession becomes an absolute right of the purchaser as the confirmed owner. (Emphases supplied.)

---

[24] *Santiago v. Merchants Rural Bank of Talavera, Inc.*, G.R. No. 147820, 18 March 2005, 453 SCRA 756, 763.

[25] A.M. No. RTJ-03-1750, 14 January 2005, 448 SCRA 140, 153.

The order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond, if applied for by the purchaser during the redemption period; and upon the filing of the proper motion, with no more need for a bond, if applied for by the purchaser after the lapse of the redemption period. The judge issuing the order, following the express provisions of law and settled jurisprudence, cannot be charged with having acted with grave abuse of discretion.[26]

Hence, *certiorari* does not lie in instances where the RTC granted the Petition for the Issuance of the Writ of Possession, for he is mandated by the law to issue such writ and the buyer in the foreclosure sale is entitled to it as a matter of right. A special civil action for *certiorari* could be availed of only if the lower tribunal has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. However, where the assailed Order was forthwith issued by the RTC pursuant to its ministerial duty, and in the absence of any showing that the said Order is tainted with illegality, as in the case at bar, *certiorari* is not the proper remedy.[27]

In sum, We have established that LRC Case No. R-5792 is *ex-parte* and summary in nature, and it can proceed independently of Civil Case No. 66256. The writ of possession shall be issued in favor of the purchaser of the mortgaged property in the foreclosure sale, despite the pendency, but without prejudice to the subsequent outcome, of the case for annulment of the mortgage or the foreclosure proceedings. Hence, RTC, Branch 158 also did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it issued its Orders dated 10 May 2000 and 10 July 2000 denying the spouses Espinoza's Motion for Consolidation of LRC Case No. R-5792 with Civil Case No. 66256.

---

[26] *Ong v. Court of Appeals*, *supra* note 22.

[27] *Samson v. Rivera*, *supra* note 23.

The Court of Appeals reversed the 13 July 2000 Order of the RTC, Branch 158, granting the issuance of a writ of possession over the subject property to UOB, on the ground that there are peculiar and equitable circumstances attendant in the case which no longer made the issuance of said writ a mere ministerial duty of the trial court.

Apparently, the appellate court relied on *Cometa v. Intermediate Appellate Court* [28] and *Barican v. Intermediate Appellate Court*[29] cited in *Vaca v. Court of Appeals*[30] in holding that the issuance of writ of possession had ceased to be ministerial. In *Cometa,* which actually involved execution of judgment for the prevailing party in a damages suit, the subject properties were sold at the public auction at an unusually lower price, while in *Barican,* the mortgagee bank took five years from the time of foreclosure before filing the petition for the issuance of writ of possession. We have considered these equitable and peculiar circumstances in *Cometa* and *Barican* to justify the relaxation of the otherwise absolute rule. None of these exceptional circumstances, however, attended herein so as to place the instant case in the same stature as that of *Cometa* and *Barican.* Instead, the ruling in *Vaca v. Court of Appeals* on all fours with the present petition. In *Vaca,* there is no dispute that the property was not redeemed within one year from the registration of the extrajudicial foreclosure sale; thus, the mortgagee bank acquired an absolute right, as purchaser, to the issuance of the writ of possession. Similarly, UOB, as the purchaser at the auction sale in the instant case, is entitled as a matter of right, as purchaser, to the issuance of the writ of possession.

The Court of Appeals evidently committed reversible error in finding otherwise.

WHEREFORE, IN VIEW OF THE FOREGOING, the instant Petition is *GRANTED.* The Decision dated 25 June 2002, and the Resolution dated 28 November 2002, rendered by the

[28] G.R. No. 69294, 30 June 1987, 151 SCRA 563.

[29] G.R. No. 79906, 20 June 1988, 162 SCRA 358.

[30] G.R. No. 109672, 14 July 1994, 234 SCRA 146.

Court of Appeals in CA-G.R. SP No. 60865, are hereby *REVERSED* and *SET ASIDE*. The Orders dated 10 May 2000, 10 July 2000, 13 July 2000 and 25 August 2000 of the Regional Trial Court of Pasig City, Branch 158, in LRC Case No. R-5792 are hereby *REINSTATED.*

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 158040. April 14, 2008]

SPOUSES ONESIFORO and ROSARIO ALINAS, *petitioners, vs.* **SPOUSES VICTOR and ELENA ALINAS,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; CERTIFICATE OF TITLE; VALIDITY THEREOF CANNOT BE ASSAILED IN AN ACTION FOR RECOVERY OF POSSESSION AND OWNERSHIP OF PROPERTY.— The first issue raised by petitioners deserves scant consideration. By assailing the authenticity of the Registrar of Deeds' signature on the certificates of title, they are, in effect, questioning the validity of the certificates. Section 48 of Presidential Decree No. 1529 provides, thus: Sec. 48. *Certificate not subject to collateral attack.* - A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law. Pursuant to said provision, the Court ruled in *De Pedro v. Romasan Development Corporation* that: It has been held that a certificate of title, once registered, should not thereafter be impugned,

altered, changed, modified, enlarged or diminished except in a direct proceeding permitted by law. x x x The **action of the petitioners** against the respondents, based on the material allegations of the complaint, **is one for recovery of possession of the subject property and damages.** However, **such action is not a direct, but a collateral attack** of TCT No. 236044. As in *De Pedro*, the complaint filed by herein petitioners with the RTC is also one for recovery of possession and ownership. Verily, the present case is merely a collateral attack on TCT No. T-17394, which is not allowed by law and jurisprudence.

2. REMEDIAL LAW; JUDGMENTS; NO MODIFICATION OF JUDGMENT OR AFFIRMATIVE RELIEF CAN BE GRANTED TO A PARTY WHO DID NOT APPEAL.— It is a basic principle that no modification of judgment or affirmative relief can be granted to a party who did not appeal. Hence, not having appealed from the RTC Decision, petitioners can no longer seek the reversal or modification of the trial court's ruling that respondent spouses had acquired ownership of Lot 896-B-9-A by virtue of the sale of the lot to them by RBO.

3. CIVIL LAW; FAMILY CODE; CONJUGAL PARTNERSHIP PROPERTY; ABSENT THE CONSENT OF THE OTHER SPOUSE, THE SALE OF THE CONJUGAL PROPERTY BY THE HUSBAND IS ENTIRELY NULL AND VOID.— However, with regard to Lot 896-B-9-B (with house), the Court finds it patently erroneous for the CA to have applied the principle of equity in sustaining the validity of the sale of Onesiforo's one-half share in the subject property to respondent spouses. Although petitioners were married before the enactment of the Family Code on August 3, 1988, the sale in question occurred in 1989. Thus, their property relations are governed by Chapter IV on Conjugal Partnership of Gains of the Family Code. The CA ruling completely deviated from the clear dictate of Article 124 of the Family Code xxx. In *Homeowners Savings & Loan Bank v. Dailo*, the Court categorically stated thus: In *Guiang v. Court of Appeals*, it was held that the sale of a conjugal property requires the consent of both the husband and wife. In applying Article 124 of the Family Code, this Court declared that **the absence of the consent of one renders the entire sale null and void, including the portion of the conjugal property pertaining to the husband who contracted the sale**. x x x By express provision of Article

124 of the Family Code, in the absence of (court) authority or written consent of the other spouse, any disposition or encumbrance of the conjugal property shall be void. Thus, pursuant to Article 124 of the Family Code and jurisprudence, the sale of petitioners' conjugal property made by petitioner Onesiforo alone is void in its entirety.

4. ID.; SPECIAL CONTRACTS; SALES; BUYER IN GOOD FAITH; A PURCHASER CANNOT CLOSE HIS EYES TO FACTS WHICH SHOULD PUT A REASONABLE MAN ON HIS GUARD AND STILL CLAIM HE ACTED IN GOOD FAITH.— It is true that in a number of cases, this Court abstained from applying the literal import of a particular provision of law if doing so would lead to unjust, unfair and absurd results. In the present case, the Court does not see how applying Article 124 of the Family Code would lead to injustice or absurdity. It should be noted that respondent spouses were well aware that Lot 896-B-9-B is a conjugal property of petitioners. They also knew that the disposition being made by Onesiforo is without the consent of his wife, as they knew that petitioners had separated, and, the sale documents do not bear the signature of petitioner Rosario. The fact that Onesiforo had to execute two documents, namely: the Absolute Deed of Sale dated March 10, 1989 and a notarized Agreement likewise dated March 10, 1989, reveals that they had full knowledge of the severe infirmities of the sale. As held in *Heirs of Aguilar-Reyes v. Spouses Mijares*, "a purchaser cannot close his eyes to facts which should put a reasonable man on his guard and still claim he acted in good faith." Such being the case, no injustice is being foisted on respondent spouses as they risked transacting with Onesiforo alone despite their knowledge that the subject property is a conjugal property. Verily, the sale of Lot 896-B-9-B to respondent spouses is entirely null and void.

5. ID.; ID.; ID.; WHERE THE SALE IS DECLARED NULL AND VOID THE BUYER IS ENTITLED TO THE REIMBURSEMENT OF THE REDEMPTION PRICE WITH 6% INTEREST FROM THE TIME OF FILING OF THE COMPLAINT.— However, in consonance with the salutary principle of non-enrichment at another's expense, the Court agrees with the CA that petitioners should reimburse respondent spouses the redemption price paid for Lot 896-B-9-B in the amount of ₱111,110.09 with legal interest from the time of

filing of the complaint. In *Heirs of Aguilar-Reyes*, the husband's sale of conjugal property without the consent of the wife was annulled but the spouses were ordered to refund the purchase price to the buyers, it was ruled that an interest of 12% *per annum* on the purchase price to be refunded is not proper. The Court elucidated as follows: The trial court, however, erred in imposing 12% interest per annum on the amount due the respondents. In *Eastern Shipping Lines, Inc. v. Court of Appeals*, it was held that interest on obligations not constituting a loan or forbearance of money is six percent (6%) annually. If the purchase price could be established with certainty at the time of the filing of the complaint, the six percent (6%) interest should be computed from the date the complaint was filed until finality of the decision. In *Lui vs. Loy*, involving a suit for reconveyance and annulment of title filed by the first buyer against the seller and the second buyer, the Court, ruling in favor of the first buyer and annulling the second sale, ordered the seller to refund to the second buyer (who was not a purchaser in good faith) the purchase price of the lots. It was held therein that the 6% interest should be computed from the date of the filing of the complaint by the first buyer. After the judgment becomes final and executory until the obligation is satisfied, the amount due shall earn interest at 12% per year, the interim period being deemed equivalent to a forbearance of credit. xxx. Thus, herein petitioners should reimburse respondent spouses the redemption price plus interest at the rate of 6% *per annum* from the date of filing of the complaint, and after the judgment becomes final and executory, the amount due shall earn 12% interest *per annum* until the obligation is satisfied.

6. ID.; POSSESSION; POSSESSOR IN BAD FAITH; HAS A RIGHT TO BE REFUNDED FOR NECESSARY EXPENSES ON THE PROPERTY.— As to rentals for Lot 896-B-9-B and the house thereon, respondent Victor testified that they never agreed to rent the house and when they finally took over the same, it was practically inhabitable and so they even incurred expenses to repair the house. There is absolutely no proof of the rental value for the house, considering the condition it was in; as well as for the lot respondent spouses are occupying. Respondent spouses, having knowledge of the flaw in their mode of acquisition, are deemed to be possessors in bad faith under Article 526 of the Civil Code. However, they have a right to

be refunded for necessary expenses on the property as provided under Article 546 of the same Code. Unfortunately, there is no credible proof to support respondent spouses' allegation that they spent more than ₱400,000.00 to repair and make the house habitable.

7. ID.; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; SET-OFF OR COMPENSATION CANNOT TAKE PLACE WHERE THE DEBTS OF BOTH PARTIES AGAINST EACH OTHER IS UNLIQUIDATED.— Set-off or compensation is governed by Article 1279 of the Civil Code which provides, thus: xxx. Therefore, under paragraph 4 of the foregoing provision, compensation or set-off is allowed only if the debts of both parties against each other is already liquidated and demandable. To liquidate means "to make the amount of indebtedness or an obligation clear and settled in the form of money." In the present case, no definite amounts for rentals nor for expenses for repairs on subject house has been determined. Thus, in the absence of evidence upon which to base the amount of rentals, no compensation or set-off can take place between petitioners and respondent spouses. While the courts are empowered to set an amount as reasonable compensation to the owners for the use of their property, this Court cannot set such amount based on mere surmises and conjecture.

APPEARANCES OF COUNSEL

Obar and Associates for petitioners.
Restituto Cudiamat for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA) dated September 25, 2002, and the CA

[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Rodrigo V. Cosico and Edgardo F. Sundiam, concurring; *rollo*, pp. 10-23.

Resolution[2] dated March 31, 2003, denying petitioners' motion for reconsideration, be reversed and set aside.

The factual antecedents of the case are as follows.

Spouses Onesiforo and Rosario Alinas (petitioners) separated sometime in 1982, with Rosario moving to Pagadian City and Onesiforo moving to Manila. They left behind two lots identified as Lot 896-B-9-A with a *bodega* standing on it and Lot 896-B-9-B with petitioners' house. These two lots are the subject of the present petition.

Petitioner Onesiforo Alinas (Onesiforo) and respondent Victor Alinas (Victor) are brothers. Petitioners allege that they entrusted their properties to Victor and Elena Alinas (respondent spouses) with the agreement that any income from rentals of the properties should be remitted to the Social Security System (SSS) and to the Rural Bank of Oroquieta City (RBO), as such rentals were believed sufficient to pay off petitioners' loans with said institutions. Lot 896-B-9-A with the bodega was mortgaged as security for the loan obtained from the RBO, while Lot 896-B-9-B with the house was mortgaged to the SSS. Onesiforo alleges that he left blank papers with his signature on them to facilitate the administration of said properties.

Sometime in 1993, petitioners discovered that their two lots were already titled in the name of respondent spouses.

Records show that after Lot 896-B-9-A was extra-judicially foreclosed, Transfer Certificate of Title (TCT) No. T-11853[3] covering said property was issued in the name of mortgagee RBO on November 13, 1987. On May 2, 1988, the duly authorized representative of RBO executed a Deed of Installment Sale of Bank's Acquired Assets[4] conveying Lot 896-B-9-A to respondent spouses. RBO's TCT over Lot 896-B-9-A was then cancelled and on February 22, 1989,

---

[2] *Id.* at 9.

[3] Exh. "7", records, pp. 207-208.

[4] Exh. "6" *id.* at 201-203.

TCT No. T-12664[5] covering said lot was issued in the name of respondent spouses.

Lot 896-B-9-B was also foreclosed by the SSS and on November 17, 1986, the *Ex-Officio* City Sheriff of Ozamis City issued a Certificate of Sale[6] over said property in favor of the SSS. However, pursuant to a Special Power of Attorney[7] signed by Onesiforo in favor of Victor, dated March 10, 1989, the latter was able to redeem, on the same date, Lot 896-B-9-B from the SSS for the sum of ₱111,110.09. On June 19, 1989, a Certificate of Redemption[8] was issued by the SSS.

Onesiforo's signature also appears in an Absolute Deed of Sale[9] likewise dated March 10, 1989, selling Lot 896-B-9-B to respondent spouses. The records also show a notarized document dated March 10, 1989 and captioned Agreement[10] whereby petitioner Onesiforo acknowledged that his brother Victor used his own money to redeem Lot 896-B-9-B from the SSS and, thus, Victor became the owner of said lot. In the same Agreement, petitioner Onesiforo waived whatever rights, claims, and interests he or his heirs, successors and assigns have or may have over the subject property. On March 15, 1993, by virtue of said documents, TCT No. 17394[11] covering Lot 896-B-9-B was issued in the name of respondent spouses.

On June 25, 1993, petitioners filed with the Regional Trial Court (RTC) of Ozamis City a complaint for recovery of possession and ownership of their conjugal properties with damages against respondent spouses.

After trial, the RTC rendered its Decision dated November 13, 1995, finding that:

---

[5] Exh. "7-C" to "7-G", *id*. at 209-210.

[6] Exh. "11", *id*. at 222-223.

[7] Exh. "M", *id*. at 99-100.

[8] Exh. "Q", *id*. at 27.

[9] Exh. "O", *id*. at 101.

[10] Exh. "9", *id*. at 216-217.

[11] Exh. "15", *id* at 227.

1. Plaintiffs have not proven that they entrusted defendant spouses with the care and administration of their properties. It was Valeria Alinas, their mother, whom plaintiff Onesiforo requested/directed to "take care of everything and sell everything" and Teresita Nuñez, his elder sister, to whom he left a "verbal" authority to administer his properties.

2. Plaintiffs have not proven their allegation that defendant spouses agreed to pay rent of ₱1,500.00 a month for the occupancy of plaintiffs' house, which rent was to be remitted to the SSS and Rural Bank of Oroquieta to pay off plaintiffs' loan and to keep for plaintiffs the rest of the rent after the loans would have been paid in full.

3. Plaintiff Onesiforo's allegation that defendants concocted deeds of conveyances (Exh. "M", "N" & "O") with the use of his signatures in blank is not worthy of credence. Why his family would conspire to rob him at a time when life had struck him with a cruel blow in the form of a failed marriage that sent him plummeting to the depths of despair is not explained and likewise defies comprehension. That his signatures appear exactly on the spot where they ought to be in Exhs. "M", "N" & "O" belies his pretension that he affixed them on blank paper only for the purpose of facilitating his sister Terry's acts of administration.

This Court, therefore, does not find that defendant spouses had schemed to obtain title to plaintiffs' properties or enriched themselves at the expense of plaintiffs.[12]

with the following dispositive portion:

WHEREFORE, this Court renders judgment:

1. declaring [respondents] Victor Jr. and Elena Alinas owners of Lot 896-B-9-A with the building (*bodega*) standing thereon and affirming the validity of their acquisition thereof from the Rural Bank of Oroquieta, Inc.;

2. declaring [petitioners] Onesiforo and Rosario Alinas owners of Lot 896-B-9-B with the house standing thereon, plaintiff Onesiforo's sale thereof to defendants spouses without the consent of his wife being null and void and defendant spouses' redemption thereof from the SSS not having conferred its ownership to them;

[12] Records, p. 246.

3. ordering [petitioners] to reimburse [respondents] Victor Jr. and Elena Alinas the redemption sum of ₱111,100.09, paid by them to the SSS (without interest as it shall be compensated with the rental value of the house they occupy) within sixty days from the finality of this judgment;

4. ordering [respondents] to vacate the subject house within thirty days from receiving the reimbursement mentioned in No. 3 above; and

5. reinstating TCT No. T-7248 in the name of [petitioners] and cancelling TCT No. T-17394 in the name of [respondents].

No costs.

SO ORDERED.[13]

Only respondent spouses appealed to the CA assailing the RTC's ruling that they acquired Lot 896-B-9-B from the SSS by mere redemption and not by purchase. They likewise question the reimbursement by petitioners of the redemption price without interest.

On September 25, 2002, the CA promulgated herein assailed Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing disquisitions, the first paragraph of the dispositive portion of the assailed decision is AFFIRMED and the rest MODIFIED as follows:

1. declaring [respondents] Victor Jr. and Elena Alinas owners of Lot 896-B-9-A with the building (*bodega*) standing thereon and affirming the validity of their acquisition thereof from the Rural Bank of Oroquieta, Inc.;

2. declaring Onesiforo's sale of Lot 896-B-9-B together with the house standing thereon to [respondents] in so far as Rosario Alinas, his wife's share of one half thereof is concerned, of no force and effect;

3. ordering [petitioners] Rosario Alinas to reimburse [respondents] the redemption amount of ₱55,550.00 with interest of 12% per annum from the time of redemption until fully paid.

[13] *Id*. at 248-249.

4. ordering the [respondents] to convey and transfer one half portion of Lot 896-B-9-B unto Rosario Alinas, which comprises her share on the property simultaneous to the tender of the above redemption price, both to be accomplished within sixty (60) days from finality of this judgment.

5. in the event of failure of [respondents] to execute the acts as specified above, [petitioner] Rosario Alinas may proceed against them under Section 10, Rule 39 of the 1997 Rules of Civil Procedure.

6. on the other hand, failure of [petitioner] Rosario Alinas to reimburse the redemption price within sixty (60) days from the finality of this decision will render the conveyance and sale of her share by her husband to [respondents], of full force and effect.

No costs.

SO ORDERED.[14]

Petitioners moved for reconsideration but the CA denied said motion per herein assailed Resolution dated March 31, 2003.

Hence, the present petition on the following grounds:

The Honorable Court of Appeals abuse [sic] its discretion in disregarding the testimony of the Register of Deeds, Atty. Nerio Nuñez, who swore that the signatures appearing on various TCTs were not his own;

The Honorable Court of Appeals manifestly abuse [sic] its discretion in declaring the respondents to be the owners of Lot 896-B-9-A with the building (*bodega*) standing thereon when they merely redeemed the property and are therefore mere trustees of the real owners of the property;

It was pure speculation and conjecture and surmise for the Honorable Court of Appeals to impose an obligation to reimburse upon petitioners without ordering respondents to account for the rentals of the properties from the time they occupied the same up to the present time and thereafter credit one against the other whichever is higher.[15]

---

[14] *Rollo*, pp. 60-61.

[15] *Id*. at 29-30.

The first issue raised by petitioners deserves scant consideration. By assailing the authenticity of the Registrar of Deeds' signature on the certificates of title, they are, in effect, questioning the validity of the certificates.

Section 48 of Presidential Decree No. 1529 provides, thus:

> Sec. 48. *Certificate not subject to collateral attack.* - A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

Pursuant to said provision, the Court ruled in *De Pedro v. Romasan Development Corporation*[16] that:

> It has been held that a certificate of title, once registered, should not thereafter be impugned, altered, changed, modified, enlarged or diminished except in a direct proceeding permitted by law. x x x
>
> The **action of the petitioners** against the respondents, based on the material allegations of the complaint, **is one for recovery of possession of the subject property and damages.** However, **such action is not a direct, but a collateral attack** of TCT No. 236044.[17] (Emphasis supplied)

As in *De Pedro*, the complaint filed by herein petitioners with the RTC is also one for recovery of possession and ownership. Verily, the present case is merely a collateral attack on TCT No. T-17394, which is not allowed by law and jurisprudence.

With regard to the second issue, petitioners' claim that it was the CA which declared respondent spouses owners of Lot 896-B-9-A (with *bodega*) is misleading. It was the RTC which ruled that respondent spouses are the owners of Lot 896-B-9-A and, therefore, since only the respondent spouses appealed to the CA, the issue of ownership over Lot 896-B-9-A is not raised before the appellate court. Necessarily, the CA merely reiterated in the dispositive portion of its decision the RTC's ruling on respondent spouses' ownership of Lot 896-B-9-A.

---

[16] G.R. No. 158002, February 28, 2005, 452 SCRA 564.

[17] *Id.* at 575-576.

It is a basic principle that no modification of judgment or affirmative relief can be granted to a party who did not appeal.[18] Hence, not having appealed from the RTC Decision, petitioners can no longer seek the reversal or modification of the trial court's ruling that respondent spouses had acquired ownership of Lot 896-B-9-A by virtue of the sale of the lot to them by RBO.

Furthermore, the CA did not commit any reversible error in affirming the trial court's factual findings as the records are indeed bereft of proof to support the petitioners' allegations that they left the care and administration of their properties to respondent spouses; and that there is an agreement between petitioners and respondent spouses regarding remittance to the SSS and the RBO of rental income from their properties. Thus, respondent spouses may not be held responsible for the non-payment of the loan with RBO and the eventual foreclosure of petitioners' Lot 896-B-9-A.

Petitioners do not assail the validity of the foreclosure of said lot but argues that respondent spouses merely redeemed the property from RBO. This is, however, belied by evidence on record which shows that ownership over the lot had duly passed on to the RBO, as shown by TCT No. T-11853 registered in its name; and subsequently, RBO sold the lot with its improvements to respondent spouses. Needless to stress, the sale was made after the redemption period had lapsed. The trial court, therefore, correctly held that respondent spouses acquired their title over the lot from RBO and definitely not from petitioners.

However, with regard to Lot 896-B-9-B (with house), the Court finds it patently erroneous for the CA to have applied the principle of equity in sustaining the validity of the sale of Onesiforo's one-half share in the subject property to respondent spouses.

---

[18] *Filinvest Credit Corporation v. Intermediate Appellate Court,* G.R. No. 65935, September 30, 1988*; Del Castillo v. Del Castillo,* G.R. No. L-33186, June 27, 1988, 162 SCRA 556, 561.

Although petitioners were married before the enactment of the Family Code on August 3, 1988, the sale in question occurred in 1989. Thus, their property relations are governed by Chapter IV on Conjugal Partnership of Gains of the Family Code.

The CA ruling completely deviated from the clear dictate of Article 124 of the Family Code which provides:

> Art. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. x x x
>
> In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. **In the absence of such authority or consent the disposition or encumbrance shall be void**. x x x (Underscoring and emphasis supplied)

In *Homeowners Savings & Loan Bank v. Dailo*,[19] the Court categorically stated thus:

> In *Guiang v. Court of Appeals*, it was held that the sale of a conjugal property requires the consent of both the husband and wife. In applying Article 124 of the Family Code, this Court declared that **the absence of the consent of one renders the entire sale null and void, including the portion of the conjugal property pertaining to the husband who contracted the sale.** x x x
>
> xxx xxx xxx
>
> x x x By express provision of Article 124 of the Family Code, in the absence of (court) authority or written consent of the other spouse, any disposition or encumbrance of the conjugal property shall be void.[20]

Thus, pursuant to Article 124 of the Family Code and jurisprudence, the sale of petitioners' conjugal property made by petitioner Onesiforo alone is void in its entirety.

---

[19] G.R. No. 153802, March 11, 2005, 453 SCRA 283.

[20] *Id.* at 289-291.

It is true that in a number of cases, this Court abstained from applying the literal import of a particular provision of law if doing so would lead to unjust, unfair and absurd results.[21]

In the present case, the Court does not see how applying Article 124 of the Family Code would lead to injustice or absurdity. It should be noted that respondent spouses were well aware that Lot 896-B-9-B is a conjugal property of petitioners. They also knew that the disposition being made by Onesiforo is without the consent of his wife, as they knew that petitioners had separated, and, the sale documents do not bear the signature of petitioner Rosario. The fact that Onesiforo had to execute two documents, namely: the Absolute Deed of Sale dated March 10, 1989 and a notarized Agreement likewise dated March 10, 1989, reveals that they had full knowledge of the severe infirmities of the sale. As held in *Heirs of Aguilar-Reyes v. Spouses Mijares*,[22] "a purchaser cannot close his eyes to facts which should put a reasonable man on his guard and still claim he acted in good faith."[23] Such being the case, no injustice is being foisted on respondent spouses as they risked transacting with Onesiforo alone despite their knowledge that the subject property is a conjugal property.

Verily, the sale of Lot 896-B-9-B to respondent spouses is entirely null and void.

However, in consonance with the salutary principle of non-enrichment at another's expense, the Court agrees with the CA that petitioners should reimburse respondent spouses the redemption price paid for Lot 896-B-9-B in the amount of ₱111,110.09 with legal interest from the time of filing of the complaint.

In *Heirs of Aguilar-Reyes*, the husband's sale of conjugal property without the consent of the wife was annulled but the spouses were ordered to refund the purchase price to the buyers,

---

[21] *Solid Homes, Inc. v. Tan*, G.R. Nos. 145156-57, July 29, 2005, 465 SCRA 137, 149.

[22] 457 Phil. 120 (2003).

[23] *Id*. at 136-137.

it was ruled that an interest of 12% *per annum* on the purchase price to be refunded is not proper. The Court elucidated as follows:

> The trial court, however, erred in imposing 12% interest per annum on the amount due the respondents. In *Eastern Shipping Lines, Inc. v. Court of Appeals*, it was held that interest on obligations not constituting a loan or forbearance of money is six percent (6%) annually. If the purchase price could be established with certainty at the time of the filing of the complaint, the six percent (6%) interest should be computed from the date the complaint was filed until finality of the decision. In *Lui vs. Loy*, involving a suit for reconveyance and annulment of title filed by the first buyer against the seller and the second buyer, the Court, ruling in favor of the first buyer and annulling the second sale, ordered the seller to refund to the second buyer (who was not a purchaser in good faith) the purchase price of the lots. It was held therein that the 6% interest should be computed from the date of the filing of the complaint by the first buyer. After the judgment becomes final and executory until the obligation is satisfied, the amount due shall earn interest at 12% per year, the interim period being deemed equivalent to a forbearance of credit.
>
> **Accordingly, the amount of ₱110,000.00 due the respondent spouses which could be determined with certainty at the time of the filing of the complaint shall earn 6% interest per annum from June 4, 1986 until the finality of this decision. If the adjudged principal and the interest (or any part thereof) remain unpaid thereafter, the interest rate shall be twelve percent (12%) per annum computed from the time the judgment becomes final and executory until it is fully satisfied**.[24]

Thus, herein petitioners should reimburse respondent spouses the redemption price plus interest at the rate of 6% *per annum* from the date of filing of the complaint, and after the judgment becomes final and executory, the amount due shall earn 12% interest *per annum* until the obligation is satisfied.

Petitioners pray that said redemption price and interest be offset or compensated against the rentals for the house and *bodega*.

---

[24] *Id*. at 140.

The records show that the testimonial evidence for rentals was only with regard to the *bodega*.[25] However, the Court has affirmed the ruling of the RTC that Lot 896-B-9-A with the bodega had been validly purchased by respondent spouses from the RBO and a TCT over said property was issued in the name of respondent spouses on February 22, 1989. Testimonial evidence shows that the *bodega* was leased out by respondent spouses only beginning January of 1990 when ownership had been transferred to them.[26] Hence, any rentals earned from the lease of said bodega rightfully belongs to respondent spouses and cannot be offset against petitioners' obligation to respondent spouses.

As to rentals for Lot 896-B-9-B and the house thereon, respondent Victor testified that they never agreed to rent the house and when they finally took over the same, it was practically inhabitable and so they even incurred expenses to repair the house.[27] There is absolutely no proof of the rental value for the house, considering the condition it was in; as well as for the lot respondent spouses are occupying.

Respondent spouses, having knowledge of the flaw in their mode of acquisition, are deemed to be possessors in bad faith under Article 526[28] of the Civil Code. However, they have a right to be refunded for necessary expenses on the property as provided under Article 546[29] of the same Code. Unfortunately,

---

[25] TSN, June 21, 1995, pp. 17-19.

[26] *Id*. at 34.

[27] *Id*. at 5-6, 12.

[28] Article 526. He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.

He is deemed a possessor in bad faith who possesses in any case contrary to the foregoing.

xxx xxx xxx

[29] Article 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

xxx xxx xxx

there is no credible proof to support respondent spouses' allegation that they spent more than ₱400,000.00 to repair and make the house habitable.

Set-off or compensation is governed by Article 1279 of the Civil Code which provides, thus:

Article 1279. In order that compensation may be proper, it is necessary:

1. That each one of the obligors be bound principally, and that he be at the time a principal creditor of the other;
2. That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
3. That the two debts be due;
4. That they be liquidated and demandable;
5. That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

Therefore, under paragraph 4 of the foregoing provision, compensation or set-off is allowed only if the debts of both parties against each other is already liquidated and demandable. To liquidate means "to make the amount of indebtedness or an obligation clear and settled in the form of money."[30] In the present case, no definite amounts for rentals nor for expenses for repairs on subject house has been determined. Thus, in the absence of evidence upon which to base the amount of rentals, no compensation or set-off can take place between petitioners and respondent spouses.

While the courts are empowered to set an amount as reasonable compensation to the owners for the use of their property, this Court cannot set such amount based on mere surmises and conjecture

---

[30] *Philippine Legal Encyclopedia*, 2000 Reprint, p. 530

WHEREFORE, the petition is *PARTLY GRANTED*. The Decision of the Court of Appeals dated September 25, 2002 is *MODIFIED* to read as follows:

1. declaring respondent spouses Victor Jr. and Elena Alinas owners of Lot 896-B-9-A with the building (*bodega*) standing thereon and affirming the validity of their acquisition thereof from the Rural Bank of Oroquieta, Inc.;

2. **declaring Onesiforo's sale of Lot 896-B-9-B together with the house standing thereon to respondent spouses null and void *ab initio***;

3. ordering petitioners to jointly and severally reimburse respondent spouses the redemption amount of ₱111,110.09 with interest **at 6% *per annum* from the date of filing of the complaint, until finality of this decision. After this decision becomes final, interest at the rate of 12% *per annum* on the principal and interest (or any part thereof) shall be imposed until full payment;**

4. ordering the respondent spouses to convey and transfer Lot 896-B-9-B to petitioners and vacate said premises within fifteen (15) days from finality of this Decision; and

5. in the event of failure of respondent spouses to execute the acts as specified above, petitioners may proceed against them under Section 10, Rule 39 of the 1997 Rules of Civil Procedure.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 158965. April 14, 2008]

NESTORIO W. LAYA and RUDY MARTIN, *petitioners, vs.* **SPOUSES EDWIN and LOURDES TRIVIÑO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; A JURISDICTIONAL QUESTION MAY BE RAISED ANY TIME EXCEPT WHEN ESTOPPEL HAS SUPERVENED.— As to the first assigned error, respondents raised the issue of lack of jurisdiction only in their Comment and/or Opposition to the Petition for Review filed with the HLURB Board of Commissioners. After participating in all stages of the case before the Regional Field Office of the HLURB, respondents are effectively barred by estoppel from challenging its jurisdiction. While it is a rule that a jurisdictional question may be raised any time, this, however, admits of an exception where, as in this case, estoppel has supervened. Assuming that petitioners' petition/appeal with the HLURB Regional Field Office was filed out of time and before the wrong forum, respondents should have pointed out these defects at the earliest opportunity instead of actively participating in several stages of the proceedings before the Regional Field Office and discussing the case on its merits. It is settled that the active participation of a party against whom the action was brought, coupled with his failure to object to the jurisdiction of the court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction and a willingness to abide by the resolution of the case and will bar said party from later on impugning the court or body's jurisdiction. In the instant case, respondents cannot belatedly reject or repudiate the jurisdiction of the HLURB Regional Field Office after voluntarily submitting to it. They never questioned the jurisdiction of the said Office despite several opportunities to do so. It was only when petitioners appealed the decision of the Regional Field Office with the HLURB Board of Commissioners did respondents raise such question. Respondents are already estopped from doing so.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCY; HLURB; JURISDICTION.— Respondents also question the jurisdiction of the HLURB Board of Commissioners. However, it is clear that under the law, the Board of Commissioners has competent jurisdiction to take cognizance of the Verified Petition for Review filed by petitioners and to issue orders in the exercise of such jurisdiction owing to its authority to determine appeals from decisions of its Regional Offices. As correctly pointed out by petitioners, among the powers and duties of the HLURB, as provided for, respectively, under Article IV, Section 5 (f) and (p) of E.O. No. 648, are to: 1) "[a]ct as the appellate body on decisions and actions of local and regional planning and zoning bodies and of the deputized officials of the Commission, on matters arising from the performance of these functions"; and 2) [i]ssue orders after conducting the appropriate investigation for the cessation or closure of any use or activity and to issue orders to vacate or demolish any building or structure that is determined to have violated or failed to comply with any of the laws, presidential decrees, letters of instructions, executive orders and other presidential issuances and directives being implemented by it, either on its own or upon complaint of any interested party." Moreover, Rule XII, Section 1 of the Rules of Procedure of the HLURB, as amended by Section 9 of HLURB Resolution No. R-655, Series of 1999, specifically provides that decisions of a Regional Officer of the HLURB may be elevated for review before the Board of Commissioners. xxx.

3. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; DETERMINATION OF FACTUAL MATTERS IS BEYOND THE PROVINCE OF THE SUPREME COURT.— With respect to the last assigned error, the Court finds that this is one of the issues raised in the Verified Petition for Review filed by petitioners with the HLURB Board of Commissioners, which is pending resolution by the said Board. Moreover, the issue involves a determination of factual matters, which would determine whether or not the provisions of the subject Zoning Ordinance have been complied with, which, generally, is beyond the province of this Court. Hence, this

issue must first be settled by the HLURB.

APPEARANCES OF COUNSEL

Roberto A. Demigillo for petitioners.
Gilbert G. Gordove for respondents

D E C I S I O N

AUSTRIA-MARTINEZ, *J.:*

Assailed in the present Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 66923 promulgated on September 27, 2002; and the CA Resolution[2] dated July 4, 2003, denying petitioners' Motion for Reconsideration.

The antecedents of the case, as summarized by the CA, are as follows:

Petitioners [herein respondents] Edwin and Lourdes Triviño are the registered owners of a residential unit within the La Pacita Complex Subdivision, San Pedro, Laguna.

Since 1987, said spouses are utilizing a portion of their residence as a mini-grocery store. By the year 2000, the store had occupied more than half of their house, hence, the Triviños saw the need to renovate the same.

Corollarily, petitioners [herein respondents] applied for a building permit with the Office [of the] Zoning Administrator Pablito Tolentino who issued a Zoning Certification dated 21 June 2000. In addition, the Triviños had secured the following documents/permits before they started the construction, to wit:

1. A Certification/Endorsement dated 05 June 2000 from Mr. Danilo Berciles, the Board Chairman and President of Pacita

---

[1] Penned by Justice Andres B. Reyes, Jr. with the concurrence of Justices Ruben T. Reyes (now a member of this Court) and Danilo B. Pine, *rollo*, pp. 8-18.

[2] *Id*. at 20.

Complex I Homeowners Association, Inc. interposing no objection to a house construction;

2. Construction Clearance/Certification dated 05 June 2000 from the Barangay Chairman, Norvic D. Solidum interposing no objection to house construction;

3. Tax Declaration No. 17-29691 on Lot 1, Blk. 1 of Mr. Trivino; and

4. Endorsement Letter dated 21 June 2000 from the Inspector of the San Pedro Fire Station to the Building interposing no objection to the proposed construction.

On 11 July 2000, private respondents [which include herein petitioners], who are the homeowners of the said subdivision, wrote Mayor Felicisimo Vierneza expressing their objection to the construction. They claimed that the building permit granted to the petitioners [herein respondents] was in violation of the San Pedro Zoning Ordinance enacted in March 1982.

On 29 July 2000, private respondents [which include herein petitioners] received a copy of the Zoning Certification issued in favor of the Triviños. However, instead of filing an appeal to the Local Zoning Board of Appeal, private respondents [which include herein petitioners] chose to pursue their complaint at the Office of the Municipal Mayor.

On 12 January 2001, after realizing the futility of the Complaint before the Mayor's Office, private respondents [which include herein petitioners] instituted a *Petition/Appeal With Urgent Prayer For A Cease And Desist Order* (docketed as RIV6-012601-1512) before the public respondent HLURB averring as follows:

"2.1 The construction of a commercial building in an RI residential area is strictly prohibited under the Zoning Ordinance promulgated by the Sangguniang Bayan of San Pedro, Laguna. The Avowed purpose of the prohibition is to maintain the peace and quiet of the area;

2.2 Our subdivision is classified as an RI district or low density residential zone. This can be verified in the Official Zoning Map, x x x;

2.3 As we have consistently raised in our objection before the Mayor's Office and the deputized Zoning

> Administrator, Engr. Tolentino, the proposed commercial building, once completed, will create tremendous problems to the residents of our subdivision, not only in terms of traffic congestion, but also, its effect on environmental sanitation and noise and other pollution.
>
> xxx xxx xxx

On 16 February 2001, the Regional Field Office No. IV of HLURB promulgated an Order dismissing the appeal for lack of merit.

Undaunted, private respondents [which include herein petitioners], on 05 March 2001, filed a Verified Petition for Review with the Office of the Board of Commissioners of HLURB [docketed as HLURB Case No. REM-A-010320-0091] insisting that the construction of the building, being commercial in use and located in a residential zone, violates the pertinent provisions of the Zoning Ordinance of San Pedro, Laguna.

On 18 April 2001, public respondent HLURB issued a Temporary Restraining Order commanding petitioner[s] [herein respondents] to temporarily cease and desist from proceeding with any construction works for a period of twenty (20) days.

The temporary restraining order was made permanent by the respondent HLURB on 30 May 2001 as evidenced by the herein assailed Order.[3]

The dispositive portion of the May 30, 2001 Order of the Housing and Land Use Regulatory Board (HLURB) Board of Commissioners reads:

WHEREFORE, premises considered, respondents and all other persons acting under their control or direction are hereby ENJOINED pending resolution of the main complaint from using the newly constructed premises for commercial activities other than those previously existing and on a scale engaged in prior to the renovation of the building and deemed compatible with the character of the area as a low-[density] residential zone conditioned upon the posting by complainants [herein petitioners] of an injunction bond in the amount of One Hundred Thousand Pesos (₱100,000.00) within ten (10) days from receipt of this Order. Non-filing of said bond shall result in the automatic lifting of this injunction.

---

[3] CA *rollo*, pp. 253-256.

SO ORDERED.[4]

Respondents filed a Motion for Reconsideration of the May 30, 2001 HLURB Order but the same was denied.

Respondents then filed a special civil action for *certiorari* with the CA contending that both the HLURB Regional Field Office and the HLURB Board of Commissioners did not acquire jurisdiction over the case.

On September 27, 2002, the CA promulgated the presently assailed Decision with the following dispositive portion:

> WHEREFORE, premises considered, the Petition is GRANTED and the 30 May 2001 Order of the respondent Commission is hereby SET ASIDE. Consequently, HLURB Case No. REM-A-10320-0091 is also ordered DISMISSED for lack of merit.
>
> SO ORDERED.[5]

Petitioners filed a Motion for Reconsideration but the CA denied it *via* its Resolution dated July 4, 2003.

Hence, the present petition with the following assignment of errors:

> I
>
> THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE PETITION (RIV6-012601-1512) FILED BY PETITIONERS WITH THE HLURB REGIONAL FIELD OFFICE IV WAS LODGED IN THE WRONG FORUM, THEREFORE NO JURISDICTION AND BEYOND THE REGLEMENTARY PERIOD OF THIRTY (30) DAYS AS REQUIRED BY SECTION 6, ARTICLE X OF THE ZONING ORDINANCE OF SAN PEDRO, LAGUNA;
>
> II
>
> THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE PETITIONERS CHALLENGED THE ZONING CERTIFICATION ONLY ON 12 JANUARY 2001 OR AFTER MORE THAN FIVE (5) MONTHS AFTER RECEIPT OF THE NOTICE;

---

[4] *Id*. at 20.

[5] CA *rollo*, p. 262.

III

THE COURT OF APPEALS GRAVELY ERRED IN CONCLUDING THAT THE FILING OF RIV6-012601-1512 IS AN AFTERTHOUGHT;

IV

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE DECISION OF THE ZONING ADMINISTRATOR HAS BECOME FINAL AND EXECUTORY;

V

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE PETITIONERS FAILED TO PROVE THAT THE CONSTRUCTION IS IN VIOLATION OF THE ZONING ORDINANCE OF SAN PEDRO.[6]

Petitioners claim that respondents are estopped from questioning the jurisdiction of the HLURB because they never questioned such jurisdiction during the proceedings before the Regional Field Office of the HLURB, where they obtained a favorable judgment; and that it was only when the HLURB Board of Commissioners issued its May 30, 2001 Order that petitioners questioned the jurisdiction of the HLURB.

Petitioners contend that pursuant to the provisions of Executive Order No. 648 which was promulgated on February 7, 1981, the Human Settlements Regulatory Commission (now HLURB) has jurisdiction to take cognizance of their petition/appeal.

Petitioners further aver that the Zoning Certification issued by the Zoning Administrator is not the Certificate of Zoning Compliance contemplated and required under the Zoning Ordinance of San Pedro, Laguna and which is appealable to the Local Zoning Board. As such, petitioners maintain that the remedy of appeal, including the prescriptive period provided for under the subject Ordinance, is not applicable.

Petitioners also contend that at the time their petition was filed with the HLURB, there is no existing Zoning Appeals Board

[6] *Rollo*, p. 33.

and in such a case, Section 8 of the Zoning Ordinance provides that appeals from decisions of the Zoning Administrator shall be made directly with the HLURB.

Petitioners further argue that even assuming that the decision of the Zoning Administrator to issue a Zoning Certification could have been appealed, such decision could not have become final and executory in view of the Zoning Administrator's issuance of a Work Stoppage Order on August 25, 2000, which was never lifted, directing herein respondents to stop their construction activities until they have settled the complaints of herein petitioners.

Petitioners also contend that the burden of proof is on the respondents to show that the construction they have undertaken falls under any of the exceptions to the prohibitions under the subject Zoning Ordinance.

Respondents counter that it is clear that under the applicable municipal ordinance of San Pedro, Laguna, the reglementary period for filing an appeal from the issuance of a Zoning Certification by the Office of the Zoning Administrator is 30 days from receipt of notice of such issuance or certification; that respondents admit having received notice of the subject Zoning Certification on July 29, 2000, and that it was only on January 12, 2001 that they filed their petition/appeal with the Regional Field Office of HLURB; and that petitioners' petition/appeal was filed out of time. In addition, respondents aver that petitioners should have filed a Notice of Appeal with the Zoning Administrator and not a petition/appeal with the HLURB Regional Field Office. Respondents contend that appeal is a statutory privilege and it must be exercised within the period and in the manner provided by law.

Lastly, respondents contend that the CA did not commit error in dismissing HLURB Case No. REM-A-010320-0091 (RIV6-012601-1512) since petitioners failed to prove that the construction undertaken by respondents is in violation of the Zoning Ordinance of San Pedro, Laguna.

The Court finds the petition meritorious.

As to the first assigned error, respondents raised the issue of lack of jurisdiction only in their Comment and/or Opposition to the Petition for Review filed with the HLURB Board of Commissioners. After participating in all stages of the case before the Regional Field Office of the HLURB, respondents are effectively barred by estoppel from challenging its jurisdiction. While it is a rule that a jurisdictional question may be raised any time, this, however, admits of an exception where, as in this case, estoppel has supervened.[7]

Assuming that petitioners' petition/appeal with the HLURB Regional Field Office was filed out of time and before the wrong forum, respondents should have pointed out these defects at the earliest opportunity instead of actively participating in several stages of the proceedings before the Regional Field Office and discussing the case on its merits. It is settled that the active participation of a party against whom the action was brought, coupled with his failure to object to the jurisdiction of the court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction and a willingness to abide by the resolution of the case and will bar said party from later on impugning the court or body's jurisdiction.[8] In the instant case, respondents cannot belatedly reject or repudiate the jurisdiction of the HLURB Regional Field Office after voluntarily submitting to it. They never questioned the jurisdiction of the said Office despite several opportunities to do so. It was only when petitioners appealed the decision of the Regional Field Office with the HLURB Board of Commissioners did respondents raise such question. Respondents are already estopped from doing so.

Respondents also question the jurisdiction of the HLURB Board of Commissioners. However, it is clear that under the

---

[7] *David v. Cordova,* G.R. No. 152992, July 28, 2005, 464 SCRA 384, 401.

[8] *Heirs of the Late Panfilo V. Pajarillo v. Court of Appeals*, G.R. Nos. 155056-57, October 19, 2007.

law, the Board of Commissioners has competent jurisdiction to take cognizance of the Verified Petition for Review filed by petitioners and to issue orders in the exercise of such jurisdiction owing to its authority to determine appeals from decisions of its Regional Offices.

As correctly pointed out by petitioners, among the powers and duties of the HLURB, as provided for, respectively, under Article IV, Section 5 (f) and (p) of E.O. No. 648, are to: 1) "[a]ct as the appellate body on decisions and actions of local and regional planning and zoning bodies and of the deputized officials of the Commission, on matters arising from the performance of these functions"; and 2) [i]ssue orders after conducting the appropriate investigation for the cessation or closure of any use or activity and to issue orders to vacate or demolish any building or structure that is determined to have violated or failed to comply with any of the laws, presidential decrees, letters of instructions, executive orders and other presidential issuances and directives being implemented by it, either on its own or upon complaint of any interested party."

Moreover, Rule XII, Section 1 of the Rules of Procedure of the HLURB, as amended by Section 9 of HLURB Resolution No. R-655, Series of 1999,[9] specifically provides that decisions of a Regional Officer of the HLURB may be elevated for review before the Board of Commissioners, to wit:

> *Petition for Review*. - Any party aggrieved by the decision of the Regional Officer, on any legal ground and upon payment of the review fee may file with the Regional Office a verified Petition for Review of such decision within thirty (30) calendar days from receipt thereof. In cases decided by the Executive Committee pursuant to Rule II, Section 2 of these Rules as amended, the verified petition shall be filed with the Executive Committee within thirty (30) calendar days from receipt of the Committee's decision. Copy of such petition shall be furnished the other party and the Board of Commissioners. No motion for reconsideration or mere notice of petition for review of the decision shall be entertained.

[9] Issued by the HLURB Board of Commissioners on December 15, 1999.

Within ten (10) calendar days from receipt of the petition, the Regional Officer, or the Executive Committee, as the case may be, shall elevate the records to the Board of Commissioners together with the summary of proceedings before the Regional Office. The petition for review of a decision rendered by the Executive Committee shall be taken cognizance of by the Board *en banc*.

Having concluded that respondents are estopped from questioning the jurisdiction of the HLURB Field Office and that the Board of Commissioners has power and authority to take cognizance of the Verified Petition for Review filed before it, this Court finds it no longer necessary to address the second, third and fourth issues raised in the present petition as the resolution of these issues hinges on the determination of the question whether the HLURB may decide the petition for review filed by respondents.

With respect to the last assigned error, the Court finds that this is one of the issues raised in the Verified Petition for Review filed by petitioners with the HLURB Board of Commissioners, which is pending resolution by the said Board. Moreover, the issue involves a determination of factual matters, which would determine whether or not the provisions of the subject Zoning Ordinance have been complied with, which, generally, is beyond the province of this Court. Hence, this issue must first be settled by the HLURB.

WHEREFORE, the instant petition is *GRANTED*. The September 27, 2002 Decision and July 4, 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 66923 are *REVERSED* and *SET ASIDE*. The Order of the HLURB Board of Commissioners dated May 30, 2001 is *REINSTATED* and the Board is *ORDERED* to proceed with reasonable dispatch in hearing the merits of petitioners' Verified Petition For Review.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Leonardo-de Castro,*[*] *JJ.,* concur.

---

[*] In lieu of Justice Ruben T. Reyes, per Raffle dated April 2, 2008.

SECOND DIVISION

[G.R. No. 161004. April 14, 2008]

TECNOGAS* PHILIPPINES MANUFACTURING CORPORATION, *petitioner, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; WHEN MAY BE ISSUED.— A writ of preliminary injunction may be issued only upon clear showing by the applicant of the existence of the following: (1) a right in *esse* or a clear and unmistakable right to be protected; (2) a violation of that right; and (3) an urgent and paramount necessity for the writ to prevent serious damage. In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; *DACION EN PAGO;* EXPLAINED.— *Dacion en pago* is a special mode of payment whereby the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding obligation. The undertaking is really one of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt. As such, the essential elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present. It is only when the thing offered as an equivalent is accepted by the creditor that novation takes place, thereby, totally extinguishing the debt.

3. ID.; ID.; ID.; ID.; AN UNACCEPTED PROPOSAL TO PAY BY WAY OF *DACION EN PAGO* NEITHER NOVATES THE PARTIES' MORTGAGE CONTRACT NOR SUSPENDS ITS EXECUTION FOR WANT OF MEETING OF MINDS BETWEEN THE PARTIES.— On the first issue, the Court of Appeals did not err in ruling that Tecnogas has no clear

* Technogas Philippines Manufacturing Corp. in some parts of the records.

legal right to an injunctive relief because its proposal to pay by way of *dacion en pago* did not extinguish its obligation. Undeniably, Tecnogas' proposal to pay by way of *dacion en pago* was not accepted by PNB. Thus, the unaccepted proposal neither novates the parties' mortgage contract nor suspends its execution as there was no meeting of the minds between the parties on whether the loan will be extinguished by way of *dacion en pago*. Necessarily, upon Tecnogas' default in its obligations, the foreclosure of the REM becomes a matter of right on the part of PNB, for such is the purpose of requiring security for the loans.

4. REMEDIAL LAW; APPEALS; FACTUAL ISSUES MUST BE PASSED UPON BY THE TRIAL COURT.— By disallowing Tecnogas' prayer for injunctive relief, the Court of Appeals did not preempt the resolution of the main case in Civil Case No. 01-0330 for annulment of extrajudicial foreclosure sale. In said case, the trial court still needs to resolve the issues of whether Tecnogas observed the procedures prescribed by Act No. 3135, as amended, on extrajudicial foreclosure of REM, and whether it suffered damage as a result of PNB's acts. These issues are still unresolved questions which have to be passed upon by the trial court after hearing the evidence of both parties so that an adjudication of the rights of the parties can be had.

5. ID.; CIVIL PROCEDURE; JUDGMENTS; MOOT CASES; HOLDING OF EXTRAJUDICIAL FORECLOSURE SALE DID NOT RENDER THE CASE AT BAR MOOT; THE PRELIMINARY INJUNCTION ISSUED BY THE TRIAL COURT REMAINS VALID UNTIL THE DECISION OF THE APPELLATE COURT ANNULING THE SAME ATTAINS FINALITY.— On the second issue, the holding of the extrajudicial foreclosure sale did not render this case moot. A case becomes moot only when there is no more actual controversy between the parties, or when no useful purpose can be served in passing upon the merits. In this case, the decision of the Court of Appeals annulling the grant of preliminary injunction in favor of Tecnogas has not yet become final on August 24, 2004. The preliminary injunction, therefore, issued by the trial court remains valid until the decision of the Court of Appeals annulling the same attains finality, and violation thereof constitutes indirect contempt which, however, requires either a formal charge or a verified petition.

APPEARANCES OF COUNSEL

De Jesus Manimtim & Peran for petitioner.
Chief Legal Department (PNB) for respondent.

D E C I S I O N

QUISUMBING, *J.*:

For review under Rule 45 are the Decision[1] and the Resolution[2] dated July 24, 2003 and November 5, 2003, respectively, of the Court of Appeals in CA-G.R. SP No. 73822. The Court of Appeals reversed the Orders dated October 8, 2001[3] and September 11, 2002[4] of the Regional Trial Court (RTC) of Parañaque City, Branch 274, granting petitioner's application for a writ of preliminary injunction in Civil Case No. 01-0330.

The antecedent facts are as follows:

On December 3, 1991, petitioner Tecnogas Philippines Manufacturing Corporation (Tecnogas) obtained from respondent Philippine National Bank (PNB) an Omnibus Line of ₱35 million and a 5-year Term Loan of ₱14 million. To secure the loan, Tecnogas executed a Real Estate Mortgage[5] (REM) over its parcel of land in Parañaque City, covered by Transfer Certificate of Title (TCT) No. 122533[6] and registered in the Registry of Deeds of Parañaque City.

The REM authorized PNB to extrajudicially foreclose the mortgage as the duly constituted attorney-in-fact of Tecnogas[7]

---

[1] *Rollo,* pp. 28-36. Penned by Associate Justice Bernardo P. Abesamis, with Associate Justices Jose L. Sabio, Jr. and Jose C. Mendoza concurring.

[2] *Id*. at 38. Penned by Associate Justice Jose Catral Mendoza, with Associate Justices Eloy R. Bello, Jr. and Jose L. Sabio, Jr. concurring.

[3] Records, Vol. I, p. 299. Penned by Pairing Judge Helen Bautista-Ricafort.

[4] *Id*. at Vol. II, pp. 630-633. Penned by Presiding Judge Fortunito L. Madrona.

[5] CA *rollo*, pp. 72-76.

[6] *Id*. at 77. TCT No. 122533 is a transfer from TCT No. 409316 (13293)/ T-67.

[7] *Id*. at 73.

in case Tecnogas defaults on its obligations. It also provided that the mortgage will stand as a security for any and all other obligations of Tecnogas to PNB, for whatever kind or nature, and regardless of whether the obligations had been contracted before, during or after the constitution of the mortgage.[8]

On several occasions, Tecnogas' loan had been increased, renewed and restructured upon its requests whenever it could not pay its obligations on their due dates. Finally, when the loan matured, PNB sent collection letters[9] to Tecnogas, but the latter only proposed to pay its obligations by way of *dacion en pago* conveying TCT No. 122533.[10] As of April 15, 2001, petitioner's loan obligation was ₱205,025,743.59, inclusive of interest and penalties.[11]

On August 16, 2001, PNB filed a petition for extrajudicial foreclosure of the REM in the RTC of Parañaque City. The auction sale was set on September 20, 2001.

A day before the auction sale, Tecnogas filed with the Parañaque City RTC a complaint[12] for annulment of extrajudicial foreclosure sale, with application for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction docketed as Civil Case No. 01-0330. On the same date, the RTC issued

[8] *Id*. at 72. . . . In case the Mortgagor/s execute subsequent promissory note or notes either as a renewal of the former note, as an extension thereof, or as a new loan, or is given any other kind of accommodations such as overdrafts, letters of credit, acceptances and bills of exchange, releases of import shipments on Trust Receipts, *etc*., this mortgage shall also stand as security for the payment of the said promissory note or notes and/or accommodations without the necessity of executing a new contract and this mortgage shall have the same force and effect as if the said promissory note or notes and/or accommodations were existing on the date hereof. *This mortgage shall also stand as security for said obligations and any and all other obligations of the Mortgagor/s to the Mortgagee of whatever kind and nature, whether such obligations have been contracted before, during or after the constitution of this mortgage*.... (Emphasis supplied.)

[9] *Id*. at 136-139. Dated November 7, 2000, December 7, 2000, December 28, 2000, and February 28, 2001.

[10] *Id*. at 300.

[11] CA *rollo,* pp. 145-146.

[12] Records, Vol. I, pp. 8-47.

a TRO valid for 72 hours.[13] On September 21, 2001, the RTC granted extension of the TRO for 17 days.[14]

On October 8, 2001, the RTC granted Tecnogas' application and issued a writ of preliminary injunction enjoining the extrajudicial foreclosure sale of the mortgaged property.[15] PNB sought reconsideration with a motion to dissolve the writ. But its motions were denied by the court in its Order[16] dated September 11, 2002.

On November 29, 2002, PNB filed a petition for *certiorari* with the Court of Appeals, seeking the annulment of the October 8, 2001 and September 11, 2002 Orders of the RTC.

On July 24, 2003, the Court of Appeals issued the assailed decision and ruled that the trial court committed grave abuse of discretion in enjoining the extrajudicial foreclosure sale. It held that Tecnogas' proposal to pay through *dacion en pago* did not constitute payment as it was not accepted by PNB. Thus, injunction was not proper as the extrajudicial foreclosure of the REM was a necessary consequence of Tecnogas' default in its loan obligations. Tecnogas sought reconsideration, but it was denied. Hence, this petition.

Meanwhile, the auction sale was set on August 17 and 24, 2004. Tecnogas filed an Urgent Motion for the Issuance of a TRO/Injunction. The August 17, 2004 auction sale was postponed to permit Tecnogas to settle its obligations, but it failed to do so. Thus, the auction sale proceeded on August 24, 2004.

In its memorandum, Tecnogas raises the following issues:

I.

WHETHER OR NOT THE TWO (2) RTC JUDGES *A QUO* COMMITTED GRAVE ABUSE OF DISCRETION WHICH IS CORRECTIBLE BY *CERTIORARI* UNDER RULE 65[.]

---

[13] *Id*. at 4.

[14] *Id*. at 143.

[15] *Id*. at p. 299. Issued by Pairing Judge Helen Bautista-Ricafort.

[16] *Id*. at Vol II, pp. 630-633. Issued by Presiding Judge Fortunito L. Madrona.

II.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN PRE-EMPTING THE MERITS OF THE MAIN CASE[.]

III.

WHETHER OR NOT THERE WERE ERRORS OF JUDGEMENT COMMITTED BY THE TWO (2) RTC JUDGES *A QUO*.

IV.

WHETHER OR NOT THE INSTANT PETITION HAS BEEN RENDERED MOOT AND ACADEMIC BY THE FORECLOSURE SALE[.][17]

Simply, the issues are: (1) Did the Court of Appeals err in ruling that Tecnogas was not entitled to an injunctive relief? (2) Did the foreclosure sale render the petition moot?

Tecnogas admits its liability and that its proposal to pay by way of *dacion en pago* was not accepted by PNB. But Tecnogas avers that its proposal constitutes a valid tender of payment. It further avers that the Court of Appeals, in issuing the assailed decision, preempted the merits of the main case in Civil Case No. 01-0330. It finally avers that the foreclosure sale did not render the petition moot.[18]

PNB counters that the proposal to pay by way of *dacion en pago* did not extinguish Tecnogas' obligation; thus, the extrajudicial foreclosure sale was proper. It also contends that the Court of Appeals did not preempt the resolution of the main case in Civil Case No. 01-0330, as its findings were necessary to resolve the issue on injunction. It finally contends that the foreclosure of the REM rendered the petition moot.[19]

Considering the submissions and contentions of the parties, we are in agreement that the petition lacks merit.

---

[17] *Rollo*, p. 296.

[18] *Id*. at 283-289.

[19] *Id*. at 308-311.

A writ of preliminary injunction may be issued only upon clear showing by the applicant of the existence of the following: (1) a right in *esse* or a clear and unmistakable right to be protected; (2) a violation of that right; and (3) an urgent and paramount necessity for the writ to prevent serious damage. In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion.[20]

Dacion en pago is a special mode of payment whereby the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding obligation. The undertaking is really one of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt. As such, the essential elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present. It is only when the thing offered as an equivalent is accepted by the creditor that novation takes place, thereby, totally extinguishing the debt.[21]

On the first issue, the Court of Appeals did not err in ruling that Tecnogas has no clear legal right to an injunctive relief because its proposal to pay by way of *dacion en pago* did not extinguish its obligation. Undeniably, Tecnogas' proposal to pay by way of *dacion en pago* was not accepted by PNB. Thus, the unaccepted proposal neither novates the parties' mortgage contract nor suspends its execution as there was no meeting of the minds between the parties on whether the loan will be extinguished by way of *dacion en pago*. Necessarily, upon Tecnogas' default in its obligations, the foreclosure of the REM becomes a matter of right on the part of PNB, for such is the purpose of requiring security for the loans.

By disallowing Tecnogas' prayer for injunctive relief, the Court of Appeals did not preempt the resolution of the main case in Civil Case No. 01-0330 for annulment of extrajudicial foreclosure sale. In said case, the trial court still needs to resolve the issues of whether Tecnogas observed the procedures prescribed by Act

[20] *Tayag v. Lacson*, G.R. No. 134971, March 25, 2004, 426 SCRA 282, 299.

[21] *Philippine Lawin Bus, Co. v. Court of Appeals,* G.R. No. 130972, January 23, 2002, 374 SCRA 332, 338, citing *Filinvest Credit Corp. v. Phil. Acetylene, Co., Inc.,* No. L-50449, January 30, 1982, 111 SCRA 421, 427-428.

No. 3135,[22] as amended, on extrajudicial foreclosure of REM, and whether it suffered damage as a result of PNB's acts. These issues are still unresolved questions which have to be passed upon by the trial court after hearing the evidence of both parties so that an adjudication of the rights of the parties can be had.[23]

On the second issue, the holding of the extrajudicial foreclosure sale did not render this case moot. A case becomes moot only when there is no more actual controversy between the parties, or when no useful purpose can be served in passing upon the merits.[24] In this case, the decision of the Court of Appeals annulling the grant of preliminary injunction in favor of Tecnogas has not yet become final on August 24, 2004. The preliminary injunction, therefore, issued by the trial court remains valid until the decision of the Court of Appeals annulling the same attains finality, and violation thereof constitutes indirect contempt which, however, requires either a formal charge or a verified petition.[25]

WHEREFORE, the instant petition is *DENIED* for lack of merit. The assailed Decision and Resolution dated July 24, 2003 and November 5, 2003, respectively, of the Court of Appeals in CA-G.R. SP No. 73822 are hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr. and *Brion, JJ.,* concur.

---

[22] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES.

[23] See *Philippine National Bank v. Court of Appeals,* G.R. No. 121251, June 26, 1998, 291 SCRA 271, 278.

[24] *Id*.

[25] See *Lee v. Court of Appeals*, G.R. No.147191, July 27, 2006, 496 SCRA 668, 686-687.

THIRD DIVISION

[G.R. No. 161070. April 14, 2008]

JOHN HILARIO *y* SIBAL, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPRME COURT UNDER RULE 45; EFFECTS OF NON-COMPLIANCE WITH THE REQUIRED ATTACHMENT OF PLEADINGS.— The initial determination of what pleadings, documents or orders are relevant and pertinent to the petition rests on the petitioner. If, upon its initial review of the petition, the CA is of the view that additional pleadings, documents or order should have been submitted and appended to the petition, the following are its options: (a) dismiss the petition under the last paragraph of Rule 46 of the Rules of Court; (b) order the petitioner to submit the required additional pleadings, documents, or order within a specific period of time; or (c) order the petitioner to file an amended petition appending thereto the required pleadings, documents or order within a fixed period.

2. ID.; RULES OF PROCEDURE; A LITIGANT WHO IS NOT A LAWYER IS NOT EXPECTED TO KNOW THE RULES OF PROCEDURE.— The RTC Decision dated December 5, 2001, finding petitioner guilty of two counts of homicide, the Comment of the City Prosecutor as well as the counsel's withdrawal of appearance were considered by the CA as relevant and pertinent to the petition for *certiorari*, thus it dismissed the petition for failure to attach the same. However, the CA failed to consider the fact that the petition before it was filed by petitioner, a detained prisoner, without the benefit of counsel. A litigant who is not a lawyer is not expected to know the rules of procedure. In fact, even the most experienced lawyers get tangled in the web of procedure. We have held in a civil case that to demand as much from ordinary citizens whose only *compelle intrare* is their sense of right would turn the legal system into an intimidating monstrosity where an individual may be stripped of his property rights not because he has no

right to the property but because he does not know how to establish such right. This finds application specially if the liberty of a person is at stake.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO COUNSEL IS IMMUTABLE, OTHERWISE, THERE WOULD BE A GRAVE DENIAL OF DUE PROCESS.— The filing of the petition for *certiorari* by petitioner without counsel should have alerted the CA and should have required petitioner to cause the entry of appearance of his counsel. Although the petition filed before the CA was a petition for *certiorari* assailing the RTC Order dismissing the petition for relief, the ultimate relief being sought by petitioner was to be given the chance to file an appeal from his conviction, thus the need for a counsel is more pronounced. To repeat the ruling in *Telan*, no arrangement or interpretation of law could be as absurd as the position that the right to counsel exists only in the trial courts and that thereafter, the right ceases in the pursuit of the appeal. It is even more important to note that petitioner was not assisted by counsel when he filed his petition for relief from judgment with the RTC. It cannot be overstressed therefore, that in criminal cases, as held in *Telan*, the right of an accused person to be assisted by a member of the bar is immutable; otherwise, there would be a grave denial of due process.

4. REMEDIAL LAW; MOTIONS; MOTION FOR RECONSIDERATION; RULE; FAILURE TO FILE THE SAME WITHIN THE REGLEMENTARY PERIOD RENDERED THE RESOLUTION FINAL AND EXECUTORY; RELAXATION OF THE RULE, WHEN WARRANTED.— 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 served better. The CA denied petitioner's motion for reconsideration for having been filed late. It appears that the CA Resolution dismissing the petition for *certiorari* was received at the address written in the petition on September 1, 2003, and that petitioner filed his motion for reconsideration on September 18, 2003, or two days late. While as a general rule, the failure of petitioner to file his motion for reconsideration within the 15-day reglementary period fixed by law rendered the resolution final and executory, we have

on some occasions relaxed this rule. Thus, in *Barnes v. Padilla* we held: However, this Court has relaxed this rule in order to serve substantial justice considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby. Invariably, rules of procedure should be viewed as 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 eschewed. Even the Rules of Court reflects this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself had already declared to be final.

5. ID.; RULES OF PROCEDURE; A STRICT AND RIGID APPLICATION OF THE RULES THAT WOULD RESULT IN THE TECHNICALITIES THAT TEND TO FRUSTRATE RATHER THAN PROMOTE SUBSTANTIAL JUSTICE MUST BE AVOIDED.— Petitioner claims that he actually received the CA Resolution dismissing his petition for *certiorari* only on September 4, 2003 even as the same Resolution was earlier received on September 1, 2003 at the address written in his petition, *i.e.*, c/o Robert S. Bacuraya, No. 9 Iris St., West Fairview, 1118, Quezon City, by a certain Leonora Coronel. Apparently, Bacuraya is not a lawyer. Ordinarily, petitioner being detained at the National Penitentiary, Muntinlupa, the CA should have also sent a copy of such Resolution to his place of detention. Considering that petitioner only received the Resolution on September 4, 2003, we find the two days delay in filing his motion for reconsideration pardonable as it did not cause any prejudice to the other party. There is no showing that petitioner was motivated by a desire to delay the proceedings or obstruct the administration of justice. The suspension of the Rules is warranted in this case since the procedural infirmity was not entirely attributable to the fault or negligence of petitioner. Rules of procedure are mere tools designed to expedite the decision or resolution of cases and other matters pending in court. A strict and rigid application of rules that would result in technicalities that tend to frustrate

rather than promote substantial justice must be avoided. In dismissing the petition for *certiorari* filed before it, the CA clearly put a premium on technicalities and brushed aside the issue raised before it by petitioner, *i.e.*, whether the RTC committed grave abuse of discretion in dismissing petitioner's petition for relief thus preventing him from taking an appeal from his conviction.

6. LEGAL ETHICS; ATTORNEYS; GENERAL RULE; NEGLIGENCE OF COUNSEL MAY NOT BE CONDONED AND SHOULD BIND THE CLIENT; EXCEPTION.— While as a general rule, negligence of counsel may not be condoned and should bind the client, the exception is when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court. In *Aguilar v. Court of Appeals,* we held: xxx x x x If the incompetence, ignorance or inexperience of counsel is so great and the error committed as a result thereof is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court, the litigation may be reopened to give the client another chance to present his case. In a criminal proceeding, where certain evidence was not presented because of counsel's error or incompetence, the defendant in order to secure a new trial must satisfy the court that he has a good defense and that the acquittal would in all probability have followed the introduction of the omitted evidence. What should guide judicial action is that a party be given the fullest opportunity to establish the merits of his action or defense rather than for him to lose life, liberty, honor or property on mere technicalities. The PAO lawyer, Atty. Rivera, filed his Withdrawal of Appearance on September 30, 2002, almost three months before the RTC rendered its assailed Order dated December 13, 2002, dismissing the petition for relief. The RTC had ample time to require the PAO lawyer to comment on the petition for relief from judgment, before issuing the questioned Order. Had the RTC done so, there would have been a factual basis for the RTC to determine whether or not the PAO lawyer was grossly negligent; and eventually, whether the petition for relief from judgment is meritorious. If there was no instruction from petitioner to file an appeal, then there was no obligation on the part of the PAO lawyer to file an appeal as stated in the PAO Memorandum Circular and negligence could not be attributed to him. However, if indeed there was such an

instruction to appeal but the lawyer failed to do so, he could be considered negligent. Thus, there was no basis for the RTC to conclude that the claim of petitioner that he instructed the PAO lawyer to file an appeal as self-serving and unsubstantiated. The RTC's dismissal of the petition for relief was done with grave abuse of discretion amounting to an undue denial of the petitioner's right to appeal.

7. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; ACCUSED SHALL HAVE THE RIGHT TO APPEAL IN THE MANNER PRESCRIBED BY LAW; IMPORTANCE AND PURPOSE OF THE REMEDY OF APPEAL.— The RTC faulted petitioner for claiming in his petition for relief that he instructed his counsel to file the necessary motion for reconsideration or notice of appeal; while in his affidavit of merit, he claimed to have told his counsel to simply file a notice of appeal. We do not find such circumstance sufficient ground to dismiss the petition considering that he filed the petition for relief unassisted by counsel. In all criminal prosecutions, the accused shall have the right to appeal in the manner prescribed by law. The importance and real purpose of the remedy of appeal has been emphasized in *Castro v. Court of Appeals* where we ruled that an appeal is an essential part of our judicial system and trial courts are advised to proceed with caution so as not to deprive a party of the right to appeal and instructed that every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities. **While this right is statutory, once it is granted by law, however, its suppression would be a violation of due process, a right guaranteed by the Constitution.** Thus, the importance of finding out whether petitioner's loss of the right to appeal was due to the PAO lawyer's negligence and not at all attributed to petitioner.

8. ID.; ID.; ID.; REMAND OF THE CASE AT BAR TO THE LOWER COURT, WARRANTED.— However, we cannot, in the present petition for review on *certiorari,* make a conclusive finding that indeed there was excusable negligence on the part of the PAO lawyer which prejudiced petitioner's right to appeal his conviction. To do so would be pure speculation or conjecture. Therefore, a remand of this case to the RTC for the proper determination of the merits of the petition for relief from judgment is just and proper.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.

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 filed by John Hilario *y* Sibal (petitioner), seeking to annul and set aside the Resolutions dated August 19, 2003[1] and November 28 2003[2] of the Court of Appeals in CA-G.R. SP No. 75820.

The antecedents are as follows:

Petitioner, together with one Gilbert Alijid (Alijid), was charged with two counts[3] of Murder in the Regional Trial Court (RTC), Branch 76, Quezon City to which petitioner, assisted by counsel *de parte*, pleaded not guilty.

During trial, Atty. Raul Rivera of the Public Attorney's Office (PAO), counsel of Alijid, took over representing petitioner in view of the death of the latter's counsel.

On December 5, 2001, the RTC rendered its Decision[4] finding petitioner and his co-accused Alijid guilty beyond reasonable doubt of the crime of homicide and sentencing them to suffer imprisonment of eight (8) years and one (1) day of *prision mayor* to fourteen (14) years and eight (8) months of *reclusion temporal* in each count.

On May 10, 2002, petitioner, this time unassisted by counsel, filed with the RTC a Petition for Relief[5] from the Decision

[1] Penned by Justice Sergio L. Pestaño and concurred in by Justices Rodrigo V. Cosico and Rosalinda Asuncion-Vicente; *rollo*, p. 26.

[2] *Id*. at 28-29.

[3] Docketed as Criminal Case Nos. Q-00-91647-48.

[4] Penned by Judge Monina A. Zenarosa, *rollo*, pp. 36-52.

[5] *Id*. at 53-60.

dated December 5, 2001 together with an affidavit of merit. In his petition, petitioner contended that at the time of the promulgation of the judgment, he was already confined at Quezon City Jail and was directed to be committed to the National Penitentiary in Muntinlupa; that he had no way of personally filing the notice of appeal thus he instructed his lawyer to file it on his behalf; that he had no choice but to repose his full trust and confidence to his lawyer; that he had instructed his lawyer to file the necessary motion for reconsideration or notice of appeal; that on May 2, 2002, he was already incarcerated at the New Bilibid Prisons, Muntinlupa City and learned from the grapevine of his impending transfer to the Iwahig Penal Colony, Palawan; that believing that the notice of appeal filed by his counsel prevented the Decision dated December 5, 2001 from becoming final to warrant his transfer, he instructed his representative to get a copy of the notice of appeal from the RTC; that no notice of appeal was filed by his lawyer in defiance of his clear instructions; and that the RTC Decision showed that it was received by his counsel on February 1, 2002 and yet the counsel did not inform him of any action taken thereon.

Petitioner claimed that he had a meritorious defense, to wit:

1. The Decision dated December 5, 2001, on page 16 thereof states an imprisonment term of eight (8) years and one (1) day of Prision Mayor to fourteen (14) years and eight (8) months of *Reclusion Temporal* - a matter which ought to be rectified;
2. The undersigned is a first time offender;
3. No ruling was laid down on the stipulated facts (Decision, p. 3) relative to the (1) absence of counsel during the alleged inquest, and (2) absence of warrant in arresting the accused after ten (10) days from the commission of the crime;
4. Absence of a corroborating witness to the purported lone eyewitness, as against the corroborated testimony of accused-petitioner's alibi;
5. The Commission on Human Rights investigation on the torture of the accused-petitioner;

6. and others.[6]

Petitioner argued that he was meted a total of 16 years imprisonment or almost equal to the previous capital punishment of 20 years which was given an automatic review by the Supreme Court, thus it is of greater interest of justice that his case be reviewed by the appellate court; and that no damage will be sustained if the appeal is given due course since he continues to languish in jail while the Petition for Relief is pending.

The Assistant City Prosecutor filed his Comment on the Petition for Relief where he contended that the petition should no longer be entertained; and that perfection of appeal in the manner and within the period permitted by law was not only mandatory but jurisdictional and failure to perfect the appeal rendered the judgment final and executory.

The records do not show that the RTC required petitioner's counsel to whom petitioner attributed the act of not filing the notice of appeal to file his comment.

On September 30, 2002, petitioner's counsel filed a Withdrawal of Appearance[7] from the case with petitioner's consent. Again, the documents before us do not show the action taken by the RTC thereon.

In an Order[8] dated December 13, 2002, the RTC dismissed petitioner's petition for relief with the following disquisition:

After a careful study of the instant petition and the arguments raised by the contending parties, the Court is not persuaded by petitioner/accused's allegation that he was prevented from filing a notice of appeal due to excusable negligence of his counsel.

Accused's allegation that he indeed specifically instructed his counsel to file a notice of appeal of the Decision dated [sic] and the latter did not heed his instruction is at best self-serving and unsubstantiated and thus, unworthy of credence. At any rate, even if

[6] *Id*. at 57.

[7] *Id*. at 65.

[8] *Id*. at 67-68.

said omission should be considered as negligence, it is a well-settled rule that negligence of counsel is binding on the client. x x x Besides, nowhere does it appear that accused/petitioner was prevented from fairly presenting his defense nor does it appear that he was prejudiced as the merits of this case were adequately passed upon in the Decision dated December 5, 2001.

It must also be pointed out that in his petition for relief, he stated that he instructed his counsel to file the necessary motion for reconsideration or notice of appeal of the Decision dated December 5, 2001, whereas in his affidavit of merit, he claimed to have told his counsel to simply file a notice of appeal thereof.[9] (Emphasis supplied)

Petitioner, again by himself, filed a petition for *certiorari* with the CA on the ground that the RTC committed grave abuse of discretion in dismissing his petition for relief. He claims that the delay in appealing his case without his fault constitutes excusable negligence to warrant the granting of his petition for relief.

In a Resolution dated August 19, 2003, the CA dismissed the petition in this wise:

It appearing that petitioner in the instant petition for *certiorari* failed to attach the following documents cited in his petition, namely:

1. The December 5, 2001 Decision;
2. Comment of the City Prosecutor;
3. Manifestation of petitioner's counsel *de oficio* signifying his withdrawal as petitioner's counsel.

The instant petition for *certiorari* is hereby DISMISSED pursuant to Section 2, Rule 42 of the 1997 Rules of Civil Procedure and as prayed for by the Solicitor General.[10]

Petitioner's motion for reconsideration was denied in a Resolution dated November 28, 2003 for having been filed beyond the 15-day reglementary period, in violation of Section 1, Rule 52

[9] *Id*.

[10] *Id*. at 26.

of the Rules of Court and for failure to attach to the petition, the relevant and pertinent documents. The CA also stressed that procedural rules are not to be belittled simply because their non-observance may have resulted in prejudice to a party's substantive rights.

Hence, herein recourse filed by petitioner, still unassisted by counsel, raising the following issues:

> Whether or not the delay in appealing the instant case due to the defiance of the petitioner's counsel *de oficio* to seasonably file a Notice of Appeal, constitutes excusable negligence to entitle the undersigned detention prisoner/ petitioner to pursue his appeal?
>
> Whether or not *pro hac vice*, the mere invocation of justice warrants the review of a final and executory judgment?

Petitioner contends that the negligence of his counsel *de oficio* cannot be binding on him for the latter's defiance of his instruction to appeal automatically breaks the fiduciary relationship between counsel-client and cannot be against the client who was prejudiced; that this breach of trust cannot easily be concocted in this situation considering that it was a counsel *de oficio*, a lawyer from PAO, who broke the fiduciary relationship; that the assailed CA Resolutions both harped on technicalities to uphold the dismissal by the RTC of his petition for relief; that reliance on technicalities to the prejudice of petitioner who is serving 14 years imprisonment for a crime he did not commit is an affront to the policy promulgated by this Court that dismissal purely on technical grounds is frowned upon especially if it will result to unfairness; and that it would have been for the best interest of justice for the CA to have directed the petitioner to complete the records instead of dismissing the petition outright.

In his Comment, the OSG argues that the mere invocation of justice does not warrant the review of an appeal from a final and executory judgment; that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but jurisdictional and failure to perfect the appeal renders the judgment sought to be reviewed final and not appealable; and that petitioner's appeal after the finality of

judgment of conviction is an exercise in futility, thus the RTC properly dismissed petitioner's petition for relief from judgment. The OSG further claims that notice to counsel is notice to clients and failure of counsel to notify his client of an adverse judgment would not constitute excusable negligence and therefore binding on the client.

We grant the petition.

The CA dismissed the petition for *certiorari* filed under Rule 65 of the Rules of Court, in relation to Rule 46, on the ground that petitioner failed to attach certain documents which the CA found to be relevant and pertinent to the petition for *certiorari*.

The requirements to attach such relevant pleadings under Section 1, Rule 65 is read in relation to Section 3, Rule 46 of the Rules of Court, thus:

Section 1, Rule 65 provides:

SECTION. 1. Petition for *certiorari*. –

xxx xxx xxx

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto x x x.

Section 3, Rule 46, provides:

SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. –

xxx xxx xxx

[The petition] shall be x x x accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto x x x.

xxx xxx xxx

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

The initial determination of what pleadings, documents or orders are relevant and pertinent to the petition rests on the petitioner. If, upon its initial review of the petition, the CA is of the view that additional pleadings, documents or order should have been submitted and appended to the petition, the following are its options: (a) dismiss the petition under the last paragraph of Rule 46 of the Rules of Court; (b) order the petitioner to submit the required additional pleadings, documents, or order within a specific period of time; or (c) order the petitioner to file an amended petition appending thereto the required pleadings, documents or order within a fixed period.[11]

The RTC Decision dated December 5, 2001, finding petitioner guilty of two counts of homicide, the Comment of the City Prosecutor as well as the counsel's withdrawal of appearance were considered by the CA as relevant and pertinent to the petition for *certiorari*, thus it dismissed the petition for failure to attach the same. However, the CA failed to consider the fact that the petition before it was filed by petitioner, a detained prisoner, without the benefit of counsel. A litigant who is not a lawyer is not expected to know the rules of procedure. In fact, even the most experienced lawyers get tangled in the web of procedure.[12] We have held in a civil case that to demand as much from ordinary citizens whose only *compelle intrare* is their sense of right would turn the legal system into an intimidating monstrosity where an individual may be stripped of his property rights not because he has no right to the property but because he does not know how to establish such right.[13] This finds application specially if the liberty of a person is at stake. As we held in *Telan v. Court of Appeals*:

> The right to counsel in civil cases exists just as forcefully as in criminal cases, specially so when as a consequence, life, liberty, or property is subjected to restraint or in danger of loss.

---

[11] *Garcia v. Philippine Airlines, Inc.*, G.R. No. 160798, June 8, 2005, 459 SCRA 768, 780.

[12] See *Telan v. Court of Appeals*, G.R. No. 95026, October 4, 1991, 202 SCRA 534, 541.

[13] *Id*.

In criminal cases, the right of an accused person to be assisted by a member of the bar is immutable. Otherwise, there would be a grave denial of due process. Thus, even if the judgment had become final and executory, it may still be recalled, and the accused afforded the opportunity to be heard by himself and counsel.

xxx xxx xxx

Even the most experienced lawyers get tangled in the web of procedure. The demand as much from ordinary citizens whose only *compelle intrare* is their sense of right would turn the legal system into an intimidating monstrosity where an individual may be stripped of his property rights not because he has no right to the property but because he does not know how to establish such right.

The right to counsel is absolute and may be invoked at all times. More so, in the case of an on-going litigation, it is a right that must be exercised at every step of the way, with the lawyer faithfully keeping his client company.

No arrangement or interpretation of law could be as absurd as the position that the right to counsel exists only in the trial courts and that thereafter, the right ceases in the pursuit of the appeal.[14] (Emphasis supplied)

The filing of the petition for *certiorari* by petitioner without counsel should have alerted the CA and should have required petitioner to cause the entry of appearance of his counsel. Although the petition filed before the CA was a petition for *certiorari* assailing the RTC Order dismissing the petition for relief, the ultimate relief being sought by petitioner was to be given the chance to file an appeal from his conviction, thus the need for a counsel is more pronounced. To repeat the ruling in *Telan*, no arrangement or interpretation of law could be as absurd as the position that the right to counsel exists only in the trial courts and that thereafter, the right ceases in the pursuit of the appeal.[15] It is even more important to note that petitioner was not assisted by counsel when he filed his petition for relief from judgment with the RTC.

---

[14] *Id*. at 540-541.

[15] *Id*. at 541.

It cannot be overstressed therefore, that in criminal cases, as held in *Telan*, the right of an accused person to be assisted by a member of the bar is immutable; otherwise, there would be a grave denial of due process.

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 served better.[16]

The CA denied petitioner's motion for reconsideration for having been filed late. It appears that the CA Resolution dismissing the petition for *certiorari* was received at the address written in the petition on September 1, 2003, and that petitioner filed his motion for reconsideration on September 18, 2003, or two days late.

While as a general rule, the failure of petitioner to file his motion for reconsideration within the 15-day reglementary period fixed by law rendered the resolution final and executory, we have on some occasions relaxed this rule. Thus, in *Barnes v. Padilla*[17] we held:

> However, this Court has relaxed this rule in order to serve substantial justice considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.
>
> Invariably, rules of procedure should be viewed as 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 eschewed. Even the Rules of Court reflects this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself had already declared to be final.

---

[16] *Garcia v. Philippine Airlines, Inc., supra* note 11, at 781.

[17] G.R. No. 160753, September 30, 2004, 439 SCRA 675.

In *De Guzman v. Sandiganbayan*, this Court, speaking through the late Justice Ricardo J. Francisco, had occasion to state:

> The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts in rendering justice have always been, as they ought to be guided by the norm that when on the balance, technicalities take a backseat against substantive rights, and not the other way around. Truly then, technicalities, in the appropriate language of Justice Makalintal, "should give way to the realities of the situation."

Indeed, the emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.[18]

Moreover, in *Basco v. Court of Appeals,*[19] we also held:

> Nonetheless, procedural rules were conceived to aid the attainment of justice. If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter. Recognizing this, Section 2, Rule 1 of the Rules of Court specifically provides that:
>
> SECTION 2. *Construction*. — These rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding.[20]

Petitioner claims that he actually received the CA Resolution dismissing his petition for *certiorari* only on September 4, 2003 even as the same Resolution was earlier received on September 1, 2003 at the address written in his petition, *i.e.*, c/o Robert S. Bacuraya, No. 9 Iris St., West Fairview, 1118, Quezon City, by a certain Leonora Coronel. Apparently, Bacuraya is not a lawyer. Ordinarily, petitioner being detained at the National

[18] *Id*. at 686-687.

[19] 392 Phil. 251 (2000).

[20] *Id*. at 266.

Penitentiary, Muntinlupa, the CA should have also sent a copy of such Resolution to his place of detention. Considering that petitioner only received the Resolution on September 4, 2003, we find the two days delay in filing his motion for reconsideration pardonable as it did not cause any prejudice to the other party. There is no showing that petitioner was motivated by a desire to delay the proceedings or obstruct the administration of justice. The suspension of the Rules is warranted in this case since the procedural infirmity was not entirely attributable to the fault or negligence of petitioner.

Rules of procedure are mere tools designed to expedite the decision or resolution of cases and other matters pending in court. A strict and rigid application of rules that would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided.[21]

In dismissing the petition for *certiorari* filed before it, the CA clearly put a premium on technicalities and brushed aside the issue raised before it by petitioner, *i.e.*, whether the RTC committed grave abuse of discretion in dismissing petitioner's petition for relief thus preventing him from taking an appeal from his conviction.

Even if the judgment had become final and executory, it may still be recalled, and the accused afforded the opportunity to be heard by himself and counsel.[22] However, instead of remanding the case to the CA for a decision on the merits, we opt to resolve the same so as not to further delay the final disposition of this case.

The RTC denied the petition for relief as it found petitioner's claim that his counsel did not heed his instruction to file an appeal to be unsubstantiated and self serving; and that if there was indeed such omission committed by the counsel, such negligence is binding on the client.

---

[21] *Cusi-Hernandez v. Spouses Diaz*, 390 Phil. 1245, 1252 (2000).

[22] *Telan v. Court of Appeals*, *supra* note 12, at 540-541; *People of the Philippines v. Holgado*, 85 Phil. 752, 756-757 (1950); *Flores v. Judge Ruiz*, 179 Phil. 351, 355 (1979); *Delgado v. Court of Appeals,* 229 Phil. 362, 366 (1986).

Petitioner insists that the failure of his counsel to timely file a notice of appeal of his judgment of conviction despite his explicit instruction to do so constitutes excusable negligence and so his petition for relief should have been granted.

We find that the RTC committed grave abuse of discretion in dismissing petitioner's petition for relief from judgment.

Petitioner was represented in the RTC by Atty. Rivera of the PAO. Section 1, Article IV of PAO Memorandum Circular No.18 series of 2002, the Amended Standard Office Procedures in Extending Legal Assistance (PAO Memorandum Circular), provides that all appeals must be made upon the request of the client himself and only meritorious cases shall be appealed; while Section 2, Article II of PAO Memorandum Circular provides that in criminal cases, the accused enjoys the constitutional presumption of innocence until the contrary is proven, hence cases of defendants in criminal actions are considered meritorious and therefore, should be appealed, upon the client's request.

In this case, petitioner claims he had instructed the PAO lawyer to file an appeal. Under the PAO Memorandum Circular, it was the duty of the latter to perfect the appeal. Thus, in determining whether the petition for relief from judgment is based on a meritorious ground, it was crucial to ascertain whether petitioner indeed gave explicit instruction to the PAO lawyer to file an appeal but the latter failed to do so.

To determine the veracity of petitioner's claim, it was incumbent upon the RTC to have required the PAO lawyer to comment on the petition for relief. However, it appears from the records that the RTC only required the City Prosecutor to file a comment on the petition.

The RTC Order dismissing the petition for relief did not touch on the question whether the PAO lawyer was indeed negligent in not filing the appeal as it merely stated that even if said omission, *i.e.*, not filing the appeal despite his client's instruction to do so, should be considered as negligence, it is a well-settled rule that negligence of counsel is binding on the client.

While as a general rule, negligence of counsel may not be condoned and should bind the client,[23] the exception is when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court.[24] In *Aguilar v. Court of Appeals*,[25] we held:

> x x x Losing liberty by default of an insensitive lawyer should be frowned upon despite the fiction that a client is bound by the mistakes of his lawyer. The established jurisprudence holds:
>
> xxx xxx xxx
>
> The function of the rule that negligence or mistake of counsel in procedure is imputed to and binding upon the client, as any other procedural rule, is to serve as an instrument to advance the ends of justice. When in the circumstances of each case the rule desert its proper office as an aid to justice and becomes its great hindrance and chief enemy, its rigors must be relaxed to admit exceptions thereto and to prevent a manifest miscarriage of justice.
>
> xxx xxx xxx
>
> The court has the power to except a particular case from the operation of the rule whenever the purposes of justice require it.
>
> xxx xxx xxx
>
> If the incompetence, ignorance or inexperience of counsel is so great and the error committed as a result thereof is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court, the litigation may be reopened to give the client another chance to present his case. In a criminal proceeding, where certain evidence was not presented because of counsel's error or incompetence, the defendant in order to secure a new trial must satisfy the court that he has a good defense and that the acquittal would in all probability have followed the introduction of the omitted evidence. What should guide judicial action is that a party be given the fullest opportunity to establish the merits of his action or defense

---

[23] *Lamsan Trading, Inc. v. Leogrado, Jr.*, 228 Phil. 542, 550 (1986).

[24] *Sapad v. Court of Appeals*, 401 Phil. 478, 483 (2000).

[25] 320 Phil. 456 (1995).

rather than for him to lose life, liberty, honor or property on mere technicalities.[26]

The PAO lawyer, Atty. Rivera, filed his Withdrawal of Appearance on September 30, 2002, almost three months before the RTC rendered its assailed Order dated December 13, 2002, dismissing the petition for relief. The RTC had ample time to require the PAO lawyer to comment on the petition for relief from judgment, before issuing the questioned Order. Had the RTC done so, there would have been a factual basis for the RTC to determine whether or not the PAO lawyer was grossly negligent; and eventually, whether the petition for relief from judgment is meritorious. If there was no instruction from petitioner to file an appeal, then there was no obligation on the part of the PAO lawyer to file an appeal as stated in the PAO Memorandum Circular and negligence could not be attributed to him. However, if indeed there was such an instruction to appeal but the lawyer failed to do so, he could be considered negligent.

Thus, there was no basis for the RTC to conclude that the claim of petitioner that he instructed the PAO lawyer to file an appeal as self-serving and unsubstantiated. The RTC's dismissal of the petition for relief was done with grave abuse of discretion amounting to an undue denial of the petitioner's right to appeal.

The RTC faulted petitioner for claiming in his petition for relief that he instructed his counsel to file the necessary motion for reconsideration or notice of appeal; while in his affidavit of merit, he claimed to have told his counsel to simply file a notice of appeal. We do not find such circumstance sufficient ground to dismiss the petition considering that he filed the petition for relief unassisted by counsel.

In all criminal prosecutions, the accused shall have the right to appeal in the manner prescribed by law. The importance and real purpose of the remedy of appeal has been emphasized in *Castro v. Court of Appeals*[27] where we ruled that an appeal is

[26] *Id*. at 461-462.

[27] 208 Phil. 691, 696 (1983).

an essential part of our judicial system and trial courts are advised to proceed with caution so as not to deprive a party of the right to appeal and instructed that every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities. **While this right is statutory, once it is granted by law, however, its suppression would be a violation of due process, a right guaranteed by the Constitution**. Thus, the importance of finding out whether petitioner's loss of the right to appeal was due to the PAO lawyer's negligence and not at all attributed to petitioner.

However, we cannot, in the present petition for review on *certiorari,* make a conclusive finding that indeed there was excusable negligence on the part of the PAO lawyer which prejudiced petitioner's right to appeal his conviction. To do so would be pure speculation or conjecture. Therefore, a remand of this case to the RTC for the proper determination of the merits of the petition for relief from judgment is just and proper.

WHEREFORE, the petition is *GRANTED*. The Resolutions dated August 19, 2003 and November 28, 2003 of the Court of Appeals are *REVERSED* and *SET ASIDE*. The Order dated December 13, 2002 of the Regional Trial Court of Quezon City, Branch 76, is *SET ASIDE*. The RTC is hereby ordered to require Atty. Raul Rivera of the Public Attorney's Office to file his comment on the petition for relief from judgment filed by petitioner, hold a hearing thereon, and thereafter rule on the merits of the petition for relief from judgment, with dispatch.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 162356. April 14, 2008]

DONG SEUNG INCORPORATED, *petitioner, vs.* **BUREAU OF LABOR RELATIONS, HANS LEO J. CACDAC, Director and NAMAWU Local 188 — Dong Seung Workers Union,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; THE SUPREME COURT CANNOT ENTERTAIN SUCH FACTUAL ISSUE FOR IT DOES NOT TRY FACTS NOR EVALUATE EVIDENCE.— The timeliness of an appeal is a factual issue as it requires a review or evaluation of evidence on when the judgment was actually received and the appeal filed. The Court cannot entertain such factual issue in a proceeding under Rule 45 for it does not try facts nor evaluate evidence, much less in the present case where the only evidence submitted by petitioner on the issue of timeliness consists of a certification by Acting Postmaster Mendoza which is of dubious authenticity as it is a plain photocopy, completely devoid of any marking or note of authentication. Moreover, the certification is woefully lacking in material details - such as the exact nature and origin of the letter that was purportedly sent to Jorge Villamarin and the date it was received by Evelyn Villamarin - that it could not be reasonably concluded that what was sent and received was actually the December 1, 2000 DOLE Region IV Order. Therefore, the certification alone cannot serve as basis for the reversal of the findings of the CA.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNION; THE BUREAU OF LABOR RELATION'S EXPEDITIOUS ACTION ON THE APPEAL SHOULD NOT BE TAKEN AGAINST IT AS LONG AS THE SAME OBSERVES DUE PROCESS.— Without elaborating, petitioner also criticizes what it claims to be the personal bias and self-interest of BLR as shown by its "hasty" resolution of respondent union's appeal. The Court fails to see why the BLR's speedy resolution of an appeal should be taken against it. For

as long as the BLR observes due process, its proceedings cannot be impugned merely for being expeditious. It is of record that the BLR allowed petitioner every opportunity to be heard. In fact, the latter was able to file a motion to dismiss the appeal and a motion for reconsideration of the August 19, 2002 BLR Decision. Clearly, although the BLR took expeditious action on the appeal, it did not sacrifice petitioner's right to due process.

3. ID.; ID.; ID.; THE BUREAU OF LABOR RELATION'S INTERPRETATION OF ARTICLE 235 OF THE LABOR CODE IS ACCORDED GREAT WEIGHT.— Indeed, all that Article 235 requires is that the secretary's certification be under oath. It does not prescribe a specific manner of its notarization. Based on its interpretation of Article 235, the BLR, in its October 14, 1998 Advisory, allows for the wholesale notarization of a union's application for registration and recognizes the effects thereof even on the attachments, including the secretary's certification. This is a reasonable interpretation considering that the form of notarization contemplated in said Advisory adequately serves the purpose of Article 235, which is to forestall fraud and misrepresentation. More importantly, such interpretation of the BLR is accorded great weight by the Court for it is said agency which is vested with authority and endowed with expertise to implement the law in question.

4. ID.; ID.; ID.; RULING IN *PROGRESSIVE DEVELOPMENT CORPORATION V. DOLE SECRETARY*, INAPPLICABLE TO THE CASE AT BAR.— Petitioner cannot rely on the ruling of the Court in *Progressive Development Corporation v. DOLE Secretary* as said case is hardly germane to the present case. For one, *Progressive Development Corporation* involved a petition for certification of election, and not a petition for cancellation of union registration. Thus, the Court merely restrained action on the petition for certification filed by the local union whose legitimacy was under question, but did not cancel the registration of said union. Moreover, the defect in the registration of the said union consisted of the utter lack of a secretary's certification under oath. On the other hand, in the present case, the documents filed by respondent union contain the requisite secretary's certification which, along with the entire application, was found by the BLR to have been duly notarized.

5. ID.; ID.; ID.; ID.; CANCELLATION OF UNION REGISTRATION ON GROUND OF FRAUD AND MISREPRESENTATION; IT MUST BE ESTABLISHED THAT THE SPECIFIC ACT OR OMISSION OF THE UNION DEPRIVED THE COMPLAINING EMPLOYEES-MEMBERS OF THEIR RIGHT TO CHOOSE.— The second ground cited by DOLE Region IV in canceling the registration of respondent union is that the latter allegedly committed misrepresentation in securing the signatures of its members: xxx The CA and BLR, on the other hand, assign no credence to the *Sinumpaang Petisyon* for it is a mere photocopy, the genuineness and due execution of which cannot be reasonably ascertained. Moreover, citing *Oriental Tin Can Labor Union v. Secretary of Labor,* the BLR held that it has reason to be wary of the *Sinumpaang Petisyon* for the withdrawal of support by the alleged signatories to the petition may have been "procured through duress, coercion, or for a valuable consideration." The Court adopts the foregoing observations of the CA and BLR. Another factor which militates against the veracity of the allegations in the *Sinumpaang Petisyon* is the lack of particularities on how, when and where respondent union perpetrated the alleged fraud on each member. Such details are crucial for in the proceedings for cancellation of union registration on the ground of fraud or misrepresentation, what needs to be established is that the specific act or omission of the union deprived the complaining employees-members of their right to choose.

APPEARANCES OF COUNSEL

Cabio Law Office & Associates for petitioner.

Roberto A. Padilla & Associates Law Offices for private respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the September 26, 2003 Decision[1] of the Court of Appeals (CA), which affirmed the dismissal of the petition of Dong Seung Incorporated (petitioner) for cancellation of the registration of NAMAWU Local 188-Dong Seung Workers Union (respondent union); and the February 23, 2004 CA Resolution[2] which denied petitioner's motion for reconsideration.

The facts now in dispute are as follows:

On July 10, 2000, petitioner filed with the Department of Labor and Employment (DOLE), Region IV a Petition[3] for cancellation of the union registration of respondent union on the grounds that the List of Officers and Constitution and By-laws which the respondent union attached to its application for union registration contain the union secretary's certification but the same is not under oath, contrary to Section 1, Rule VI of the Implementing Rules of Book V of the Labor Code, as amended by Department Order No. 9, series of 1997;[4] and that, as shown in a *Sinumpaang Petisyon*,[5] 148 out of approximately 200 employees-members have since denounced respondent union for employing deceit in obtaining signatures to support its registration application.[6]

After hearing the petition, DOLE (Region IV) Regional Director Ricardo Martinez, Sr. issued an Order dated December 1, 2000, to wit:

---

[1] Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Roberto A. Barrios and Arsenio J. Magpale; *rollo*, p. 27.

[2] *Id*. at 30.

[3] CA *rollo*, p. 16.

[4] *Id*.

[5] *Id*. at 32.

[6] *Id*. at 18

WHEREFORE, premises considered, herein petition is granted. Likewise, Charter Certificate [of] NAMAWU-Local 188 is hereby delisted from the roster of legitimate labor organization[s] in this jurisdiction.

SO ORDERED.[7]

Respondent union appealed to the Bureau of Labor Relations (BLR) on March 27, 2001.[8] Petitioner filed a Motion to Dismiss[9] the appeal on the ground that, as respondent union received copy of the December 1, 2000 DOLE Region IV Order on December 8, 2000, its appeal, filed only on March 27, 2001, was already beyond the appeal period.

The BLR gave due course to the appeal and granted the same in a Decision dated August 19, 2002, *viz*:

WHEREFORE, premises considered, the appeal is hereby GRANTED. The Order of the Regional Director, DOLE-Region IV dated 01 December 2000 is hereby REVERSED AND SET ASIDE. The NAMAWU LOCAL 188 - DONG SEUNG WORKERS' UNION, shall remain in the roster of legitimate labor organizations. NAMAWU Local 188 - Dong Seung Workers' Union, however, is required to submit its constitution and by-laws, updated list of officers and members, their addresses and the principal office of the local/chapter as certified under oath by the Secretary or the Treasurer and attested to by the President, within thirty (30) days from finality of this decision.

SO RESOLVED.[10]

After its motion for reconsideration[11] was denied by the BLR,[12] petitioner filed with the CA a Petition for *Certiorari*,[13] insisting

---

[7] *Id*. at 43.

[8] *Id*. at 60.

[9] *Id*. at 53.

[10] *Id*. at 62.

[11] *Id*. at 63.

[12] *Id*. at 68.

[13] *Id*. at 2.

that the BLR acted with grave abuse of discretion in giving due course to respondent union's appeal despite its having been filed out of time. To prove its claim, petitioner attached a Certification dated February 8, 2001 issued by Acting Postmaster Edwin O. Mendoza, stating that "registered letter x x x No. 1062 addressed to Jeorge [sic] Villamarin was received on December 8, 2000 and delivered on December 8, 2000 and received by Evelyn Villamarin";[14] showing that the latter had only until December 18, 2000 to appeal.

The CA dismissed the petition in its herein assailed September 26, 2003 Decision and denied petitioner's motion for reconsideration in its February 23, 2004 Resolution.

Hence, the present petition.

The Court gave due course to the petition and, in compliance with its Resolution dated March 16, 2005, parties submitted their respective memoranda.

As may be gleaned from its Memorandum, petitioner assails the CA Decision and Resolution on the grounds that:

I. The CA erred in affirming the BLR when it gave due course to respondent's belated appeal;[15]

II. The CA erred in not finding that the BLR acted with bias;[16] and

III. The CA erred in sustaining the BLR when it declared respondent's union registration valid.[17]

The Court finds no such reversible error in the CA Decision and Resolution.

---

[14] *Id*. at 56.

[15] Memorandum, *rollo*, pp. 142-143.

[16] *Id*. at 144-145.

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

On the timeliness of respondent union's appeal to the BLR

The BLR found respondent union's appeal tardy yet gave due course to it on account of its inherent merit.[18] The CA found respondent union's appeal to have "substantially complied with the requirements provided by law."[19]

Petitioner insists that, based on the Certification of Acting Postmaster Mendoza, respondent union had only until December 18, 2000 to appeal for it received the December 1, 2000 DOLE Region IV Order as early as December 8, 2000.[20]

The timeliness of an appeal is a factual issue as it requires a review or evaluation of evidence on when the judgment was actually received and the appeal filed. The Court cannot entertain such factual issue in a proceeding under Rule 45 for it does not try facts nor evaluate evidence,[21] much less in the present case where the only evidence submitted by petitioner on the issue of timeliness consists of a certification by Acting Postmaster Mendoza which is of dubious authenticity as it is a plain photocopy, completely devoid of any marking or note of authentication. Moreover, the certification is woefully lacking in material details - such as the exact nature and origin of the letter that was purportedly sent to Jorge Villamarin and the date it was received by Evelyn Villamarin - that it could not be reasonably concluded that what was sent and received was actually the December 1, 2000 DOLE Region IV Order. Therefore, the certification alone cannot serve as basis for the reversal of the findings of the CA.[22]

---

[18] BLR Decision, CA *rollo*, p. 61.

[19] Memorandum, *rollo*, p. 135.

[20] *Id*. at 17.

[21] *National Power Corporation v. Degamo*, G.R. No. 164602, February 28, 2005, 452 SCRA 634, 642.

[22] *Verceles v. Bureau of Labor Relations-Department of Labor and Employment-National Capital Region*, G.R. No. 152322, February 15, 2005, 451 SCRA 338, 354; *St. James School of Quezon City v. Samahang Manggagawa sa St. James School of Quezon City*, G.R. No. 151326, November 23, 2005, 476 SCRA 12, 19.

On the alleged bias of the BLR

Without elaborating, petitioner also criticizes what it claims to be the personal bias and self-interest of BLR as shown by its "hasty" resolution of respondent union's appeal.[23] The Court fails to see why the BLR's speedy resolution of an appeal should be taken against it. For as long as the BLR observes due process, its proceedings cannot be impugned merely for being expeditious.[24] It is of record that the BLR allowed petitioner every opportunity to be heard. In fact, the latter was able to file a motion to dismiss the appeal and a motion for reconsideration of the August 19, 2002 BLR Decision. Clearly, although the BLR took expeditious action on the appeal, it did not sacrifice petitioner's right to due process.

On the validity of respondent union's registration

Petitioner insists that the BLR erred in its interpretation of the requirement that the union secretary's certification of all the documents for union registration be under oath.[25]

The requirement that the union secretary certify under oath all documents and papers filed in support of an application for union registration is imposed by Article 235 of the Labor Code, to wit:

> Art. 235. *Action on application*. The Bureau shall act on all applications for registration within thirty (30) days from filing.
>
> All requisite documents and papers shall be certified under oath by the secretary or the treasurer of the organization, as the case may be, and attested to by its president.

DOLE Region IV cancelled the registration of respondent union on the ground that the secretary's certification of the correctness of the List of Officers and the Constitution and By-laws attached to the application is not under oath, *viz*:

---

[23] Petition, *rollo*, p. 20.

[24] *Sarapat v. Salanga*, G.R. No. 154110, November 23, 2007.

[25] Memorandum, *rollo*, p. 141.

Considering that the respondent union failed to submit its answer or comment to the petition to controvert the allegations that although it submitted the list of union officers and Constitution and By laws which was attested to by the president but not duly sworn and subscribed under oath by the Secretary or Treasurer is a ***fatal defect*** that would warrant the withholding of status of legitimacy to the local union or chapter as held by the Supreme Court in the case of *Progressive Development Corp. vs. Honorable Secretary of Labor and Employment*.[26] (Emphasis supplied)

In reversing DOLE Region IV, the BLR cited its Advisory,[27] dated October 14, 1998, which ***interprets*** the requirement under Article 235, to wit:

Pursuant to Rule XVII, Section 1 of Department Order No. 09, Series of 1997 x x x. [T]he Bureau of Labor Relations is empowered, consistent with the State policy to promote unionism, to "devise or prescribe such forms as are necessary to facilitate the process of registration of labor organizations x x x," including the chartering of locals or chapters. Accordingly, the Bureau has devised and transmitted to the Regional Offices the appropriate official registration forms, particularly the following:

xxx xxx xxx

5. BLR Reg. Form No. 5-LOC-LO. S. 1998 For Chartering Locals/ Chapters

xxx xxx xxx

Part I of each of the first seven forms is a space provided for the notarization of the application x x x. However, considering that applicants are not yet fully familiar with the forms in spite of orientation and seminar conducted, some applications have been submitted without using the forms prescribed by the Bureau. In lieu of submitting a notarized application using the official forms, some applicants comply with the requirements by having their supporting documents separately notarized.

To prevent inconvenience to the public, particularly to the applicants, the Regional Offices are hereby advised ***that applications submitted***

---

[26] DOLE Region IV Order, CA *rollo*, p. 42.

[27] *Id*. at 51.

with supporting documents which are separately notarized need not comply with the notarization requirement under Part I or Part II, as the case may be, of the prescribed forms. x x x

Accordingly, the absence of notarization under Part I or Part II of the appropriate forms shall not be a basis for denying applications where it appears that all the required supporting documents have already been notarized or attested. (Emphasis supplied)

The BLR explained that under the foregoing Advisory, the certification issued by respondent union's secretary may be notarized either separately or along with the main application. The BLR noted that respondent union correctly availed of the second option:

A perusal of the registration records of the [respondent] revealed that respondent's registration application was sufficient in form and substance, having been notarized as provided in the BLR official forms. (Atty. Manuel E. Robles notarized such application on 8 February 1999 at Cavite City.) All the other supporting documents to the charter certificate issued by the National Mines and Allied Workers Union were certified true and correct by the secretary and attested to by the president.

Thus, from the standpoint of compliance, [respondent] x x x submitted all the documentary requirements for the creation of a local/chapter in accordance with Section 1, Rule VI, D.O. 9 series of 1997.[28] (Emphasis supplied)

Indeed, all that Article 235 requires is that the secretary's certification be under oath. It does not prescribe a specific manner of its notarization. Based on its interpretation of Article 235, the BLR, in its October 14, 1998 Advisory, allows for the wholesale notarization of a union's application for registration and recognizes the effects thereof even on the attachments, including the secretary's certification. This is a reasonable interpretation considering that the form of notarization contemplated in said Advisory adequately serves the purpose of Article 235, which is to forestall fraud and misrepresentation. More importantly, such interpretation of the BLR is accorded great weight by the

[28] *Id.* at 51-52.

Court for it is said agency which is vested with authority and endowed with expertise to implement the law in question.[29]

Petitioner cannot rely on the ruling of the Court in *Progressive Development Corporation v. DOLE Secretary*[30] as said case is hardly germane to the present case. For one, *Progressive Development Corporation* involved a petition for certification of election, and not a petition for cancellation of union registration. Thus, the Court merely restrained action on the petition for certification filed by the local union whose legitimacy was under question, but did not cancel the registration of said union. Moreover, the defect in the registration of the said union consisted of the utter lack of a secretary's certification under oath. On the other hand, in the present case, the documents filed by respondent union contain the requisite secretary's certification which, along with the entire application, was found by the BLR to have been duly notarized.

The second ground cited by DOLE Region IV in canceling the registration of respondent union is that the latter allegedly committed misrepresentation in securing the signatures of its members:

> Considering further that the respondent failed to refute the "Sinumpaang Petisyon" executed by 148 out of 200 employees of the petitioner company that they were made to sign a blank sheet of paper purportedly to be used to request a dialogue with the president of the company which turned out later the signatures were misused and misrepresented to form a local union under NAMAWU constitute grave misrepresentation in violation of par. (A) of Article 239 of the Labor Code as amended, a valid ground for cancellation of union registration.[31]

---

[29] *Eastern Telecommunications Philippines, Inc. v. International Communication Corporation*, G.R. No. 135992, January 31, 2006, 481 SCRA 163, 166-167; *Cemco Holdings, Inc. v. National Life Insurance Company of the Philippines, Inc.*, G.R. No. 171815, August 7, 2007, 529 SCRA 355, 372.

[30] G.R. No. 96425, February 4, 1992, 205 SCRA 802.

[31] *Rollo*, pp. 76-77.

The CA and BLR, on the other hand, assign no credence to the *Sinumpaang Petisyon* for it is a mere photocopy,[32] the genuineness and due execution of which cannot be reasonably ascertained. Moreover, citing *Oriental Tin Can Labor Union v. Secretary of Labor*,[33] the BLR held that it has reason to be wary of the *Sinumpaang Petisyon* for the withdrawal of support by the alleged signatories to the petition may have been "procured through duress, coercion, or for a valuable consideration."

The Court adopts the foregoing observations of the CA and BLR.

Another factor which militates against the veracity of the allegations in the *Sinumpaang Petisyon* is the lack of particularities on how, when and where respondent union perpetrated the alleged fraud on each member.[34] Such details are crucial for in the proceedings for cancellation of union registration on the ground of fraud or misrepresentation, what needs to be established is that the specific act or omission of the union deprived the complaining employees-members of their right to choose.

WHEREFORE, the petition is *DENIED*.

No costs.

SO ORDERED.

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

---

[32] CA *rollo,* pp. 32-39.

[33] 356 Phil. 141 (1998).

[34] *Toyota Autoparts, Phils., Inc. v. The Director of the Bureau of Labor Relations*, 363 Phil. 437, 445 (1999).

THIRD DIVISION

[G.R. No. 164150. April 14, 2008]

THE GOVERNMENT OF THE KINGDOM OF BELGIUM, represented by the Royal Embassy of Belgium, *petitioner, vs.* **HON. COURT OF APPEALS, UNIFIED FIELD CORPORATION, MARILYN G. ONG, VICTORIA O. ANG, EDNA C. ALFUERTE, MARK DENNIS O. ANG and ALVIN O. ANG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW TO THE COURT OF APPEALS; EFFECT OF FAILURE TO FILE APPELLANT'S BRIEF WITHIN THE REGLEMENTARY PERIOD; GENERAL RULE; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— It is thus daylight clear from all these cases that: (1) The general rule is for the Court of Appeals to dismiss an appeal when no appellant's brief is filed within the reglementary period prescribed by the rules; (2) The power conferred upon the Court of Appeals to dismiss an appeal is discretionary and directory and not ministerial or mandatory; (3) The failure of an appellant to file his brief within the reglementary period does not have the effect of causing the automatic dismissal of the appeal; (4) In case of late filing, the appellate court has the power to still allow the appeal; however, for the proper exercise of the court's leniency it is imperative that: (a) the circumstances obtaining warrant the court's liberality; (b) that strong considerations of equity justify an exception to the procedural rule in the interest of substantial justice; (c) no material injury has been suffered by the appellee by the delay; (d) there is no contention that the appellees' cause was prejudiced; (e) at least there is no motion to dismiss filed. (5) In case of delay, the lapse must be for a reasonable period; and (6) Inadvertence of counsel cannot be considered as an adequate excuse as to call for the appellate court's indulgence except: (a) where the reckless or gross negligence of counsel deprives the client of due process of law; (b) when application of the rule will result in outright deprivation of the client's liberty or property; or (c) where the interests of justice so

require. In this case, the Court cannot say that the issues being raised by respondents are of such importance that would justify the appellate court to exempt them from the general rule and give due course to their appeal despite the late filing of their appellant's brief.

2. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; NEGLIGENCE OF COUNSEL BINDS THE CLIENT; EXCEPTION; NOT PRESENT IN CASE AT BAR.— Our attention is riveted to respondents' repeated laxity and indolence as regards this case even when it was still pending before the RTC. xxx. Respondents evidently continued with their lack of care even when they filed an appeal with the Court of Appeals as shown by their not having filed an appellants' brief under the reglementary period. The purported inadvertence of their counsel cannot justify a relaxation of the rules. It is the counsel's responsibility to see to it that he has established an efficient system to monitor the receipt of important notices and orders from the courts. While the omission can plausibly qualify as simple negligence, it does not amount to gross negligence to call for the exception to the oft-repeated rule that the negligence of counsel binds the client. Respondents are, thus, bound by their counsel's negligence.

3. REMEDIAL LAW; RULES OF PROCEDURE; ABSENT SUFFICIENT AND COMPELLING REASONS, THE COURT WILL ADHERE STRICTLY TO THE PROCEDURAL RULES.— Finally, it appears that respondents finally "attached" their Brief only in their Motion for Reconsideration filed on 27 October 2003 in the Court of Appeals seeking a reconsideration of the appellate court's Resolution of 30 September 2003, dismissing their appeal. The delay in the filing thereof, 57 days after the expiration of the period to file the same on 1 September 2003, was, indeed, unreasonably long. ALL TOLD, the Court finds no sufficient and compelling reasons to justify the exercise of the Court's leniency and sound discretion. Under the facts of the case, the Court is constrained to adhere strictly to the procedural rules.

APPEARANCES OF COUNSEL

Conde and Associates for petitioner.
Elmer T. Rabuya for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for *Certiorari* under Rule 65[1] of the Rules of Court assailing the (1) Resolution[2] dated 27 November 2003 of the Court of Appeals in CA-G.R. CV No. 77701 granting the Motion for Reconsideration filed in said case by herein respondent Unified Field Corporation (UFC), thus, allowing the latter to file its appellant's brief; and (2) Resolution[3] dated 5 May 2004 of the appellate court in the same case denying reconsideration of its 27 November 2003 Resolution sought by herein petitioner Government of the Kingdom of Belgium, represented by the Royal Embassy of Belgium.[4]

The facts of the case are as follows:

A Complaint[5] for specific performance of contract with damages was filed by petitioner against respondents UFC, Marilyn G. Ong, Victoria O. Ang, Edna C. Alfuerte, Mark Dennis O. Ang, and Alvin O. Ang, with the Regional Trial Court (RTC) of Makati City, Branch 150, docketed as Civil Case No. 01-976.

In its Complaint, petitioner avers that it entered into a Contract of Lease dated 30 July 1997 with respondent UFC, represented by its President and co-respondent, Marilyn G. Ong. By virtue of the said contract, petitioner leased from UFC Units "B" and

---

[1] Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Mario L. Guarina III and Edgardo F. Sundiam, concurring. *Rollo*, pp. 25-29.

[2] *Rollo,* p. 25.

[3] *Id*. at 27-29.

[4] Through its Ambassador to the Philippines, His Excellency, R. Schellinck.

[5] *Rollo*, p. 30.

"D", with a gross area of 377 square meters, more or less, and six parking lots, at the Chatham House Condominium, located at the corner of Valero and Herrera Streets, Salcedo Village, Makati City (leased premises), for a maximum term of four (4) years beginning 1 October 1997. For the use of the leased premises, petitioner agreed to pay the sum of ₱5,430,240.00, as rentals for the first two years, from 1 October 1997 to 30 September 1999, payable in full upon the official turn-over of the leased premises; and the sum of ₱678,780.00, as security deposit, for a total amount of ₱6,109,020.00.[6] The Contract provided for the pre-termination option that may be exercised by the lessee.[7]

On or about 23 June 2000, three months prior to the expiration of the third year of the lease, petitioner, through counsel, served by personal service upon respondent UFC, through its President

[6] *Id.* at 31-32.

[7] 22. PRETERMINATION CLAUSE. Should the LESSEE, during the term of the lease be disinterested to continue the lease for no reason whatsoever, the LESSEE shall pay the LESSOR according to the schedule heretofore as enumerated, and the LESSOR shall thereafter refund all unused advance rental payments to the LESSEE, if so required under this lease agreement, within FORTY –FIVE (45) days following receipt of full pre-termination payment.

Total sum due LESSOR in the event of pre-termination:

- pre-termination before end of first year of lease, or prior to 01 October 1998: SIX HUNDRED SEVENTY-EIGHT THOUSAND SEVEN HUNDRED EIGHTY PESOS (₱678,780.00), Philippine Currency, including any and all unused advance rental payments applicable for the first year of the lease. The unused advanced rental payments applicable for the second year of the lease shall be refunded to the LESSEE within FORTY-FIVE (45) days following receipt of full pre-termination payment;
- pre-termination after first year of lease and before end of second year of lease, or after 01 October 1998 and before 30 September 1999: SIX HUNDRED SEVENTY-EIGHT THOUSAND SEVEN HUNDRED EIGHTY PESOS ONLY (₱678,780.00) Philippine currency;
- pre-termination after second year of lease and before end of lease period, or after 30 September 1999 and before 30 September 2001: (Please refer to paragraph 1 of this contract of lease). (*Rollo*, 43-43-A.)

and co-respondent, Marilyn G. Ong, a letter dated 23 June 2000[8] informing the corporation that petitioner was pre-terminating the Lease Contract effective 31 July 2000. Considering that under the Contract of Lease, it could pre-terminate the lease after the expiry of the second-year term without having to pay pre-termination penalties, petitioner also requested the return or delivery of the total sum of ₱1,093,600.00, representing its unused two months advance rentals for August and September 2000, in the sum of ₱414,820.00, and the security deposit in the sum of ₱678,780.00, within forty-five days after the pre-termination of the lease contract, or on 15 September 2000.

On 31 July 2000, petitioner vacated and surrendered the leased premises to respondent UFC through the latter's President and co-respondent Marilyn G. Ong free of any outstanding bills for water, electricity, telephone and other utility charges or damages to said leased premises. However, respondents UFC and Marilyn G. Ong, in her capacity as UFC President, totally ignored the demands made by petitioner in its letter of 23 June 2000 and, consequently, failed to return or deliver the ₱1,093,600.00 sought by petitioner.

Petitioner claims that respondent UFC plainly committed fraud in the performance of its clear duty under paragraph 22 of the Contract of Lease by not returning petitioner's unused two months advance rentals and security deposit despite repeated demands therefor. Hence, the individual respondents as directors of respondent UFC should be deemed to have willfully and knowingly assented to a patently unlawful act or are guilty of gross negligence or bad faith, as the case may be, in directing the affairs of respondent UFC. Under Section 31 of the Corporation Code[9]

[8] Records, p. 66.

[9] Section 31. *Liability of directors, trustees or officers*.- Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

of the Philippines, the respondent directors must be jointly and severally held liable together with respondent UFC.

Petitioner thus prayed to the RTC:

> x x x that, after due notice and trial, to render a judgment in favor of [herein petitioner] and against [herein respondents] by ordering [respondents] jointly and severally to pay [petitioner] the following sums of money, to wit:
>
> a) the principal amount of ₱1,093,600.00, representing the return or delivery of the unused two (2) months rentals and the security deposit, plus interest at the rate of twelve per centum (12%) per annum from 15 September 2000 until the principal amount due is fully paid, plus six per centum (6%) per annum on the aforesaid interest due from the filing of this complaint until the principal amount is fully paid;
>
> b) the sum of ₱400,000.00, as and for actual damages by way of attorney's fees and litigation expenses;
>
> c) the sum of ₱100,000.00, as and for moral damages;
>
> d) the sum of ₱100,000.00, as and for exemplary damages;
>
> e) the costs of suit.[10]

Respondents filed their Answer with Compulsory Counterclaim on 2 August 2001.[11] Thereafter, pre-trial was set. However, respondents failed to appear and, worse, failed to file their pre-trial brief, as required by the Rules of Court. They were therefore declared to have waived their right to adduce evidence on their behalf. Respondents did not seek for a reconsideration of the aforesaid Order; hence, petitioner was allowed to present its evidence *ex-parte* on 19 June 2002 and 19 August 2002.

On 8 November 2002, the RTC rendered a Decision, the dispositive portion of which states:

> From the foregoing, the Court is convinced that the [herein petitioner] has established its claim against the [herein respondents].

[10] Records, pp. 9-10.

[11] *Id*. at 38.

WHEREFORE, judgment is hereby rendered in favor of the [petitioner] and against the [respondents], ordering the latter, jointly and severally, to pay [petitioner]:

1. the principal amount of Php1,093,600.00 representing two (2) months rentals and security deposit, plus interest of 12% per annum from September 15, 2000, until the principal amount due is fully paid, plus 6% per annum on the interest due from the filing of this complaint until the principal amount is fully paid;
2. the sum of Php400,000.00, as and by way of attorney's fees and litigation expenses;
3. the sum of Php100,000.00, as moral damages;
4. the sum of Php100,000.00, as exemplary damages; and
5. costs of suit.[12]

Respondents elevated the case on appeal to the Court of Appeals. They received a Notice to File Brief[13] from the Court of Appeals. Respondents were unable to comply with this directive. Petitioner thus filed on 17 September 2003 with the Court of Appeals a Motion to Dismiss Appeal of the respondents on the ground that respondents' counsel received the Notice to File Brief on 16 July 2003 as shown by the Registry Return Receipt and had forty-five (45) days or until 1 September 2003 to file their appellants' brief, but failed to do so. No opposition to the said Motion to Dismiss Appeal was filed by respondents. Neither did they file a motion for extension of time to file appellants' brief.

On 30 September 2003, the Court of Appeals issued a Resolution which reads:

For failure of the [herein respondents] to file their brief within the reglementary period, this appeal is hereby considered ABANDONED and accordingly DISMISSED pursuant to Section 1(e), Rule 50 of the 1997 Rules on Civil Procedure, as amended.[14]

[12] *Rollo*, p. 52.

[13] *Id*. at 10.

[14] *Id*. at 62.

On 27 October 2003, respondents filed a Motion for Reconsideration[15] of the foregoing Resolution stating that their failure to file their appellants' brief was due to their counsel's inadvertence, attaching their brief thereto and praying for its admission. Respondents' counsel had used his residence as his mailing address and the domestic helper might have misplaced the notice to file brief; hence, respondents' counsel failed to monitor the running of the reglementary period for the filing of the appellants' brief.

On 27 November 2003, the Court of Appeals resolved respondents' Motion for Reconsideration as follows:

> For consideration is [herein respondents'] Motion for Reconsideration of this Court's resolution dated September 30, 2003 dismissing their appeal for failure to file the [appellants'] brief within the reglementary period. [Respondents] contend that their failure to file the same was due to inadvertence and not for the purpose of delay.
>
> WHEREFORE, finding the motion to be meritorious and in the interest of substantial justice, this Court resolves to GRANT the motion.
>
> Accordingly, this Court's resolution dated September 30, 2003 is hereby REVERSED and SET ASIDE and a new one entered allowing the filing of the [appellants'] brief. The appellants' brief attached to the motion for reconsideration is ADMITTED.
>
> [Herein petitioner] may file its appellee's brief within the period prescribed by the rules upon receipt hereof.[16]

Petitioner then filed a Motion for Reconsideration of the afore-quoted Resolution which the Court of Appeals denied in another Resolution dated 5 May 2004. According to the appellate court:

> The failure of the [herein respondents] to file their brief within the prescribed period does not have the effect of automatically dismissing the appeal. The Court has the discretion to dismiss or not to dismiss the appeal, fully aware of its primary duty to render

---

[15] *Id*. at 64.

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

or dispense justice, if possible, with dispatch. However, every party must be afforded the amplest opportunity for the proper and just determination of his cause, free from the game of technicalities. If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter. Courts in real justice have always been guided by the norm that when on the balance, technicalities take a backseat against substantive rights, and not the other way around.

Dismissal of appeal purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid and technical sense.

WHEREFORE, premises considered, [herein petitioner's] motion for reconsideration is hereby DENIED.[17]

Hence, the present Petition raising the sole issue:

Whether or not Public Respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the resolutions of November 27, 2003 and May 5, 2004.[18]

In brief, petitioner submits that the inadvertence of respondents' counsel to timely file their appellants' brief is not a persuasive reason or a compelling justification to forego the Rules of Procedure.[19]

Respondents, on the other hand, insist that the substantive merit of their appeal to the Court of Appeals outweigh the procedural infirmity they committed by their omission to file appellants' brief within the prescribed period, and that the decision of the RTC has no basis in fact and law.

The pertinent rules of procedure can be found in Section 7, Rule 44, and Section 1(e), Rule 50 of the Rules of Court which read:

---

[17] *Id*. at 28-29.

[18] *Id*. at 180.

[19] *Id*.

Procedure in the Court of Appeals

Rule 44
Ordinary Appealed Cases

Section 7. *Appellant's brief*.- It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

RULE 50
DISMISSAL OF APPEAL

SECTION 1. *Grounds for dismissal of appeal*. – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

xxx xxx xxx

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules.

The issue in this case is not a novel one. It has already been the subject of cases previously decided by this Court.

It is a good time to revisit the cases we have decided, delving on the issue of non-filing of appellants' brief to the Court of Appeals and its consequence.

Early in *Pongasi v. Court of Appeals*,[20] involving the failure to file the appellant's brief within the prescribed period, this Court ruled:

[P]etitioner's counsel filed a timely motion for special extension of time on February 19, 1975, two days before the expiration date on February 21, 1975, and that petitioners' counsel filed defendants-appellants' brief on March 3, 1975, well within the 15 days special extension prayed for by him in his motion.

xxx xxx xxx

[20] 163 Phil. 638, 643-644 (1976).

This litigation is one for partition and the conflicting assertions of the parties herein over property rights deserve to be passed upon by the appellate court if only to assure itself that the properties in question are awarded to those who rightfully deserve them.

Gregorio v. Court of Appeals[21] followed suit as this Court again gave due course to the appeal despite the filing of the appellant's brief beyond the reglementary period, considering the subject matter of the appeal:

> What is before the court is a question of forgery in the supposed conveyance of a 57,491-square meter land located in the residential area of a 57,491-square meter land located in the residential area of Las Piñas, Rizal. Petitioner claims that the sale of the land to the Spouses Corpuz Parami and Luciana Parami is an absolute falsity. He stubbornly asserts that he never sold the land to them. Such charges are doubtless not devoid of significance. Respondent Appellate Court, therefore, grievously erred in dismissing the appeal.

This Court expounded on its decision thus:

> The expiration of the time to file brief, unlike lateness in filing the notice of appeal, appeal bond or record on appeal is not a jurisdictional matter and may be waived by the parties. It is sufficient ground for extending the time where the delay in filing the brief was caused in part by a misunderstanding of counsel, and in part by appellant's inability, *because of his poverty,* to obtain the money necessary to pay the expenses of the appeal. Similarly, where the question raised is of sufficient importance to require an examination of the record, the late filing of the brief may be forgone. This is especially true, like in the case before Us, where there is no showing or assertion whatsoever of any intent to delay on the part of the appellant. Dismissal of appeals purely on technical grounds is frowned upon where the policy of the courts is to encourage ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure not override substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated.

Development Bank of the Philippines v. Court of Appeals,[22] took its bearings from the above case, thus:

---

[21] 164 Phil. 129, 136 (1976).

[22] 411 Phil. 121, 135-136 (2001).

[t]he need x x x to determine once and for all whether the lands subject of petitioner's reversion efforts are foreshore lands constitutes good and sufficient cause for relaxing procedural rules and granting the third and fourth motions for extension x x x" and constituted an "exceptional circumstance" which impressed petitioner's appeal with public interest. Thus, petitioner's appeal was given due course despite the late filing of its appellant's brief.

Similarly, the case at bar is impressed with public interest. If petitioner's appeal is denied due course, a government institution could lose a great deal of money over a mere technicality.

Though not deviating from the basic principle set in the above cases earlier mentioned, *Philippine Merchant Marine School, Inc. v. Court of Appeals*[23] became more succinct and this Court emphasized that sufficient cause must exist for the relaxation of procedural rules:

As consistently reiterated, the power conferred upon the Court of Appeals to dismiss an appeal is discretionary and not merely ministerial. With that affirmation comes the caution that such discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.

In the case at bar, we find no reason to disturb the conclusions of the Court of Appeals. Petitioner failed to adduce sufficient proof that any inadvertence was caused by the Post Office. Moreover, no conclusive proof could be shown that a motion for extension was indeed filed at any time. All these create a doubt that petitioner's counsel has been candid in his dealings with the courts. Needless to stress, a lawyer is bound by ethical principles in the conduct of cases before the courts at all times.

As a last recourse, petitioner contends that the interest of substantial justice would be served by giving due course to the appeal. However, we must state that the liberality with which we exercise our equity jurisdiction is always anchored on the basic consideration that the same must be warranted by the circumstances obtaining in each case. Having found petitioner's explanation less than worthy of credence, and without evidentiary support, we are constrained to adhere strictly to the procedural rules on the timeliness of submission before the

[23] 432 Phil. 733, 741-742 (2002).

court.

Bago v. People[24] followed the lead of *Philippine Merchant*, and ruled as follows:

> On March 9, 1998, petitioner's counsel filed a manifestation stating the Appellant's Brief was filed seasonably by his secretary with the Court of Appeals. However, the original of the same was inadvertently filed with the copies intended for the Brief Section because there were Christmas parties going on. Petitioner's counsel likewise admitted that the Office of the Solicitor General had just been furnished with a copy of the Appellant's Brief due to the failure of her secretary to send it on December 22, 1997.
>
> xxx xxx xxx
>
> [I]t is axiomatic that Rules of Court, promulgated by authority of law, have the force and effect of law. More importantly, rules prescribing the time within which certain acts must be done, or certain proceedings taken, are absolutely indispensable to the prevention of needless delays and the orderly and speedy discharge of judicial business. Strict compliance with such rules is mandatory and imperative. Only strong considerations of equity, which are wanting in this case, will lead us to allow an exception to the procedural rule in the interest of substantial justice.
>
> Consequently, the instant petition must perforce be denied. Petitioner has failed to show compelling reasons to relax the rules in his favor. His failure to comply strictly with the procedural requirements of the Rules of Court and observe the reglementary periods prescribed therein will not warrant the application of equity and the liberal construction of the Rules.

Of the same tenor is *De la Cruz v. Ramiscal*,[25] where we again explained at length that:

> Petitioner's justification that their former counsel belatedly transmitted said order to them only on 20 March 1998 is not a good reason for departing from the established rule. It was the responsibility of petitioners and their counsel to devise a system for the receipt

[24] 443 Phil. 503, 505-506 (2003).

[25] G.R. No. 137882, 4 February 2005, 450 SCRA 456-457.

of mail intended for them. Rules on procedure cannot be made to depend on the singular convenience of a party.

Asian Spirit Airlines (Airline Employees Cooperative) v. Bautista[26] stayed on course with the more recent jurisprudence by refusing to allow the late filing of the appellant's brief on the ground of the mistake or inadvertence of the counsel's secretary:

> Blaming its counsel's unidentified secretary for its abject failure to file its brief is a common practice for negligent lawyers to cover up for their own negligence, incompetence, indolence, and ineptitude. Such excuse is the most hackneyed and habitual subterfuge employed by litigants who fail to observe the procedural requirements prescribed by the Rules of Court. It bears stressing that it is the duty of counsel to adopt and strictly maintain a system that insures that all pleadings should be filed and duly served within the period therefor and, if he fails to do so, the negligence of his secretary or clerk to file such pleading is imputable to the said counsel.

In *Uy v. Baloja*,[27] counsel of therein petitioner attributed his failure to file the appellant's brief on time to his inability to locate the transcript of stenographic notes in the case. Unmoved, this Court dismissed the appeal and pronounced:

> Truly, petitioner's conduct in the premises can never be a case of excusable neglect. Quite the contrary, it smacks of a lack of honest concern on his part and a blatant disregard of the lawful directive of the appellate court. Giving in to petitioner's maneuverings is tantamount to putting premium on a litigant's naked indolence and imparting imprimatur to a scheme of prolonging litigation.

This Court reiterated its stance on the strict adherence to the rules of procedure when in *Philippine Rabbit Bus Lines, Inc. v. Goimco, Sr.,*[28] it rejected therein petitioner's excuse for the late filing of his appellant's brief:

---

[26] G.R. No. 164668, 14 February 2005, 451 SCRA 294, 300.

[27] G.R. No. 134155, 6 April 2005, 455 SCRA 55, 60-61.

[28] G.R. No. 135507, 29 November 2005, 476 SCRA 361, 367.

We note that petitioner's previous counsel is a large law firm with several lawyers in its roster. Yet it took said counsel *four (4) months, from the expiration of the reglementary period,* within which to file the appellant's brief. It is settled that failure to file brief for a client constitutes inexcusable negligence. Petitioner's flimsy excuse that it's counsel's log-book containing the schedules for the filing of pleadings and hearings was lost is, to say the least, most unpersuasive. Said counsel should have examined consistently the records of its cases to find out what appropriate actions have to be taken thereon. The notice to file the appellant's brief was in the records of the instant cases all along. Had counsel been efficient in the handling of its cases, the required appellant's brief could have been filed on time. Its failure to do so is an inexcusable negligence.

In *Cruz v. Court of Appeals,*[29] the Court likewise refused to relax its procedural rules:

> Petitioner does not deny the procedural infraction on his part, but he asks for the relaxation of the rules. Granting his plea, however, would be to fault the appellate court for acting in faithful compliance with the rules of procedure which the court has been mandated to observe.
>
> The Rules of Court are designed for the proper and prompt disposition of cases before the appellate court. We cannot just turn a blind eye and tolerate its contravention. Section 7, Rule 44 of the Rules of Court provides that it shall be the duty of the appellant to file his brief within 45 days from receipt of notice. His failure to comply with this mandate is a ground for the dismissal of his appeal as provided under Section 1(e), Rule 50 of the Rules of Court. Petitioner actually had 135 days to prepare his brief which is a considerable period of time.
>
> In not a few instances, we relaxed the rigid application of the rules of procedure, so that the ends of justice may be better served. However, such liberality may not be invoked if it would result in the wanton disregard of the rules, and cause needless delay. Save for the most persuasive of reason, strict compliance with the rules is enjoined to facilitate the orderly administration of justice. Negligence of petitioner's counsel and his own failure to enter the

[29] G.R. No. 156894, 2 December 2005, 476 SCRA 581, 585-586.

appearance of his collaborating counsel are, to our mind, unacceptable reasons for relaxing the observance of the period set for filing briefs.

The same principle was highlighted in *Moneytrend Lending v. Court of Appeals,*[30] where we again repeated that the general rule is that failure to file the appellant's brief within the prescribed period would result in the dismissal of the appeal, and any exemption from the rule must be for the most compelling reasons **and** the delay must be for a reasonable period:

> It may be that mere lapse of the period to file an appellant's brief does not automatically result in the dismissal of the appeal and loss of jurisdiction by the appellate court. It ought to be stressed, however, the relaxation of the rules on pleadings and practice to relieve a party-litigant of an injustice must be for most persuasive reasons. And in case of delay, the lapse must be for a reasonable period.

In *Delos Santos v. Elizalde,*[31] this Court reminded litigants of their responsibility to monitor the status of their case and the inexcusability of the inability to file appellant's brief on account of non-monitoring:

> Petitioners' failure to apprise themselves of the status of their case during its pendency before the CA is inexcusable. Moreover, their former counsel's failure or neglect to file the required appellant's brief shall bind them.

Then in *Redena v. Court of Appeals*,[32] we repeated that negligence of counsel is not a defense for the failure to file the appellant's brief within the reglementary period, and explained at length that:

> In seeking exemption from the above rule, petitioner claims that he will suffer deprivation of property without due process of law on account of the gross negligence of his previous counsel. To him, the negligence of his former counsel was so gross that it practically resulted to fraud because he was allegedly placed under the impression that the counsel had prepared and filed his appellant's brief. He

[30] G.R. No. 165580, 20 February 2006, 482 SCRA 705, 713-714.

[31] G.R. Nos. 141810 & 141812, 2 February 2007, 514 SCRA 14, 34.

[32] G.R. No. 146611, 6 February 2007, 514 SCRA 389, 402.

thus prays the Court reverse the CA and remand the main case to the court of origin for new trial.

Admittedly, this Court has relaxed the rule on the binding effect of counsel's negligence and allowed a litigant another chance to present his case (1) where the reckless or gross negligence of counsel deprives the client of due process of law; (2) when application of the rule will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require. None of these exceptions obtains here.

For a claim of counsel's gross negligence to prosper, nothing short of clear abandonment of the client's cause must be shown. Here, petitioner's counsel failed to file the appellant's brief. While this omission can plausibly qualify as simple negligence, it does not amount to gross negligence to justify the annulment of the proceeding below.

In *Natonton v. Magaway,*[33] this Court deemed it proper to underscore once more that the dismissal of an appeal for the late filing of the appellant's brief is discretionary upon the court, depending on the circumstances surrounding the same:

In *Carco Motor Sales v. Court of Appeals* (G.R. No. L-44609, August 31, 1977, 78 SCRA 526), this Court held:

> "As held by the Court in Gregorio v. Court of Appeals (70 SCRA 546 [1976]), **'(T)he expiration of the time to file brief**, unlike lateness in filing the notice of appeal, appeal bond or record on appeal **is not a jurisdictional matter and may be waived by the parties. Even after the expiration of the time fixed for the filing of the brief, the reviewing court may grant an extension of time, at least where no motion to dismiss has been made. Late filing or service of briefs may be excused where no material injury has been suffered by the appellee be reason of the delay or where there is no contention that the appellee's cause was prejudiced."**

Technically, the **Court of Appeals may dismiss an appeal for failure to file appellant's brief on time. However, the dismissal is directory, not mandatory**. It is not the ministerial duty of the court to dismiss the appeal. The failure of an appellant to file his

[33] G.R. No. 147011, 31 March 2006, 486 SCRA 199, 203-204.

brief within the time prescribed does not have the effect of dismissing the appeal automatically. The court has discretion to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case. (Emphases supplied.)

It is thus daylight clear from all these cases that:

(1) The general rule is for the Court of Appeals to dismiss an appeal when no appellant's brief is filed within the reglementary period prescribed by the rules;

(2) The power conferred upon the Court of Appeals to dismiss an appeal is discretionary and directory and not ministerial or mandatory;

(3) The failure of an appellant to file his brief within the reglementary period does not have the effect of causing the automatic dismissal of the appeal;

(4) In case of late filing, the appellate court has the power to still allow the appeal; however, for the proper exercise of the court's leniency it is imperative that:

(a) the circumstances obtaining warrant the court's liberality;

(b) that strong considerations of equity justify an exception to the procedural rule in the interest of substantial justice;

(c) no material injury has been suffered by the appellee by the delay;

(d) there is no contention that the appellees' cause was prejudiced;

(e) at least there is no motion to dismiss filed.

(5) In case of delay, the lapse must be for a reasonable period; and

(6) Inadvertence of counsel cannot be considered as an adequate excuse as to call for the appellate court's indulgence except:

(a) where the reckless or gross negligence of counsel deprives the client of due process of law;

(b) when application of the rule will result in outright deprivation of the client's liberty or property; or

(c) where the interests of justice so require.

In this case, the Court cannot say that the issues being raised by respondents are of such importance that would justify the appellate court to exempt them from the general rule and give due course to their appeal despite the late filing of their appellant's brief. It is starkly clear that respondents do not deny that they owe petitioner the amount it is demanding, as borne out in the Answer they filed before the RTC, save to say that petitioner refused and failed to accept the payment thereof. Respondents' Answer before the RTC confirms this observation. Their Answer reads:

5. [Herein petitioner] has no valid cause of action as against the [herein respondents] considering that [respondent UFC] has already prepared the check as early as October 3, 2000 as its payment in the amount of ₱1,025,590.00 but the [petitioner] refused and failed to accept such payment. For reference, we attached herewith copy of the check voucher and check as Annexes "A" and "B" respectively.[34]

Even the claim of refusal by petitioner to accept the check payment is contrary to ordinary human character and cannot be given even half a life. For, why would the petitioner go to this length in collecting the amount due him after allegedly refusing and failing to accept the respondents' payment?

Our attention is riveted to respondents' repeated laxity and indolence as regards this case even when it was still pending before the RTC. As shown by the records and contained in the RTC Order dated 22 April 2002:

When called for pre-trial, there was no appearance on the part of the [herein respondents]. Records show that this is the 4th time this case is set for pre-trial. In fact, up to the present time despite the requirements of the Rules of Court the [respondents] have failed to

[34] *Id*. at 46.

file their Pre-trial Brief. When called for the third time at 10:00 a.m., there was still no appearance on the part of the [respondents], prompting the [herein petitioner] thru counsel to pray for an Order of default.

Premises considered, and as prayed for, the [respondents] are now declared to have waived their right to adduce evidence on Pre-trial, and the [petitioner] may present evidence *ex-parte* on May 24, 2002, at 2:00 p.m.[35]

Respondents did not file any motion to set aside the above order.

Respondents evidently continued with their lack of care even when they filed an appeal with the Court of Appeals as shown by their not having filed an appellants' brief under the reglementary period. The purported inadvertence of their counsel cannot justify a relaxation of the rules. It is the counsel's responsibility to see to it that he has established an efficient system to monitor the receipt of important notices and orders from the courts. While the omission can plausibly qualify as simple negligence, it does not amount to gross negligence to call for the exception to the oft-repeated rule that the negligence of counsel binds the client. Respondents are, thus, bound by their counsel's negligence.

Finally, it appears that respondents finally "attached" their Brief only in their Motion for Reconsideration filed on 27 October 2003 in the Court of Appeals seeking a reconsideration of the appellate court's Resolution of 30 September 2003, dismissing their appeal. The delay in the filing thereof, 57 days after the expiration of the period to file the same on 1 September 2003,[36] was, indeed, unreasonably long.

ALL TOLD, the Court finds no sufficient and compelling reasons to justify the exercise of the Court's leniency and sounddiscretion. Under the facts of the case, the Court is constrained to adhere strictly to the procedural rules.

---

[35] *Rollo*, p. 49.

[36] *Rollo,* p. 60.

WHEREFORE, premises considered, the petition is **GRANTED**. Accordingly, the Court of Appeals' Resolutions dated 27 November 2003 and 5 May 2004 are *ANNULLED* and *SET ASIDE,* and the Resolution dated 30 September 2003 dismissing the appeal of respondents Unified Field Corporation, Marilyn G. Ong, Victoria O. Ang, Edna C. Alfuerte, Mark Dennis O. Ang and Alvin Ang, is *REINSTATED*. Costs against respondents.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 165968. April 14, 2008]

PEPSI COLA PRODUCTS PHILIPPINES, INC. and ERNESTO F. GOCHUICO, *petitioners, vs.* **EMMANUEL V. SANTOS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; WHERE THE FACTUAL FINDINGS OF THE LABOR ARBITER, THE NLRC, AND THE COURT OF APPEALS ARE IN ABSOLUTE AGREEMENT, THE SAME ARE ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY IF SUPPORTED BY SUBSTANTIAL EVIDENCE.— The *first* issue involves a question of fact which the Court is not at liberty to review. Our jurisdiction is generally limited to reviewing errors of law that may have been committed by the Court of Appeals. Not being a trier of facts, the Court cannot re-examine and re-evaluate the probative value of evidence presented to the Labor

Arbiter, the NLRC, and the Court of Appeals, which formed the basis of the questioned decision. Indeed, when their findings are in absolute agreement, the same are accorded not only respect but even finality as long as they are supported by substantial evidence.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; THE *ONUS PROBANDI* RESTS ON THE EMPLOYER TO PROVE THAT ITS DISMISSAL OF AN EMPLOYEE IS FOR A VALID CAUSE.— In any event, we have carefully reviewed the records of this case and found no compelling reason to disturb the uniform findings and conclusions of the Labor Arbiter, the NLRC, and the Court of Appeals. In an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee is for a valid cause. In the instant case, petitioners failed to present evidence to justify respondent's dismissal. Save for the notice of termination, we could not find any evidence which would clearly and convincingly show that respondent was guilty of the charges imputed against him. There appears to be no compelling reason why petitioners would rather present their witnesses on direct testimony rather than reduce their testimonies into affidavits. The submission of these affidavits appears to be the more prudent course of action particularly when the Labor Arbiter informed the parties that no further trial will be conducted in the case.

3. ID.; LABOR RELATIONS; PROCEEDINGS BEFORE THE LABOR ARBITER; HOLDING OF A HEARING IS DISCRETIONARY WITH THE LABOR ARBITER AND IS SOMETHING THAT CANNOT BE DEMANDED BY THE PARTIES AS A MATTER OF RIGHT.— Anent the *second* issue, we reiterate that it is not legally objectionable, for being violative of due process, for the Labor Arbiter to resolve a case based solely on the position papers, affidavits or documentary evidence submitted by the parties. The holding of a formal hearing or trial is discretionary with the Labor Arbiter and is something that the parties cannot demand as a matter of right. The requirements of due process are satisfied when the parties are given the opportunity to submit position papers wherein they are supposed to attach all the documents that would prove their claim in case it be decided that no hearing should be conducted or was necessary.

4. CIVIL LAW; DAMAGES; MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES; CANNOT BE AWARDED ABSENT EVIDENCE THAT THE EMPLOYEE'S DISMISSAL WAS TAINTED WITH BAD FAITH AND MALICE.— Finally, on the matter of attorney's fees, we have ruled that attorney's fees may be awarded only when the employee is illegally dismissed in bad faith and is compelled to litigate or incur expenses to protect his rights by reason of the unjustified acts of his employer. In this case, the NLRC deleted the award of moral and exemplary damages precisely because of the absence of evidence that respondent's suspension and eventual dismissal were tainted with bad faith and malice.

5. ID.; ID.; ATTORNEY'S FEES; NO PREMIUM SHOULD BE PLACED ON THE RIGHT TO LITIGATE.— We note that although the Labor Arbiter awarded attorney's fees, the basis for the same was not discussed in the decision nor borne out by the records of this case. There must always be a factual basis for the award of attorney's fees. This is consistent with the policy that no premium should be placed on the right to litigate. For these reasons, we believe and so rule that the award of attorney's fees should be deleted.

APPEARANCES OF COUNSEL

J.D.M. Cualing and Associates Law Office for petitioners.
Nestor P. Ricolcol for respondent.

D E C I S I O N

QUISUMBING, *J.*:

For review under Rule 45 is the Decision[1] dated October 25, 2004 of the Court of Appeals in CA-G.R. SP No. 71648, which affirmed the Decision[2] dated January 31, 2002 of the National

[1] *Rollo*, pp. 24-36. Penned by Associate Justice Danilo B. Pine, with Associate Justices Rodrigo V. Cosico and Vicente S.E. Veloso concurring.

[2] CA *rollo*, pp. 16-21.

Labor Relations Commission (NLRC) in NLRC NCR CA No. 015665-98. The NLRC had affirmed the Decision[3] dated January 26, 2000 of the Labor Arbiter which ordered petitioners to pay respondent separation pay of ₱165,000, backwages of ₱180,000, and 10% attorney's fees, but deleted the award of moral and exemplary damages.

The pertinent facts are as follows:

Respondent Emmanuel V. Santos was employed by petitioner Pepsi Cola Products Phils., Inc. sometime in July 1989. In March 1996, he was promoted as Acting Regional Sales Manager at the Libis Sales Office.

On February 14, 1997, respondent received from petitioner Ernesto F. Gochuico a memorandum[4] charging him with violation of company rules and regulations and Article 282(a)[5] of the Labor Code, as follows:

Group III FRAUD AND ACTS OF DISHONESTY

NO. 12	Falsifying company records or documents or knowingly using falsified records or documents.
NO. 8	Breach of trust and confidence.
NO. 4	Engaging in fictitious transactions, fake invoicing, deals padding and other sales malpractices.
NO. 5	Misappropriation or embezzlement of company funds or property and other acts of dishonesty.

[3] *Id.* at 38-44.

[4] Records, pp. 29-30.

[5] **ART. 282. Termination by employer.** – An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

xxx xxx xxx

Article 282 (a) Serious misconduct or willful disobedience to the lawful orders of his employer.[6]

The charges arose out of alleged artificial sales by the sales personnel of the Libis Sales Office in March 1996 allegedly upon the instruction of respondent. The alleged artificial sales resulted in damage to petitioners amounting to ₱795,454.54.

The memorandum also apprised respondent of his preventive suspension and the scheduled hearings of the administrative investigation.

After the termination of the hearings, petitioners found respondent guilty of the aforesaid charges with the exception of falsifying company records. As a result, respondent was dismissed on June 27, 1997.[7]

Respondent filed a case for illegal dismissal which the Labor Arbiter dismissed on April 30, 1998.[8] On appeal, the NLRC remanded the case to the Labor Arbiter for further proceedings.

In a Decision[9] dated January 26, 2000, the Labor Arbiter ruled that petitioners failed to satisfactorily prove the serious charges against respondent. The only relevant evidence adduced by petitioners was the notice of termination which narrated what happened during the administrative investigation. The decretal portion of the decision reads:

WHEREFORE, premises above considered, a decision is hereby issued declaring the suspension and dismissal of complainant illegal. However, in view of the already impaired relationship between complainant and respondent, and the non-feasibility of the relief of reinstatement, respondent Pepsi Cola Products, Phil.[,] Inc. and/or Ernesto F. Gochuico is hereby ordered to pay complainant separation pay of ₱165,000.00 based on his eleven (11) years of service at one-month salary for every year of service, plus one (1) year backwages in the amount of ₱180,000.00, all in the aggregate amount

[6] Records, p. 29.

[7] *Rollo*, pp. 37-38.

[8] CA *rollo*, pp. 29-37.

[9] *Id*. at 38-44.

of Three Hundred Forty Five Thousand [(]₱345,000.00) pesos, and attorney's fees equivalent to ten (10) percent of the above monetary award.

In addition, as his suspension and dismissal is illegal, and apparently tainted with malice and bad faith, an award of ₱100,000.00 as moral damages and ₱50,000.00 as exemplary damages is hereby granted.

SO ORDERED.[10]

Petitioners appealed to the NLRC which affirmed the Labor Arbiter's finding of illegal dismissal. It observed that after the case was remanded, the Labor Arbiter immediately conducted hearings. Moreover, in the hearing dated September 7, 1999,[11] petitioners agreed to submit the case for resolution based on the additional pleadings submitted by the parties. Nevertheless, the NLRC deleted the award of moral and exemplary damages in the absence of evidence that respondent's suspension and eventual dismissal were tainted with bad faith and malice. Thus, it ruled:

WHEREFORE, premises considered, the Decision dated January 26, 2000 is hereby MODIFIED by deleting the award of moral damages in the amount of ₱100,000.00 and exemplary damages in the amount of ₱50,000.00.

The rest of the decision is hereby AFFIRMED.

SO ORDERED.[12]

Aggrieved, petitioners elevated the matter to the Court of Appeals. On October 25, 2004, the appellate court affirmed the NLRC decision. It agreed with the Labor Arbiter and the NLRC that the charges in the memorandum of suspension and the notice of termination were not satisfactorily proven. The only evidence submitted by petitioners was the notice of termination which narrated what happened during the administrative investigation. It also observed that while petitioners

---

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

[11] *Id*. at 20.

[12] *Id*. at 21.

discovered the alleged fictitious sales in April 1996, it was only on February 14, 1997 that petitioners placed respondent on preventive suspension and commenced administrative investigation. It further ruled that the holding of a trial was discretionary on the Labor Arbiter especially where the parties had already presented their documentary evidence, as in this case.

Petitioners now submit the following issues for our consideration:

I.

THE HONORABLE COURT OF APPEALS COMMITTED MANIFEST AND REVERSIBLE ERROR IN HOLDING AND AFFIRMING THAT PETITIONERS FAILED TO PROVE THAT RESPONDENT'S DISMISSAL WAS VALID.

II.

THE HONORABLE COURT OF APPEALS COMMITTED MANIFEST AND REVERSIBLE ERROR IN HOLDING THAT THE LABOR ARBITER BELOW NEED NOT CONDUCT A TRIAL ON THE MERITS.

III.

THE HONORABLE COURT OF APPEALS COMMITTED MANIFEST ERROR WHEN IT AFFIRMED THE AWARD OF ATTORNEY'S FEES.[13]

In essence, the issues are: (1) whether respondent was validly dismissed; (2) whether a trial on the merits was necessary; and (3) whether the award of attorney's fees was proper.

Petitioners contend that the charges arose out of artificial sales by the sales personnel of the Libis Sales Office in March 1996 upon the direction of respondent. The alleged artificial sales resulted in damage to petitioners amounting to ₱795,454.54. It is petitioners' view that since respondent never denied these allegations, he is deemed to have admitted the same. Petitioners also aver that the Labor Arbiter should have conducted a trial

[13] *Rollo*, p. 12.

on the merits since the case involved vital factual issues. Petitioners finally dispute the award of attorney's fees since it is only allowed in case of unlawful withholding of wages.

Respondent counters that petitioners can no longer raise before the Court questions of fact that have already been passed upon by the Labor Arbiter, the NLRC, and the Court of Appeals.

The *first* issue involves a question of fact which the Court is not at liberty to review. Our jurisdiction is generally limited to reviewing errors of law that may have been committed by the Court of Appeals.[14] Not being a trier of facts, the Court cannot re-examine and re-evaluate the probative value of evidence presented to the Labor Arbiter, the NLRC, and the Court of Appeals, which formed the basis of the questioned decision. Indeed, when their findings are in absolute agreement, the same are accorded not only respect but even finality as long as they are supported by substantial evidence.[15]

In any event, we have carefully reviewed the records of this case and found no compelling reason to disturb the uniform findings and conclusions of the Labor Arbiter, the NLRC, and the Court of Appeals. In an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee is for a valid cause.[16] In the instant case, petitioners failed to present evidence to justify respondent's dismissal. Save for the notice of termination, we could not find any evidence which would clearly and convincingly show that respondent was guilty of the charges imputed against him. There appears to be no compelling reason why petitioners would rather present their witnesses on direct testimony rather than reduce their testimonies into affidavits. The submission of these affidavits appears to be the more prudent course of action particularly

---

[14] *Amante v. Serwelas*, G.R. No. 143572, September 30, 2005, 471 SCRA 348, 351.

[15] *Domondon v. National Labor Relations Commission*, G.R. No. 154376, September 30, 2005, 471 SCRA 559, 566.

[16] *R.P. Dinglasan Construction, Inc. v. Atienza*, G.R. No. 156104, June 29, 2004, 433 SCRA 263, 269.

when the Labor Arbiter informed the parties that no further trial will be conducted in the case.

Anent the *second* issue, we reiterate that it is not legally objectionable, for being violative of due process, for the Labor Arbiter to resolve a case based solely on the position papers, affidavits or documentary evidence submitted by the parties.[17] The holding of a formal hearing or trial is discretionary with the Labor Arbiter and is something that the parties cannot demand as a matter of right. The requirements of due process are satisfied when the parties are given the opportunity to submit position papers wherein they are supposed to attach all the documents that would prove their claim in case it be decided that no hearing should be conducted or was necessary.[18]

Finally, on the matter of attorney's fees, we have ruled that attorney's fees may be awarded only when the employee is illegally dismissed in bad faith and is compelled to litigate or incur expenses to protect his rights by reason of the unjustified acts of his employer.[19] In this case, the NLRC deleted the award of moral and exemplary damages precisely because of the absence of evidence that respondent's suspension and eventual dismissal were tainted with bad faith and malice.

We note that although the Labor Arbiter awarded attorney's fees, the basis for the same was not discussed in the decision nor borne out by the records of this case. There must always be a factual basis for the award of attorney's fees. This is consistent with the policy that no premium should be placed on the right to litigate. For these reasons, we believe and so rule that the award of attorney's fees should be deleted.[20]

---

[17] *CMP Federal Security Agency, Inc. v. NLRC*, G.R. No. 125298, February 11, 1999, 303 SCRA 99, 110.

[18] *Shoppes Manila, Inc. v. National Labor Relations Commission*, G.R. No. 147125, January 14, 2004, 419 SCRA 354, 361.

[19] *Pascua v. NLRC (Third Division)*, G.R. No. 123518, March 13, 1998, 287 SCRA 554, 580; see *Lopez v. National Labor Relations Commission*, G.R. No. 124548, October 8, 1998, 297 SCRA 508, 519.

[20] *German Marine Agencies, Inc. v. NLRC*, G.R. No. 142049, January 30, 2001, 350 SCRA 629, 649.

WHEREFORE, the instant petition is *PARTIALLY GRANTED.* The Decision dated October 25, 2004 of the Court of Appeals in CA-G.R. SP No. 71648, which affirmed the Decision dated January 31, 2002 of the National Labor Relations Commission in NLRC NCR CA No. 015665-98, is *MODIFIED*. The award of 10% attorney's fees made by the Labor Arbiter in his Decision dated January 26, 2000 is *DELETED*.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

THIRD DIVISION

[G.R. No. 166703. April 14, 2008]

AMA COMPUTER COLLEGE, INC., *petitioner, vs.* **ELY GARCIA and MA. TERESA BALLA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; FACTUAL FINDINGS OF THE NLRC, AS AFFIRMED BY THE COURT OF APPEALS, ARE ACCORDED HIGH RESPECT AND FINALITY; EXCEPTION.— The issues for resolution are factual and 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 reexamine and reevaluate the evidence on record. Moreover, the factual findings of the NLRC, as affirmed by the Court of Appeals, are accorded high respect and finality unless the factual findings and conclusions of the Labor Arbiter clash with those of the NLRC and the Court of Appeals in which case, the Court will 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; DISMISSAL; BURDEN OF PROVING JUST AND VALID CAUSE THEREFOR RESTS UPON THE EMPLOYER.— In termination cases, the burden of proving just and valid cause for dismissing an employee from his employment rests upon the employer, and the latter's failure to discharge that burden would result in a finding that the dismissal is unjustified.

3. ID.; ID.; ID.; AUTHORIZED CAUSES; REDUNDANCY; REQUISITES TO BE VALID.— Redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business enterprise. A reasonably redundant position is one rendered superfluous by any number of factors, such as overhiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of service activity priorly undertaken by the business. Among the requisites of a valid redundancy program are: (1) the good faith of the employer in abolishing the redundant position; and (2) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.

4. ID.; ID.; ID.; ID.; ID.; TERMINATION OF EMPLOYEE'S SERVICES FOR BEING REDUNDANT IS NOT SUBJECT TO DISCRETIONARY REVIEW OF THE LABOR ARBITER; CONDITIONS.— The determination that the employee's services are no longer necessary or sustainable and, therefore, properly terminable for being redundant is an exercise of business judgment of the employer. The wisdom or soundness of this judgment is not subject to discretionary review of the Labor Arbiter and the NLRC, provided there is no violation of law and no showing that it was prompted by an arbitrary or malicious act. In other words, it is not enough for a company to merely declare that it has become overmanned. It must produce adequate proof of such redundancy to justify the dismissal of the affected employees.

5. ID.; ID.; ID.; ID.; ID.; EVIDENCE TO SUBSTANTIATE REDUNDANCY NOT SATISTIFIED IN CASE AT BAR.—

In *Panlilio v. National Labor Relations Commission,* it was held that the following evidence may be proffered to substantiate redundancy: the new staffing pattern, feasibility studies/proposal on the viability of the newly created positions, job description and the approval by the management of the restructuring. In the case at bar, ACC attempted to establish its streamlining program by presenting its new table of organization. ACC also submitted a certification by its Human Resources Supervisor, Ma. Jazmin Reginaldo, that the functions and duties of many rank and file employees, including the positions of Garcia and Balla as Library Aide and Guidance Assistant, respectively, are now being performed by the supervisory employees. These, however, do not satisfy the requirement of substantial evidence that a reasonable mind might accept as adequate to support a conclusion. As they are, they are grossly inadequate and mainly self-serving. More compelling evidence would have been a comparison of the old and new staffing patterns, a description of the abolished and newly created positions, and proof of the set business targets and failure to attain the same which necessitated the reorganization or streamlining.

6. ID.; ID.; ID.; ID.; ID.; WHEN IT ARISES.— To further justify its dismissal of Garcia and Balla, ACC presented several memoranda to prove that Garcia and Balla had been remiss in the performance of their duties, as well as perennially tardy and absent. Other than being self-serving, said memoranda are irrelevant to prove redundancy of the positions held by Garcia and Balla. Redundancy arises because there is no more need for the employee's position in relation to the whole business organization, and not because the employee unsatisfactorily performed the duties and responsibilities required by his position. Redundancy is an authorized cause for termination of employment under Article 282 of the Labor Code; while serious misconduct or willful disobedience or gross and habitual neglect of duties by the employee is a just cause for dismissal under Article 283 of the Code.

7. ID.; ID.; ID.; ID.; ID.; NOTICE REQUIREMENT; NOT COMPLIED WITH IN THE DISMISSAL OF THE EMPLOYEES IN CASE AT BAR.— The lingering doubt as to the existence of redundancy or of ACC's so called "streamlining program" is highlighted even more by its non-presentation of the required notice to the Department of Labor

and Employment (DOLE) at least one month before the intended dismissal. The notice to the DOLE would have afforded the labor department the opportunity to look into and verify whether there is truth as to ACC's claim that a decline in its student population resulted in excess manpower in the college. Compliance with the required notices would have also established that ACC pursued its streamlining program in good faith. In balancing the interest between labor and capital, the prudent recourse in termination cases is to safeguard the prized security of tenure of employees and to require employers to present the best evidence obtainable, especially so because in most cases, the documents or proof needed to resolve the validity of the termination, are in the possession of employers. A contrary ruling would encourage employers to utilize redundancy as a means of dismissing employees when no valid grounds for termination are shown by simply invoking a feigned or unsubstantiated redundancy program.

8. ID.; ID.; ID.; ID.; ID.; CRITERIA IN THE IMPLEMENTATION THEREOF, NOT APPLIED TO CASE AT BAR.— Granting that ACC was able to substantiate the need for streamlining its organization, it still failed to implement the same using fair and reasonable criteria for choosing which employees to dismiss. Among the accepted criteria in implementing a redundancy are: (a) less preferred status, *e.g.,* temporary employee; (b) efficiency; and (c) seniority. There is no showing that ACC applied any of these criteria in determining that, among its employees, Garcia and Balla should be dismissed, thus, making their dismissal arbitrary and illegal.

9. ID.; ID.; ID.; RETRENCHMENT; REQUISITES TO BE VALID.— Retrenchment, on the other hand, is the termination of employment effected by management during periods of business recession, industrial depression, seasonal fluctuations, lack of work or considerable reduction in the volume of the employer's business. Resorted to by an employer to avoid or minimize business losses, it is a management prerogative consistently recognized by this Court. There are three basic requisites for a valid retrenchment to exist, to wit: (a) the retrenchment is necessary to prevent losses and such losses are proven; (b) written notice to the employees and to the DOLE at least one (1) month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one (1) month

pay or at least one-half (½) month pay for every year of service, whichever is higher.

10. ID.; ID.; ID.; ID.; CONDITIONS FOR COMPANY LOSSES TO JUSTIFY RETRENCHMENT.— To justify retrenchment, the employer must prove serious business losses. Indeed, not all business losses suffered by the employer would justify retrenchment under Article 283 of the Labor Code. The "loss" referred to in Article 283 cannot be just any kind or amount of loss; otherwise, a company could easily feign excuses to suit its whims and prejudices or to rid itself of unwanted employees. In a number of cases, the Court has identified the necessary conditions for the company losses to justify retrenchment: (1) the losses incurred are substantial and not *de minimis*; (2) the losses are actual or reasonably imminent; (3) the retrenchment is reasonably necessary and is likely to be effective in preventing the expected losses; and (d) the alleged losses, if already incurred, or the expected imminent losses sought to be forestalled, are proven by sufficient and convincing evidence. ACC miserably failed to prove any of the foregoing.

11. ID.; ID.; ID.; ID.; REQUIREMENTS FOR VALIDITY THEREOF NOT COMPLIED WITH IN CASE AT BAR.— In the case at bar, ACC claimed that the retrenchment of Garcia and Balla was justified due to the financial difficulties experienced by the college that it was made effective in all of its campuses and for all departments; and appropriate notices were given to Garcia and Balla. But other than its bare allegations, ACC failed to present any supporting evidence. Not only was ACC unable to prove its losses, it also failed to present proof that it served the necessary notice to the DOLE one month before the purported retrenchment of Garcia and Balla. As also found by the Labor Arbiter, and affirmed by the NLRC and the Court of Appeals, ACC did not give Garcia and Balla sufficient separation pay. Falling short of all the requirements, ACC cannot claim that it had effected a valid retrenchment of Garcia and Balla.

12. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REVIEW OF THE DECISION OF THE NLRC DOES NOT INCLUDE INQUIRY INTO THE CORRECTNESS OF ITS EVALUATION OF THE EVIDENCE BUT IS CONFINED TO ISSUES OF JURISDICTION OR GRAVE ABUSE OF

DISCRETION.— The extent of judicial review by *certiorari* of decisions or resolutions of the NLRC, as exercised previously by the Supreme Court and now by the Court of Appeals, is described in *Zarate, Jr. v. Olegario*, thus – The rule is settled that the original and exclusive jurisdiction of this Court to review a decision of respondent NLRC (or Executive Labor Arbiter as in this case) in a petition for *certiorari* under Rule 65 **does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for *certiorari*, which is merely confined to issues of jurisdiction or grave abuse of discretion.** It is thus incumbent upon petitioner to satisfactorily establish that respondent Commission or executive labor arbiter acted capriciously and whimsically in total disregard of evidence material to or even decisive of the controversy, in order that the extraordinary writ of *certiorari* will lie. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. For *certiorari* to lie, there must be capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions. The Court of Appeals, therefore, can grant the petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which is material or decisive of the controversy.

13. ID.; ID.; ID.; SCOPE OF THE COURT OF APPEALS POWER TO REVIEW THE FACTUAL DETERMINATION OF THE NLRC.— In *Garcia v. National Labor Relations Commission*, we further defined the scope of the Court of Appeals' power to review the evidence when the decision of the NLRC is brought before it *via* a petition for *certiorari* – [I]n *Ong v. People*, we ruled that *certiorari* can be properly resorted to where the factual findings complained of are not supported by the evidence on record. xxx. And in another case of recent vintage, we further held: In the review of an NLRC decision through a special civil action for *certiorari*, resolution is confined only to issues of jurisdiction and grave abuse of discretion on the part of the labor tribunal. Hence, the Court refrains from reviewing factual

assessments of lower courts and agencies exercising adjudicative functions, such as the NLRC. Occasionally, however, the Court is constrained to delve into factual matters where, as in the instant case, the **findings of the NLRC contradict those of the Labor Arbiter.** In this instance, the Court in the exercise of its equity jurisdiction may look into the records of the case and re-examine the questioned findings. As a corollary, this Court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it **finds that their consideration is necessary to arrive at a just decision of the case.** The same principles are now necessarily adhered to and are applied by the Court of Appeals in its expanded jurisdiction over labor cases elevated through a petition for *certiorari*; thus, we see no error on its part when it made anew a factual determination of the matters and on that basis reversed the ruling of the NLRC. None of the foregoing circumstances exists in this case that would justify the Court of Appeals, in a petition for *certiorari*, to look into and re-weigh the evidence on record to determine whether the NLRC committed errors of judgment as regards thereto. Absent exceptional circumstances, the general rule applies and the Court of Appeals is limited only to ascertaining whether the NLRC acted capriciously and whimsically in total disregard of evidence material to or decisive of the controversy so as to oust the latter of jurisdiction.

APPEARANCES OF COUNSEL

Almazan Veloso Mira & Partners for petitioner.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to reverse the Decision[1] dated 30 August 2004 of the Court of Appeals in CA-G.R. SP No. 81808 affirming the Decision dated 29 May 2003 of the National Labor Relations Commission (NLRC) in NLRC NCR 00-03-01898-00. The NLRC,

[1] Penned by Presiding Justice Conrado M. Vasquez, Jr. with Associate Justices Josefina Guevarra-Salonga and Fernanda Lampas-Peralta, concurring. *Rollo*, pp. 31-38.

in its Decision, affirmed the Labor Arbiter's Decision dated 25 March 2002, finding that the dismissal by petitioner AMA Computer College, Inc. (ACC) of respondents Ely Garcia (Garcia) and Ma. Teresa Balla (Balla) was illegal and granting of backwages and separation pay; but modified the same by deleting the grant of 13th month pay, service incentive leave pay and cost of living allowance. The Court of Appeals, in its Resolution dated 1 December 2004, denied ACC's motion for reconsideration of its earlier Decision.

The factual antecedents of the case are as follows:

Garcia was hired as a janitress by ACC on 6 January 1988. On 15 May 1989, her employment status was changed to probationary Library Aide. She became a regular employee on 15 February 1990.

Balla was hired as a Social Worker by ACC on 1 August 1996. She later became a Guidance Assistant in the Guidance Department of ACC, and on 2 June 1997, became a regular employee.

On 21 March 2000, Anthony R. Vince Cruz, ACC Human Resource Director, informed Garcia and Balla and 52 other employees of the termination of their employment, thus:

> This is to formally inform you that due to the prevailing economic condition of our economy and as part of the austerity program of the company, the top management has decided to come up with a manpower review of the AMA Group of Companies in order to streamline its operation and the growth of the Organization.
>
> In view of this, your position as Library Aide [for Ely; Guidance Assistant, for Teresa] has (sic) been found no longer necessary for the reason that your function can be handled by the other existing staff.
>
> Thus, we regret to inform you effective April 21, 2000, your employment with AMA Group of Companies is hereby terminated. x x x.[2]

---

[2] *Rollo,* p. 44.

Thereafter, Garcia and Balla filed a complaint with the Labor Arbiter for illegal dismissal and prayed for the payment of separation pay, 13th month pay, and attorney's fees, alleging that ACC's streamlining program was tainted with bad faith as there was no fair and reasonable criteria used therein, such as the less preferred status, efficiency rating and authority. They asserted that certain acts of ACC belied its claim of being adversely affected by the prevailing economic conditions, and that the statistics and pattern of dismissal by the college indicate a nefarious intent to circumvent the law on the security of tenure.

ACC, in its position paper, countered that Garcia and Balla's dismissal was due to the legitimate streamlining by the company.

On 25 March 2002, the Labor Arbiter ruled that Garcia and Balla were illegally dismissed and ordered the payment of their backwages and additional separation pay. The dispositive portion of the Labor Arbiter's Decision[3] reads:

> Wherefore, premises all considered, judgment is hereby rendered finding the dismissal illegal and ordering respondent [petitioner ACC] to pay complainants [Garcia and Balla] backwages and additional separation pay.
>
> The Research and Computation Unit, (sic) this Commission is hereby directed to effect the necessary computation which shall form part of this decision.

Aggrieved by the Labor Arbiter's afore-quoted Decision, ACC appealed to the NLRC.

On 20 May 2003, the NLRC[4] affirmed the assailed Decision of the Labor Arbiter with the modification of deleting the award of 13th month pay, service incentive leave pay and cost of living allowance. The NLRC thus ordered:

> While We are in accord with the finding that complainants were illegally dismissed from employment, We find the inclusion of the relief of 13th month pay, Service Incentive Leave Pay and Cost of Living Allowance as inappropriate.

[3] *Id*. at 137-142.

[4] *Id*. at 49-54.

Quite notable from the pro-forma complaint that no prayer for payment of cost of living allowance or service incentive leave pay was indicated therein by the complainants (Records, p. 2). And, while they may have indicated non-payment of the 13th month benefit as a cause of action, nowhere in the Labor Arbiter's decision can it be gleaned that the said relief was adjudged in favor of the complainants. Deletion of the aforesaid monetary award is, therefore, decreed.

WHEREFORE, premises considered, the decision under review is hereby MODIFIED by DELETING the relief of 13th month pay, service incentive leave pay and cost of living allowance therefrom.

In other respects, the decision, insofar as it orders the payment to the complainants [Garcia and Balla] their backwages and additional separation pay, shall stand AFFIRMED.

ACC filed a Motion for Reconsideration of the foregoing but the same was denied[5] by the NLRC in a Resolution dated 30 October 2003.

ACC then appealed[6] by way of Petition for *Certiorari* under Rule 65 of the Rules of Court to the Court of Appeals alleging that the NLRC gravely abused its discretion amounting to lack or in excess of jurisdiction in only partially modifying the Decision of the Labor Arbiter and affirming the rest thereof.

On 30 August 2004, the Court of Appeals rendered a Decision[7] affirming the Decision of the NLRC. In its Decision, the Court of Appeals ruled that inquiry in a Petition for *Certiorari* under Rule 65 of the Rules of Court is limited exclusively to the issue of whether or not respondent acted with grave abuse of discretion, amounting to lack or in excess of jurisdiction, and does not go as far as to evaluate the sufficiency of evidence upon which the NLRC and the Labor Arbiter based their determination.

ACC filed a motion for reconsideration but was denied by the Court of Appeals in a Resolution[8] dated 1 December 2004.

---

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

[6] *Id*. at 59-77.

[7] *Id*. at 31-38.

[8] *Id*. at 41-42.

Hence, the present Petition for Review under Rule 45 of the Rules of Court filed by ACC raising the following errors[9] of the Court of Appeals:

THE COURT OF APPEALS GRAVELY ERRED IN DEPARTING FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL REVIEW[.]

THE COURT OF APPEALS GRAVELY ERRED WHEN IT SUSTAINED THE FINDING OF ILLEGAL DISMISSAL NOTWITHSTANDING THE SUBSTANTIAL EVIDENCE ADDUCED BY PETITIONER TO THE CONTRARY[.]

THE COURT OF APPEALS GRAVELY ERRED WHEN IT REFUSED TO RECOGNIZE REDUNDANCY AS A BASIS IN TERMINATING THE SERVICES OF RESPONDENT[S].

On 18 April 2005, We required[10] Garcia and Balla to file their Comment within ten days from notice, but they failed to comply therewith despite notice.

As a consequence, we required[11] Garcia and Balla to show cause why they should not be held in contempt of court for failure to file their desired comment. Again, they failed to comply with our show cause order, thus, we imposed[12] upon them a fine of ₱500.00 each payable within ten days from receipt of notice.

Still failing to receive any response from Garcia and Balla, we required[13] ACC, on 2 October 2006, to inform the Court of their current addresses.

In a Manifestation[14] dated 18 January 2007, ACC stated that, as for Garcia, it has the same address as the one being considered by the Court; and as to Balla, all pleadings and orders in the

[9] *Id*. at 16.

[10] *Id*. at 198.

[11] *Id*. at 199. Issued on 8 February 2006.

[12] *Id*. at 200. Issued 12 July 2006.

[13] *Id*. at 2004.

[14] *Id*. at 206-208.

course of the proceedings before the NLRC and the Court of Appeals were served to her through Garcia's address.

In a Resolution dated 28 February 2007, we noted ACC's Manifestation but considered its compliance unsatisfactory. We required ACC to exert more effort in locating Garcia's present address and to inform the Court thereof within ten days from notice.[15]

ACC through counsel failed to comply with our 28 February 2007 Resolution, thus, we required[16] its counsel to show cause why it should not be held in contempt for failure to submit the addresses of Garcia and Balla despite notice.

In a Compliance[17] dated 5 December 2007, ACC through counsel apologized for its inadvertence and asked for an extension within which to comply with the 28 February 2007 Resolution, which was granted.[18]

ACC's counsel would later inform us that various ways were employed to search for Garcia's address, such as searches through the telephone directories, internet and personal inquiries, but to no avail. Hence, ACC requested for another extension,[19] which was again granted.

In a Manifestation, dated 5 January 2007, ACC through counsel stated that it already made a personal inquiry at Garcia's previous address, but still without success.

Thus, we resolved to dispense with Garcia and Balla's comment and submitted the case for decision based on the pleadings filed.

Even without Garcia and Balla's comment, this Court denies ACC's Petition.

---

[15] *Id*. at 210.

[16] *Id*. at 219.

[17] *Id*. at 220-224.

[18] *Id*. at 226.

[19] *Id*. at 227-233.

The issues for resolution are factual and 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 reexamine and reevaluate the evidence on record. Moreover, the factual findings of the NLRC, as affirmed by the Court of Appeals, are accorded high respect and finality unless the factual findings and conclusions of the Labor Arbiter clash with those of the NLRC and the Court of Appeals in which case, the Court will have to review the records and the arguments of the parties to resolve the factual issues and render substantial justice to the parties.[20]

In termination cases, the burden of proving just and valid cause for dismissing an employee from his employment rests upon the employer, and the latter's failure to discharge that burden would result in a finding that the dismissal is unjustified.[21]

It must be stressed at the outset that ACC raised different grounds to justify its dismissal of Garcia and Balla: before the Labor Arbiter, it cited retrenchment; before the NLRC, it claimed redundancy; and before the Court of Appeals, it averred both retrenchment and redundancy.

It is apparent that ACC itself is confused as to the real reason why it terminated Garcia and Balla's employment.

Both retrenchment and redundancy are authorized causes for the termination of employment. According to Article 283 of the Labor Code:

ART. 283. *Closure of establishment and reduction of personnel.* – The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Department of Labor

---

[20] *Union Motor Corporation v. National Labor Relations Commission,* G.R. No. 159738, 9 December 2004, 445 SCRA 683, 689.

[21] *Metro Transit Organization, Inc. v. National Labor Relations Commission,* 331 Phil. 633, 642 (1996).

and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Although governed by the same provision of the Labor Code, retrenchment and redundancy are two distinct grounds for termination arising from different circumstances, thus, they are in no way interchangeable.

Redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business enterprise. A reasonably redundant position is one rendered superfluous by any number of factors, such as overhiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of service activity priorly undertaken by the business. Among the requisites of a valid redundancy program are: (1) the good faith of the employer in abolishing the redundant position; and (2) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.[22]

The determination that the employee's services are no longer necessary or sustainable and, therefore, properly terminable for being redundant is an exercise of business judgment of the employer. The wisdom or soundness of this judgment is not subject to discretionary review of the Labor Arbiter and the NLRC, provided there is no violation of law and no showing that it was prompted by an arbitrary or malicious act. In other

[22] *Asian Alcohol Corporation v. National Labor Relations Commission*, 364 Phil. 912, 930 (1999).

words, it is not enough for a company to merely declare that it has become overmanned. It must produce adequate proof of such redundancy to justify the dismissal of the affected employees.[23]

In *Panlilio v. National Labor Relations Commission,*[24] it was held that the following evidence may be proffered to substantiate redundancy: the new staffing pattern, feasibility studies/proposal on the viability of the newly created positions, job description and the approval by the management of the restructuring.

In the case at bar, ACC attempted to establish its streamlining program by presenting its new table of organization. ACC also submitted a certification[25] by its Human Resources Supervisor, Ma. Jazmin Reginaldo, that the functions and duties of many rank and file employees, including the positions of Garcia and Balla as Library Aide and Guidance Assistant, respectively, are now being performed by the supervisory employees. These, however, do not satisfy the requirement of substantial evidence that a reasonable mind might accept as adequate to support a conclusion.[26] As they are, they are grossly inadequate and mainly self-serving. More compelling evidence would have been a comparison of the old and new staffing patterns, a description of the abolished and newly created positions, and proof of the set business targets and failure to attain the same which necessitated the reorganization or streamlining.

To further justify its dismissal of Garcia and Balla, ACC presented several memoranda to prove that Garcia and Balla had been remiss in the performance of their duties, as well as perennially tardy and absent. Other than being self-serving, said memoranda are irrelevant to prove redundancy of the positions held by Garcia and Balla. Redundancy arises because there is

---

[23] *Asufrin, Jr. v. San Miguel Corporation*, 469 Phil. 237, 245 (2004).

[24] 346 Phil. 30, 34 (1997).

[25] *Rollo*, p. 91. Issued on 17 July 2003.

[26] *Mendoza v. National Labor Relations Commission*, 369 Phil. 1113, 1130 (1999).

no more need for the employee's position in relation to the whole business organization, and not because the employee unsatisfactorily performed the duties and responsibilities required by his position. Redundancy is an authorized cause for termination of employment under Article 282 of the Labor Code; while serious misconduct or willful disobedience or gross and habitual neglect of duties by the employee is a just cause for dismissal under Article 283 of the Code.

The lingering doubt as to the existence of redundancy or of ACC's so called "streamlining program" is highlighted even more by its non-presentation of the required notice[27] to the Department of Labor and Employment (DOLE) at least one month before the intended dismissal.[28] The notice to the DOLE would have afforded the labor department the opportunity to look into and verify whether there is truth as to ACC's claim that a decline in its student population resulted in excess manpower in the college. Compliance with the required notices would have also established that ACC pursued its streamlining program in good faith.

In balancing the interest between labor and capital, the prudent recourse in termination cases is to safeguard the prized security of tenure of employees and to require employers to present the best evidence obtainable, especially so because in most cases, the documents or proof needed to resolve the validity of the termination, are in the possession of employers. A contrary ruling would encourage employers to utilize redundancy as a means of dismissing employees when no valid grounds for termination are shown by simply invoking a feigned or unsubstantiated redundancy program.

---

[27] ART. 283. *Closure of establishment and reduction of personnel.* – The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, **by serving a written notice on the worker and the Department of Labor and Employment at least one (1) month before the intended date thereof**. x x x. (Emphasis supplied.)

[28] *Rollo*, p. 53

Granting that ACC was able to substantiate the need for streamlining its organization, it still failed to implement the same using fair and reasonable criteria for choosing which employees to dismiss. Among the accepted criteria in implementing a redundancy are: (a) less preferred status, *e.g.,* temporary employee; (b) efficiency; and (c) seniority.[29] There is no showing that ACC applied any of these criteria in determining that, among its employees, Garcia and Balla should be dismissed, thus, making their dismissal arbitrary and illegal.

Retrenchment, on the other hand, is the termination of employment effected by management during periods of business recession, industrial depression, seasonal fluctuations, lack of work or considerable reduction in the volume of the employer's business.[30] Resorted to by an employer to avoid or minimize business losses,[31] it is a management prerogative consistently recognized by this Court.[32]

There are three basic requisites for a valid retrenchment to exist, to wit: (a) the retrenchment is necessary to prevent losses and such losses are proven; (b) written notice to the employees and to the DOLE at least one (1) month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher.[33]

To justify retrenchment, the employer must prove serious business losses.[34] Indeed, not all business losses suffered by the employer would justify retrenchment under Article 283 of

---

[29] *Asufrin, Jr. v. San Miguel Corporation*, *supra* note 22 at 275.

[30] *De la Cruz v. National Labor Relations Commission*, 335 Phil. 932, 939 (1997).

[31] *Somerville Stainless Steel Corporation v. National Labor Relations Commission,* 350 Phil. 859, 869 (1998).

[32] *Id*.

[33] *F.F. Marine Corporation v. National Labor Relations Commission*, G.R. No. 152039, 8 April 2005, 455 SCRA 154, 165.

[34] *Balbalec v. National Labor Relations Commission,* 321 Phil. 771, 778 (1995).

the Labor Code.[35] The "loss" referred to in Article 283 cannot be just any kind or amount of loss; otherwise, a company could easily feign excuses to suit its whims and prejudices or to rid itself of unwanted employees.[36]

In a number of cases, the Court has identified the necessary conditions for the company losses to justify retrenchment: (1) the losses incurred are substantial and not *de minimis*; (2) the losses are actual or reasonably imminent; (3) the retrenchment is reasonably necessary and is likely to be effective in preventing the expected losses; and (d) the alleged losses, if already incurred, or the expected imminent losses sought to be forestalled, are proven by sufficient and convincing evidence.[37] ACC miserably failed to prove any of the foregoing.

In the case at bar, ACC claimed that the retrenchment of Garcia and Balla was justified due to the financial difficulties experienced by the college that it was made effective in all of its campuses and for all departments; and appropriate notices were given to Garcia and Balla. But other than its bare allegations, ACC failed to present any supporting evidence.

Not only was ACC unable to prove its losses, it also failed to present proof that it served the necessary notice to the DOLE one month before the purported retrenchment of Garcia and Balla.[38] As also found by the Labor Arbiter, and affirmed by the NLRC and the Court of Appeals, ACC did not give Garcia and Balla sufficient separation pay. Falling short of all the

---

[35] *Guerrero v. National Labor Relations Commission*, 329 Phil. 1069, 1075 (1996).

[36] *Somerville Stainless Steel Corp v. National Labor Relations Commission*, *supra* note 31.

[37] *Lopez Sugar Corporation v. Federation of Free Workers*, G.R. Nos. 75700-01, 30 August 1990, 189 SCRA 179, 186-187; *Somerville Stainless Steel Corporation v. National Labor Relations Commission*, *supra* note 31; *Revidad v. National Labor Relations Commission*, 315 Phil. 373, 395 (1995); *Catatista v. National Labor Relations Commission*, 317 Phil. 54, 61 (1995); *San Miguel Jeepney Service v. National Labor Relations Commission*, 332 Phil. 804 (1996).

[38] *Rollo*, p. 140.

requirements, ACC cannot claim that it had effected a valid retrenchment of Garcia and Balla.

In sum, the Court finds no basis for disturbing the consistent findings of the Labor Arbiter, the NLRC and the Court of Appeals that ACC was not able to discharge the burden of proving that its dismissal of Garcia and Balla was valid.

Finally, ACC argues that the Court of Appeals should not have limited its power of review to the finding of grave abuse of discretion allegedly committed by the NLRC, but should have considered the substantial evidence adduced by ACC.

The contention is without merit.

The extent of judicial review by *certiorari* of decisions or resolutions of the NLRC, as exercised previously by the Supreme Court and now by the Court of Appeals, is described in *Zarate, Jr. v. Olegario*,[39] thus —

> The rule is settled that the original and exclusive jurisdiction of this Court to review a decision of respondent NLRC (or Executive Labor Arbiter as in this case) in a petition for *certiorari* under Rule 65 **does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for *certiorari*, which is merely confined to issues of jurisdiction or grave abuse of discretion.** It is thus incumbent upon petitioner to satisfactorily establish that respondent Commission or executive labor arbiter acted capriciously and whimsically in total disregard of evidence material to or even decisive of the controversy, in order that the extraordinary writ of *certiorari* will lie. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. For *certiorari* to lie, there must be capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions. (Underscoring supplied.)

[39] 331 Phil. 278, 287-288 (1996).

The Court of Appeals, therefore, can grant the petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which is material or decisive of the controversy.

In *Garcia v. National Labor Relations Commission*,[40] we further defined the scope of the Court of Appeals' power to review the evidence when the decision of the NLRC is brought before it *via* a petition for *certiorari* –

> [I]n *Ong v. People*, we ruled that *certiorari* can be properly resorted to where the factual findings complained of are not supported by the evidence on record. Earlier, in *Gutib v. Court of Appeals*, we emphasized thus:
>
> > [I]t has been said that a wide breadth of discretion is granted a court of justice in *certiorari* proceedings. The cases in which *certiorari* will issue cannot be defined, because to do so would be to destroy its comprehensiveness and usefulness. So wide is the discretion of the court that authority is not wanting to show that *certiorari* is more discretionary than either prohibition or *mandamus*. In the exercise of our superintending control over inferior courts, we are to be guided by all the circumstances of each particular case "as the ends of justice may require." So it is that the **writ will be granted where necessary to prevent a substantial wrong or to do substantial justice.**
>
> And in another case of recent vintage, we further held:
>
> > In the review of an NLRC decision through a special civil action for *certiorari*, resolution is confined only to issues of jurisdiction and grave abuse of discretion on the part of the labor tribunal. Hence, the Court refrains from reviewing factual assessments of lower courts and agencies exercising adjudicative functions, such as the NLRC. Occasionally, however, the Court is constrained to delve into factual matters where, as in the instant case, the **findings of the NLRC contradict those of the Labor Arbiter.**

[40] G.R. No. 147427, 7 February 2005, 450 SCRA 535, 548-549.

In this instance, the Court in the exercise of its equity jurisdiction may look into the records of the case and re-examine the questioned findings. As a corollary, this Court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it **finds that their consideration is necessary to arrive at a just decision of the case.** The same principles are now necessarily adhered to and are applied by the Court of Appeals in its expanded jurisdiction over labor cases elevated through a petition for *certiorari*; thus, we see no error on its part when it made anew a factual determination of the matters and on that basis reversed the ruling of the NLRC. (Underscoring supplied.)

None of the foregoing circumstances exists in this case that would justify the Court of Appeals, in a petition for *certiorari*, to look into and re-weigh the evidence on record to determine whether the NLRC committed errors of judgment as regards thereto. Absent exceptional circumstances, the general rule applies and the Court of Appeals is limited only to ascertaining whether the NLRC acted capriciously and whimsically in total disregard of evidence material to or decisive of the controversy so as to oust the latter of jurisdiction.

WHEREFORE, the instant Petition is hereby *DENIED*. The Decision dated 30 August 2004 of the Court of Appeals in CA-G.R. SP No. 81808 is hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 169370. April 14, 2008]

EUSTACIO ATWEL, LUCIA PILPIL and MANUEL MELGAZO, *petitioners, vs.* **CONCEPCION PROGRESSIVE ASSOCIATION, INC.,**[*] *respondent.*

SYLLABUS

1. COMMERCIAL LAW; PRIVATE CORPORATIONS; INTRA-CORPORATE CONTROVERSY; ELEMENTS.— To determine whether a case involves an intra-corporate controversy to be heard and decided by the RTC, two elements must concur: (1) the status or relationship of the parties and (2) the nature of the question that is subject of their controversy. The first element requires that the controversy must arise out of intra-corporate or partnership relations: (a) between any or all of the parties and the corporation, partnership or association of which they are stockholders, members or associates; (b) between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates and (c) between such corporation, partnership or association and the State insofar as it concerns their individual franchises. On the other hand, the second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation. If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy. In the case at bar, these elements are not present. The records reveal that petitioners were never officers nor members of CPAI. CPAI itself admitted this in its pleadings. In fact, petitioners were the only remaining members of CPA which, obviously, was not the CPAI that was registered in the SEC.

---

[*] Judge Salvador Y. Apurillo, presiding judge of Branch 8 of the Regional Trial Court of Tacloban City, was impleaded as respondent. However, his name was deleted from the title pursuant to Rule 45, Section 4 of the Rules which states that public respondents, like judges of the lower courts, need not be impleaded in the petition.

2. ID.; ID.; ID.; CONTROVERSY THAT IS CIVIL IN NATURE IS COGNIZABLE BY THE REGULAR COURT.— Moreover, the issue in this case does not concern the regulation of CPAI (or even CPA). The determination as to who is the true owner of the disputed property entitled to the income generated therefrom is civil in nature and should be threshed out in a regular court. Cases of this nature are cognizable by the RTC under BP 129. Therefore, the conflict among the parties here was outside the jurisdiction of the special commercial court.

3. REMEDIAL LAW; JURISDICTION; JURISDICTION BY ESTOPPEL; WHEN APPLICABLE; ESTOPPEL DOES NOT CONFER JURISDICTION ON A TRIBUNAL THAT HAS NONE OVER THE CAUSE OF ACTION OR SUBJECT MATTER OF THE CASE.— In *Lozon v. NLRC*, this Court came up with a clear rule on when jurisdiction by estoppel applies and when it does not: **The operation of estoppel on the question of jurisdiction seemingly depends on whether the lower court actually had jurisdiction or not. If it had no jurisdiction, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same "must exist as a matter of law, and may not be conferred by the consent of the parties or *by estoppel*."** However, if the lower court had jurisdiction, and the case was heard and decided upon a given theory, such, for instance, as that the court had no jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position – that the lower court had jurisdiction.... The ruling was reiterated in *Metromedia Times Corporation [(Metromedia)] v. Pastorin,* where we reversed the CA ruling that Metromedia was already estopped from questioning the jurisdiction of the labor arbiter (LA) after it participated in the proceedings before him. xxx. We likewise held in *Metromedia* that *Tijam* provided an exceptional circumstance. To void the trial court's decision in *Tijam* for lack of jurisdiction was not only unfair but patently revolting considering that the question on jurisdiction was raised only after 15 years of tedious litigation. xxx. The rule remains that estoppel does not confer jurisdiction on a tribunal that has none over the cause of action or subject matter of the case. Unfortunately for CPAI, no exceptional circumstance appears

in this case to warrant divergence from the rule. Jurisdiction by estoppel is not available here.

4. ID.; ID.; DECISION OF A TRIBUNAL NOT VESTED WITH THE APPROPRIATE JURISDICTION IS NULL AND VOID.— Consequently, CPAI cannot be permitted to wrest from petitioners (as the remaining CPA officers) the administration of the disputed property until after the parties' rights are clearly adjudicated in the proper courts. It is neither fair nor legal to bind a party to the result of a suit or proceeding in a court with no jurisdiction. The decision of a tribunal not vested with the appropriate jurisdiction is null and void.

APPEARANCES OF COUNSEL

Richard W. Sison & Associates for petitioners.
Josenilo Reoma for respondent.

D E C I S I O N

CORONA, *J.*:

The present petition under Rule 45 of the Rules of Court assails the decision[1] of the Court of Appeals (CA), dated March 17, 2005 in CA-G.R. SP No. 85170, declaring petitioners Eustacio Atwel,[2] Lucia Pilpil and Manuel Melgazo estopped from questioning the jurisdiction of Branch 8 of the Regional Trial Court (RTC) of Tacloban City as a special commercial court under Republic Act (RA) No. 8799.[3]

---

[1] Penned by Justice Isaias P. Dicdican, with the concurrence of Justices Vicente L. Yap (retired) and Enrico A. Lanzanas, Twentieth Division of the Court of Appeals. *Rollo*, pp. 29-35.

[2] Also referred to as "Eustacio Atuel" in the records.

[3] The Securities Regulation Code, which took effect on August 8, 2000. Under RA 8799, jurisdiction over intra-corporate controversies and other cases in PD 902-A (Reorganization of the Securities and Exchange Commission) was transferred from the Securities and Exchange Commission (SEC) to the Regional Trial Court (RTC). The creation of special commercial courts was by virtue of A.M. No. 00-11-03-SC promulgated on 21 November 2000.

The facts follow.

In 1948, then Assemblyman Emiliano Melgazo[4] founded and organized Concepcion Progressive Association (CPA) in Hilongos, Leyte. The organization aimed to provide livelihood to and generate income for his supporters.

In 1968, after his election as CPA president, Emiliano Melgazo bought a parcel of land in behalf of the association. The property was later on converted into a wet market where agricultural, livestock and other farm products were sold. It also housed a cockpit and an area for various forms of amusement. The income generated from the property, mostly rentals from the wet market, was paid to CPA.

When Emiliano Melgazo died, his son, petitioner Manuel Melgazo, succeeded him as CPA president and administrator of the property. On the other hand, petitioners Atwel and Pilpil were elected as CPA vice-president and treasurer, respectively.

In 1997, while CPA was in the process of registering as a stock corporation, its other elected officers and members formed their own group and registered themselves in the Securities and Exchange Commission (SEC) as officers and members of respondent Concepcion Progressive Association, Inc. (CPAI). Petitioners were not listed either as officers or members of CPAI. Later, CPAI objected to petitioners' collection of rentals from the wet market vendors.

In 2000, CPAI filed a case in the SEC for mandatory injunction.[5] With the passage of RA 8799, the case was transferred to Branch 24 of the Southern Leyte RTC and subsequently, to Branch 8 of the Tacloban City RTC. Both were special commercial courts.

In the complaint, CPAI alleged that it was the owner of the property and petitioners, without authority, were collecting rentals from the wet market vendors.

---

[4] Petitioner Manuel Melgazo's father.

[5] With a prayer for the issuance of a writ of preliminary injunction. SEC Case No. 2001-07-110.

In their answer, petitioners refuted CPAI's claim saying that it was preposterous and impossible for the latter to have acquired ownership over the property in 1968 when it was only in 1997 that it was incorporated and registered with the SEC. Petitioners added that since the property was purchased using the money of petitioner Manuel Melgazo's father (the late Emiliano Melgazo), it belonged to the latter.

On June 9, 2004, the special commercial court ruled that the deed of sale covering the property was in the name of CPA, not Emiliano Melgazo:

> The terms and language of said Deed is unmistakable that the vendee is [CPA], through Emiliano Melgazo, and Emiliano Melgazo signed said Deed "for and [in] behalf of the CPA"...there is therefore no doubt as to who the vendee is. It is [CPA] and not Emiliano Melgazo. As such, it is [CPA] who is the owner of said property and not [petitioner] Manuel Melgazo... [Petitioners] contend that the money used in the purchase of [the property] was Emiliano Melgazo['s]. This Court is not persuaded and to rule otherwise...will be a contravention [to] the Parole Evidence Rule.[6]

In the dispositive portion of the decision, the court, however, considered CPA to be one and the same as CPAI:

> WHEREFORE, premises considered, this Court finds for [CPAI] and against [petitioners] and the latter are hereby directed to cease and desist from collecting the vendor's fee for and [on] behalf of [CPAI] and to account what they have collected from October 1996 up to the present and [turn over] the same to the proper officer.
>
> SO ORDERED.[7]

Aggrieved, petitioners went to the CA and contested the jurisdiction of the special commercial court over the case. According to them, they were not CPAI members, hence the

---

[6] *Rollo*, p. 80. Under Rule 130, Section 9, when the terms of an agreement have been reduced to writing, it is considered to contain all the terms agreed upon. As between the parties and their successors in interest, there can be no evidence of such terms other than the contents of the written agreement.

[7] *Id*., p. 81. Decided by Judge Salvador Y. Apurillo.

case did not involve an intra-corporate dispute "between and among members" so as to warrant the special commercial court's jurisdiction over it. CPAI, on the other hand, argued that petitioners were already in estoppel as they had participated actively in the court proceedings.

In its assailed decision of March 17, 2005, although the CA found that the special commercial court should not have tried the case since there was no intra-corporate dispute among CPAI members or officers, it nonetheless held that petitioners were already barred from questioning the court's jurisdiction based on the doctrine of estoppel. Quoting this Court's ruling in *Tijam v. Sibonghanoy*,[8] the CA held:

> An examination of the record of the case will show that [CPAI] admitted in its Pre-Trial Brief and Amended Pre-Trial Brief that petitioners are not its members. The fact that petitioners are admittedly not members of [CPAI], then, [the special commercial court] should not have taken cognizance of the case as [it] exercises special and limited jurisdiction under R.A. No. 8799. However, as correctly argued and pointed out by [CPAI], the acts of the petitioners, through their counsel, in participating in the trial of the case...show that they themselves consider the trial court to have jurisdiction over the case.[9]
>
> xxx xxx xxx
>
> ...[I]n the case of *Tijam v. Sibonghanoy,* the Supreme Court categorically that:
>
> "The rule is that the jurisdiction over the subject matter is conferred upon the courts exclusively by law, and as the lack

[8] 131 Phil. 556 (1968). In this case, Tijam filed a case for recovery of sum of money in 1948 in the then Court of First Instance (CFI), now RTC. Respondent Sibonghanoy's surety filed a counter-bond. When Sibonghanoy lost to Tijam, a writ of execution was later issued against the bond. The surety opposed the execution and assailed the CFI's jurisdiction contending that it was the inferior courts that had jurisdiction over the case. The Supreme Court held in this case that, although the inferior court had jurisdiction, the surety was already estopped from questioning the CFI's jurisdiction considering that it participated (as a quasi-party) in the proceedings and it was only after 15 years that the question on jurisdiction was raised.

[9] *Supra* at note 1.

> of it affects the very authority of the court to take cognizance of the case, the objection may be raised at any stage of the proceedings. However, considering the facts and the circumstances of the present case, a party may be barred by laches from invoking this plea for the first time on appeal for the purpose of annulling everything done in the case with the active participation of said party invoking the plea."

Hence, we agree with [CPAI] that petitioners, after actively participating in the trial of the case, can no longer be allowed to impugn the jurisdiction of the court...[10]

xxx xxx xxx

WHEREFORE, based on the foregoing premises, judgment is hereby rendered by us DISMISSING the petition filed in this case and AFFIRMING the DECISION dated June 9, 2004 of the [special commercial court] of Tacloban City, Branch 8 in SEC Case No. 2001-07-110.

SO ORDERED.[11]

Petitioners filed a motion for reconsideration but it was denied by the CA.[12] Hence, this petition.

Petitioners essentially argue that estoppel cannot apply because a court's jurisdiction is conferred exclusively by the Constitution or by law, *not* by the parties' agreement or by estoppel.

We agree.

Originally, Section 5 of Presidential Decree (PD) 902-A[13] conferred on the SEC original and exclusive jurisdiction over the following:

(1) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the

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

[11] *Id*., p. 34.

[12] Resolution dated August 12, 2005. *Rollo*, pp. 36-37.

[13] Reorganization of the Securities and Exchange Commission.

stockholders, partners, or members of any corporation, partnership, or association;

(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; or association of which they are stockholders, members, or associates, respectively;

(3) Controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships, or associations;

(4) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payment in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities but is under the management of a rehabilitation receiver or management committee...(emphasis supplied)

Upon the enactment of RA 8799 in 2000, the jurisdiction of the SEC over intra-corporate controversies and other cases enumerated in Section 5 of PD 902-A was transferred to the courts of general jurisdiction. Under this authority, Branch 8 of the Tacloban City RTC, acting as a special commercial court, deemed the mandatory injunction case filed by CPAI an intra-corporate dispute falling under subparagraph (2) of the aforecited provision as it involved the officers and members thereof.

To determine whether a case involves an intra-corporate controversy to be heard and decided by the RTC, two elements must concur:

(1) the status or relationship of the parties and

(2) the nature of the question that is subject of their controversy.[14]

The first element requires that the controversy must arise out of intra-corporate or partnership relations: (a) between any

[14] *Speed Distributing Corporation v. CA*, 469 Phil. 739 (2004).

or all of the parties and the corporation, partnership or association of which they are stockholders, members or associates; (b) between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates and (c) between such corporation, partnership or association and the State insofar as it concerns their individual franchises. On the other hand, the second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation.[15] If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy.[16]

In the case at bar, these elements are not present. The records reveal that petitioners were never officers nor members of CPAI. CPAI itself admitted this in its pleadings. In fact, petitioners were the only remaining members of CPA which, obviously, was not the CPAI that was registered in the SEC.

Moreover, the issue in this case does not concern the regulation of CPAI (or even CPA). The determination as to who is the true owner of the disputed property entitled to the income generated therefrom is civil in nature and should be threshed out in a regular court. Cases of this nature are cognizable by the RTC under BP 129.[17] Therefore, the conflict among the parties here was outside the jurisdiction of the special commercial court.

But did the doctrine of estoppel bar petitioners from questioning the jurisdiction of the special commercial court? No.

In *Lozon v. NLRC*,[18] this Court came up with a clear rule on when jurisdiction by estoppel applies and when it does not:

The operation of estoppel on the question of jurisdiction seemingly depends on whether the lower court actually had jurisdiction or not. If it had no jurisdiction, but the case was

[15] *Id*.

[16] *Id*.

[17] The Judiciary Reorganization Act.

[18] 310 Phil. 1 (1995).

tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same "must exist as a matter of law, and may not be conferred by the consent of the parties or *by estoppel*." However, if the lower court had jurisdiction, and the case was heard and decided upon a given theory, such, for instance, as that the court had no jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position – that the lower court had jurisdiction.... (emphasis supplied)

The ruling was reiterated in *Metromedia Times Corporation [(Metromedia)] v. Pastorin,*[19] where we reversed the CA ruling that Metromedia was already estopped from questioning the jurisdiction of the labor arbiter (LA) after it participated in the proceedings before him. There, an illegal dismissal case was filed by an employee against Metromedia alleging that his transfer to another department[20] was tantamount to constructive dismissal. Realizing the issue was properly cognizable by a voluntary arbitrator, Metromedia assailed the LA's jurisdiction in the NLRC and the CA. The CA, also citing *Tijam,*[21] ruled erroneously that Metromedia was already barred from questioning the LA's jurisdiction.

We likewise held in *Metromedia* that *Tijam* provided an exceptional circumstance. To void the trial court's decision in *Tijam* for lack of jurisdiction was not only unfair but patently revolting considering that the question on jurisdiction was raised only after 15 years of tedious litigation.[22] We said:

> The notion that the defense of lack of jurisdiction may be waived by estoppel on the party invoking the same most prominently emerged in *Tijam v. Sibonghanoy*....[H]owever, *Tijam* represented an exceptional case wherein the party invoking the lack of jurisdiction only did so after fifteen (15) years, and at a stage where the case was already elevated to the Court of Appeals.

[19] G.R. No. 154295, 29 July 2005, 465 SCRA 320.

[20] Due to his failure to pay his personal obligations to Metromedia's client.

[21] *Supra* at note 8.

[22] *Id*. It was Sibonghanoy's surety that questioned the court's jurisdiction in this case.

In *Calimlim v. Ramirez*,[23] which we extensively quoted in *Metromedia,* we spoke of *Tijam* in this sense:

> A rule that had been settled by unquestioned acceptance and upheld in decisions so numerous to cite is that jurisdiction is a matter of law and may not be conferred by consent or agreement of the parties....[T]his doctrine has been qualified by recent pronouncements which stemmed principally from the ruling in the cited case of [*Tijam v.*]*Sibonghanoy*. It is to be regretted, however, that the holding in said case had been applied to situations which were obviously not contemplated therein. The exceptional circumstances involved in [*Tijam v.*]*Sibonghanoy* which justified the departure from the accepted doctrine of non-waivability of objection to jurisdiction has been ignored and instead a blanket doctrine had been repeatedly upheld that rendered the supposed ruling [therein] not as the exception, but rather the general rule, virtually overthrowing altogether the time-honored principle that the issue of jurisdiction is not lost by waiver or by estoppel.

The rule remains that estoppel does not confer jurisdiction on a tribunal that has none over the cause of action or subject matter of the case.[24] Unfortunately for CPAI, no exceptional circumstance appears in this case to warrant divergence from the rule. Jurisdiction by estoppel is not available here.

Consequently, CPAI cannot be permitted to wrest from petitioners (as the remaining CPA officers) the administration of the disputed property until after the parties' rights are clearly adjudicated in the proper courts. It is neither fair nor legal to bind a party to the result of a suit or proceeding in a court with no jurisdiction.[25] The decision of a tribunal not vested with the appropriate jurisdiction is null and void.[26]

---

[23] No. L-34362, 19 November 1982, 118 SCRA 399.

[24] See also *Southeast Asian Fisheries and Development Center-Aquaculture Department (SEAFDEC-AQD) v. NLRC*, G.R. No. 86773, 14 February 1992, 206 SCRA 283; *Union Motors Corporation v. NLRC*, 373 Phil. 310 (1999).

[25] *Calimlim v. Ramirez, supra.*

[26] *Id.*

WHEREFORE, the petition is hereby *GRANTED*. The assailed decision of the Court of Appeals in CA-G.R. SP No. 85170 is *REVERSED* and *SET ASIDE*. Accordingly, SEC Case No. 2001-07-110 is *DISMISSED* for lack of jurisdiction.

SO ORDERED.

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

Azcuna, J., on official leave.

FIRST DIVISION

[G.R. No. 172038. April 14, 2008]

DANTE D. DE LA CRUZ, *petitioner, vs.* **MAERSK FILIPINAS CREWING, INC. and ELITE SHIPPING A.S.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; MOTION FOR EXTENSION TO FILE A PLEADING; WHEN GRANTED, THE DUE DATE FOR THE EXTENDED PERIOD SHALL BE COUNTED FROM THE ORIGINAL DUE DATE, NOT FROM THE NEXT WORKING DAY ON WHICH THE MOTION FOR EXTENSION WAS FILED.— Section 1, Rule 22, as clarified by the circular, is clear. Should a party desire to file any pleading, even a motion for extension of time to file a pleading, and the last day falls on a Saturday, Sunday or a legal holiday, he may do so on the next working day. This is what petitioner did in the case at bar. However, according to the same circular, the petition for review on *certiorari* was indeed filed out of time. The provision states that in case a motion for extension is granted, the due date for the extended period shall be counted

from the original due date, not from the next working day on which the motion for extension was filed. In *Luz v. National Amnesty Commission*, we had occasion to expound on the matter. In that case, we held that the extension granted by the court should be tacked to the original period and commences immediately after the expiration of such period. In the case at bar, although petitioner's filing of the motion for extension was within the period provided by law, the filing of the petition itself was not on time. Petitioner was granted an additional period of 30 days within which to file the petition. Reckoned from the original period, he should have filed it on May 8, 2006. Instead, he did so only on May 11, 2006, that is, 3 days late.

2. ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; A FEW DAYS LATE IN THE FILING THEREOF DOES NOT AUTOMATICALLY WARRANT THE DISMISSAL THEREOF, SPECIALLY WHERE STRONG CONSIDERATIONS OF SUBSTANTIAL JUSTICE ARE MANIFEST IN THE PETITION.— Well settled is the rule that litigations should, as much as possible, be decided on their merits and not on technicalities. In accordance with this legal precept, this Court has ruled that being a few days late in the filing of the petition for review does not automatically warrant the dismissal thereof, specially where strong considerations of substantial justice are manifest in the petition. Such is the case here.

3. ID.; APPEALS; FINDINGS OF FACT OF THE COURT OF APPEALS ARE BINDING AND CONCLUSIVE; CASE AT BAR, AN EXCEPTION.— The *second* preliminary issue we need to address is the matter of this Court's jurisdiction in petitions for review on *certiorari* under Rule 45. It should be noted that our jurisdiction in such cases is limited only to questions of law. It does not extend to questions of fact. This doctrine applies with greater force in labor cases. As such, the findings of fact of the CA are binding and conclusive upon this Court. However, this rule is not absolute but admits of certain exceptions. Factual findings may be reviewed in a case when the findings of fact of the LA and the NLRC are in conflict with those of the CA. In this case, the LA and the NLRC held that respondents did not comply with the notice requirement; the CA found otherwise. Thus, although the instant petition

involves a question of fact, that is, whether or not the notice requirement was met, we can still rule on it.

4. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; PROCEDURAL REQUIREMENTS; TWO NOTICE REQUIREMENT APPLICABLE TO CASES OF SEAFARERS.— An employer has the burden of proving that an employee's dismissal was for a just cause. Failure to show this necessarily means that the dismissal was unjustified and therefore illegal. Furthermore, not only must the dismissal be for a cause provided by law, it should also comply with the rudimentary requirements of due process, that is, the opportunity to be heard and to defend oneself. These requirements are of equal application to cases of Filipino seamen recruited to work on board foreign vessels. Procedural due process requires that a seaman must be given a written notice of the charges against him and afforded a formal investigation where he can defend himself personally or through a representative before he can be dismissed and disembarked from the vessel. The employer is bound to furnish him two notices: (1) the written charge and (2) the written notice of dismissal (in case that is the penalty imposed). This is in accordance with the POEA Revised Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (POEA Revised Standard Employment Terms and Conditions).

5. ID.; ID.; ID.; ID.; ID.; THE NOTICE MUST STATE WITH PARTICULARITY THE ACTS OR OMISSIONS FOR WHICH THE EMPLOYEE'S DISMISSAL IS BEING SOUGHT.— Section 17 of the POEA Revised Standard Employment Terms and Conditions laid down the disciplinary procedures to be taken against erring seafarers: xxx. Furthermore, the notice must state with particularity the acts or omissions for which his dismissal is being sought. Contrary to respondents' claim, the logbook entries did not substantially comply with the first notice, or the written notice of charge(s). It did not state the particular acts or omissions for which petitioner was charged. The statement therein that petitioner had "not been able to live up to the company's SMS job description for 3rd Engineer" and that he had "been informed that if he [does] not improve his job/working performance within [a] short time he will have to be signed off according to CBA

Article 1 (7)" was couched in terms too general for legal comfort.

6. ID.; ID.; ID.; ID.; ID.; ANYTHING SHORT OF COMPLYING WITH THE PROCEDURAL REQUIREMENTS AMOUNTS TO A DISMISSAL.— Clearly, respondents were unmindful of the requirements explicitly laid down by law and jurisprudence. Anything short of complying with the same amounts to a dismissal. Thus, no amount of justification from respondents can move us now to declare the dismissal as being in accordance with the procedural requirements provided for by law. It cannot be overemphasized that sufficient notice should be given as part of due process because a worker's employment is his property in the constitutional sense.

7. ID.; POEA; SEAFARERS; NOT COVERED BY THE TERM REGULAR EMPLOYMENT.— It is well to remind both parties that, as early as *Brent School, Inc. v. Zamora*, we already held that seafarers are not covered by the term *regular employment*, as defined under Article 280 of the Labor Code. This was reiterated in *Coyoca v. National Labor Relations Commission*. Instead, they are considered contractual employees whose rights and obligations are governed primarily by the POEA Standard Employment Contract for Filipino Seamen (POEA Standard Employment Contract), the Rules and Regulations Governing Overseas Employment, and, more importantly, by Republic Act No. 8042, otherwise known as The Migrant Workers and Overseas Filipinos Act of 1995. Even the POEA Standard Employment Contract itself mandates that in no case shall a contract of employment concerning seamen exceed 12 months.

8. ID.; ID.; ID.; EMPLOYMENT THEREOF IS FOR A FIXED PERIOD ONLY.— It is an accepted maritime industry practice that the employment of seafarers is for a fixed period only. The Court acknowledges this to be for the mutual interest of both the seafarer and the employer. Seafarers cannot stay for a long and indefinite period of time at sea as limited access to shore activity during their employment has been shown to adversely affect them. Furthermore, the diversity in nationality, culture and language among the crew necessitates the limitation of the period of employment.

9. ID.; ID.; ID.; PROVISION IN THE COLLECTIVE BARGAINING AGREEMENT PROVIDING FOR A PROBATIONARY PERIOD OF EMPLOYMENT TO SEAFARERS CANNOT OVERRIDE THE PROVISIONS OF THE POEA STANDARD EMPLOYMENT CONTRACT.— While we recognize that petitioner was a registered member of the Associated Marine Officers and Seamen's Union of the Philippines which had a CBA with respondent Elite Shipping A.S. providing for a probationary period of employment, the CBA cannot override the provisions of the POEA Standard Employment Contract. The law is read into, and forms part of, contracts. And provisions in a contract are valid only if they are not contrary to law, morals, good customs, public order or public policy.

10. ID.; ID.; ID.; ID.; TERMS "PROBATIONARY" AND "PERMANENT" *VIS-A-VIS* SEAFARERS, CONSTRUED.— In *Millares v. NLRC*, this Court had occasion to rule on the use of the terms "permanent and probationary masters and employees" *vis-à-vis* contracts of enlistment of seafarers. In that case, petitioners made much of the fact that they were continually re-hired for 20 years by private respondent Esso International. By such circumstances, they claimed to have acquired regular status with all the rights and benefits appurtenant thereto. The Court quoted with favor the NLRC's explanation that the reference to permanent and probationary masters and employees was a misnomer. It did not change the fact that the contract for employment was for a definite period of time. **In using the terms "probationary" and "permanent" *vis-à-vis* seafarers, what was really meant was "eligible for re-hire."** This is the only logical explanation possible as the parties cannot and should not violate the POEA's directive that a contract of enlistment must not exceed 12 months.

APPEARANCES OF COUNSEL

Nicolas B. Nicolas for petitioner.

Ortega Del Castillo Bacorro Odulio Calma & Carbonell for respondents.

D E C I S I O N

CORONA, *J.*:

This petition for review on *certiorari*[1] seeks to set aside the November 26, 2004 decision[2] and March 9, 2006 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 74097.

Respondent Elite Shipping A.S. hired petitioner Dante D. de la Cruz as third engineer for the vessel M/S Arktis Morning through its local agency in the Philippines, co-respondent Maersk Filipinas Crewing Inc. The contract of employment was for a period of nine months, starting April 19, 1999, with a monthly basic salary of US$1,004.00 plus other benefits.

Petitioner was deployed to Jebel Ali, United Arab Emirates and boarded M/S Arktis Morning on May 14, 1999.

In a logbook entry dated June 18, 1999, chief engineer Normann Per Nielsen expressed his dissatisfaction over petitioner's performance:

> 3rd Eng. Dante D. de la Cruz has[,] since he signed on[,] not been able to live up to the company's SMS job describtion (*sic*) for 3rd Engineer[.] Today he has been informed that if he do[es] not improve his Job/Working performance within [a] short time he will be signed off according to CBA Article 1 (7).

Said Article 1 (7) of the collective bargaining agreement (CBA) between respondent Elite Shipping A.S. and its employees reads:

> (7) The first sixty (60) days of service is to be considered a probationary period which entitles a shipowner or his representative, *i.e.*[,] the master of the vessel[,] to terminate the contract by giving fourteen (14) days of written notice.

---

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

[2] Penned by Associate Justice Portia Alino-Hormachuelos and concurred in by Associate Justices Rebecca De Guia-Salvador and Aurora Santiago-Lagman of the Seventh Division of the Court of Appeals. *Rollo*, pp. 311-324.

[3] *Id*., pp. 341-343.

This entry was followed by another one dated June 26, 1999 which was similar in content.

On June 27, 1999, petitioner was informed of his discharge through a notice captioned "Notice according to CBA Article 1 (7)," to wit:

To: 3rd engineer Dante D. de la Cruz

Pls. be informed that you will be discharged according to CBA article 1 (7) in first possible port. Reason for the decision is, as you have been informed by chief engineer Per Nielsen on several occasions, he [does] not find you qualified for the position as 3rd engineer onboard this vessel. The chief engineer has also made 2 entries in the engine logbook, regarding your insufficient job/working, which you are well aware of.

Petitioner was then made to disembark at the port of Houston, Texas and was repatriated to Manila on July 17, 1999.

Petitioner thereafter filed a complaint for illegal dismissal with claims for the monetary equivalent of the unexpired portion of his contract, damages and attorney's fees in the National Labor Relations Commission (NLRC) on September 21, 1999.

The labor arbiter (LA) ruled that petitioner was dismissed without just cause and due process as the logbook entry (which respondents claimed to be the first notice to petitioner) was vague. It failed to expound on or state the details of petitioner's shortcomings or infractions. As such, petitioner was deprived of a real or meaningful opportunity to explain his side. Hence, the LA ruled that petitioner was entitled to a monetary equivalent of salaries for three months, moral and exemplary damages and attorney's fees.

On appeal, the NLRC upheld the LA's finding of illegal dismissal but deleted the award of moral and exemplary damages. Respondents moved for reconsideration. It was denied.

Thereafter, respondents filed a petition for *certiorari* (under Rule 65) with the CA. It granted the petition. It held that, although the findings of fact of the LA and NLRC were entitled to great respect, this rule was inapplicable because the NLRC committed

grave abuse of discretion in upholding the LA's decision. The findings were not only unsupported by substantial evidence but were also based solely on the ground that the logbook entries were vague and without concrete standards.

The CA deemed the logbook entries to be sufficient compliance with the first notice requirement of the law. It was a written appraisal of petitioner's poor job performance coupled with a warning that should he fail to improve his performance, he would be signed off in accordance with the provisions of the CBA. It reasoned that a probationary employee may be dismissed at anytime during the probationary period for failure to live up to the expectations of the employer.

Petitioner filed a motion for reconsideration of the CA decision. It was denied. Hence, this petition.

The main issue raised before us is whether or not petitioner was illegally dismissed by respondents.

Before addressing the merits of the controversy, we need to settle two preliminary issues. *First*, respondents interposed in their comment that the present petition should be dismissed outright as the motion for extension of time to file this petition for review was filed late.

In his petition, petitioner indicated that he received a copy of the CA resolution (dated March 9, 2006) denying his motion for reconsideration on March 24, 2006. He, therefore, had until April 8, 2006 to appeal said resolution to this Court or to file a motion for extension of time to file the petition. However, as April 8, 2006 fell on a Saturday, petitioner deemed it sufficient compliance to file his motion for extension on April 10, 2006, in accordance with Section 1, Rule 22 of the Rules of Court:

> SECTION 1. *How to compute time.* - xxx If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

Respondents countered that A.M. No. 00-2-14-SC dated February 29, 2000 (Re: Computation of Time When the Last

Day Falls on Saturday, Sunday or Legal Holiday and a Motion for Extension on Next Working Day is Granted) clarified that the aforementioned rule is applicable only to the filing of pleadings *other than motions for extension of time*, such that when a party seeks an extension to file a desired pleading, the provision no longer applies and the motion should be filed on the due date itself, regardless of the fact that it falls on a Saturday, Sunday or legal holiday.

Respondents' contention is incorrect.

A.M. No. 00-2-14-SC provides:

xxx xxx xxx

Whereas, the aforecited provision [Section 1, Rule 22 of the Rules of Court] applies in the matter of filing of pleadings in courts when the due date falls on a Saturday, Sunday or legal holiday, in which case, the filing of the said pleading on the next working day is deemed on time;

Whereas, the question has been raised if the period is extended *ipso jure* to the next working day immediately following where the last day of the period is a Saturday, Sunday or legal holiday so that when a motion for extension of time is filed, the period of extension is to be reckoned from the next working day and not from the original expiration of the period.

NOW THEREFORE, the Court Resolves, for the guidance of the Bench and the Bar, to declare that Section 1, Rule 22 speaks only of "the last day of the period" so that when a party seeks an extension and the same is granted, the due date ceases to be the last day and hence, the provision no longer applies. **Any extension of time to file the required pleading should therefore be counted from the expiration of the period regardless of the fact that said due date is a Saturday, Sunday or legal holiday.** (emphasis supplied)

Section 1, Rule 22, as clarified by the circular, is clear. Should a party desire to file any pleading, even a motion for extension of time to file a pleading, and the last day falls on a Saturday, Sunday or a legal holiday, he may do so on the next working day. This is what petitioner did in the case at bar.

However, according to the same circular, the petition for review on *certiorari* was indeed filed out of time. The provision states that in case a motion for extension is granted, the due date for the extended period shall be counted from the original due date, not from the next working day on which the motion for extension was filed. In *Luz v. National Amnesty Commission*,[4] we had occasion to expound on the matter. In that case, we held that the extension granted by the court should be tacked to the original period and commences immediately after the expiration of such period.

In the case at bar, although petitioner's filing of the motion for extension was within the period provided by law, the filing of the petition itself was not on time. Petitioner was granted an additional period of 30 days within which to file the petition. Reckoned from the original period, he should have filed it on May 8, 2006. Instead, he did so only on May 11, 2006, that is, 3 days late.

Nevertheless, we will gloss over this technicality and resolve the case on its merits in the exercise of this Court's equity jurisdiction as we have done in a number of cases.[5]

Well settled is the rule that litigations should, as much as possible, be decided on their merits and not on technicalities.[6] In accordance with this legal precept, this Court has ruled that being a few days late in the filing of the petition for review does not automatically warrant the dismissal thereof,[7] specially

---

[4] G.R. No. 159708, 24 September 2004, 439 SCRA 111, 115.

[5] *Orata v. IAC*, G.R. No. 73471, 8 May 1990, 185 SCRA 148, 152, citing *St. Peter Memorial Park, Inc. v. Cleofas,* 206 Phil. 224, 233-234 (1983). In *Ramos v. Bagasao*, No. L-51552, 28 February 1980, 96 SCRA 395, we held that the delay of four (4) days in filing a notice of appeal and a motion for an extension of time to file a record on appeal can be excused on the basis of equity with the additional consideration that said record was then already with respondent judge.

[6] *Id*., citing *Galdo v. Rosete*, No. L-47342, 25 July 1978, 84 SCRA 239, 242-243.

[7] *Id*., citing *Serrano v. CA*, No. L-46307, 9 October 1985, 139 SCRA 179, 186.

where strong considerations of substantial justice are manifest in the petition.[8] Such is the case here.

The *second* preliminary issue we need to address is the matter of this Court's jurisdiction in petitions for review on *certiorari* under Rule 45. It should be noted that our jurisdiction in such cases is limited only to questions of law. It does not extend to questions of fact. This doctrine applies with greater force in labor cases.[9] As such, the findings of fact of the CA are binding and conclusive upon this Court. However, this rule is not absolute but admits of certain exceptions. Factual findings may be reviewed in a case when the findings of fact of the LA and the NLRC are in conflict with those of the CA.[10] In this case, the LA and the NLRC held that respondents did not comply with the notice requirement; the CA found otherwise. Thus, although the instant petition involves a question of fact, that is, whether or not the notice requirement was met, we can still rule on it.

Now, the merits of the instant controversy.

The CA committed an error in holding that petitioner was not illegally dismissed. The contrary findings and conclusions made by the LA and the NLRC were supported by jurisprudence and the evidence on record.

An employer has the burden of proving that an employee's dismissal was for a just cause. Failure to show this necessarily means that the dismissal was unjustified and therefore illegal.[11]

---

[8] *Id*.

[9] *Skippers United Pacific, Inc. v. NLRC*, G.R. No. 148893, 12 July 2006, 494 SCRA 661, 667.

[10] *Bernardo v. CA*, G.R. No. 124261, 27 May 2004, 429 SCRA 285, 299-300. In that case, we held that the findings of fact of administrative bodies, if based on substantial evidence, are controlling on the reviewing authority. It is not for the appellate court to substitute its own judgment for that of the administrative agency on the sufficiency of the evidence and the credibility of the witnesses. Administrative decisions on matters within their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud or error of law.

[11] *Skippers United Pacific, Inc. v. NLRC*, *supra*, citing *Pascua v. NLRC*, 351 Phil. 48, 62 (1998).

Furthermore, not only must the dismissal be for a cause provided by law, it should also comply with the rudimentary requirements of due process, that is, the opportunity to be heard and to defend oneself.[12]

These requirements are of equal application to cases of Filipino seamen recruited to work on board foreign vessels. Procedural due process requires that a seaman must be given a written notice of the charges against him and afforded a formal investigation where he can defend himself personally or through a representative before he can be dismissed and disembarked from the vessel.[13] The employer is bound to furnish him two notices: (1) the written charge and (2) the written notice of dismissal (in case that is the penalty imposed).[14] This is in accordance with the POEA Revised Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (POEA Revised Standard Employment Terms and Conditions).

Section 17 of the POEA Revised Standard Employment Terms and Conditions laid down the disciplinary procedures to be taken against erring seafarers:

> Section 17. DISCIPLINARY PROCEDURES
>
> The Master shall comply with the following disciplinary procedures against an erring seafarer:
>
> A. The Master shall furnish the seafarer with a written notice containing the following:

[12] *Pascua v. NLRC*, *supra*, 62-63.

[13] See *Seahorse Maritime Corporation v. NLRC*, G.R. No. 84712, 15 May 1989, 173 SCRA 390. In that case, the Court held that as private respondent Singian was not informed of the cause or causes of his dismissal and was not investigated nor given a chance to air his side, his dismissal was without due process. However, the Court also ruled that his dismissal was for cause as he was given to drunkenness, violent temper, insubordination and habitual absenteeism. The Court found that these charges were not seriously controverted.

[14] *Skippers United Pacific, Inc. v NLRC, supra* note 9, citing *Skippers Pacific, Inc. v. Mira*, 440 Phil. 906, 919 (2002) and *Tingson v. NLRC*, G.R. No. 84702, 18 May 1990, 185 SCRA 498, 502, citing *National Service Corporation v. NLRC*, No. L-69870, 29 November 1988, 168 SCRA 122.

1. Grounds for the charges as listed in Section 31 of this Contract.

2. Date, time and place for a formal investigation of the charges against the seafarer concerned.

B. The Master or his authorized representative shall conduct the investigation or hearing, giving the seafarer the opportunity to explain or defend himself against the charges. An entry on the investigation shall be entered into the ship's logbook.

C. If, after the investigation or hearing, the Master is convinced that imposition of a penalty is justified, the Master shall issue a written notice of penalty and the reasons for it to the seafarer, with copies furnished to the Philippine agent.

xxx xxx xxx

Furthermore, the notice must state with particularity the acts or omissions for which his dismissal is being sought.[15]

Contrary to respondents' claim, the logbook entries did not substantially comply with the first notice, or the written notice of charge(s). It did not state the particular acts or omissions for which petitioner was charged. The statement therein that petitioner had "not been able to live up to the company's SMS job description for 3rd Engineer" and that he had "been informed that if he [does] not improve his job/working performance within [a] short time he will have to be signed off according to CBA Article 1 (7)" was couched in terms too general for legal comfort.

The CA held that the logbook entries were sufficient to enable petitioner to explain his side or to contest the negative assessment of his performance and were clearly intended to inform him to improve the same. We cannot fathom how the CA arrived at such a conclusion. The entries did not contain any information *at all* as to why he was even being warned of discharge in the first place. Even we were left to speculate as to what really transpired, calling for such an extreme course of action from the chief engineer. The entries raised more questions than answers.

[15] *Bondoc v. NLRC,* 342 Phil. 250, 258 (1997).

How *exactly* was he unable to live up to the company's SMS job description of a third engineer? Respondents should have indicated the grounds for the threatened termination, the specific acts or omissions illustrating the same, along with the date and the approximate time of their occurrence. For how else could petitioner be expected to meet the charges against him if all he was given as reason for his discharge was a vague and general accusation such as that handed down by the chief engineer? Even if the chief engineer verbally informed him of what his specific shortcomings were, as insisted upon by respondents, the POEA Revised Standard Employment Terms and Conditions and jurisprudence require that the charges be put in writing.

The same thing may be said of the written notice of dismissal. It sorely lacked the necessary details that should accompany it. Instead of delving into the grounds for petitioner's discharge, it merely echoed the logbook entries by nebulously justifying his dismissal on the ground that the chief engineer "[did] not find [petitioner] qualified for the position as 3rd engineer." Much like the first notice, it barely made mention of the grounds for his discharge. Again, we were left in the dark as to the nature of the acts or omissions relied upon as basis for the termination of petitioner's employment.

These ambiguities, attributable solely to respondents, should be resolved against them.

Moreover, we observed that the records were devoid of any proof indicating that petitioner was ever given an opportunity to present his side. In their comment, respondents in fact admitted not having conducted any formal investigation:

> A formal investigation in this case was not necessary because the findings against petitioner were not in the form of infractions that ought to be investigated. The issue against petitioner was the quality of his work as 3rd Engineer. Having been duly notified of his shortcomings, it devolved upon the petitioner to improve the quality of his work in order to pass his probationary period and be a regular employee. But petitioner did not.

They also insisted that as petitioner was served notice of his termination, the same constituted sufficient compliance with

the requirement of notice and due process as the notice gave him an opportunity to defend himself. [16]

Clearly, respondents were unmindful of the requirements explicitly laid down by law and jurisprudence. Anything short of complying with the same amounts to a dismissal. Thus, no amount of justification from respondents can move us now to declare the dismissal as being in accordance with the procedural requirements provided for by law. It cannot be overemphasized that sufficient notice should be given as part of due process because a worker's employment is his property in the constitutional sense.[17]

As to the substantive aspect of the requirement, suffice it to say that respondents dismally failed to prove that petitioner's termination from employment was for cause. As the logbook entries were too general and vague, we cannot even reach any conclusion on whether or not respondents had a valid cause to discharge petitioner. Not only was petitioner's dismissal procedurally flawed, it was also without just cause.

Lastly, petitioner and respondents were at odds over the former's employment status when he was discharged from the vessel. It was petitioner's position that he was already a regular employee when his services were terminated; respondents, on the other hand, insisted that he was then still on probationary status. This, according to respondents, entitled them to dismiss

---

[16] Per position paper for respondent, *rollo*, p. 35; reply to complainant's position paper, *id*., p. 75; and respondent's rejoinder, *id*., p. 88. However, in their notice and memorandum of appeal to the NLRC, *id*., p. 127, respondents, probably sensing the fallacy of their argument, contended that, "[c]omplainant was first notified to improve his performance. Thereafter he was given a notice of termination. The first notice gave him an opportunity not only to improve his performance[,] but more importantly[,] to defend himself." This argument was reiterated in their petition for *certiorari* filed in the CA, *id*., p. 168.

[17] *Zagala v. Mikado Philippines Corporation,* G.R. No. 160863, 27 September 2006, 503 SCRA 581, 589; *Coca-Cola Bottlers, Phils., Inc. v. Kapisanan ng Malayang Manggagawa sa Coca-Cola-FFW*, G.R. No. 148205, 28 February 2005, 452 SCRA 480, 500; *Asuncion v. NLRC, et al*., 414 Phil. 329, 336 (2001) and *Maneja v. NLRC*, 353 Phil. 45, 66 (1998).

him in accordance with the provisions of Article 1 (7) of the CBA (which allows the master to terminate the contract of one under probation by merely serving a written notice 14 days prior to the contemplated discharge) and the requirements on the termination of a probationary employee's employment as laid down in *Manila Hotel Corporation v. NLRC*.[18]

It is well to remind both parties that, as early as *Brent School, Inc. v. Zamora*,[19] we already held that seafarers are not covered by the term *regular employment*, as defined under Article 280 of the Labor Code. This was reiterated in *Coyoca v. National Labor Relations Commission*.[20] Instead, they are considered contractual employees whose rights and obligations are governed primarily by the POEA Standard Employment Contract for Filipino Seamen (POEA Standard Employment Contract), the Rules and Regulations Governing Overseas Employment, and, more importantly, by Republic Act No. 8042, otherwise known as The Migrant Workers and Overseas Filipinos Act of 1995.[21] Even the POEA Standard Employment Contract itself mandates that in no case shall a contract of employment concerning seamen exceed 12 months.

It is an accepted maritime industry practice that the employment of seafarers is for a fixed period only. The Court acknowledges

---

[18] 225 Phil. 127, 135 (1986). This case enumerated the limitations for the termination of a probationary employee's employment, to wit:

1. It must be exercised in accordance with the specific requirements of the contract;
2. If a particular time is prescribed, the termination must be within such time and if formal notice is required, then that form must be used;
3. The employer's dissatisfaction must be real and in good faith, not feigned so as to circumvent the contract or the law;
4. There must be no unlawful discrimination in the dismissal.

[19] G.R. No. 48494, 5 February 1990, 181 SCRA 702, 714.

[20] 312 Phil. 1137, 1144 (1995).

[21] *Skippers United Pacific, Inc. v. NLRC*, *supra* note 9, citing *Ravago v. ESSO Eastern Marine, Ltd.*, G.R. No. 158324, 14 March 2005, 453 SCRA 381, 402.

this to be for the mutual interest of both the seafarer and the employer. Seafarers cannot stay for a long and indefinite period of time at sea as limited access to shore activity during their employment has been shown to adversely affect them. Furthermore, the diversity in nationality, culture and language among the crew necessitates the limitation of the period of employment.[22]

While we recognize that petitioner was a registered member of the Associated Marine Officers and Seamen's Union of the Philippines which had a CBA with respondent Elite Shipping A.S. providing for a probationary period of employment, the CBA cannot override the provisions of the POEA Standard Employment Contract. The law is read into, and forms part of, contracts. And provisions in a contract are valid only if they are not contrary to law, morals, good customs, public order or public policy.[23]

In *Millares v. NLRC*,[24] this Court had occasion to rule on the use of the terms "permanent and probationary masters and employees" *vis-à-vis* contracts of enlistment of seafarers. In that case, petitioners made much of the fact that they were continually re-hired for 20 years by private respondent Esso International. By such circumstances, they claimed to have acquired regular status with all the rights and benefits appurtenant thereto. The Court quoted with favor the NLRC's explanation that the reference to permanent and probationary masters and employees was a misnomer. It did not change the fact that the contract for employment was for a definite period of time. **In using the terms "probationary" and "permanent" *vis-à-vis* seafarers, what was really meant was "eligible for re-hire."**

This is the only logical explanation possible as the parties cannot and should not violate the POEA's directive that a contract of enlistment must not exceed 12 months.

---

[22] *Pentagon International Shipping, Inc. v. Adelantar*, G.R. No. 157373, 27 July 2004, 435 SCRA 342, 348, citing *Millares v. NLRC,* 434 Phil. 524, 539 (2002).

[23] CIVIL CODE, Art. 1306.

[24] *Supra*.

WHEREFORE, the petition is hereby *GRANTED*. The November 26, 2004 decision and March 9, 2006 resolution of the Court of Appeals in CA-G.R. SP No. 74097 are *REVERSED and SET ASIDE*. The March 22, 2002 resolution of the National Labor Relations Commission in NLRC NCR CA No. 029139-01 is *REINSTATED.*

SO ORDERED.

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

Azcuna, J., on official leave.

THIRD DIVISION

[G.R. No. 172410. April 14, 2008]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE TOLL REGULATORY BOARD (TRB), *petitioner*, *vs.* **HOLY TRINITY REALTY DEVELOPMENT CORP.,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; EXPROPRIATION PROCEDURES UNDER REPUBLIC ACT NO. 8974 AND RULE 67 OF THE RULES OF COURT, DISTINGUISHED.— At the outset, we call attention to a significant oversight in the TRB's line of reasoning. It failed to distinguish between the expropriation procedures under Republic Act No. 8974 and Rule 67 of the Rules of Court. Republic Act No. 8974 and Rule 67 of the Rules of Court speak of different procedures, with the former specifically governing expropriation proceedings for national government infrastructure projects. Thus, in *Republic v. Gingoyon*, we held: There are at least two crucial differences

between the respective procedures under Rep. Act No. 8974 and Rule 67. **Under the statute, the Government is required to make immediate payment to the property owner upon the filing of the complaint to be entitled to a writ of possession, whereas in Rule 67, the Government is required only to make an initial deposit with an authorized government depositary.** Moreover, Rule 67 prescribes that the initial deposit be equivalent to the assessed value of the property for purposes of taxation, unlike Rep. Act No. 8974 which provides, as the relevant standard for initial compensation, the market value of the property as stated in the tax declaration or the current relevant zonal valuation of the Bureau of Internal Revenue (BIR), whichever is higher, and the value of the improvements and/or structures using the replacement cost method. x x x x Rule 67 outlines the procedure under which eminent domain may be exercised by the Government. Yet by no means does it serve at present as the solitary guideline through which the State may expropriate private property. For example, Section 19 of the Local Government Code governs as to the exercise by local government units of the power of eminent domain through an enabling ordinance. And then there is Rep. Act No. 8974, which covers expropriation proceedings intended for national government infrastructure projects. Rep. Act No. 8974, which provides for a procedure eminently more favorable to the property owner than Rule 67, inescapably applies in instances when the national government expropriates property "for national government infrastructure projects." Thus, if expropriation is engaged in by the national government for purposes other than national infrastructure projects, the assessed value standard and the deposit mode prescribed in Rule 67 continues to apply. There is no question that the proceedings in this case deal with the expropriation of properties intended for a national government infrastructure project. Therefore, the RTC correctly applied the procedure laid out in Republic Act No. 8974, by requiring the deposit of the amount equivalent to 100% of the zonal value of the properties sought to be expropriated before the issuance of a writ of possession in favor of the Republic.

2. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT INFRASTRUCTURE PROJECTS; EXPROPRIATION PROCEDURES UNDER REPUBLIC ACT NO. 8974; IMMEDIATE PAYMENT OF 100% OF THE CURRENT ZONAL VALUE OF THE PROPERTY EXPROPRIATED

TO THE OWNER THEREOF IS A REQUISITE.— We agree with the Court of Appeals, and find no merit in the instant Petition. The deposit was made in order to comply with Section 4 of Republic Act No. 8974, which requires nothing less than the *immediate payment* of 100% of the value of the property, based on the current zonal valuation of the BIR, to the property owner. Thus, going back to our ruling in *Republic v. Gingoyon*: It is the plain intent of Rep. Act No. 8974 to supersede the system of deposit under Rule 67 with the scheme of "immediate payment" in cases involving national government infrastructure projects. xxx. The critical factor in the different modes of effecting delivery which gives legal effect to the act is the actual intention to deliver on the part of the party making such delivery. The intention of the TRB in depositing such amount through DPWH was clearly to comply with the requirement of immediate payment in Republic Act No. 8974, so that it could already secure a writ of possession over the properties subject of the expropriation and commence implementation of the project. In fact, TRB did not object to HTRDC's Motion to Withdraw Deposit with the RTC, for as long as HTRDC shows (1) that the property is free from any lien or encumbrance and (2) that respondent is the absolute owner thereof.

3. ID.; ID.; ID.; ID.; ID.; INTEREST EARNED BY THE AMOUNT DEPOSITED IN THE EXPROPRIATION ACCOUNT ACCRUES TO THE OWNER OF THE PRINCIPAL BY VIRTUE OF ACCESSION.— A close scrutiny of TRB's arguments would further reveal that it does not directly challenge the Court of Appeals' determinative pronouncement that the interest earned by the amount deposited in the expropriation account accrues to HTRDC by virtue of accession. TRB only asserts that HTRDC is "entitled only to an amount equivalent to the zonal value of the expropriated property, nothing more and nothing less." We agree in TRB's statement since it is exactly how the amount of the immediate payment shall be determined in accordance with Section 4 of Republic Act No. 8974, *i.e.*, an amount equivalent to 100% of the zonal value of the expropriated properties. However, TRB already complied therewith by depositing the required amount in the expropriation account of DPWH with LBP-South Harbor. By depositing the said amount, TRB is already considered to have paid the same to HTRDC, and HTRDC became the owner thereof.

The amount earned interest *after* the deposit; hence, the interest should pertain to the owner of the principal who is already determined as HTRDC. The interest is paid by LBP-South Harbor on the deposit, and the TRB cannot claim that it paid an amount more than what it is required to do so by law. Nonetheless, we find it necessary to emphasize that HTRDC is determined to be the owner of only a part of the amount deposited in the expropriation account, in the sum of **₱22,968,000.00**. Hence, it is entitled by right of accession to the interest that had accrued to the said amount only.

4. ID.; ID.; ID.; ID.; ID.; RULING IN THE CASES OF *NATIONAL POWER CORPORATION V. ANGAS* (G.R. NOS. 60225-26 8 MAY 1992) AND *LAND BANK OF THE PHILIPPINES V. WYCOCO* (G.R. NO. 140160 13 JANUARY 2004), INAPPLICABLE TO CASE AT BAR.— We are not persuaded by TRB's citation of *National Power Corporation v. Angas* and *Land Bank of the Philippines v. Wycoco*, in support of its argument that the issue on interest is merely part and parcel of the determination of just compensation which should be determined in the second stage of the proceedings only. We find that neither case is applicable herein. The issue in *Angas* is whether or not, in the computation of the legal rate of interest on just compensation for expropriated lands, the applicable law is Article 2209 of the Civil Code which prescribes a 6% legal interest rate, or Central Bank Circular No. 416 which fixed the legal rate at 12% per annum. We ruled in *Angas* that since the kind of interest involved therein is interest by way of damages for delay in the payment thereof, and not as earnings from loans or forbearances of money, Article 2209 of the Civil Code prescribing the 6% interest shall apply. In *Wycoco*, on the other hand, we clarified that interests in the form of damages cannot be applied where there is prompt and valid payment of just compensation. The case at bar, however, does not involve interest as damages for delay in payment of just compensation. It concerns interest earned by the amount deposited in the expropriation account.

5. ID.; ID.; ID.; ID.; JUST COMPENSATION MUST BE IMMEDIATELY PAID UPON FILING OF THE COMPLAINT .— Under Section 4 of Republic Act No. 8974, the implementing agency of the government pays just compensation twice: (1) immediately upon the filing of the

complaint, where the amount to be paid is 100% of the value of the property based on the current relevant zonal valuation of the BIR (*initial payment*); and (2) when the decision of the court in the determination of just compensation becomes final and executory, where the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court (*final payment*). HTRDC never alleged that it was seeking interest because of delay in either of the two payments enumerated above. In fact, HTRDC's cause of action is based on the prompt initial payment of just compensation, which effectively transferred the ownership of the amount paid to HTRDC. Being the owner of the amount paid, HTRDC is claiming, by the right of accession, the interest *earned* by the same while on deposit with the bank.

6. ID.; ID.; ID.; ID.; THE EFFECTS OF THE CONSTRUCTIVE DELIVERY OF THE PAYMENT OF JUST COMPENSATION TO THE OWNER OF THE EXPROPRIATED PROPERTY, ONCE THE CONDITIONS HAVE BEEN FULFILLED, SHALL RETROACT TO THE ACTUAL DATE OF THE DEPOSIT OF THE SAID AMOUNT IN THE EXPROPRIATION ACCOUNT OF THE GOVERNMENT AGENCY.— As a final note, TRB does not object to HTRDC's withdrawal of the amount of ₱22,968,000.00 from the expropriation account, provided that it is able to show (1) that the property is free from any lien or encumbrance and (2) that it is the absolute owner thereof. The said conditions do not put in abeyance the constructive delivery of the said amount to HTRDC pending the latter's compliance therewith. Article 1187 of the Civil Code provides that the "effects of a conditional obligation to give, once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation." Hence, when HTRDC complied with the given conditions, as determined by the RTC in its Order dated 21 April 2003, the effects of the constructive delivery retroacted to the actual date of the deposit of the amount in the expropriation account of DPWH.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Ramon Duque Pagarigan for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to set aside the Decision[1] dated 21 April 2006 of the Court of Appeals in CA-G.R. SP No. 90981 which, in turn, set aside two Orders[2] dated 7 February 2005[3] and 16 May 2005[4] of the Regional Trial Court (RTC) of Malolos, Bulacan, in Civil Case No. 869-M-2000.

The undisputed factual and procedural antecedents of this case are as follows:

On 29 December 2000, petitioner Republic of the Philippines, represented by the Toll Regulatory Board (TRB), filed with the RTC a Consolidated Complaint for Expropriation against landowners whose properties would be affected by the construction, rehabilitation and expansion of the North Luzon Expressway. The suit was docketed as Civil Case No. 869-M-2000 and raffled to Branch 85, Malolos, Bulacan. Respondent Holy Trinity Realty and Development Corporation (HTRDC) was one of the affected landowners.

On 18 March 2002, TRB filed an Urgent *Ex-Parte* Motion for the issuance of a Writ of Possession, manifesting that it deposited a sufficient amount to cover the payment of 100% of the zonal value of the affected properties, in the total amount of ₱28,406,700.00, with the Land Bank of the Philippines, South Harbor Branch (LBP-South Harbor), an authorized government depository. TRB maintained that since it had already complied with the provisions of Section 4 of Republic Act

---

[1] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Arturo D. Brion and Arcangelita M. Romilla-Lontok, concurring; *rollo*, pp. 32-39.

[2] Issued by Judge Ma. Belen Ringpis Liban.

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

[4] *Id*. at 164.

No. 8974[5] in relation to Section 2 of Rule 67 of the Rules of Court, the issuance of the writ of possession becomes ministerial on the part of the RTC.

The RTC issued, on 19 March 2002, an Order for the Issuance of a Writ of Possession, as well as the Writ of Possession itself. HTRDC thereafter moved for the reconsideration of the 19 March 2002 Order of the RTC.

On 7 October 2002, the Sheriff filed with the RTC a Report on Writ of Possession stating, among other things, that since none of the landowners voluntarily vacated the properties subject of the expropriation proceedings, the assistance of the Philippine National Police (PNP) would be necessary in implementing the Writ of Possession. Accordingly, TRB, through the Office of the Solicitor General (OSG), filed with the RTC an Omnibus Motion praying for an Order directing the PNP to assist the Sheriff in the implementation of the Writ of Possession. On 15 November 2002, the RTC issued an Order directing the landowners to file their comment on TRB's Omnibus Motion.

On 3 March 2003, HTRDC filed with the RTC a Motion to Withdraw Deposit, praying that the respondent or its duly authorized representative be allowed to withdraw the amount of ₱22,968,000.00, out of TRB's advance deposit of ₱28,406,700.00 with LBP-South Harbor, including the interest which accrued thereon. Acting on said motion, the RTC issued an Order dated 21 April 2003, directing the manager of LBP-South Harbor to release in favor of HTRDC the amount of ₱22,968,000.00 since the latter already proved its absolute ownership over the subject properties and paid the taxes due thereon to the government. According to the RTC, "(t)he issue however on the interest earned by the amount deposited in the bank, if there is any, should still be threshed out."[6]

---

[5] AN ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES.

[6] CA *rollo*, p. 146.

On 7 May 2003, the RTC conducted a hearing on the accrued interest, after which, it directed the issuance of an order of expropriation, and granted TRB a period of 30 days to inquire from LBP-South Harbor "whether the deposit made by DPWH with said bank relative to these expropriation proceedings is earning interest or not."[7]

The RTC issued an Order, on 6 August 2003, directing the appearance of LBP Assistant Vice-President Atty. Rosemarie M. Osoteo and Department Manager Elizabeth Cruz to testify on whether the Department of Public Works and Highways' (DPWH's) expropriation account with the bank was earning interest. On 9 October 2003, TRB instead submitted a Manifestation to which was attached a letter dated 19 August 2003 by Atty. Osoteo stating that the DPWH Expropriation Account was an interest bearing current account.

On 11 March 2004, the RTC issued an Order resolving as follows the issue of ownership of the interest that had accrued on the amount deposited by DPWH in its expropriation current account with LBP-South Harbor:

> WHEREFORE, the interest earnings from the deposit of ₱22,968,000.00 respecting one hundred (100%) percent of the zonal value of the affected properties in this expropriation proceedings under the principle of accession are considered as fruits and should properly pertain to the herein defendant/property owner [HTRDC]. Accordingly, the Land Bank as the depositary bank in this expropriation proceedings is (1) directed to make the necessary computation of the accrued interest of the amount of ₱22,968,000.00 from the time it was deposited up to the time it was released to Holy Trinity Realty and Development Corp. and thereafter (2) to release the same to the defendant Holy Trinity Development Corporation through its authorized representative.[8]

TRB filed a Motion for Reconsideration of the afore-quoted RTC Order, contending that the payment of interest on money deposited and/or consigned for the purpose of securing a writ of possession was sanctioned neither by law nor by jurisprudence.

---

[7] *Id*. at 147.

[8] *Rollo,* p. 143.

TRB filed a Motion to Implement Order dated 7 May 2003, which directed the issuance of an order of expropriation. On 5 November 2004, the RTC issued an Order of Expropriation.

On 7 February 2005, the RTC likewise granted TRB's Motion for Reconsideration. The RTC ruled that the issue as to whether or not HTRDC is entitled to payment of interest should be ventilated before the Board of Commissioners which will be created later for the determination of just compensation.

Now it was HTRDC's turn to file a Motion for Reconsideration of the latest Order of the RTC. The RTC, however, denied HTRDC's Motion for Reconsideration in an Order dated 16 May 2005.

HTRDC sought recourse with the Court of Appeals by filing a Petition for *Certiorari*, docketed as CA-G.R. SP No. 90981. In its Decision, promulgated on 21 April 2006, the Court of Appeals vacated the Orders dated 7 February 2005 and 16 May 2005 of the RTC, and reinstated the Order dated 11 March 2004 of the said trial court wherein it ruled that the interest which accrued on the amount deposited in the expropriation account belongs to HTRDC by virtue of accession. The Court of Appeals thus declared:

> WHEREFORE, the foregoing premises considered, the assailed Orders dated 07 February and 16 May 2005 respectively of the Regional Trial Court of Malolos, Bulacan (Branch 85) are hereby VACATED and SET ASIDE. Accordingly, the Order dated 11 March 2004 is hereby reinstated.[9]

From the foregoing, the Republic, represented by the TRB, filed the present Petition for Review on *Certiorari*, steadfast in its stance that HTRDC is "entitled only to an amount equivalent to the zonal value of the expropriated property, nothing more and nothing less."[10] According to the TRB, the owner of the subject properties is entitled to an exact amount as clearly defined in both Section 4 of Republic Act No. 8974, which reads:

---

[9] *Id*. at 38-39.

[10] *Id*. at 314.

Section 4. *Guidelines for Expropriation Proceedings*. – Whenever it is necessary to acquire real property for the right-of-way, site or location for any national government infrastructure project through expropriation, the appropriate implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:

(a) Upon the filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the **amount equivalent to the sum of (1) one hundred (100%) percent of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR)**; and (2) the value of the improvements and/or structures as determined under Section 7 hereof.

and Section 2, Rule 67 of the Rules of Court, which provides:

Sec. 2. *Entry of plaintiff upon depositing value with authorized government depositary*. – Upon the filing of the complaint or at anytime thereafter and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depositary **an amount equivalent to the assessed value of the property for purposes of taxation** to be held by such bank subject to the orders of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a government bank of the Republic of the Philippines payable on demand to the authorized government depositary.

The TRB reminds us that there are two stages[11] in expropriation proceedings, the determination of the authority to exercise eminent

---

[11] We held in *Heirs of Alberto Suguitan v. City of Mandaluyong*, 384 Phil. 676, 691 (2000) that:

Rule 67 of the 1997 Revised Rules of Court reveals that expropriation proceedings are comprised of two stages:

(1) the first is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit; it ends with an order if not in a dismissal of the action, of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint;

domain and the determination of just compensation. The TRB argues that it is only during the second stage when the court will appoint commissioners and determine claims for entitlement to interest, citing *Land Bank of the Philippines v. Wycoco*[12] and *National Power Corporation v. Angas*.[13]

The TRB further points out that the expropriation account with LBP-South Harbor is not in the name of HTRDC, but of DPWH. Thus, the said expropriation account includes the compensation for the other landowners named defendants in Civil Case No. 869-M-2000, and does not exclusively belong to respondent.

At the outset, we call attention to a significant oversight in the TRB's line of reasoning. It failed to distinguish between the expropriation procedures under Republic Act No. 8974 and Rule 67 of the Rules of Court. Republic Act No. 8974 and Rule 67 of the Rules of Court speak of different procedures, with the former specifically governing expropriation proceedings for national government infrastructure projects. Thus, in *Republic v. Gingoyon*,[14] we held:

> There are at least two crucial differences between the respective procedures under Rep. Act No. 8974 and Rule 67. **Under the statute, the Government is required to make immediate payment to the property owner upon the filing of the complaint to be entitled to a writ of possession, whereas in Rule 67, the Government is required only to make an initial deposit with an authorized government depositary.** Moreover, Rule 67 prescribes that the initial deposit be equivalent to the assessed value of the property for purposes of taxation, unlike Rep. Act No. 8974 which provides, as the relevant standard for initial compensation, the market value of the property as stated in the tax declaration or the current relevant zonal valuation of the Bureau of Internal Revenue (BIR), whichever

(2) the second phase is concerned with the determination by the court of the just compensation for the property sought to be taken; this is done by the court with the assistance of not more than three (3) commissioners.

[12] G.R. No. 140160, 13 January 2004, 419 SCRA 67, 80.

[13] G.R. Nos. 60225-26, 8 May 1992, 208 SCRA 542.

[14] G.R. No. 166429, 19 December 2005, 478 SCRA 474, 509-515.

is higher, and the value of the improvements and/or structures using the replacement cost method.

xxx xxx xxx

Rule 67 outlines the procedure under which eminent domain may be exercised by the Government. Yet by no means does it serve at present as the solitary guideline through which the State may expropriate private property. For example, Section 19 of the Local Government Code governs as to the exercise by local government units of the power of eminent domain through an enabling ordinance. And then there is Rep. Act No. 8974, which covers expropriation proceedings intended for national government infrastructure projects.

Rep. Act No. 8974, which provides for a procedure eminently more favorable to the property owner than Rule 67, inescapably applies in instances when the national government expropriates property "for national government infrastructure projects." Thus, if expropriation is engaged in by the national government for purposes other than national infrastructure projects, the assessed value standard and the deposit mode prescribed in Rule 67 continues to apply.

There is no question that the proceedings in this case deal with the expropriation of properties intended for a national government infrastructure project. Therefore, the RTC correctly applied the procedure laid out in Republic Act No. 8974, by requiring the deposit of the amount equivalent to 100% of the zonal value of the properties sought to be expropriated before the issuance of a writ of possession in favor of the Republic.

The controversy, though, arises not from the amount of the deposit, but as to the ownership of the interest that had since accrued on the deposited amount.

Whether the Court of Appeals was correct in holding that the interest earned by the deposited amount in the expropriation account would accrue to HRTDC by virtue of accession, hinges on the determination of who actually owns the deposited amount, since, under Article 440 of the Civil Code, the right of accession is conferred by ownership of the principal property:

Art. 440. The ownership of property gives the right by accession to everything which is produced thereby, or which is incorporated or attached thereto, either naturally or artificially.

The principal property in the case at bar is part of the deposited amount in the expropriation account of DPWH which pertains particularly to HTRDC. Such amount, determined to be ₱22,968,000.00 of the ₱28,406,700.00 total deposit, was already ordered by the RTC to be released to HTRDC or its authorized representative. The Court of Appeals further recognized that the deposit of the amount was already deemed a constructive delivery thereof to HTRDC:

> When the [herein petitioner] TRB deposited the money as advance payment for the expropriated property with an authorized government depositary bank for purposes of obtaining a writ of possession, it is deemed to be a "constructive delivery" of the amount corresponding to the 100% zonal valuation of the expropriated property. Since [HTRDC] is entitled thereto and undisputably the owner of the principal amount deposited by [herein petitioner] TRB, conversely, the interest yield, as accession, in a bank deposit should likewise pertain to the owner of the money deposited.[15]

Since the Court of Appeals found that the HTRDC is the owner of the deposited amount, then the latter should also be entitled to the interest which accrued thereon.

We agree with the Court of Appeals, and find no merit in the instant Petition.

The deposit was made in order to comply with Section 4 of Republic Act No. 8974, which requires nothing less than the *immediate payment* of 100% of the value of the property, based on the current zonal valuation of the BIR, to the property owner. Thus, going back to our ruling in *Republic v. Gingoyon*:[16]

> It is the plain intent of Rep. Act No. 8974 to supersede the system of deposit under Rule 67 with the scheme of "immediate payment" in cases involving national government infrastructure projects. The following portion of the Senate deliberations, cited by PIATCO in its Memorandum, is worth quoting to cogitate on the purpose behind the plain meaning of the law:

---

[15] *Rollo*, p. 37.

[16] *Supra* note 14 at 519-520.

THE CHAIRMAN (SEN. CAYETANO). "x x x Because the Senate believes that, you know, we have to pay the landowners immediately not by treasury bills but by cash.

Since we are depriving them, you know, upon payment, 'no, of possession, we might as well pay them as much, 'no, hindi lang 50 percent.

xxx xxx xxx

THE CHAIRMAN (REP. VERGARA). Accepted.

xxx xxx xxx

THE CHAIRMAN (SEN. CAYETANO). *Oo. Because this is really in favor of the landowners, e.*

THE CHAIRMAN (REP. VERGARA). That's why we need to really secure the availability of funds.

xxx xxx xxx

THE CHAIRMAN (SEN. CAYETANO). *No, no. It's the same. It says here: iyong first paragraph, diba? Iyong zonal – talagang magbabayad muna. In other words, you know, there must be a payment kaagad.* (TSN, Bicameral Conference on the Disagreeing Provisions of House Bill 1422 and Senate Bill 2117, August 29, 2000, pp. 14-20)

xxx xxx xxx

THE CHAIRMAN (SEN. CAYETANO). *Okay, okay, 'no.* ***Unang-una*, it is not deposit, 'no. It's payment."**

REP. BATERINA. *It's payment, ho, payment."*

The critical factor in the different modes of effecting delivery which gives legal effect to the act is the actual intention to deliver on the part of the party making such delivery.[17] The intention of the TRB in depositing such amount through DPWH was clearly to comply with the requirement of immediate payment in Republic Act No. 8974, so that it could already secure a writ of possession over the properties subject of the expropriation and commence implementation of the project. In fact, TRB did not object to HTRDC's Motion to Withdraw Deposit with the

[17] *Union Motor Corporation v. Court of Appeals*, 414 Phil. 33, 43 (2001).

RTC, for as long as HTRDC shows (1) that the property is free from any lien or encumbrance and (2) that respondent is the absolute owner thereof.[18]

A close scrutiny of TRB's arguments would further reveal that it does not directly challenge the Court of Appeals' determinative pronouncement that the interest earned by the amount deposited in the expropriation account accrues to HTRDC by virtue of accession. TRB only asserts that HTRDC is "entitled only to an amount equivalent to the zonal value of the expropriated property, nothing more and nothing less."

We agree in TRB's statement since it is exactly how the amount of the immediate payment shall be determined in accordance with Section 4 of Republic Act No. 8974, *i.e.*, an amount equivalent to 100% of the zonal value of the expropriated properties. However, TRB already complied therewith by depositing the required amount in the expropriation account of DPWH with LBP-South Harbor. By depositing the said amount, TRB is already considered to have paid the same to HTRDC, and HTRDC became the owner thereof. The amount earned interest *after* the deposit; hence, the interest should pertain to the owner of the principal who is already determined as HTRDC. The interest is paid by LBP-South Harbor on the deposit, and the TRB cannot claim that it paid an amount more than what it is required to do so by law.

Nonetheless, we find it necessary to emphasize that HTRDC is determined to be the owner of only a part of the amount deposited in the expropriation account, in the sum of **₱22,968,000.00.** Hence, it is entitled by right of accession to the interest that had accrued to the said amount only.

We are not persuaded by TRB's citation of *National Power Corporation v. Angas* and *Land Bank of the Philippines v. Wycoco*, in support of its argument that the issue on interest is merely part and parcel of the determination of just compensation which should be determined in the second stage of the proceedings only. We find that neither case is applicable herein.

[18] CA *rollo*, pp. 141-143.

The issue in *Angas* is whether or not, in the computation of the legal rate of interest on just compensation for expropriated lands, the applicable law is Article 2209 of the Civil Code which prescribes a 6% legal interest rate, or Central Bank Circular No. 416 which fixed the legal rate at 12% per annum. We ruled in *Angas* that since the kind of interest involved therein is interest by way of damages for delay in the payment thereof, and not as earnings from loans or forbearances of money, Article 2209 of the Civil Code prescribing the 6% interest shall apply. In *Wycoco*, on the other hand, we clarified that interests in the form of damages cannot be applied where there is prompt and valid payment of just compensation.

The case at bar, however, does not involve interest as damages for delay in payment of just compensation. It concerns interest earned by the amount deposited in the expropriation account.

Under Section 4 of Republic Act No. 8974, the implementing agency of the government pays just compensation twice: (1) immediately upon the filing of the complaint, where the amount to be paid is 100% of the value of the property based on the current relevant zonal valuation of the BIR (*initial payment*); and (2) when the decision of the court in the determination of just compensation becomes final and executory, where the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court (*final payment*).[19]

HTRDC never alleged that it was seeking interest because of delay in either of the two payments enumerated above. In fact, HTRDC's cause of action is based on the prompt initial payment of just compensation, which effectively transferred the ownership of the amount paid to HTRDC. Being the owner

[19] The fourth paragraph of Section 4 of Rep. Act No. 8974 states: "In the event that the owner of the property contests the implementing agency's proffered value, the court shall determine the just compensation to be paid the owner within sixty (60) days from the date of filing of the expropriation case. When the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court."

of the amount paid, HTRDC is claiming, by the right of accession, the interest *earned* by the same while on deposit with the bank.

That the expropriation account was in the name of DPWH, and not of HTRDC, is of no moment. We quote with approval the following reasoning of the Court of Appeals:

> Notwithstanding that the amount was deposited under the DPWH account, ownership over the deposit transferred by operation of law to the [HTRDC] and whatever interest, considered as civil fruits, accruing to the amount of Php22,968,000.00 should properly pertain to [HTRDC] as the lawful owner of the principal amount deposited following the principle of accession. Bank interest partake the nature of civil fruits under Art. 442 of the New Civil Code. And since these are considered fruits, ownership thereof should be due to the owner of the principal. Undoubtedly, being an attribute of ownership, the [HTRDC's] right over the fruits (*jus fruendi*), that is the bank interests, must be respected.[20]

Considering that the expropriation account is in the name of DPWH, then, DPWH should at most be deemed as the trustee of the amounts deposited in the said accounts irrefragably intended as initial payment for the landowners of the properties subject of the expropriation, until said landowners are allowed by the RTC to withdraw the same.

As a final note, TRB does not object to HTRDC's withdrawal of the amount of ₱22,968,000.00 from the expropriation account, provided that it is able to show (1) that the property is free from any lien or encumbrance and (2) that it is the absolute owner thereof.[21] The said conditions do not put in abeyance the constructive delivery of the said amount to HTRDC pending the latter's compliance therewith. Article 1187[22] of the Civil

---

[20] *Rollo*, p. 37.

[21] CA *rollo*, pp. 141-143.

[22] Art. 1187. The effects of a conditional obligation to give, once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation. Nevertheless, when the obligation imposes reciprocal prestations upon the parties, the fruits and interests during the pendency of the condition shall be deemed to have been mutually compensated. If the obligation is unilateral, the debtor shall appropriate the fruits and interests received, unless

Code provides that the "effects of a conditional obligation to give, once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation." Hence, when HTRDC complied with the given conditions, as determined by the RTC in its Order[23] dated 21 April 2003, the effects of the constructive delivery retroacted to the actual date of the deposit of the amount in the expropriation account of DPWH.

WHEREFORE, the Petition is *DENIED*. The Court of Appeals Decision dated 21 April 2006 in CA-G.R. SP No. 90981, which set aside the 7 February 2005 and 16 May 2005 Orders of the Regional Trial Court of Malolos, Bulacan, is *AFFIRMED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Reyes, and *Leonardo-de Castro,*[*] *JJ.,* concur.

---

from the nature and circumstances of the obligation it should be inferred that the intention of the person constituting the same was different.

In obligations to do and not to do, the courts shall determine, in each case, the retroactive effect of the condition that has been complied with.

[23] CA *rollo*, pp. 144-146.

[*] Justice Teresita J. Leonardo-De Castro was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 26 March 2008.

FIRST DIVISION

[G.R. No. 174011. April 14, 2008]

AIR TRANSPORTATION OFFICE, DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS and MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY, *petitioners, vs.* **ANGELES URGELLO TONGOY and the HEIRS OF PILAR U. ARCENAS, namely, ENRIQUE ARCENAS, MONETTE ARCENAS SANCHEZ, RENATO U. ARCENAS, PATRICIA ARCENAS TING, ROY U. ARCENAS, VICTOR U. ARCENAS and ROSENDO U. ARCENAS,*** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF BOTH THE REGIONAL TRIAL COURT AND THE COURT OF APPEALS WILL NOT BE DISTURBED BY THE SUPREME COURT.— The issue raised by petitioners is factual. Both the RTC and CA found that there was such an agreement and that petitioners failed to rebut the evidence presented by respondents. We find no reason to disturb their findings.

2. ID.; SPECIAL CIVIL ACTIONS; EXPROPRIATION PROCEEDINGS; RULING IN THE CASES OF *MCIAA V. COURT OF APPEALS* (G.R. NO. 139495, 27 NOV. 2000) AND *ATIO V. GOPUCO* (G.R. NO. 158563, 30 JUNE 2005) ARE INAPPLICABLE TO CASE AT BAR.— *MCIAA v. CA* and *ATO v. Gopuco* cited by petitioners are not applicable here. In *MCIAA*, the previous owner failed to prove that there was a compromise settlement. In *ATO*, the previous owner was not a party to the compromise agreements.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Diores Law Offices for respondents.

* Angeles U. Tongoy died on March 22, 2002. In a resolution dated December 11, 2006, we granted the prayer of respondents in their motion for substitution that Antonina A. Fritzsche, the only legitimate child of Tongoy, be substituted as respondent in place of her mother; *rollo*, p. 149.

RESOLUTION

CORONA, *J.*:

This is a petition for review on *certiorari*[1] of the March 31, 2004 decision and August 2, 2006 resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 55114.

In 1963, the Republic of the Philippines instituted expropriation proceedings for the improvement and expansion of the Lahug Airport in Cebu City. Among the properties affected were Lot Nos. 913-F and 913-G belonging to respondents.[3] The trial court ruled in favor of the government. The respondents filed an appeal.[4]

Pending the appeal, the parties entered into a verbal compromise agreement whereby the owners of the affected lots agreed to withdraw their appeal in consideration of a commitment that, pursuant to an established policy involving similar cases, the subject lots would be resold to them at the same price at which they were expropriated in the event that the Civil Aeronautics Administration (CAA), predecessor of petitioner Air Transportation Office (ATO),[5] later abandoned the Lahug Airport.[6] Consequently, the respondents withdrew their appeal.[7]

---

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

[2] Both penned by Associate Justice Elvi John S. Asuncion (dismissed from the service) and concurred in by Associate Justices Godardo A. Jacinto (retired) and Lucas P. Bersamin of the Fourth Division of the Court of Appeals; *rollo*, pp. 9-16.

[3] Respondent Angeles U. Tongoy was the owner of lot no. 913-F with an area of 6,640 sq. m. located in Cebu City and covered by TCT No. 10874. Pilar U. Arcenas, represented herein by respondent heirs, Enrique Arcenas, Monette A. Sanchez, Renato U. Arcenas, Patricia A. Ting, Roy U. Arcenas, Victor U. Arcenas and Rosendo U. Arcenas, was the owner of the adjacent lot no. 913-G with an area of 6,638 sq. m. which was covered by TCT No. 10875; *id.*, p. 89.

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

[5] The ATO, created under EO 365, had the exclusive jurisdiction to administer, operate, manage, control, maintain and develop all government-owned airports, including Lahug Airport; *id.*, p. 88.

[6] *Id.*

[7] *Id.*, p. 12.

In accordance with the expropriation, the subject properties were registered in the name of the government. However, the projected improvement and expansion plan did not materialize as ATO decided to move its operations to the Mactan Airbase and to instead lease out the area of the Lahug Airport. Petitioner Department of Public Works and Highways constructed a building on a portion of the subject properties.[8]

In 1964 or a year after the expropriation, respondents requested the repurchase of the lots in accordance with the commitment of the CAA. On August 10, 1964, the CAA responded that there could still be a need to use the Lahug Airport as an emergency DC-3 airport. It reiterated, however, that "should this office dispose and resell the properties which may be found out to be no longer necessary as an airport, then the policy of this office is to give priority to the former owners subject to the approval of the President."[9]

On January 7, 1967, respondents reiterated their offer to repurchase the properties, referring to an executive order of President Ferdinand Marcos which directed the closure of the Lahug Airport and transferred all aviation operations to Mactan Airbase. The Director of the CAA, in a letter dated March 28, 1967, informed respondents that their office had no plans yet of abandoning Lahug Airport.[10]

In a memorandum dated November 29, 1989 to the Secretary of the Department of Transportation,[11] President Corazon Aquino directed the transfer of general aviation operations of the Lahug Airport to the Mactan International Airport before the end of 1990, and upon such transfer, to close the Lahug Airport. By virtue of RA 6958,[12] the management and aeronautics operations

---

[8] *Id*., pp. 10-11.

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

[10] *Id*.

[11] *Id*., p. 186. The RTC and CA decisions stated it was a memorandum to the Department of Tourism; *id*., pp. 11 and 90.

[12] Entitled "An Act Creating the Mactan-Cebu International Airport Authority, Transferring Existing Assets of the Mactan International Airport and the Lahug

of Lahug Airport were transferred to petitioner Mactan-Cebu International Airport Authority (MCIAA).[13]

In 1992, respondents filed an action for recovery of possession and reconveyance of ownership of properties with damages in the Regional Trial Court (RTC), Cebu City, Branch 21 against petitioners.[14] Petitioners did not present any testimonial or documentary evidence. Neither did they cross-examine the witness presented by respondents. They also failed to submit any memorandum despite the ample time given to file it.[15]

The RTC rendered a decision on December 27, 1995 ordering petitioners to restore possession and ownership of Lot Nos. 913-F and 913-G to respondents and to remove all improvements thereon upon reimbursement of the just compensation paid to respondents at the time of expropriation. It also ordered the Register of Deeds of Cebu City to issue new transfer certificates of title in the name of respondents, upon payment of the proper fees.[16] It held that respondents were able to prove the oral agreement that the lots could be repurchased by their previous owners for the same price at which they were expropriated in case the CAA abandoned Lahug Airport.

Aggrieved, petitioners filed an appeal in the CA. In a decision dated March 31, 2004, the CA affirmed the RTC judgment. It denied reconsideration in a resolution promulgated on August 2, 2006.

Hence this petition which boils down to one core issue: whether the respondents were able to prove that there was an oral compromise agreement that entitled them to repurchase the expropriated lots.

Airport to the Authority, Vesting the Authority with Power to Administer and Operate the Mactan International Airport and the Lahug Airport, and for Other Purposes" and also known as the "Charter of the Mactan-Cebu International Airport Authority." This was passed on July 31, 1990.

[13] *Rollo*, p. 66.

[14] It was docketed as Civil Case No. CEB-11795; *id.*, p. 88.

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

[16] *Id.*, p. 95.

The issue raised by petitioners is factual. Both the RTC and CA found that there was such an agreement and that petitioners failed to rebut the evidence presented by respondents. We find no reason to disturb their findings.

Moreover, in *Heirs of Timoteo Moreno and Maria Rotea v. MCIAA*[17] involving lots similarly expropriated for the expansion of the same Lahug Airport, we recognized the right of the previous owners who were able to prove the commitment of the government to allow them to repurchase their land:

> The indisputable certainty in the present case is that there was a prior promise by the predecessor of the respondent that the expropriated properties may be recovered by the former owners once the airport is transferred to Mactan, Cebu. In fact, the witness for the respondent testified that 15 lots were already reconveyed to their previous owners.[18]

MCIAA v. CA[19] and *ATO v. Gopuco*[20] cited by petitioners are not applicable here. In *MCIAA*, the previous owner failed to prove that there was a compromise settlement.[21] In *ATO*, the previous owner was not a party to the compromise agreements.[22]

WHEREFORE, the petition is hereby *DENIED*.

No costs.

SO ORDERED.

Puno, C.J. (Chairpeson), Carpio, and *Leonardo-de Castro, JJ.,* concur.

Azcuna, J., on official leave.

---

[17] G.R. No. 156273, 15 October 2003, 413 SCRA 502. MCIAA's motion for reconsideration was denied in a resolution dated 9 August 2005, 466 SCRA 288.

[18] G.R. No. 156273, 9 August 2005, 466 SCRA 288, 301.

[19] G.R. No. 139495, 27 November 2000, 346 SCRA 126.

[20] G.R. No. 158563, 30 June 2005, 462 SCRA 544.

[21] *Supra* note 19, pp. 137-140.

[22] *Supra* note 20, pp. 556 and 558.

THIRD DIVISION

[G.R. No. 175460. April 14, 2008]

METRO TRANSIT ORGANIZATION, INC., and JOSE L. CORTEZ, JR., *petitioners, vs.* **PIGLAS NFWU-KMU, SAMMY MALUNES, ROMULO QUIGAO, RODULFO CAMERINO, BRENDO MAKILING, MAXIMO VITANGCOL, PETER DIA, ELMER BOBADILLA, NOEL ESGASANE, ISIDRO CORTEZ, CRISPIN YAPCHIONGCO, MARLON E. SANTOS, WILFREDO DE RAMOS, ARTEMIO SALIG, AGRIFINO GOROSPE, RUEL MAGBALANA, JOEL MARANO, MELCHOR ALARCON, ROMEO TAGUID, EMERSON LUMABI, ATILANO JOB, DENNIS T. CRUZ, ARNOLD DIMALANTA, CARLITO MANZANILLA, GUILLERMO DUMAN, CRISANTO S. MAGNAYE, RONALDO ESTRELLA, EDMUNDO QUEMADA, MARITO N. HEBREO, EDGARDO C. RAMOS, VICTOR G. BABIERA, EDMUNDO B. GONZALEZ, ROSELL VILLANUEVA, FLORIFE BLAS, JAIME ABULENCIA, RODOLFO GAMBOA, VALENTIN BORBON, ALAN ATURBA, TEOFANES TESIOMA, PEDRO TESIOMA, CESAR BATTUNG, EDWIN ENRIQUEZ, RODOLFO PILAFIL, ARIEL BUSTAMANTE, CRISENDO CASAS, RONALD LOVEDOREAL, VICENTE RAMIREZ, GERARDO DE GUZMAN, ROBINSON VINZON, ELPIDIO P. VARGAS, LC DELA CRUZ, ARIEL DIMAWALA, JOEY A. LOBERIANO, REYNALDO S. DEL ROSARIO, PAUL V. LEGASPI, EDUARDO C. SANTOS, JOHN R. NUNEZ, JUSTINO B. ASAYTANO, JR., RONALD G. DECOSTO, JOENEL G. BALIGUAT, RUTCHIE R. RELIMBO, BENJAMIN A. ABIDIN, ALLAN CORTEZ, ALEJANDRO M. DIAZ, ANTONIO BALANGUE, RICARDO G. DALUNSONG, ERWIN S. BARRERA, ALLAN M. MARANG, PONCIANO M. ZAMORA, APOLINARIO M. BOLGEN, ARNOLD B. ESTORES, RUBEN BERNAL, ROLANDO B. CANLAS,**

RODOLFO C. HERESE, ANTONIO VILLAMOR, JR., ARTHUR B. HERMITANIO, HERNANI M. LIBANTING, ALBERTO T. DELA CRUZ, JEREMIAH V. MAHINAY, HELEN P. DIOLANDA, PAMPILO R. BALASBAS, EDUARDO G. MANOSCA, NATALIA PAYONGAYONG, JOHN M. BISCOCHO, DESIDERIO S. MOSQUEDA, GIOVANNI V. MUESCAN, M. MAUR A. MENDELEVAR, ORLANDO MALAYBA, ROLANDO DE GUZMAN, EDGAR V. VICELLAJE, JOEL G. EVANGELISTA, REYNALDO C. VERANO, CYRILL MAYOR, JOEY J. SABANAL, JONNY L. IGNACIO, JESUS C. FAJARDO, LEOPOLDO CAZENAS, ANASTACIO JANAVAN, VIRGILO C. CRUZ, EDGARDO ESPINOSA, ROMEO MIRAFUENTE, EDWIN R. JUAT, RENATO TAPALLA, EDWARD F. MARIANO, JESSIE A. DUQUE, MANUEL M. FLOGIO, RODRIGO SARASUA, EDWARD M. DIAZ, TEOFILO RIZ MOCORRO, JR., CESAR CUENCO, JR., ARIEL MAGNO, NEPTALI PASADAS, MAURICIO DELA CRUZ, WILHEMINE POLINTAN, DANIEL F. IJIRAN, DELIA O. CUPCUPIN, BERNARDINO G. MATIAS, DANILO B. MARIANO, JOSELITO G. CONCIO, RAMON CAQUIAT, RICARDO B. ANO, JR., LAWRENCE SACDALAN, MICHAEL GUINTO, RAYMUNDO LITAN, JR., EUCLIDA GAURANO, GENEROSO RAPOSA, RICARDO SANTOS, ROLANDO PEREZ, EXEJESON EVA RUAZOL, EDUARDO ROQUE, RONALDO GELLE, RHODELIO G. CRUZ, RONNIE M. GONZALES, ELIZALDE JANAPIN, EDWIN BORJA, RENIERO L. GAKO, REYNALDO T. IGNACIO, JOSE A. CENIDONIA, GLECIRIO M. SAYAT, ROGELIO LUMABAN, LARRY ORATE, SANTIAGO CLARIN, ANTONIO LEGASPI, MARILYN BRAVO, EDUARDO AGUILA, DANA KINGKING, TERESITA VELASQUEZ, AURELIO PAGTAKHAN, ALBERTO BRAVO, DONALD REYES, REINERIO RIPAY, ALFONSO TRINIDAD, JR., CESAR CANETE, SILVESTRE ALVANO, JOSEPH RODRIGUEZ, HAROLD FLORES,

MICAHEL ROMBLON, RAMON AMEGLEO, PASCUAL PARAGAS, VICTOR SANCHEZ, ESTHELA ATIENZA, ANTONY DE LUNA, AGNES DELA CRUZ, CLARYMAR ESTOQUE, FELIX ARRIOLA, CARLOS SAMONTE, MEDWIN MESINA, REGGIE FELIXMENIA, RICARDO EVANGELISTA, EDISON JOSE DORDAS, LORNA SALON, LELIBETH CASINO, GREGORIO SALVEDIA, AQUILINO EBEN, RESTITUTO FELIPE, NELFRED DELETINA, FERNANDO MALLARI, RAMIR GORDO, CARLOS BANDILLA, ERNESTOR SERENA, MATEO HAO, RONILO DE VERA, ALBERTO ASIS, JR., JAIME BARCOMA, WILLIAM VILLANUEVA, ARMANDO NODADO, ENRIQUE ESPANOL, JR., FRANCISCO FLORES, ELMER CRUZ, DANILO YU, ENRIQUE FLORES, JAYSON LIWAG, ROMEO PALAGANAS, EDUARDO BERBA, MELCHOR REGALADO, REDEN NOLASCO, MARIO S. DELA CRUZ, ARNOLD MENDOZA, DANTE MENDOZA, LARRY TAN, LARRY HERNANDEZ, GODOFREDO BEUNO, MANOLO SANTOS, RICARDO PATRIARCA, ALBERTO RAMOS, ARNULFO DE LARA, WILFREDO BANDIALA, LOVIN DE LIMA, GEORGE DELA CUEVA, NELSO LABAYO, EDITHA DELA ROSA, ELIZABETH REYES, EDMUNDO LIONGSON, JR., DANILO RIVERA, SR., BENJAMIN CANDOLE, CATALINO MELEGRITO, *respondents*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* A MOTION FOR RECONSIDERATION IS A CONDITION *SINE QUA NON* FOR THE FILING OF A PETITION FOR *CERTIORARI*.— The settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari.* Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. The rationale of the rule rests upon the presumption

that the court or administrative body which issued the assailed order or resolution may amend the same, if given the chance to correct its mistake or error. We have held that the "plain," "speedy," and "adequate remedy" referred to in Section 1, Rule 65 of the Rules of Court is a *motion for reconsideration* of the questioned Order or Resolution. As we consistently held in numerous cases, a motion for reconsideration is indispensable for it affords the NLRC an opportunity to rectify errors or mistakes it might have committed before resort to the courts can be had.

2. ID.; ID.; ID.; ID.; ID.; EXCEPTIONS.— We agree in the Court of Appeals' finding that petitioners' case does not fall under any of the recognized exceptions to the filing of a motion for reconsideration, to wit: (1) when the issue raised is purely of law; (2) when public interest is involved; (3) in case of urgency; or when the questions raised are the same as those that have already been squarely argued and exhaustively passed upon by the lower court. As the Court of Appeals reasoned, the issue before the NLRC is both factual and legal at the same time, involving as it does the requirements of the property bond for the perfection of the appeal, as well as the finding that petitioners failed to perfect the same. Evidently, the burden is on petitioners seeking exception to the rule to show sufficient justification for dispensing with the requirement. *Certiorari* cannot be resorted to as a shield from the adverse consequences of petitioners' own omission of the filing of the required motion for reconsideration.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEALS; APPEAL FROM THE LABOR ARBITER'S MONETARY AWARD; HOW PERFECTED.— In cases involving a monetary award, an employer seeking to appeal the decision of the Labor Arbiter to the NLRC is unconditionally required by Article 223 of the Labor Code to post a cash or surety bond equivalent to the amount of the monetary award adjudged. It should be stressed that the intention of lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored by the provision that an appeal by the employer may be perfected only upon the posting of a cash or surety bond. The word "only" makes it perfectly clear that the lawmakers intended the posting of a

cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be perfected. Moreover, it bears stressing that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to conform to the rules will render the judgment sought to be reviewed final and unappealable. It cannot be overemphasized that the NLRC Rules, akin to the Rules of Court, promulgated by authority of law, have the force and effect of law.

APPEARANCES OF COUNSEL

Office of the Government Counsel for petitioners.

Pro-Labor Legal Assistance Center for private respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed in the instant Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure is the Resolution[1] dated 24 August 2006 of the Court of Appeals in CA-G.R. SP. No. 95665, as well as its Resolution[2] dated 14 November 2006 dismissing petitioners' Motion for Reconsideration thereof.

Petitioner Metro Transit Organization, Inc. (MTO) is a government owned and controlled corporation which entered into a Management and Operations Agreement (MOA) with the Light Rail Transit Authority (LRTA) for the operation of the Light Rail Transit (LRT) Baclaran-Monumento Line. Petitioner Jose L. Cortez, Jr. was sued in his official capacity as then Undersecretary of the Department of Transportation and Communications and Chairman of the Board of Directors of petitioner MTO.

---

[1] Penned by Associate Justice Mario L. Guariña III with Associate Justices Roberto A. Barrios and Lucenito N. Tagle, *concurring*, *rollo*, pp. 52-53.

[2] *Id*. at 55.

For purposes of collective bargaining agreement (CBA), petitioner MTO's rank and file employees formed the Pinagisang Lakas ng Manggagawa sa Metro, Inc.-National Federation of Labor (PIGLAS). Meanwhile, its managerial and supervisory employees created their own union bearing the name Supervisory Employees Association of Metro (SEAM).

Petitioners MTO and PIGLAS entered into a CBA covering the period of 13 February 1995 to 13 February 2000. SEAM similarly negotiated with petitioner MTO under a separate CBA. Allegedly disgruntled with PIGLAS, some rank and file employees formed another union under the umbrella of the Philippine Transport Group Workers Organization-Trade Union Congress of the Philippines (PTGWO-TUCP), which negotiated with management for certification as the new bargaining agent. The aforesaid intra-union dispute was settled through a certification election which PIGLAS won. Thereafter, PIGLAS renegotiated the CBA demanding higher benefits.

On 25 July 2000, due to a bargaining deadlock, PIGLAS filed a Notice of Strike before the National Conciliation and Mediation Board (NCMB). On the same date, PIGLAS staged a strike. Consequently, Hon. Bienvenido E. Laguesma, then Secretary of the Department of Labor and Employment (DOLE), issued an Order of Assumption of Jurisdiction/Return to Work,[3]

[3] The Order disposed, thus:

WHEREFORE, foregoing premises considered, this Office hereby assumes jurisdiction over the labor dispute at the Metro Transit Organization, Inc., pursuant to Article 263(g) of the Labor Code, as amended.

Accordingly, all striking employees are hereby directed to return to work immediately upon receipt of this Order and for the Company to accept them back under the same terms and conditions of employment prevailing prior to the strike.

The parties are further directed to cease and desist from committing any act that will exacerbate the situation.

Likewise, to expedite resolution of the dispute, the parties are directed to submit their respective position papers and evidence to this Office within TEN (10) days from receipt hereof.

Finally, to ensure compliance of this Order, PNP Chief Superintendent Edgardo Aglipay, NCR is hereby deputized to assist in the peaceful and orderly implementation of this Order. (*Id*. at 194.)

dated 25 July 2000, directing the striking employees to immediately return to work, and petitioner MTO to take them back under the same terms and conditions of employment prevailing prior to the strike. The Order of Assumption of Jurisdiction/Return to Work was published in newspapers of general circulation. The striking employees refused to receive a copy of said Order; hence, copies thereof were posted in the stations and terminals of the LRT.

The striking PIGLAS members refused to accede to the Return to Work Order. Following their continued non-compliance, on 28 July 2000, the LRTA formally informed petitioner MTO that it had issued a Board Resolution which: (1) allowed the expiration after 31 July 2000 of LRTA's MOA with petitioner MTO; and (2) directed the LRTA to take over the operations and maintenance of the LRT Line. By virtue of said Resolution, petitioner MTO sent termination notices to its employees, including herein respondents.

Resultantly, respondents filed with the Labor Arbiter Complaints[4] against petitioners and the LRTA for the following: (1) illegal dismissal; (2) unfair labor practice for union busting; (3) moral and exemplary damages; and (4) attorney's fees.

On 13 September 2004, the Labor Arbiter rendered judgment in favor of respondents. The decretal portion of the Labor Arbiter's Decision, states:

> WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of the complainants as illegal and ordering respondents Metro Transit Organization, Inc. and Light Rail Transit Authority to jointly and severally pay complainants their separation pay and backwages in the amounts indicated opposite their respective names as shown in Annexes "A" to "A-5" of this decision or in the total amount of ₱208,235,682.72.
>
> Respondents are further ordered to pay the sum equivalent to ten (10%) percent of the judgment award as and by way of attorney's fees or in the amount of ₱20,823,568.27.

[4] *Id*. at 197-209.

The claim of complainant Ronald Lovedoreal is ordered dismissed without prejudice.

All other claims are ordered dismissed for lack of merit.[5]

Petitioners appealed to the National Labor Relations Commission (NLRC). In a Resolution dated 19 May 2006, the NLRC dismissed petitioners' appeal for non-perfection since it failed to post the required bond. The NLRC ratiocinated:

Section 6, Rule VI of the Rules of Procedure of the National Labor Relations Commission, as amended by Resolution No. 01-02, Series of 2002 provides, to wit:

SECTION 6 BOND. In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond. The appeal bond shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees."

In this case [petitioners] filed a property bond, and applying a liberal interpretation of the above Rule and finding support in the Supreme Court pronouncement in the case of *UERM-Memorial Medical Center, et al. vs. NLRC, et al*., G.R. No. 110419, March 3, 1997, we conditionally accepted the property bond subject to the submission of the requirements specified in the Order. Moreover, [petitioners] were directed to comply with the requirements within ten (10) days from receipt of the Order with a warning that failure to comply will result in the dismissal of the appeal for non-perfection thereof.

It appears that to date, which is more than a month from receipt of the Order, [petitioners] failed to comply with the conditions required in the posting of the property bond, this Commission is therefore constrained to dismiss the appeal for non-perfection thereof.[6]

The NLRC thus disposed:

WHEREFORE, premises considered, an order is hereby issued DISMISSING the appeal of [petitioners] for non-perfection thereof and the Decision dated 13 September 2004 has become final.

---

[5] CA *rollo,* pp. 135-136.

[6] *Id*. at 36.

The Motion for Reconsideration filed by complainants-appellees and the motion to suspend proceedings filed by [petitioners] are both DENIED for lack of merit.

No further motion of similar nature shall be entertained.[7]

Without filing a Motion for Reconsideration of the afore-quoted NLRC Resolution, petitioners filed a Petition for *Certiorari* with the Court of Appeals assailing the same.

On 24 August 2006, the Court of Appeals issued a Resolution dismissing the Petition. It ruled:

The petitioners have filed this petition for *certiorari* against the resolution of the NLRC dated May 19, 2006 dismissing the appeal for non-perfection. They have not, however, filed a motion for reconsideration of the ruling prior to filing the petition. This renders the petition fatally defective. The motion for reconsideration has been held to be a condition *sine qua non* for *certiorari*, the rationale being that the lower court should be given the opportunity to correct its error before recourse to the higher court is made. *[Yau] vs. Manila Banking Corp*. 384 SCRA 340. The [acknowledged] exceptions to the rule find no application here. The order of dismissal is issued by the NLRC in the exercise of its discretionary authority to fix the requirements of the property bond for appeal, and the finding that the petitioners failed to perfect the appeal for non-compliance with these conditions is both a factual and legal issue. We have a perfect textbook example of an order that is amenable to a motion for reconsideration.[8]

Petitioners moved for the reconsideration of the appellate court's dismissal of its Petition. The Court of Appeals, however, in a Resolution dated 14 November 2006 found no cogent reason to disturb its original conclusions.

Hence, petitioners come to this Court, challenging the dismissal by the Court of Appeals of its Petition.[9]

---

[7] *Id*. at 37.

[8] *Rollo,* p. 52.

[9] Petitioner raises the following:

I. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE PETITION FOR *CERTIORARI* FALLS UNDER

It must be primarily established that petitioners contravened the procedural rule for the extraordinary remedy of *certiorari.* The rule is, for the writ to issue, it must be shown that there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.[10]

The settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari.*[11] Its

ANY OF THOSE INSTANCES WHERE A MOTION FOR RECONSIDERATION NEED NOT BE FILED BEFORE A PETITION FOR *CERTIORARI* CAN BE INSTITUTED.

II. THE HONORABLE COURT OF APPEALS ERRED IN IGNORING THE FACT THAT PUBLIC RESPONDENT HAS NO JURISDICTION AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT ALSO ASSUMED JURISDICTION OVER THE PRESENT CASE DESPITE THE FACT THAT IT IS THE SECRETARY OF LABOR WHICH HAS JURISDICTION OVER THE PRESENT CASE.

III. ASSUMING PUBLIC RESPONDENT NLRC HAS JURISDICTION OVER THE PRESENT CASE, THE HONORABLE COURT OF APPEALS ERRED IN IGNORING THE FACT THAT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR IN EXCESS OF JURISDICTION WHEN IT DID NOT GIVE LRTA AND PETITIONER SUFFICIENT TIME TO COMPLY WITH ITS ORDER TO SUBMIT THE DOCUMENTATION FOR THE APPEAL BOND.

IV. ASSUMING PUBLIC RESPONDENT NLRC HAS JURISDICTION OVER THE PRESENT CASE, THE HONORABLE COURT OF APPEALS ERRED IN IGNORING THE FACT THAT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR IN EXCESS OF JURISDICTION WHEN IT DID NOT RESOLVE ON THE MERITS THE FOLLOWING ISSUES:

A) The complaints state no cause of action because the non-renewal of the MOA between petitioner and LRTA caused private respondents' unemployment status.

B) The claims of private respondents are CBA related which CBA was entered into by and between petitioner and PIGLAS or SEAM.

C) The unemployed status of private respondents was not caused by illegal dismissal.

D) Petitioner was not a labor-only contractor.

[10] *Solidum v. Court of Appeals,* G.R. No. 161647, 22 June 2006, 492 SCRA 261, 270.

[11] *Office of the Ombudsman v. Laja,* G.R. No. 169241, 2 May 2006, 488 SCRA 574, 580.

purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case.[12] The rationale of the rule rests upon the presumption that the court or administrative body which issued the assailed order or resolution may amend the same, if given the chance to correct its mistake or error.[13]

We have held that the "plain," "speedy," and "adequate remedy" referred to in Section 1, Rule 65 of the Rules of Court[14] is a *motion for reconsideration* of the questioned Order or Resolution. As we consistently held in numerous cases, a motion for reconsideration is indispensable for it affords the NLRC an opportunity to rectify errors or mistakes it might have committed before resort to the courts can be had.[15]

In the case at bar, petitioners directly went to the Court of Appeals on *certiorari* without filing a motion for reconsideration with the NLRC. The motion for reconsideration would have aptly furnished a plain, speedy, and adequate remedy. As a rule, the Court of Appeals, in the exercise of its original jurisdiction, will not take cognizance of a petition for *certiorari* under Rule 65, unless the lower court has been given the opportunity to correct the error imputed to it.[16] The Court of Appeals correctly

---

[12] *Id*.

[13] *Republic v. Sandiganbayan,* G.R. No. 141796, 15 June 2005, 460 SCRA 146, 158. The Court ruled that the strict application of [Section 1 of Rule 65] will also prevent unnecessary and premature resort to appellate proceedings.

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

[15] *Lagera v. National Labor Relations Commission,* 385 Phil. 1087, 1091 (2000).

[16] *Yau v. Manila Banking Corporation,* 433 Phil. 701, 709-710 (2002).

ruled that petitioners' failure to file a motion for reconsideration against the assailed Resolution of the NLRC rendered its petition for *certiorari* before the appellate court as fatally defective.

We agree in the Court of Appeals' finding that petitioners' case does not fall under any of the recognized exceptions to the filing of a motion for reconsideration, to wit: (1) when the issue raised is purely of law; (2) when public interest is involved; (3) in case of urgency;[17] or when the questions raised are the same as those that have already been squarely argued and exhaustively passed upon by the lower court.[18] As the Court of Appeals reasoned, the issue before the NLRC is both factual and legal at the same time, involving as it does the requirements of the property bond for the perfection of the appeal, as well as the finding that petitioners failed to perfect the same. Evidently, the burden is on petitioners seeking exception to the rule to show sufficient justification for dispensing with the requirement.[19] *Certiorari* cannot be resorted to as a shield from the adverse consequences of petitioners' own omission of the filing of the required motion for reconsideration.[20]

Nonetheless, even if we are to disregard the petitioners' procedural *faux pas* with the Court of Appeals, and proceed to review the propriety of the 19 May 2006 NLRC Resolution, we still arrive at the conclusion that the NLRC did not err in denying petitioners' appeal for its failure to file a bond in accordance with the Rules of Procedure of the NLRC.[21]

---

[17] *Government of the United States of America v. Purganan,* 438 Phil. 417, 437 (2002).

[18] *Id*.

[19] *Seagull Shipmanagement and Transport, Inc. v. National Labor Relations Commission,* 388 Phil. 906, 912 (2000).

[20] *Id*.

[21] Section 6, Rule VI of the Rules of Procedure of the National Labor Relations Commission, provides:

> 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

In cases involving a monetary award, an employer seeking to appeal the decision of the Labor Arbiter to the NLRC is unconditionally required by Article 223[22] of the Labor Code to post a cash or surety bond equivalent to the amount of the monetary award adjudged.[23] It should be stressed that the intention of lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored by the provision that an appeal by the employer may be perfected only upon the posting of a cash or surety bond.[24] The word "only" makes it perfectly clear that the lawmakers intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be perfected.[25] Moreover, it bears stressing that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional,[26] and failure to

---

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.

[22] The pertinent portion of Article 223 of the Labor Code, states:

ART. 223. *Appeal*. – x x x

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

[23] *Calabash Garments, Inc. v. National Labor Relations Commission,* 329 Phil. 227, 233 (1996).

[24] *Navarro v. National Labor Relations Commission,* 383 Phil. 765, 774 (2000).

[25] *Id*.

[26] *Tan v. Court of Appeals,* G.R. No. 157194, 20 June 2006, 491 SCRA 452, 459; *Dela Cruz v. Golar Maritime Services, Inc.,* G.R. No. 141277, 16 December 2005, 478 SCRA 173, 184; *FILIPINAS (Pre-fabricated Bldg.) Systems "Filsystems," Inc. v. National Labor Relations Commission,* 463 Phil. 813, 818-819 (2003).

conform to the rules will render the judgment sought to be reviewed final and unappealable. [27] It cannot be overemphasized that the NLRC Rules, akin to the Rules of Court, promulgated by authority of law, have the force and effect of law.[28]

As borne by the records, petitioners filed a property bond which was conditionally accepted by the NLRC subject to the following conditions specified in its 24 February 2006 Order:

> The conditional acceptance of petitioner's property bond was subject to the submission of the following: 1) Certified copy of Board Resolution or a Certificate from the Corporate Secretary of Light Rail Transit Authority stating that the Corporation President is authorized by a Board Resolution to submit title as guarantee of judgment award; 2) Certified Copy of the Titles issued by the Registry of Deeds of Pasay City; 3) Certified Copy of the current tax declarations of Titles; 4) Tax clearance from the City Treasurer of Pasay City; 5) Appraisal report of an accredited appraisal company attesting to the fair market value of property within ten (10) days from receipt of this Order. Failure to comply therewith will result in the dismissal of the appeal for non-perfection thereof.[29]

In the same Order, the NLRC warned that failure of the petitioners to comply with the conditions would result in the dismissal of the appeal for non-perfection thereof. Petitioners were directed to comply with its given conditions within 10 days from receipt of the Order with a caveat that their failure will result in the dismissal of the appeal. Subsequently, in its 19 May 2006 Resolution, the NLRC finally made a factual finding that petitioners failed to comply with the conditions attached to their posting of the property bond. Thus, the NLRC dismissed petitioners' appeal for non-perfection thereof.

Essentially, the failure of petitioners to comply with the conditions for the posting of the property bond is tantamountto

---

[27] *Philippine Transmarine Carriers, Inc. v. Cortina,* 461 Phil. 422, 428 (2003), citing *Imperial Textile Mills, Inc. v. National Labor Relations Commission*, G.R. No. 101527, 19 January 1993, 217 SCRA 237, 246.

[28] *Corporate Inn Hotel v. Lizo,* G.R. No. 148279, 27 May 2004, 429 SCRA 573, 577.

[29] *Rollo*, p. 171.

to a failure to post the bond as required by law. What is even more salient is the fact that the NLRC had stressed that petitioners had, for more than a month from receipt of its 24 February 2006 Order, to comply with the conditions set forth therein for the posting of the property bond. It cannot be gainsaid that the NLRC had given petitioners a period of 10 days from receipt of the Order with a warning that non-compliance would result in the dismissal of their appeal for failure to perfect the same. Petitioners therefore disregarded the rudiments of the law in the perfection of their appeal. We are without recourse but to take petitioners' failure against their interest.

WHEREFORE, the Petition is *DENIED*. The Resolutions dated 24 August 2006 and 14 November 2006 of the Court of Appeals in CA-G.R. SP. No. 95665 are *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 179901. April 14, 2008]

BANCO DE ORO-EPCI, INC.,* *petitioner, vs.* **JAPRL DEVELOPMENT CORPORATION, RAPID FORMING CORPORATION and JOSE U. AROLLADO,** *respondents.*

---

* Formerly Equitable PCI Bank, Inc.

SYLLABUS

1. MERCANTILE LAW; CORPORATIONS; INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; STAY ORDER; EFFECT.— Under the Interim Rules of Procedure on Corporate Rehabilitation, a stay order defers all actions or claims against the corporation seeking rehabilitation from the date of its issuance until the dismissal of the petition or termination of the rehabilitation proceedings.

2. ID.; ID.; A CREDITOR CAN DEMAND PAYMENT FROM THE SURETY SOLIDARILY LIABLE WITH THE CORPORATION SEEKING REHABILITATION.— A creditor can demand payment from the surety solidarily liable with the corporation seeking rehabilitation.

3. ID.; GENERAL BANKING LAW; BANKS; NATURE.— Banks are entities engaged in the lending of funds obtained through deposits from the public. They borrow the public's excess money (*i.e.,* deposits) and lend out the same. Banks therefore redistribute wealth in the economy by channeling idle savings to profitable investments. Banks operate (and earn income) by extending credit facilities financed primarily by deposits from the public. They plough back the bulk of said deposits into the economy in the form of loans. Since banks deal with the public's money, their viability depends largely on their ability to return those deposits on demand. For this reason, banking is undeniably imbued with public interest. Consequently, much importance is given to sound lending practices and good corporate governance. Protecting the integrity of the banking system has become, by large, the responsibility of banks. The role of the public, particularly individual borrowers, has not been emphasized. Nevertheless, we are not unaware of the rampant and unscrupulous practice of obtaining loans without intending to pay the same.

4. ID.; ID.; ID.; HAVE THE RIGHT TO ANNUL ANY CREDIT ACCOMMODATION OR LOAN, AND DEMAND IMMEDIATE PAYMENT THEREOF, FROM BORROWERS PROVEN TO BE GUILTY OF FRAUD.— Section 40 of the General Banking Law x x x states: "Section 40. *Requirement for Grant of Loans or Other Credit Accommodations*. Before granting a loan or other credit

accommodation, a bank must ascertain that the debtor is capable of fulfilling his commitments to the bank. Towards this end, a bank may demand from its credit applicants a statement of their assets and liabilities and of their income and expenditures and such information as may be prescribed by law or by rules and regulations of the Monetary Board to enable the bank to properly evaluate the credit application which includes the corresponding financial statements submitted for taxation purposes to the Bureau of Internal Revenue. **Should such statements prove to be false or incorrect in any material detail, the bank may terminate any loan or credit accommodation granted on the basis of said statements and shall have the right to demand immediate repayment or liquidation of the obligation.** In formulating the rules and regulations under this Section, the Monetary Board shall recognize the peculiar characteristics of microfinancing, such as cash flow-based lending to the basic sectors that are not covered by traditional collateral." Under this provision, banks have the right to annul any credit accommodation or loan, and demand the immediate payment thereof, from borrowers proven to be guilty of fraud.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Joselito B. Flores for respondents.

D E C I S I O N

CORONA, *J.*:

This petition for review on *certiorari*[1] seeks to set aside the decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 95659 and its resolution[3] denying reconsideration.

---

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

[2] Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan-Vidal of the Tenth Division of the Court of Appeals. Dated June 7, 2007. *Rollo,* pp. 49-59.

[3] Dated August 31, 2007. *Id.*, p. 60.

After evaluating the financial statements of respondent JAPRL Development Corporation (JAPRL) for fiscal years 1998, 1999 and 2000,[4] petitioner Banco de Oro-EPCI, Inc. extended credit facilities to it amounting to ₱230,000,000[5] on March 28, 2003. Respondents Rapid Forming Corporation (RFC) and Jose U. Arollado acted as JAPRL's sureties.

Despite its seemingly strong financial position, JAPRL defaulted in the payment of four trust receipts soon after the approval of its loan.[6] Petitioner later learned from MRM Management, JAPRL's financial adviser, that JAPRL had altered and falsified its financial statements. It allegedly bloated its sales revenues to post a big income from operations for the concerned fiscal years to project itself as a viable investment.[7] The information alarmed petitioner. Citing relevant provisions of the Trust Receipt Agreement,[8] it

---

[4] *Id*., pp. 62-63.

[5] *Id*., p. 63.

[6] JAPRL failed to pay the value of trust receipt nos. 114505, 1000006285, 1000006305 and 1000006325. *Id*.

[7] *Id*., pp. 62-66.

[8] Paragraph 16 of the Trust Receipt Agreement provided:

> 16. If any of the following Events of Default shall have occurred:
>
> x x x x x x x x x
>
> b. The Entrustee shall default in the due performance or observance of any other covenant contained herein on in any agreement under which the Entruster issued the letter of credit under the terms of which the Trust Property was purchased, and such default shall remain unremedied for a period of five (5) calendar days after the Entrustee shall have received written notice thereof from the Entruster; or,
>
> c. Any statement, representation or warranty made by the Entrustee, hereunder, in its application with the Entruster or in other document delivered or made pursuant thereto shall prove to be incorrect or untrue in the any material respect; or,
>
> d. The Entrustee/ any of its subsidiary or affiliate fails to pay or default in the payment of any installment of the principal or interests relative to, or fails to comply with or to perform, any other obligation or commits a breach or violation of any of the terms, conditions or stipulations, of any agreement, contract

demanded immediate payment of JAPRL's outstanding obligations amounting to ₱194,493,388.98.[9]

SP PROC. NO. Q-03-064

On August 30, 2003, JAPRL (and its subsidiary, RFC) filed a petition for rehabilitation in the Regional Trial Court (RTC)

---

or document with Entruster or any third person or persons to which the Entruster or any of its subsidiary or affiliate is a party or privy, whether executed prior to or after the date hereof under which credit has or may have been extended to such Entrustee/ subsidisiary or affiliate by the Entruster or such third person or persons or under which the Entrustee has agreed to act as guarantor, surety or accommodation party, which, under the terms of such agreement, contract, document, guaranty or suretyship, including any agreement similar or analogous thereto, shall constitute a default or is defined as an event of default thereunder; or,

x x x x x x x x x

j. Any adverse circumstance occurs, which in the reasonable opinion of the Entruster, materially or adversely affects the ability of the Entrustee to perform its obligation hereunder; or

x x x x x x x x x

Id., pp. 65-66.

[9] JAPRL's outstanding liabilities were broken down as follows:

LETTER OF CREDIT	TRUST RECEIPT	OUTSTANDING BALANCE
9185863	114505	₱ 4,818,784.50
9186617	115613	10,002,405.35
9186263	115099	24,421,786.32
9188618	115612	17,742,002.53
9187128	116067	7,718,059.80
14913	1000006285	1,734,837.50
14927	1000006305	3,235,780.00
14952	1000006325	2,809,031.24
14969	1000006330	3,739,312.50
14982	1000006339	4,142,952.24
15144	1000006532	7,080,696.00
15168	1000006558	4,889,034.00
15181	1000006571	5,104,317.50
15186	1000006574	10,129,035.00
15207	1000006599	7,183,010.00

of Quezon City, Branch 90 (Quezon City RTC).[10] It disclosed that it had been experiencing a decline in sales for the three preceding years and a staggering loss in 2002.[11]

15236	1000006646	6,730,310.00
15244	1000006648	3,481,760.00
15251	1000006652	6,353,342.50
15273	1000006670	10,781,095.00
15320	1000006723	9,043,803.00
15340	1000006749	8,974,180.00
15374	1000006781	5,344,652.00
15387	1000006801	10,545,120.00
	1000006808	6,454,320.00
	1000006809	5,837,680.00
15413	1000006824	6,196,080.00
TOTAL		₱194,493,388.98

Id., p. 64.

[10] *Id*., pp. 83-84.

[11] *Id*., p. 63.

According to the affidavit of general financial condition executed by Peter Paul Limson, concurrent chairman and chief executive officer of JAPRL and RFC, both corporations have been suffering staggering losses since the year 2000:

	2002	2001	2000
SALES			
JAPRL	₱210,570,962	₱ 233,064,377	₱303,661,262
RFC	284,828,246	294,940,656	248,013,118
PROFIT/LOSSES			
JAPRL	(₱14,536,976)	₱ 269,958	₱ 516,359
RFC	215,747	327,462	503,112

Because the petition was sufficient in form and substance, a stay order[12] was issued on September 28, 2003.[13] However, the proposed rehabilitation plan for JAPRL and RFC was eventually rejected by the Quezon City RTC in an order dated May 9, 2005.[14]

CIVIL CASE NO. 03-991

Because JAPRL ignored its demand for payment, petitioner filed a complaint for sum of money with an application for the

[12] See Interim Rules of Procedure on Corporate Rehabilitation (A.M. No. 00-8-10-SC), Sec. 6 which provides:

Section 6. *Stay Order*. - **If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) days from the filing of the petition, issue an Order**: (a) applying a Rehabilitation Receiver and fixing his bond; (b) **staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor**; (c) prohibiting the debtor from selling,encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; (d) **prohibiting the debtor from making any payment of its liabilities outstanding as at the date of filing of the petition**; (e) prohibiting the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order; (f) directing the payment in full of all administrative expenses incurred after the issuance of the stay order; (g) fixing the initial hearing on the petition not earlier than forty-five (45) days but not later than sixty (60) days from the filing thereof; (h) directing the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; (i) **directing all creditors and all interested parties** (including the Securities and Exchange Commission) **to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings**; and (j) directing the creditors and interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition. (emphasis supplied)

[13] Issued by Presiding Judge Reynaldo B. Daway. *Rollo*, pp. 83-84.

[14] *Id*., p. 127.

issuance of a writ of preliminary attachment against respondents in the RTC of Makati City, Branch 145 (Makati RTC) on August 21, 2003.[15] Petitioner essentially asserted that JAPRL was guilty of fraud because it (JAPRL) altered and falsified its financial statements.[16]

The Makati RTC subsequently denied the application (for the issuance of a writ of preliminary attachment) for lack of merit as petitioner was unable to substantiate its allegations. Nevertheless, it ordered the service of summons on respondents.[17] Pursuant to the said order, summonses were issued against respondents and were served upon them.

Respondents moved to dismiss the complaint due to an allegedly invalid service of summons.[18] Because the officer's return stated that an "administrative assistant" had received the summons,[19] JAPRL and RFC argued that Section 11, Rule 14 of the Rules of Court[20] contained an exclusive list of persons on whom

---

[15] Annex "F", *id.,* pp. 61-71.

[16] *Id*., p. 67.

[17] Issued by Presiding Judge Cesar D. Santamaria. Dated September 23, 2003. Annex "G", *id*., pp. 73-74.

[18] Annex "K", *id*., pp. 92-94.

[19] Annex "J", *id*., p. 91. It stated:

> I HEREBY CERTIFY that on July 9, 2004 a copy of summons dated May 5, 2004 issued by the Honorable Court in connection with [Civil Case No. 03-991], the undersigned served upon [JAPRL], 2/F Vasquez Madrigal Plaza, 51 Annapolis St., Greenhills, San Juan, Metro Manila, [RFC and Arollado]; **thru Ms. GRACE CANO, administrative assistant** who acknowledged receipt as evidenced by her signature at the original copy of summons.
>
> DULY SERVED.
>
> City of Makati, 12 July 2004. (emphasis supplied)

[20] RULES OF COURT, Rule 14, Sec. 11 provides:

> Section 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)

summons against a corporation must be served.[21] An "administrative assistant" was not one of them. Arollado, on the other hand, cited Section 6, Rule 14 thereof[22] which mandated personal service of summons on an individual defendant.[23]

The Makati RTC, in its October 10, 2005 order,[24] noted that because corporate officers are often busy, summonses to corporations are usually received only by administrative assistants or secretaries of corporate officers in the regular course of business. Hence, it denied the motion for lack of merit.

Respondents moved for reconsideration[25] but withdrew it before the Makati RTC could resolve the matter.[26]

RTC SEC Case No. 68-2008-C

On February 20, 2006, JAPRL (and its subsidiary, RFC) filed a petition for rehabilitation in the RTC of Calamba, Laguna, Branch 34 (Calamba RTC). Finding JAPRL's petition sufficient in form and in substance, the Calamba RTC issued a stay order[27] on March 13, 2006.

In view of the said order, respondents hastily moved to suspend the proceedings in Civil Case No. 03-991 pending in the Makati RTC.[28]

---

[21] Annex "K", *rollo,* pp. 92-94. See *Mason v. Court of Appeals,* 459 Phil. 689, 698-699 (2003).

[22] RULES OF COURT, Sec. 6, Rule 14 provides:

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

[23] *Rollo,* p. 93.

[24] Annex "M", *id*., pp. 102-103.

[25] Annex "N", *id*., pp. 104-112.

[26] Annex, "O", *id*., pp. 113-115.

[27] Issued by Judge Jesus A. Santiago. Dated September 11, 2006. *Id*., pp. 126-129.

[28] Annex "Q", *id*., pp. 124-125.

On July 7, 2006, the Makati RTC granted the motion with regard to JAPRL and RFC but ordered Arollado to file an answer. It ruled that, because he was jointly and solidarily liable with JAPRL and RFC, the proceedings against him should continue.[29] Respondents moved for reconsideration[30] but it was denied.[31]

On August 11, 2006, respondents filed a petition for *certiorari*[32] in the CA alleging that the Makati RTC committed grave abuse of discretion in issuing the October 10, 2005 and July 7, 2006 orders.[33] They asserted that the court did not acquire jurisdiction over their persons due to defective service of summons. Thus, the Makati RTC could not hear the complaint for sum of money.[34]

In its June 7, 2007 decision, the CA held that because the summonses were served on a mere administrative assistant, the Makati RTC never acquired jurisdiction over respondents. Thus, it granted the petition.[35]

Petitioner moved for reconsideration but it was denied.[36] Hence, this petition.

Petitioner asserts that respondents maliciously evaded the service of summonses to prevent the Makati RTC from acquiring jurisdiction over their persons. Furthermore, they employed bad faith to delay proceedings by cunningly exploiting procedural technicalities to avoid the payment of their obligations.[37]

We grant the petition.

---

[29] Annex "R", *id*., p. 130.

[30] Annex "S", *id*., pp. 131-134.

[31] Annex "T", *id*., p. 135.

[32] Under Rule 65 of the Rules of Court.

[33] Respondents' motion for reconsideration was pending in the Makati RTC when they filed the petition for *certiorari* in the CA. It (petition) should have been dismissed for being filed prematurely.

[34] Annex "U", *rollo,* pp. 136-149.

[35] *Supra* note 2.

[36] *Supra* note 3.

[37] *Id*., pp. 10-35.

Respondents, in their petition for *certiorari* in the CA, questioned the jurisdiction of the Makati RTC over their persons (*i.e.,* whether or not the service of summons was validly made). Therefore, it was only the October 10, 2005 order of the said trial court which they in effect assailed.[38] However, because they withdrew their motion for reconsideration of the said order, it became final. Moreover, the petition was filed 10 months and 1 day after the assailed order was issued by the Makati RTC,[39] way past the 60 days allowed by the Rules of Court. For these reasons, the said petition should have been dismissed outright by the CA.

More importantly, when respondents moved for the suspension of proceedings in Civil Case No. 03-991 before the Makati RTC (on the basis of the March 13, 2006 order of the Calamba RTC), they waived whatever defect there was in the service of summons and were deemed to have submitted themselves voluntarily to the jurisdiction of the Makati RTC.[40]

We withhold judgment for the moment on the July 7, 2006 order of the Makati RTC suspending the proceedings in Civil Case No. 03-991 insofar as JAPRL and RFC are concerned. Under the Interim Rules of Procedure on Corporate Rehabilitation, a stay order defers all actions or claims against the corporation seeking rehabilitation[41] from the date of its issuance until the dismissal of the petition or termination of the rehabilitation proceedings.[42]

---

[38] The July 7, 2006 and September 11, 2006 orders of the Makati RTC resolved whether or not the proceedings in Civil Case No. 03-991 should be suspended in view of the March 13, 2006 order of the Calamba RTC in RTC SEC Case No. 68-2008-C.

[39] See RULES OF COURT, Sec. 4, Rule 65 which provides:

Section 4. *When and where petition filed.* The petition shall be filed not later than sixty (60) days from notice of judgment, order or resolution. In case a motion for reconsideration is filed on time, whether such motion is required or not, the sixty (60) day period shall be counted for the notice of said motion.

x x x x x x x x x

[40] See *Orosa v. Court of Appeals,* 330 Phil. 67 (1996).

[41] *Philippine Airlines v. Kurangking,* 438 Phil. 375, 381 (2002).

[42] *Id*.

The Makati RTC may proceed to hear Civil Case No. 03-991 only against Arollado if there is no ground to go after JAPRL and RFC (as will later be discussed). A creditor can demand payment from the surety solidarily liable with the corporation seeking rehabilitation.[43]

Respondents abused procedural technicalities (albeit unsuccessfully) for the sole purpose of preventing, or at least delaying, the collection of their legitimate obligations. Their reprehensible scheme impeded the speedy dispensation of justice. More importantly, however, considering the amount involved, respondents utterly disregarded the significance of a stable and efficient banking system to the national economy.[44]

Banks are entities engaged in the lending of funds obtained through deposits[45] from the public.[46] They borrow the public's

---

See A.M. No. 00-8-10-SC, Sec. 11 provides:

Section 11. *Period of Stay Order.* **The stay order shall be effective from the date of its issuance until the dismissal of the petition or termination of the rehabilitation proceedings**.

The petition shall be dismissed if no rehabilitation is approved by the court upon the lapse of one hundred eighty (180) days from the date of the initial hearing. The court may grant an extension beyond this periodonly if it appears by convincing and compelling evidence that the debtor may successfully be rehabilitated. In no instance, however, shall the period for approving or disapproving a rehabilitation plan exceed eighteen (18) months from the date of filing of the petition. (emphasis supplied)

[43] *Philippine Blooming Mills v. Court of Appeals,* 459 Phil. 875, 892 (2003) citing *Traders Royal Bank v. Court of Appeals,* G.R. No. 78412, 26 September 1989, 177 SCRA 788, 792.

[44] GEN. BANKING LAW, Sec. 2 provides:

Section 2. *Declaration of Policy.* The State recognizes the **vital role of banks providing an environment conducive to the sustained development of the national economy** and the fiduciary nature of banking that requires high standards of integrity and performance. In furtherance thereof, **the State shall promote a stable and efficient banking and financial system that is globally competitive, dynamic and responsive to the demands of a developing economy.** (emphasis supplied)

[45] GEN. BANKING LAW, Sec. 3.1.

[46] Gen. Banking Law, Sec. 8.2.

excess money (*i.e.,* deposits) and lend out the same.[47] Banks therefore redistribute wealth in the economy by channeling idle savings to profitable investments.

Banks operate (and earn income) by extending credit facilities financed primarily by deposits from the public.[48] They plough back the bulk of said deposits into the economy in the form of loans.[49] Since banks deal with the public's money, their viability depends largely on their ability to return those deposits on demand. For this reason, banking is undeniably imbued with public interest. Consequently, much importance is given to sound lending practices and good corporate governance.[50]

Protecting the integrity of the banking system has become, by large, the responsibility of banks. The role of the public, particularly individual borrowers, has not been emphasized. Nevertheless, we are not unaware of the rampant and unscrupulous practice of obtaining loans without intending to pay the same.

In this case, petitioner alleged that JAPRL fraudulently altered and falsified its financial statements in order to obtain its credit facilities. Considering the amount of petitioner's exposure in JAPRL, justice and fairness dictate that the Makati RTC hear whether or not respondents indeed committed fraud in securing the credit accomodation.

A finding of fraud will change the whole picture. In this event, petitioner can use the finding of fraud to move for the dismissal of the rehabilitation case in the Calamba RTC.

---

[47] Frederic Mishkin, *THE ECONOMICS OF MONEY, BANKING AND FINANCIAL MATTERS*, 5th ed., pp. 231-238.

See also Vicente Valdepeñas, Jr., *THE BANGKO SENTRAL AND THE PHILIPPINE ECONOMY*, pp. 123-124.

[48] Valdepeñas, *id*., p. 125.

[49] The Bangko Sentral ng Pilipinas (BSP) controls bank lending by imposing reserve requirements which may be increased or reduced, subject to the financing needs of the economy.

[50] Valdepeñas, *supra* note 47 at 125-126.

The protective remedy of rehabilitation was never intended to be a refuge of a debtor guilty of fraud.

Meanwhile, the Makati RTC should proceed to hear Civil Case No. 03-991 against the three respondents guided by Section 40 of the General Banking Law which states:

> Section 40. *Requirement for Grant of Loans or Other Credit Accommodations.* Before granting a loan or other credit accommodation, a bank must ascertain that the debtor is capable of fulfilling his commitments to the bank.
>
> Towards this end, a bank may demand from its credit applicants a statement of their assets and liabilities and of their income and expenditures and such information as may be prescribed by law or by rules and regulations of the Monetary Board to enable the bank to properly evaluate the credit application which includes the corresponding financial statements submitted for taxation purposes to the Bureau of Internal Revenue. **Should such statements prove to be false or incorrect in any material detail, the bank may terminate any loan or credit accommodation granted on the basis of said statements and shall have the right to demand immediate repayment or liquidation of the obligation.**
>
> In formulating the rules and regulations under this Section, the Monetary Board shall recognize the peculiar characteristics of microfinancing, such as cash flow-based lending to the basic sectors that are not covered by traditional collateral. (emphasis supplied)

Under this provision, banks have the right to annul any credit accommodation or loan, and demand the immediate payment thereof, from borrowers proven to be guilty of fraud. Petitioner would then be entitled to the immediate payment of ₱194,493,388.98 and other appropriate damages.[51]

---

[51] Paragraph 28 of the Trust Receipt Agreement provides:

> 28. In all cases where the Entruster is compelled to resort to the cancellation of this Trust Receipt or any take legal action to protect its interests, the Entrustee shall pay attorney fees fixed at 15% of the total obligation of the Entrustee, which shall in case be less than ₱20,000 exclusive of costs and fees allowed by law and the other expenses of collection incurred by the Entruster, and liquidated damages equal to fifteen percent (15%) of the total amount due but in no case less than ₱20,000. Any deficiency resulting within 24 hours from such sale, failing

Finally, considering that respondents failed to pay the four trust receipts, the Makati City Prosecutor should investigate whether or not there is probable cause to indict respondents for violation of Section 13 of the Trust Receipts Law.[52]

ACCORDINGLY, the petition is hereby *GRANTED*. The June 7, 2007 decision and August 31, 2007 resolution of the Court of Appeals in CA-G.R. SP No. 95659 are *REVERSED* and *SET ASIDE*.

The Regional Trial Court of Makati City, Branch 145 is ordered to proceed expeditiously with the trial of Civil Case No. 03-991 with regard to respondent Jose U. Arollado, and the other respondents if warranted.

SO ORDERED.

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

Azcuna, on official leave.

---

which the Entruster may take such legal action, without further notice to the Entrustee, as it may deem necessary to collect such deficiency from the Entrustee.

Id., pp. 66-67.

[52] TRUST RECEIPTS LAW, Sec. 13 provides:

> Section 13. *Penalty Clause.* – The failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with terms of the trust receipt shall constitute the **crime of estafa**, punishable under the provisions of Article Three hundred and fifteen, paragraph one (b) of Act Numbered Three thousand eight hundred and fifteen, as amended, otherwise known as the Revised Penal Code. If the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty provided for in this Decree shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to civil liabilities arising from the criminal offense. (emphasis supplied)

SECOND DIVISION

[A.C. No. 6567. April 16, 2008]

JOSE C. SABERON, *complainant, vs.* **ATTY. FERNANDO T. LARONG,** *respondent.*

SYLLABUS

1. LEGAL ETHICS, ATTORNEYS; A LAWYER'S LANGUAGE EVEN IN HIS PLEADINGS MUST BE DIGNIFIED.— To be sure, the adversarial nature of our legal system has tempted members of the bar to use strong language in pursuit of their duty to advance the interests of their clients. However, while a lawyer is entitled to present his case with vigor and courage, such enthusiasm does not justify the use of offensive and abusive language. Language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, illuminating but not offensive. On many occasions, the Court has reminded members of the Bar to abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged. In keeping with the dignity of the legal profession, a lawyer's language even in his pleadings must be dignified.

2. ID.; ID.; A LAWYER MUST BE SCRUPULOUSLY OBSERVANT OF LAW AND ETHICS.— It is of no consequence that the allegedly malicious statements of respondent were made not before a court but before the BSP. A similar submission that actuations of and statements made by lawyers before the National Labor Relations Commission (NLRC) are not covered by the Code of Professional Responsibility, the NLRC not being a court, was struck down in *Lubiano v. Gordolla,* thus: "Respondent became unmindful of the fact that in addressing the National Labor Relations Commission, he nonetheless remained a member of the Bar, an oath-bound servant of the law, whose first duty is not to his client but to the administration of justice and whose conduct ought to be and must be scrupulously observant of law and ethics."

3. REMEDIAL LAW; EVIDENCE; RELEVANCY; UTTERANCES, PETITIONS AND MOTIONS MADE IN THE COURSE OF JUDICIAL PROCEEDINGS ARE CONSIDERED AS

ABSOLUTELY PRIVILEGED SO LONG AS THEY ARE PERTINENT AND RELEVANT TO THE SUBJECT OF INQUIRY; TEST OF RELEVANCY. — [U]tterances, petitions and motions made in the course of judicial proceedings have consistently been considered as absolutely privileged, however false or malicious they may be, but only for so long as they are pertinent and relevant to the subject of inquiry. The test of relevancy has been stated, thus: "x x x. As to the degree of relevancy or pertinency necessary to make alleged defamatory matters privileged the courts favor a liberal rule. The matter to which the privilege does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its relevancy and impropriety. In order that matter alleged in a pleading may be privileged, it need not be in every case material to the issues presented by the pleadings. It must, however, be legitimately related thereto, or so pertinent to the subject of the controversy that it may become the subject of inquiry in the course of the trial x x x."

4. ID.; REVISED RULES OF COURT; DISBARMENT AND DISCIPLINE OF ATTORNEYS; REVIEW AND DECISION BY THE BOARD OF GOVERNORS; RULE.— Section 12 of Rule 139-B of the Rules of Court provides: "SEC. 12. Review and decision by the Board of Governors. - (a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report. **The decision of the Board upon such review shall be in writing and shall clearly and distinctly state the facts and the reasons on which it is based.** It shall be promulgated within a period not exceeding thirty (30) days from the next meeting of the Board following the submittal of the Investigator's report." The above requirement serves a very important function not just to inform the parties of the reason for the decision as would enable them on appeal to point out and object to the findings with which they are not in agreement, but also to assure the parties that the Board of Governors has reached the judgment through the process of legal reasoning.

APPEARANCES OF COUNSEL

Castro Castro & Associates for complainant.
Reserva & Filoteo Law Office for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

In a Complaint[1] filed before the Office of the Bar Confidant, this Court, complainant Jose C. Saberon (complainant) charged Atty. Fernando T. Larong (respondent) of grave misconduct for allegedly using abusive and offensive language in pleadings filed before the *Bangko Sentral ng Pilipinas* (BSP).

The antecedent facts of the case are as follows:

Complainant filed before the BSP a Petition[2] against Surigaonon Rural Banking Corporation (the bank) and Alfredo Tan Bonpin (Bonpin), whose family comprises the majority stockholders of the bank, for cancellation of the bank's registration and franchise. The Petition, he said, arose from the bank's and/or Bonpin's refusal to return various checks and land titles, which were given to secure a loan obtained by his (complainant's) wife, despite alleged full payment of the loan and interests.

Respondent, in-house counsel and acting corporate secretary of the bank, filed an Answer with Affirmative Defenses[3] to the Petition stating, *inter alia,*

> 5. That this is another in the series of **blackmail** suits filed by plaintiff [herein complainant Jose C. Saberon] and his wife to coerce the Bank and Mr. Bonpin for financial gain –
>
> x x x.[4] (Emphasis and underscoring supplied)

Respondent made statements of the same tenor in his Rejoinder[5] to complainant's Reply.

---

[1] *Rollo*, pp. 1-5. Filed before the Office of the Bar Confidant on September 22, 2004.

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

[3] *Id.* at 12-19.

[4] *Id.* at 13; p. 2 of the Answer.

[5] *Id.* at 26-35. Denominated as "Traverse to Reply," the rejoinder stated on paragraph 4, as follows:

Finding the aforementioned statements to be "totally malicious, viscous [*sic*] and bereft of any factual or legal basis," complainant filed the present complaint.

Complainant contends that he filed the Petition before the BSP in the legitimate exercise of his constitutional right to seek redress of his grievances; and that respondent, as in-house counsel and acting corporate secretary of the bank, was fully aware that the loan obtained by his (complainant's) wife in behalf of "her children" had been paid in full, hence, there was no more reason to continue holding the collaterals.

Complainant adds that respondent aided and abetted the infliction of damages upon his wife and "her children" who were thus deprived of the use of the mortgaged property.

In his Comment[6] to the present complaint against him, respondent argues that: (1) there was "nothing abusive, offensive or otherwise improper" in the way he used the word "blackmail" to characterize the suit against his clients; and (2) when a lawyer files a responsive pleading, he is not in any way aiding or abetting the infliction of damages upon the other party.

By Resolution of March 16, 2005,[7] the Court referred the case to the Integrated Bar of the Philippines for investigation, report and recommendation.

In his Report and Recommendation dated June 21, 2006,[8] IBP Investigating Commissioner Dennis A. B. Funa held that the word "blackmail" connotes something sinister and criminal. Unless the person accused thereof is criminally charged with extortion, he added, it would be imprudent, if not offensive, to characterize that person's act as blackmail.

---

4. Most notably, after Respondents revealed that **the instant Petition is a mere ruse employed by Petitioner to blackmail the former for financial gain** and after ample showing that this action is baseless and fruitless, petitioner, finding his foot in his mouth, now changes gear and goes amuck by raising new matters purely extraneous to his original cause of action xxx. (Emphasis supplied)

[6] *Id*. at 40-47. Filed before the OBC on February 1, 2005.

[7] *Id*. at 192.

[8] *Id.* at 187-190.

Commissioner Funa stressed that a counsel is expected only to present factual arguments and to anchor his case on the legal merits of his client's claim or defense in line with his duty under Rule 19.01 of the Code of Professional Responsibility, as follows:

> A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

Moreover, he noted that in espousing a client's cause, respondent should not state his personal belief as to the soundness or justice of his case pursuant to Canon 15[9] of the Code of Professional Responsibility.

The Investigating Commissioner also opined that by using words that were "unnecessary and irrelevant to the case," respondent went "overboard and crossed the line" of professional conduct. In view thereof, he recommended that respondent be found culpable of gross misconduct and suspended from the practice of law for 30 days.

By Resolution No. XVII-2007-036 of January 18, 2007,[10] the IBP Board of Governors disapproved the recommendation and instead dismissed the case for lack of merit.

The Commission on Bar Discipline, by letter of March 26, 2007, transmitted the records of the case to this Court.[11]

Complainant appealed the Resolution of the IBP Board of Governors to this Court via a petition filed on March 7, 2007, under Section 12 (c) of Rule 139-B[12] of the Revised Rules of Court.

---

[9] Canon 15- A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.

[10] *Rollo,* p. 186.

[11] *Id.* at 185.

[12] Section 2(c) of Rule 139-B of the Revised Rules of Court, provides:

(c) If the respondent is exonerated by the Board or the disciplinary sanction imposed by it is less than suspension or disbarment (such as admonition, reprimand

Complainant challenges the IBP Board of Governor's Resolution as illegal and void *ab initio* for violating the mandatory requirements of Section 12(a) of Rule 139-B of the Revised Rules of Court that the same be "reduced to writing, clearly and distinctly stating the facts and the reasons on which it is based."

Finding the ruling of the Investigating Commissioner that respondent is guilty of grave misconduct to be in accordance with the evidence, complainant nevertheless submits that the recommended penalty of suspension should be modified to disbarment. The offense committed by respondent, he posits, manifests an evil motive and is therefore an infraction involving moral turpitude.

In his Comment to [the] Petition for Review, respondent states that the administrative complaint against him is a harassment suit given that it was in his capacity as counsel for the bank and Bonpin that he filed the Answer objected to by complainant.

Moreover, respondent claims that the purportedly offensive allegation was a statement of fact which he had backed up with a narration of the chronological incidents and suits filed by complainant and his wife against his clients. That being the case, he contends that the allegation made in the Answer must be considered absolutely privileged just like allegations made in any complaint or initiatory pleading.

Respondent in fact counters that it was complainant himself who had made serious imputations of wrongdoing against his clients – the bank for allegedly being engaged in some illegal activities, and Bonpin for misrepresenting himself as a Filipino.

Nonetheless, respondent pleads that at the time the allegedly abusive and offensive language was used, he was only two years into the profession, with nary an intention of bringing dishonor to it. He admits that because of some infelicities of language,

---

or fine) it shall issue a decision exonerating respondent or imposing such sanction. The case shall be deemed terminated unless upon petition of the complainant or other interested party filed with the Supreme Court within (15) days from notice of the Board's resolution, the Supreme Court orders otherwise.

he may have stirred up complainant's indignation for which he asked the latter's and this Court's clemency.

In his Reply,[13] complainant counters that respondent's Comment reveals the latter's propensity to deliberately state a falsehood; and that respondent's claim that the administrative complaint was a "harassing act," deducible from the "fact that [it] post-dates a series of suits, none of which has prospered xxx against the same rural bank and its owner," is bereft of factual basis.

Complainant goes on to argue that respondent, as counsel for Bonpin, knew of the two criminal cases he and his wife had filed against Bonpin and, as admitted by respondent, of the criminal charges against him for libel arising from his imputations of blackmail, extortion or robbery against him and his wife.

Finally, complainant refuses to accede to respondent's entreaty for clemency.

This Court finds respondent guilty of simple misconduct for using intemperate language in his pleadings.

The Code of Professional Responsibility mandates:

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

Rule 8.01 - A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

CANON 11 - A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

Rule 11.03 - A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.

To be sure, the adversarial nature of our legal system has tempted members of the bar to use strong language in pursuit of their duty to advance the interests of their clients.[14]

---

[13] *Rollo*, pp. 243-249.

[14] *Go v. Court of Appeals*, G.R. No. 106087, April 7, 1993, 221 SCRA 397, 420.

However, while a lawyer is entitled to present his case with vigor and courage, such enthusiasm does not justify the use of offensive and abusive language.[15] Language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, illuminating but not offensive.[16]

On many occasions, the Court has reminded members of the Bar to abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.[17] In keeping with the dignity of the legal profession, a lawyer's language even in his pleadings must be dignified.[18]

It is of no consequence that the allegedly malicious statements of respondent were made not before a court but before the BSP. A similar submission that actuations of and statements made by lawyers before the National Labor Relations Commission (NLRC) are not covered by the Code of Professional Responsibility, the NLRC not being a court, was struck down in *Lubiano v. Gordolla,*[19] thus:

> Respondent became unmindful of the fact that in addressing the National Labor Relations Commission, he nonetheless remained a member of the Bar, an oath-bound servant of the law, whose first duty is not to his client but to the administration of justice and whose conduct ought to be and must be scrupulously observant of law and ethics.[20]

---

[15] *Rubio v. Court of Appeals*, G.R. No. 84032, August 29, 1989, 177 SCRA 60, 63.

[16] *Torres v. Javier*, A.C. No. 5910, September 21, 2005, 470 SCRA 408, 421; *Nuñez v. Astorga*, A.C. No. 6131, February 28, 2005, 452 SCRA 353, 364, citing *Hueysuwan-Florido v. Atty. Florido*, 465 Phil. 1, 7 (2004); *Cruz v. Cabrera*, A.C. No. 5737, October 25, 2004, 441 SCRA 211, 219.

[17] Section 20(f) of Rule 138 of the Rules of Court. *Vide Uy v. Atty. Depasucat*, 455 Phil. 1, 21 (2003).

[18] *Ng v. Alar*, A.C. No. 7252, November 22, 2006, 507 SCRA 465, 473; *Torres v. Javier*, *supra*.

[19] A.C. No. 2343, July 30, 1982, 115 SCRA 459, 462.

[20] *Supra*, citing *Surigao Mineral Reservation Board v. Cloribel*, G.R. No. L-27072, January 9, 1970, 31 SCRA 1, 17.

The observation applies with equal force to the case at bar.

Respecting respondent's argument that the matters stated in the Answer he filed before the BSP were privileged, it suffices to stress that lawyers, though they are allowed a latitude of pertinent remark or comment in the furtherance of the causes they uphold and for the felicity of their clients, should not trench beyond the bounds of relevancy and propriety in making such remark or comment.[21]

True, utterances, petitions and motions made in the course of judicial proceedings have consistently been considered as absolutely privileged, however false or malicious they may be, but only for so long as they are pertinent and relevant to the subject of inquiry.[22] The test of relevancy has been stated, thus:

> x x x. As to the degree of relevancy or pertinency necessary to make alleged defamatory matters privileged the courts favor a liberal rule. The matter to which the privilege does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its relevancy and impropriety. In order that matter alleged in a pleading may be privileged, it need not be in every case material to the issues presented by the pleadings. It must, however, be legitimately related thereto, or so pertinent to the subject of the controversy that it may become the subject of inquiry in the course of the trial x x x.[23]

Granting that the proceedings before the BSP partake of the nature of judicial proceedings, the ascription of 'blackmail' in the Answer and Rejoinder filed by respondent is not legitimately related or pertinent to the subject matters of inquiry before the BSP, which were Bonpin's alleged alien citizenship and majority

---

[21] *Uy v. Atty. Depasucat*, *supra* note 17 at 19.

[22] *Torres v. Atty. Javier*, *supra* note16 at 418; *Villalon v. Buendia*, 315 Phil. 663, 667 (1995); *Gutierrez v. Abila et al.,* 197 Phil. 616, 621 (1982).

[23] *Uy v. Atty. Depasucat*, *supra* note 21. *Vide Alcantara v. Ponce*, G.R. No. 156183, February 28, 2007, 517 SCRA 74, 83; *Tolentino v. Baylosis*, 110 Phil. 1010, 1013 (1961).

stockholding in the bank. Those issues were amply discussed in the Answer with Affirmative Defenses without need of the further allegation that the Petition was "another in a series of **blackmail** suits . . . to coerce the Bank and Mr. Bonpin for financial gain." Hence, such allegation was unnecessary and uncalled for. More so, considering that complainant and his wife were well within their rights to file the cases against the bank and/or Bonpin to protect their interests and seek redress of their grievances.

Respecting the assailed Resolution of the IBP Board of Governors, indeed only a "Notice of Resolution" was transmitted to this Court, together with the Records of the case, which Notice simply stated that on January 18, 2007, the IBP Board of Governors passed Resolution No. XVII-2007-036 in which it:

> RESOLVED to AMEND, as it is hereby AMENDED, the Recommendation of the Investigating Commissioner, and to APPROVE the DISMISSAL of the above-entitled case for lack of merit.

Upon such Notice, it is evident that there is no compliance with the procedural requirement that the IBP Board of Governors' decision shall state clearly and distinctly the findings of facts or law on which the same is based. Thus Section 12 of Rule 139-B of the Rules of Court provides:

> SEC. 12. Review and decision by the Board of Governors. — (a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report. **The decision of the Board upon such review shall be in writing and shall clearly and distinctly state the facts and the reasons on which it is based.** It shall be promulgated within a period not exceeding thirty (30) days from the next meeting of the Board following the submittal of the Investigator's report. (Emphasis and underscoring supplied)

The above requirement serves a very important function not just to inform the parties of the reason for the decision as would enable them on appeal to point out and object to the findings with which they are not in agreement, but also to assure the

parties that the Board of Governors has reached the judgment through the process of legal reasoning.[24]

With regard to complainant's plea that respondent be disbarred, this Court has consistently considered disbarment and suspension of an attorney as the most severe forms of disciplinary action, which should be imposed with great caution. They should be meted out only for duly proven serious administrative charges.[25]

Thus, while respondent is guilty of using infelicitous language, such transgression is not of a grievous character as to merit respondent's disbarment. In light of respondent's apologies, the Court finds it best to temper the penalty for his infraction which, under the circumstances, is considered simple, rather than grave, misconduct.

WHEREFORE, complainant's petition is partly *GRANTED*. Respondent, Atty. Fernando T. Larong, is found guilty of *SIMPLE MISCONDUCT* for using intemperate language. He is *FINED* ₱2,000 with a stern *WARNING* that a repetition of this or similar act will be dealt with more severely.

Let a copy of this Decision be furnished the Office of the Bar Confidant for appropriate annotation in the record of respondent.

SO ORDERED.

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

---

[24] *Teodosio v. Nava*, A.C. No. 4673, April 27, 2001, 357 SCRA 406, 412, cited in *Cruz v. Cabrera*, *supra* note 16 at 216-217.

[25] *Nuñez v. Astorga*, *supra* note 16 at 354.

FIRST DIVISION

[A.M. No. MTJ-08-1695. April 16, 2008]
(Formerly OCA IPI 03-1380-MTJ)

JULIANITO M. SALVADOR, *complainant, vs.* **JUDGE MANUEL Q. LIMSIACO, JR. and JOHN O. NEGROPRADO, Clerk of Court, both of the 4th MCTC, Valladolid-San Enrique-Pulupandan, Negros Occidental,** *respondents.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; SHOULD DISPOSE OF THE COURT'S BUSINESS PROMPTLY AND EXPEDITIOUSLY AND DECIDE CASES WITHIN THE PERIOD FIXED BY LAW.— A judge's foremost consideration is the administration of justice. Thus, he should follow the time limit set for deciding cases. The Constitution mandates that all cases or matters filed before all lower courts shall be decided or resolved within 90 days from the time the case is submitted for decision. Judges are enjoined to dispose of the court's business promptly and expeditiously and decide cases within the period fixed by law. Failure to comply within the mandated period constitutes a serious violation of the constitutional right of the parties to a speedy disposition of their cases. It also undermines the people's faith and confidence in the judiciary, lowers its standards and brings it to disrepute. Decision making, among other duties, is the most important duty of a member of the bench.

2. REMEDIAL LAW; REVISED RULES OF COURT; CHARGES AGAINST JUDGES; UNDUE DELAY IN RENDERING A DECISION; PENALTY.— Under Rule 140, Section 9 (1), as amended by Administrative Matter No. 01-8-10-SC, respondent judge's undue delay in rendering a decision is classified as a less serious offense. It carries the penalty of suspension from office without salary and other benefits for not less than one nor more than three months, *or* a fine of more than ₱10,000 but not exceeding ₱20,000.

R E S O L U T I O N

CORONA, *J.*:

This treats of the administrative complaint for obstruction of justice, undue delay in rendering a decision and gross inefficiency filed by the complainant Julianito M. Salvador against respondent Judge Manuel Q. Limsiaco, Jr.

In his affidavit-complaint,[1] the complainant averred that, on October 21, 2001, he filed an ejectment case[2] in the Municipal Circuit Trial Court (MCTC) of Valladolid-San Enrique-Pulupandan, Negros Occidental. Respondent judge presided over that court.

After the defendants filed their answer, the case was heard on February 13, 2002. As the parties failed to amicably settle the case, respondent judge required them to submit their respective position papers. The complainant submitted his position paper on March 15, 2002 while the defendants failed to do so.

After two months, the complainant moved for the early resolution of the case but the defendants opposed it claiming respondent judge was yet to issue a pre-trial order defining the issues to be discussed in the position papers.

Respondent judge did not act on the motion. Instead, he again required the complainant to submit a copy of his position paper. According to the complainant, respondent judge lost the original copy of his position paper. On November 4, 2002, he complied with respondent judge's directive. He filed two more motions for the early resolution of the case. Respondent judge did not resolve both motions.

On May 21, 2003, respondent judge finally rendered a decision dismissing the ejectment case for lack of cause of action.[3]

---

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

[2] Civil Case No. 01-005-V entitled *Julianito Salvador v. Eduardo Ebro and Erryl Ebro*.

[3] *Rollo*, pp. 175-182.

The complainant filed a notice of appeal which the MCTC granted. On follow-up, however, he was informed that the records had not yet been transmitted to the Regional Trial Court (RTC). He also discovered that the MCTC's clerk of court, respondent John O. Negroprado, failed to attach his position paper to the case's records and to issue a certificate on the completeness of said records.

The complaint was amended to include Negroprado for undue delay in transmitting the complete records of the case to the RTC and for not issuing the certificate.

In his comment,[4] respondent judge contended that the complainant's accusations were baseless. According to him, he had already decided the case on May 21, 2003. It was not also true that he lost the original copy of complainant's position paper. He insisted he neither received nor saw the document.

Regarding the complainant's notice of appeal, respondent judge stated that he had in fact ordered the transmittal of the records to the RTC. On the other hand, respondent Negroprado maintained that he transmitted the complete records on June 16, 2003.[5] He, however, admitted that he failed to issue the certificate relating to the completeness of the documents.[6]

The complainant refuted respondents' defense. He insisted the records of the case were transmitted to the RTC only on July 10, 2003 as evidenced by the stamp mark made and initialed by the RTC's receiving clerk.

In a report,[7] the Office of the Court Administrator (OCA) gave credence to the complainant's version and recommended that:

1. the case be re-docketed as a regular administrative matter;
2. respondent Judge Manuel Q. Limsiaco, Jr., 4th MCTC, Valladolid-San Enrique-Pulupandan, Negros Occidental be

[4] *Id*., pp. 247-249.

[5] Respondent Negroprado's comment, id., pp. 269-271.

[6] *Id*.

[7] Report dated November 06, 2007. *Id*., pp. 370-375.

administratively liable for undue delay in rendering a decision and be **FINED** in the amount of ₱1,000 with a warning that a repetition of similar infraction be dealt with more severely; and[,]

3. respondent Clerk of Court John O. Negroprado, be **ADMONISHED** to be more circumspect in the discharge of his functions.

We adopt the OCA's recommendations, with modification.

Under Rule 70 of the Rules of Court, the court shall render its judgment within 30 days after its receipt of the parties' position papers or the expiration of the period for filing the same,[8] whichever comes first.

The record shows that during the February 13, 2002 hearing, the parties were given 30 days (or until March 15, 2002) within which to submit their respective position papers. Only the complainant complied with the order.

Despite the expiration of the period granted by the court, however, respondent judge failed to decide the case. It was only after more than one year from the lapse of the prescribed period that he rendered his decision.

A judge's foremost consideration is the administration of justice.[9] Thus, he should follow the time limit set for deciding cases.[10]

The Constitution mandates that all cases or matters filed before all lower courts shall be decided or resolved within 90 days

---

[8] Rule 70, Section 11. *Period for rendition of judgment.* – Within thirty (30) days after receipt of the affidavits and position papers, or the expiration of the period for filing the same, the court shall render judgment.

xxx xxx xxx

[9] *Report in the Judicial Audit and Inventory of the Records of Cases in the RTC, Branch 43, Roxas, Mindoro Oriental,* A.M. No. 93-9-1249-RTC, 22 September 1994, 236 SCRA 631.

[10] *Mosquero v. Legaspi,* A.M. No. RTJ-99-1511, 10 July 2000, 335 SCRA 326.

from the time the case is submitted for decision.[11] Judges are enjoined to dispose of the court's business promptly and expeditiously and decide cases within the period fixed by law.[12] Failure to comply within the mandated period constitutes a serious violation of the constitutional right of the parties to a speedy disposition of their cases.[13] It also undermines the people's faith and confidence in the judiciary, lowers its standards and brings it to disrepute.[14] Decision making, among other duties, is the most important duty of a member of the bench.[15]

Under Rule 140, Section 9 (1), as amended by Administrative Matter No. 01-8-10-SC, respondent judge's undue delay in rendering a decision is classified as a less serious offense. It carries the penalty of suspension from office without salary and other benefits for not less than one nor more than three months, *or* a fine of more than ₱10,000 but not exceeding ₱20,000.[16]

Regarding respondent Negroprado, the complainant failed to provide sufficient evidence to show that he had maliciously retained the original copy of the position paper or that he had custody of the same. The complainant submitted the original copy of his position paper on March 15, 2002 while Negroprado assumed his position only on May 5, 2003. Considering, however, that he failed to immediately transmit the records of the case to the RTC and to certify their completeness upon transmittal, he is sternly warned to be more circumspect in the discharge of his duties.

WHEREFORE, respondent Judge Manuel Q. Limsiaco, Jr. is hereby found *GUILTY* of undue delay in rendering a decision.

---

[11] 1987 Constitution, Article VIII, Section 15. See also *Tiongco v. Judge Savillo,* A.M. No. RTJ-02-1719, March 31, 2006, 486 SCRA 48.

[12] *Office of the Court Administrator v. Eisma*, 439 Phil. 601 (2002).

[13] *Mosquero v. Legaspi, supra.*

[14] *Cases Submitted for Decision before Retired Judge Maximo A. Savellano, Jr., RTC-Branch 53, Manila,* 386 Phil. 80 (2000).

[15] *Id*.

[16] Rules of Court, Rule 140, Section 11 (b).

Accordingly, he is *FINED* ₱20,000 with a warning that a repetition of the same or similar infraction in the future shall be dealt with more severely. On the other hand, respondent Clerk of Court John O. Negroprado is hereby sternly *WARNED* to be more circumspect in the discharge of his functions.

SO ORDERED.

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

Carpio, J., on leave.

FIRST DIVISION

[A.M. No. P-06-2142. April 16, 2008]
(Formerly OCA I.P.I. No. 05-2294-P)

BRANCH CLERK OF COURT MARIZEN B. GRUTAS, *complainant, vs.* **REYNALDO B. MADOLARIA,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SHOULD SERVE WITH THE HIGHEST DEGREE OF RESPONSIBILITY, INTEGRITY, LOYALTY AND EFFICIENCY AND AT ALL TIMES REMAIN ACCOUNTABLE TO THE PEOPLE.—** Section 1 of Article XI of the Constitution declares that a public office is a public trust. It enjoins public officers and employees to serve with the highest degree of responsibility, integrity, loyalty and efficiency and to at all times remain accountable to the people. As frontline officials of the justice system, sheriffs and deputy sheriffs must always strive to maintain public trust in the performance of their duties.

2. ID.; ID.; ID.; COURT PERSONNEL; SHERIFFS; INEFFICIENCY AND INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; COMMITTED IN CASE AT BAR; PENALTY.— By the very nature of their functions, deputy sheriffs, such as respondent, are called upon to discharge their duties with due care and utmost diligence and above all, to be beyond suspicion. Evidently, respondent's repeated failure to make a return, to serve notice to the accused, and to submit a return within the allowable period constitute inefficiency and incompetence in the performance of official duties, and conduct prejudicial to the best interest of the service. Inefficiency and incompetence in the performance of official duties, and conduct prejudicial to the best interest of the service each carry the penalty of suspension from six months and one day to one year even for the first offense.

3. ID.; ID.; ID.; ID.; ID.; INSUBORDINATION; ESTABLISHED IN CASE AT BAR; PENALTY. — Respondent's failure likewise to attend the JTS Meeting on July 27, 2005 echoes his insubordination to office rules and directives and shows his lack of professionalism. For the first offense, insubordination carries the penalty of suspension from one month and one day to six months.

4. ID.; ID.; ID.; LOAFING; COMMITTED IN CASE AT BAR; PENALTY. — Another infraction committed by the respondent is loafing, which is defined as "frequent unauthorized absences from duty during regular hours," with the word "frequent" connoting that the employees absent themselves from duty more than once. Respondent claims that he is always on duty outside of the office and does his work even late in the afternoon, sometimes utilizing the weekends for the rendition of his service. This explanation is indefensible as the practice of off-setting tardiness or absence by working for an equivalent number of minutes or hours beyond the regular or approved working hours of the employee concerned is not allowed under the Civil Service Rules. Loafing or frequent unauthorized absences from duty during regular working hours is punishable by suspension from office for six months and one day to one year for the first offense following Rule IV, Section 52 A (17) of the

Uniform Rules on Administrative Cases in the Civil Service or CSC Resolution No. 991936.

D E C I S I O N

AZCUNA, *J.*:

This case arose from a complaint-affidavit dated September 26, 2005[1] filed by Branch Clerk of Court, Atty. Marizen Grutas (complainant), charging Deputy Sheriff Reynaldo B. Madolaria (respondent) of the Regional Trial Court (RTC), Branch 217, Quezon City with gross incompetence, insubordination and conduct prejudicial to the best interest of the service.

Complainant alleged that on several occasions, respondent had been remiss in his duties as deputy sheriff. He was always out of office and had the predilection to loaf during office hours resulting in the delay and resetting of court hearings. Further, respondent's conduct seriously affected the schedule of hearings which impaired the RTC's function of administering speedy justice to the party-litigants. Several memoranda were issued to respondent requiring him to explain his failure to submit on time the return of the notices and processes in the case pending before the court. Complainant reports that respondent merely disregarded the said directives. Complainant further avers that respondent remained adamant despite the following memoranda/ orders issued to him, to *wit*:

1) Memorandum dated 23 June 2004

   Subject: Procedure Re: Time-Ins and Time-Out Unauthorized Out of Court Processes and Transactions and Turn-over of Return.[2]

2) Memorandum dated 3 August 2004

   Subject: Loafing During Office Hours, Disrespectful Attitude, Inefficiency.[3]

---

[1] *Rollo*, pp. 1-4.

[2] *Rollo*, p. 5.

[3] *Id.* at 6.

3) Memorandum dated 23 September 2004

Subject: Failure to Submit Return within the Allowable Period in the following cases:

1) Jane Orsino vs. Highway Rental Services Corp. rep. by its Pres. Lee Seung and Vice Pres. Annie Llanura – Civil Case No. Q-04-51476;

2) Fred Bautista and Ana Tribina vs. Lily Crespo and Priscilla Crespo – Civil Case No. Q-04-52667; and

3) Epifania Ignacio, et al. vs. The Register of Deeds of Quezon City, et al. – Civil Case No. Q-04-52723.[4]

4) Memorandum dated 25 October 2004

Subject: Failure to Make a Return Re: the Order dated July 29, 2004, Re: Sp. Proc. No. Q-04-52764 Despite Receipt thereof on August 4, 2004.[5]

5) Memorandum dated 25 October 2004

Subject: Failure to Submit Return Re: Writs of Preliminary Attachment Within the Allowable Period in the following cases:

1) Power Check vs. Ferdinand Garcia – Q-04-52898.

2) Sonic Print, Inc. vs. Handy City Pages, Inc., et al. – Q-04-53159.

3) Igros Marketing Corp. vs. MSM Contracting Corp. – Q-03-50220.[6]

6) Memorandum dated 13 December 2004

Subject: Failure to Serve Notice to Accused Salvador Jara

[4] *Id.* at 7.

[5] *Id.* at 8.

[6] *Id.* at 9.

y Sarabia for Promulgation of Judgment (Crim. Case No. Q-98-76268).[7]

7) Memorandum dated 01 March 2005

Subject: Failure to Make a Return (Civil Case No. 04-54187).[8]

8) Order Issued by Judge Lydia Layosa dated 13 May 2005 in Civil Case No. Q-05-54916 citing respondent in contempt of court and ordering him to pay a fine of One Hundred Pesos (₱100.00) for failure to serve the Order dated 4 April 2005 (settling the prayer for preliminary injunction) resulting in non-appearance of petitioner's counsel in the hearing for the injunction.[9]

9) Memorandum dated 26 April 2005

Subject: Failure to Make a Return Re: the Service of Summons in Civil Cases Nos. 05-54620 and 05-05-55072.[10]

10) Memorandum dated 19 May 2005

Subject: Inefficiency, Complete Disregard of Office Rules (for not reporting back to the office after serving court orders and/or processes during the remaining office hours).[11]

11) Memorandum dated 01 June 2005

Subject: Failure to Serve Notice to Accused for Arraignment on June 1, 2005 (Crim. Case No. Q-05-132200).[12]

12) Memorandum dated 24 June 2005

---

[7] *Id*. at 10.

[8] *Id.* at 12.

[9] *Id.* at 13.

[10] *Id*. at 21.

[11] *Id*. at 22.

[12] *Id.* at 23.

Subject: Failure to Submit Returns Re: Writ of Preliminary Attachment in Civil Case No. Q-04-54479, entitled *Dr. Potenciano Malvar vs. Atty. Sergio Angeles, et al.* Despite the Pending Motion to Quash Writ Filed by Defendant.[13]

13) Memorandum dated 30 June 2005

Subject: Insubordination to Office Rules & Directives (for failure to attend the monthly Judicial Service Team meeting despite notice).[14]

14) Memorandum dated 11 July 2005

Subject: Failure to Serve Notices to Witnesses in Crim. Case Nos. Q-05-131750, 05-133415 and Service Thereof Despite Lack of Three Day Notice in Crim. Case Q-04-24217.[15]

15) Memorandum dated 01 August 2005

Subject: Late Submission of Returns in Violation of the Office Rules Agreed Upon During the JST Meeting on July 27, 2005 (Crim. Case No. 03-120093-94; Crim. Case No. Q-04-127994-95-96).[16]

16) Memorandum dated 02 August 2005

Subject: Failure to Submit Sheriff's Returns Re: Judgment of Forfeiture and Writs Executed on Confiscated Bonds in Violation of the Rules on Surety Bond.

1) *Pp. vs. Monica Cincyo y Rapal* (Q-03-122915);

2) *Pp. vs. Edilberto Napoles y Castillo* (Q-02-108283);

3) *Pp. vs. Juancho Navarro y Fernandez* (Q-03-122332);

---

[13] *Id*. at 24.

[14] *Id.* at 25.

[15] *Id.* at 26-27.

[16] *Id.* at 28.

4) *Pp. vs. Senando Santos* (Q-03-122962);

5) *Pp. vs. Antonio Yucor y Mirasol* (Q-03-122962);

6) *Pp. vs. Armando Padilla y Pascual* (Q-04-123603); and

7) *Pp. vs. Rodrigo Mahur-Benson* (Q-03-121120).[17]

17) Memorandum dated 13 December 2004

Subject: Guidelines on How to Make a Proper Service of Notices/Processes, Orders, etc.[18]

18) Memorandum dated 26 April 2005

Subject: Proper Coordination/OB Slip Before Service of Any Court Processes.[19]

The Office of the Court Administrator (OCA) thereupon ordered respondent, by 1st Indorsement of October 11, 2005,[20] to submit his Comment within ten days from receipt.

In his Counter-Affidavit, respondent contended that voluminous court processes for service, difficulty in locating the addresses and effecting personal service, and heavy traffic usually prevent him from going back to work after he has served all the processes. He claims that complainant was never satisfied with his diligent work because she wants him to resign from the service in order that the position may be vacated.

In the agenda report[21] dated February 13, 2006, the OCA recommended that respondent be suspended from office for one year without pay with warning that the commission of the same or similar acts shall be dealt with more severely. Observed the Court Administrator:

---

[17] *Id.* at 29.

[18] *Id.* at 30.

[19] *Id.* at 31.

[20] *Id.* at 33.

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

Certainly, respondent's reliance in the above-cited case is misplaced. His acts clearly constitute dereliction of duty and gross incompetence to the great prejudice of the administration of justice. As sheriff, he is primarily responsible for the speedy and efficient service of all court processes.

Respondent did not deny the allegations in the complaint but merely proffered flimsy excuses for his failures. It can be discerned from respondent's own counter-affidavit that complainant had no malicious motive for lodging the instant complaint.

The Court has time and again reminded court personnel to perform their assigned tasks promptly and with great care and diligence. Sec. 1, Canon IV of the Code of Conduct for Court Personnel, provides:

> Sec. 1. Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours.

The Court agrees with the OCA's findings and recommended penalty.

Respondent relied in the ruling of the case of *Philippine Racing Club, Inc. v. Bonifacio, et al.*[22] and claimed that:

> x x x when the Deputy Sheriff is invested with discretion and is empowered to exercise judgment in matters brought before him such as prioritizing the service of notice, processes, and court orders, he is called a quasi-judicial officer, and when so acting, he is given immunity from liability [to those] who may be injured as a result of such erroneous or mistaken decision. x x x [23]

As noted by the OCA, respondent's contention is flawed. Section 1 of Article XI of the Constitution declares that a public office is a public trust. It enjoins public officers and employees to serve with the highest degree of responsibility, integrity, loyalty and efficiency and to at all times remain accountable to the people.[24] As frontline officials of the justice system, sheriffs

[22] 109 Phil. 233, 241 (1960).

[23] *Rollo*, p. 42.

[24] *Geolingo v. Albayda,* A.M. No. P-02-1660, January 31, 2006, 481 SCRA 32, 38.

and deputy sheriffs must always strive to maintain public trust in the performance of their duties.[25]

The Court finds respondent's explanations of the various offenses attributed to him to be utterly wanting. As the OCA reported, respondent did not refute the allegations in the complaint but merely proffered feeble defenses for his unsatisfactory work in the judiciary.

By the very nature of their functions, deputy sheriffs, such as respondent, are called upon to discharge their duties with due care and utmost diligence and above all, to be beyond suspicion.[26] Evidently, respondent's repeated failure to make a return, to serve notice to the accused, and to submit a return within the allowable period constitute inefficiency and incompetence in the performance of official duties, and conduct prejudicial to the best interest of the service. Inefficiency and incompetence in the performance of official duties, and conduct prejudicial to the best interest of the service each carry the penalty of suspension from six months and one day to one year even for the first offense.[27]

Respondent's failure likewise to attend the JTS Meeting on July 27, 2005 echoes his insubordination to office rules and directives and shows his lack of professionalism.[28] For the first offense, insubordination carries the penalty of suspension from one month and one day to six months.[29]

Another infraction committed by the respondent is loafing, which is defined as "frequent unauthorized absences from duty during regular hours," with the word "frequent" connoting that

---

[25] *Fajardo v. Sheriff Quitalig,* 448 Phil. 29, 31 (2003).

[26] *Imperial v. Santiago, Jr.*, 446 Phil. 104, 119 (2003).

[27] Rule IV, Section 52 A (16), (20) of the "Uniform Rules on Administrative Cases in the Civil Service," Resolution No. 991936 of the Civil Service Commission.

[28] *Geolingo v. Albayda, supra* note 24, at 39.

[29] Rule IV, Section 52 B (5) of the "Uniform Rules on Administrative Cases in the Civil Service," Resolution No. 991936 of the Civil Service Commission.

the employees absent themselves from duty more than once.[30] Respondent claims that he is always on duty outside of the office and does his work even late in the afternoon, sometimes utilizing the weekends for the rendition of his service. This explanation is indefensible as the practice of off-setting tardiness or absence by working for an equivalent number of minutes or hours beyond the regular or approved working hours of the employee concerned is not allowed under the Civil Service Rules.[31] Loafing or frequent unauthorized absences from duty during regular working hours is punishable by suspension from office for six months and one day to one year for the first offense following Rule IV, Section 52 A (17) of the Uniform Rules on Administrative Cases in the Civil Service or CSC Resolution No. 991936.

In *Lopena v. Saloma*,[32] the Court held:

> x x x all judicial employees must devote their official time to government service. Public officials and employees must see to it that they follow the Civil Service Law and Rules. Consequently, they must observe the prescribed office hours and the efficient use of every moment thereof for public service if only to recompense the government and ultimately the people who shoulder the cost of maintaining the judiciary. To inspire public respect for the justice system, court officials and employees are at all times behooved to strictly observe official time. This is because the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the last and lowest of its employees. Thus, court employees must exercise at all times a high degree of professionalism and responsibility, as service in the judiciary is not only a duty, it is a mission.[33]

---

[30] *Lopena v. Saloma*, A.M. No. P-06-2280, January 31, 2008.

[31] Section 9 Rule XVII of the Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws provides:

> SEC. 9. Off-setting of tardiness or absence by working for an equivalent number of minutes or hours by which an officer or employee has been tardy or absent, beyond the regular or approved working hours of the employees concerned, shall not be allowed.

[32] *Supra* note 30.

[33] *Id.*

WHEREFORE, Reynaldo B. Madolaria, Deputy Sheriff, Regional Trial Court, Branch 217, Quezon City, is found *GUILTY* of inefficiency and incompetence in the performance of official duties, conduct prejudicial to the best interest of service, insubordination, and loafing or frequent unauthorized absences from duty during regular working hours and is *SUSPENDED* for one (1) year without pay, with a *STERN WARNING* that the commission of the same or similar acts shall be dealt with more severely.

No costs.

SO ORDERED.

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

Carpio, J., on leave.

FIRST DIVISION

[Adm. Matter No. P-06-2214. April 16, 2008]
(Formerly OCA I.P.I. No. 05-2338-P)

GEMMA LETICIA F. TABLATE, *complainant, vs.* **JORGE C. RAÑESES, Sheriff IV, Regional Trial Court, Branch 79, Quezon City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; THE DUTY OF THE SHERIFF IN THE EXECUTION OF A WRIT IS MANDATORY AND PURELY MINISTERIAL, NOT DIRECTORY.— Time and again, this Court stressed upon those tasked to implement court orders and processes to see to it that the final stage of the litigation

process – the execution of judgment – be carried out promptly. Sheriffs, in particular, should exert every effort and consider it their bounden duty because a decision left unexecuted or delayed indefinitely is nothing but an empty victory on the part of the prevailing party. x x x The duty of the sheriff in the execution of a writ is mandatory and purely ministerial, not directory. Once the writ is placed in his hands, it is his duty, unless restrained by the court, to proceed with reasonable alacrity to enforce it to the letter, ensuring at all times that the implementation of a judgment is not unduly delayed. Thus, the tolerance or forgiving attitude, or even a seeming indifference, of the prevailing party is wholly immaterial. In the enforcement of a writ, a sheriff owes fervor and obedience to the law, not to the whims and caprices of a party. This Court emphasized on numerous occasions that there is no need for the litigants to "follow-up" the matter before the sheriff should act.

2. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; RETURN OF WRIT OF EXECUTION; PURPOSE.— The mandatory character of Section 14 of Rule 39 of the Revised Rules of Court is unmistakable, as it reads: "SEC. 14. *Return of writ of execution*. – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties." A similar rule is found in Administrative Circular No. 12 dated October 1, 1985, which vests upon the sheriffs the primary responsibility to speedily and efficiently serve all court processes and writs. The Circular directs them to submit a report to the judge concerned on the action taken on all assigned writs and processes within 10 days from receipt thereof. Moreover, it provides that a monthly report shall be submitted to the OCA indicating the number of writs and processes issued and served (or unserved) during the month, with the unserved writs and processes further explained in the

report. The submission of the return and periodic reports by the sheriffs is not a duty that must be taken lightly. It serves to update the court as to the status of the execution and to give it an idea as to why the judgment was not satisfied. It also provides insights for the court as to how efficient court processes are after judgment has been promulgated. The overall purpose of the requirement is to ensure speedy execution of decisions.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SIMPLE NEGLECT OF DUTY; COMMITTED IN CASE AT BAR; PENALTY.— [R]espondent Rañeses is remiss in performing the duty of his office to conscientiously and expeditiously implement the writ as well as to comply with the submission of monthly progress reports. Under the Revised Uniform Rules on Administrative Cases in the Civil Service, he is, therefore, guilty of simple neglect of duty, which is defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference. It is classified as a less grave offense which carries the penalty of suspension for one (1) month and one (1) day to six (6) months for the first offense and dismissal for the second offense. As it appears that there has been no previous administrative case against him and in order not to hamper the duties of his office, instead of suspending him, he is fined in an amount equivalent to his one (1) month salary.

D E C I S I O N

AZCUNA, *J.*:

This is an administrative case filed by complainant Gemma Leticia F. Tablate against respondent Jorge C. Rañeses in his capacity as Sheriff IV of Regional Trial Court (RTC), Branch 79, Quezon City, for gross neglect of duty and incompetence relative to his alleged failure to serve the writ of execution for more than two years resulting in the accused's evasion of civil indemnity (in favor of complainant) amounting to ₱300,000 in Criminal Case No. Q-98-78569.

In her verified Complaint dated November 22, 2005 before the Office of the Court Administrator (OCA),[1] complainant Tablate averred that: on September 7, 1998, an Information for *estafa* was filed against accused Libertad De Guzman, which was docketed as Criminal Case No. Q-98-78569 and raffled to Quezon City RTC Branch 79; after trial, the case was decided acquitting the accused of the crime charged but ordering her to pay complainant the amount of ₱300,000 plus legal interest; when the decision became final and executory, complainant moved for the execution of the judgment, which was granted by the court on February 24, 2003; pursuant to the Order, a writ of execution was issued by the branch clerk on March 6, 2003; since the issuance of the writ and up to the filing of this complaint, the writ had not been implemented by respondent; and that complainant had been continuously kept in the dark by respondent by not updating her on how he would proceed with the execution despite the fact that the latter had demanded and was given a sum of money to defray the expenses for the implementation of the writ and in spite of the follow-ups made by complainant by phone and in person or through representative, the latest being on November 9, 2005.

Respondent Rañeses denied the allegations of complainant. He countered in his Comment[2] that:

xxx xxx xxx

3. After the issuance of the writ of execution on March 6, 2003, the complainant, through Atty. Kintanar, the private prosecutor in the subject case, first coordinated with the respondent regarding the writ's execution sometime in [October 2003]. Immediately thereafter, the respondent proceeded to the Office of the City Assessor of Quezon City to verify under whose name the subject property, on which the accused purportedly resides, per court records, was registered. Upon learning from the said office that the said real property was NOT REGISTERED in the name of the accused but instead the same was registered in the name of a certain Perfecto T. Ebangin x x x, the respondent

[1] *Rollo*, pp. 1-4.

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

proceeded to the Office of the [Register] of Deeds of Quezon City. In the [Register] of Deeds' office[,] the respondent learned that the title to the house and lot in which the accused supposedly resides (TCT No. PR-35698) at that time was registered under the name of a certain Reynaldo P. Villacorta, and that the same title [had] already been CANCELLED. The same verification also revealed that the subject real property [had] already been sold to a certain Arsenio Cuasa x x x;

4. All the foregoing developments/information [were] promptly relayed to the private prosecutor by the respondent. Upon being apprised of the result of the respondent's research[,] the private prosecutor told the sheriff that he [would] inform the private complainant, herein complainant, of the situation and the respondent was instructed to await further instructions from the complainant herself;

5. After thus reporting to the private prosecutor, neither he nor the complainant made further follow-ups until [August 2004] when complainant Atty. Tablate called the office of the respondent. However, at the time of said call, the respondent was not available to take the same, so the complainant left a message [to] the respondent for the latter to return her call. Immediately after learning of the phone call[,] the respondent called up the [complainant] in her office and made arrangements to meet with her at the soonest possible time to discuss the implementation of the writ. However, before such meeting could take place, a certain Alejandro Cruz, also a deputy sheriff [of] Quezon City, approached the respondent and made representations that he was following up the writ's implementation in behalf of the complainant. Sheriff Cruz volunteered to assist the respondent in the implementation of the writ of execution in case such implementation would proceed. So, on August 12, 2004, the respondent, together with Alejandro Cruz and a police officer, proceeded to the address on record of accused De Guzman, for verification purposes, and if feasible[,] to effect the implementation of the writ. Upon arriving at the site, the respondent saw the house thereat but the doors and windows thereof were all shut. They were further informed by neighbors that the accused was no longer residing in the said house. Consequently, the respondent

and his companions left the site. (Sheriff's Report, September 17, 2004, x x x). Thereafter, the respondent promptly informed the complainant of the proceedings taken on the writ of execution personally at the latter's office. At said meeting[,] the complainant sought and the respondent gave some advice as to how to proceed with the implementation of the writ. The respondent told the complainant that he could conduct periodic "stake outs" of the premises, coordinate with the local [*barangay*] officials concerned with respect to the possibility of securing a certification as to whether or not the accused resides in the area, among other things. Thereafter, the complainant directed the respondent to do what he can to effect the implementation of the writ. In compliance with such instructions, the respondent made several follow-up visits to the premises for the purpose of locating the whereabouts of the accused as well as identifying personal property which could be the subject of levy on execution. However, despite earnest efforts on the part of the respondent, he could not locate any motor vehicle owned by the accused;

6. Another visit to the premises on record at Blk. 2, Lot 26, St. Andrews St., Phase 3, Sacred Heart Village, Quezon City, by the respondent pursuant to the writ was on March 18, 2005. On that occasion[,] he was again accompanied by Sheriff Alejandro Cruz. In the course of their investigation, they learned from a tricycle driver that accused De Guzman was renting a small space near the gate of the subdivision for use in her *"carinderia"* business. Acting on such information[,] the respondent proceeded to the said establishment but the accused was not around. While there, the respondent noted that there was no leviable personal property of value thereat since all he saw were plastic chairs and tables, a dilapidated refrigerator, and an old gas stove. The respondent and his companion left the premises. Such proceedings taken by the respondent were reduced into writing. (Sheriff's Report, April 28, 2005, x x x). [In May 2005,] the respondent went to the complainant's office and apprised her of his latest efforts to effect the implementation of the writ. During such meeting, the respondent advised the complainant that they may as well go to the [*barangay*] unit concerned to secure the appropriate certification as [to] whether the accused was indeed a resident in the area.

For her part[,] the complainant again instructed the respondent to do all that he could so as to effect the execution of the money judgment. The complainant further told the respondent that in the event that no property of the accused could be attached or levied[,] as the case may be, she would just make public her complaints against the accused through print media with the help of Mr. Tulfo;

7. After the meeting, the respondent proceeded to the Barangay Hall in Quezon City which is supposed to have territorial jurisdiction over the premises per the records, for purposes of securing the certificate of residency of the accused. However, he was informed by a certain [barangay] BSDO *(sic)* that their area of responsibility extends only up to Phase 2 of Sacred Heart Village. The same [*barangay*] official informed the respondent that Phase 3 of Sacred Heart Village, in which the address on the accused on records is situated, [falls] within the territorial jurisdiction of Barangay Pasong Putik in Caloocan City. However, when the respondent went to Barangay Pasong Putik, the local authorities there told him that the premises was also beyond their jurisdiction and that it was in fact still within Quezon City. Given such situation, the respondent was unable to secure the subject certification;

8. On November 9, 2005, the complainant went to the respondent's office. The complainant at the time [was] accompanied by a certain Atty. Gerardo Calvo. During said visit[,] Atty. Tablate complained to the respondent as to why he was unable to implement the writ of execution. Furthermore, the complainant questioned the necessity of securing a [*barangay*] certification for purposes of determining the whereabouts of the accused. In response, the respondent informed the complainant that he [would] return to the premises with Sheriff Arnulfo Lim of Branch 227 to again attempt to locate property that may be attached or levied;

9. On November 11, 2005[,] the respondent, with Sheriff Arnulfo Lim[,] proceeded to the premises in issue where they found out from a nearby resident that the accused was still residing at the same address on record. They were further informed that it was difficult to chance upon Libertad de Guzman since she leaves very early in the morning and returns very late in the evening. Thereafter, the respondent knocked on the gate of the subject house. [Thereupon,] a man appeared before

them and identified himself as one Bernardino de Guzman, who claimed to be the husband of Libertad. This Bernardo de Guzman went outside to meet the respondent and Sheriff Lim, locked the gate, and accompanied the sheriffs to the alleged *"carinderia"* of the accused. Upon arriving there[,] they were made to wait for a while as Mr. De Guzman went away to fetch his wife. When he returned, he was accompanied by accused Libertad. Upon meeting with the accused, the respondent served upon her the subject writ of execution and demanded of the latter that she immediately pay the money judgment. Upon receiving the writ and after having been asked to make payment, the accused told the respondent sheriff that she [would] refer the matter first to her counsel and further manifested that she would soon coordinate with the respondent and the court after meeting with her lawyer. The proceedings undertaken as above-mentioned have been reduced [into] writing as the "Sheriff's Partial Report" dated November 23, 2005 x x x;

10. On November 22, 2005, the respondent, this time with Deputy Sheriff Pedro Borja of the Clerk of Court's Office, Regional Trial Court of Quezon City, together with a police officer, again proceeded to the premises for the purpose of implementing the subject writ of execution. However, upon arriving at the site, it was discovered that the gate of the premises was closed, the doors were locked, and all the windows were likewise shut. Consequently, the respondent and his companions left the premises. x x x. The respondent personally furnished the complainant a copy of the said Sheriff's Partial Report on November 23, 2005 and it was during said encounter that the respondent learned from the complainant that she already filed an administrative complaint against the former;

11. The respondent specifically denies having demanded and received from the complainant any such sum of money purportedly to defray the expenses of the writ's implementation. Sad to state, in truth and in fact, on numerous occasions, respondent in trying to enforce the money judgment, even used his own limited financial resources just so that he could perform his duties as required by law but his efforts proved futile; and

> 12. It can be well stated by herein respondent that attempts to implement the writ of execution were hampered by lack of sufficient information and knowledge as to what and where the leviable property belonging to the judgment obligor (the accused) could be located.[3]

In response, complainant filed her Reply.[4]

On April 24, 2006, the OCA recommended that respondent be fined in the amount of ₱5,000, with a stern warning that commission of the same or similar acts would be dealt with more severely. In its Report,[5] the OCA found that the writ of execution issued on March 6, 2003 remained unsatisfied until the complaint was filed and that respondent had not shown any diligence in its enforcement. Further, respondent failed to make the required periodic report: From March 2003 until November 2005, he only submitted three Sheriff's Return, and only one of these was furnished complainant. Also, the first return was dated September 17, 2004, or almost one year and a half after the issuance of the writ. The OCA, however, found that complainant failed to present convincing proof that respondent demanded and received cash from her for the implementation of the writ.

Conformably with the Court's Resolution on July 12, 2006,[6] complainant filed her manifestation stating her willingness to have the case submitted for decision based on the pleadings filed.[7]

On the other hand, respondent filed his Supplemental Comment,[8] stressing that complainant had always been apprised of the status of the execution and that attempts to enforce the writ proved futile due to the absence of leviable property of the accused. Respondent noted that he was surprised when

---

[3] *Id*.

[4] *Id.* at 25-27.

[5] *Id.* at 32-36.

[6] *Id.* at 37.

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

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

complainant filed this case since the latter, who herself works for the judiciary, never threatened to sue him, expressed dissatisfaction or resentment on account of the delay in the satisfaction of the judgment, or pushed for the expeditious implementation of the writ.

The Court agrees with the OCA report but not with the recommended penalty.

Time and again, this Court stressed upon those tasked to implement court orders and processes to see to it that the final stage of the litigation process – the execution of judgment – be carried out promptly. Sheriffs, in particular, should exert every effort and consider it their bounden duty because a decision left unexecuted or delayed indefinitely is nothing but an empty victory on the part of the prevailing party.[9]

In this case, it is clear from respondent Rañeses' own narration that: despite the issuance of the writ of execution on March 6, 2003, he only acted in October 2003 after complainant's counsel "first coordinated" with him; upon verification from the City Assessor and Register of Deeds of Quezon City that accused has no real property registered in her name and reporting the same to the complainant's counsel, he again waited almost a year – until August 2004, when the complainant made her "follow-up" – before he went to the residence of the accused but only to be told allegedly by the neighbors that the accused was no longer residing thereat; in March 2005, following another visit to the same address, he received an information that the accused has a *carinderia* (eatery) business near the subdivision gate of her residence; and it was only after eight months, in November 2005, that respondent was finally able to serve a copy of the writ on the accused.

The lapse of time alone evidently shows that respondent Rañeses has been wanting in diligence and initiative in the enforcement of the writ. His reason – that the delay was because he awaited further instructions from complainant and her private prosecutor and that neither of them made "follow-ups" in due time – is not

[9] *Sps. Morta v. Judge Bagagñan*, 461 Phil. 312, 322-323 (2003).

an excuse. The duty of the sheriff in the execution of a writ is mandatory and purely ministerial, not directory. Once the writ is placed in his hands, it is his duty, unless restrained by the court, to proceed with reasonable alacrity to enforce it to the letter, ensuring at all times that the implementation of a judgment is not unduly delayed.[10] Thus, the tolerance or forgiving attitude, or even a seeming indifference, of the prevailing party is wholly immaterial. In the enforcement of a writ, a sheriff owes fervor and obedience to the law, not to the whims and caprices of a party. This Court emphasized on numerous occasions that there is no need for the litigants to "follow-up" the matter before the sheriff should act.[11]

Moreover, extant from the records is respondent Rañeses' failure to comply with the requisite submission of progress reports as regards the action he had taken on the assigned writ. Instead of submitting a monthly update to the court from the time the writ of execution was issued on March 6, 2003 up to the filing of this administrative case on November 22, 2005, he only did it thrice, to wit: September 17, 2004, April 28, 2005, and November 23, 2005.

The mandatory character of Section 14 of Rule 39 of the Revised Rules of Court is unmistakable, as it reads:

SEC. 14. *Return of writ of execution*. – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires.

[10] *Vargas v. Primo*, A.M. No. P-07-2336, January 24, 2008, pp. 4-5; *Cebu International Finance Corporation v. Cabigon*, A.M. No. P-06-2107, February 14, 2007, 515 SCRA 616, 622; and *Patawaran v. Nepomuceno*, A.M. No. P-02-1655, February 6, 2007, 514 SCRA 265, 277.

[11] See *Santuyo v. Benito*, A.M. No. P-05-1997, August 3, 2006, 497 SCRA 461, 467; *Legaspi v. Tobillo*, A.M. No. P-05-1978, March 31, 2005, 454 SCRA 228, 237; and *Mendoza v. Sheriff IV Tuquero*, 412 Phil. 435, 441 (2001).

The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.[12]

A similar rule is found in Administrative Circular No. 12 dated October 1, 1985, which vests upon the sheriffs the primary responsibility to speedily and efficiently serve all court processes and writs. The Circular directs them to submit a report to the judge concerned on the action taken on all assigned writs and processes within 10 days from receipt thereof.[13] Moreover, it provides that a monthly report shall be submitted to the OCA indicating the number of writs and processes issued and served (or unserved) during the month, with the unserved writs and processes further explained in the report.[14]

The submission of the return and periodic reports by the sheriffs is not a duty that must be taken lightly. It serves to update the court as to the status of the execution and to give it an idea as to why the judgment was not satisfied. It also provides insights for the court as to how efficient court processes are after judgment has been promulgated. The overall purpose of the requirement is to ensure speedy execution of decisions.[15]

Undoubtedly, the foregoing circumstances only evince that respondent Rañeses is remiss in performing the duty of his office to conscientiously and expeditiously implement the writ as well as to comply with the submission of monthly progress reports. Under the Revised Uniform Rules on Administrative Cases in the Civil Service,[16] he is, therefore, guilty of simple

[12] See also *Bunagan v. Ferraren*, A.M. No. P-06-2173, January 28, 2008, p. 8; *Cebu International Finance Corporation v. Cabigon*, *id.*; and *Patawaran v. Nepomuceno*, *id*.

[13] A.C. No. 12, Paragraph 4.

[14] *Id.* at Par. 8.

[15] *Patawaran v. Nepomuceno*, *supra* note 10; and *Flores v. Marquez*, A.M. No. P-06-2277, December 6, 2006, 510 SCRA 35, 44.

[16] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated August 1999 and implemented by CSC Memorandum Circular No. 19, Series of 1999 (See *Aranda, Jr. v. Alvarez*, A.M. No. P-04-1889, November 23, 2007).

neglect of duty, which is defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference. It is classified as a less grave offense which carries the penalty of suspension for one (1) month and one (1) day to six (6) months for the first offense and dismissal for the second offense.[17] As it appears that there has been no previous administrative case against him and in order not to hamper the duties of his office,[18] instead of suspending him, he is fined in an amount equivalent to his one (1) month salary.

As a final note, this Court reiterates the ruling in *Legaspi v. Tobillo*:[19]

> Time and again we have ruled that high standards are expected of sheriffs who play an important role in the administration of justice. This was further expounded in the case of *Vda. De Abellera v. Dalisay*:
>
> > "At the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with the 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.
> >
> > In serving court writs and processes and in implementing court orders, they cannot afford to procrastinate without affecting the efficiency of court processes and the administration of justice. Given their important functions as

[17] See *Vargas v. Primo*, A.M. No. P-07-2336, January 24, 2008, p. 6; *Sy v. Binasing*, A.M. No. P-06-2213, November 23, 2007, p. 4; *De Leon-Dela Cruz v. Recacho*, A.M. No. P-06-2122, July 17, 2007, 527 SCRA 622, 631; *Jacinto v. Castro*, A.M. No. P-04-1907, July 3, 2007, 526 SCRA 272, 278; *Tiu v. Dela Cruz*, A.M. No. P-06-2288, June 15, 2007, 524 SCRA 630, 640; *Malsi v. Malana, Jr.*, A.M. No. P-07-2290, May 25, 2007, 523 SCRA 167, 174; and *Patawaran v. Nepomuceno*, *supra* note 10.

[18] See *Sy v. Binasing*, *id.*; *Jacinto v. Castro*, *id.*; and *Tiu v. Dela Cruz*, *id.*

[19] A.M. No. P-05-1978, March 31, 2005, 454 SCRA 228.

> frontline representatives of the justice system, they should be imbued with a sense of professionalism in the performance of their duties. When they lose the people's trust, they diminish the people's faith in the judiciary.
>
> It is undisputable that the most difficult phase of any proceeding is the execution of judgment. The officer charged with this delicate task is the sheriff. Despite being exposed to hazards that come with the implementation of the judgment, the sheriff must perform his duties by the book. x x x." (citations omitted)[20]

Certainly, all employees in the judiciary should be examples of responsibility, competence, and efficiency. As officers of the court and agents of the law, they must discharge their duties with due care and utmost diligence. Any conduct they exhibit tending to diminish the faith of the people in the judiciary will not be condoned.

WHEREFORE, respondent Jorge C. Rañeses is found *GUILTY* of simple neglect of duty and is *FINED* in an amount equivalent to his salary for one month, with a *STERN WARNING* that a repetition of the same or similar act in the future shall be dealt with more severely.

Let a copy of this Decision be attached to the personnel records of respondent Rañeses in the Office of the Administrative Services, Office of the Court Administrator.

No costs.

SO ORDERED.

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

Carpio, J., on leave.

---

[20] *Id.* at 239-240.

FIRST DIVISION

[A.M. No. P-08-2431. April 16, 2008]
(Formerly OCA IPI No. 03-1682-P)

EDITHA P. ELAPE, *complainant, vs.* **ALBERTO R. ELAPE, Process Server, Regional Trial Court, Surigao City, Branch 30,**[*] *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; IMMORAL CONDUCT; DEFINED.—** Immoral conduct is 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." In several cases, we have ruled that the abandonment of one's wife and children, and cohabitation with a woman not his wife, constitutes immoral conduct that is subject to disciplinary action.

2. **ID.; ID.; ID.; ID.; RESPONDENT'S ACT OF MAINTAINING AN ILLICIT RELATIONSHIP WITH A WOMAN NOT HIS WIFE CONSTITUTES DISGRACEFUL AND IMMORAL CONDUCT; PENALTY.—** Respondent's act of maintaining an illicit relationship with a woman not his wife is, within the purview of Section 46 (b) (5) of Subtitle A, Title I, Book V of the Administrative Code of 1987, disgraceful and immoral conduct. Under the Uniform Rules on Administrative Cases in the Civil Service Commission, disgraceful and immoral conduct is a grave offense for which the penalty of suspension for six months and one day to one year shall be imposed for the first offense and dismissal for the second.

APPEARANCES OF COUNSEL

Noel P. Catre for complainant

[*] The name Alberto B. Elape was mistakenly used in the title. He testified before the investigating judge that he was the process server of the Office of the Clerk of Court, RTC, Surigao City, Branch 30; *rollo*, p. 103.

R E S O L U T I O N

CORONA, *J.*:

In her complaint dated May 26, 2003, the complainant Editha P. Elape charged her husband, respondent Alberto R. Elape, process server of the Regional Trial Court (RTC), Surigao City, Branch 30, with immorality.

The complainant is married to respondent and they have five children. On December 20, 2001,[1] she instituted an administrative complaint for immorality against respondent before the Executive Judge of the RTC, Surigao City but she withdrew the same because respondent apologized and promised to leave his mistress. She reconciled with the respondent to protect their children. However, despite the reconciliation, respondent rarely spent the night with his family.[2]

On May 7, 2003, the complainant discovered that respondent had resumed his extramarital affair, cohabiting with his mistress under scandalous circumstances. He was known to be a married man and a court employee at that.[3] Respondent later abandoned his family and stopped giving financial support to them.[4] Thus, the complainant filed this second administrative complaint on May 26, 2003.[5]

Respondent denied that he committed immorality. He averred that he discontinued his extramarital affair after the first complaint for immorality was filed. He insisted that he had faithfully responded to the needs of his family to the extent of borrowing money from his friends for their sustenance. He again sought reconciliation with the complainant but the latter refused.[6]

---

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

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

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

[4] *Id*., p. 34.

[5] *Id*., p. 2.

[6] *Id*., p. 116.

This Court, in its May 5, 2004 resolution, referred the case to Executive Judge Victor A. Tomaneng, RTC, Butuan City, Agusan del Norte, Branch 33, for investigation, report and recommendation.

Judge Tomaneng heard the parties. The complainant, her daughter Kathleen and Aloma Rodriguez Hadji[7] testified that respondent and his mistress were still living together and comporting themselves publicly as husband and wife.[8] Before presenting his evidence, respondent tried to settle the case by again asking the complainant's forgiveness, to no avail.[9] Respondent, in his testimony, denied that he had resumed his relationship with his mistress and stated that his encounters with her were mere coincidences.[10] But he admitted that it was his habit to engage in drinking sprees and to play *mahjong* whenever he had money.[11]

Judge Tomaneng ruled that respondent was guilty of immorality and should be punished by suspension for six months and one day.[12]

In its memorandum dated March 7, 2006, the Office of the Court Administrator (OCA) adopted the findings, conclusion and recommendation of the investigating judge:

> This Office adopts the Investigator's findings, conclusions and recommendation which are a result of a careful analysis of the complainant and respondent's testimonial and documentary evidence. Aside from respondent's admission [to complainant] that he is so attracted to [his mistress] and they are already living together, complainant and her eldest daughter positively testified that they saw respondent living with [his mistress] in a rented room in San Juan St., Surigao City since 2004. Aloma Hadji likewise declared

[7] Neighbor of respondent and his mistress.

[8] *Rollo*, pp. 115-116.

[9] *Id*., pp. 116-117.

[10] *Id*., p. 117.

[11] *Id*., p. 104.

[12] *Id*., pp. 117-118.

that respondent and [his mistress] had been her neighbors in Tondo, Surigao City from July 2003 to January 2004 and they displayed their affection in public. The extract of the police blotter and the pictures showing respondent and [his mistress] embracing each other are supplemental proofs that respondent has continued his illicit relations with [her].

Respondent's explanation that his several meetings with [his mistress] on the following dates, 14 September 2002 when respondent saw [her] in Mabua, Surigao City and offered her a ride which resulted [in] a vehicular accident, 30 November 2004 in Medarda Videoke Bar where [she] is working as a guest relation officer and sometime in November 2004 inside a restaurant where they were seen together taking meals[,] were due to plain coincidence. His clarification and denial that he did not abandon his family and he stopped seeing [his mistress] after he was forgiven by complainant are not worthy of belief. His denial cannot prevail over the positive statements of the complainant and her witnesses.

From the evidence presented[,] there is no doubt that respondent has not reformed despite the dismissal of the first complaint for immorality against him. He has flaunted his paramour in the eyes of the public, living with her in different places and being seen around with her. Undeniably, he is maintaining an illicit relationship which is definitely contrary to the acceptable norms of morality, especially when the person involved is a court personnel who is supposed to maintain a high standard of morality in order to live up to his role as a model in society.

xxx xxx xxx

In view of the foregoing, it is respectfully recommended that respondent Alberto [R.] Elape be SUSPENDED for SIX (6) MONTHS and ONE (1) DAY without pay with stern warning that repetition of the same or similar offense in the future shall be dealt with more severely.[13]

We agree with the findings and evaluation of the OCA.

Immoral conduct is conduct which is "willful, flagrant or shameless, and which shows a moral indifference to the opinion

[13] OCA Memorandum dated March 7, 2006, pp. 5-6, citations omitted.

of the good and respectable members of the community."[14] In several cases, we have ruled that the abandonment of one's wife and children, and cohabitation with a woman not his wife, constitutes immoral conduct that is subject to disciplinary action.[15]

Respondent's act of maintaining an illicit relationship with a woman not his wife is, within the purview of Section 46 (b) (5) of Subtitle A, Title I, Book V of the Administrative Code of 1987,[16] disgraceful and immoral conduct.[17] Under the Uniform Rules on Administrative Cases in the Civil Service Commission,[18] disgraceful and immoral conduct is a grave offense for which the penalty of suspension for six months and one day to one year shall be imposed for the first offense and dismissal for the second.[19]

Since this is respondent's first offense, the recommended penalty of six months and one day is in order.

It cannot be overstressed that—

> [although] every office in the government service is a public trust, no position exacts a greater demand for moral righteousness and uprightness from an individual than in the judiciary. That is why this Court has firmly laid down exacting standards of morality and decency expected of those in the service of the judiciary. Their conduct, not to mention behavior, is circumscribed with the heavy burden of

---

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

[15] *Sealana-Abbu v. Laurenciana-Huraño*, A.M. No. P-05-2091, 28 August 2007; *dela Torre-Yadao v. Cabanatan*, A.M. Nos. P-05-1953 and P-05-1954, 8 June 2005, 459 SCRA 332, 338, citing *Maguad v. de Guzman*, A.M. No. P-94-1015, 29 March 1999, 305 SCRA 469, 476; *Lauro v. Lauro*, 411 Phil. 12, 17 (2001); *Bucatcat v. Bucatcat*, 380 Phil. 555, 566-567 (2000).

[16] EO 292.

[17] *Acebedo v. Arquero*, A.M. No. P-94-1054, 11 March 2003, 399 SCRA 10, 17; also under Rule XIV, Section 23 (o) of the Civil Service Rules; *Navarro v. Navarro*, 394 Phil. 226, 234 (2000).

[18] Adopted and approved by the Civil Service Commission in its Resolution No. 991936 dated August 31, 1999.

[19] Rule IV, Section 52 (A) (15).

responsibility, characterized by, among other things, propriety and decorum so as to earn and keep the public's respect and confidence in the judicial service. It 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; court employees are also judged by their private morals.[20]

WHEREFORE, respondent Alberto R. Elape, process server, Regional Trial Court, Surigao City, Branch 30 is hereby found *GUILTY* of immorality. He is *SUSPENDED* for six (6) months and one (1) day without pay with *STERN WARNING* that commission of the same or similar offenses shall be dealt with more severely.

After he shall have served his suspension, respondent is hereby ordered to give the required financial support to his family. He is warned that failure to do so will be a ground for his dismissal from the service.

Let a copy of this resolution be filed in the personal record of respondent.

SO ORDERED.

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

Carpio, J., on leave.

[20] *Acebedo v. Arquero*, *supra* note 17, pp. 16-17, citations omitted.

SECOND DIVISION

[G.R. Nos. 146121-22. April 16, 2008]

SAN MIGUEL CORPORATION and GERIBERN ABELLA, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION (First Division), LABOR ARBITER PEDRO RAMOS and ERNESTO IBIAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; FACTUAL FINDINGS OF THE COURT OF APPEALS, GENERALLY BINDING UPON THE SUPREME COURT.— [F]indings of fact of the Court of Appeals, particularly where it is in absolute agreement with that of the NLRC and the Labor Arbiter, as in this case, are accorded not only respect but even finality and are deemed binding upon this Court so long as they are supported by substantial evidence.

2. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; CONSIDERED SUFFICIENT AS BASIS FOR JUDGMENT ON THE LEGALITY OF AN EMPLOYER'S DISMISSAL OF AN EMPLOYEE.— The settled rule in administrative and quasi-judicial proceedings is that proof beyond reasonable doubt is not required in determining the legality of an employer's dismissal of an employee, and not even a preponderance of evidence is necessary as substantial evidence is considered sufficient. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. Thus, substantial evidence is the least demanding in the hierarchy of evidence.

3. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; MANAGEMENT PREROGATIVES; EMPLOYERS ENJOY A WIDE LATITUDE OF DISCRETION IN THE PROMULGATION OF POLICIES, RULES AND REGULATIONS ON WORK-RELATED ACTIVITIES OF THE EMPLOYEES.— An employer has the prerogative to

prescribe reasonable rules and regulations necessary for the proper conduct of its business, to provide certain disciplinary measures in order to implement said rules and to assure that the same would be complied with. An employer enjoys a wide latitude of discretion in the promulgation of policies, rules and regulations on work-related activities of the employees. It is axiomatic that appropriate disciplinary sanction is within the purview of management imposition. Thus, in the implementation of its rules and policies, the employer has the choice to do so strictly or not, since this is inherent in its right to control and manage its business effectively. Consequently, management has the prerogative to impose sanctions lighter than those specifically prescribed by its rules, or to condone completely the violations of its erring employees. Of course, this prerogative must be exercised free of grave abuse of discretion, bearing in mind the requirements of justice and fair play. Indeed, we have previously stated: "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 [fewer] privileges in life, the Supreme 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 the Court to rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine."

APPEARANCES OF COUNSEL

De Lima-Bohol & Meñez Law Offices and *Rommel Napoleon M. Lumibao* for petitioners.

Potenciano Flores, Jr. for private respondent.

D E C I S I O N

TINGA, *J.*:

In this Petition for Review on *Certiorari*[1] under Rule 45, petitioners San Miguel Corporation (SMC) and Geribern Abella, Assistant Vice President and Plant Manager of SMC's Metal

[1] *Rollo*, pp. 28-68.

Closure and Lithography Plant, assail the Decision[2] dated 28 June 2000 and the Resolution[3] dated 17 November 2000, both of the Court of Appeals in the consolidated cases of *Ernesto M. Ibias v. National Labor Relations Commission, et al.* and *San Miguel Corporation Metal Closure and Lithography Plant, et al. v. National Labor Relations Commission, et al.,* docketed as CA G.R. SP No. 54684 and CA G.R. SP No. 54709, respectively.

The factual and legal antecedents follow.

Ernesto M. Ibias (respondent) was employed by petitioner SMC on 24 December 1978 initially as a CRO operator in its Metal Closure and Lithography Plant. Respondent continuously worked therein until he advanced as Zamatic operator. He was also an active and militant member of a labor organization called Ilaw Buklod Manggagawa (IBM)-SMC Chapter.

According to SMC's Policy on Employee Conduct,[4] absences without permission or AWOPs, which are absences not covered either by a certification of the plant doctor that the employee was absent due to sickness or by a duly approved application for leave of absence filed at least six (6) days prior to the intended leave, are subject to disciplinary action characterized by progressively increasing weight, as follows:

VIOLATIONS	1ST Offense	2nd Offense	3rd Offense	4th Offense	5th Offense
2.ABSENCE WITHOUT PERMISSION (within one calendar year)					
A. Each day absent not exceeding two (2) days	Written warning				

[2] *Id*. at 10-19. Penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justices Eloy R. Bello, Jr. and Elvijohn S. Asuncion of the Thirteenth Division.

[3] *Id*. at 83.

[4] NLRC records, pp. 73-84.

B. 3rd AWOP	3 Days' suspension				
C. 4th AWOP		5 Days' suspension			
D. 5th AWOP		7 Days' suspension			
E. 6th AWOP		10 Days' suspension			
F. 7th AWOP		15 Days' suspension			
G. 8th AWOP		30 Days' suspension			
H. 9th AWOP		Discharge			
3.ABSENCE WITHOUT PERMISSION FOR SIX (6) OR MORE CONSECUTIVE WORKING DAYS IS CONSIDERED ABANDONMENT OF WORK	Discharge[5]				

The same Policy on Employee Conduct also punishes falsification of company records or documents with discharge or termination for the first offense if the offender himself or somebody else benefits from falsification or would have benefited if falsification is not found on time.[6]

It appears that per company records, respondent was AWOP on the following dates in 1997: 2, 4 and 11 January; 26, 28 and 29 April; and 5, 7, 8, 13, 21, 22, 28 and 29 May. For his absences on 2, 4 and 11 January and 28 and 29 April, he was

[5] *Id*. at 77.

[6] *Id*. at 80.

given a written warning [7] dated 9 May 1997 that he had already incurred five (5) AWOPs and that further absences would be subject to disciplinary action. For his absences on 28 and 29 April and 7 and 8 May, respondent was alleged to have falsified his medical consultation card by stating therein that he was granted sick leave by the plant clinic on said dates when in truth he was not.

In a Notice to Explain dated 20 May 1997,[8] respondent was required to state in writing why he should not be subject to disciplinary action for falsifying his medical consultation card. On 29 May 1997, he was sent a telegram[9] asking him to explain why he should not be disciplined for not reporting for work since 26 May 1997. Respondent did not comply with these notices. He was again issued two Notices to Explain[10] both dated 3 June 1997, one for his AWOPs from 26 May to 2 June 1997 and another for falsification of medical consultation card entries for 28 April and 8 May 1997.

On 5 June 1997, respondent submitted a handwritten explanation to the charges, to wit: "*Tungkol po sa ibinibintang po ninyong* [*sic*] *sa akin na* falsification of medical consultation card *ito po hindi ko magagawa at sa mga araw na hindi ko po ipinasok ito po ay may kaukulang* supporting paper[s]."[11]

Not satisfied with the explanation, SMC conducted an administrative investigation on 17 and 23 June 1997.[12]

During the investigation, respondent admitted that he was absent on 28 and 29 April and 7 and 8 May 1997 and had not sought sick leave permission for those dates, and also denied falsifying or having had anything to do with the falsification of his medical consultation card.

---

[7] *Id*. at 93-A.

[8] *Id*. at 96.

[9] *Id*. at 97.

[10] *Id*. at 98-99.

[11] *Id*. at 100.

[12] *Id*. at 102-110; Minutes of the Administrative Investigation dated 17 and 23 June 1997.

Ferdinand Siwa (Siwa), staff assistant, and Dr. Angelito Marable (Marable), retainer-physician, testified for SMC.

Siwa testified that sometime in May 1997, he called respondent's attention to AWOPs he incurred on 28 and 29 April. He admitted having given respondent a written warning for his absences on 2, 4 and 11 January and on 28 and 29 April. Respondent admitted his absences on 28 and 29 April but reasoned that he was on sick leave on those dates, producing his medical consultation card from his locker to prove the same. Siwa was surprised that the medical consultation card was in respondent's possession since this should have been in the rack beside the plant clinic. His medical consultation showed that he was purportedly granted sick leave for 28 and 29 April. However, upon verification with the plant clinic, Siwa found that respondent was not granted sick leaves on those dates. When Siwa confronted respondent about the falsification, respondent allegedly replied that he resorted to falsification to cover up his AWOPs which he was forced to incur because of personal problems.

Marable testified that sometime in May 1997, he together with the plant nurse and Siwa counter-checked respondent's sick leaves with the daily personnel leave authority report. The examination revealed that the clinic had not granted any sick leave on 28 and 29 April and 7 and 8 May 1997. On 16 June 1997, when respondent came to him for consultation, Marable confronted respondent about the falsified entries in his medical consultation card, but respondent only explained that he had been having a lot of problems.

After the completion of the investigation, SMC concluded that respondent committed the offenses of excessive AWOPs and falsification of company records or documents, and accordingly dismissed him.[13]

On 30 March 1998, respondent filed a complaint for illegal dismissal against SMC and Geribern Abella, assistant vice president and plant manager of the Metal Closure and Lithography Plant.

[13] *Id*. at 111; Notice of Termination dated 2 July 1997.

On 2 September 1998, Acting Executive Labor Arbiter Pedro C. Ramos rendered his Decision,[14] finding respondent to have been illegally dismissed and ordering his reinstatement and payment of full backwages, benefits and attorney's fees.[15]

The labor arbiter believed that respondent had committed the absences pointed out by SMC but found the imposition of termination of employment based on his AWOPs to be disproportionate since SMC failed to show by clear and convincing evidence that it had strictly implemented its company policy on absences. It found nothing in the records that would show that respondent was suspended for his previous AWOPs before he was meted the maximum penalty of discharge from service and thus, it ruled that management was to be blamed for the non-implementation of and lax compliance with the policy. It also noted that termination based on the alleged falsification of company records was unwarranted in view of SMC's failure to establish respondent's guilt. It observed that the medical card was under the care of Siwa and thus it was he who should be responsible for its loss and the insertion of falsified entries therein.

SMC appealed the decision to the National Labor Relations Commission (NLRC) on 13 November 1998. On 31 March 1999, the NLRC First Division affirmed with modification the decision of the labor arbiter.[16] The NLRC found that there was already a strained relationship between the parties such that reinstatement was no longer feasible, so instead it granted separation pay equivalent to one (1) month for every year of service. It also deleted the award of attorney's fees.[17]

The NLRC, on 30 June 1999, denied the parties' respective motions for reconsideration of its decision.

On 2 September 1999, respondent filed a special civil action for *certiorari* assailing the NLRC decision and resolution. SMC

---

[14] *Rollo*, pp. 211-229.

[15] *Id*. at 229.

[16] *Id*. at 262-274.

[17] *Id*. at 273.

filed its petition for *certiorari* on 3 September 1999. The cases were consolidated.

On 28 June 2000, the Court of Appeals rendered its Decision affirming the findings of the labor arbiter and the NLRC relative to the illegality of respondent's dismissal but modifying the monetary award. The dispositive portion of the decision reads:

> WHEREFORE, the decision of the public respondent modifying the decision of the labor arbiter is **SET ASIDE** and the decision of the labor arbiter is hereby **REINSTATED** with the modification that the payment of the full backwages and other benefits would be from 2 July 1997 up to 14 October 1998.
>
> SO ORDERED.[18]

The Court of Appeals believed that contrary to SMC's claims, it was more consistent with human experience that respondent did not make an admission, especially in view of his consistent denials during the administrative investigation and of his written explanation dated 5 June 1997. The Court of Appeals also stayed firm in its determination that the testimonies of Marable and Siwa could not be given weight as they were uncorroborated, and that it was Siwa who was liable for the falsification of respondent's consultation card.

The appellate court also held that respondent's AWOPs did not warrant his dismissal in view of SMC's inconsistent implementation of its company policies. It could not understand why respondent was given a mere warning for his absences on 28 and 29 April which constituted his 5th and 6th AWOPs, respectively, when these should have merited suspension under SMC's policy. According to the appellate court, since respondent was merely warned, logically said absences were deemed committed for the first time; thus, it follows that the subject AWOPs did not justify his dismissal because under SMC's policy, the 4th to 9th AWOPs are meted the corresponding penalty only when committed for the second time.

---

[18] *Id*. at 81.

The Court of Appeals, however, disagreed with the NLRC's application of the doctrine of "strained relations," citing jurisprudence[19] that the same should be strictly applied so as not to deprive an illegally dismissed employee of his right to reinstatement, and that since every labor dispute almost always results in "strained relations," the phrase cannot be given an over-arching interpretation.[20] Thus, it ordered that respondent's backwages be computed from the date of his dismissal up to the time when he was actually reinstated. Since respondent was placed on payroll reinstatement on 15 October 1998, he should be awarded backwages from 2 July 1997 up to 14 October 1998.

Both parties separately moved for reconsideration of the decision but the Court of Appeals denied the motions for lack of merit in the Resolution dated 17 November 2000.

In this present petition for review, SMC raises the following grounds:

A.

THE COURT OF APPEALS DECIDED THE CASES IN A WAY NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THE SUPREME COURT, AND IN VIOLATION OF THE ACCEPTED RULES ON EVIDENCE AND USUAL COURSE OF JUDICIAL PROCEEDINGS.

B.

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE ABSENCES OF IBIAS ON 28TH AND 29TH OF APRIL 1997 "*WERE COMMITTED FOR THE FIRST TIME.*" SUCH FINDING IS GROUNDED ENTIRELY ON SPECULATION AND CONJECTURE AND A RESULT OF A MANIFESTLY ABSURD INFERENCE.[21]

On the first ground, SMC contends that the Court of Appeals allegedly disregarded the basic rule on evidence that affirmative

[19] *Quijano v. Mercury Drug Corporation*, 354 Phil. 112 (1998).

[20] *Id*. at 122.

[21] *Rollo*, pp. 53-54.

testimony is stronger than negative testimony. It claims that the testimonies of Marable and Siwa that respondent admitted having committed the falsification should be given more weight than his mere denial. SMC adds that the falsified medical consultation card by itself proves respondent's falsification of the card. The fact that he used the falsified consultation card to falsely represent that he had been granted sick leave on 28 and 29 April and 7 and 8 May 1997 is sufficient to hold him liable for falsification, SMC adds. Further, SMC argues that respondent's possession of the falsified consultation card also raises the presumption that he is the author of the falsification.

On the second ground, SMC points out respondent's absences on 28 and 29 April 1997 were his 5th and 6th AWOPs, respectively, and following the Court of Appeals' ruling, the same should have been meted the penalty of five (5) days' suspension for the 5th AWOP and 10 days' suspension for the 6th AWOP under SMC's Policy on Employee Conduct. Respondent incurred fourteen (14) AWOPs but when SMC imposed the penalty of discharge, the Court of Appeals disagreed since SMC had supposedly failed to strictly implement its company policy on attendance. Such reasoning would have respondent's AWOPs justified by SMC's lax implementation of disciplinary action on its employees, and would place on SMC the burden of proving strict conformity with company rules. SMC argues that this is contrary to the ruling in *Cando v. NLRC*[22] that it should be the employee who must show proof of condonation by the employer of the offense or laxity in the enforcement of the company rules since it is he who has raised this defense.

SMC directs our attention to the Court of Appeals' observation that Ibias' 5th and 6th AWOPs should be considered as though "said absences were committed for the first time" since respondent "was merely given a warning" for said AWOPs. To SMC, it seems that that the appellate court would count the employee's AWOPs not on the basis of the number of times that he had been absent, but on the basis of the penalty imposed by the employee. This is clearly contrary to the dictates of the Policy. Such a

[22] G.R. No. 91344, 14 September 1990, 189 SCRA 666.

ruling also deprives SMC of its management prerogative to impose sanctions lighter than those specifically prescribed by its rules.

The issues to be resolved are whether the Court of Appeals erred in sustaining the findings of the labor arbiter and the NLRC and in dismissing SMC's claims that respondent was terminated from service with just cause.

The petition is meritorious as regards one of the issues.

At the outset, it should be stressed that whether respondent had falsified his medical consultation card and whether he incurred unauthorized absences are questions of fact which the Court of Appeals, the NLRC, and the labor arbiter had already resolved. We see no reason to disturb the same. After all, findings of fact of the Court of Appeals, particularly where it is in absolute agreement with that of the NLRC and the Labor Arbiter, as in this case, are accorded not only respect but even finality and are deemed binding upon this Court so long as they are supported by substantial evidence.[23] Nevertheless, while the Court subscribes to the factual findings of the lower tribunals, it finds that these tribunals misapplied the appropriate law and jurisprudence on the issue of respondent's dismissal due to his unauthorized absences. But first the falsification issue.

The settled rule in administrative and quasi-judicial proceedings is that proof beyond reasonable doubt is not required in determining the legality of an employer's dismissal of an employee, and not even a preponderance of evidence is necessary as substantial evidence is considered sufficient. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. Thus, substantial evidence is the least demanding in the hierarchy of evidence.[24]

---

[23] *Hantex Trading Co., Inc. v. Court of Appeals*, 438 Phil. 737, 743 (2002).

[24] *Salvador v. Philippine Mining Service Corporation*, 443 Phil. 878, 888-889 (2003).

The Court agrees with the tribunals below that SMC was unable to prove the falsification charge against respondent. Respondent cannot be legally dismissed on the basis of the uncorroborated and self-serving testimonies of SMC's employees. SMC merely relied on the testimonies of Marabe and Siwa, who both stated that respondent admitted to them that he falsified his medical consultation card to cover up his excessive AWOPs. For his part, respondent denied having had any knowledge of said falsification, both in his testimony during the company-level investigation and in his handwritten explanation. He did not even claim that he had requested for, nor had been granted any sick leave for the days that the falsified entries were made. Siwa, being responsible for the medical cards, should take the blame for the loss and alleged tampering thereof, and not respondent who had no control over the same.

Proof beyond reasonable doubt is not required as a basis for judgment on the legality of an employer's dismissal of an employee, nor even preponderance of evidence for that matter, substantial evidence being sufficient. In the instant case, while there may be no denying that respondent's medical card had falsified entries in it, SMC was unable to prove, by substantial evidence, that it was respondent who made the unauthorized entries. Besides, SMC's (Your) Guide on Employee Conduct[25] punishes the act of falsification of company records or documents; it does not punish mere possession of a falsified document.

The issue of the unauthorized absences, however, is another matter.

Respondent's time cards showed that he was on AWOP on the dates enumerated by SMC: 2, 4 and 11 January; 26, 28 and 29 April; and 5, 7, 8, 13, 21, 22, 28 and 29 May 1997. The Labor Arbiter even found that respondent was on AWOP on all said dates.[26] Respondent also admitted being absent on 28 and 29 April and 7 and 8 May 1997. For each of the periods of 1 to 15 January 1997 and 16 to 30 April 1997, respondent reported

---

[25] NLRC records, pp. 73-84.

[26] *Rollo*, p. 225.

for work only for two days.[27] For the month of May 1997, he reported only for one day.[28]

The Court observes that respondent admitted during the company-level investigation that that his absences incurred on 28 and 29 April, and 7 and 8 May 1997 were without permission.[29] He explained that during those times, he had a family problem which needed his attention; he was confused and was unable to inform or seek permission from his superior.[30]

However, while respondent has admitted these absences, before the Court, he also seeks to belittle the plain by countering that SMC has not been too rigid in its application of company rules pertaining to leave availments. In the proceedings below he claimed that during the days that he was absent, he had attended to some family matters. Thus, he presented copies of two (2) medical certificates and a *barangay* certification that he attended hearings on some of the days when he was absent. These certifications, however, cannot work to erase his AWOPs; respondent had never submitted these documents to SMC and it is only when the case was pending before the Labor Arbiter that he produced the same.[31]

Respondent cannot feign surprise nor ignorance of the earlier AWOPs he had incurred. He was given a warning for his 2, 4,

---

[27] Records, pp. 90-91.

[28] *Id*. at 92-93.

[29] NLRC records, pp. 102-108. Minutes of the Administrative Meeting held on 17 June 1997. The pertinent portion reads:

Investigator: *Ginoong Ibias, Ikaw ba ay pumasok sa iyong trabaho noong April 28 & 29, at May 7 at 8, 1997*?

E.Ibias: *Hindi po*.

Investigator: *Sa mga araw na nabanggit, ang iyo bang pagliban o pag-absent ay may permiso ba mula sa iyong supervisor o manager*?

E. Ibias: *Wala po*. (*Id*. at 102-103)

[30] *Id*. at 103. Respondent showed his assent to the contents of the Minutes of the said investigation by affixing his signature on every page thereof.

[31] *Id*. at 146. As called by SMC in its Rejoinder dated 29 June 1998. Respondent did not deny this allegation.

and 11 January and 26, 28, and 29 April 1997 AWOPs.[32] In the same warning, he was informed that he already had six AWOPs for 1997. He admitted that he was absent on 7 and 8 May 1997.[33] He was also given notices to explain his AWOPs for the period 26 May to 2 June 1997, which he received but refused to acknowledge.[34] It does not take a genius to figure out that as early as June 1997, he had more than nine AWOPs.

Thus, even if he was not punished for his subsequent AWOPs, the same remained on record. He was aware of the number of AWOPs he incurred and should have known that these were punishable under company rules. The fact that he was spared from suspension cannot be used as a reason to incur further AWOPs and be absolved from the penalty therefor.

The Court of Appeals, NLRC, and the labor arbiter found that respondent incurred unauthorized absences, but concluded that the penalty of discharge or determination was disproportionate to respondent's absences in view of SMC's inconsistent and lax implementation of its policy on employees attendance. The Court disagrees. Respondent's dismissal was well within the purview of SMC's management prerogative.

What the lower tribunals perceived as laxity, we consider as leniency. SMC's tendency to excuse justified absences actually redounded to the benefit of respondent since the imposition of the corresponding penalty would have been deleterious to him. In a world where "no work-no pay" is the rule of thumb, several days of suspension would be difficult for an ordinary working man like respondent. He should be thankful that SMC did not exact from him almost 70 days suspension before he was finally dismissed from work.

In any case, when SMC imposed the penalty of dismissal for the 12th and 13th AWOPs, it was acting well within its rights as an employer. An employer has the prerogative to prescribe reasonable rules and regulations necessary for the proper conduct

[32] *Id*. at 93-A.Warning.

[33] *Id*. at 102-108. Minutes of the Administrative Meeting held on 17 June 1997.

[34] *Id*. at 97-98.

of its business, to provide certain disciplinary measures in order to implement said rules and to assure that the same would be complied with.[35] An employer enjoys a wide latitude of discretion in the promulgation of policies, rules and regulations on work-related activities of the employees.[36]

It is axiomatic that appropriate disciplinary sanction is within the purview of management imposition.[37] Thus, in the implementation of its rules and policies, the employer has the choice to do so strictly or not, since this is inherent in its right to control and manage its business effectively. Consequently, management has the prerogative to impose sanctions lighter than those specifically prescribed by its rules, or to condone completely the violations of its erring employees. Of course, this prerogative must be exercised free of grave abuse of discretion, bearing in mind the requirements of justice and fair play. Indeed, we have previously stated:

> 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 [fewer] privileges in life, the Supreme 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 the Court to rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.[38]

All told, we find that SMC acted well within its rights when it dismissed respondent for his numerous absences. Respondent was afforded due process and was validly dismissed for cause.

WHEREFORE, the instant petition is *GRANTED*. The challenged Decision dated 28 June 2000 and Resolution dated

---

[35] *Gustilo v. Wyeth Philippines, Inc.*, G.R. No. 149629, 4 October 2004, 440 SCRA 67, 75.

[36] *Coca Cola Bottlers, Phils., Inc. v. Kapisanan ng Malayang Manggagawa sa Coca Cola-FFW*, G.R. No. 148205, 28 February 2005, 452 SCRA 480, 496.

[37] *Lopez v. National Labor Relations Commission,* G.R. No. 167385, 13 December 2005, 477 SCRA 596, 602.

[38] *Samar II Electric Cooperative, Inc. v. NLRC*, 337 Phil. 24, 28-29 (1997), citing *Sosito v. Aguinaldo Development Corp.*, 156 SCRA 392 (1987).

17 November 2000 of the Court of Appeals in CA-G.R. SP Nos. 54684 and 54709 are *REVERSED* and *SET ASIDE*. Respondent's complaint against petitioners is *DISMISSED*.

SO ORDERED.

Quisumbing (Chairperson), Austria-Martinez,[*] *Carpio Morales,* and *Velasco, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 148187. April 16, 2008]

PHILEX MINING CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; CONTRACT OF PARTNERSHIP; ELUCIDATED.— Under a contract of partnership, two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves. While a corporation, like petitioner, cannot generally enter into a contract of partnership unless authorized by law or its charter, it has been held that it may enter into a joint venture which is akin to a particular partnership: "The legal concept of a joint venture is of common law origin. It has no precise legal definition, but it has been generally understood to mean an organization formed for some temporary purpose. x x x It is in fact hardly distinguishable from the partnership, since their elements are similar – community of interest in the business, sharing of

[*] As replacement of *J.* Arturo D. Brion who took no part due to a party being a former client per Administrative Circular No. 84-2007.

profits and losses, and a mutual right of control. x x x The main distinction cited by most opinions in common law jurisdictions is that the partnership contemplates a general business with some degree of continuity, while the joint venture is formed for the execution of a single transaction, and is thus of a temporary nature. x x x This observation is not entirely accurate in this jurisdiction, since under the Civil Code, a partnership may be particular or universal, and a particular partnership may have for its object a specific undertaking. x x x It would seem therefore that under Philippine law, a joint venture is a form of partnership and should be governed by the law of partnerships. The Supreme Court has however recognized a distinction between these two business forms, and has held that although a corporation cannot enter into a partnership contract, it may however engage in a joint venture with others. x x x "

2. **ID.; ID.; AGENCY; AGENCY COUPLED WITH INTEREST; DESCRIBED.—** In an agency coupled with interest, it is the **agency** that cannot be revoked or withdrawn **by the principal** due to an interest of a third party that depends upon it, or the mutual interest of both principal and agent.

3. **ID.; ID.; ID.; ESSENCE.—** The essence of an agency, even one that is coupled with interest, is the agent's ability to represent his principal and bring about business relations between the latter and third persons. Where representation for and in behalf of the principal is merely incidental or necessary for the proper discharge of one's paramount undertaking under a contract, the latter may not necessarily be a contract of agency, but some other agreement depending on the ultimate undertaking of the parties.

4. **TAXATION; INCOME TAXATION; DEDUCTIONS FROM GROSS INCOME; PARTAKE OF THE NATURE OF TAX EXEMPTIONS AND ARE STRICTLY CONSTRUED AGAINST THE TAXPAYER.—** Deductions for income tax purposes partake of the nature of tax exemptions and are strictly construed against the taxpayer, who must prove by convincing evidence that he is entitled to the deduction claimed.

APPEARANCES OF COUNSEL

Roco Kapunan Migallos Perez & Luna for petitioner.

The Solicitor General for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is a petition for review on *certiorari* of the June 30, 2000 Decision[1] of the Court of Appeals in CA-G.R. SP No. 49385, which affirmed the Decision[2] of the Court of Tax Appeals in C.T.A. Case No. 5200. Also assailed is the April 3, 2001 Resolution[3] denying the motion for reconsideration.

The facts of the case are as follows:

On April 16, 1971, petitioner Philex Mining Corporation (Philex Mining), entered into an agreement[4] with Baguio Gold Mining Company ("Baguio Gold") for the former to manage and operate the latter's mining claim, known as the Sto. Niño mine, located in Atok and Tublay, Benguet Province. The parties' agreement was denominated as "Power of Attorney" and provided for the following terms:

4. Within three (3) years from date thereof, the PRINCIPAL (Baguio Gold) shall make available to the MANAGERS (Philex Mining) up to ELEVEN MILLION PESOS (₱11,000,000.00), in such amounts as from time to time may be required by the MANAGERS within the said 3-year period, for use in the MANAGEMENT of the STO. NIÑO MINE. The said ELEVEN MILLION PESOS (₱11,000,000.00) shall be deemed, for internal audit purposes, as the owner's account in the Sto. Niño PROJECT. Any part of any income of the PRINCIPAL from the STO. NIÑO MINE, which is left with the Sto. Niño PROJECT, shall be added to such owner's account.

5. Whenever the MANAGERS shall deem it necessary and convenient in connection with the MANAGEMENT of the STO. NIÑO MINE, they may transfer their own funds or property to the Sto. Niño PROJECT, in accordance with the following arrangements:

---

[1] *Rollo*, pp. 46-57; penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Ma. Alicia Austria-Martinez (now an Associate Justice of the Supreme Court) and Elvi John S. Asuncion.

[2] *Id*. at 169-196; penned by Justice Amancio Q. Saga.

[3] *Id*. at 59.

[4] *Id*. at 60-69.

(a) The properties shall be appraised and, together with the cash, shall be carried by the Sto. Niño PROJECT as a special fund to be known as the MANAGERS' account.

(b) The total of the MANAGERS' account shall not exceed ₱11,000,000.00, except with prior approval of the PRINCIPAL; provided, however, that if the compensation of the MANAGERS as herein provided cannot be paid in cash from the Sto. Niño PROJECT, the amount not so paid in cash shall be added to the MANAGERS' account.

(c) The cash and property shall not thereafter be withdrawn from the Sto. Niño PROJECT until termination of this Agency.

(d) The MANAGERS' account shall not accrue interest. Since it is the desire of the PRINCIPAL to extend to the MANAGERS the benefit of subsequent appreciation of property, upon a projected termination of this Agency, the ratio which the MANAGERS' account has to the owner's account will be determined, and the corresponding proportion of the entire assets of the STO. NIÑO MINE, excluding the claims, shall be transferred to the MANAGERS, except that such transferred assets shall not include mine development, roads, buildings, and similar property which will be valueless, or of slight value, to the MANAGERS. The MANAGERS can, on the other hand, require at their option that property originally transferred by them to the Sto. Niño PROJECT be re-transferred to them. Until such assets are transferred to the MANAGERS, this Agency shall remain subsisting.

xxx xxx xxx

12. The compensation of the MANAGER shall be fifty per cent (50%) of the net profit of the Sto. Niño PROJECT before income tax. It is understood that the MANAGERS shall pay income tax on their compensation, while the PRINCIPAL shall pay income tax on the net profit of the Sto. Niño PROJECT after deduction therefrom of the MANAGERS' compensation.

xxx xxx xxx

16. The PRINCIPAL has current pecuniary obligation in favor of the MANAGERS and, in the future, may incur other obligations in favor of the MANAGERS. This Power of Attorney has been executed as security for the payment and satisfaction of all such obligations of the PRINCIPAL in favor of the MANAGERS and as

a means to fulfill the same. Therefore, this Agency shall be irrevocable while any obligation of the PRINCIPAL in favor of the MANAGERS is outstanding, inclusive of the MANAGERS' account. After all obligations of the PRINCIPAL in favor of the MANAGERS have been paid and satisfied in full, this Agency shall be revocable by the PRINCIPAL upon 36-month notice to the MANAGERS.

17. Notwithstanding any agreement or understanding between the PRINCIPAL and the MANAGERS to the contrary, the MANAGERS may withdraw from this Agency by giving 6-month notice to the PRINCIPAL. The MANAGERS shall not in any manner be held liable to the PRINCIPAL by reason alone of such withdrawal. Paragraph 5(d) hereof shall be operative in case of the MANAGERS' withdrawal.

xxx xxx xxx[5]

In the course of managing and operating the project, Philex Mining made advances of cash and property in accordance with paragraph 5 of the agreement. However, the mine suffered continuing losses over the years which resulted to petitioner's withdrawal as manager of the mine on January 28, 1982 and in the eventual cessation of mine operations on February 20, 1982.[6]

Thereafter, on September 27, 1982, the parties executed a "Compromise with Dation in Payment"[7] wherein Baguio Gold admitted an indebtedness to petitioner in the amount of ₱179,394,000.00 and agreed to pay the same in three segments by first assigning Baguio Gold's tangible assets to petitioner, transferring to the latter Baguio Gold's equitable title in its Philodrill assets and finally settling the remaining liability through properties that Baguio Gold may acquire in the future.

On December 31, 1982, the parties executed an "Amendment to Compromise with Dation in Payment"[8] where the parties determined that Baguio Gold's indebtedness to petitioner actually amounted to ₱259,137,245.00, which sum included liabilities

[5] *Id*. at 62-63, 66 & 68.

[6] *Id*. at 124.

[7] *Id*. at 89-97.

[8] *Id*. at 98-106.

of Baguio Gold to other creditors that petitioner had assumed as guarantor. These liabilities pertained to long-term loans amounting to US$11,000,000.00 contracted by Baguio Gold from the Bank of America NT & SA and Citibank N.A. This time, Baguio Gold undertook to pay petitioner in two segments by first assigning its tangible assets for ₱127,838,051.00 and then transferring its equitable title in its Philodrill assets for ₱16,302,426.00. The parties then ascertained that Baguio Gold had a remaining outstanding indebtedness to petitioner in the amount of ₱114,996,768.00.

Subsequently, petitioner wrote off in its 1982 books of account the remaining outstanding indebtedness of Baguio Gold by charging ₱112,136,000.00 to allowances and reserves that were set up in 1981 and P2,860,768.00 to the 1982 operations.

In its 1982 annual income tax return, petitioner deducted from its gross income the amount of ₱112,136,000.00 as "loss on settlement of receivables from Baguio Gold against reserves and allowances."[9] However, the Bureau of Internal Revenue (BIR) disallowed the amount as deduction for bad debt and assessed petitioner a deficiency income tax of ₱62,811,161.39.

Petitioner protested before the BIR arguing that the deduction must be allowed since all requisites for a bad debt deduction were satisfied, to wit: (a) there was a valid and existing debt; (b) the debt was ascertained to be worthless; and (c) it was charged off within the taxable year when it was determined to be worthless.

Petitioner emphasized that the debt arose out of a valid management contract it entered into with Baguio Gold. The bad debt deduction represented advances made by petitioner which, pursuant to the management contract, formed part of Baguio Gold's "pecuniary obligations" to petitioner. It also included payments made by petitioner as guarantor of Baguio Gold's long-term loans which legally entitled petitioner to be subrogated to the rights of the original creditor.

[9] *Id*. at 129.

Petitioner also asserted that due to Baguio Gold's irreversible losses, it became evident that it would not be able to recover the advances and payments it had made in behalf of Baguio Gold. For a debt to be considered worthless, petitioner claimed that it was neither required to institute a judicial action for collection against the debtor nor to sell or dispose of collateral assets in satisfaction of the debt. It is enough that a taxpayer exerted diligent efforts to enforce collection and exhausted all reasonable means to collect.

On October 28, 1994, the BIR denied petitioner's protest for lack of legal and factual basis. It held that the alleged debt was not ascertained to be worthless since Baguio Gold remained existing and had not filed a petition for bankruptcy; and that the deduction did not consist of a valid and subsisting debt considering that, under the management contract, petitioner was to be paid fifty percent (50%) of the project's net profit.[10]

Petitioner appealed before the Court of Tax Appeals (CTA) which rendered judgment, as follows:

> WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby DENIED for lack of merit. The assessment in question, *viz*: FAS-1-82-88-003067 for deficiency income tax in the amount of ₱62,811,161.39 is hereby AFFIRMED.
>
> ACCORDINGLY, petitioner Philex Mining Corporation is hereby ORDERED to PAY respondent Commissioner of Internal Revenue the amount of ₱62,811,161.39, plus, 20% delinquency interest due computed from February 10, 1995, which is the date after the 20-day grace period given by the respondent within which petitioner has to pay the deficiency amount x x x up to actual date of payment.
>
> SO ORDERED.[11]

The CTA rejected petitioner's assertion that the advances it made for the Sto. Niño mine were in the nature of a loan. It instead characterized the advances as petitioner's investment in a partnership with Baguio Gold for the development and

[10] *Id*. at 148-149.

[11] *Id*. at 195.

exploitation of the Sto. Niño mine. The CTA held that the "Power of Attorney" executed by petitioner and Baguio Gold was actually a partnership agreement. Since the advanced amount partook of the nature of an investment, it could not be deducted as a bad debt from petitioner's gross income.

The CTA likewise held that the amount paid by petitioner for the long-term loan obligations of Baguio Gold could not be allowed as a bad debt deduction. At the time the payments were made, Baguio Gold was not in default since its loans were not yet due and demandable. What petitioner did was to pre-pay the loans as evidenced by the notice sent by Bank of America showing that it was merely demanding payment of the installment and interests due. Moreover, Citibank imposed and collected a "pre-termination penalty" for the pre-payment.

The Court of Appeals affirmed the decision of the CTA.[12] Hence, upon denial of its motion for reconsideration,[13] petitioner took this recourse under Rule 45 of the Rules of Court, alleging that:

I.

The Court of Appeals erred in construing that the advances made by Philex in the management of the Sto. Niño Mine pursuant to the Power of Attorney partook of the nature of an investment rather than a loan.

II.

The Court of Appeals erred in ruling that the 50%-50% sharing in the net profits of the Sto. Niño Mine indicates that Philex is a partner of Baguio Gold in the development of the Sto. Nino Mine notwithstanding the clear absence of any intent on the part of Philex and Baguio Gold to form a partnership.

III.

The Court of Appeals erred in relying only on the Power of Attorney and in completely disregarding the Compromise Agreement and the Amended Compromise Agreement when it construed the nature of the advances made by Philex.

[12] *Id*. at 46-57.

[13] *Id*. at 59.

IV.

The Court of Appeals erred in refusing to delve upon the issue of the propriety of the bad debts write-off.[14]

Petitioner insists that in determining the nature of its business relationship with Baguio Gold, we should not only rely on the "Power of Attorney," but also on the subsequent "Compromise with Dation in Payment" and "Amended Compromise with Dation in Payment" that the parties executed in 1982. These documents, allegedly evinced the parties' intent to treat the advances and payments as a loan and establish a creditor-debtor relationship between them.

The petition lacks merit.

The lower courts correctly held that the "Power of Attorney" is the instrument that is material in determining the true nature of the business relationship between petitioner and Baguio Gold. Before resort may be had to the two compromise agreements, the parties' contractual intent must first be discovered from the expressed language of the primary contract under which the parties' business relations were founded. It should be noted that the compromise agreements were mere collateral documents executed by the parties pursuant to the termination of their business relationship created under the "Power of Attorney". On the other hand, it is the latter which established the juridical relation of the parties and defined the parameters of their dealings with one another.

The execution of the two compromise agreements can hardly be considered as a subsequent or contemporaneous act that is reflective of the parties' true intent. The compromise agreements were executed eleven years after the "Power of Attorney" and merely laid out a plan or procedure by which petitioner could recover the advances and payments it made under the "Power of Attorney." The parties entered into the compromise agreements as a consequence of the dissolution of their business relationship. It did not define that relationship or indicate its real character.

[14] *Id*. at 18.

An examination of the "Power of Attorney" reveals that a partnership or joint venture was indeed intended by the parties. Under a contract of partnership, two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.[15] While a corporation, like petitioner, cannot generally enter into a contract of partnership unless authorized by law or its charter, it has been held that it may enter into a joint venture which is akin to a particular partnership:

> The legal concept of a joint venture is of common law origin. It has no precise legal definition, but it has been generally understood to mean an organization formed for some temporary purpose. x x x It is in fact hardly distinguishable from the partnership, since their elements are similar – community of interest in the business, sharing of profits and losses, and a mutual right of control. x x x The main distinction cited by most opinions in common law jurisdictions is that the partnership contemplates a general business with some degree of continuity, while the joint venture is formed for the execution of a single transaction, and is thus of a temporary nature. x x x This observation is not entirely accurate in this jurisdiction, since under the Civil Code, a partnership may be particular or universal, and a particular partnership may have for its object a specific undertaking. x x x It would seem therefore that under Philippine law, a joint venture is a form of partnership and should be governed by the law of partnerships. The Supreme Court has however recognized a distinction between these two business forms, and has held that although a corporation cannot enter into a partnership contract, it may however engage in a joint venture with others. x x x (Citations omitted)[16]

Perusal of the agreement denominated as the "Power of Attorney" indicates that the parties had intended to create a partnership and establish a common fund for the purpose. They also had a joint interest in the profits of the business as shown by a 50-50 sharing in the income of the mine.

Under the "Power of Attorney," petitioner and Baguio Gold undertook to contribute money, property and industry to the

[15] CIVIL CODE, Art. 1767.

[16] *Aurbach v. Sanitary Wares Manufacturing Corporation*, G.R. No. 75875, December 15, 1989, 180 SCRA 130, 146-147.

common fund known as the Sto. Niño mine.[17] In this regard, we note that there is a substantive equivalence in the respective contributions of the parties to the development and operation of the mine. Pursuant to paragraphs 4 and 5 of the agreement, petitioner and Baguio Gold were to contribute equally to the joint venture assets under their respective accounts. Baguio Gold would contribute **₱11M** under its owner's account plus any of its **income** that is left in the project, in addition to its **actual mining claim**. Meanwhile, petitioner's contribution would consist of its **expertise** in the management and operation of mines, as well as the manager's account which is comprised of **₱11M** in funds and property and petitioner's **"compensation"** as manager that cannot be paid in cash.

However, petitioner asserts that it could not have entered into a partnership agreement with Baguio Gold because it did not "bind" itself to contribute money or property to the project; that under paragraph 5 of the agreement, it was only optional for petitioner to transfer funds or property to the Sto. Niño project "(w)henever the MANAGERS shall deem it necessary and convenient in connection with the MANAGEMENT of the STO. NIÑO MINE."[18]

The wording of the parties' agreement as to petitioner's contribution to the common fund does not detract from the fact that petitioner transferred its funds and property to the project as specified in paragraph 5, thus rendering effective the other stipulations of the contract, particularly paragraph 5(c) which prohibits petitioner from withdrawing the advances until termination of the parties' business relations. As can be seen, petitioner became bound by its contributions once the transfers were made. The contributions acquired an obligatory nature as soon as petitioner had chosen to exercise its option under paragraph 5.

There is no merit to petitioner's claim that the prohibition in paragraph 5(c) against withdrawal of advances should not be

[17] Power of Attorney, paragraph 2(a), *rollo*, p. 61.

[18] *Rollo*, p. 62.

taken as an indication that it had entered into a partnership with Baguio Gold; that the stipulation only showed that what the parties entered into was actually a contract of agency coupled with an interest which is not revocable at will and not a partnership.

In an agency coupled with interest, it is the **agency** that cannot be revoked or withdrawn **by the principal** due to an interest of a third party that depends upon it, or the mutual interest of both principal and agent.[19] In this case, the non-revocation or non-withdrawal under paragraph 5(c) applies to the **advances** made by petitioner who is supposedly the **agent** and not the principal under the contract. Thus, it cannot be inferred from the stipulation that the parties' relation under the agreement is one of agency coupled with an interest and not a partnership.

Neither can paragraph 16 of the agreement be taken as an indication that the relationship of the parties was one of agency and not a partnership. Although the said provision states that "this Agency shall be irrevocable while any obligation of the PRINCIPAL in favor of the MANAGERS is outstanding, inclusive of the MANAGERS' account," it does not necessarily follow that the parties entered into an agency contract coupled with an interest that cannot be withdrawn by Baguio Gold.

It should be stressed that the main object of the "Power of Attorney" was not to confer a power in favor of petitioner to contract with third persons on behalf of Baguio Gold but to create a business relationship between petitioner and Baguio Gold, in which the former was to manage and operate the latter's mine through the parties' mutual contribution of material resources and industry. The essence of an agency, even one that is coupled with interest, is the agent's ability to represent his principal and bring about business relations between the latter and third persons.[20] Where representation for and in behalf of the principal

---

[19] CIVIL CODE, Art. 1927. An agency cannot be revoked if a bilateral contract depends upon it, or if it is the means of fulfilling an obligation already contracted, or if a partner is appointed manager of a partnership in the contract of partnership and his removal from the management is unjustifiable.

[20] *Partnership, Agency and Trusts*, 1996 Ed., De Leon and De Leon, Jr., p. 330.

is merely incidental or necessary for the proper discharge of one's paramount undertaking under a contract, the latter may not necessarily be a contract of agency, but some other agreement depending on the ultimate undertaking of the parties.[21]

In this case, the totality of the circumstances and the stipulations in the parties' agreement indubitably lead to the conclusion that a partnership was formed between petitioner and Baguio Gold.

First, it does not appear that Baguio Gold was unconditionally obligated to return the advances made by petitioner under the agreement. Paragraph 5 (d) thereof provides that upon termination of the parties' business relations, "the ratio which the MANAGER'S account has to the owner's account will be determined, and the corresponding proportion of the entire assets of the STO. NIÑO MINE, excluding the claims" shall be transferred to petitioner.[22] As pointed out by the Court of Tax Appeals, petitioner was merely entitled to a proportionate return of the mine's assets upon dissolution of the parties' business relations. There was nothing in the agreement that would require Baguio Gold to make payments of the advances to petitioner as would be recognized as an item of obligation or "accounts payable" for Baguio Gold.

Thus, the tax court correctly concluded that the agreement provided for a distribution of assets of the Sto. Niño mine upon termination, a provision that is more consistent with a partnership than a creditor-debtor relationship. It should be pointed out that in a contract of loan, a person who receives a loan or money or any fungible thing acquires ownership thereof and is **bound** to pay the creditor an equal amount of the same kind and quality.[23] In this case, however, there was no stipulation for Baguio Gold to actually repay petitioner the cash and property that it had advanced, but only the return of an amount pegged at a ratio which the manager's account had to the owner's account.

---

[21] See *Nielson & Company, Inc. v. Lepanto Consolidated Mining Company*, 135 Phil. 532, 542 (1968).

[22] *Rollo*, p. 63.

[23] CIVIL CODE, Art. 1953.

In this connection, we find no contractual basis for the execution of the two compromise agreements in which Baguio Gold recognized a debt in favor of petitioner, which supposedly arose from the termination of their business relations over the Sto. Niño mine. The "Power of Attorney" clearly provides that petitioner would only be entitled to the return of a proportionate share of the mine assets to be computed at a ratio that the manager's account had to the owner's account. Except to provide a basis for claiming the advances as a bad debt deduction, there is no reason for Baguio Gold to hold itself liable to petitioner under the compromise agreements, for any amount over and above the proportion agreed upon in the "Power of Attorney."

Next, the tax court correctly observed that it was unlikely for a business corporation to lend hundreds of millions of pesos to another corporation with neither security, or collateral, nor a specific deed evidencing the terms and conditions of such loans. The parties also did not provide a specific maturity date for the advances to become due and demandable, and the manner of payment was unclear. All these point to the inevitable conclusion that the advances were not loans but capital contributions to a partnership.

The strongest indication that petitioner was a partner in the Sto Niño mine is the fact that it would receive 50% of the net profits as "compensation" under paragraph 12 of the agreement. The entirety of the parties' contractual stipulations simply leads to no other conclusion than that petitioner's "compensation" is actually its share in the income of the joint venture.

Article 1769 (4) of the Civil Code explicitly provides that the "receipt by a person of a share in the profits of a business is *prima facie* evidence that he is a partner in the business." Petitioner asserts, however, that no such inference can be drawn against it since its share in the profits of the Sto Niño project was in the nature of compensation or "wages of an employee," under the exception provided in Article 1769 (4) (b).[24]

[24] Article 1769 (4) (b) of the Civil Code states:

Art. 1769. In determining whether a partnership exists, these rules shall apply:

On this score, the tax court correctly noted that petitioner was not an employee of Baguio Gold who will be paid "wages" pursuant to an employer-employee relationship. To begin with, petitioner was the manager of the project and had put substantial sums into the venture in order to ensure its viability and profitability. By pegging its compensation to profits, petitioner also stood not to be remunerated in case the mine had no income. It is hard to believe that petitioner would take the risk of not being paid at all for its services, if it were truly just an ordinary employee.

Consequently, we find that petitioner's "compensation" under paragraph 12 of the agreement actually constitutes its share in the net profits of the partnership. Indeed, petitioner would not be entitled to an equal share in the income of the mine if it were just an employee of Baguio Gold.[25] It is not surprising that petitioner was to receive a 50% share in the net profits, considering that the "Power of Attorney" also provided for an almost equal contribution of the parties to the St. Niño mine. The "compensation" agreed upon only serves to reinforce the notion that the parties' relations were indeed of partners and not employer-employee.

All told, the lower courts did not err in treating petitioner's advances as investments in a partnership known as the Sto. Niño mine. The advances were not "debts" of Baguio Gold to petitioner inasmuch as the latter was under no unconditional obligation to return the same to the former under the "Power of Attorney." As for the amounts that petitioner paid as guarantor to Baguio Gold's creditors, we find no reason to depart from the tax court's factual finding that Baguio Gold's debts were

---

xxx xxx xxx

(4) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

xxx xxx xxx

(b) As wages of an employee or rent to a landlord;

xxx xxx xxx

[25] See *Tocao v. Court of Appeals*, 396 Phil. 166, 180-182 (2000).

not yet due and demandable at the time that petitioner paid the same. Verily, petitioner pre-paid Baguio Gold's outstanding loans to its bank creditors and this conclusion is supported by the evidence on record.[26]

In sum, petitioner cannot claim the advances as a bad debt deduction from its gross income. Deductions for income tax purposes partake of the nature of tax exemptions and are strictly construed against the taxpayer, who must prove by convincing evidence that he is entitled to the deduction claimed.[27] In this case, petitioner failed to substantiate its assertion that the advances were subsisting debts of Baguio Gold that could be deducted from its gross income. Consequently, it could not claim the advances as a valid bad debt deduction.

WHEREFORE, the petition is *DENIED*. The decision of the Court of Appeals in CA-G.R. SP No. 49385 dated June 30, 2000, which affirmed the decision of the Court of Tax Appeals in C.T.A. Case No. 5200 is *AFFIRMED*. Petitioner Philex Mining Corporation is *ORDERED to PAY* the deficiency tax on its 1982 income in the amount of ₱62,811,161.31, with 20% delinquency interest computed from February 10, 1995, which is the due date given for the payment of the deficiency income tax, up to the actual date of payment.

SO ORDERED.

Carpio Morales,[*] *Chico-Nazario, Nachura,* and *Reyes, JJ.,* concur.

---

[26] *Rollo*, pp. 81-88.

[27] See *Law of Basic Taxation in the Philippines*, 2001 Revised Ed., Benjamin B. Aban, p. 119.

[*] In lieu of Associate Justice Ma. Alicia Austria-Martinez.

SECOND DIVISION

[G.R. No. 150283. April 16, 2008]

RYUICHI YAMAMOTO, *petitioner, vs.* **NISHINO LEATHER INDUSTRIES, INC. and IKUO NISHINO,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; PRIVATE CORPORATIONS; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION; ELEMENTS DETERMINATIVE OF THE APPLICABILITY THEREOF.— While the veil of separate corporate personality may be pierced when the corporation is merely an adjunct, a business conduit, or alter ego of a person, the mere ownership by a single stockholder of even all or nearly all of the capital stocks of a corporation is not by itself a sufficient ground to disregard the separate corporate personality. The elements determinative of the applicability of the doctrine of piercing the veil of corporate fiction follow: "*1. Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; 2. Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of the plaintiff's legal rights; and 3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.* ***The absence of any one of these elements prevents "piercing the corporate veil."*** *In applying the 'instrumentality' or 'alter ego' doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation."* In relation to the second element, to disregard the separate juridical personality of a corporation, the wrongdoing or unjust act in contravention of a plaintiff's legal rights must be clearly and convincingly established; it cannot be presumed. Without a demonstration that any of the evils

sought to be prevented by the doctrine is present, it does not apply.

2. ID.; ID.; ID.; TRUST FUND DOCTRINE; EXPLAINED.— It is settled that the property of a corporation is not the property of its stockholders or members. Under the *trust fund doctrine*, the capital stock, property, and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors which are preferred over the stockholders in the distribution of corporate assets. The distribution of corporate assets and property cannot be made to depend on the whims and caprices of the stockholders, officers, or directors of the corporation unless the indispensable conditions and procedures for the protection of corporate creditors are followed.

APPEARANCES OF COUNSEL

Salvador Guevara and Associates for petitioner.

Clarito I. Aquino, Jr. for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

In 1983, petitioner, Ryuichi Yamamoto (Yamamoto), a Japanese national, organized under Philippine laws Wako Enterprises Manila, Incorporated (WAKO), a corporation engaged principally in leather tanning, now known as Nishino Leather Industries, Inc. (NLII), one of herein respondents.

In 1987, Yamamoto and the other respondent, Ikuo Nishino (Nishino), also a Japanese national, forged a Memorandum of Agreement under which they agreed to enter into a joint venture wherein Nishino would acquire such number of shares of stock equivalent to 70% of the authorized capital stock of WAKO.

Eventually, Nishino and his brother[1] Yoshinobu Nishino (Yoshinobu) acquired more than 70% of the authorized capital

[1] TSN, May 7, 1993, p. 23.

stock of WAKO, reducing Yamamoto's investment therein to, by his claim, 10%,[2] less than 10% according to Nishino.[3]

The corporate name of WAKO was later changed to, as reflected earlier, its current name NLII.

Negotiations subsequently ensued in light of a planned takeover of NLII by Nishino who would buy-out the shares of stock of Yamamoto. In the course of the negotiations, Yoshinobu and Nishino's counsel Atty. Emmanuel G. Doce (Atty. Doce) advised Yamamoto by letter dated October 30, 1991, the pertinent portions of which follow:

> Hereunder is a simple memorandum of the subject matters discussed with me by Mr. Yoshinobu Nishino yesterday, October 29th, based on the letter of Mr. Ikuo Nishino from Japan, and which I am now transmitting to you.[4]
>
> xxx xxx xxx
>
> 12. Machinery and Equipment:
>
> The following machinery/equipment have been contributed by you to the company:
>
> | | | |
> |---|---|---|
> | Splitting machine | - | 1 unit |
> | Samming machine | - | 1 unit |
> | Forklift | - | 1 unit |
> | Drums | - | 4 units |
> | Toggling machine | - | 2 units |
>
> Regarding the above machines, you may take them out with you (for your own use and sale) if you want, **provided**, the value of such machines is deducted from your and Wako's capital contributions, which will be paid to you.
>
> **Kindly let me know of your comments on all the above, soonest.**

---

[2] *Id*. at 18.

[3] Records, p. 58.

[4] Exhibit "C", *id*. at 124.

x x x[5] (Emphasis and underscoring supplied)

On the basis of such letter, Yamamoto attempted to recover the machineries and equipment which were, by Yamamoto's admission, part of his investment in the corporation,[6] but he was frustrated by respondents, drawing Yamamoto to file on January 15, 1992 before the Regional Trial Court (RTC) of Makati a complaint[7] against them for replevin.

Branch 45 of the Makati RTC issued a writ of replevin after Yamamoto filed a bond.[8]

In their Answer with Counterclaim,[9] respondents claimed that the machineries and equipment subject of replevin form part of Yamamoto's capital contributions in consideration of his equity in NLII and should thus be treated as corporate property; and that the above-said letter of Atty. Doce to Yamamoto was merely a proposal, "conditioned on [Yamamoto's] sell-out to . . . Nishino of his entire equity,"[10] which proposal was yet to be authorized by the stockholders and Board of Directors of NLII.

By way of Counterclaim, respondents, alleging that they suffered damage due to the seizure via the implementation of the writ of replevin over the machineries and equipment, prayed for the award to them of moral and exemplary damages, attorney's fees and litigation expenses, and costs of suit.

The trial court, by Decision of June 9, 1995, decided the case in favor of Yamamoto,[11] disposing thus:

WHEREFORE, judgment is hereby rendered: (1) declaring plaintiff as the rightful owner and possessor of the machineries in question,

---

[5] Exhibit "C-3", *id*. at 127.

[6] *Vide* TSN, May 7, 1993, pp. 20-21,29, 35-36.

[7] Records, pp. 1-5.

[8] *Id*. at 39-50.

[9] *Id*. at 58-64.

[10] *Id*. at 61.

[11] *Id*. at 246-253. *Vide id*. at 220-228, 247-248.

and making the writ of seizure permanent; (2) ordering defendants to pay plaintiff attorney's fees and expenses of litigation in the amount of Fifty Thousand Pesos (₱50,000.00), Philippine Currency; (3) dismissing defendants' counterclaims for lack of merit; and (4) ordering defendants to pay the costs of suit.

SO ORDERED.[12] (Underscoring supplied)

On appeal,[13] the Court of Appeals held in favor of herein respondents and accordingly **reversed** the RTC decision and dismissed the complaint.[14] In so holding, the appellate court found that the machineries and equipment claimed by Yamamoto are corporate property of NLII and may not thus be retrieved without the authority of the NLII Board of Directors;[15] and that petitioner's argument that Nishino and Yamamoto cannot hide behind the shield of corporate fiction does not lie,[16] nor does petitioner's invocation of the doctrine of promissory estoppel.[17] At the same time, the Court of Appeals found no ground to support respondents' Counterclaim.[18]

The Court of Appeals having denied[19] his Motion for Reconsideration,[20] Yamamoto filed the present petition,[21] faulting the Court of Appeals

A.

x x x IN HOLDING THAT THE VEIL OF CORPORATE FICTION SHOULD NOT BE PIERCED IN THE CASE AT BAR.

---

[12] *Id*. at 253.

[13] *Id*. at 254.

[14] Decision of May 30, 2001, penned by Court of Appeals Associate Justice Josefina Guevara-Salonga, with the concurrence of Associate Justices Delilah Vidallon-Magtolis and Teodoro P. Regino. CA *rollo*, pp. 66-77.

[15] *Vide* id. at 73-74.

[16] *Id*. at 75.

[17] *Id*. at 74-75.

[18] *Id*. at 76.

[19] *Id*. at 94.

[20] *Id*. at 81-87.

[21] *Rollo*, pp. 16-34.

B.

x x x IN HOLDING THAT THE DOCTRINE OF PROMISSORY ESTOPPEL DOES NOT APPLY TO THE CASE AT BAR.

C.

x x x IN HOLDING THAT RESPONDENTS ARE NOT LIABLE FOR ATTORNEY'S FEES.[22]

The resolution of the petition hinges, in the main, on whether the advice in the letter of Atty. Doce that Yamamoto may retrieve the machineries and equipment, which admittedly were part of his investment, bound the corporation. The Court holds in the negative.

Indeed, without a Board Resolution authorizing respondent Nishino to act for and in behalf of the corporation, he cannot bind the latter. Under the Corporation Law, unless otherwise provided, corporate powers are exercised by the Board of Directors.[23]

Urging this Court to *pierce the veil of corporate fiction*, Yamamoto argues, *viz*:

> During the negotiations, the issue as to the ownership of the Machiner[ies] never came up. Neither did the issue on the proper procedure to be taken to execute the complete take-over of the Company come up since Ikuo, Yoshinobu, and Yamamoto were the owners thereof, the presence of other stockholders being only for the purpose of complying with the minimum requirements of the law.
>
> What course of action the Company decides to do or not to do depends not on the "other members of the Board of Directors." **It depends on what Ikuo and Yoshinobu decide. The Company is but a mere instrumentality of Ikuo [and] Yoshinobu**.[24]

xxx xxx xxx

---

[22] *Id*. at 23.

[23] *Vide* CORPORATION CODE, Section 23*; San Juan Structural & Steel Fabricators, Inc. v. Court of Appeals,* 357 Phil. 631, 644 (1998).

[24] *Rollo*, p. 25.

x x x The Company hardly holds board meetings. It has an inactive board, the directors are directors in name only and are there to do the bidding of the Nish[i]nos, nothing more. Its minutes are paper minutes. x x x[25]

xxx xxx xxx

The fact that the parties started at a 70-30 ratio and Yamamoto's percentage declined to 10% does not mean the 20% went to others. x x x The 20% went to no one else but Ikuo himself. x x x **Yoshinobu is the younger brother of Ikuo and has no say at all in the business. Only Ikuo makes the decisions. There were, therefore, no other members of the Board who have not given their approval**.[26] (Emphasis and underscoring supplied)

While the veil of separate corporate personality may be pierced when the corporation is merely an adjunct, a business conduit, or alter ego of a person,[27] the mere ownership by a single stockholder of even all or nearly all of the capital stocks of a corporation is not by itself a sufficient ground to disregard the separate corporate personality.[28]

The elements determinative of the applicability of the doctrine of piercing the veil of corporate fiction follow:

"1. Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;

2. Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of the plaintiff's legal rights; and

---

[25] *Id*. at 27.

[26] *Id*. at 28.

[27] *Vide PNB v. Ritratto Group, Inc.*, 414 Phil. 494, 505 (2001) (citation omitted).

[28] *Vide Martinez v. Court of Appeals*, G.R. No. 131673, September 10, 2004, 438 SCRA 130, 150.

3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

The absence of any one of these elements prevents "piercing the corporate veil." *In applying the 'instrumentality' or 'alter ego' doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation."*[29] (Italics in the original; emphasis and underscoring supplied)

In relation to the second element, to disregard the separate juridical personality of a corporation, the wrongdoing or unjust act in contravention of a plaintiff's legal rights must be clearly and convincingly established; it cannot be presumed.[30] Without a demonstration that any of the evils sought to be prevented by the doctrine is present, it does not apply.[31]

In the case at bar, there is no showing that Nishino used the separate personality of NLII to unjustly act or do wrong to Yamamoto in contravention of his legal rights.

Yamamoto argues, in another vein, that *promissory estoppel* lies against respondents, thus:

> Under the doctrine of promissory estoppel, x x x estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice.
>
> x x x Ikuo and Yoshinobu wanted Yamamoto out of the Company. For this purpose negotiations were had between the parties. Having expressly given Yamamoto, through the Letter and through a subsequent meeting at the Manila Peninsula where Ikuo himself confirmed that Yamamoto may take out the Machinery from the

---

[29] *Concept Builders, Inc. v. NLRC*, 326 Phil. 955, 966 (2001) (citation omitted).

[30] *Vide Solidbank Corporation v. Mindanao Ferroalloy Corporation*, G.R. No. 153535, July 28, 2005, 464 SCRA 409, 424-425 (citation omitted).

[31] *Vide Philippine National Bank v. Ritratto Group, Inc.*, *supra* note 27 at 506; *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals, supra* note 23 at 649.

Company anytime, respondents should not be allowed to turn around and do the exact opposite of what they have represented they will do.

In paragraph twelve (12) of the Letter, Yamamoto was expressly advised that he could take out the Machinery if he wanted to so, provided that the value of said machines would be deducted from his capital contribution x x x.

xxx xxx xxx

Respondents cannot now argue that they did not intend for Yamamoto to rely upon the Letter. That was the purpose of the Letter to begin with. Petitioner[s] in fact, relied upon said Letter and such reliance was further strengthened during their meeting at the Manila Peninsula.

To sanction respondents' attempt to evade their obligation would be to sanction the perpetration of fraud and injustice against petitioner.[32] (Underscoring supplied)

It bears noting, however, that the aforementioned paragraph 12 of the letter is followed by a request for Yamamoto to give his "comments on all the above, soonest."[33]

What was thus proffered to Yamamoto was not a promise, but a mere offer, subject to his acceptance. Without acceptance, a mere offer produces no obligation.[34]

Thus, under Article 1181 of the Civil Code, "[i]n conditional obligations, the acquisition of rights, as well as the extinguishment

---

[32] *Rollo*, pp. 28-30 (citations omitted).

[33] Exhibit "C-3", records, p. 127.

[34] *Vide* CIVIL CODE, Article 1318:

> There is no contract unless the following requisites concur:
>
> (1) Consent of the contracting parties;
>
> (2) Object certain which is the subject matter of the contract;
>
> (3) Cause of the obligation which is established.;

Article 1319:

> Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.
>
> xxx xxx xxx

or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition." In the case at bar, there is no showing of compliance with the condition for allowing Yamamoto to take the machineries and equipment, namely, his agreement to the deduction of their value from his capital contribution due him in the buy-out of his interests in NLII. Yamamoto's allegation that he agreed to the condition[35] remained just that, no proof thereof having been presented.

The machineries and equipment, which comprised Yamamoto's investment in NLII,[36] thus remained part of the capital property of the corporation.[37]

It is settled that the property of a corporation is not the property of its stockholders or members.[38] Under the *trust fund doctrine*, the capital stock, property, and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors which are preferred over the stockholders in the distribution of corporate assets.[39] The distribution of corporate assets and property cannot be made to depend on the whims and caprices of the stockholders, officers, or directors of the corporation unless the indispensable conditions and procedures for the protection of corporate creditors are followed.[40]

WHEREFORE, the petition is *DENIED*.

---

[35] *Rollo*, p. 188.

[36] Records, pp. 60; Exhibits "B" – "B-1", records, pp. 122-123; Exhibit "C-3", records, p. 127; TSN, May 7, 1993, pp. 20-21, 35-36; CA *rollo*, p. 75.

[37] Vide *National Telecommunications Commission v. CA*, 370 Phil. 538, 544 (1999). "The term 'capital' and other terms used to describe the capital structure of a corporation are of universal acceptance, and their usages have long been established in jurisprudence. Briefly, capital refers to the value of the property or assets of a corporation."

[38] Vide *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals, supra* note 23 at 643.

[39] Vide *Boman Environmental Development Corporation v. Court of Appeals*, G.R. No. 77860, November 22, 1988, 167 SCRA 540, 548.

[40] Vide *Ong Yong v. Tiu*, 448 Phil. 860, 887 (2003).

Costs against petitioner.

SO ORDERED.

Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

Quisumbing, J. (Chairperson), on official leave.

THIRD DIVISION

[G.R. No. 153420. April 16, 2008]

PARAISO INTERNATIONAL PROPERTIES, INC., *petitioner, vs.* **COURT OF APPEALS and PEOPLE'S HOUSING LAND CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WRIT OF *CERTIORARI*, WHEN ISSUED.— For a writ of *certiorari* to issue, the applicant must show that the court or tribunal acted with grave abuse of discretion in issuing the challenged order. Grave abuse of discretion is defined as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave, as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; COMPROMISE AGREEMENT; DEFINED.— A compromise agreement is essentially a contract perfected by mere consent, the latter being manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.

APPEARANCES OF COUNSEL

George L. Howard for petitioner.

Espiritu and Associates Law Office for respondent.

D E C I S I O N

NACHURA, *J.*:

Assailed before the Court via a petition for *certiorari* under Rule 65 of the Rules of Court are the November 12, 2001[1] and the March 7, 2002[2] Resolutions of the Court of Appeals (CA) in CA-G.R. CV No. 71311.

The records reveal that on April 2, 1998 the parties submitted to the appellate court a 6-page undated Compromise Agreement[3]

[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Godardo A. Jacinto and Eloy R. Bello, Jr. concurring; *rollo*, p. 38.

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

[3] *Id.* at 20-25. The pertinent portions of the Compromise Agreement are as follows:

xxx xxx xxx

"**Compromise Agreement**

"COME NOW the plaintiff-[a]ppellant PARAISO INTERNATIONAL PROPERTIES, INC. (PARAISO for brevity) and defendant-appellee PEOPLE'S HOUSING LAND CORPORATION (PEOPLE'S for brevity), duly assisted by their respective counsels, unto this Honorable Court of Appeals, most respectfully submit;

"1. Plaintiff-[a]ppellant and [d]efendant-[a]ppellee have mutually agreed that it is to their best interests to enter into an amicable settlement of all their cases, and to direct their efforts towards the development of a 'golf and mountain resort', which will redound to the benefit of the parties, the Province of Batangas, and its constituents; That this COMPROMISE AGREEMENT shall likewise apply to the other cases pending between the parties, especially Civil Case No. P-962 (RTC-Balayan, Batangas), C.A.-G.R. SP No. 38197 (Court of Appeals).

"2. Plaintiff-appellant's present management represented by Mr. Hisahide Saito (Saito for brevity) has agreed to assign all their shares of stocks, paid-up and subscription rights and interest therein (including the right to represent [p]laintiff corporation in the instant action) in favor of Messrs. Ryuji Nonoda

amicably settling all their pending cases — CA-G.R. CV No. 71311, CA-G.R. SP No. 38197 (both pending with the Court of Appeals), and Civil Case No. P-962 (lodged with the Regional Trial Court of Balayan, Batangas).

The parties also submitted to the appellate court, as "Annex A" of the Compromise Agreement, a 2-page undated

---

and Ferdinand Belgica (NONODA and BELGICA for brevity) as evidenced by a duly executed Deed of Assignment, a copy of which is hereto attached as Annex "A" hereof. As represented by Saito, it is understood that the total authorized capital of [p]laintiff corporation has been fully subscribed to and totally paid up by all the stockholders and that no such Certificate of Stock is delinquent. It is further represented by Saito and understood by defendant that plaintiff corporation does not have any indebtedness with any person or entity whomsoever except the mortgage and promissory note mentioned herein. Defendant recognizes that this deed of assignment is for valuable consideration.

"3. For and in consideration of this Compromise Agreement, Paraiso, now represented by Nonoda and Belgica, shall pay People's, represented by J. Antonio Leviste, the following:

"a. ₱5 [m]illion upon signing of this Compromise Agreement;

"b. ₱30 [m]illion within a period of six months from execution hereof, the same to be paid by plaintiff from the proceeds of the sale of the [p]roprietary shares, to be sold by the corporation upon licensing thereof, by allocating 65% thereof for the purpose and 35% for development. Otherwise, the same shall be raised by the plaintiff thru other means. It is understood that the processing for SEC approval thereof maybe the abovesaid period of six months after which the sale of proprietary share may commence. However, if the same is delayed for reasons not attributable to plaintiff, the defendant agrees to extend the period for a reasonable length of time. Pending full compliance by NONODA and BELGICA of the same, they shall tender unto defendant J. Antonio Leviste physically and by way of mortgage to serve as guarantee for their performance of said obligation, 50% of their shares within the corporation.

"c. 400 proprietary shares out of the proposed 2,000 proprietary shares at a value of 400,000 pesos per share to be issued by Paraiso after the registration and licensing thereof by the Securities and Exchange Commission. From the remainder of these two thousand proprietary shares, the proceeds of one thousand one hundred shares out of the 2,000 shares shall be utilized for development of the project while the remaining balance of five hundred shares shall belong to the corporation to be shared between plaintiff and defendant on a 80:20 basis, provided however, that 200 shares thereof shall be mortgaged in favor of Saito to secure Nonoda and Belgica's indebtedness to him, the same to be received, lifted upon full payment thereof.

"d. 20% of NONODA [and] BELGICA's total outstanding capital stock of Paraiso shall be assigned unto defendant, or its representative, Mr. J. Antonio Leviste.

"e. In addition to the foregoing, Mr. J. Antonio Leviste or the defendant shall be allowed to designate two members of the [b]oard of [d]irectors of the [c]orporation out of a total membership of five notwithstanding defendant's twenty percent ownership of outstanding capital of the corporation, one of which shall be the [c]hairman and the other the [s]ecretary. Said members of the [b]oard of [d]irectors shall have full, irrevocable and indispensable signing authority over all actions of the [c]orporation including signing and issuance of checks and other similar financial instruments.

"4. Upon execution of this compromise agreement, the real estate mortgage and promissory note subject matter of the auction sale on 20 June 1994, in favor of People's shall be cancelled, waived and extinguished, and all entries or liens and encumbrances thereon, including but not limited to the real estate mortgage, promissory note, certificate of sale, final certificate of sale, on TCT's Nos. 63107, 63108, 63109, 63116 (sic), 63111, 63112, 63113, 63114, 63115, 63116, 63117, 63118 and 63119, or any derivative titles thereof issued by the Register of Deeds of Balayan, Batangas covering thirteen (13) parcels of land situated at Barangay Paraiso, Calatagan, Batangas shall be CANCELLED, and the said parcels of land shall be free from any and all liens and encumbrances. However, a one-hectare portion of the property encompassing and embracing the natural spring, as may be separately surveyed hereinafter, shall be excluded from this agreement and shall belong to defendant by virtue hereof provided the same remains and is used as a mini-forest. In the event defendant desires to sell this portion later, in addition to the consideration agreed herein, plaintiff shall be given the right of first refusal to buy the same at its fair market value.

"5. On the other hand, should [p]laintiff or its new representatives fail to pay in full to the [d]efendant the sum of 30 million pesos as mentioned in paragraph 3-b hereof, or to perform any of its obligations under and by virtue of this agreement within the applicable periods and under appropriate conditions and circumstances, plaintiff including NONODA, BELGICA and their nominees shall lose in favor of the defendants or J. Antonio Leviste their 62% share in the corporation. All payments already made to defendant shall be forfeited. Further, NONODA and BELGICA's stock ownership of 80% shall be liquidated as follows:

"a. 40% in favor of defendant J. Antonio Leviste,

"b. 18% in favor of Saito; and

"c. 22% held in trust to Saito shall be released in favor of defendant and/or J. Antonio Leviste.

The release of 18% and 22% to Saito and defendant and/or J. Antonio Leviste respectively, shall automatically release NONODA and BELGICA from their

respective obligation to Saito and defendant and/or J. Antonio Leviste. It is understood that the 18% belonging to Saito shall continue to remain under his name for any project that the plaintiff corporation may choose to engage. The release of 18% to Saito shall automatically cancel NONODA and BELGICA's obligation to Saito. Pending full compliance by NONODA and BELGICA of their obligations under this agreement, they shall not be allowed to alienate or otherwise encumber any portion of their 80% share of the corporation to any person or entity except the 40% held in trust by SAITO pending the performance of NONODA and BELGICA of their obligation to the same. It is understood that upon full payment and satisfaction of all the considerations agreed hereunder, the mortgage constituted on the shares of stock held by NONODA and BELGICA in favor of defendant J. Antonio Leviste shall be automatically cancelled and nullified and correspondingly released to them free from all liens and encumbrances.

"6. It is mutually agreed that the development of the project shall commence after the issuance of the SEC permit and other licenses and permits from the appropriate government agencies as decided by virtue of a company board resolution. The development shall be completed within a period of three (3) years from its commencement provided that a 33% partial accomplishment of the project shall be completed after one year and 66% after 2 years and 100% by the third year. The 3 accomplishment periods may be extended if the delay is not attributable to the plaintiff.

"7. That the parties agree to execute and sign any additional document/ paper that may be required to carry into effect this Agreement.

"8. That the [p]laintiff-[a]ppellant and [d]efendant-[a]ppellee hereby waive any and all claims and counterclaims against each other subject to and except those set forth herein.

"9. That this "Compromise Agreement" bears the conformity of all the parties and their representative whose authorities are shown in the corresponding Special Powers of Attorney, copies of which are hereto attached as Annexes B and C hereof duly assisted by their respective counsels and the parties further certify, that the same is not contrary to law, morals, public (sic) and public order.

"WHEREFORE, in view of the foregoing, it is most respectfully prayed of this Honorable Court of Appeals, that the Decision dated 15 April 1997 be *ANNULLED AND SET ASIDE*, and in lieu thereof, a *NEW DECISION be ISSUED* based on the "Compromise Agreement", and the parties *be ENJOINED* to strictly comply with the same.

"PLAINTIFF-APPELLANT and DEFENDANT-APPELLEE, further pray for such other reliefs as may be deemed just and equitable in the premises.

"Makati City, _____ November 1997.

Deed of Assignment[4] executed by petitioner, represented by Hisahide Saito, transferring to Ryuji Nonoda and Ferdinand Belgica all the shares of stocks, paid-up, subscription rights and interests therein, including the right to represent the corporation in the pending cases. Hisahide Saito signed the deed as the representative of the outgoing management of petitioner, while Nonoda and Belgica, affixed their signatures as the assignees and as the representatives of petitioner's new management. Significantly, the acknowledgement portion of the deed had been crossed out.

Further submitted to the CA as "Annexes B and C" of the Compromise Agreement were, respectively, the Secretary's Certificate[5] confirming that the petitioner's board of directors authorized Hisahide Saito to negotiate, sign, endorse and deliver the Compromise Agreement to the respondent; and the Secretary's Certificate[6] proving that respondent's board of directors authorized J. Antonio Leviste and Atty. Cirilo A. Avila to enter into and execute a compromise agreement with petitioner.

Perceptive of the apparent formal defects in the agreement and the deed, the CA, on September 25, 1998, resolved to

---

"PARAISO INTERNATIONAL PROPERTIES INC.
"(Plaintiff-Appellant)
"by:
"Representing the New Management:
(SGD.) RYUJI NONODA (1998 [unintelligible] 3 [unintelligible] 9)
"and
"(SGD.) FERDINAND BELGICA 1998/3/9
"and
"(SGD.) HISAHIDE SAITO 1998/3/12
"Representing the Outgoing Management

"PEOPLE'S HOUSING AND LAND CORPORATION
"(Defendant-Appellee)
"by:
"(SGD.) J. ANTONIO LEVISTE
"Authorized Representative

"Assisted by:
"(SGD.) GEORGE L. HOWARD
"Counsel for Plaintiff-Appellant"
"xxx"

"(SGD.) CIRILO A. AVILA
"Counsel for Defendant-Appellee
"xxx"

[4] *Rollo*, pp. 26-27.

[5] *Id.* at 28-29.

[6] *Id.* at 30-31.

direct respondent to inform the court why the Compromise Agreement and the Deed of Assignment were undated; why there was no signature of the authorized representative of the new management; whether the signature/initial of the one representing respondent was that of J. Antonio Leviste; and why the acknowledgement in the Deed of Assignment was crossed out.[7]

As two years passed without any compliance with the said directive, the CA, on August 8, 2000, resolved to require respondent's counsel to show cause why he should not be held in contempt for failing to comply, with the order, and reiterated the directive for him to comply with the said resolution.[8]

On November 12, 2001, the appellate court, in the first assailed resolution, disapproved the compromise agreement for respondent's failure to comply with the CA's resolutions.[9]

Petitioner subsequently filed its December 6, 2001 Manifestation/Motion[10] and its December 21, 2001 Supplemental Argument[11] explaining that the failure of respondent's counsel to comply with the resolutions of the court should neither prejudice nor defeat the duly executed compromise agreement of the parties; that, being a consensual contract, it was perfected upon the parties' meeting of the minds; and that judicial approval was not required for its perfection.

On March 7, 2002, the CA, in the second assailed resolution, denied petitioner's manifestation/motion on the ground that the compromise agreement was not exempt from the rules and principles of a contract, and for the parties' repeated refusal to explain to the appellate court the apparent flaws in the said agreement.[12]

---

[7] *Id*. at 32.

[8] *Id*. at 35-36.

[9] *Supra* note 1.

[10] *Rollo*, pp. 40-42.

[11] *Id*. at 43-45.

[12] *Supra* note 2.

Aggrieved, petitioner filed the instant Petition for *Certiorari*[13] raising the following errors:

1. COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN DISAPPROVING THE COMPROMISE AGREEMENT, DESPITE THE FACT, THAT NONE OF THE PARTIES, PETITIONER OR PRIVATE RESPONDENT RAISED ANY QUESTION ON ITS VALIDITY OR AUTHENTICITY, NOR OBJECTED THERETO;

2. COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN FAILING TO APPROVE THE COMPROMISE AGREEMENT, DESPITE THE FACT THAT THE INFORMATION REQUIRED IN ITS QUERIES DIRECTED AGAINST PRIVATE RESPONDENT PEOPLE'S HOUSING LAND CORPORATION'S COUNSEL ARE ALL IN FACT AVAILABLE, PRESENT OR EXTANT IN THE COMPROMISE AGREEMENT IT HAD DISAPPROVED.[14]

In its May 3, 2004 Memorandum,[15] petitioner explicated that the compromise agreement, indeed, has a date—November 1997, although it was signed by the parties on different dates, as indicated by the numerical notations beside their respective signatures; that the representatives of petitioner's new management, Nonoda and Belgica, also signed the agreement; that, the signature or the initial of Leviste, representing the respondent, is not questioned by the parties, thus, the same is a non-issue in the case; and that respondent's counsel even signed the agreement. Further, petitioner pointed out that the board of director's authorized both Leviste and the corporation's counsel to represent respondent in the negotiation and signing of the agreement. As to the deed of assignment, the petitioner certified that the crossing out of the acknowledgement should not affect the deed because in the sale or assignment of shares of stocks, acknowledgement or

[13] *Rollo*, pp. 5-18.

[14] *Id*. at 12.

[15] *Id*. at 140-151.

notarization is not a requirement for the contract's validity. Likewise, the deed contains a date, 1998. In addition, petitioner stated that, the deed's authenticity or validity is confirmed by the Secretary's Certificate attesting to the fact that petitioner's board of directors authorized Saito to sign the compromise agreement with Nonoda and Belgica relative to the management and control of the corporation's affairs or activities.

Respondent, in its July 13, 2004 Memorandum,[16] manifested that it is adopting petitioner's memorandum.

The sole issue for the resolution of the Court is whether the appellate court gravely abused its discretion in when it disapproved the compromise agreement.

The petition is granted.

For a writ of *certiorari* to issue, the applicant must show that the court or tribunal acted with grave abuse of discretion in issuing the challenged order. Grave abuse of discretion is defined as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave, as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[17]

---

[16] *Id.* at 169.

[17] *Yuchengco v. Court of Appeals*, G.R. No. 165793, October 27, 2006, 505 SCRA 716; *see Estate of Salud Jimenez v. Philippine Export Processing Zone*, G.R. No. 137285, January 16, 2001, 349 SCRA 240 where the Court further explained that, as a general rule, a petition for *certiorari* will not lie if an appeal is the proper remedy thereto such as when an error of judgment as well as of procedure are involved. As long as a court acts within its jurisdiction and does not gravely abuse its discretion in the exercise thereof, any supposed error committed by it will amount to nothing more than an error of judgment reviewable by a timely appeal and not assailable by a special civil action of *certiorari*. However, in certain exceptional cases, where the rigid application of such rule will result in a manifest failure or miscarriage of justice, the provisions of the Rules of Court which are technical rules may be relaxed. *Certiorari* has been deemed to be justified, for instance, in order to prevent irreparable damage and injury to a party where the trial judge has capriciously

In the instant case, the appellate court gravely abused its discretion in disapproving the compromise agreement for the simple reason that respondent did not comply with the CA's resolutions requiring it to explain the apparent formal defects in the agreement. The Court notes that the appellate court unnecessarily focused its attention on the defects in the form of the compromise agreement when these flaws in formality do not go into the validity of the parties' contract, and, more importantly, when none of the parties assails its due execution.

To elucidate, the absence of a specific date does not adversely affect the agreement considering that the date of execution is not an essential element of a contract.[18] A compromise agreement is essentially a contract perfected by mere consent, the latter being manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.[19] The CA should have allowed greater laxity in scrutinizing the compromise agreement, not only because the absence of a specific date is a mere formal defect, but also because the signatories to the compromise indicated the date when they signed the agreement beside their signatures. These signatories are also sufficiently authorized to enter into a compromise by the respective board of directors of the petitioner and the respondent.[20] It is not amiss to state at this point that

and whimsically exercised his judgment, or where there may be danger of clear failure of justice, or where an ordinary appeal would simply be inadequate to relieve a party from the injurious effects of the judgment complained of.

[18] *See* Article 2028 of the Civil Code, which states that a compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced; *see also Clark Development Corp. v. Mondragon Leisure*, G.R. No. 150986, March 2, 2007, 517 SCRA 203, where the Court ruled that a compromise is an agreement between two or more persons who, for preventing or putting an end to a lawsuit, adjust their respective positions by mutual consent in the way they feel they can live with; and that reciprocal concessions are the very heart and life of every compromise, where each party approximates and concedes in the hope of gaining balance by the danger of losing.

[19] *Mactan-Cebu International Airport Authority v. Court of Appeals and Chiongbian*, G.R. No. 139495, November 27, 2000, 346 SCRA 126.

[20] *See* Article 2033 of the Civil Code, which states that juridical persons may compromise only in the form and with the requisites which may be necessary

in *National Commercial Bank of Saudi Arabia v. Court of Appeals*,[21] we approved an undated compromise agreement.

The Court also finds as glaringly erroneous the CA's inquiry as to whether the new management of petitioner has signed the said compromise agreement. As aforesaid, the one authorized by petitioner's board of directors to sign the agreement is Saito, who indeed signed the same. Additionally, the representatives of the new management, Nonoda and Belgica, also affixed their respective signatures in the agreement.

As to whether the signature/initial of respondent's representative is truly that of Leviste, suffice it to state that none of the parties assails the due execution of the compromise agreement and that the signature of Avila, the other representative authorized by the respondent's board of directors to enter into a compromise, is affixed in the agreement.

The crossing out of the acknowledgement portion of the deed of assignment attached to the compromise agreement is of no moment precisely because, as advanced by the parties, the notarization of the deed or even its execution[22] is not a requirement for the valid transfer of shares of stocks.[23] On the question why the deed is undated, again, the date is not essential for its

---

to alienate their property; *see also Great Asian Sales Center Corporation v. Court of Appeals*, G.R. No. 105774, April 25, 2002, 381 SCRA 557, where the Court stated that the Corporation Code of the Philippines vests in the board of directors the exercise of the corporate powers of the corporation, save in those instances where the Code requires stockholders' approval for certain specific acts.

[21] G.R. No. 124267, January 17, 2005, 448 SCRA 340.

[22] See *Republic v. Estate of Hans Menzi*, G.R. Nos. 152578, 154487 & 154518, November 23, 2005, 476 SCRA 20, where the Court declared that the absence of a deed of assignment is not a fatal flaw which renders the transfer of shares of stocks invalid.

[23] Section 63 of the Corporation Code of the Philippines provides that:

SEC. 63. Certificate of stock and transfer of shares.—The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. *Shares of stocks so issued are personal*

validity. In any case, the execution of the deed of assignment and its annexation to the compromise agreement are a superfluity because, as aforesaid, petitioner's board of directors had authorized Saito to enter into the compromise agreement, he signed the same, and even the representatives of petitioner's new management likewise signed the agreement.

From the foregoing, our inevitable conclusion is that the CA acted with grave abuse of discretion when it disapproved the compromise agreement. However, rather than remand the case to the appellate court which will only further delay the lengthy litigation that the parties wish to end, we choose to act directly on the matter. Thus, on the basis of our finding that the compromise agreement is not contrary to law, public order, public policy, morals or good customs, the Court hereby approves the same.

WHEREFORE, premises considered, the petition is *GRANTED*. The assailed November 12, 2001 and March 7, 2002 Resolutions of the Court of Appeals in CA-G.R. CV No. 71311 are *ANNULLED AND SET ASIDE* for having been issued with grave abuse of discretion. The Compromise Agreement submitted by the parties on April 2, 1998 is hereby *APPROVED* and judgment is rendered in conformity with and embodying the terms and conditions mentioned in the said Compromise Agreement.

SO ORDERED.

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

---

property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation. [Italics supplied]

THIRD DIVISION

[G.R. No. 154740. April 16, 2008]

HENRY DELA RAMA CO, *petitioner, vs.* **ADMIRAL UNITED SAVINGS BANK,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; LOANS; ACCOMMODATION PARTY; LIABILITY.— An accommodation party who lends his name to enable the accommodated party to obtain credit or raise money is liable on the instrument to a holder for value even if he receives no part of the consideration. He assumes the obligation to the other party and binds himself to pay the note on its due date.

2. ID.; OBLIGATIONS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT; RECEIPTS OF PAYMENT, ALTHOUGH NOT EXCLUSIVE, ARE DEEMED TO BE THE BEST EVIDENCE OF THE FACT OF PAYMENT.— In *Alonzo v. San Juan*, we held that the receipts of payment, although not exclusive, were deemed to be the best evidence of the fact of payment.

3. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; EXPLAINED.— Jurisprudence is replete with rulings that in civil cases, the party who alleges a fact has the burden of proving it. Burden of proof is the duty of a party to present evidence on the facts in issue necessary to prove the truth of his claim or defense by the amount of evidence required by law. Thus, a party who pleads payment as a defense has the burden of proving that such payment had, in fact, been made. When the plaintiff alleges nonpayment, still, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove nonpayment.

4. CIVIL LAW; SPECIAL CONTRACTS; REAL ESTATE MORTGAGE; EFFECT OF CANCELLATION.— A real estate mortgage is but an accessory contract to secure the loan in the promissory note. Its cancellation does not automatically result in the extinguishment of the loan. Being

the principal contract, the loan is unaffected by the release or cancellation of the mortgage. Certainly, a debt may subsist even without a mortgage.

5. ID.; DAMAGES; AWARDS OF LIQUIDATED DAMAGES AND ATTORNEY'S FEES, ELUCIDATED.— As to the awards of liquidated damages and attorney's fees, we acknowledge that the law allows a party to recover liquidated damages and attorney's fees under a written agreement, thus: "[T]he attorney's fees here are in the nature of liquidated damages and the stipulation therefor is aptly called a penal clause. It has been said that so long as such stipulation does not contravene law, morals, or public order, it is strictly binding upon defendant. The attorney's fees so provided are awarded in favor of the litigant, not his counsel. On the other hand, the law also allows parties to a contract to stipulate on liquidated damages to be paid in case of breach. A stipulation on liquidated damages is a penalty clause where the obligor assumes a greater liability in case of breach of an obligation. The obligor is bound to pay the stipulated amount without need for proof on the existence and on the measure of damages caused by the breach." Nonetheless, courts are empowered to reduce such penalty if the same is iniquitous or unconscionable. Article 1229 of the Civil Code states: "ART. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable." This sentiment is echoed in Article 2227 of the same Code: "ART. 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable."

APPEARANCES OF COUNSEL

Raul L. Dela Cruz for petitioner.

D E C I S I O N

NACHURA, *J.*:

On appeal is the February 19, 2002 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 42167, setting aside the May 18, 1991 Decision[2] of the Regional Trial Court (RTC) of Quezon City, Branch 100, as well as its subsequent Resolution,[3] denying petitioner's motion for reconsideration.

On February 28, 1983, Admiral United Savings Bank (ADMIRAL) extended a loan of Five Hundred Thousand Pesos (₱500,000.00) to petitioner Henry Dela Rama Co (Co), with Leocadio O. Isip (Isip) as co-maker. The loan was evidenced by Promissory Note No. A1-041[4] dated February 28, 1983 and payable on or before February 23, 1984, with interest at the rate of 18% per annum and service charge of 10% per annum. The note also provided for liquidated damages at the rate of 3% per month plus incidental cost of collection and/or legal fees/cost, in the event of non-payment on due date.

Co and Isip failed to pay the loan when it became due and demandable. Demands for payment were made by ADMIRAL, but these were not heeded. Consequently, ADMIRAL filed a collection case against Co and Isip with the RTC of Quezon City, docketed as Civil Case No. Q-48543.

Co answered the complaint alleging that the promissory note was sham and frivolous; hence, void *ab initio*. He denied receiving any benefits from the loan transaction, claiming that ADMIRAL merely induced him into executing a promissory note. He also claimed that the obligations, if any, had been paid, waived or otherwise extinguished. Co allegedly ceded several vehicles to

---

[1] Penned by Associate Justice Renato C. Dacudao (retired), with Associate Justices Perlita J. Tria Tirona (retired) and Mariano C. Del Castillo, concurring; *rollo*, pp. 66-74.

[2] *Rollo*, pp. 34-40.

[3] *Id*. at 103.

[4] Records, p. 180.

ADMIRAL, the value of which was more than enough to cover the alleged obligation. He added that there was condonation of debt and novation of the obligation. ADMIRAL was also guilty of laches in prosecuting the case. Finally, he argued that the case was prematurely filed and was not prosecuted against the real parties-in-interest.[5]

Pending resolution of the case, Isip died. Accordingly, he was dropped from the complaint.

Co then filed a third party complaint against Metropolitan Rentals & Sales, Inc. (METRO RENT). He averred that the incorporators and officers of METRO RENT were the ones who prodded him in obtaining a loan of ₱500,000.00 from ADMIRAL. The proceeds of the loan were given to the directors and officers of METRO RENT, who assured him of prompt payment of the loan obligation. METRO RENT also assured him that he would be discharged from all liabilities under the promissory note, but it did not make good its promise. Co, thus, prayed that METRO RENT be adjudged liable to ADMIRAL for the payment of the obligation under the promissory note.[6]

Traversing the third party complaint, METRO RENT denied receiving the loan proceeds from Co. It claimed that the loan was Co's personal loan from which METRO RENT derived no benefit, thus, it cannot be held liable for the payment of the same.[7]

In due course and after hearing, the RTC rendered a Decision[8] on May 18, 1991, dismissing the complaint on the ground that the obligation had already been paid or otherwise extinguished. It primarily relied on the release of mortgage executed by the officers of ADMIRAL, and on Co's testimony that METRO RENT already paid the loan. The RTC also dismissed Co's third party complaint against METRO RENT, as well as his counterclaim against ADMIRAL for lack of basis.

---

[5] *Id*. at 12.

[6] *Id*. at 64-65.

[7] *Id*. at 114-115.

[8] *Supra* note 2.

ADMIRAL appealed the dismissal of the complaint to the CA.[9] On February 19, 2002, the CA rendered the assailed decision.[10] Reversing the RTC, the CA found preponderance of evidence to hold Co liable for the payment of his loan obligation to ADMIRAL. It rejected Co's assertion that he merely acted as an accommodation party for METRO RENT, declaring that Co's liability under the note was apparent in his express, absolute and unconditional promise to pay the loan upon maturity. The CA further held that whatever agreement Co had with METRO RENT cannot bind ADMIRAL since there is no showing that the latter was aware of the agreement, let alone consented to it. The CA also rejected Co's alternative defense that METRO RENT already paid the loan, finding the testimonial evidence in support of the assertion as pure hearsay.

The CA disposed, thus:

> **UPON THE VIEW WE TAKE OF THIS CASE, THUS**, the judgment appealed from must be as it hereby is, **REVERSED** and **SET ASIDE**, and a new one entered **CONDEMNING** [petitioner] Henry Dela Rama Co to pay [respondent] Admiral United Savings Bank: (1) the sum of **FIVE HUNDRED THOUSAND (₱500,000.00) PESOS**, Philippine Currency, with interest at eighteen percent (18%) per annum, and charges of ten percent (10%) per annum, reckoned from 28 February 1984, until fully paid; (2) the sum equivalent to three percent (3%) per month from said due date until fully paid, by way of liquidated damages; and, (3) the sum equivalent to twenty-five percent (25%) of the total amount due in the concept of attorney's fees.
>
> For insufficiency of evidence, the third party complaint against third party defendant Metropolitan Rental and Sales, Incorporated, is **DISMISSED**. Without costs.
>
> SO ORDERED.[11]

Co filed a motion for reconsideration, but the CA denied the same on August 7, 2002.[12]

---

[9] *Rollo*, pp. 41-64.

[10] *Supra* note 1.

[11] *Id*. at 73.

[12] *Id*. at 103.

Hence, this appeal by Co faulting the CA for reversing the RTC.

The appeal lacks merit.

Co has not denied the authenticity and due execution of the promissory note. He, however, asserts that he is not legally bound by said document because he merely acted as an accommodation party for METRO RENT. He claimed that the he signed the note only for the purpose of lending his name to METRO RENT, without receiving value therefor.

The argument fails to persuade.

The document, bearing Co's signature, speaks for itself. To repeat, Co has not questioned the genuineness and due execution of the note. By signing the promissory note, Co acknowledged receipt of the loan amounting to ₱500,000.00, and undertook to pay the same, plus interest, to ADMIRAL on or before February 28, 1984. Thus, he cannot validly set up the defense that he did not receive the value of the note or any consideration therefor.

At any rate, Co's assertion that he merely acted as an accommodation party for METRO RENT cannot release him from liability under the note. An accommodation party who lends his name to enable the accommodated party to obtain credit or raise money is liable on the instrument to a holder for value even if he receives no part of the consideration.[13] He assumes the obligation to the other party and binds himself to pay the note on its due date. By signing the note, Co thus became liable for the debt even if he had no direct personal interest in the obligation or did not receive any benefit therefrom.

In *Sierra v. Court of Appeals*,[14] we held that:

> A promissory note is a solemn acknowledgment of a debt and a formal commitment to repay it on the date and under the conditions agreed upon by the borrower and the lender. A person who signs such an instrument is bound to honor it as a legitimate obligation

[13] *Ang v. Associated Bank*, G.R. No. 146511, September 5, 2007, 532 SCRA 244, 273.

[14] G. R. No. 90270, July 24, 1992, 211 SCRA 785, 795.

duly assumed by him through the signature he affixes thereto as a token of his good faith. If he reneges on his promise without cause, he forfeits the sympathy and assistance of this Court and deserves instead its sharp repudiation.

Co is not unfamiliar with commercial transactions. He is a certified public accountant, who obtained his bachelor's degree in accountancy from De La Salle University. Certainly, he fully understood the import and consequences of what he was doing when he signed the promissory note. He even mortgaged his own properties to secure payment of the loan. His disclaimer, therefore, does not inspire belief.

Co also offered the alternative defense that the loan had already been extinguished by payment. He testified that METRO RENT paid the loan *a week before April 11, 1983*.[15]

In *Alonzo v. San Juan*,[16] we held that the receipts of payment, although not exclusive, were deemed to be the best evidence of the fact of payment.

In this case, no receipt was presented to substantiate the claim of payment. Instead, Co presented a Release of Real Estate Mortgage[17] dated April 11, 1983 to prove his assertion. But a cancellation of mortgage is not conclusive proof of payment of a loan, even as it may serve as basis for an inference that payment of the principal obligation had been made.

Unfortunately for Co, no such inference can be made from the deed he presented. The Release of Real Estate Mortgage reads:

The ADMIRAL UNITED SAVINGS BANK, a banking institution duly organized and existing under and by virtue of the laws of the Philippines, with offices at S. Medalla Building, EDSA corner Gen. MacArthur, Cubao, Quezon City, Metro-Manila, represented in this act by its First Vice-President, MR. EMMANUEL ALMANZOR, and its Asst. Vice President, MR. ROSSINI PETER G. GAMALINDA,

---

[15] TSN, April 24, 1990, p. 12.

[16] G.R. No. 137549, February 11, 2005, 451 SCRA 45, 56.

[17] Exhibit "3"; records, pp. 224-225.

the mortgagee of the properties described in Transfer Certificates of Title Nos. 3478 and 95759 of the Registry of Deeds of Laguna in the MORTGAGE executed on February 24, 1983 and acknowledged on the same date before Atty. Benjamin Baens del Rosario, Notary Public for and in Quezon City, Metro Manila who entered in his notarial protocol as Doc. No. 70, Page No. 15, Book No. IV, Series of 1983, in favor of the said Bank, by HENRY DE[LA] RAMA CO, hereby RELEASES and DISCHARGES the mortgage on the aforesaid Transfer Certificates of Title Nos. 3478 and 95759 of the Registry of Deeds of Laguna.[18]

The record is bereft of any showing that the promissory note was secured by a mortgage over properties covered by TCT Nos. 3478 and 95759. Thus, it cannot be assumed that the mortgage executed on February 28, 1983, and released on April 11, 1983, was the security for the subject promissory note.

In addition, TCT Nos. 3478 and 95759, the supposed collaterals for the loan, are still with the bank.[19] If indeed there was payment of the principal obligation and cancellation of the mortgage in 1983, Co should have immediately demanded for the return of the TCTs. This he failed to do.[20] It was only on June 11, 1987, after the filing of the complaint with the RTC, that Co demanded for the return of TCT Nos. 3478 and 95759.[21] Co's inaction militates against his assertion.

Jurisprudence is replete with rulings that in civil cases, the party who alleges a fact has the burden of proving it. Burden of proof is the duty of a party to present evidence on the facts in issue necessary to prove the truth of his claim or defense by the amount of evidence required by law.[22] Thus, a party who pleads payment as a defense has the burden of proving that such payment had, in fact, been made. When the plaintiff alleges nonpayment, still, the general rule is that the burden rests on

[18] *Id.* at 224.

[19] TSN, February 12, 1990, p. 17.

[20] *Id.* at 19.

[21] Records, pp. 43-44.

[22] RULES OF COURT, Rule 131, Sec. 1.

the defendant to prove payment, rather than on the plaintiff to prove nonpayment.[23]

Verily, Co failed to discharge this burden. His bare testimonial assertion that METRO RENT paid the loan *a week before April 11, 1983* or *forty-five (45) days after [the] release of the loan*, cannot be characterized as adequate and competent proof of payment. Accordingly, the CA rightly rejected his alternative defense of payment.

Similarly, Co's protestation that the cancellation of the real estate mortgage extinguished his obligation to pay the loan cannot be sustained. We perceive it as a strained attempt to rationalize his untenable position.

A real estate mortgage is but an accessory contract to secure the loan in the promissory note. Its cancellation does not automatically result in the extinguishment of the loan. Being the principal contract, the loan is unaffected by the release or cancellation of the mortgage. Certainly, a debt may subsist even without a mortgage. Thus, in the case at bench, ADMIRAL can still run after Co for the payment of the loan under the promissory note, even after the release of the mortgage on the properties, especially because there was no showing that the mortgage was constituted as a security for the loan covered by the promissory note.

In sum, the CA committed no reversible error in holding Co liable for the payment of the loan.

However, we find a need to modify the damages awarded in favor of ADMIRAL.

The CA, in conformity with the terms of the promissory note, awarded to ADMIRAL the amount of ₱500,000.00 with interest at 18% per annum, and service charge at the rate of 10% per annum, computed from February 28, 1984 until fully paid. It also awarded *the sum equivalent to three percent (3%) per month from said due date until fully paid, by way of*

[23] See *Bulos, Jr. v. Yasuma*, G.R. No. 164159, July 17, 2007, 527 SCRA 727, 739; *Alonzo v. San Juan*, *supra* note 16, at 56.

liquidated damages, and *the sum equivalent to twenty-five (25%) of the total amount due in the concept of attorney's fees*.[24]

We sustain the interest rate of 18% per annum for being fair and reasonable. However, equity dictates that we reduce the service charge, liquidated damages and attorney's fees awarded in favor of ADMIRAL.

In *L.M. Handicraft Manufacturing Corporation v. Court of Appeals*,[25] we held that a bank is only entitled to a maximum of 2% per annum service charge for amounts not over ₱500,000.00. We, therefore, modify the amount of service charge from 10% to 2%, or ₱10,000.00 per annum beginning February 28, 1984 until full payment of the loan obligation.

As to the awards of liquidated damages and attorney's fees, we acknowledge that the law allows a party to recover liquidated damages and attorney's fees under a written agreement, thus:

> [T]he attorney's fees here are in the nature of liquidated damages and the stipulation therefor is aptly called a penal clause. It has been said that so long as such stipulation does not contravene law, morals, or public order, it is strictly binding upon defendant. The attorney's fees so provided are awarded in favor of the litigant, not his counsel.

On the other hand, the law also allows parties to a contract to stipulate on liquidated damages to be paid in case of breach. A stipulation on liquidated damages is a penalty clause where the obligor assumes a greater liability in case of breach of an obligation. The obligor is bound to pay the stipulated amount without need for proof on the existence and on the measure of damages caused by the breach.[26]

Nonetheless, courts are empowered to reduce such penalty if the same is iniquitous or unconscionable. Article 1229 of the Civil Code states:

---

[24] *Rollo*, p. 73.

[25] G.R. No. 90047, June 18, 1990, 186 SCRA 640, 645.

[26] *Titan Construction Corporation v. Uni-Field Enterprise*, G.R. No. 153874, March 1, 2007, 517 SCRA 180, 189.

> ART. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

This sentiment is echoed in Article 2227 of the same Code:

> ART. 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

ADMIRAL is more than adequately protected from a possible breach of contract because of the stipulations on the payment of interest, service fee, liquidated damages and attorney's fees. Thus, this Court finds the award of liquidated damages and attorney's fees by the CA exorbitant. After all, liquidated damages and attorney's fees serve the same purpose, that is, as penalty for breach of contract.[27] Accordingly, we reduce the liquidated damages to ₱150,000.00, and attorney's fees to 10% of the principal loan or ₱50,000.00.

WHEREFORE, the petition is *DENIED*. The assailed Decision of the Court of Appeals in CA-G.R. CV No. 42167 is *AFFIRMED* with *MODIFICATIONS*. Petitioner Henry Dela Rama Co is ordered to pay Admiral United Savings Bank ₱500,000.00, with interest at 18% per annum from February 28, 1984 until the loan is fully paid. In addition, Co is adjudged liable to pay ADMIRAL a service charge equivalent to 2% of the principal loan, or ₱10,000.00 per year also from February 28, 1984 until the full payment of the loan; ₱150,000.00, as liquidated damages; and ₱50,000.00, as attorney's fees.

SO ORDERED.

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

---

[27] *Id*.

SECOND DIVISION

[G.R. No. 158881. April 16, 2008]

PETRON CORPORATION, *petitioner, vs.* **MAYOR TOBIAS M. TIANGCO, and MUNICIPAL TREASURER MANUEL T. ENRIQUEZ of the MUNICIPALITY OF NAVOTAS, METRO MANILA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; TAXING POWERS OF LOCAL GOVERNMENT UNITS; LIMITATIONS.— Section 133(h) of the LGC reads as follows: *"***Sec. 133. Common Limitations on the Taxing Powers of Local Government Units.** - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and Barangays shall not extend to the levy of the following: xxx (h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;" Evidently, Section 133 prescribes the limitations on the capacity of local government units to exercise their taxing powers otherwise granted to them under the LGC. Apparently, paragraph (h) of the Section mentions two kinds of taxes which cannot be imposed by local government units, namely: "excise taxes on articles enumerated under the National Internal Revenue Code [(NIRC)], as amended"; and "taxes, fees or charges on petroleum products."

2. ID.; ID.; ID.; ID.; POWER OF A MUNICIPALITY TO IMPOSE BUSINESS TAXES; EXPLAINED.— The power of a municipality to impose business taxes is provided for in Section 143 of the LGC. Under the provision, a municipality is authorized to impose business taxes on a whole host of business activities. Suffice it to say, unless there is another provision of law which states otherwise, Section 143, broad in scope as it is, would undoubtedly cover the business of selling diesel fuels, or any other petroleum product for that matter. Nonetheless, Article 232 of the IRR defines with more particularity the capacity of a municipality to impose taxes on

businesses. The enumeration that follows is generally a positive list of businesses which may be subjected to business taxes, and paragraph (h) of Article 232 does allow the imposition of local business taxes "[o]n any business not otherwise specified in the preceding paragraphs which the *sanggunian* concerned may deem proper to tax," but subject to this important qualification, thus: "xxx provided further, that in line with existing national policy, any business engaged in the production, manufacture, refining, distribution or sale of oil, gasoline and other petroleum products shall not be subject to any local tax imposed on this article.

3. TAXATION; EXCISE TAXES; KINDS.— [B]eginning with the National Internal Revenue Code of 1986, as amended, the term "excise taxes" was used and defined as applicable "to goods manufactured or produced in the Philippines… and to things imported." This definition was carried over into the present NIRC of 1997. Further, these two latest codes categorize two different kinds of excise taxes: "specific tax" which is imposed and based on weight or volume capacity or any other physical unit of measurement; and "*ad valorem* tax" which is imposed and based on the selling price or other specified value of the goods.

4. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; TAXING POWERS OF LOCAL GOVERNMENT UNITS; POWER OF A MUNICIPALITY TO IMPOSE BUSINESS OR OTHER LOCAL TAXES; BASIS.— The power of a municipality to impose business taxes derives from Section 143 of the Code that specifically enumerates several types of business on which it may impose taxes, including manufacturers, wholesalers, distributors, dealers of any article of commerce of whatever nature; those engaged in the export or commerce of essential commodities; retailers; contractors and other independent contractors; banks and financial institutions; and peddlers engaged in the sale of any merchandise or article of commerce. This obviously broad power is further supplemented by paragraph (h) of Section 143 which authorizes the *sanggunian* to impose taxes on any other businesses not otherwise specified under Section 143 which the *sanggunian* concerned may deem proper to tax. This ability of local government units to impose business or other local taxes is ultimately rooted in the 1987 Constitution. Section 5,

Article X assures that "[e]ach local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges," though the power is "subject to such guidelines and limitations as the Congress may provide." There is no doubt that following the 1987 Constitution and the LGC, the fiscal autonomy of local government units has received greater affirmation than ever. Previous decisions that have been skeptical of the viability, if not the wisdom of reposing fiscal autonomy to local government units have fallen by the wayside.

5. ID.; ID.; ID.; ID.; LOCAL GOVERNMENT UNITS ARE PROHIBITED TO IMPOSE ALL SORTS OF TAXES ON PETROLEUM PRODUCTS, INCLUDING BUSINESS TAXES.— [A] tax on a business is distinct from a tax on the article itself, or for that matter, that a business tax is distinct from an excise tax. However, such distinction is immaterial insofar as the latter part of Section 133(h) is concerned, for the phrase "taxes, fees or charges on petroleum products" does not qualify the kind of taxes, fees or charges that could withstand the absolute prohibition imposed by the provision. It would have been a different matter had Congress, in crafting Section 133(h), barred "excise taxes" or "direct taxes," or any category of taxes only, for then it would be understood that only such specified taxes on petroleum products could not be imposed under the prohibition. The absence of such a qualification leads to the conclusion that all sorts of taxes on petroleum products, including business taxes, are prohibited by Section 133(h). Where the law does not distinguish, we should not distinguish. The language of Section 133(h) makes plain that the prohibition with respect to petroleum products extends not only to excise taxes thereon, but all "taxes, fees and charges." The earlier reference in paragraph (h) to excise taxes comprehends a wider range of subjects of taxation: all articles already covered by excise taxation under the NIRC, such as alcohol products, tobacco products, mineral products, automobiles, and such non-essential goods as jewelry, goods made of precious metals, perfumes, and yachts and other vessels intended for pleasure or sports. In contrast, the later reference to "taxes, fees and charges" pertains only to one class of articles of the many subjects of excise taxes, specifically, "petroleum products". While local government units are authorized to burden all such other class of goods with "taxes, fees and charges," excepting

excise taxes, a specific prohibition is imposed barring the levying of any other type of taxes with respect to petroleum products.

APPEARANCES OF COUNSEL

Belo Gozon Elma Parel Asuncion and Lucila for petitioner.
Rodrigo C. Manio and *Municipal Legal Office (Mun. of Navotas)* for respondents.

D E C I S I O N

TINGA, *J.*:

The novel but important issue before us is whether a local government unit is empowered under the Local Government Code (the LGC) to impose business taxes on persons or entities engaged in the sale of petroleum products.

I.

The present Petition for Review on *Certiorari* under Rule 45 filed by petitioner Petron Corporation (Petron) directly assails the Decision of the Regional Trial Court (RTC) of Malabon, Branch 74, which dismissed petitioner's complaint for cancellation of assessment made by the then municipality (now City) of Navotas (Navotas) for deficiency taxes, and ordering the payment of ₱10,204,916.17 pesos in business taxes to Navotas. As the issues raised are pure questions of law, we need not dwell on the facts at length.

Petron maintains a depot or bulk plant at the Navotas Fishport Complex in Navotas. Through that depot, it has engaged in the selling of diesel fuels to vessels used in commercial fishing in and around Manila Bay.[1] On 1 March 2002, Petron received a letter from the office of Navotas Mayor, respondent Toby Tiangco, wherein the corporation was assessed taxes "relative to the figures covering sale of diesel declared by your Navotas Terminal from 1997 to 2001."[2] The stated total amount due

[1] *Rollo*, p. 60.

[2] *Id*. at 200.

was ₱6,259,087.62, a figure derived from the gross sales of the depot during the years in question. The computation sheets[3] that were attached to the letter made reference to Ordinance 92-03, or the New Navotas Revenue Code (Navotas Revenue Code), though such enactment was not cited in the letter itself.

Petron duly filed with Navotas a letter-protest to the notice of assessment pursuant to Section 195 of the Code. It argued that it was exempt from local business taxes in view of Art. 232(h) of the Implementing Rules (IRR) of the Code, as well as a ruling of the Bureau of Local Government Finance of the Department of Finance dated 31 July 1995, the latter stating that sales of petroleum fuels are not subject to local taxation. The letter-protest was denied by the Navotas Municipal Treasurer, respondent Manuel T. Enriquez, in a letter dated 8 May 2002.[4] This was followed by a letter from the Mayor dated 15 May 2002, captioned "Final Demand to Pay," requiring that Petron pay the assessed amount within five (5) days from receipt thereof, with a threat of closure of Petron's operations within Navotas should there be no payment.[5] Petron, through counsel, replied to the Mayor by another letter posing objections to the threat of closure. The Mayor did not respond to this last letter.[6]

Thus, on 20 May 2002, Petron filed with the Malabon RTC a Complaint for Cancellation of Assessment for Deficiency Taxes with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Preliminary Injunction. The quested TRO was not issued by the Malabon RTC upon manifestation of respondents that they would not proceed with the closure of Petron's Navotas bulk plant until after the RTC shall have decided the case on the merits.[7] However, while the case was pending decision, respondents refused to issue a business permit to Petron, thus

[3] *Id*. at 201-205.

[4] See *rollo*, p. 26.

[5] *Id*. at 210.

[6] *Id*. at 27.

[7] *Id*. at 19.

prompting Petron to file a Supplemental Complaint with Prayer for Preliminary Mandatory Injunction against respondents.[8]

On 5 May 2003, the Malabon RTC rendered its Decision dismissing Petron's complaint and ordering the payment of the assessed amount.[9] Eleven days later, Petron received a Closure Order from the Mayor, directing Petron to cease and desist from operating the bulk plant. Petron sought a TRO from the Malabon RTC, but this was denied.[10] Petron also filed a motion for reconsideration of the order of denial, but this was likewise denied.[11]

On 4 August 2003, this Court issued a TRO, enjoining the respondents from closing Petron's Navotas bulk plant or otherwise interfering in its operations.[12]

II.

As earlier stated, Petron has opted to assail the RTC Decision directly before this Court since the matter at hand involves pure questions of law, a characterization conceded by the RTC Decision itself. Particularly, the controversy hinges on the correct interpretation of Section 133(h) of the LGC, and the applicability of Article 232 (h) of the IRR.

Section 133(h) of the LGC reads as follows:

Sec. 133. Common Limitations on the Taxing Powers of Local Government Units. - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and Barangays shall not extend to the levy of the following:

xxx xxx xxx

(h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;

---

[8] *Id*. at 158-164.

[9] *Id*. at 60-69.

[10] In an Order dated 19 June 2003.

[11] In an Order dated 2 July 2003.

[12] *Rollo*, pp. 213-215.

Evidently, Section 133 prescribes the limitations on the capacity of local government units to exercise their taxing powers otherwise granted to them under the LGC. Apparently, paragraph (h) of the Section mentions two kinds of taxes which cannot be imposed by local government units, namely: "excise taxes on articles enumerated under the National Internal Revenue Code [(NIRC)], as amended"; and "taxes, fees or charges on petroleum products."

The power of a municipality to impose business taxes is provided for in Section 143 of the LGC. Under the provision, a municipality is authorized to impose business taxes on a whole host of business activities. Suffice it to say, unless there is another provision of law which states otherwise, Section 143, broad in scope as it is, would undoubtedly cover the business of selling diesel fuels, or any other petroleum product for that matter.

Nonetheless, Article 232 of the IRR defines with more particularity the capacity of a municipality to impose taxes on businesses. The enumeration that follows is generally a positive list of businesses which may be subjected to business taxes, and paragraph (h) of Article 232 does allow the imposition of local business taxes "[o]n any business not otherwise specified in the preceding paragraphs which the sanggunian concerned may deem proper to tax," but subject to this important qualification, thus:

> "xxx provided further, that in line with existing national policy, any business engaged in the production, manufacture, refining, distribution or sale of oil, gasoline and other petroleum products shall not be subject to any local tax imposed on this article.

Notably, the Malabon RTC declared Art. 232(h) of the IRR void because the LGC purportedly does not contain a provision prohibiting the imposition of business taxes on petroleum products.[13] This submission warrants close examination as well.

With all the relevant provisions of law laid out, we address the core issues submitted by Petron, namely: first, is the challenged

[13] *Id*. at 66.

tax on sale of the diesel fuels an excise tax on an article enumerated under the NIRC, thusly prohibited under Section 133(h) of the CGC?; second, is the challenged tax prohibited by Section 133(h) under the *proviso*, "taxes, fees or charges on petroleum products"? and; third, does Art. 232(h) of the IRR similarly prohibit the imposition of the challenged tax?

III

As earlier observed, Section 133(h) provides two kinds of taxes which cannot be imposed by local government units: "excise taxes on articles enumerated" under the NIRC, as amended; and "taxes, fees or charges on petroleum products." There is no doubt that among the excise taxes on articles enumerated under the NIRC are those levied on petroleum products, per Section 148 of the NIRC.

We first consider Petron's argument that the "business taxes" on its sale of diesel fuels partakes of an excise tax, which if true, could invalidate the challenged tax solely on the basis of the phrase "excise taxes on articles enumerated under the [NIRC]." To support this argument, it cites *Cordero v. Conda*,[14] *Allied Thread Co. Inc. v. City Mayor of Manila*,[15] and *Iloilo Bottlers, Inc. v. City of Iloilo*,[16] as having explained that "an excise tax is a tax upon the performance, carrying on, or the exercise of an activity."[17] Respondents, on the other hand, argue that what the provision prohibits is the imposition of excise taxes on petroleum products, but not the imposition of business taxes on the same. They cite *Philippine Petroleum Corporation v. Municipality of Pililia,*[18] where the Court had noted, "[a] tax on business is distinct from a tax on the article itself."[19]

Petron's argument is fraught with far-reaching implications, for if it were sustained, it would mean that local government

[14] 124 Phil. 926 (1966).

[15] 218 Phil. 308 (1984).

[16] G.R. No. 52019, 19 August 1988, 164 SCRA 607.

[17] *Rollo*, p. 31.

[18] G.R. No. 90776, 3 June 1991, 198 SCRA 82.

[19] *Id*., at 89.

units are barred from imposing business taxes on any of the articles subject to excise taxes under the NIRC. These would include alcohol products,[20] tobacco products,[21] mineral products[22] automobiles,[23] and such non-essential goods as jewelry, goods made of precious metals, perfumes, and yachts and other vessels intended for pleasure or sports.[24]

Admittedly, the proffered definition of an excise tax as "a tax upon the performance, carrying on, or exercise of some right, privilege, activity, calling or occupation" derives from the compendium *American Jurisprudence,* popularly referred to as *Am Jur*, [25] and has been cited in previous decisions of this Court, including those cited by Petron itself. Such a definition would not have been inconsistent with previous incarnations of our Tax Code, such as the NIRC of 1939,[26] as amended, or the NIRC of 1977[27] because in those laws the term "excise tax" was not used at all. In contrast, the nomenclature used in those prior laws in referring to taxes imposed on specific articles was "specific tax."[28] Yet beginning with the National Internal Revenue Code of 1986, as amended, the term "excise taxes" was used and defined as applicable "to goods manufactured or produced in the Philippines… and to things imported."[29] This definition was carried over into the present NIRC of 1997.[30]

---

[20] See Sections 141-143, NIRC.

[21] See Sections 144-147, NIRC.

[22] See Section 151, NIRC.

[23] See Section 149, NIRC.

[24] See Section 150, NIRC.

[25] See Footnote No. 27, *Cordero v. Conda*, 124 Phil. 926, 937 (1966); citing 51 *Am. Jur*., pp. 1068-1069.

[26] COMMONWEALTH ACT NO. 466, as amended.

[27] Pres. Decree No. 1158.

[28] See Title IV, COMMONWEALTH ACT NO. 466; Title IV, Pres. Decree No. 1158.

[29] See Sec. 126, Pres. Decree No. 1994, establishing National Internal Revenue Code of 1986.

[30] See Sec. 129, National Internal Revenue Code of 1997.

Further, these two latest codes categorize two different kinds of excise taxes: "specific tax" which is imposed and based on weight or volume capacity or any other physical unit of measurement; and "*ad valorem* tax" which is imposed and based on the selling price or other specified value of the goods. In other words, the meaning of "excise tax" has undergone a transformation, morphing from the *Am Jur* definition to its current signification which is a tax on certain specified goods or articles.

The change in perspective brought forth by the use of the term "excise tax" in a different connotation was not lost on the departed author Jose Nolledo as he accorded divergent treatments in his 1973 and 1994 commentaries on our tax laws. Writing in 1973, and essentially alluding to the *Am Jur* definition of "excise tax," Nolledo observed:

> Are specific taxes, taxes on property or excise taxes –
>
> In the case of *Meralco v. Trinidad* ([G.R.] 16738, (sic) 1925) it was held that specific taxes are property taxes, a ruling which seems to be erroneous. Specific taxes are truly excise taxes for the fact that the value of the property taxed is taken into account will not change the nature of the tax. It is correct to say that specific taxes are taxes on the privilege to import, manufacture and remove from storage certain articles specified by law.[31]

In contrast, after the tax code was amended to classify specific taxes as a subset of excise taxes, Nolledo, in his 1994 commentaries, wrote:

> 1. *Excise taxes*, as used in the Tax Code, refers to taxes applicable to certain specified goods or articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported into the Philippines. They are either *specific* or *ad valorem*.
>
> 2. *Nature of excise taxes.* – They are imposed directly on certain specified goods. (*infra*) They are, therefore, taxes on property. (see *Medina vs. City of Baguio*, 91 Phil. 854.)

---

[31] J. NOLLEDO, *NATIONAL INTERNAL REVENUE CODE OF THE PHILIPPINES* (1973 ed.), at 678-679.

A tax is not excise where it does not subject directly the produce or goods to tax but indirectly as an incident to, or in connection with, the business to be taxed.[32]

In their 2004 commentaries, De Leon and De Leon restate the *Am Jur* definition of excise tax, and observe that the term is "synonymous with 'privilege tax' and [both terms] are often used interchangeably."[33] At the same time, they offer a caveat that "[e]xcise tax, as [defined by *Am Jur*], is not to be confused with excise tax imposed [by the NIRC] on certain specified articles manufactured or produced in, or imported into, the Philippines, 'for domestic sale or consumption or for any other disposition.'"[34]

It is evident that *Am Jur* aside, the current definition of an excise tax is that of a tax levied on a specific article, rather than one "upon the performance, carrying on, or the exercise of an activity." This current definition was already in place when the LGC was enacted in 1991, and we can only presume that it was what the Congress had intended as it specified that local government units could not impose "excise taxes on articles enumerated under the [NIRC]." This prohibition must pertain to the same kind of excise taxes as imposed by the NIRC, and not those previously defined "excise taxes" which were not integrated or denominated as such in our present tax law.

It is quite apparent, therefore, that our current body of taxation law does not explicitly accommodate the traditional definition of excise tax offered by Petron. In fact, absent any statutory adoption of the traditional definition, it may be said that starting in 1986 excise taxes in this jurisdiction refer exclusively to specific or *ad valorem* taxes imposed under the NIRC. At the very least, it is this concept of excise tax which we can reasonably assume that Congress had in mind and actually adopted when it crafted the LGC. The palpable absurdity that ensues should

---

[32] J. Nolledo, *THE NATIONAL INTERNAL REVENUE CODE ANNOTATED* (5th ed., 1994), at 471-472.

[33] H. DE LEON & H. DE LEON, JR., *THE FUNDAMENTALS OF TAXATION* (14th ed., 2004), at 12-13.

[34] *Id*. at 13.

the alternative interpretation prevail all but strengthens this position.

Thus, Petron's argument concerning excise taxes is founded not on what the NIRC or the LGC actually provides, but on a non-statutory definition sourced from a legal paradigm that is no longer applicable in this jurisdiction. That such definition was referred to again in our 1998 decision in *Province of Bulacan v. Court of Appeals*[35] is ultimately of little consequence, and so is Petron's reliance on such ruling. The Court therein had correctly nullified, on the basis of Section 133(h) of the LGC, a province-imposed tax "of 10% of the fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth and other quarry resources xxx extracted from public lands," because it noted that under Section 151 of the NIRC, all nonmetallic minerals and quarry resources were assessed with excise taxes of "two percent (2%) based on the actual market value of the gross output thereof at the time of removal, in case of those locally extracted or produced."[36] Additionally, the Court also observed that the case had emanated from an attempt to impose the said tax on quarry resources from private lands, despite the clear language of the tax ordinance limiting the tax to such resources extracted from public lands.[37] On that score alone, the case could have been correctly decided.

It is true that the Court had additionally reasoned in *Province of Bulacan* that "[t]he tax imposed by the Province of Bulacan is an excise tax, being a tax upon the performance, carrying on, or exercise of an activity." As earlier noted, such definition of excise tax however was not explicitly carried over into the NIRC and was even superseded beginning with the 1986 amendments thereto. To insist on utilizing this definition simply because it had been reiterated in *Province of Bulacan*, unnecessary as such reiteration may have been to the resolution of that case, would have the unfortunate effect of infusing life into a concept that is diametrically inconsistent with the present state of the law.

[35] 359 Phil. 779 (1998).

[36] *Id*. at 794-795.

[37] *Id*. at 795.

We thus can assert with clear comfort that excise taxes, as imposed under the NIRC, do not pertain to "the performance, carrying on, or exercise of an activity," at least not to the extent of equating excise with business taxes.

IV.

We next consider whether the clause "taxes, fees or charges on petroleum products" in Section 133(h) precludes local government units from imposing business taxes based on the sale of petroleum products.

The power of a municipality to impose business taxes derives from Section 143 of the LGC that specifically enumerates several types of business on which it may impose taxes, including manufacturers, wholesalers, distributors, dealers of any article of commerce of whatever nature;[38] those engaged in the export or commerce of essential commodities;[39] retailers;[40] contractors and other independent contractors;[41] banks and financial institutions;[42] and peddlers engaged in the sale of any merchandise or article of commerce.[43] This obviously broad power is further supplemented by paragraph (h) of Section 143 which authorizes the *sanggunian* to impose taxes on any other businesses not otherwise specified under Section 143 which the *sanggunian* concerned may deem proper to tax.[44]

This ability of local government units to impose business or other local taxes is ultimately rooted in the 1987 Constitution. Section 5, Article X assures that "[e]ach local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges," though the power is "subject

[38] See Section 143 (a) & (b), Local Government Code.

[39] See Section 143(c), Local Government Code.

[40] See Section 143(d), Local Government Code.

[41] See Section 143(e), Local Government Code.

[42] See Section 143(f), Local Government Code.

[43] See Section 143(g), Local Government Code.

[44] See *Yamane v. BA Lepanto*, G.R. No. 154993, 25 October 2005, 474 SCRA 258, 272-273.

to such guidelines and limitations as the Congress may provide." There is no doubt that following the 1987 Constitution and the LGC, the fiscal autonomy of local government units has received greater affirmation than ever. Previous decisions that have been skeptical of the viability, if not the wisdom of reposing fiscal autonomy to local government units have fallen by the wayside.

Respondents cite our declaration in *City Government of San Pablo v. Reyes*[45] that following the 1987 Constitution the rule thenceforth "in interpreting statutory provisions on municipal fiscal powers, doubts will have to be resolved in favor of municipal corporations."[46] Such policy is also echoed in Section 5(a) of the LGC, which states that "[a]ny 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." But somewhat conversely, Section 5(b) then proceeds to assert that "[i]n case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally in favor of the taxpayer."[47] And this latter qualification has to be respected as a constitutionally authorized limitation which Congress has seen fit to provide. Evidently, local fiscal autonomy should not necessarily translate into abject deference to the power of local government units to impose taxes.

Congress has the constitutional authority to impose limitations on the power to tax of local government units, and Section 133 of the LGC is one such limitation. Indeed, the provision is the explicit statutory impediment to the enjoyment of absolute taxing power by local government units, not to mention the reality that such power is a delegated power. To cite one example,

[45] 364 Phil. 842 (1999).

[46] *Id.* at 857.

[47] Section 5(b) also provides, "Any tax exemption, incentive or relief granted by any local government unit pursuant to the provisions of this Code shall be construed strictly against the person claiming it; xxx" This proviso should find no application to this case, since the tax exemption invoked by Petron was not granted or legislated by Navotas, but bestowed by the Congress through the Local Government Code.

under Section 133(g), local government units are disallowed from levying business taxes on "business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and (4) four years, respectively from the date of registration."

Section 133(h) states that local government units "shall not extend to the levy of xxx taxes, fees or charges on petroleum products." Respondents assert that the phrase "taxes, fees or charges on petroleum products" pertains to the imposition of direct or excise taxes on petroleum products, and not business taxes. If the phrase actually pertains to excise taxes, then it would be an exercise in utter redundancy, since the preceding phrase already prohibits the imposition of excise taxes on articles already subject to such taxes under the NIRC, such as petroleum products. There would be no sense on the part of the legislature to twice emphasize in the same sentence that excise taxes on petroleum products are beyond the pale of local government taxation.

It appears that this argument of respondents was fashioned on the basis of the pronouncement of the Court in *Philippine Petroleum Corporation v. Municipality of Pililla*, thus:[48]

> xxx [W]hile Section 2 of P.D. 436 prohibits the imposition of local taxes on petroleum products, said decree did not amend Sections 19 and 19 (a) of P.D. 231 as amended by P.D. 426, wherein the municipality is granted the right to levy taxes on business of manufacturers, importers, producers of any article of commerce of whatever kind or nature. **A tax on business is distinct from a tax on the article itself.** Thus, if the imposition of tax on business of manufacturers, etc. in petroleum products contravenes a declared national policy, it should have been expressly stated in P.D. No. 436.

The *dicta* that "[a] tax on a business is distinct from a tax on the article itself" might at first blush somehow lend support to respondents' position, yet that *dicta* has not since been reprised by this Court. It is likewise worth observing that *Pililla* did involve a tax ordinance that imposed business taxes on an enterprise engaged in the manufacture and storage of petroleum products.

---

[48] *Supra* note 18 at 89.

Significantly, the legal milieu governing *Pililla* is vastly different from that existing at bar, to the extent that the earlier case could not be presently controlling.

At the time the taxes sought to be collected in *Pililla* were imposed, there was no national law in place similar to Section 133(h) of the LGC that barred local "taxes, fees or charges on petroleum products." There were circulars to that effect issued by the Finance Department, yet the Court could not validate such issuances since under the tax laws then in place "no exemptions were given to manufacturers, wholesalers, retailers, or dealers in petroleum products."[49] In fact, the Court tellingly observed that "if the imposition of tax on business of manufacturers, *etc*. in petroleum products contravenes a declared national policy, it should have been expressly stated in P.D. No. 436."[50] Such expression conspiciously missing in P.D. No. 436 is now found in Section 133(h).

In view of the difference in statutory paradigm between this case and *Pililla*, the latter case is severely diminished as applicable precedent at bar. The Court then was correct in observing that a mere administrative circular could not prohibit a local tax that is not otherwise barred under a national statute, yet in this case that conflict is not present since the LGC explicitly prohibits the imposition of several classes of local taxes, including those on petroleum products. The final and only straw *Pililla* provides that respondents can still grasp at is the bare statement that "[a] tax on a business is distinct from a tax on the article itself,"[51] a sentence which could have been omitted from that decision without any effect.

We can concede that a tax on a business is distinct from a tax on the article itself, or for that matter, that a business tax is distinct from an excise tax. However, such distinction is immaterial insofar as the latter part of Section 133(h) is concerned, for the phrase "taxes, fees or charges on petroleum products" does not qualify the kind of taxes, fees or charges that could

[49] *Id*. at 89.

[50] *Id*.

[51] *Supra* note 19.

withstand the absolute prohibition imposed by the provision. It would have been a different matter had Congress, in crafting Section 133(h), barred "excise taxes" or "direct taxes," or any category of taxes only, for then it would be understood that only such specified taxes on petroleum products could not be imposed under the prohibition. The absence of such a qualification leads to the conclusion that all sorts of taxes on petroleum products, including business taxes, are prohibited by Section 133(h). Where the law does not distinguish, we should not distinguish.

The language of Section 133(h) makes plain that the prohibition with respect to petroleum products extends not only to excise taxes thereon, but all "taxes, fees and charges." The earlier reference in paragraph (h) to excise taxes comprehends a wider range of subjects of taxation: all articles already covered by excise taxation under the NIRC, such as alcohol products, tobacco products, mineral products, automobiles, and such non-essential goods as jewelry, goods made of precious metals, perfumes, and yachts and other vessels intended for pleasure or sports. In contrast, the later reference to "taxes, fees and charges" pertains only to one class of articles of the many subjects of excise taxes, specifically, "petroleum products." While local government units are authorized to burden all such other class of goods with "taxes, fees and charges," excepting excise taxes, a specific prohibition is imposed barring the levying of any other type of taxes with respect to petroleum products.

V.

We no longer need to dwell on the arguments centering on Article 232 of the IRR. As earlier stated, the provision explicitly stipulates that "in line with existing national policy, any business engaged in the production, manufacture, refining, distribution or sale of oil, gasoline and other petroleum products shall not be subject to any local tax imposed on this article [on business taxes]." The RTC went as far as to declare Article 232 as "invalid" on the premise that the prohibition was not similarly warranted under the LGC.

Assuming that the LGC does not, in fact, prohibit the imposition of business taxes on petroleum products, we would agree that

the IRR could not impose such a prohibition. With our ruling that Section 133(h) does indeed prohibit the imposition of local business taxes on petroleum products, however, the RTC declaration that Article 232 was invalid is, in turn, itself invalid. Even absent Article 232, local government units cannot impose business taxes on petroleum products. If anything, Article 232 merely reiterates what the LGC itself already provides, with the additional explanation that such prohibition was "in line with existing national policy."

VI.

We have said all that need be said for the resolution of this case, but there is one more line of argument raised by respondents that deserves a remark. Respondents argue, "assuming... that the Oversight Committee [that drafted the IRR] can legislate, that the "existing national policy" referred to in Article 232 had been superseded by Republic Act No. 8180, or the Oil Deregulation Law. Boiled down to its essence, the argument is that since the oil industry is presently deregulated the basis for exempting petroleum products from business taxes no longer exists.

Of course, the starting premise for this argument, that the IRR can establish a tax or an exemption, is false and has been flatly rejected by this Court before.[52] The LGC itself does not connect its prohibition on taxation of petroleum products with any existing or future national oil policy, so the change in such national policy with the regime of oil deregulation is ultimately of no moment. Still, we can divine the reasoning behind singling out petroleum products, among all other commodities, as beyond the power of local government units to levy local taxes.

Why the special concern over petroleum products? The answer is quite evident to all sentient persons. In this age where unfortunately dependence on petroleum as fuel has yet no equally feasible alternative, the cost of petroleum products, though fully controlled by private enterprise, remains an area of public concern. To be blunt about it, there is an inevitable link between the

[52] See *e.g., John Hay People's Alternative Coalition v. Lim*, 460 Phil. 530, 551 (2003).

fluctuation of oil prices and the prices of every other commodity. The reality, indeed, is oil is a political commodity. Such fact has received recognition from this Court. "[O]il [is] a commodity whose supply and price affect the ebb and flow of the lifeblood of the nation. Its shortage of supply or a slight, upward spiral in its price shakes our economic foundation. Studies show that the areas most impacted by the movement of oil are food manufacture, land transport, trade, electricity and water."[53] "[T]he upswing and downswing of our economy materially depend on the oscillation of oil."[54] "Fluctuations in the supply and price of oil products have a dramatic effect on economic development and public welfare."[55]

It can be reasonably presumed that if municipalities, cities and provinces were authorized to impose business taxes on manufacturers and retailers of petroleum products, the resulting losses to these enterprises would be passed on to the consumers, triggering the chain of increases that normally accompany the increase in oil prices. No similarly massive trigger effect would ensue upon the imposition of business taxes on other commodities, including those already subject to excise taxation under the NIRC.

It may very well be that the policy of deregulation, which was not yet in effect at the time of the enactment of the LGC, has changed the complexion of the issue, for unlike before, oil companies are free at will to increase oil prices, thus mitigating the similarly arbitrary consequences that could develop if petroleum products were subject to local taxes. Still, it cannot be denied that subjecting petroleum products to business taxes apart from the taxes already imposed by Congress in this age of deregulation would lead to the same result had they been so taxed during the era of oil regulation – the increase of oil prices. We do not discount the authority of Congress to enact measures that facilitate the increase in oil prices; witness the Oil Deregulation Law and the most recent Expanded VAT Law. Yet these hard choices are presumably made by Congress with the expectation that the

---

[53] *Tatad v. Secretary of Energy,* 346 Phil. 321, 379 (1997).

[54] *Id*. at 348.

[55] *Garcia v. Corona*, 378 Phil. 848, 859 (1999).

negative effects of increased oil prices are offset by the other economic benefits promised by those new laws (*i.e.*, a more vibrant oil industry; increased government revenue).

The Court defers to the other branches of government in the formulation of oil policy, but when the choices are made through legislation, the Court expects that the choices are deliberate, considering that the stakes are virtually all-in. Herein, respondents may be bolstered by the constitutional and statutory policy favoring local fiscal autonomy, but it would be utter indolence to reflexively affirm such policy when the inevitable effect is an increase in oil prices. Any prudent adjudication should fully ascertain the mandate of local government units to impose taxes on petroleum products, and such mandate should be cast in so specific terms as to leave no dispute as to the legislative intendment to extend such power in the name of local autonomy. What we have found instead, from the plain letter of the law is an explicit disinclination on the part of the legislature to impart that particular taxing power to local government units.

While Section 133(h) does not generally bar the imposition of business taxes on articles burdened by excise taxes under the NIRC, it specifically prohibits local government units from extending the levy of any kind of "taxes, fees or charges on petroleum products." Accordingly, the subject tax assessment is *ultra vires* and void.

WHEREFORE, the Petition is *GRANTED*. The Decision of the Regional Trial Court of Malabon City in Civil Case No. 3380-MN is *REVERSED* and *SET ASIDE* and the subject assessment for deficiency taxes on petitioner is ordered *CANCELLED*. The Temporary Restraining Order dated 4 August 2003 is hereby made *PERMANENT*. No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 160855. April 16, 2008]

CONCEPCION CHUA GAW, *petitioner, vs.* **SUY BEN CHUA and FELISA CHUA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PREPONDERANCE OF EVIDENCE; EXPLAINED.— [T]he delineation of a piece of evidence as part of the evidence of one party or the other is only significant in determining whether the party on whose shoulders lies the burden of proof was able to meet the quantum of evidence needed to discharge the burden. In civil cases, that burden devolves upon the plaintiff who must establish her case by preponderance of evidence. The rule is that the plaintiff must rely on the strength of his own evidence and not upon the weakness of the defendant's evidence. Thus, it barely matters who with a piece of evidence is credited. In the end, the court will have to consider the entirety of the evidence presented by both parties. Preponderance of evidence is then determined by considering all the facts and circumstances of the case, culled from the evidence, *regardless of who actually presented it*.

2. ID.; ID.; PRESENTATION OF EVIDENCE; IMPEACHMENT OF ADVERSE PARTY'S WITNESS; RULE.— That the witness is the adverse party does not necessarily mean that the calling party will not be bound by the former's testimony. The fact remains that it was at his instance that his adversary was put on the witness stand. Unlike an ordinary witness, the calling party may impeach an adverse witness in all respects as if he had been called by the adverse party, except by evidence of his bad character. Under a rule permitting the impeachment of an adverse witness, although the calling party does not vouch for the witness' veracity, he is nonetheless bound by his testimony if it is not contradicted or remains unrebutted. A party who calls his adversary as a witness is, therefore, not bound by the latter's testimony only in the sense that he may contradict him by introducing other evidence to prove a state of facts contrary to what the witness testifies on. A rule that

provides that the party calling an adverse witness shall not be bound by his testimony does not mean that such testimony may not be given its proper weight, but merely that the calling party shall not be precluded from rebutting his testimony or from impeaching him.

3. ID.; ID.; PARTIES BOUND BY THEIR EVIDENCE.— All the parties to the case, x x x are considered bound by the favorable or unfavorable effects resulting from the evidence.

4. ID.; CIVIL PROCEDURE; APPEAL; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; FACTUAL FINDINGS OF THE COURT OF APPEALS AFFIRMING THOSE OF THE TRIAL COURT ARE ACCORDED GREAT RESPECT, EVEN FINALITY, BY THE SUPREME COURT; EXCEPTIONS.— [T]he findings of fact of the CA affirming those of the trial court are accorded great respect, even finality, by this Court. Only errors of law, not of fact, may be reviewed by this Court in petitions for review on *certiorari* under Rule 45. A departure from the general rule may be warranted where the findings of fact of the CA are contrary to the findings and conclusions of the trial court, or when the same is unsupported by the evidence on record.

5. ID.; ID.; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PUBLIC DOCUMENTS; NOTARIZED DOCUMENT; NATURE.— The notarization of a private document converts it into a public document, and makes it admissible in court without further proof of its authenticity. It is entitled to full faith and credit upon its face. A notarized document carries evidentiary weight as to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity. Such a document must be given full force and effect absent a strong, complete and conclusive proof of its falsity or nullity on account of some flaws or defects recognized by law. A public document executed and attested through the intervention of a notary public is, generally, evidence of the facts therein express in clear unequivocal manner.

6. ID.; ID.; ADMISSIBILITY OF EVIDENCE; DOCUMENTARY EVIDENCE; BEST EVIDENCE RULE; WHEN APPLICABLE. – The "best evidence rule" as encapsulated in

> Rule 130, Section 3, of the Revised Rules of Evidence applies only when the content of such document is the subject of the inquiry. Where the issue is only as to whether such document was actually executed, or exists, or on the circumstances relevant to or surrounding its execution, the best evidence rule does not apply and testimonial evidence is admissible. Any other substitutionary evidence is likewise admissible without need to account for the original. Moreover, production of the original may be dispensed with, in the trial court's discretion, whenever *the opponent does not bona fide dispute the contents of the document* and no other useful purpose will be served by requiring production.

APPEARANCES OF COUNSEL

Cruz Durian Alday & Cruz Matters for petitioner.
Punzalan and Punongbayan Law Office for respondents.

D E C I S I O N

NACHURA, *J.:*

This is a Petition for Review on *Certiorari* from the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 66790 and Resolution[2] denying the motion for reconsideration. The assailed decision affirmed the ruling of the Regional Trial Court (RTC) in a Complaint for Sum of Money in favor of the plaintiff.

The antecedents are as follows:

Spouses Chua Chin and Chan Chi were the founders of three business enterprises[3] namely: Hagonoy Lumber, Capitol Sawmill Corporation, and Columbia Wood Industries. The couple had seven children, namely, Santos Chua; Concepcion Chua; Suy Ben Chua; Chua Suy Phen; Chua Sioc Huan; Chua Suy Lu;

---

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Delilah Vidallon-Magtolis and Edgardo F. Sundiam, concurring; *rollo*, pp. 8-24.

[2] *Rollo*, pp. 26-27.

[3] *Id*. at 122.

and Julita Chua. On June 19, 1986, Chua Chin died, leaving his wife Chan Chi and his seven children as his only surviving heirs. At the time of Chua Chin's death, the net worth of Hagonoy Lumber was ₱415,487.20.[4]

On December 8, 1986, his surviving heirs executed a Deed of Extra-Judicial Partition and Renunciation of Hereditary Rights in Favor of a Co-Heir [5] (Deed of Partition, for brevity), wherein the heirs settled their interest in Hagonoy Lumber as follows: one-half (½) thereof will pertain to the surviving spouse, Chan Chi, as her share in the conjugal partnership; and the other half, equivalent to ₱207,743.60, will be divided among Chan Chi and the seven children in equal *pro indiviso* shares equivalent to ₱25,967.00 each.[6] In said document, Chan Chi and the six children likewise agreed to voluntarily renounce and waive their shares over Hagonoy Lumber in favor of their co-heir, Chua Sioc Huan.

In May 1988, petitioner Concepcion Chua Gaw and her husband, Antonio Gaw, asked respondent, Suy Ben Chua, to lend them ₱200,000.00 which they will use for the construction of their house in Marilao, Bulacan. The parties agreed that the loan will be payable within six (6) months without interest.[7] On June 7, 1988, respondent issued in their favor China Banking Corporation Check No. 240810[8] for ₱200,000.00 which he delivered to the couple's house in Marilao, Bulacan. Antonio later encashed the check.

On August 1, 1990, their sister, Chua Sioc Huan, executed a Deed of Sale over all her rights and interests in Hagonoy Lumber for a consideration of ₱255,000.00 in favor of respondent.[9]

---

[4] Records Vol. II, p. 203.

[5] *Id*. at 203-205.

[6] *Id*. at 203.

[7] *Rollo*, p. 119.

[8] Records, Vol. I, p. 5.

[9] Records Vol. II, p. 201.

Meantime, the spouses Gaw failed to pay the amount they borrowed from respondent within the designated period. Respondent sent the couple a demand letter,[10] dated March 25, 1991, requesting them to settle their obligation with the warning that he will be constrained to take the appropriate legal action if they fail to do so.

Failing to heed his demand, respondent filed a Complaint for Sum of Money against the spouses Gaw with the RTC. The complaint alleged that on June 7, 1988, he extended a loan to the spouses Gaw for ₱200,000.00, payable within six months without interest, but despite several demands, the couple failed to pay their obligation.[11]

In their Answer (with Compulsory Counterclaim), the spouses Gaw contended that the ₱200,000.00 was not a loan but petitioner's share in the profits of Hagonoy Lumber, one of her family's businesses. According to the spouses, when they transferred residence to Marilao, Bulacan, petitioner asked respondent for an accounting, and payment of her share in the profits, of Capital Sawmills Corporation, Columbia Wood Industries Corporation, and Hagonoy Lumber. They claimed that respondent persuaded petitioner to temporarily forego her demand as it would offend their mother who still wanted to remain in control of the family businesses. To insure that she will defer her demand, respondent allegedly gave her ₱200,000.00 as her share in the profits of Hagonoy Lumber.[12]

In his Reply, respondent averred that the spouses Gaw did not demand from him an accounting of Capitol Sawmills Corporation, Columbia Wood Industries, and Hagonoy Lumber. He asserted that the spouses Gaw, in fact, have no right whatsoever in these businesses that would entitle them to an accounting thereof. Respondent insisted that the ₱200,000.00 was given to and accepted by them as a loan and not as their share in Hagonoy Lumber.[13]

[10] Records, Vol. I, p. 6.

[11] *Id*. at 2-3.

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

[13] Records, Vol. I, p. 53.

With leave of court, the spouses Gaw filed an Answer (with Amended Compulsory Counterclaim) wherein they insisted that petitioner, as one of the compulsory heirs, is entitled to one-sixth (1/6) of Hagonoy Lumber, which the respondent has arrogated to himself. They claimed that, despite repeated demands, respondent has failed and refused to account for the operations of Hagonoy Lumber and to deliver her share therein. They then prayed that respondent make an accounting of the operations of Hagonoy Lumber and to deliver to petitioner her one-sixth (1/6) share thereof, which was estimated to be worth not less than ₱500,000.00.[14]

In his Answer to Amended Counterclaim, respondent explained that his sister, Chua Sioc Huan, became the sole owner of Hagonoy Lumber when the heirs executed the Deed of Partition on December 8, 1986. In turn, he became the sole owner of Hagonoy Lumber when he bought it from Chua Sioc Huan, as evidenced by the Deed of Sale dated August 1, 1990.[15]

Defendants, in their reply,[16] countered that the documents on which plaintiff anchors his claim of ownership over Hagonoy Lumber were not true and valid agreements and do not express the real intention of the parties. They claimed that these documents are mere paper arrangements which were prepared only upon the advice of a counsel until all the heirs could reach and sign a final and binding agreement, which, up to such time, has not been executed by the heirs.[17]

During trial, the spouses Gaw called the respondent to testify as adverse witness under Section 10, Rule 132. On direct examination, respondent testified that Hagonoy Lumber was the conjugal property of his parents Chua Chin and Chan Chi, who were both Chinese citizens. He narrated that, initially, his father leased the lots where Hagonoy Lumber is presently located from his godfather, Lu Pieng, and that his father constructed

[14] *Id*. at 109-110.

[15] *Id*. at 129-131.

[16] *Id*. at 138-140.

[17] Records, Vol. I, pp. 138-139.

the two-storey concrete building standing thereon. According to respondent, when he was in high school, it was his father who managed the business but he and his other siblings were helping him. Later, his sister, Chua Sioc Huan, managed Hogonoy Lumber together with their other brothers and sisters. He stated that he also managed Hagonoy Lumber when he was in high school, but he stopped when he got married and found another job. He said that he now owns the lots where Hagonoy Lumber is operating.[18]

On cross-examination, respondent explained that he ceased to be a stockholder of Capitol Sawmill when he sold his shares of stock to the other stockholders on January 1, 1991. He further testified that Chua Sioc Huan acquired Hagonoy Lumber by virtue of a Deed of Partition, executed by the heirs of Chua Chin. He, in turn, became the owner of Hagonoy Lumber when he bought the same from Chua Sioc Huan through a Deed of Sale dated August 1, 1990.[19]

On re-direct examination, respondent stated that he sold his shares of stock in Capitol Sawmill for ₱254,000.00, which payment he received in cash. He also paid the purchase price of ₱255,000.00 for Hagonoy Lumber in cash, which payment was not covered by a separate receipt as he merely delivered the same to Chua Sioc Huan at her house in Paso de Blas, Valenzuela. Although he maintains several accounts at Planters Bank, Paluwagan ng Bayan, and China Bank, the amount he paid to Chua Sioc Huan was not taken from any of them. He kept the amount in the house because he was engaged in rediscounting checks of people from the public market.[20]

On December 10, 1998, Antonio Gaw died due to cardio vascular and respiratory failure.[21]

On February 11, 2000, the RTC rendered a Decision in favor of the respondent, thus:

---

[18] *Rollo,* pp. 108-110.

[19] *Id*.

[20] *Id*. at 110-111.

[21] Records, Vol. II, pp. 174-177.

WHEREFORE, in the light of all the foregoing, the Court hereby renders judgement ordering defendant Concepcion Chua Gaw to pay the [respondent] the following:

1. ₱200,000.00 representing the principal obligation with legal interest from judicial demand or the institution of the complaint on November 19, 1991;

2. ₱50,000.00 as attorney's fees; and

3. Costs of suit.

The defendants' counterclaim is hereby dismissed for being devoid of merit.

SO ORDERED.[22]

The RTC held that respondent is entitled to the payment of the amount of ₱200,000.00 with interest. It noted that respondent personally issued Check No. 240810 to petitioner and her husband upon their request to lend them the aforesaid amount. The trial court concluded that the ₱200,000.00 was a loan advanced by the respondent from his own funds and not remunerations for services rendered to Hagonoy Lumber nor petitioner's advance share in the profits of their parents' businesses.

The trial court further held that the validity and due execution of the Deed of Partition and the Deed of Sale, evidencing transfer of ownership of Hagonoy Lumber from Chua Sioc Huan to respondent, was never impugned. Although respondent failed to produce the originals of the documents, petitioner judicially admitted the due execution of the Deed of Partition, and even acknowledged her signature thereon, thus constitutes an exception to the best evidence rule. As for the Deed of Sale, since the contents thereof have not been put in issue, the non-presentation of the original document is not fatal so as to affect its authenticity as well as the truth of its contents. Also, the parties to the documents themselves do not contest their validity. Ultimately, petitioner failed to establish her right to demand an accounting of the operations of Hagonoy Lumber nor the delivery of her 1/6 share therein.

[22] *Rollo,* p. 126.

As for petitioner's claim that an accounting be done on Capitol Sawmill Corporation and Columbia Wood Industries, the trial court held that respondent is under no obligation to make such an accounting since he is not charged with operating these enterprises.[23]

Aggrieved, petitioner appealed to the CA, alleging that the trial court erred (1) when it considered the amount of ₱200,000.00 as a loan obligation and not Concepcion's share in the profits of Hagonoy Lumber; (2) when it considered as evidence for the defendant, plaintiff's testimony when he was called to testify as an adverse party under Section 10 (e), Rule 132 of the Rules of Court; and (3) when it considered admissible mere copies of the Deed of Partition and Deed of Sale to prove that respondent is now the owner of Hagonoy Lumber.[24]

On May 23, 2003, the CA affirmed the Decision of the RTC.[25] The appellate court found baseless the petitioner's argument that the RTC should not have included respondent's testimony as part of petitioner's evidence. The CA noted that the petitioner went on a fishing expedition, the taking of respondent's testimony having taken up a total of eleven hearings, and upon failing to obtain favorable information from the respondent, she now disclaims the same. Moreover, the CA held that the petitioner failed to show that the inclusion of respondent's testimony in the statement of facts in the assailed decision unduly prejudiced her defense and counterclaims. In fact, the CA noted that the facts testified to by respondent were deducible from the totality of the evidence presented.

The CA likewise found untenable petitioner's claim that Exhibit "H" (Deed of Sale) and Exhibit "I" (Deed of Partition) were merely temporary paper arrangements. The CA agreed with the RTC that the testimony of petitioner regarding the matter was uncorroborated — she should have presented the other heirs to attest to the truth of her allegation. Instead, petitioner

[23] *Id*. at 119-126.

[24] CA *rollo*, pp. 20-27.

[25] *Rollo,* pp. 8-24.

admitted the due execution of the said documents. Since petitioner did not dispute the due execution and existence of Exhibits "H" and "I", there was no need to produce the originals of the documents in accordance with the best evidence rule.[26]

On December 2, 2003, the CA denied the petitioner's motion for reconsideration for lack of merit.[27]

Petitioner is before this Court in this petition for review on *certiorari*, raising the following errors:

I. THAT ON THE PRELIMINARY IMPORTANT RELATED ISSUE, CLEAR AND PALPABLE LEGAL ERROR HAS BEEN COMMITTED IN THE APPLICATION AND LEGAL SIGNIFICANCE OF THE RULE ON EXAMINATION OF ADVERSE PARTY OR HOSTILE WITNESS UNDER SECTION 10 (d) AND (e) OF RULE 132, CAUSING SERIOUS DOUBT ON THE LOWER COURT'S APPEALED DECISION'S OBJECTIVITY, ANNEX "C".

II. THAT ON THE IMPORTANT LEGAL ISSUE RELATIVE TO THE AFORESAID TWO OPPOSING CLAIMS OF RESPONDENT AND PETITIONER, CLEAR AND PALPABLE LEGAL ERROR HAS BEEN COMMITTED UNDER THE LOWER COURT'S DECISION ANNEX "C" AND THE QUESTIONED DECISION OF MAY 23, 2003 (ANNEX "A") AND THE RESOLUTION OF DECEMBER 2, 2003, (ANNEX "B") IN DEVIATING FROM AND DISREGARDING ESTABLISHED SUPREME COURT DECISIONS ENJOINING COURTS NOT TO OVERLOOK OR MISINTERPRET IMPORTANT FACTS AND CIRCUMSTANCES, SUPPORTED BY CLEAR AND CONVINCING EVIDENCE ON RECORD, AND WHICH ARE OF GREAT WEIGHT AND VALUE, WHICH WOULD CHANGE THE RESULT OF THE CASE AND ARRIVE AT A JUST, FAIR AND OBJECTIVE DECISION. (Citations omitted)

III. THAT FINALLY, AS TO THE OTHER LEGAL IMPORTANT ISSUE RELATIVE TO CLAIM OR OWNERSHIP OF THE "HAGONOY LUMBER" FAMILY BUSINESS, CLEAR AND

[26] *Id*. at 13-16.

[27] *Id*. at 104.

PALPABLE LEGAL ERROR HAS BEEN COMMITTED ON THE REQUIREMENTS AND CORRECT APPLICATION OF THE "BEST EVIDENCE RULE" UNDER SECTION 3, RULE 130 OF THE REVISED RULES OF COURT.[28]

The petition is without merit.

Petitioner contends that her case was unduly prejudiced by the RTC's treatment of the respondent's testimony as adverse witness during cross-examination by his own counsel as part of her evidence. Petitioner argues that the adverse witness' testimony elicited during cross-examination should not be considered as evidence of the calling party. She contends that the examination of respondent as adverse witness did not make him her witness and she is not bound by his testimony, particularly during cross-examination by his own counsel.[29] In particular, the petitioner avers that the following testimony of the respondent as adverse witness should not be considered as her evidence:

(11.a) That RESPONDENT-Appellee became owner of the "HAGONOY LUMBER" business when he bought the same from Chua Sioc Huan through a Deed of Sale dated August 1, 1990 (EXH.H);

(11.b) That the "HAGONOY LUMBER," on the other hand, was acquired by the sister Chua Sioc Huan, by virtue of Extrajudicial Partition and Renunciation of Hereditary Rights in favor of a Co-Heir (EXH. I);

(11.c) That the 3 lots on which the "HAGONOY LUMBER" business is located were acquired by Lu Pieng from the Santos family under the Deed of Absolute Sale (EXH. J); that Lu Pieng sold the Lots to Chua Suy Lu in 1976 (EXHS. K, L, & M.); that Chua Siok Huan eventually became owner of the 3 Lots; and in 1989 Chua Sioc Huan sold them to RESPONDENT-Appellee (EXHS. Q and P); that after he acquired the 3 Lots, he has not sold them to anyone and he is the owner of the lots.[30]

---

[28] *Id*. at 4-6.

[29] *Id*. at 252.

[30] *Id*. at 251-252.

We do not agree that petitioner's case was prejudiced by the RTC's treatment of the respondent's testimony during cross-examination as her evidence.

If there was an error committed by the RTC in ascribing to the petitioner the respondent's testimony as adverse witness during cross-examination by his own counsel, it constitute a harmless error which would not, in any way, change the result of the case.

In the first place, the delineation of a piece of evidence as part of the evidence of one party or the other is only significant in determining whether the party on whose shoulders lies the burden of proof was able to meet the quantum of evidence needed to discharge the burden. In civil cases, that burden devolves upon the plaintiff who must establish her case by preponderance of evidence. The rule is that the plaintiff must rely on the strength of his own evidence and not upon the weakness of the defendant's evidence. Thus, it barely matters who with a piece of evidence is credited. In the end, the court will have to consider the entirety of the evidence presented by both parties. Preponderance of evidence is then determined by considering all the facts and circumstances of the case, culled from the evidence, *regardless of who actually presented it*.[31]

That the witness is the adverse party does not necessarily mean that the calling party will not be bound by the former's testimony. The fact remains that it was at his instance that his adversary was put on the witness stand. Unlike an ordinary witness, the calling party may impeach an adverse witness in all respects as if he had been called by the adverse party,[32]

[31] *Supreme Transliner, Inc. v. Court of Appeals,* 421 Phil. 692, 699 (2001).

[32] REVISED RULES ON EVIDENCE, Rule 132, Section 11 provides how the witness may be impeached, thus:

SECTION 11. *Impeachment of adverse party's witness*. — A witness may be impeached by the party against whom he was called, by contradictory evidence, by evidence that his general reputation for truth, honesty, or integrity is bad, or by evidence that he has made at other times statements inconsistent with his present testimony, but not by evidence of particular wrongful acts,

except by evidence of his bad character.[33] Under a rule permitting the impeachment of an adverse witness, although the calling party does not vouch for the witness' veracity, he is nonetheless bound by his testimony if it is not contradicted or remains unrebutted.[34]

A party who calls his adversary as a witness is, therefore, not bound by the latter's testimony only in the sense that he may contradict him by introducing other evidence to prove a state of facts contrary to what the witness testifies on.[35] A rule that provides that the party calling an adverse witness shall not be bound by his testimony does not mean that such testimony may not be given its proper weight, but merely that the calling party shall not be precluded from rebutting his testimony or from impeaching him.[36] This, the petitioner failed to do.

In the present case, the petitioner, by her own testimony, failed to discredit the respondent's testimony on how Hagonoy Lumber became his sole property. The petitioner admitted having signed the Deed of Partition but she insisted that the transfer of the property to Chua Siok Huan was only temporary. On cross-examination, she confessed that no other document was executed to indicate that the transfer of the business to Chua Siok Huan was a temporary arrangement. She declared that, after their mother died in 1993, she did not initiate any action concerning Hagonoy Lumber, and it was only in her counterclaim in the instant that, for the first time, she raised a claim over the business.

Due process requires that in reaching a decision, a tribunal must consider the entire evidence presented.[37] All the parties to

---

except that it may be shown by the examination of the witness, or the record of the judgment, that he has been convicted of an offense.

[33] REVISED RULES ON EVIDENCE, Rule 132, Section 12.

[34] *Landau v. Landau,* 20 Ill.2d 381, 385, 170 N.E. 2d 1, 3 (1960)

[35] See: *Evidence* by Ricardo J. Francisco,Third Edition (1996), p. 487, citing 58 Am.Jur. 443.

[36] *Leonard v. Watsonville Community Hospital,* 47 Cal. 2d 509, 516, 305 P. 2d 36 (1956).

[37] *Equitable PCI Bank v. Caguioa*, G.R. No. 159170, August 12, 2005, 466 SCRA 686, 693.

the case, therefore, are considered bound by the favorable or unfavorable effects resulting from the evidence.[38] As already mentioned, in arriving at a decision, the entirety of the evidence presented will be considered, regardless of the party who offered them in evidence. In this light, the more vital consideration is not whether a piece of evidence was properly attributed to one party, but whether it was accorded the apposite probative weight by the court. The testimony of an adverse witness is evidence in the case and should be given its proper weight, and such evidence becomes weightier if the other party fails to impeach the witness or contradict his testimony.

Significantly, the RTC's finding that the ₱200,000.00 was given to the petitioner and her husband as a loan is supported by the evidence on record. Hence, we do not agree with the petitioner's contention that the RTC has overlooked certain facts of great weight and value in arriving at its decision. The RTC merely took into consideration evidence which it found to be more credible than the self-serving and uncorroborated testimony of the petitioner.

At this juncture, we reiterate the well-entrenched doctrine that the findings of fact of the CA affirming those of the trial court are accorded great respect, even finality, by this Court. Only errors of law, not of fact, may be reviewed by this Court in petitions for review on *certiorari* under Rule 45.[39] A departure from the general rule may be warranted where the findings of fact of the CA are contrary to the findings and conclusions of the trial court, or when the same is unsupported by the evidence on record.[40] There is no reason to apply the exception in the instant case because the findings and conclusions of the CA are in full accord with those of the trial court. These findings are buttressed by the evidence on record. Moreover, the issues

[38] *Arwood Industries, Inc. v. D.M. Consunji, Inc.*, G.R No. 142277, December 11, 2002, 394 SCRA 11, 19.

[39] *Union Refinery Corporation v. Tolentino*, G.R. No. 155653, September 30, 2005, 471 SCRA 613, 618.

[40] *Changco v. Court of Appeals*, G.R. No. 128033, March 20, 2002, 379 SCRA 590, 594.

and errors alleged in this petition are substantially the very same questions of fact raised by petitioner in the appellate court.

On the issue of whether the ₱200,000.00 was really a loan, it is well to remember that a check may be evidence of indebtedness.[41] A check, the entries of which are in writing, could prove a loan transaction.[42] It is pure naiveté to insist that an entrepreneur who has several sources of income and has access to considerable bank credit, no longer has any reason to borrow any amount.

The petitioner's allegation that the ₱200,000.00 was advance on her share in the profits of Hagonoy Lumber is implausible. It is true that Hagonoy Lumber was originally owned by the parents of petitioner and respondent. However, on December 8, 1986, the heirs freely renounced and waived in favor of their sister Chua Sioc Huan all their hereditary shares and interest therein, as shown by the Deed of Partition which the petitioner herself signed. By virtue of this deed, Chua Sioc Huan became the sole owner and proprietor of Hagonoy Lumber. Thus, when the respondent delivered the check for ₱200,000.00 to the petitioner on June 7, 1988, Chua Sioc Huan was already the sole owner of Hagonoy Lumber. At that time, both petitioner and respondent no longer had any interest in the business enterprise; neither had a right to demand a share in the profits of the business. Respondent became the sole owner of Hagonoy Lumber only after Chua Sioc Huan sold it to him on August 1, 1990. So, when the respondent delivered to the petitioner the ₱200,000.00 check on June 7, 1988, it could not have been given as an advance on petitioner's share in the business, because at that moment in time both of them had no participation, interest or share in Hagonoy Lumber. Even assuming, *arguendo*, that the check was an advance on the petitioner's share in the profits of the business, it was highly unlikely that the respondent would

[41] *Pacheco v. Court of Appeals*, G.R. No. 126670, December 2, 1999, 319 SCRA 595, 603.

[42] *Tan v. Villapaz*, G.R. No. 160892, November 22, 2005, 475 SCRA 721, 730.

deliver a check drawn against his personal, and not against the business enterprise's account.

It is also worthy to note that both the Deed of Partition and the Deed of Sale were acknowledged before a Notary Public. The notarization of a private document converts it into a public document, and makes it admissible in court without further proof of its authenticity.[43] It is entitled to full faith and credit upon its face.[44] A notarized document carries evidentiary weight as to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity. Such a document must be given full force and effect absent a strong, complete and conclusive proof of its falsity or nullity on account of some flaws or defects recognized by law.[45] A public document executed and attested through the intervention of a notary public is, generally, evidence of the facts therein express in clear unequivocal manner.[46]

Petitioner, however, maintains that the RTC erred in admitting in evidence a mere copy of the Deed of Partition and the Deed of Sale in violation of the best evidence rule. In addition, petitioner insists that the Deed of Sale was not the result of *bona fide* negotiations between a true seller and buyer.

The "best evidence rule" as encapsulated in Rule 130, Section 3,[47] of the Revised Rules of Evidence applies only when

---

[43] *Tigno v. Aquino,* G.R. No. 129416, November 25, 2004, 444 SCRA 61, 75.

[44] *Mendezona v. Ozamis,* G.R. No. 143370, February 6, 2002, 376 SCRA 482, 495-496.

[45] *Herbon v. Palad,* G.R. No. 149572, July 20, 2006, 495 SCRA 544, 555-556

[46] *Valencia v. Locquiao,* G.R. No. 122134, October 3, 2004, 412 SCRA 600, 609.

[47] Sec. 3. *Original document must be produced; exceptions.* – When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

the content of such document is the subject of the inquiry. Where the issue is only as to whether such document was actually executed, or exists, or on the circumstances relevant to or surrounding its execution, the best evidence rule does not apply and testimonial evidence is admissible. Any other substitutionary evidence is likewise admissible without need to account for the original.[48] Moreover, production of the original may be dispensed with, in the trial court's discretion, whenever *the opponent does not bona fide dispute the contents of the document* and no other useful purpose will be served by requiring production.[49]

Accordingly, we find that the best evidence rule is not applicable to the instant case. Here, there was no dispute as to the terms of either deed; hence, the RTC correctly admitted in evidence mere copies of the two deeds. The petitioner never even denied their due execution and admitted that she signed the Deed of Partition.[50] As for the Deed of Sale, petitioner had, in effect, admitted its genuineness and due execution when she failed to specifically deny it in the manner required by the rules.[51] The petitioner merely claimed that said documents do not express the true agreement and intention of the parties since they were only provisional paper arrangements made upon the advice of counsel.[52] Apparently, the petitioner does not contest the contents

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

[48] *Citibank, N.A. v. Sabeniano*, G.R. No. 156132, October 12, 2006, 504 SCRA 378, 458.

[49] *Estrada v. Desierto*, G.R. No. 146710-15, April 3, 2001, 356 SCRA 108, 138, citing Wigmore on Evidence, Sec. 1191, p. 334.

[50] TSN, 25 September 1998, pp. 6-7; TSN, 25 September 1998, pp. 10-13.

[51] RULES OF COURT, Rule 8, Section 8.

[52] Records, Vol. I, pp.138-139.

of these deeds but alleges that there was a contemporaneous agreement that the transfer of Hagonoy Lumber to Chua Sioc Huan was only temporary.

An agreement or the contract between the parties is the formal expression of the parties' rights, duties and obligations. It is the best evidence of the intention of the parties.[53] The parties' intention is to be deciphered from the language used in the contract, not from the unilateral *post facto* assertions of one of the parties, or of third parties who are strangers to the contract.[54] Thus, when the terms of an agreement have been reduced to writing, it is deemed to contain all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.[55]

WHEREFORE, premises considered**,** the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CV No. 66790 dated May 23, 2003 and Resolution dated December 2, 2003 are *AFFIRMED*.

SO ORDERED.

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

---

[53] *Arwood Industries, Inc. v D.M. Consunji, Inc.*, G.R No. 142277, December 11, 2002, 394 SCRA 11, 16.

[54] *Herbon v. Palad*, G.R. No. 149572, July 20, 2006, 495 SCRA 544, 554-555.

[55] Rules of Court, Rule 130, Sec. 9.

THIRD DIVISION

[G.R. No. 161390. April 16, 2008]

RAUL H. SESBREÑO, *petitioner, vs.* **HON. COURT OF APPEALS, PROVINCE OF CEBU, GOV. EDUARDO R. GULLAS, THE PROVINCIAL TREASURER, THE PROVINCIAL AUDITOR, THE PROVINCIAL ENGINEER PATROCINIO BACAY (sued both in their official and personal capacities),** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; COURTS ARE MANDATED TO DECIDE OR RESOLVE CASES WITHIN THE PRESCRIBED PERIOD.— The court, under the 1987 Constitution, is x x x mandated to decide or resolve the case or matter submitted to it for determination within specified periods. Even when there is delay and no decision or resolution is made within the prescribed period, there is no automatic affirmance of the appealed decision.

2. LEGAL ETHICS; ATTORNEYS; ATTORNEY'S LIENS; EXPLAINED.— To insure payment of his professional fees and reimbursement of his lawful disbursements in keeping with his dignity as an officer of the court, the law creates in favor of a lawyer a lien, not only upon the funds, documents and papers of his client which have lawfully come into his possession until what is due him has been paid, but also a lien upon all judgments for the payment of money and executions issued pursuant to such judgments rendered in the case wherein his services have been retained by the client. Section 37, Rule 138 of the Rules of Court specifically provides: "Section 37. Attorney's liens. – An attorney shall have a lien upon the funds, documents and papers of his client, which have lawfully come into his possession and may retain the same until his lawful fees and disbursements have been paid, and may apply such funds to the satisfaction thereof. He shall also have a lien to the same extent upon all judgments for the payment of money, and executions issued in pursuance of such judgments, which he has secured in a litigation of his client, from and after the time when he shall have caused a statement of his claim of

such lien to be entered upon the records of the court rendering such judgment, or issuing such execution, and shall have caused written notice thereof to be delivered to his client and to the adverse party; and he shall have the same right and power over such judgments and executions as his client would have to enforce his lien and secure the payment of his just fees and disbursements."

3. **ID.; ID.; ID.; CHARGING LIEN; DEFINED. –** A charging lien is an equitable right to have the fees and costs due to the lawyer for services in a suit secured to him out of the judgment or recovery in that particular suit. It is based on the natural equity that the plaintiff should not be allowed to appropriate the whole of a judgment in his favor without paying thereout for the services of his attorney in obtaining such judgment.

4. **ID.; ID.; LAWYERING; ELUCIDATED. –** Lawyering is not a moneymaking venture and lawyers are not merchants. Law advocacy is not capital that yields profits. The returns it births are simple rewards for a job done or service rendered. It is a calling that, unlike mercantile pursuits which enjoy a greater deal of freedom from governmental interference, is impressed with a public interest, for which it is subject to state regulation.

APPEARANCES OF COUNSEL

Raul H. Sesbreño for himself.
Marino Martinquila for respondents.

D E C I S I O N

NACHURA, *J.*:

For review is the Decision[1] of the Court of Appeals (CA) dated July 23, 2003 and its Resolution[2] dated January 12, 2004 in CA-G.R. CV No. 43287. The assailed decision reversed the decision[3] of the Regional Trial Court (RTC), Branch 6, Cebu

[1] Penned by Associate Justice Eliezer R. De Los Santos, with Associate Justices Romeo A. Brawner and Jose C. Mendoza, concurring; *rollo*, pp. 45-59.

[2] *Rollo*, pp. 97-98.

[3] Penned by Judge Ramon AM. Torres; *rollo*, pp. 99-116.

City in Civil Case R-19022 insofar as the RTC held the Province of Cebu liable for damages to petitioner Raul H. Sesbreño. The assailed resolution denied petitioner's motion for reconsideration.

On January 26, 1970, Mrs. Rosario Sen and other *camineros*[4] hired the petitioner to prosecute Civil Cases Nos. R-10933[5] and R-11214,[6] evidenced by an *Agreement,*[7] the terms of which read as follows:

AGREEMENT

WE, the undersigned, hereby agree to pay Atty. Raul H. Sesbreño, thirty (30%) percent of whatever back salaries, damages, etc. that we may recover in the *mandamus* and other cases that we are filing or have filed against the Province of Cebu, the Provincial Governor, *etc*., whether or not the said cases will be amicably settled or decided by the courts by final judgment. We shall take care of all expenses in connection with the said cases.[8]

During the pendency of the aforesaid cases or on April 17, 1979, petitioner registered his charging/retaining lien based on the Agreement.[9]

The *camineros* obtained favorable judgment when the Court of First Instance (now RTC) of Cebu ordered that they be reinstated to their original positions with back salaries, together with all privileges and salary adjustments or increases.[10]

[4] They were permanent laborers holding positions in the national plantilla of floating personnel chargeable against the "JJ" funds with particular assignments at the First Engineering District of Cebu.

[5] Entitled "*Cesar Pañares, et al. v. Gov. Rene Espina, et al.*"

[6] Entitled *"Camia Hermosa, et al. v. Gov. Rene Espina, et al."*

[7] Records, p. 9.

[8] *Id*.

[9] *Id*. at 123.

[10] The dispositive portion of the decison reads:

WHEREFORE, judgment is hereby rendered ordering the alternative respondents Commissioner of Public Highways and the District Engineer of the First Engineering District of Cebu, Bureay of Public Highways, to reinstate the petiitoner to their original positions will back salaries, togerhter with all

Aggrieved, the Commissioner of Public Highways and the District Engineer filed *certiorari* cases before this Court where the petitioner willingly rendered further legal assistance and represented the *camineros*.

When respondent Eduardo R. Gullas (Gov. Gullas) assumed the position of governor of Cebu, he proposed the compromise settlement of all *mandamus* cases then pending against the province which included Civil Cases Nos. R-10933 and R-11214 handled by the petitioner.

On April 21, 1979, the *camineros,* represented by the petitioner, and the province of Cebu, through then Gov. Gullas, forged a *Compromise Agreement*,[11] with the following terms and conditions:

1. The respondent Province of Cebu represented in this act by Gov. Eduardo R. Gullas, duly authorized by proper resolution of the Sanguniang Panlalawigan, hereby agrees to immediately appropriate and pay full backwages and salaries as awarded by the trial court in its decision to all the private respondents-employees from and after July 1, 1968, the date of their termination, up to the date of the approval of the herein Compromise Agreement by the Honorable Supreme Court, except for those who are qualified for compulsory retirement whose back salaries and wages shall be limited up to the effective date of their retirement.

xxx xxx xxx

9. That the amounts payable to the employees concerned represented by Atty. Raul H. Sesbreño is subject to said lawyer's charging and retaining liens as registered in the trial court and in the Honorable Court of Appeals.

xxx xxx xxx

11. That upon request of the employees concerned, most of whom are in dire actual financial straits, the Province of Cebu is agreeable to paying an advance of ₱5,000.00 to each employee payable through

---

the privileges and salary adjustments or increases, from July 1, 1968 until reinstatement.

SO ORDERED. (Exh. "TT")

[11] Records, pp. 10-15.

their counsel, Atty. Raul H. Sesbreño, deductible from the total amount that each will receive from the Province of Cebu, effective upon confirmation by the Honorable Solicitor General, the Supreme Court and the Philippine National Bank where the JJ (now infrastructure funds) are now in deposit under trust.[12]

Apparently, the *camineros* waived their right to reinstatement embodied in the CFI decision and the province agreed that it immediately pay them their back salaries and other claims. This Court adopted said compromise agreement in our decision[13] dated December 18, 1979.[14]

In view of the finality of the above decision, the *camineros*, through their new counsel (who substituted for the petitioner), moved for its execution. The court then ordered the issuance of a partial writ of execution directing the payment of only 45% of the amount due them based on the computation of the provincial engineering office as audited by the authority concerned.[15] The court did not release the remaining 55%, thus holding in abeyance the payment of the lawyer's fees pending the determination of the final amount of such fees.[16] However, instead of complying with the court order directing partial payment, the province of Cebu directly paid the *camineros* the full amount of their adjudicated claims.[17]

Thus, petitioner filed the complaint for *Damages (Thru Breach of Contract) and Attorney's Fees* against the Province of Cebu, the provincial governor, treasurer, auditor, and engineer in their official and personal capacities, as well as against his former clients (the *camineros)*.[18]

---

[12] *Id*. at 11-14.

[13] No. L-36752-53, December 18, 1979, 94 SCRA 731.

[14] But the same was amended on October 13, 1981 due to mistakes in the reproduction of the compromise agreement.

[15] Records, p. 123.

[16] *Rollo*, p. 47.

[17] *Id*.

[18] Records, pp. 1-8.

Petitioner anchored his claim on the provision of the Civil Code, specifically Article 19[19] thereof. He alleged that by directly paying the *camineros* the amounts due them, the respondents induced the *camineros* to violate their written contract for attorney's fees.[20] He likewise claimed that they violated the compromise agreement approved by the Court by computing the *camineros*' money claims based on the provincial instead of the national wage rate which, consequently, yielded a lower amount.[21] Petitioner went on to say that although he was not a party to the above contracts, by virtue of the registration of his charging lien, he was a quasi-party and thus, had legal standing to institute the case below.[22]

On August 23, 1982, petitioner moved to dismiss the case against the *camineros* after he had entered into an agreement with them and settled their differences.[23] The case, however, proceeded against the respondents.

On October 18, 1992, the RTC rendered a decision in favor of the petitioner and against the respondent province of Cebu, the pertinent portion of which reads:

> Wherefore, for all the foregoing, judgment is rendered, ordering the defendant Province of Cebu to pay the plaintiff the following sums:
>
> (a) ₱669,336.51 in actual damages; with interest of 12% per annum from date of demand until fully paid;
>
> (b) ₱20,000.00 in moral damages;
>
> (c) ₱5,000.00 in litigation expenses; and
>
> (d) To pay the costs.[24]

---

[19] Art. 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.

[20] *Rollo*, pp. 47-48.

[21] *Id*. at 48-49.

[22] *Id*. at 49.

[23] Records, pp. 423-424.

[24] *Rollo*, p. 116.

While maintaining the validity of the compromise agreement, the trial court found that the petitioner's money claims should have been computed based on the national and not the provincial rate of wages paid the *camineros*. Accordingly, the court declared that the petitioner was prejudiced to the extent of the difference between these two rates. The court further upheld the petitioner's status as a quasi-party considering that he had a registered charging lien. However, it did not give credence to the petitioner's claim that the respondent public officials induced the *camineros* to violate their contract, and thus, absolved them from liability.

On appeal, the CA reversed the trial court's decision and dismissed the complaint.[25] The appellate court concluded that petitioner failed to sufficiently establish his allegation that the respondents induced the *camineros* to violate the agreement for attorney's fees and the compromise agreement, and that he suffered damage due to respondents' act of directly paying the *camineros* the amounts due them.[26]

Hence, the instant petition. In his Memorandum, petitioner raises the following issues:

1. RESPONDENT COURT OF APPEALS ERRED IN NOT AFFIRMING THE TRIAL COURT DECISION DUE TO LONG DELAY IN DECIDING CA-G.R. CV NO. 43287.

2. RESPONDENT COURT OF APPEALS ERRED IN NOT DISMISSING THE APPEAL IN CA-G.R. CV NO. 43287 FOR FAILURE TO PROSECUTE AND DUE TO THE FATALLY-DEFECTIVE APPELLANT'S BRIEF.

3. RESPONDENT COURT OF APPEALS ERRED IN REVERSING THE TRIAL COURT DECISION BY DECLARING THAT THE TRIAL COURT SHOULD NOT FIX THE ATTORNEY'S FEES OF PETITIONER DESPITE THE FACT THAT THE TRIAL COURT DECISION IS CLEAR THAT WHAT WAS ADJUDGED WAS THE DECLARATION THAT THERE WAS BREACH OF THE COMPROMISE CONTRACT AND DAMAGES ARE TO BE AWARDED THE PETITIONER.

---

[25] *Id*. at 58.

[26] *Id*. at 54-58.

4. RESPONDENT COURT OF APPEALS ERRED IN NOT DECLARING RESPONDENTS GULLAS, RESENTES, SANCHEZ AND BACAY AS PERSONALLY LIABLE AND THAT THEIR PERSONAL LIABILITY IS SOLIDARY WITH THAT OF RESPONDENT PROVINCE OF CEBU.

5. RESPONDENT COURT OF APPEALS ERRED IN NOT DECLARING THAT PRIVATE RESPONDENTS ARE SOLIDARILY LIABLE TO PAY TO PETITIONER ACTUAL OR COMPENSATORY, MORAL, EXEMPLARY, NOMINAL, TEMPERATE DAMAGES, LITIGATION EXPENSES AND LOSS OF EARNINGS AND INTERESTS.[27]

The petition is bereft of merit.

Petitioner insists that the CA should have affirmed the trial court's decision in view of the delay in resolving the case, and should have denied the appeal because of the formal defects in the appellant's brief.[28] Petitioner cites the cases of *Malacora v. Court of Appeals*[29] and *Flora v. Pajarillaga*[30] where this Court held that an appealed case which had been pending beyond the time fixed by the Constitution should be "deemed affirmed."

We cannot apply the cited cases to the one at bench because they were decided on the basis of Section 11 (2), Article X of the 1973 Constitution, which reads:

SEC. 11. x x x

(2) With respect to the Supreme Court and other collegiate appellate courts, when the applicable maximum period shall have lapsed without the rendition of the corresponding decision or resolution because the necessary vote cannot be had, the judgment, order, or resolution appealed from shall be deemed affirmed x x x.

That provision is not found in the present Constitution. The court, under the 1987 Constitution, is now mandated to decide or resolve the case or matter submitted to it for determination

[27] *Id*. at 186.

[28] *Id*. at 187-189.

[29] No. L-51042, September 30, 1982, 117 SCRA 435.

[30] G.R. No. L-24806, January 22, 1980, 95 SCRA 100.

within specified periods.[31] Even when there is delay and no decision or resolution is made within the prescribed period, there is no automatic affirmance of the appealed decision. The appellate court, therefore, cannot be faulted in not affirming the RTC's decision. While we do not tolerate delay in the disposition of cases, we cannot dismiss appealed cases solely because they had been pending in court for a long period, especially when the appeal is highly meritorious as in the present case.

Likewise, we cannot agree with the petitioner that the appealed case be dismissed on account of the formal defects in respondent's appellant's brief filed before the CA. The requirements laid down by the Rules of Court on the contents of the brief are intended to aid the appellate court in arriving at a just and proper conclusion of the case.[32] However, despite its deficiencies, respondent's appellant's brief is sufficient in form and substance as to apprise the appellate court of the essential facts and nature of the case, as well as the issues raised and the laws necessary for the disposition of the same.[33] Thus, we sustain the CA's decision to rule on the merits of the appeal instead of dismissing it on mere technicality.

Now, on the main issue of whether or not respondents are liable for damages for breach of contract.

Petitioner clarifies that he instituted the instant case for breach of the compromise agreement and not for violation of the agreement for attorney's fees as mistakenly concluded by the appellate court. He also cites *Calalang v. De Borja*[34] in support of his right to collect the amounts due him against the judgment debtor (the respondents).[35] Lastly, petitioner argues that the respondent public officials acted beyond the scope of their authority when they directly paid the *camineros* their money

---

[31] CONSTITUTION, Art. VIII, Sec. 15(4).

[32] *Phil. Coconut Authority v. Corona International, Inc.*, 395 Phil 742, 750 (2000).

[33] *Phil. Coconut Authority v. Corona International, Inc., supra*.

[34] 160 Phil. 1040, 1045 (1975).

[35] *Rollo*, pp. 199-200.

claims and failed to withhold the petitioner's fees. There is, according to the petitioner, a showing of bad faith on the part of the province and the public officials concerned.

After a careful scrutiny of the record of the case, we find no compelling reason to disturb the appellate court's conclusion. We would like to stress at this point that the compromise agreement had been validly entered into by the respondents and the *camineros* and the same became the basis of the judgment rendered by this Court. Its validity, therefore, had been laid to rest as early as 1979 when the Court promulgated its decision in *Commissioner of Public Highways v. Burgos*.[36] In fact, the judgment had already been fully satisfied by the respondents. It was precisely this full satisfaction of judgment that gave rise to the instant controversy, based primarily on the petitioner's claim that he was prejudiced because of the following: 1) the wrong computation in the *camineros'* money claims by using the provincial and not the national wage rate; and 2) the mode of satisfying the judgment through direct payment which impaired his registered charging lien.

Petitioner's claim for attorney's fees was evidenced by an *agreement for attorney's fees* voluntarily executed by the *camineros* where the latter agreed to pay the former "thirty (30%) percent of ***whatever*** back salaries, damages, *etc*. that they might recover in the *mandamus* and other cases that they were filing or have filed." Clearly, no fixed amount was specifically provided for in their contract nor was a specified rate agreed upon on how the money claims were to be computed. The use of the word ***"whatever"*** shows that the basis for the computation would be the amount that the court would award in favor of the *camineros*. Considering that the parties agreed to a compromise, the payment would have to be based on the amount agreed upon by them in the compromise agreement approved by the court. And since the compromise agreement had assumed finality, this Court can no longer delve into its substance, especially at this time when the judgment had already been fully satisfied. We cannot allow the petitioner to question anew the compromise

[36] *Supra*, note 13.

agreement on the pretext that he suffered damage. As long as he was given the agreed percentage of the amount received by the *camineros*, then, the agreement is deemed complied with, and petitioner cannot claim to have suffered damage.

Petitioner likewise claims that he was prejudiced by respondents' act in directly paying the *camineros* the amounts due them, as it rendered inutile the charging lien duly registered for his protection.

To insure payment of his professional fees and reimbursement of his lawful disbursements in keeping with his dignity as an officer of the court, the law creates in favor of a lawyer a lien, not only upon the funds, documents and papers of his client which have lawfully come into his possession until what is due him has been paid, but also a lien upon all judgments for the payment of money and executions issued pursuant to such judgments rendered in the case wherein his services have been retained by the client.[37] Section 37, Rule 138 of the Rules of Court specifically provides:

> Section 37. Attorney's liens. – An attorney shall have a lien upon the funds, documents and papers of his client, which have lawfully come into his possession and may retain the same until his lawful fees and disbursements have been paid, and may apply such funds to the satisfaction thereof. He shall also have a lien to the same extent upon all judgments for the payment of money, and executions issued in pursuance of such judgments, which he has secured in a litigation of his client, from and after the time when he shall have caused a statement of his claim of such lien to be entered upon the records of the court rendering such judgment, or issuing such execution, and shall have caused written notice thereof to be delivered to his client and to the adverse party; and he shall have the same right and power over such judgments and executions as his client would have to enforce his lien and secure the payment of his just fees and disbursements.

A charging lien is an equitable right to have the fees and costs due to the lawyer for services in a suit secured to him out of the judgment or recovery in that particular suit. It is based

---

[37] *Legal Ethics* by Ruben E. Agpalo, 1989 Edition, p. 359.

[38] *Bacolod Murcia Milling Co., Inc. v. Henares, etc.*, 107 Phil 560, 567 (1960).

on the natural equity that the plaintiff should not be allowed to appropriate the whole of a judgment in his favor without paying thereout for the services of his attorney in obtaining such judgment.[38]

In this case, the existence of petitioner's charging lien is undisputed since it was properly registered in the records. The parties even acknowledged its existence in their compromise agreement. However, a problem arose when the respondents directly paid in full the *camineros*' money claims and did not withhold that portion which corresponds to petitioner's fees.

When the judgment debt was fully satisfied, petitioner could have enforced his lien either against his clients (the *camineros* herein) or against the judgment debtor (the respondents herein). The clients, upon receiving satisfaction of their claims without paying their lawyer, should have held the proceeds in trust for him to the extent of the amount of his recorded lien, because after the charging lien had attached, the attorney is, to the extent of said lien, regarded as an equitable assignee of the judgment or funds produced by his efforts.[39] The judgment debtors may likewise be held responsible for their failure to withhold from the *camineros* the amount of attorney's fees due the petitioner.

In the instant case, the petitioner rightly commenced an action against both his clients and the judgment debtors. However, at the instance of the petitioner himself, the complaint against his clients was withdrawn on the ground that he had settled his differences with them. He maintained the case against respondents because, according to him, the computation of the *camineros*' money claims should have been based on the national and not the provincial wage rate. Thus, petitioner insists that the respondents should be made liable for the difference.

While the respondents may have impaired the petitioner's charging lien by satisfying the judgment without regard for the lawyer's right to attorney's fees, we cannot apply the doctrine enunciated in *Calalang v. Judge de Borja*,[40] because of the

---

[39] *Bacolod Murcia Milling Co., Inc. v. Henares, etc.*, *supra* at 568.

[40] *Supra*.

peculiar circumstances obtaining in this case. In *Calalang*, this Court stressed that the judgment debtor may be held responsible for his failure to withhold the amount of attorney's fees in accordance with the duly registered charging lien.[41] However, there is a disparity between the two cases, because, in this case, the petitioner had withdrawn his complaint against the *camineros* with whom he had a contract for legal services. The withdrawal was premised on a settlement, which indicates that his former clients already paid their obligations. This is bolstered by the certification of the clerk of court that his former clients had deposited their passbooks to ensure payment of the agreed fees. Having been paid by his clients in accordance with the agreement, his claim against the respondents, therefore, has no leg to stand on.

Neither can the petitioner rely on *Bacolod Murcia Milling Co., Inc. v. Henares, etc.*[42] where this court declared that satisfaction of the judgment, in general, does not by itself bar or extinguish the attorney's liens, as the court may even vacate such satisfaction and enforce judgment for the amount of the lien.[43] However, the satisfaction of the judgment extinguishes the lien if there has been a waiver, as shown either by the attorney's conduct or by his passive omission.[44] In the instant case, petitioner's act in withdrawing the case against the *camineros* and agreeing to settle their dispute may be considered a waiver of his right to the lien. No rule will allow a lawyer to collect from his client and then collect anew from the judgment debtor except, perhaps, on a claim for a bigger amount which, as earlier discussed, is baseless.

Lawyering is not a moneymaking venture and lawyers are not merchants. Law advocacy is not capital that yields profits. The returns it births are simple rewards for a job done or service rendered. It is a calling that, unlike mercantile pursuits which enjoy a greater deal of freedom from governmental interference,

[41] *Supra* at 1045.

[42] *Supra*.

[43] *Supra*.

[44] *Bacolod Murcia Milling Co., Inc. v. Henares, etc.*, *supra*.

is impressed with a public interest, for which it is subject to state regulation.[45]

Considering that petitioner's claim of higher attorney's fees is baseless and considering further that he had settled his case as against his former clients, we cannot sustain his right to damages for breach of contract against the respondents, even on the basis of Articles 1191[46] or 1311.[47] Although we sustain his status to institute the instant case, we cannot render a favorable judgment because there was no breach of contract. Even if there was such a breach, he had waived his right to claim against the respondents by accepting payment and/or absolving from liability those who were primarily liable to him. Thus, no liability can be imputed to the province of Cebu or to the respondent public officials, either in their personal or official capacities.

---

[45] *Bach v. Ongkiko Kalaw Manhit & Acorda Law Offices*, G.R. No. 160334, September 11, 2006, 501 SCRA 419, 433; *Metropolitan Bank & Trust Company v. Court of Appeals*, G.R. Nos. 86100-03, January 23, 1990, 181 SCRA 367, 377.

[46] The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

[47] Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

Lastly, we cannot ascribe bad faith to the respondents who directly paid the *camineros* the amounts due them. The records do not show that when they did so, they induced the *camineros* to violate their contract with the petitioner; nor do the records show that they paid their obligation in order to cause prejudice to the petitioner. The attendant circumstances, in fact, show that the *camineros* acknowledged their liability to the petitioner and they willingly fulfilled their obligation. It would be contrary to human nature for the petitioner to have acceded to the withdrawal of the case against them, without receiving the agreed attorney's fees.

WHEREFORE, premises considered, the petition is hereby *DENIED*. The Decision of the Court of Appeals dated July 23, 2003 and its Resolution dated January 12, 2004 in CA-G.R. CV No. 43287 are *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 163684. April 16, 2008]

FAUSTINA CAMITAN and DAMASO LOPEZ, *petitioners, vs.* **FIDELITY INVESTMENT CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSIONS; NATURE.— A judicial admission is an admission, verbal or written, made by a party in the course of the proceedings in

the same case, which dispenses with the need for proof with respect to the matter or fact admitted. It may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made.

2. LEGAL ETHICS; ATTORNEYS; THE MISTAKE OR NEGLIGENCE OF THE CLIENT'S COUNSEL WHICH MAY RESULT IN THE RENDITION OF AN UNFAVORABLE JUDGMENT GENERALLY BINDS THE CLIENT; EXCEPTION.— Every counsel has the implied authority to do all acts which are necessary or incidental to the prosecution and management of the suit in behalf of his client. Any act performed by counsel within the scope of his general and implied authority is, in the eyes of the law, regarded as the act of the client himself. Consequently, the mistake or negligence of the client's counsel, which may result in the rendition of an unfavorable judgment, generally binds the client. To rule otherwise would encourage every defeated party, in order to salvage his case, to claim neglect or mistake on the part of his counsel. Then, there would be no end to litigation, as every shortcoming of counsel could be the subject of challenge by his client through another counsel who, if he is also found wanting, would likewise be disowned by the same client through another counsel, and so on, *ad infinitum*. This rule admits of exceptions, *i.e.*, where the counsel's mistake is so great and serious that the client is deprived of his day in court or of his property without due process of law. In these cases, the client is not bound by his counsel's mistakes and the case may even be reopened in order to give the client another chance to present his case.

3. CIVIL LAW; LAND REGISTRATION; IF AN OWNER'S DUPLICATE COPY OF A CERTIFICATE OF TITLE HAS NOT BEEN LOST BUT IS IN FACT IN THE POSSESSION OF ANOTHER PERSON, THE RECONSTITUTED TITLE IS VOID.— [W]e have consistently ruled that if an owner's duplicate copy of a certificate of title has not been lost but is in fact in the possession of another person, the reconstituted title is void, as the court rendering the decision never acquires jurisdiction. Consequently, the decision may be attacked at any time.

4. REMEDIAL LAW; ACTIONS; PETITION FOR THE ISSUANCE OF A NEW OWNER'S DUPLICATE COPY OF

A CERTIFICATE OF TITLE IN LIEU OF A LOST ONE; THE QUESTION OF ACTUAL OWNERSHIP OF THE LAND COVERED BY THE LOST OWNER'S DUPLICATE COPY OF THE CERTIFICATE OF TITLE CANNOT BE PASSED THEREIN.— In a petition for the issuance of a new owner's duplicate copy of a certificate of title in lieu of one allegedly lost, on which this case is rooted, the RTC, acting only as a land registration court with limited jurisdiction, has no jurisdiction to pass upon the question of actual ownership of the land covered by the lost owner's duplicate copy of the certificate of title. Consequently, any question involving the issue of ownership must be threshed out in a separate suit where the trial court will conduct a full-blown hearing with the parties presenting their respective evidence to prove ownership over the subject realty.

5. **CIVIL LAW; LAND REGISTRATION; CERTIFICATE OF TITLE; DOES NOT VEST TITLE, AS IT IS MERELY AN EVIDENCE OF TITLE OVER THE PARTICULAR PROPERTY DESCRIBED THEREIN.–** [P]ossession of a lost owner's duplicate copy of a certificate of title is not necessarily equivalent to ownership of the land covered by it. Registration of real property under the Torrens System does not create or vest title because it is not a mode of acquiring ownership. The certificate of title, by itself, does not vest ownership; it is merely an evidence of title over the particular property described therein.

APPEARANCES OF COUNSEL

Restituto M. Mendoza for petitioners.
Poblador Bautista and Reyes for respondent.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court of the Decision[1] dated November 28, 2003

[1] Penned by Associate Justice Ruben T. Reyes (now a member of this Court), with Associate Justices Edgardo P. Cruz and Noel G. Tijam, concurring; *rollo,* pp. 9-17.

and of the Resolution[2] dated May 12, 2004, both of the Court of Appeals (CA) in CA-G.R. SP No. 37291 entitled *Fidelity Investment Corporation v. Alipio Camitan, Faustina Camitan, Damaso Lopez, the Regional Trial Court of Calamba, Laguna (Branch 37) and the Register of Deeds of Calamba, Laguna.*

The case arose from the Petition[3] for the issuance of another duplicate copy of Certificate of Title No. T-(12110) T-4342 (TCT) filed in 1993 by herein petitioners, together with Alipio Camitan, before the Regional Trial Court (RTC) of Calamba, Laguna. The case was raffled to Branch 37 of the said court and was docketed as SLRC Case No. 1198-93-C.

The petition contained, among others, the allegations that: (1) the petitioners are the true and lawful registered co-owners of a parcel of land located at Maunong, Calamba, Laguna, consisting of 30,000 square meters covered by the TCT; (2) the lot is declared for tax purposes under Tax Declaration No. 14187; (3) petitioners paid the realty taxes on the said property until 1993; (4) the owner's duplicate copy was lost and could not be found despite diligent efforts to locate it; (5) per Certification[4] dated June 21, 1993 of the Register of Deeds of Calamba, Laguna, there were no legal claims annotated at the back of the TCT filed with that office; (6) petitioners filed with the Register of Deeds an affidavit of loss of the said owner's duplicate copy; (7) they secured a certified true copy of the original TCT from the Register of Deeds with the affidavit of loss annotated at the back thereof; (8) at the last page of the original certificate of title, a mortgage was annotated, which upon verification was found to have already been paid; (9) the Register of Deeds of Calamba could not cancel the mortgage from the original copy of the title until presentation of the owner's duplicate copy to the bank; and (10) petitioners were in possession of the subject property.

---

[2] *Id*. at 19-20.

[3] *Rollo,* pp. 53-55.

[4] *Id*. at 143.

After due proceedings, the RTC, in its Order[5] dated April 8, 1994, granted the petition, directed the Register of Deeds of Calamba, Laguna to issue a second owner's duplicate copy of the TCT, and declared void the first owner's duplicate copy thereof.

Later, on May 25, 1995, herein respondent Fidelity Investment Corporation (Fidelity) filed a Petition[6] for annulment of judgment and cancellation of title before the CA. According to Fidelity, on December 16, 1967, it purchased the property covered by the subject certificate of title from the registered owners thereof pursuant to a Deed of Absolute Sale[7] of the same date. It said that upon execution of the Deed of Absolute Sale and the payment in full of the purchase price, the vendors delivered to Fidelity their owner's duplicate copy of the TCT, which has been in its possession since. It also alleged that it had been in actual physical possession and continuous occupation of the subject property and that it had been paying the real estate taxes due thereon.

It further said that, sometime in March 1995, upon verification with the Register of Deeds of Calamba, Laguna, it learned for the first time of the issuance of a second owner's duplicate copy as recorded under Entry No. 357701 dated May 26, 1994 and annotated on the TCT. Thus, it caused the sale of the property in its favor to be annotated on the TCT. The notice of the sale was annotated on March 28, 1995 as Entry No. 384954. Fidelity then filed, on April 26, 1995, a Notice of Adverse Claim with the concerned Register of Deeds, which was annotated on the TCT as Entry No. 387483.

In fine, Fidelity argued that the Order dated April 18, 1994 is null and void, the RTC having no jurisdiction to issue the same as the owner's duplicate copy of the TCT was in its possession all along and the respondents therein had no standing to file the petition on account of the Deed of Absolute Sale they executed in its favor. It claimed that the petitioners perjured

---

[5] *Id*. at 56-58.

[6] *Id*. at 59-70.

[7] *Id*. at 73-75.

themselves before the RTC when they stated that the duplicate copy of the TCT was lost and that they gave notice to all who had interest in the property, because they failed to notify Fidelity despite knowledge of the latter's possession of the property.

In their Comment,[8] private respondents [herein petitioners] Faustina Camitan, Damaso Lopez, and the surviving heirs of deceased Alipio Camitan, denied having committed falsehoods in their petition before the trial court, which they claimed had jurisdiction over the case. They submitted that the long, unexplained, and questionable silence of Fidelity on its alleged possession of the owner's duplicate copy of the TCT and the Deed of Absolute Sale over the property and the non-registration and titling thereof in its name for about 27 years since the purported sale, was tainted with malice and bad faith, thus, subjecting it to estoppel and laches.

By its Resolution dated May 27, 1997, the CA gave due course to the petition for annulment of judgment, and a preliminary conference was set, directing Fidelity to bring the owner's duplicate copy of the TCT. At the preliminary conference, Fidelity's counsel presented what was claimed to be the owner's duplicate copy of the TCT. Counsel for private respondents examined the certificate of title and admitted that it is the genuine owner's copy thereof. Thereafter, counsel for Fidelity manifested that they were no longer presenting other evidence. On the other hand, counsel for private respondents prayed that an additional issue, the question of the validity of the deed of sale in favor of Fidelity, be likewise resolved. Fidelity's counsel objected on the ground of irrelevancy. However, in order to expedite the proceedings, he agreed to have private respondents amplify their position in their memorandum.

In their Memorandum, private respondents retracted their counsel's admission on the genuineness of the owner's duplicate copy of the TCT presented by Fidelity, citing honest mistake and negligence owing to his excitement and nervousness in appearing before the CA. They pointed to some allegedly irreconcilable discrepancies between the copy annexed to the

[8] *Id*. at 76-88.

petition and the exhibit presented by Fidelity during the preliminary conference. They also reiterated the issue on the validity of the purported deed of sale of the property in favor of Fidelity.

In its Comment to the Memorandum, Fidelity countered that there were no discrepancies between the owner's duplicate copy it presented and the original copy on file with the Registry of Deeds of Calamba, Laguna. It argued that private respondents are bound by the judicial admission made by their counsel during the preliminary conference. It, likewise, objected to the inclusion of the issue on the validity of the deed of sale over the property.

In the Decision dated November 28, 2003, the CA ruled in favor of Fidelity. It declared that the RTC was without jurisdiction to issue a second owner's duplicate copy of the title in light of the existence of the genuine owner's duplicate copy in the possession of petitioner, as admitted by private respondents through counsel. According to the CA, a judicial admission is conclusive upon the party making it and cannot be contradicted unless previously shown to have been made through palpable mistake or that no such admission was made. It said that honest mistake and negligence, as raised by private respondents in retracting their counsel's admission, are not sufficient grounds to invalidate the admission.

Hence, this petition, raising the sole issue of –

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT DID NOT CONSIDER THAT THE JUDICIAL ADMISSION OF THE COUNSEL OF THE PETITIONERS DURING THE HEARING IN C.A.-G.R. SP. NO. 37291 WAS A PALPABLE MISTAKE.

Herein petitioners argue that despite the existence of a judicial admission, there is still some leeway for the court to consider other evidence presented. They point out that, even as early as in their Memorandum before the CA, they had already retracted their counsel's admission on the genuineness of the owner's duplicate copy of the TCT presented by Fidelity, and claim that their counsel was honestly mistaken and negligent in his admission owing to his excitement and nervousness in appearing before the CA. Petitioners likewise cite, in support of their position,

the circumstances they alleged in their petition before the RTC which convinced the latter to issue them a new owner's duplicate copy of the TCT. Further, petitioners raise in issue the discrepancies between the certificate of title on file with the Register of Deeds of Calamba, Laguna and that submitted by Fidelity during the preliminary conference before the CA.

In its Comment,[9] Fidelity reiterate the arguments it presented before the CA.

We find for the respondent.

At the outset, we emphasize that the core issue in this case is the validity of the issuance by the RTC of a new owner's duplicate copy of the TCT in favor of petitioners. The applicable law is Section 109 of Presidential Decree (P.D.) No. 1529 (Property Registration Decree), which states:

> SEC. 109. *Notice and replacement of lost duplicate certificate.*– In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.
>
> Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree.

Petitioners were able to convince the RTC that their owner's duplicate copy had indeed been lost. They appeared to have complied with the requirements of the law. This led the RTC to grant their petition.

---

[9] *Id*. at 155-170.

Upon discovery of the issuance of a new owner's duplicate copy of the TCT, Fidelity went to the CA seeking to annul the judgment of the RTC. Unfortunately for petitioners, their counsel admitted the genuineness of the owner's duplicate copy of the TCT presented by Fidelity during the preliminary conference at the CA. The following exchange is revealing:

J. MARTIN:

> **Counsel for the private respondent, will you go over the owner's copy and manifest to the court whether that is a genuine owner's copy?**

ATTY. MENDOZA:

> **Yes, Your Honor.**

J. MARTIN:

> Alright. **Make it of record that after examining the owner's copy of TCT NO. (T-12110) T-4342, counsel for the private respondent admitted that the same appears to be a genuine owner's copy of the transfer certificate of title.** Do you have a certified true copy of this or any machine copy that you can compare?

ATTY. QUINTOS:

> Yes, Your Honor.

J. REYES:

> Including all the entries at the back page.

ATTY. QUINTOS:

> Yes, Your Honor.

J. MARTIN:

> Does it include all the list of the encumbrances?

ATTY. QUINTOS:

> Yes, Your Honor.

ATTY. MENDOZA:

> We do not admit, Your Honor this being only a xerox copy and not certified . . .

J. MARTIN:

> It is only for purposes of substitution. **Will you compare that with the other copy which you already admitted to be a genuine owner's copy.**

ATTY. MENDOZA:

> **Yes, Your Honor.**

J. MARTIN:

> Alright. Counsel, are you marking that?

ATTY. QUINTOS:

> Your Honor, we request that this copy of the transfer certificate of title No. T-12110, T-4342 be marked as Exhibit A to A-3 for the petitioner?

J. MARTIN:

> Preliminary conference.
>
> Alright, **after examining the machine copy consisting of three pages and comparing the same with the admittedly genuine owner's copy of the transfer certificate of title, counsel prayed for the substitution of the machine copy – after marking them as Exhibits A-A-3 inclusive.** We will return the owner's copy to you so that you can submit this already in lieu thereof.
>
> This is a preliminary conference. Unless you have other incidents to thresh out, I think that we can terminate the conference this morning. Counsel for the private respondents?[10]

The foregoing transcript of the preliminary conference indubitably shows that counsel for petitioners made a judicial admission and failed to refute that admission during the said proceedings despite the opportunity to do so. A judicial admission is an admission, verbal or written, made by a party in the course of the proceedings in the same case, which dispenses with the need for proof with respect to the matter or fact admitted. It

[10] *Id*. at 182-187. (Emphasis supplied)

may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made.[11]

Petitioners, in their Memorandum before the CA, attempted to retract their counsel's judicial admission on the authenticity of the owner's duplicate copy of TCT in the possession of Fidelity. Petitioners explicate that the wrong admission was an honest mistake and negligence attributable to the counsel's nervousness and excitement in appearing for the first time before the CA. However, as correctly pointed out by the CA, such an admission may only be refuted upon a proper showing of palpable mistake or that no such admission was made. Thus, the claim of "honest mistake and negligence" on the part of the counsel due to his excitement and nervousness in appearing before the CA did not suffice.

Petitioners now claim that the "honest mistake and negligence" of their counsel amount to palpable mistake. They also enumerate observed discrepancies between the original TCT on file with the Register of Deeds of Calamba, Laguna and the owner's duplicate copy presented by Fidelity, to wit:

1. On the above left margin of the xerox copy of the ORIGINAL COPY of TCT No. (T-12110) T-4342 on file with the Register of Deeds, Calamba, Laguna in question, (Annex A, Respondent's Petition in question before the Court of Appeals) Annex C, *supra*, the PRINTED WORDS were:

"(JUDICIAL FORM NO. 109)
(Revised September, 1954.)

However, in the belated submission of the alleged xerox copy of the alleged duplicate copy of the title in question by the respondent to the Court of Appeals (Exh. A; Annex "H", *supra*,) the following PRINTED WORDS appeared:

"(JUDICIAL FORM NO. 109-D)
(Revised September, 1954.)" (Emphasis supplied)

xxx xxx xxx

[11] RULES OF COURT, Rule 129, Sec. 4.

[2.] The Serial Number of the Xerox copy of the original copy of the title in question on file with the Register of Deeds of Calamba City was written in handwriting as "158640".

However, the Serial Number of the purported duplicate copy of the original title in question of the respondent was PRINTED in letters and in figures: "No. 158640".

3. The typewritten words "PROVINCE OF LAGUNA" on the heading of the xerox copy of the original copy of the said title on file with the said Register of Deeds were written in big type of letters.

However, in Exh. "A", Annex H, *supra*, of the respondent, it was typewritten with small type of letters.

4. In the FIGURES of the xerox copy of the original copy of the said title: NO. (T-12110) T-4342 in question, they were written in a big type of letters. The same is true in the letters "T" and DASH after the letter "T". The figures "4342" were printed in big letters.

However, the printed and handwritten figures and words in Exh. A, Annex C, *supra*, were small. The figures 4342 were in handwriting.

5. In the xerox copy of the original copy of title of the property in question covered by TCT No. (T-12110) T-4342, which cancelled TCT No. T-10700, the type of letter "T", figures, 10700 and dash thereof were in big letters.

However, the purported duplicate copy of the original copy of the title in question submitted to the Court of Appeals by the respondent, the type of the letter, dash and figures thereof were in small letters.

6. The type of the printed words, dashes, and figures in the body of the Xerox copy of the original title in question, it was typewritten with big letters and figures.

The purported duplicate copy of the original title of the property in question submitted to the Court of Appeals by the respondent, the letters, dashes and figures there of were typewritten in small letters.

7. The letters, dashes, and figures of the xerox copy of the original title in question were typewritten in a manual typewriter with big letters.

In Exh. "A", Annex H, *supra*, the purported duplicate copy of the original title in question submitted to the Court of Appeals by the respondent, they were typewritten in a manual typewriter with small letters and figures.

8. The signatures of the Registrar of Deeds in the xerox of the original copy of the title in question; had loop in small letter "d" and the rest had no loops.

In Exh. A, Annex H, *supra*, of the purported duplicate copy of the title in question submitted by the respondent to the Court of Appeals, there was no loop, except there were two (2) open vertical lines below thereof after four letters.

9. The xerox copy of the original copy of the title in question after TCT No. T-10700 was cancelled, it was entered in the Register of Deeds of Sta. Cruz, Laguna since September 24, 1957 at 9:10 a.m.

10. In view thereof, it is but NATURAL that the judicial forms and descriptions of letters and figures of the original copy of title in question and file with the Register of Deeds its duplicate copy since September 24, 1954, were the SAME and already OLD.

11. However, in Exh. "A", Annex H, *supra*, the purported duplicate copy of the title in question submitted by the respondent to the Court of Appeals, the judicial form thereof was already small and it clearly appeared that it might have been NEWLY ISSUED NEW COPY OF TITLE. It might be the revised new form in 1988 that is presently used in the Register of Deeds.[12]

Upon examination of the said exhibits on record, it appears that the alleged discrepancies are more imagined than real. Had these purported discrepancies been that evident during the preliminary conference, it would have been easy for petitioners' counsel to object to the authenticity of the owner's duplicate copy of the TCT presented by Fidelity. As shown in the transcript of the proceedings, there was ample opportunity for petitioners' counsel to examine the document, retract his admission, and point out the alleged discrepancies. But he chose not to contest the document. Thus, it cannot be said that the admission of the petitioners' counsel was made through palpable mistake.

[12] *Rollo*, pp. 42-46. (Citations omitted)

Every counsel has the implied authority to do all acts which are necessary or incidental to the prosecution and management of the suit in behalf of his client. Any act performed by counsel within the scope of his general and implied authority is, in the eyes of the law, regarded as the act of the client himself. Consequently, the mistake or negligence of the client's counsel, which may result in the rendition of an unfavorable judgment, generally binds the client. To rule otherwise would encourage every defeated party, in order to salvage his case, to claim neglect or mistake on the part of his counsel. Then, there would be no end to litigation, as every shortcoming of counsel could be the subject of challenge by his client through another counsel who, if he is also found wanting, would likewise be disowned by the same client through another counsel, and so on, *ad infinitum*.

This rule admits of exceptions, *i.e.*, where the counsel's mistake is so great and serious that the client is deprived of his day in court or of his property without due process of law. In these cases, the client is not bound by his counsel's mistakes and the case may even be reopened in order to give the client another chance to present his case.[13] In the case at bar, however, these exceptional circumstances do not obtain.

With proof that the owner's duplicate copy of the TCT was in the possession of Fidelity, the RTC Decision dated April 8, 1994 was properly annulled. In a catena of cases, we have consistently ruled that if an owner's duplicate copy of a certificate of title has not been lost but is in fact in the possession of another person, the reconstituted title is void, as the court rendering the decision never acquires jurisdiction. Consequently, the decision may be attacked at any time.[14]

---

[13] *Juani v. Alarcon,* G.R. No. 166849, September 5, 2006, 501 SCRA 135, 153-154.

[14] *Feliciano v. Zaldivar*, G.R. No. 162593, September 26, 2006, 503 SCRA 182, 192; *Macabalo-Bravo v. Macabalo,* G.R. No. 144099, September 26, 2005, 471 SCRA 60, 72; *Heirs of Juan and Ines Panganiban v. Dayrit*, G.R. No. 151235, July 28, 2005, 464 SCRA 370, 378; *Rexlon Realty Group, Inc. v. Court of Appeals,* G.R. No. 128412, March 15, 2002, 379 SCRA 306,

The circumstances cited by petitioners in support of their petition, *i.e.*, the TCT is still in their names; the property in question is declared for tax purposes in their names; they were the persons informed by the Municipal Treasurer of Calamba, Laguna for the non-payment of real estate taxes for the years 1990-1993; they paid the real estate taxes due on the property; no one was claiming the property per the certification of the Register of Deeds of Calamba, Laguna; the questionable delay of Fidelity in registering its claim over the property under the purported sale of December 13, 1967; and the validity of the Absolute Deed of Sale, all pertain to the issue of ownership over the property covered by the TCT.

In a petition for the issuance of a new owner's duplicate copy of a certificate of title in lieu of one allegedly lost, on which this case is rooted, the RTC, acting only as a land registration court with limited jurisdiction, has no jurisdiction to pass upon the question of actual ownership of the land covered by the lost owner's duplicate copy of the certificate of title.[15] Consequently, any question involving the issue of ownership must be threshed out in a separate suit where the trial court will conduct a full-blown hearing with the parties presenting their respective evidence to prove ownership over the subject realty.[16]

At this point, we reiterate the principle that possession of a lost owner's duplicate copy of a certificate of title is not necessarily equivalent to ownership of the land covered by it. Registration of real property under the Torrens System does not create or vest title because it is not a mode of acquiring ownership. The certificate of title, by itself, does not vest ownership; it is

---

319; *Reyes, Jr. v. Court of Appeals*, G.R. No. 136478, March 27, 2000, 328 SCRA 864, 869; *New Durawood Co., Inc. v. Court of Appeals,* G.R. No. 111732, February 20, 1996, 253 SCRA 740, 747-748; *Demetriou v. Court of Appeals,* G.R. No. 115595, November 14, 1994, 238 SCRA 158, 162.

[15] *Macabalo-Bravo v. Macabalo*, *supra*; *Rexlon Realty Group, Inc. v. Court of Appeals*, *supra*.

[16] *Heirs of Susana De Guzman Tuazon v. Court of Appeals*, G.R. No. 125758, January 20, 2004, 420 SCRA 219, 227-228.

merely an evidence of title over the particular property described therein.[17]

WHEREFORE, the petition is *DENIED*. The Decision dated November 28, 2003 and the Resolution dated May 12, 2004 of the Court of Appeals in CA-G.R. SP No. 37291 are *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 164081. April 16, 2008]

MITSUBISHI MOTORS PHILS. CORPORATION, *petitioner, vs.* **ROLANDO SIMON and CONSTANTINO AJERO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; WHILE ONLY QUESTIONS OF LAW MAY BE RAISED, THE COURT MAY DELVE INTO AND RESOLVE FACTUAL ISSUES IN EXCEPTIONAL CIRCUMSTANCES AS WHEN THE APPELLATE COURT OVERLOOKED THE APPLICABLE LAWS AND JURISPRUDENCE IN REACHING ITS CONCLUSION.— Under Rule 45 of the Rules of Court, only

[17] *Supra* notes 15 and 16; *Pineda v. Court of Appeals*, G.R. No. 114712, August 25, 2003, 409 SCRA 438, 448-449.

[*] As replacement of Associate Justice Ruben T. Reyes who was the ponente in Court of Appeals decision in CA-G.R. SP No. 37291.

questions of law may be raised under a petition for review on *certiorari*. The Court, not being a trier of facts, is not wont to reexamine and reevaluate the evidence of the parties, whether testimonial or documentary. Moreover, the findings of facts of the Court of Appeals on appeal from the NLRC are, more often than not, given conclusive effect by the Court. The Court may delve into and resolve factual issues only in exceptional circumstances, as when the Court of Appeals has reached an erroneous conclusion based on arbitrary findings of fact; and when substantial justice so requires. In the present case, the Court of Appeals overlooked the applicable laws and jurisprudence when it reached its conclusion.

2. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; SUBSTANTIAL EVIDENCE IS SUFFICIENT IN ADMINISTRATIVE AND QUASI-JUDICIAL PROCEEDINGS.— The settled rule in administrative and quasi-judicial proceedings is that proof beyond reasonable doubt is not required in determining the legality of an employer's dismissal of an employee, and not even a preponderance of evidence is necessary as substantial evidence is considered sufficient. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.

3. ID.; ID.; ID.; THE AFFIDAVITS SUBMITTED ARE SELF-SERVING AND CANNOT PREVAIL OVER POSITIVE ASSERTIONS.— The Court of Appeals point to affidavits supposedly executed by respondent's co-employees, who claim that respondents were in their work stations when the extortion occurred. We checked the records of the case and discovered that the documents referred to are not affidavits, but mere handwritten letters. Respondent Simon admitted that he was the one who prepared the above letter and solicited the signatures of his co-employees. We find these documents to be self-serving and as such cannot prevail over the positive assertions by Siena.

4. ID.; ID.; ID.; ALLEGED INCONSISTENCIES IN THE AFFIDAVITS SHOULD HAVE BEEN STRIKEN DOWN DURING THE HEARING AND CONSIDERING THE FACT THAT THE LABOR ARBITER HAD ALLOWED THE CONDUCT OF A FORMAL TRIAL ON THE MERITS.—

The Court of Appeals also point to the alleged inconsistencies in the affidavit of Siena, *i.e.*, that respondent Ajero signed the receipt but warned Siena not to tell anyone about the extorted money, which should have been clarified by the labor tribunals. It added that the "labor tribunals are required to utilize all necessary means to ascertain the truth considering that a worker's livelihood is at stake. We have read the affidavit referred to, and like the NLRC and the labor arbiter, we do not see the said inconsistencies. Moreover, the Court of Appeals seems to imply that it was duty of the labor tribunals to make the case for respondents. In the first place, the labor arbiter had allowed the conduct of a formal trial on the merits, wherein both respondents testified. The hearings should have been the proper venue for respondents to strike down the alleged inconsistencies, but they failed to do so. A review of the transcripts of the hearings shows that these inconsistencies were not passed upon by the parties, especially by respondents themselves.

5. ID.; ID.; ID.; FINDINGS AND CONCLUSIONS IN A LABOR CASE ARE NOT AFFECTED BY THE OUTCOME OF A CRIMINAL CASE.— A criminal charge, much more a criminal conviction, is not necessary in order to charge administratively charge and erring employee. Time and again, we have held that the findings and conclusion in a labor case are not affected by the outcome of a criminal case. These two cases respectively require distinct and well delineated degrees of proof, namely, proof beyond reasonable doubt in one and substantial evidence in the other.

6. ID.; ID.; ID.; NO NEED FOR THE SERVICES OF A GRAPHOLOGY EXPERT TO PROVE THAT THE SIGNATURE APPEARING IN THE RECEIPT IS THAT OF RESPONDENT; BURDEN OF PROOF IN A LABOR CASE IS NOT PROOF BEYOND REASONABLE DOUBT BUT MERELY SUBSTANTIAL EVIDENCE AND THE TESTIMONY OF A HANDWRITING EXPERT IS JUST AN OPINION AND NEVER CONCLUSIVE.— We find no need for the services of a graphology expert to prove that the signature appearing in the receipt is that of respondent Ajero. As we have previously stated, the burden of proof required in a labor case is not proof beyond reasonable doubt, but merely substantial evidence. Furthermore, while a graphology expert could tell

whether the signature appearing in the receipt could be that of Ajero, it would still not be enough to dispel the extortion charges, that is the fact that he had demanded upon, and received money from Siena. Finally, it is settled the testimony of a handwriting expert is just an opinion and never conclusive. Courts and tribunals have the discretion whether to accept or overrule an such an expert's opinion.

7. ID.; ID.; ID.; SUBSTANTIAL EVIDENCE TO SUPPORT RESPONDENTS' DISMISSAL, ESTABLISHED; STATEMENTS OF THE WITNESSES ARE STRAIGHTFORWARD AND UNCOMPLICATED NEGATING ANY REASON TO DOUBT THEIR CREDIBILITY NOR ANY MOTIVE FOR THEM TO MAKE UP THEIR STORY.— We find substantial evidence to support respondents' dismissal. True, the core of petitioner's decision to dismiss respondents is the statements of the spouses Siena. However, testimonies are to be weighed, not numbered; thus it has been said that a finding of guilt may be based on the uncorroborated testimony of a single witness when the tribunal finds such testimony positive and credible. These sworn statements of the spouses Siena are straightforward and uncomplicated. In the simplest of terms, they narrated how Mr. Siena was approached by respondents, the actual handing out of money, and the warning not to tell the incident to anyone. We see no reason to doubt their credibility, nor any motive for them to make up the story. They are not employees of petitioner; even respondents admitted that they could not think of any motive why Siena would accuse them of extortion. The testimonies of persons not shown to be harboring any motive to depose falsely against an employee must be given due credence, particularly where no rational motive is shown why the employer would single out an employee for dismissal unless the latter were truly guilty. And even where motive is established, the same does not put in doubt the positive identification of the accused.

8. ID.; ID.; DENIAL AND ALIBI; RESPONDENT'S DENIAL AND ALIBI FALL FLAT IN THE FACE OF CREDIBLE TESTIMONIES OF THE WITNESSES.— Respondent's denials and alibi fall flat in the face of the credible testimonies of the spouses Siena. They were positively identified by Siena to be the same persons who demanded and received the money. The claim that they could not have committed the extortion

since they were at their workstations when the incident happened is a weak defense, easily debunked by the fact that the Antipolo Public Market where Siena's store is located can be reached in a short time from the company premises. Even the certifications made by respondents' co-employees cannot help them get out of their predicament. In the first place, these are self-serving statements, having been prepared by respondents themselves. Second, said co-employees could not have monitored the comings and goings of respondents, and the latter could have easily left and returned to the workplace unnoticed since the Antipolo Public Market is only a few minutes away, as earlier discussed.

9. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; JUST CAUSES; RESPONDENT'S ACTS CONSTITUTE SERIOUS MISCONDUCT AND WILLFUL BREACH OF TRUST.— Respondents' acts constitute serious misconduct and willful breach of trust reposed by the employer, which are just causes for termination under the Labor Code. For serious misconduct to exist, the act complained of should be corrupt or inspired by an intention to violate the law or a persistent disregard of well-known legal rules. On the other hand, in loss of trust and confidence, it must be shown that the employee concerned is responsible for the misconduct or infraction and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position. Respondents demanded money from Siena, giving the impression that they had the authority to cause the termination of his contract should he not accommodate their demand. This amounts to fraud and extortion, and possible estafa under Art. 318 of the Revised Penal Code. Under SMC rules, the commission of an act which is considered a crime under the Republic of the Philippines, committed against the company or its employees is punishable by dismissal after administrative conviction. By their acts, they have betrayed not only SMC, but also their fellow union members who elected them to their positions. They have prejudiced SMC's rice subsidy program, and disrupted the efficient administration of the services and benefits to their fellow employees. Without a doubt, there is substantial evidence to support respondents' dismissal for cause.

APPEARANCES OF COUNSEL

Imelda M. Abadilla-Brown for petitioner.
Saladero & Bunao Law Offices for respondents.

D E C I S I O N

TINGA, *J.*:

In the instant petition, Mitsubishi Motor Philippines (petitioner) questions the Decision[1] and Resolution[2] dated 20 February 2004 and 14 June 2004, respectively, in CA GR SP NO. 70704 entitled *Rolando Simon and Constatino Ajero v. Mitsubishi Motor Phils. Corp. and National Labor Relations Commission* wherein the Court of Appeals annulled and set aside the resolution and decision of the NLRC and instead ordered the reinstatement of respondents, or if reinstatement is not possible, the payment of separation pay to respondents.

The facts of the case follow.

Rolando Simon and Constantino Ajero (respondents) were employees of petitioner and members of the Hourly Union. Simon was designated as Union Chairman of the Rice Subsidy Sub-Committee[3] with Ajero as his Vice Chairman. On 29 May 1997, Rodolfo Siena (Siena), one of the accredited rice suppliers of petitioner complained to petitioner that respondents had extorted money from him in exchange for union protection for his rice store's continued accreditation in the rice subsidy program. In support of said allegation, Siena executed a Sinumpaang Salaysay,[4]

---

[1] *Rollo*, pp. 55-64; Penned by *Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Roberto A. Barrios and Hakim S. Abdulwahid*, concurring.

[2] *Id*. at 66.

[3] Petitioner's Rice Subsidy Program is administered by the Rice Subsidy Committee and Sub Committee. Under the program, petitioner's employees receive one sack of rice every two months

[4] *Rollo*, p. 67. Siena's wife also executed a Sinumpaang Salaysay dated 9 June 1997, stating that she was asked by her husband to prepare ₱3,000.00

wherein he detailed that he was approached by respondents who introduced themselves as newly elected union officers, and demanded that he pay them ₱50.00 per sack of rice given to petitioner's employees. Siena claimed that he was forced to give respondents ₱3,000.00 after they threatened him that they would no longer get him as a rice supplier. He was also warned not to tell anyone about the incident.

Petitioner, through its Industrial Relations Department, issued a Notice of Disciplinary Charge with Preventive Suspension against respondents. Administrative hearings were conducted, after which respondents were found guilty of "'serious misconduct' and 'breach of trust' amounting to loss of confidence, under Article 282(a) and (c) of the Labor Code in relation to Par. E.(1) of the Company Rules and Regulation (CRR) for 'Commission of an Act which is considered a crime under the Republic of the Philippines' namely, 'Swindling or Estafa' (extortion) under Article 315(2)(a) and/or Article 318 (other deceits) of the Revised Penal Code."[5]

Respondents filed a case for illegal dismissal but their complaint was dismissed by the labor arbiter for lack of merit.[6] The dispositive portion of the decision reads:

> WHEREFORE, the complaint for illegal dismissal is hereby DISMISSED for lack of merit. However, by way of compassionate justice, respondent is directed to extend financial assistance of ₱88,389.48 (₱94.43 x 8 hrs. x 26 days x 9/2 to Rolando Simon and ₱69,580.16 (₱86.43 x 8 hrs. x 26 days x 8/2 to Constantino Ajero.
>
> SO ORDERED.[7]

Respondents appealed the decision to the National Labor Relations Commission (NLRC). Petitioner also filed an appeal

---

and that the receipt for the said amount was signed by respondent Ajero, *id.* at 69.

[5] Termination letter dated 4 September 1997, *Rollo*, p. 106; Decision of petitioner to terminate respondents, *id.* at 86-105.

[6] Decision of Labor Arbiter Nieves V. De Castro dated 27 July 2000, *id.* at 174-181.

[7] *Id.* at 180-181.

insofar as the award of financial assistance to respondents is concerned. The NLRC affirmed the labor arbiter's decision, but it deleted the award of financial assistance, considering that respondents were dismissed for cause on the ground of serious misconduct.[8] Respondents moved for the reconsideration of the decision but their motion was denied by the NLRC.[9]

Feeling aggrieved, respondents filed a petition for *certiorari* with the Court of Appeals, imputing grave abuse of discretion on the part of the NLRC. The Court of Appeals granted the petition, finding in the main that the labor tribunals did not properly appreciate the evidence presented before them. The Court of Appeals thus ordered:

> WHEREFORE, based on the foregoing, the instant petition is hereby GRANTED. The assailed Resolution and Decision of the NLRC are hereby ANNULLED and SET ASIDE and a new judgment is hereby rendered ordering the private respondent to:
>
> (1) Reinstate petitioners to their former position without loss of seniority rights, and to pay full backwages computed from the time of their illegal dismissal to the time of actual reinstatement; and
>
> (2) Alternatively, if reinstatement is not possible, pay petitioners separation pay equivalent to one month's salary for every year of service.[10]

Petitioner moved for the reconsideration of the decision but to no avail.[11]

Before us, petitioner claims that the Court of Appeals erred in reversing the factual finding of the NLRC and the labor arbiter

---

[8] NLRC decision dated 31 January 2002, *id*. at 254-261. In ruling that respondents are not entitled to financial assistance, the NLRC cited the case of *Nuez v. NLRC* (239 SCRA 518), which held that " separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for cause other than serious misconduct or those reflecting on his moral character. xxx.

[9] *Id*. at 268.

[10] *Id*. at 63.

[11] The Court of Appeals denied the motion on 14 June 2004., *id*. at 64.

and in relying on the defense of alibi and the self-serving statements of respondents.

We find for the petitioner.

Under Rule 45 of the Rules of Court, only questions of law may be raised under a petition for review on *certiorari*. The Court, not being a trier of facts, is not wont to reexamine and reevaluate the evidence of the parties, whether testimonial or documentary. Moreover, the findings of facts of the Court of Appeals on appeal from the NLRC are, more often than not, given conclusive effect by the Court. The Court may delve into and resolve factual issues only in exceptional circumstances, as when the Court of Appeals has reached an erroneous conclusion based on arbitrary findings of fact; and when substantial justice so requires.[12] In the present case, the Court of Appeals overlooked the applicable laws and jurisprudence when it reached its conclusion.

The settled rule in administrative and quasi-judicial proceedings is that proof beyond reasonable doubt is not required in determining the legality of an employer's dismissal of an employee, and not even a preponderance of evidence is necessary as substantial evidence is considered sufficient.[13] Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[14]

Petitioner alleges that respondents extorted money from Siena, one of the rice dealers contracted by the company to provide for its rice subsidy program. According to petitioner, said act is "a clear case of serious misconduct, fraud and willful breach of trust, and disloyalty to the Company as their employer" as it

---

[12] *Kwok v. Philippine Carpet Manufacturing Corporation*, G.R. No. 149252, 28 April 2005, 457 SCRA 465, 475.

[13] *Salvador v. Philippine Mining Service Corporation*, G.R. No. 148766, 22 January 2003, 395 SCRA 729, 738.

[14] *Salvador v. Philippine Mining Service Corporation*, G.R. No. 148766, 22 January 2003, 395 SCRA 729, 738.

"sabotages the Company's Rice Subsidy Program and disrupts the efficient administration of services and benefits to employees." Thus, they claim that respondents betrayed not only the Company, but also the union members whom they had sworn to serve, reneging on their loyalty to the company, its visions and goals.[15] Petitioner based its conclusions on the sworn statements of Siena and his wife, as well as on the explanations and evidence presented by respondents. The labor arbiter and the NLRC, after finding the evidence presented by petitioner to be credible *vis a vis* respondents' general denial, ruled that respondents were not illegally dismissed.

On the other hand, the Court of Appeals, in reversing the findings of the labor tribunals, observed that the former did not take into account the affidavits of respondents' co-employees attesting to their presence in the company premises at the time of the alleged extortion and found the need for a graphology expert to verify Ajero's signature in the receipt. It also noted that Siena's affidavit is replete with inconsistencies which cast doubts on the credibility of the accusation and should have been clarified by the labor tribunals. Finally, the appellate court mentioned that petitioner did not even present a police blotter or a copy of the criminal charges against respondents, "when the same are crucial, petitioners' [respondents] dismissal being grounded on their alleged commission of the crime that amounts to a violation of the company rules. On the other hand, petitioners were able to present certifications from various agencies attesting to the fact that they were never charged with the crime being imputed to them."[16]

In so doing, the Court of Appeals raised the degree of proof in administrative cases. Rather than mere substantial evidence, the appellate court seems to be looking for proof beyond reasonable doubt, or at the very least, a preponderance of evidence.

The Court of Appeals point to affidavits supposedly executed by respondent's co-employees, who claim that respondents were

[15] *Id*. at 46.

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

in their work stations when the extortion occurred. We checked the records of the case and discovered that the documents referred to are not affidavits, but mere handwritten letters. One of the letters[17] signed by fourteen (14) employees reads:

July 31, 1997

Para sa Kinauukulan:

Ito ay nagpapatunay na si Kasamang Rolando Simon ng 7210 w Canter chassis at halal na tagasuri ng Chrysler Philippine Labor Union ay nakasama naming sa loob ng Planta (m.M.P.C.) nuong Abril 14, 1997. Siya ay nakita naming mula alasais-imedya ng umaga 6:30 AM hanggang alasdos imedya ng hapon 2:30 PM.

Narito po ang aming mga pangalan at lagda.

(names and signatures of 14 persons follow).

Respondent Simon admitted that he was the one who prepared the above letter and solicited the signatures of his co-employees.[18]

The other "affidavit" is another handwritten document which states:

August 19, 1997

Ito po ay nagpapatunay na noong Abril 14, 1997 mula 6:00 ng umaga hanggang 2:34 ng hapon ako si Mr. Constantino Ajero ay pumasok at nasa loob ng planta sa nabanggit na oras at araw. Kalakip dito ang mga lagda ng aking mga kasamahan sa Aming Departamento 9210-B at ang time sheet na magpapatunay na ako ay nasa loob ng pagawaan ng MMPC.

Narito po ang mga lagda.

Dept. No. 9210-B

(Names and signatures of 19 persons follow).

We find these documents to be self-serving and as such cannot prevail over the positive assertions by Siena.

---

[17] NLRC records, p. 15.

[18] TSN, 20 August 1998, *id*. at 283.

The Court of Appeals also point to the alleged inconsistencies in the affidavit of Siena, *i.e.*; that respondent Ajero signed the receipt but warned Siena not to tell anyone about the extorted money, which should have been clarified by the labor tribunals. It added that the "labor tribunals are required to utilize all necessary means to ascertain the truth considering that a worker's livelihood is at stake. We have read the affidavit referred to, and like the NLRC and the labor arbiter, we do not see the said inconsistencies. Moreover, the Court of Appeals seems to imply that it was duty of the labor tribunals to make the case for respondents. In the first place, the labor arbiter had allowed the conduct of a formal trial on the merits, wherein both respondents testified. The hearings should have been the proper venue for respondents to strike down the alleged inconsistencies, but they failed to do so. A review of the transcripts of the hearings[19] shows that these inconsistencies were not passed upon by the parties, especially by respondents themselves.

Another point of contention made by the Court of Appeals is the lack of formal criminal charges against respondents, which it deems crucial to the administrative charges against them. Again, we disagree.

A criminal charge, much more a criminal conviction, is not necessary in order to charge administratively charge and erring employee. Time and again, we have held that the findings and conclusion in a labor case are not affected by the outcome of a criminal case. These two cases respectively require distinct and well delineated degrees of proof,[20] namely, proof beyond reasonable doubt in one and substantial evidence in the other.

Moreover, we find no need for the services of a graphology expert to prove that the signature appearing in the receipt is that of respondent Ajero. As we have previously stated, the burden of proof required in a labor case is not proof beyond reasonable doubt, but merely substantial evidence.

---

[19] TSNs of the 7 August 1998 and 20 August 1998 hearings, *id*. at 192-226 and 236-285.

[20] *Nicolas v. NLRC*, G.R. No. 113948, 5 July 1996, 258 SCRA 250, 253.

Furthermore, while a graphology expert could tell whether the signature appearing in the receipt could be that of Ajero, it would still not be enough to dispel the extortion charges, that is the fact that he had demanded upon, and received money from Siena. Finally, it is settled the testimony of a handwriting expert is just an opinion and never conclusive. Courts and tribunals have the discretion whether to accept or overrule an such an expert's opinion.[21]

We find substantial evidence to support respondents' dismissal. True, the core of petitioner's decision to dismiss respondents is the statements of the spouses Siena. However, testimonies are to be weighed, not numbered; thus it has been said that a finding of guilt may be based on the uncorroborated testimony of a single witness when the tribunal finds such testimony positive and credible.[22]

These sworn statements of the spouses Siena are straightforward and uncomplicated. In the simplest of terms, they narrated how Mr. Siena was approached by respondents, the actual handing out of money, and the warning not to tell the incident to anyone. We see no reason to doubt their credibility, nor any motive for them to make up the story. They are not employees of petitioner; even respondents admitted that they could not think of any motive why Siena would accuse them of extortion.[23] The

---

[21] *Ceballos v. Intestate Estate of the Late Emigdio Mercado*, G.R. No. 155856, 28 May 2004, 430 SCRA 326.

[22] *People v. Obello*, G.R. No. 108772, 14 January 1998, 284 SCRA 79, 89.

[23] In the 7 August 1998 hearing, respondent Simon testified:

ATTY. GALLARDO

> Do you know of any motive why Mr. Siena wrote that complaint against you?

WITNESS

> I don't know, ma'm.
>
> xxx xxx xxx
>
> Yes, I really could not think of any motive that he has against me because I met him only one (sic) and we are only new acquaintances. (NLRC records, pp. 204-205.)

testimonies of persons not shown to be harboring any motive to depose falsely against an employee must be given due credence, particularly where no rational motive is shown why the employer would single out an employee for dismissal unless the latter were truly guilty.[24] And even where motive is established, the same does not put in doubt the positive identification of the accused.[25]

Respondent's denials and alibi fall flat in the face of the credible testimonies of the spouses Siena. They were positively identified by Siena to be the same persons who demanded and received the money. The claim that they could not have committed the extortion since they were at their workstations when the incident happened is a weak defense, easily debunked by the fact that the Antipolo Public Market where Siena's store is located can be reached in a short time from the company premises.[26] Even the certifications made by respondents' co-employees cannot help them get out of their predicament. In the first place, these are self-serving statements, having been prepared by respondents themselves. Second, said co-employees could not have monitored the comings and goings of respondents, and the latter could have easily left and returned to the workplace unnoticed since the Antipolo Public Market is only a few minutes away, as earlier discussed.

Respondent Ajero also testified that:

ATTY. GALLARDO

> So in so far as your are concerned, there is no personal disagreement or no personal problem between you and Mr. Simon which could have provoked him to file a case against you?

WITNESS

> No whatsoever. (NLRC records, pp. 223-224.)

[24] *Philippine Airlines, Inc. v. NLRC*, G.R. No. 126805, 16 March 2000, 328 SCRA 273.

[25] *People v. Guillermo*, G.R. No. 113787, 28 January 1999, 302 SCRA 257, 271.

[26] Petitioner estimates the time to be 10 minutes, one way, or about 20-25 minutes, back and forth (Company Decision dated 4 September 1997, *Rollo*, p. 105.); while respondent Simon stated that it would normally take 18-20 minutes (TSN, 20 August 198, NLRC records, p. 281.)

Respondents' acts constitute serious misconduct and willful breach of trust reposed by the employer, which are just causes for termination under the Labor Code.[27] For serious misconduct to exist, the act complained of should be corrupt or inspired by an intention to violate the law or a persistent disregard of well-known legal rules.[28] On the other hand, in loss of trust and confidence, it must be shown that the employee concerned is responsible for the misconduct or infraction and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position.[29] Respondents demanded money from Siena, giving the impression that they had the authority to cause the termination of his contract should he not accommodate their demand. This amounts to fraud and extortion, and possible estafa under Art. 318 of the Revised Penal Code.[30] Under SMC rules,[31] the commission of an act which is considered a crime under the Republic of the Philippines, committed against the company or its employees is punishable by dismissal after administrative conviction. By their acts, they have betrayed not only SMC, but also their fellow union members who elected them to their positions. They

---

[27] Art. 282. Termination by employer. - An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by his employee or duly authorized representative;

(d) Commission of a crime or offense by his employee or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing..

[28] *Francisco v. Cosico*, A.M. No. CA-04-37, 16 March 2004, 425 SCRA 521, 525.

[29] *Pioneer Texturizing Corp. v. NLRC*, G.R. No. 118651, 16 October 1997, 280 SCRA 806,816.

[30] Art. 318. *Other deceits*. The penalty of *arresto mayor* and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter.

[31] NLRC records, p. 322.

have prejudiced SMC's rice subsidy program, and disrupted the efficient administration of the services and benefits to their fellow employees. Without a doubt, there is substantial evidence to support respondents' dismissal for cause.

The office of a petition for review under Rule 45 is to review the decision of the Court of Appeals, not the NLRC's,[32] or the labor arbiter's, for that matter. All told, we find the decision of the Court of Appeals not to be in accord with the applicable laws and jurisprudence in this case.

WHEREFORE, the petition is *GRANTED* and the Decision dated 20 February 2004 and Resolution dated 14 June 2004 of the Court of Appeals are hereby nullified and ASIDE. The Decision of the NLRC dated 31 January 2002 is *REINSTATED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 165284. April 16, 2008]

MP ACEBEDO OPTICAL SHOPS/ACEBEDO OPTICAL CO., INC., *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and RODRIGO C. SANTIAGO,** *respondents.*

---

[32] *Floren Hotel v. NLRC*, G.R. No. 155264, 06 May 2005, 458 SCRA 129, 147.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION RULES OF PROCEDURE; APPEAL; RIGHT TO APPEAL IS A STATUTORY RIGHT AND ONE WHO SEEKS TO AVAIL OF SAID RIGHT MUST COMPLY WITH THE APPLICABLE RULES THEREON.— Well-entrenched is the doctrine that the right to appeal is a statutory right, and one who seeks to avail of said right must comply with the applicable statute or rules thereon. The NLRC Rules, *akin* to the Rules of Court, promulgated by authority of law, have the force and effect of law; and these NLRC Rules prescribing the time within which certain acts must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays, and to the orderly and speedy discharge of judicial business. Thus, petitioners are required to perfect their appeal in the manner and within the period permitted by law, and failure to do so rendered the judgment of the Labor Arbiter final and executory.

2. ID.; ID.; ID.; ID.; THE COURT MAY, IN HIGHLY MERITORIOUS CASES, OPT TO LIBERALLY APPLY THE RULES; LIBERAL EXCEPTION DOES NOT OBTAIN IN CASE AT BAR; THE MEMORANDUM OF APPEAL FILED WAS VERY MUCH BELATED AND THE APPEAL ITSELF WAS DEFINITELY FILED OUT OF TIME.— While this Court might have time and again opted to sidestep the strict rule on the statutory or reglementary period for filing an appeal, yet, we have always emphasized that we cannot respond with alacrity to every clamor against alleged injustice and bend the rules to placate every vociferous protestor crying and claiming to be a victim of a wrong. It is only in highly meritorious cases that this Court should opt to liberally apply the rules, for the purpose of preventing a grave injustice from being done. This liberal exception does not obtain in this case. Petitioners' contention that their former counsel did not receive the Labor Arbiter's Decision dated April 30, 1998 is misleading. The records of the NLRC, as confirmed by the Court of Appeals, reveal that the decision was received by petitioners' former counsel on July 20, 1998. The presumption that the decision was delivered to petitioners' former counsel or to a person in his office duly authorized to receive papers for him therefore

stands. Petitioners have not presented any evidence to overcome this presumption of regularity in the performance of official duty. Accordingly, petitioners had ten calendar days from July 20, 1998, or until July 30, 1998, to appeal the Labor Arbiter's decision pursuant to Article 223 of the Labor Code. Patently, the memorandum of appeal they filed on June 17, 1999 was very much belated. The appeal itself was definitely filed out of time.

3. ID.; ID.; ID.; ID.; PETITIONERS MANIFESTLY FAILED TO DISPLAY THE EXPECTED DEGREE OF CONCERN OR ATTENTION TO THEIR CASE, NOR HAVE THEY SHOWN ANY COMPELLING REASON FOR THE COURT TO EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THEIR CASE.— Petitioners were not entirely faultless. As we have consistently reiterated, it is the duty of party-litigants to be in contact with their counsel from time to time in order to be informed of the progress of their case. Petitioners should have maintained contact with their former counsel and informed themselves of the progress of their case, thereby exercising that standard of care which an ordinarily prudent man devotes to his business. Clearly, petitioners manifestly failed to display the expected degree of concern or attention to their case. Nor have they shown any compelling reason for this Court to exercise its discretionary jurisdiction to review their case. Under the present circumstances of this case, with the appeal glaringly filed out of time, we need not tarry to discourse further on other errors allegedly committed by the Court of Appeals.

APPEARANCES OF COUNSEL

Soliven Castillo & Escobedo Law Office for petitioner.
R.S. de Claro, Jr. and Associates for private respondent.

D E C I S I O N

QUISUMBING, *J.*:

Petitioners seek the reversal of the Decision[1] dated April 16, 2002 of the Court of Appeals in CA-G.R. SP No. 60062, dismissing their petition for *certiorari* against the Resolution[2] dated March 31, 2000 of the National Labor Relations Commission (NLRC) in NLRC NCR CN 00-05-03491-97. Also assailed is the Resolution[3] dated August 4, 2004 of the Court of Appeals, denying their motion for reconsideration.

The case stemmed from the following antecedent facts:

On April 1, 1996, respondent Rodrigo C. Santiago was hired as one of the accountants of Acebedo Optical Shops/Acebedo Optical Co., Inc. Subsequently, he was appointed as Chief Accountant of the Acebedo Group of Companies, *i.e.*, MP Acebedo Optical Shop, Acebedo Optical Co., Acebedo Trading Company, and M.L.R. Acebedo Commercial.

During the first week of April 1997, respondent took a five-day leave of absence. When he requested for an additional two-day leave, the Human Resources Department informed him that the extension was no longer necessary since the Acebedo Group of Companies (Acebedo) had already decided to dismiss him effective April 9, 1997.

Aggrieved, respondent filed a complaint for illegal dismissal, unpaid salaries and allowances, 13th month pay, non-payment of per diem for 1996, unremitted SSS and Pag-Ibig Fund contributions and tax withheld for 1996 to 1997.

Petitioners countered that they evaluated respondent's performance in March 1997 and discovered that he had many

---

[1] *Rollo*, pp. 16-19. Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Portia Aliño-Hormachuelos and Rebecca De Guia-Salvador concurring.

[2] *Id.* at 88-89.

[3] *Id.* at 26-27.

shortcomings. It was also ascertained that he ordered the printing of accountable documents and distributed them to optical retail outlets without proper control and formal authorization from his supervisor. Hence, Acebedo formed a committee to deliberate on respondent's performance which recommended his lateral transfer to another position. When respondent learned this, he refused to follow the recommendation and went on unofficial leave. He also abandoned his post without notice.

On April 9, 1997, petitioners dismissed respondent due to loss of trust and confidence.

On April 30, 1998, the Labor Arbiter rendered a decision on the complaint filed by respondent, in this wise:

> WHEREFORE, respondents are hereby ordered to reinstate complainant Rodrigo C. Santiago to his former position without loss of seniority rights and other privileges appurtenant thereto, with full backwages from the time of his dismissal until actual reinstatement.
>
> All other monetary claims of complainant are hereby dismissed for lack of merit.
>
> SO ORDERED.[4]

Petitioners appealed to the NLRC. On March 31, 2000, the NLRC dismissed the same for being filed late.[5]

Petitioners elevated the case to the Court of Appeals *via* a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure. Petitioners argued that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the Labor Arbiter's decision.

In dismissing the petition, the appellate court noted that petitioners' former counsel received a copy of the Labor Arbiter's decision on July 20, 1998. However, petitioners filed their memorandum of appeal and paid the appeal fee only on June 17, 1999, which was way beyond the ten-day reglementary period

[4] *Id*. at 100.

[5] *Id*. at 88-89.

under Article 223[6] of the Labor Code and Section 1,[7] Rule VI of the NLRC New Rules of Procedure.

Petitioners now come to this Court contending that the Court of Appeals committed grave, palpable, and patent errors in:

I.

DECLARING THAT THE HONORABLE COMMISSION HAD NO AUTHORITY TO ENTERTAIN PETITIONERS' APPEAL AND TO REVERSE THE DECISION OF THE LABOR ARBITER *A QUO*;

II.

UPHOLDING THE DECISION AS WELL AS THE RESOLUTION OF THE PUBLIC RESPONDENT IN DECLARING THAT THE TERMINATION OF PRIVATE RESPONDENT WAS ILLEGAL;

UPHOLDING THE PUBLIC RESPONDENT IN ORDERING THE PAYMENT OF FULL BACKWAGES IN FAVOR OF THE PRIVATE RESPONDENT.[8]

The crux of the present controversy is whether petitioners' appeal from the decision of the Labor Arbiter to the NLRC was perfected within the reglementary period.

While petitioners admit that they failed to file their memorandum of appeal seasonably, they contend that it was due to their

[6] **ART. 223.** ***Appeal***. – Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. . . .

xxx xxx xxx

[7] **SECTION 1. PERIODS OF APPEAL**. – Decisions, resolutions or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt thereof; and in case of decisions, resolutions or orders of the Regional Director of the Department of Labor and Employment pursuant to Article 129 of the Labor Code, within five (5) calendar days from receipt thereof. If the 10th or 5th day, as the case may be, falls on a Saturday, Sunday or holiday, the last day to perfect the appeal shall be the first working day following such Saturday, Sunday or holiday.

No motion or request for extension of the period within which to perfect an appeal shall be allowed.

[8] *Rollo*, pp. 52-53.

former counsel's failure to receive the Labor Arbiter's Decision dated April 30, 1998. Petitioners add that they learned of the decision only on June 7, 1999 when a writ of execution was served on them.

Respondent, on the other hand, maintains that the present petition does not raise any question of law. And as petitioners' appeal to the NLRC was filed beyond the reglementary period, the NLRC correctly dismissed it.

After considering the contentions and the submissions of the parties, we agree that the petition be denied for lack of merit.

Well-entrenched is the doctrine that the right to appeal is a statutory right, and one who seeks to avail of said right must comply with the applicable statute or rules thereon. The NLRC Rules, *akin* to the Rules of Court, promulgated by authority of law, have the force and effect of law; and these NLRC Rules prescribing the time within which certain acts must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays, and to the orderly and speedy discharge of judicial business.[9] Thus, petitioners are required to perfect their appeal in the manner and within the period permitted by law, and failure to do so rendered the judgment of the Labor Arbiter final and executory.[10]

While this Court might have time and again opted to sidestep the strict rule on the statutory or reglementary period for filing an appeal, yet, we have always emphasized that we cannot respond with alacrity to every clamor against alleged injustice and bend the rules to placate every vociferous protestor crying and claiming to be a victim of a wrong. It is only in highly meritorious cases that this Court should opt to liberally apply the rules, for the purpose of preventing a grave injustice from being done.[11]

---

[9] *Corporate Inn Hotel v. Lizo*, G.R. No. 148279, May 27, 2004, 429 SCRA 573, 577.

[10] *Id.* at 578.

[11] *Sublay v. National Labor Relations Commission*, G.R. No. 130104, January 31, 2000, 324 SCRA 188, 194.

This liberal exception does not obtain in this case. Petitioners' contention that their former counsel did not receive the Labor Arbiter's Decision dated April 30, 1998 is misleading. The records of the NLRC, as confirmed by the Court of Appeals, reveal that the decision was received by petitioners' former counsel on July 20, 1998.[12] The presumption that the decision was delivered to petitioners' former counsel or to a person in his office duly authorized to receive papers for him therefore stands. Petitioners have not presented any evidence to overcome this presumption of regularity in the performance of official duty.[13]

Accordingly, petitioners had ten calendar days from July 20, 1998, or until July 30, 1998, to appeal the Labor Arbiter's decision pursuant to Article 223 of the Labor Code. Patently, the memorandum of appeal they filed on June 17, 1999 was very much belated. The appeal itself was definitely filed out of time.

In any case, petitioners were not entirely faultless. As we have consistently reiterated, it is the duty of party-litigants to be in contact with their counsel from time to time in order to be informed of the progress of their case. Petitioners should have maintained contact with their former counsel and informed themselves of the progress of their case, thereby exercising that standard of care which an ordinarily prudent man devotes to his business.[14] Clearly, petitioners manifestly failed to display the expected degree of concern or attention to their case. Nor have they shown any compelling reason for this Court to exercise its discretionary jurisdiction to review their case.

Under the present circumstances of this case, with the appeal glaringly filed out of time, we need not tarry to discourse further on other errors allegedly committed by the Court of Appeals.

---

[12] *Rollo*, pp. 18 and 88.

[13] *Rubenito v. Lagata*, G.R. No. 140959, December 21, 2004, 447 SCRA 417, 425; See *Flores v. National Labor Relations Commission*, G.R. No. 109362, May 15, 1996, 256 SCRA 735, 740.

[14] *Leonardo v. S.T. Best, Inc.*, G.R. No. 142066, February 6, 2004, 422 SCRA 347, 354; See *Tan v. Court of Appeals*, G.R. No. 157194, June 20, 2006, 491 SCRA 452, 461.

WHEREFORE, the instant petition is *DENIED* for utter lack of merit. The Decision dated April 16, 2002 of the Court of Appeals in CA-G.R. SP No. 60062, which affirmed the Resolution dated March 31, 2000 of the National Labor Relations Commission in NLRC NCR CN 00-05-03491-97, is *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Carpio-Morales, Tinga, Velasco, Jr. and *Brion, JJ.,* concur.

FIRST DIVISION

[G.R. No. 165424. April 16, 2008]

LESTER BENJAMIN S. HALILI, *petitioner, vs.* **CHONA M. SANTOS-HALILI and THE REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; VOID MARRIAGES; PSYCHOLOGICAL INCAPACITY; MUST BE CHARACTERIZED BY GRAVITY, JURIDICAL ANTECEDENCE AND INCURABILITY; THERE MUST ALSO BE PROOF OF A NATAL OR SUPERVENING DISABLING FACTOR, AN ADVERSE INTEGRAL ELEMENT IN PETITIONER'S PERSONALITY STRUCTURE THAT EFFECTIVELY INCAPACITATED HIM FROM COMPLYING WITH THE ESSENTIAL MARITAL OBLIGATIONS.— Although petitioner was able to establish his immaturity, as evidenced by the psychological report and as testified to by him and Dr. Dayan, the same hardly constituted sufficient cause for declaring the marriage null and void on the ground of psychological incapacity. It had to be characterized by gravity, juridical antecedence and

incurability. In *Republic v. CA and Molina*, we ruled that the psychological incapacity must be more than just a "difficulty," a "refusal" or a "neglect" in the performance of some marital obligations. A mere showing of irreconcilable differences and conflicting personalities does not equate to psychological incapacity. Proof of a natal or supervening disabling factor, an adverse integral element in petitioner's personality structure that effectively incapacitated him from complying with his essential marital obligations, had to be shown. In this, petitioner failed.

2. ID.; ID.; ID.; ID.; NO PROOF THAT PETITIONER'S ALLEGED DISORDER WAS GRAVE ENOUGH AND INCURABLE TO BRING ABOUT HIS DISABILITY TO ASSUME THE ESSENTIAL OBLIGATIONS OF MARRIAGE.— The evidence adduced by petitioner merely showed that he and respondent had difficulty getting along with each other as they constantly fought over petty things. However, there was no showing of the *gravity and incurability* of the psychological disorder supposedly inherent in petitioner, except for the mere statement or conclusion to that effect in the psychological report. The report, and even the testimonies given by petitioner and his expert witness at the trial, dismally failed to prove that petitioner's alleged disorder was grave enough and incurable to bring about his disability to assume the essential obligations of marriage.

3. ID.; ID.; ID.; ID.; FACT OF THEIR NOT HAVING LIVED TOGETHER UNDER ONE ROOF DOES NOT NECESSARILY GIVE RISE TO THE CONCLUSION THAT ONE OF THEM WAS PSYCHOLOGICALLY INCAPACITATED TO COMPLY WITH THE ESSENTIAL MARITAL OBLIGATIONS.— Petitioner also made much of the fact that he and respondent never lived together as husband and wife. This, however, fails to move us considering that there may be instances when, for economic and practical reasons, a married couple might have to live separately though the marital bond between them remains. In fact, both parties were college students when they got married and were obviously without the financial means to live on their own. Thus, their not having lived together under one roof did not necessarily give rise to the conclusion that one of them was psychologically incapacitated to comply with the essential marital obligations.

> It is worth noting that petitioner himself admitted that he and respondent continued the relationship after the marriage ceremony. It was only when they started fighting constantly a year later that he decided to file a petition to have the marriage annulled. It appears that petitioner just chose to give up on the marriage too soon and too easily.

APPEARANCES OF COUNSEL

Santiago Cruz & Sarte Law Office for petitioner.

R E S O L U T I O N

CORONA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks to set aside the January 26, 2004 decision[1] and September 24, 2004 resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 60010.

Petitioner Lester Benjamin S. Halili and respondent Chona M. Santos-Halili[3] were only 21 and 19 years of age, respectively, when they got married on July 4, 1995 at the City Hall of Manila. After the wedding, they continued to live with their respective parents and never lived together but maintained the relationship nonetheless.

A year after, the couple started bickering constantly. Petitioner stopped seeing respondent and went on dates with other women. It was at this time that he started receiving prank calls telling him to stop dating other women as he was already a married man.

Thereafter, petitioner filed in the Regional Trial Court (RTC) of Pasig City, Branch 158 a petition for the declaration of nullity of the marriage on the ground that he was psychologically incapacitated to fulfill his essential marital obligations to

[1] Penned by Associate Justice Godardo A. Jacinto (retired) and concurred in by Associate Justices Elvi John S. Asuncion (dismissed from the service) and Lucas P. Bersamin of the Fourth Division of the Court of Appeals. *Rollo*, pp. 10-21.

[2] *Id*., pp. 22-24.

[3] Hereafter referred to as "respondent."

respondent.[4] He claimed that he thought that the wedding performed at the City Hall of Manila was a "joke" and that the marriage certificate he signed was "fake." He also pointed out that he and respondent never lived together as husband and wife and never consummated the marriage.

The RTC granted the petition and declared petitioner psychologically incapacitated to fulfill the essential marital obligations.

On appeal, the CA reversed and set aside the RTC decision and held that, taken in totality, the evidence for petitioner failed to establish his psychological incapacity. Petitioner moved for reconsideration. The same was denied. Hence, this petition.

The question before us is whether or not the totality of evidence presented is sufficient to prove that petitioner suffered from psychological incapacity which effectively prevented him from complying with his essential marital obligations.

We deny the petition.

Petitioner had the burden of proving the nullity of his marriage with respondent.[5] He failed to discharge the burden.

The evidence for petitioner consisted of his own testimony and a psychological report written by Dr. Natividad A. Dayan, Ph. D., a clinical psychologist, who also testified on the matters contained therein.

According to Dr. Dayan, petitioner was suffering from a personality disorder characterized as "a mixed personality disorder from self-defeating personality to dependent personality disorder brought about by a dysfunctional family background." Petitioner's father was very abusive and domineering. Although petitioner and his siblings were adequately supported by their father, a very wealthy man, they lacked affirmation. Because of this, petitioner grew up without self-confidence and very immature. He never really understood what it meant to have a family,

[4] It was docketed as JDRC Case No. 4138.

[5] *Antonio v. Reyes*, G.R. No. 155800, 10 March 2006, 484 SCRA 353, 376, citing *Republic v. CA and Molina*, 335 Phil. 664 (1997).

much less to be a husband. According to Dr. Dayan, this was very much evident in petitioner's impulsive decision to get married despite having gone steady with respondent for only six months.

Moreover, she added that both petitioner and respondent were psychologically incapacitated to perform their essential marital obligations as they never lived together as husband and wife. They also never consummated their marriage. Furthermore, they constantly fought. Their separation was inevitable as they were both immature. Dr. Dayan then abruptly concluded that petitioner's psychological incapacity was grave and incurable.

In this case, although petitioner was able to establish his immaturity, as evidenced by the psychological report and as testified to by him and Dr. Dayan, the same hardly constituted sufficient cause for declaring the marriage null and void on the ground of psychological incapacity. It had to be characterized by gravity, juridical antecedence and incurability.[6]

In *Republic v. CA and Molina*,[7] we ruled that the psychological incapacity must be more than just a "difficulty," a "refusal" or a "neglect" in the performance of some marital obligations. A mere showing of irreconcilable differences and conflicting personalities does not equate to psychological incapacity.[8] Proof of a natal or supervening disabling factor, an adverse integral element in petitioner's personality structure that effectively incapacitated him from complying with his essential marital obligations,[9] had to be shown. In this, petitioner failed.

The evidence adduced by petitioner merely showed that he and respondent had difficulty getting along with each other as they constantly fought over petty things.[10] However, there was no showing of the *gravity and incurability* of the psychological

[6] *Choa v. Choa*, G.R. No. 143376, 26 November 2002, 392 SCRA 641, 650.

[7] *Supra* note 5.

[8] *Choa v. Choa*, *supra* at 651.

[9] *Navarro, Jr. v. Cecilio-Navarro*, G.R. No. 162049, 13 April 2007, 521 SCRA 121, 129-130.

[10] For instance, they would frequently quarrel over respondent's insistence that petitioner pick her up on time whenever they go out on dates.

disorder supposedly inherent in petitioner, except for the mere statement or conclusion to that effect in the psychological report. The report, and even the testimonies given by petitioner and his expert witness at the trial, dismally failed to prove that petitioner's alleged disorder was grave enough and incurable to bring about his disability to assume the essential obligations of marriage.

Petitioner also made much of the fact that he and respondent never lived together as husband and wife. This, however, fails to move us considering that there may be instances when, for economic and practical reasons, a married couple might have to live separately though the marital bond between them remains.[11] In fact, both parties were college students when they got married and were obviously without the financial means to live on their own. Thus, their not having lived together under one roof did not necessarily give rise to the conclusion that one of them was psychologically incapacitated to comply with the essential marital obligations. It is worth noting that petitioner himself admitted that he and respondent continued the relationship after the marriage ceremony. It was only when they started fighting constantly a year later that he decided to file a petition to have the marriage annulled. It appears that petitioner just chose to give up on the marriage too soon and too easily.

WHEREFORE, the petition is hereby *DENIED*. The January 26, 2004 decision and September 24, 2004 resolution of the Court of Appeals in CA-G.R. CV No. 60010 are *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

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

Carpio, J., on leave.

---

[11] *Santos v. CA*, 310 Phil. 22 (1995). See Justice Padilla's dissent, p. 48.

FIRST DIVISION

[G.R. Nos. 169829-30. April 16, 2008]

STEEL CORPORATION OF THE PHILIPPINES, *petitioner, vs.* **SCP EMPLOYEES UNION-NATIONAL FEDERATION OF LABOR UNIONS,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; STRIKES; MUST BE PURSUED WITHIN LEGAL BOUNDS; THE STRIKE UNDERTAKEN BY THE OFFICERS OF RESPONDENT UNION IS PATENTLY ILLEGAL; REASONS FOR ITS ILLEGALITY.— The strike is a legitimate weapon in the human struggle for a decent existence. It is considered as the most effective weapon in protecting the rights of the employees to improve the terms and conditions of their employment. But to be valid, a strike must be pursued within legal bounds. The right to strike as a means for the attainment of social justice is never meant to oppress or destroy the employer. The law provides limits for its exercise. In the instant case, the strike undertaken by the officers of respondent union is patently illegal for the following reasons: (1) it is a union-recognition strike which is not sanctioned by labor laws; (2) it was undertaken after the dispute had been certified for compulsory arbitration; and (3) it was in violation of the Secretary's return-to-work order.

2. ID.; ID.; ID.; RESPONDENT COULD NOT ASK PETITIONER TO BARGAIN WITH IT BECAUSE THE CERTIFICATION ELECTION THAT WAS CONDUCTED WHERE RESPONDENT EMERGED AS A WINNER WAS NOT RECOGNIZED AS VALID, THEREFORE, IT HAS NO AUTHORITY TO REPRESENT THE RANK AND FILE EMPLOYEES OF PETITIONER.— Respondent's notices of strike were founded on petitioner's continued refusal to bargain with it. It thus staged the strike to compel petitioner to recognize it as the collective bargaining agent, making it a union-recognition strike. As its legal designation implies, this kind of strike is calculated to compel the employer to recognize one's union and not other contending groups, as the employees'

bargaining representative to work out a collective bargaining agreement despite the striking union's doubtful majority status to merit voluntary recognition and lack of formal certification as the exclusive representative in the bargaining unit. The certification election that was conducted where respondent emerged as winner, not having been recognized as valid, it has no authority to represent the rank and file employees of petitioner. Thus, it could not ask petitioner to bargain with it. As the issue of its identity had been the subject of a separate case which had been settled by the court with finality, petitioner cannot, therefore, be faulted in refusing to bargain. Neither could this Court sustain respondent's imputation of unfair labor practice and union busting against petitioner. With more reason, this Court cannot sustain the validity of the strike staged on such basis.

3. ID.; ID.; ID.; THE STRIKE WAS CONDUCTED IN UTTER DEFIANCE OF THE SECRETARY'S RETURN TO WORK ORDER AND AFTER THE DISPUTE HAD BEEN CERTIFIED FOR COMPULSORY ARBITRATION.— Even if this Court were to uphold the validity of respondent's purpose or objective in staging a strike, still, the strike would be declared illegal for having been conducted in utter defiance of the Secretary's return-to-work order and after the dispute had been certified for compulsory arbitration. Although ostensibly there were several notices of strike successively filed by respondent, these notices were founded on substantially the same grounds — petitioner's continued refusal to recognize it as the collective bargaining representative.

4. ID.; ID.; ID.; THE MERE ISSUANCE OF AN ASSUMPTION ORDER BY THE SECRETARY OF LABOR AUTOMATICALLY CARRIES WITH IT A RETURN-TO-WORK ORDER, EVEN IF A DIRECTIVE TO RETURN TO WORK IS NOT EXPRESSLY STATED IN THE ASSUMPTION ORDER.— The powers granted to the Secretary under Article 263 (g) of the Labor Code have been characterized as an exercise of the police power of the State, aimed at promoting the public good. When the Secretary exercises these powers, he is granted "great breadth of discretion" to find a solution to a labor dispute. The most obvious of these powers is the automatic enjoining of an impending strike or lockout or its lifting if one has already taken place. The moment the

Secretary of Labor assumes jurisdiction over a labor dispute in an industry indispensable to national interest, such assumption shall have the effect of automatically enjoining the intended or impending strike. It was not even necessary for the Secretary of Labor to issue another order directing a return to work. The mere issuance of an assumption order by the Secretary of Labor automatically carries with it a return-to-work order, even if the directive to return to work is not expressly stated in the assumption order.

5. ID.; ID.; ID.; A RETURN-TO-WORK ORDER IMPOSES A DUTY THAT MUST BE DISCHARGED MORE THAN IT CONFERS A RIGHT THAT MAY BE WAIVED; WHILE THE WORKERS MAY CHOOSE NOT TO OBEY, THEY DO SO AT THE RISK OF SEVERING THEIR RELATIONSHIP WITH THEIR EMPLOYER.— A return-to-work order imposes a duty that must be discharged more than it confers a right that may be waived. While the workers may choose not to obey, they do so at the risk of severing their relationship with their employer. Returning to work in this situation is not a matter of option or voluntariness but of obligation. The worker must return to his job together with his co-workers so that the operations of the company can be resumed and it can continue serving the public and promoting its interest. This extraordinary authority given to the Secretary of Labor is aimed at arriving at a peaceful and speedy solution to labor disputes, without jeopardizing national interests. Regardless of their motives, or the validity of their claims, the striking workers must cease and/or desist from any and all acts that undermine or tend to undermine this authority of the Secretary of Labor, once an assumption and/or certification order is issued. They cannot, for instance, ignore return-to-work orders, citing unfair labor practices on the part of the company, to justify their action.

6. ID.; ID.; ID.; HAVING BEEN STAGED AFTER THE DISPUTE HAD BEEN CERTIFIED FOR ARBITRATION AND CONTRARY TO THE RETURN-TO-WORK ORDER, THE STRIKE BECAME A PROHIBITED ACTIVITY AND WAS THUS ILLEGAL.— Respondent, in the instant case, after the assumption of jurisdiction and certification of the dispute to the NLRC for compulsory arbitration, filed notices of strike and staged the strike obviously contrary to the provisions of

labor laws. Worse, it filed not one but several notices of strike which resulted in two certified cases which were earlier consolidated. These disputes could have been averted had respondent respected the CA's decision. That way, the collective bargaining agent would have been determined and petitioner could have been compelled to bargain. Respondent, through its officers, instead opted to use the weapon of strike to force petitioner to recognize it as the bargaining agent. The strike, having been staged after the dispute had been certified for arbitration and contrary to the return-to-work order, became a prohibited activity, and was thus illegal.

7. ID.; ID.; ID.; THE DECISION TO WIELD THE WEAPON OF STRIKE MUST REST ON A RATIONAL BASIS, FREE FROM EMOTIONALISM, UNSWAYED BY THE TEMPERS AND TANTRUMS OF A FEW, AND FIRMLY FOCUSED ON THE LEGITIMATE INTEREST OF THE UNION WHICH SHOULD NOT HOWEVER BE ANTITHETICAL TO PUBLIC WELFARE.— Strikes exert disquieting effects not only on the relationship between labor and management, but also on the general peace and progress of society, not to mention the economic well-being of the State. It is a weapon that can either breathe life to or destroy the union and members in their struggle with management for a more equitable due of their labors. Hence, the decision to wield the weapon of strike must therefore rest on a rational basis, free from emotionalism, unswayed by the tempers and tantrums of a few, and firmly focused on the legitimate interest of the union which should not however be antithetical to the public welfare. In every strike staged by a union, the general peace and progress of society and public welfare are involved.

8. ID.; ID.; ID.; FOR KNOWINGLY PARTICIPATING IN AN ILLEGAL STRIKE OR PARTICIPATING IN THE COMMISSION OF ILLEGAL ACTS DURING A STRIKE, THE LAW PROVIDES THAT THE UNION OFFICER MAY BE TERMINATED FROM EMPLOYMENT.— It bears stressing that the Article 264 of the Labor Code makes a distinction between union members and union officers. A worker merely participating in an illegal strike may not be terminated from employment. It is only when he commits illegal acts during a strike that he may be declared to have lost employment status. For knowingly participating in an illegal strike or participating

in the commission of illegal acts during a strike, the law provides that a union officer may be terminated from employment. The law grants the employer the option of declaring a union officer who participated in an illegal strike as having lost his employment. It possesses the right and prerogative to terminate the union officers from service. Otherwise, the workers will simply refuse to return to their work and cause a standstill in the company operations while retaining the positions they refuse to discharge and preventing management from filling up their positions.

APPEARANCES OF COUNSEL

Santiago Cruz & Sarte Law Offices for petitioner.
National Federation of Labor Union (NAFLU) for respondent.

D E C I S I O N

AZCUNA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court. The petition is seeking to set aside the Decision[1] rendered by the Court of Appeals (CA) dated February 28, 2005 in the consolidated cases CA-G.R. SP Nos. 79446 and 82314, wherein the CA denied the petition in CA-G.R. SP No. 79446 while partially granting the petition in CA-G.R. SP No. 82314, as well as the Resolution[2] dated September 22, 2005 denying petitioner's motion for reconsideration.

The antecedents are as follows:

Petitioner Steel Corporation of the Philippines (SCP) is engaged in manufacturing construction materials, supplying approximately 50% of the domestic needs for roofing materials.[3] On August 17,

[1] Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Lucas P. Bersamin and Celia C. Librea-Leagogo, *rollo*, pp. 52-70.

[2] *Id.* at 72.

[3] *Id.* at 54.

1998, SCP-Federated Union of the Energy Leaders – General and Allied Services (FUEL-GAS) filed a petition for Certification Election in its bid to represent the rank-and-file employees of the petitioner.[4] Respondent SCP Employees Union (SCPEU) – National Federation of Labor Unions (NAFLU) intervened, seeking to participate and be voted for in such election[5] but the same was denied for having been filed out of time.[6]

On September 14, 1998, a consent election was conducted, with "FUEL-GAS" and "NO UNION" as choices. Said election was however declared a failure because less than a majority of the rank-and-file employees cast their votes. FUEL-GAS filed an Election Protest claiming that the certification election was characterized by and replete with irregularities.[7] On September 21, 1998, NAFLU, the mother federation of respondent, filed a petition for Certification Election for and on behalf of its affiliate, seeking to represent the rank-and-file employees of petitioner.[8] The Med-Arbiter denied the election protest of FUEL-GAS and granted the petition for certification election filed by NAFLU and further ordered the conduct of the election with "NAFLU" and "NO UNION" as choices. Both petitioner and FUEL-GAS appealed to the Secretary of Labor, which appeals were later consolidated.[9]

On August 27, 1999, the Department of Labor and Employment (DOLE) Undersecretary rendered a consolidated decision ordering the conduct of a certification election with "FUEL-GAS," respondent and "NO UNION" as choices.[10] Subsequent motions for reconsideration were denied on October 18, 1999.[11]

---

[4] *Id.* at 100.

[5] *Id.* at 100-101.

[6] *Id.* at 55.

[7] *Id.* at 76-81.

[8] *Id.* at 82-83.

[9] *Id.* at 84-99.

[10] *Id.* at 100-104.

[11] *Id.* at 118-120.

Unsatisfied, petitioner and FUEL-GAS appealed to the CA by way of *certiorari*.[12]

On April 14, 2000, the certification election, as ordered by the Med-Arbiter, proceeded. FUEL-GAS participated without prejudice to the decision of the CA in its pending petition. In said election, respondent emerged as winner; hence, the second election protest filed by FUEL-GAS.[13]

On July 12, 2000, the CA, in CA-G.R. SP No. 55721, rendered a Decision[14] which annulled and set aside the August 27, 1999 decision and October 18, 1999 resolution of the Undersecretary. The CA further directed the holding of a certification election with "FUEL-GAS" and "NO UNION" as choices, to the exclusion of respondent.[15]

On July 31, 2000, the Med-Arbiter dismissed FUEL-GAS' election protest but deferred the request of respondent to be declared winner in the certification election until final resolution of the pending petitions with the CA.[16] Not satisfied with the deferment of their certification as winner, respondent appealed to the Labor Secretary.[17] It further filed a Manifestation before the CA pointing out that in the April 14, 2000 certification election, it emerged as winner, and thus, the election should be considered as an intervening event sufficient to bar another certification

---

[12] *Id.* at 121-132; 133-143.

[13] *Id.* at 144-145.

[14] *Id.* at 146-153.

[15] WHEREFORE, the instant petition is hereby GRANTED. Accordingly, the decision dated August 27, 1999 and the resolution dated October 10, 1999, both of the respondent DOLE Undersecretary are hereby NULLIFIED and SET ASIDE. Conformably herewith, the Department of Labor and Employment or its appropriate bureau or office shall conduct a certification election with Steel Corporation of the Philippines Workers' Union FUEL-GAS and No Union as choices, subject to such rules and regulations prescribed under the Labor Code and/or its Implementing Rules and Regulations.

SO ORDERED.

[16] *Rollo*, pp. 154-157.

[17] *Id.* at 56.

election.[18] The CA, however, dismissed said manifestation on December 28, 2000.[19]

Meanwhile, on October 16, 2000, the Undersecretary rendered a Decision[20] certifying respondent as the exclusive bargaining agent of petitioner's employees. Petitioner and FUEL-GAS timely filed motions for reconsideration of the aforesaid decision.[21]

As a consequence of its certification as the exclusive bargaining agent, respondent sent to petitioner CBA proposals. Petitioner, however, held in abeyance any action on the proposals in view of its pending motion for reconsideration.[22]

Finding no justification in petitioner's refusal to bargain with it, respondent filed a Notice of Strike with the National Conciliation and Mediation Board (NCMB) on December 11, 2000. The union raised the issue of unfair labor practice (ULP) allegedly committed by petitioner for the latter's refusal to bargain with it.[23]

On January 19, 2001, FUEL-GAS moved for the conduct of a certification election pursuant to the CA decision.[24] On February 27, 2001, the Undersecretary affirmed its October 16, 2000 decision.[25]

On March 16, 2001, the labor dispute was certified to the National Labor Relations Commission (NLRC) for compulsory arbitration, which case was docketed as Cert. Case No. 000200-01.[26] Again, on April 2, 2001, another Notice of Strike[27] was

[18] *Id.* at 167-170.

[19] *Id.* at 197.

[20] *Id.* at 172-175.

[21] *Id.* at 176-187.

[22] *Id.* at 57.

[23] *Id.* at 190.

[24] *Id.* at 198-199.

[25] *Id.* at 200-203.

[26] *Id.* at 224-225.

[27] *Id.* at 226.

filed by respondent for non-recognition as a certified union; refusal to bargain; discrimination against union officers and members; harassment and intimidation; and illegal dismissal, which was later consolidated with the certified case.

On December 13, 2001, acting on the January 19, 2001 petition for certification election, the Med-Arbiter recommended the holding of another certification election but with respondent and FUEL-GAS as contenders.[28] The decision was appealed to the Labor Secretary. The Labor Secretary in turn dismissed the motion to conduct certification election in a Resolution dated October 17, 2002.[29]

Meanwhile, in Cert. Case No. 000200-01, the NLRC issued a Resolution dated April 17, 2002, declaring petitioner as having no obligation to recognize respondent as the certified bargaining agent; dismissing the charge of unfair labor practice; declaring as illegal the strike held by the union; and declaring the loss of employment of the officers of the union.[30] Petitioner filed a Motion for Partial Reconsideration[31] of the resolution praying that additional employees be dismissed. For its part, respondent also filed a Motion for Reconsideration.[32]

On May 20, 2002, respondent filed another Notice of Strike alleging as grounds, petitioner's refusal to bargain and union busting.[33] The notice was later dismissed and respondent was enjoined from holding a strike.[34]

On January 7, 2003, respondent filed another Notice of Strike on the grounds of refusal to bargain and union busting.[35] Respondent thereafter went on strike on February 4, 2003. On

[28] *Id.* at 244-246.

[29] *Id.* at 290-291.

[30] CA *rollo*, CA-G.R. SP No. 79446, pp. 55-70.

[31] *Rollo,* pp. 253-265.

[32] *Id.* at 266-274.

[33] *Id.* at 275.

[34] *Id.* at 283-285.

[35] *Id.* at 292-293.

February 7, 2003, the Labor Secretary certified the dispute to the NLRC and directed the employees to return to work.[36] The second certified case was docketed as NLRC NCR CC No. 00253-03. On September 8, 2003, the NLRC rendered a Decision[37] ordering petitioner to bargain collectively with respondent as the duly certified bargaining agent. In addition, it ordered the reinstatement of the employees who were dismissed in connection with the February 4, 2003 strike, without loss of seniority rights and diminution of salary.[38] Petitioner filed a motion for reconsideration but it was denied in the Resolution[39] dated January 26, 2004. The decision and resolution became the subject of a petition before the CA in CA-G.R. SP No. 82314.

Meantime, in the first certified case, Cert. Case No. 000200-01, the NLRC, in a Decision[40] dated February 12, 2003 opted to resolve the parties' respective motions for reconsideration collectively. In said decision, the NLRC modified its earlier resolution by ordering the reinstatement of the union officers whom it previously ordered terminated, which in effect denied petitioner's motion for partial reconsideration.[41] Petitioner filed a motion for reconsideration but it was denied in a Resolution dated June 30, 2003.[42] These decision and resolution became the subject of a petition before the CA in CA-G.R. SP No. 79446.

The petitions before the CA were later consolidated. In CA-G.R. SP No. 79446, herein petitioner argued that:

> PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION GRAVELY ABUSED ITS DISCRETION IN ORDERING THE REINSTATEMENT OF THE OFFICERS OF PRIVATE RESPONDENT UNION DESPITE ITS CONCLUSION

---

[36] CA *rollo,* CA-G.R. SP No. 82314, pp. 19-20.

[37] *Id.* at 49-61.

[38] *Id.* at 59-60.

[39] *Id.* at 47-48.

[40] CA *rollo,* CA-G.R. SP No. 79446, pp. 35-52.

[41] *Id.* at 51.

[42] *Id.* at 53-54.

THAT [PRIVATE] RESPONDENT HAD CONDUCTED AN ILLEGAL STRIKE.[43]

In the other case, CA-G.R. SP No. 82314, petitioner herein argued that:

I

PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION GRAVELY ABUSED ITS DISCRETION IN DIRECTING PETITIONER TO RECOGNIZE PRIVATE RESPONDENT UNION DESPITE THE DECISION OF THIS COURT DIRECTING THE HOLDING OF ANOTHER CERTIFICATION ELECTION.

II

PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT REVERSED ITS OWN DECISION IN THE SAME CASE WHICH HAS BECOME FINAL AND EXECUTORY.

III

PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION GRAVELY ABUSED ITS DISCRETION WHEN IT CONCLUDED THAT THE STRIKE CONDUCTED BY SCPEU-NAFLU IS NOT ILLEGAL.

IV

PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION GRAVELY ABUSED ITS DISCRETION IN ORDERING THE REINSTATEMENT OF THE EMPLOYEES WHO DEFIED THE RETURN TO WORK ORDER OF THE SECRETARY OF LABOR.[44]

On February 28, 2005, the CA rendered a Decision[45] denying the petition in CA-G.R. SP No. 79446 while partially granting the petition in CA-G.R. SP No. 82314. The decretal portion of which stated:

---

[43] *Id*. at 55.

[44] CA *rollo,* CA-G.R. SP No. 82314, pp. 21-22.

[45] *Rollo,* pp. 52-70.

WHEREFORE, premises considered, the Petition in CA-G.R. SP No. 79446 is DENIED while the Petition in CA-G.R. SP No. 82314 is PARTIALLY GRANTED, decreeing herein contending parties to comply with the directives of this Tribunal in CA-G.R. SP No. 55721.

SO ORDERED.

In denying the petition in CA-G.R. SP No. 79446, the CA found no cogent reason to reverse the assailed decision of the NLRC in Cert. Case No. 000200-01. The CA concluded that petitioner's claims are based on pure allegations and not supported by any substantial evidence.[46]

In partially granting the petition in CA-G.R. SP No. 82314, the CA reasoned that by virtue of its decision in CA-G.R. SP No. 55721 dated July 12, 2000, the second certification election was, in effect, nullified and set aside. It is to be noted that FUEL-GAS participated in the second election without prejudice to the petition it filed in court. The CA added that since it did not recognize the second certification election held on April 14, 2000, wherein NAFLU was voted as the duly-elected bargaining agent of petitioner's rank-and-file employees, clearly it has no basis for its claim and it has no right to demand that petitioner collectively bargain with it.[47]

Petitioner filed a Motion for Reconsideration[48] which was denied in the Resolution[49] dated September 22, 2005.

Hence, this petition raising the following issues:

I

[WHETHER OR NOT] THE COURT OF APPEALS HAS DEPARTED FROM THE LAW AND ESTABLISHED JURISPRUDENCE WHEN IT AFFIRMED THE REINSTATEMENT OF OFFICERS WHO PARTICIPATED IN AN ILLEGAL STRIKE.

---

[46] *Id.* at 65-68.

[47] *Id.* at 68-70.

[48] CA *rollo,* CA-G.R. SP No. 79446, pp. 355-380.

[49] *Rollo,* p. 72.

II

[WHETHER OR NOT] THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT FAILED TO DECLARE AS ILLEGAL THE STRIKE HELD BY THE UNION ON FEBRUARY 4, 2003.

III

[WHETHER OR NOT] THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT FAILED TO INVALIDATE THE ORDER OF THE NATIONAL LABOR RELATIONS COMMISSION DIRECTING THE REINSTATEMENT OF THE STRIKERS WHO DEFIED THE RETURN-TO-WORK ORDER OF THE LABOR SECRETARY.

IV

[WHETHER OR NOT] THE COURT OF APPEALS COMMITTED A SERIOUS ERROR WHEN IT RULED THAT THE NLRC HAS RECONSIDERED ITS CONCLUSION ON THE ILLEGALITY OF THE MARCH 2001 STRIKE.

V

[WHETHER OR NOT] THE COURT OF APPEALS COMMITTED A SERIOUS ERROR WHEN IT CONCLUDED THAT THE NATIONAL LABOR RELATIONS COMMISSION MAY RECONSIDER IN THE SECOND CERTIFIED CASE ITS DECISION ON THE FIRST CERTIFIED CASE WHICH HAS BECOME FINAL AND EXECUTORY.[50]

Petitioner contends that the February 2003 strike held by respondent is illegal. To buttress its claim, petitioner argues that respondent has no right to demand that it bargain with the latter. Its refusal to recognize respondent as the bargaining representative of its employees is based on the directive of the CA in CA-G.R. SP No. 55721 to conduct another certification election. Petitioner maintains that respondent never denied that its purpose for holding the strike was to force it to recognize the latter over the other union. Since the strike is a union-recognition-strike, it is illegal.[51]

[50] *Id*. at 15-16.

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

Petitioner further argues that the strike was manifestly illegal for it was in gross violation of the Labor Code, particularly Art. 264,[52] which expressly prohibits the declaration of a strike over an issue that is pending arbitration between the parties.[53] Since the labor dispute in the first certified case, Cert. Case No. 000200-01, was still pending compulsory arbitration at the time of the strike on February 4, 2003, and since the said strike was based substantially on the same grounds, *i.e*., the alleged refusal by petitioner to recognize the union, the strike is illegal by express provision of the law.

Moreover, petitioner adds that the issue of illegality of the February 2003 strike was already resolved by the NLRC in Cert. Case No. 000200-01 involving a strike in March 2001 over the same labor dispute, namely, the alleged refusal of petitioner to recognize respondent. As such, the NLRC's decision in Cert. Case No. 000200-01 constitutes *res judicata* in the second certified case, NLRC NCR CC No. 00253-03.[54]

Petitioner also contends that the union officers who participated in the illegal strike are all deemed to have lost their employment. Unlike ordinary members of the union, whose dismissal requires that the employer prove that they committed illegal acts, mere participation of the union officers in an illegal strike warrants their termination from employment. Consequently, since the strike was illegal, it follows that the termination from employment of the union officers was warranted.[55]

Petitioner maintains that it was erroneous on the part of the CA not to have reversed the NLRC decision[56] ordering the reinstatement of the employees which were dismissed in

[52] ART. 264. *PROHIBITED ACTIVITIES.* — (a) x x x.

No strike or lockout shall be declared after assumption of jurisdiction by the President or the Minister or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout.

[53] *Rollo,* pp. 18-24.

[54] *Id*. at 24.

[55] *Id.* at 16-18.

[56] CA *rollo*, CA-G.R. SP No. 82314, pp. 49-61.

connection with the February 4, 2003 strike. It argues that since the termination of the employees was due to their refusal to comply with the return-to-work order issued by the Labor Secretary, not to their alleged participation in an illegal strike, the CA erred in affirming the decision.[57]

Finally, petitioner avers that the CA also committed serious errors on procedural issues when it concluded that the NLRC may reconsider in Cert. Case No. 000200-01 its decision in NLRC NCR CC No. 00253-03.[58]

The petition is meritorious.

Whether or not respondent is the recognized collective bargaining agent had been finally resolved in the negative. Consequently, as correctly concluded by the CA, it could not compel petitioner to bargain with it. Thus, the only issues left for determination are: the validity of the strike participated in by the officers of the respondent union; and the validity of their termination from employment by reason of such participation.

The strike is a legitimate weapon in the human struggle for a decent existence. It is considered as the most effective weapon in protecting the rights of the employees to improve the terms and conditions of their employment. But to be valid, a strike must be pursued within legal bounds. The right to strike as a means for the attainment of social justice is never meant to oppress or destroy the employer. The law provides limits for its exercise.[59]

In the instant case, the strike undertaken by the officers of respondent union is patently illegal for the following reasons: (1) it is a union-recognition-strike which is not sanctioned by labor laws; (2) it was undertaken after the dispute had been certified for compulsory arbitration; and (3) it was in violation of the Secretary's return-to-work order.

---

[57] *Rollo*, pp. 26-30

[58] *Id*. at 31-32.

[59] *Association of Independent Unions in the Philippines (AIUP), et al. v. NLRC*, 354 Phil. 697, 707.

Respondent's notices of strike were founded on petitioner's continued refusal to bargain with it. It thus staged the strike to compel petitioner to recognize it as the collective bargaining agent, making it a union-recognition-strike. As its legal designation implies, this kind of strike is calculated to compel the employer to recognize one's union and not other contending groups, as the employees' bargaining representative to work out a collective bargaining agreement despite the striking union's doubtful majority status to merit voluntary recognition and lack of formal certification as the exclusive representative in the bargaining unit.[60]

The certification election that was conducted where respondent emerged as winner, not having been recognized as valid, it has no authority to represent the rank and file employees of petitioner. Thus, it could not ask petitioner to bargain with it. As the issue of its identity had been the subject of a separate case which had been settled by the court with finality,[61] petitioner cannot, therefore, be faulted in refusing to bargain. Neither could this Court sustain respondent's imputation of unfair labor practice and union busting against petitioner. With more reason, this Court cannot sustain the validity of the strike staged on such basis.

Even if this Court were to uphold the validity of respondent's purpose or objective in staging a strike, still, the strike would be declared illegal for having been conducted in utter defiance of the Secretary's return-to-work order and after the dispute had been certified for compulsory arbitration. Although ostensibly there were several notices of strike successively filed by respondent, these notices were founded on substantially the same grounds – petitioner's continued refusal to recognize it as the collective bargaining representative.

Article 263(g) of the Labor Code provides:

> When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume

[60] *Id*. at 706.

[61] In CA-G.R. SP No. 55721.

jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure the compliance with this provision as well as with such orders as he may issue to enforce the same. x x x.[62]

The powers granted to the Secretary under Article 263(g) of the Labor Code have been characterized as an exercise of the police power of the State, aimed at promoting the public good. When the Secretary exercises these powers, he is granted "great breadth of discretion" to find a solution to a labor dispute. The most obvious of these powers is the automatic enjoining of an impending strike or lockout or its lifting if one has already taken place.[63]

The moment the Secretary of Labor assumes jurisdiction over a labor dispute in an industry indispensable to national interest, such assumption shall have the effect of automatically enjoining the intended or impending strike. It was not even necessary for the Secretary of Labor to issue another order directing a return to work. The mere issuance of an assumption order by the Secretary of Labor automatically carries with it a return-to-work order, even if the directive to return to work is not expressly stated in the assumption order.[64]

A return-to-work order imposes a duty that must be discharged more than it confers a right that may be waived. While the

[62] Emphasis supplied.

[63] *Philcom Employees Union v. Philippine Global Communications and Philcom Corporation*, G.R. No. 144315, July 17, 2006, 495 SCRA 214, 232.

[64] *Telefunken Semiconductors Employees Union v. Court of Appeals*, 401 Phil. 776, 794.

workers may choose not to obey, they do so at the risk of severing their relationship with their employer.[65]

Says the Labor Code:

Art. 264. Prohibited activities. –

xxx xxx xxx

No strike or lockout shall be declared after assumption of jurisdiction by the President or the Secretary or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout.

Returning to work in this situation is not a matter of option or voluntariness but of obligation. The worker must return to his job together with his co-workers so that the operations of the company can be resumed and it can continue serving the public and promoting its interest. This extraordinary authority given to the Secretary of Labor is aimed at arriving at a peaceful and speedy solution to labor disputes, without jeopardizing national interests. Regardless of their motives, or the validity of their claims, the striking workers must cease and/or desist from any and all acts that undermine or tend to undermine this authority of the Secretary of Labor, once an assumption and/or certification order is issued. They cannot, for instance, ignore return-to-work orders, citing unfair labor practices on the part of the company, to justify their action.[66]

Respondent, in the instant case, after the assumption of jurisdiction and certification of the dispute to the NLRC for compulsory arbitration, filed notices of strike and staged the strike obviously contrary to the provisions of labor laws. Worse, it filed not one but several notices of strike which resulted in two certified cases which were earlier consolidated. These disputes could have been averted had respondent respected the CA's decision. That way, the collective bargaining agent would have

[65] *Supra* note 63 at 243.

[66] *Manila Hotel Employees Association v. Manila Hotel Corporation*, G.R. No. 154591, March 5, 2007, 517 SCRA 349, 363.

been determined and petitioner could have been compelled to bargain. Respondent, through its officers, instead opted to use the weapon of strike to force petitioner to recognize it as the bargaining agent. The strike, having been staged after the dispute had been certified for arbitration and contrary to the return-to-work order, became a prohibited activity, and was thus illegal.

Strikes exert disquieting effects not only on the relationship between labor and management, but also on the general peace and progress of society, not to mention the economic well-being of the State. It is a weapon that can either breathe life to or destroy the union and members in their struggle with management for a more equitable due of their labors. Hence, the decision to wield the weapon of strike must therefore rest on a rational basis, free from emotionalism, unswayed by the tempers and tantrums of a few, and firmly focused on the legitimate interest of the union which should not however be antithetical to the public welfare. In every strike staged by a union, the general peace and progress of society and public welfare are involved.[67]

Having settled that the subject strike was illegal, this Court shall now determine the proper penalty to be imposed on the union officers who knowingly participated in the strike.

Article 264 of the Labor Code further provides:

> Art. 264. Prohibited activities.— x x x
>
> Any workers whose employment has been terminated as a consequence of an unlawful lockout shall be entitled to reinstatement with full back wages. Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: Provided, that mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike. x x x.

[67] *Santa Rosa Coca-Cola Plant Employees Union v. Coca-Cola Bottlers Phils., Inc.,* G.R. Nos. 164302-03, January 24, 2007, 512 SCRA 437, 455; *Grand Boulevard Hotel v. GLOWHRAIN,* 454 Phil. 463, 491;

It bears stressing that the law makes a distinction between union members and union officers. A worker merely participating in an illegal strike may not be terminated from employment. It is only when he commits illegal acts during a strike that he may be declared to have lost employment status. For knowingly participating in an illegal strike or participating in the commission of illegal acts during a strike, the law provides that a union officer may be terminated from employment. The law grants the employer the option of declaring a union officer who participated in an illegal strike as having lost his employment. It possesses the right and prerogative to terminate the union officers from service.[68] Otherwise, the workers will simply refuse to return to their work and cause a standstill in the company operations while retaining the positions they refuse to discharge and preventing management from filling up their positions.[69]

WHEREFORE, the petition is partly *GRANTED.* The decision of the Court of Appeals dated February 28, 2005 in the consolidated cases CA-G.R. SP Nos. 79446 and 82314 and its Resolution dated September 22, 2005 are *MODIFIED* in that the strike in question is found *ILLEGAL* and the order to reinstate the union officers who participated in the illegal strike is *REVERSED* and *SET ASIDE.*

No costs.

SO ORDERED.

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

Carpio, J., on leave.

Lapanday Workers Union v. National Labor Relations Commission, G.R. Nos. 95494-97, September 7, 1995, 248 SCRA 95, 104-105.

[68] *Santa Rosa Coca-Cola Plant Employees Union v. Coca-Cola Bottlers Phils., Inc. supra* at 458-459; See also: *Stamford Marketing Corp. v. Julian,* G.R. No. 145496, February 24, 2004, 423 SCRA 633, 649.

[69] *Supra* note 63 at 243.

FIRST DIVISION

[G.R. No. 170243. April 16, 2008]

NANCY H. ZAYCO and REMO HINLO in their capacity as judicial co-administrators of the Estate of Enrique Hinlo, *petitioners, vs.* **ATTY. JESUS V. HINLO, JR.,**[*] *respondent.*

SYLLABUS

REMEDIAL LAW; SPECIAL PROCEEDINGS; AN ORDER APPOINTING AN ADMINISTRATOR OF A DECEASED PERSON'S ESTATE IS A FINAL ORDER AND IS APPEALABLE; PETITIONER'S APPEAL IN CASE AT BAR WAS MADE ON TIME.— An order appointing an administrator of a deceased person's estate is a final determination of the rights of the parties in connection with the administration, management and settlement of the decedent's estate. It is a final order and, hence, appealable. In appeals in special proceedings, a record on appeal is required. The notice of appeal and the record on appeal should both be filed within 30 days from receipt of the notice of judgment or final order. Pursuant to *Neypes v. CA,* the 30-day period to file the notice of appeal and record on appeal should be reckoned from the receipt of the order denying the motion for new trial or motion for reconsideration. From the time petitioners received the July 23, 2003 order (denying their motion for reconsideration of the July 23, 2002 order) on July 31, 2003, they had 30 days or until August 30, 2003 to file their notice of appeal and record on appeal. They did so on August 29, 2003. Thus, the appeal was made on time.

APPEARANCES OF COUNSEL

Apuhin & Associates Law Office for petitioners.

Jesus V. Hinlo, Jr. for himself.

---

[*] Judge Renaldo M. Alon, Presiding Judge of the Regional Trial Court of Silay City, Branch 40 was impleaded as respondent but was excluded by the Court pursuant to Section 4, Rule 45 of the Rules of Court.

R E S O L U T I O N

CORONA, *J.*:

This is a petition for review[1] of the June 27, 2005 decision[2] and October 27, 2005 resolution of the Court of Appeals (CA) in CA-G.R. SP No. 82129.

After Enrique Hinlo died intestate on January 31, 1986, his heirs filed a petition for letters of administration of his estate in the Regional Trial Court (RTC) of Negros Occidental, Silay City, Branch 40. Ceferina Hinlo, widow of Enrique, was initially appointed as special administratrix of Enrique's estate. On December 23, 1991, petitioners Nancy H. Zayco and Remo Hinlo were appointed as co-administrators in lieu of their mother Ceferina who was already sickly and could no longer effectively perform her duties as special administratrix.

On March 4, 2003, respondent Atty. Jesus V. Hinlo, Jr., a grandson of Enrique and heir to his estate by virtue of representation,[3] filed a petition for the issuance of letters of administration in his favor and an urgent motion for the removal of petitioners as co-administrators of Enrique's estate.[4] Petitioners opposed both the petition and the motion.

In an order dated July 23, 2002,[5] the RTC revoked the appointment of petitioners as co-administrators of the estate of Enrique and directed the issuance of letters of administration in favor of respondent on a ₱50,000 bond. Respondent posted the required bond, took his oath as administrator and was issued letters of administration.

---

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

[2] Penned by Associate Justice Pampio A. Abarintos (retired) and concurred in by Associate Justices Mercedes Gozo-Dadole (retired) and Ramon M. Bato, Jr. of the Eighteenth Division of the Court of Appeals. *Rollo*, pp. 53-59.

[3] Respondent is a child of Jesus Enrique Hinlo, one of Enrique's children with Ceferina, who predeceased his father in 1979.

[4] *Rollo*, pp. 65-78.

[5] *Id*., pp. 99-102.

Petitioners received a copy of the July 23, 2002 order on August 2, 2002 and moved for its reconsideration on August 9, 2002. The RTC denied the motion for reconsideration in an order dated July 23, 2003.[6]

Petitioners received a copy of the July 23, 2003 order on July 31, 2003 and filed a notice of appeal the same day. They submitted a record on appeal on August 29, 2003.

In an order dated January 5, 2004,[7] the RTC denied the notice of appeal and record on appeal. It ruled that petitioners resorted to a wrong remedy as the July 23, 2002 and July 23, 2003 orders were interlocutory and not subject to appeal. Even assuming that appeal was the proper remedy, it was filed late:

> Granting *[a]rguendo*, that the Orders dated July 23, 2002 and July 23, 2003 maybe the subject of appeal, the Notice of Appeal and the Record on Appeal were already filed out of time. Records will show that the Order of this Court dated July 23, 2002 removing the former co-administrators were received by them on August 2, 2002. Subsequently, they filed a Motion for Reconsideration on August 9[, 2002] which was denied by this Court in its Order dated July 23, 2003 and was received by them on July 31, 2003. A Notice of Appeal was filed on July 31, 2003 but a Record on Appeal was only filed on August 29, 2003. The 30 days reglementary period to file an appeal in special proceedings started to run on August 2, 2002 when [the] former [co-]administrators received the order of this Court and stopped to run when they filed their Motion for Reconsideration and started to run again [on] July 31, 2003 when they received the order denying their Motion for Reconsideration until they filed their Record on Appeal on August 29, 2003. Thus, **from August 2, 2002 to August 9, 2002, [the] former [co-]administrators already consumed a period of 7 days and from July 31, 2003 to August 29, 2003, a period of 29 days[,] or a total of 36 days**. x x x[8] (emphasis supplied)

Petitioners challenged the January 5, 2004 RTC order in the CA by way of a petition for *certiorari* and *mandamus*. In a

[6] *Id*., pp. 150-156.

[7] *Id*., pp. 214-217.

[8] *Id*.

decision dated June 27, 2005, the CA dismissed the petition.[9] It ruled that there was no grave abuse of discretion on the part of the RTC as the notice of appeal and record on appeal were in fact filed beyond the prescribed period.

Petitioners sought reconsideration but the CA denied it. Hence, this petition.

Petitioners contend that the RTC erred when it ruled that the July 23, 2002 and July 23, 2003 orders were not appealable. They also claim that their notice of appeal and record on appeal were filed on time.

We agree.

An order appointing an administrator of a deceased person's estate is a final determination of the rights of the parties in connection with the administration, management and settlement of the decedent's estate.[10] It is a final order and, hence, appealable.[11]

In appeals in special proceedings, a record on appeal is required. The notice of appeal and the record on appeal should both be filed within 30 days from receipt of the notice of judgment or final order.[12] Pursuant to *Neypes v. CA*,[13] the 30-day period to file the notice of appeal and record on appeal should be reckoned from the receipt of the order denying the motion for new trial or motion for reconsideration.

---

[9] *Supra* note 2.

[10] *Testate Estate of Manuel v. Biascan*, 401 Phil. 49 (2000).

[11] *Id*.

[12] Section 3, Rule 41 of the Rules of Court provides:

> SEC. 3. Period of ordinary appeal. - The appeal shall be taken within fifteen (15) days from the notice of the judgment or final order appealed from. **Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from the notice of judgment or final order**.
>
> The period to appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed. (Emphasis supplied)

[13] G.R. No. 141524, 14 September 2005, 469 SCRA 633.

From the time petitioners received the July 23, 2003 order (denying their motion for reconsideration of the July 23, 2002 order) on July 31, 2003, they had 30 days or until August 30, 2003 to file their notice of appeal and record on appeal. They did so on August 29, 2003. Thus, the appeal was made on time.

WHEREFORE, the petition is hereby *GRANTED*. The June 27, 2005 decision and October 27, 2005 resolution of the Court of Appeals in CA-G.R. SP No. 82129 affirming the January 5, 2004 order of the Regional Trial Court of Negros Occidental, Silay City, Branch 40 are *REVERSED* and *SET ASIDE*. The trial court is hereby directed to approve the notice of appeal and record on appeal and, thereafter, to forward the same to the Court of Appeals.

SO ORDERED.

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

Carpio, J., on leave.

SECOND DIVISION

[G.R. No. 170813. April 16, 2008]

B.F. METAL (CORPORATION), *petitioner, vs.* **SPS. ROLANDO M. LOMOTAN and LINAFLOR LOMOTAN and RICO UMUYON,** *respondents.*

SYLLABUS

1. CIVIL LAW; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; THERE MUST BE COMPETENT PROOF OF THE ACTUAL AMOUNT OF LOSS TO JUSTIFY AWARD THEREOF.— Except as provided by law or by stipulation,

one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages. Actual damages are such compensation or damages for an injury that will put the injured party in the position in which he had been before he was injured. They pertain to such injuries or losses that are actually sustained and susceptible of measurement. To justify an award of actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts. In *People v. Gopio,* the Court allowed the reimbursement of only the laboratory fee that was duly receipted as "the rest of the documents, which the prosecution presented to prove the actual expenses incurred by the victim, were merely a doctor's prescription and a handwritten list of food expenses." In *Viron Transportation Co., Inc. v. Delos Santos,* the Court particularly disallowed the award of actual damages, considering that the actual damages suffered by private respondents therein were based only on a job estimate and a photo showing the damage to the truck and no competent proof on the specific amounts of actual damages suffered was presented.

2. ID.; ID.; ID.; NO EVIDENCE WAS SUBMITTED IN CASE AT BAR TO SHOW AMOUNT ACTUALLY SPENT FOR THE REPAIR OR REPLACEMENT OF THE WRECKED JEEP; THE COST ESTIMATES PRESENTED BY RESPONDENTS IS NOT COMPETENT PROOF TO PROVE ACTUAL DAMAGES.— In the instant case, no evidence was submitted to show the amount actually spent for the repair or replacement of the wrecked jeep. Spouses Lomotan presented two different cost estimates to prove the alleged actual damage of the wrecked jeep. Exhibit "B", is a job estimate by Pagawaan Motors, Inc., which pegged the repair cost of the jeep at ₱96,000.00, while Exhibit "M", estimated the cost of repair at ₱130,655.00. Following *Viron*, neither estimate is competent to prove actual damages. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. As correctly pointed out by petitioner, the best evidence to prove the value of the wrecked jeep is reflected in Exhibit "I", the Deed of Sale showing the jeep's acquisition cost at ₱72,000.00. However, the depreciation value of equivalent to 10% of the acquisition cost cannot be deducted from it in the absence of proof in support thereof.

3. ID.; ID.; MORAL DAMAGES; WHEN RECOVERABLE; REQUIREMENTS FOR AWARD.— In the case of moral damages, recovery is more an exception rather than the rule. Moral damages are not punitive in nature but are designed to compensate and alleviate the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar harm unjustly caused to a person. In order that an award of moral damages can be aptly justified, the claimant must be able to satisfactorily prove that he has suffered such damages and that the injury causing it has sprung from any of the cases listed in Articles 2219 and 2220 of the Civil Code. Then, too, the damages must be shown to be the proximate result of a wrongful act or omission. The claimant must establish the factual basis of the damages and its causal tie with the acts of the defendant. In fine, an award of moral damages would require, firstly, evidence of besmirched reputation or physical, mental or psychological suffering sustained by the claimant; secondly, a culpable act or omission factually established; thirdly, proof that the wrongful act or omission of the defendant is the proximate cause of the damages sustained by the claimant; and fourthly, that the case is predicated on any of the instances expressed or envisioned by Article 2219 and Article 2220 of the Civil Code.

4. ID.; ID.; MORAL DAMAGES; MAY BE RECOVERED IN CASES OF *CULPA AQUILIANA* OR *QUASI-DELICT* AND IN *CULPA CRIMINAL*; CASE AT BAR.— In *culpa aquiliana,* or *quasi-delict,* (a) when an act or omission causes physical injuries, or (b) where the defendant is guilty of intentional tort, moral damages may aptly be recovered. This rule also applies, as aforestated, to breaches of contract where the defendant acted fraudulently or in bad faith. In *culpa criminal,* moral damages could be lawfully due when the accused is found guilty of physical injuries, lascivious acts, adultery or concubinage, illegal or arbitrary detention, illegal arrest, illegal search, or defamation. Undoubtedly, petitioner is liable for the moral damages suffered by respondent Umuyon. Its liability is based on a *quasi-delict* or on its negligence in the supervision and selection of its driver, causing the vehicular accident and physical injuries to respondent Umuyon. Rivera is also liable for moral damages to respondent Umuyon based on either *culpa criminal* or *quasi-delict*. Since the decision in the criminal case, which found Rivera guilty of criminal negligence, did

not award moral damages, the same may be awarded in the instant civil action for damages. Jurisprudence show that in criminal offenses resulting to the death of the victim, an award within the range of ₱50,000.00 to ₱100,000.00 as moral damages has become the trend. Under the circumstances, because respondent Umuyon did not die but had become permanently incapacitated to drive as a result of the accident, the award of ₱30,000.00 for moral damages in his favor is justified.

5. ID.; ID.; ID.; ARTICLE 2220 OF THE CIVIL CODE DOES SPEAK OF AWARDING MORAL DAMAGES WHERE THERE IS INJURY TO PROPERTY, BUT THE INJURY MUST BE WILLFUL AND THE CIRCUMSTANCES SHOW THAT SUCH DAMAGES ARE JUSTLY DUE; THERE BEING NO PROOF THAT THE ACCIDENT WAS WILLFUL, ARTICLE 2220 IS NOT APPLICABLE IN CASE AT BAR.— There is no legal basis in awarding moral damages to Spouses Lomotan whether arising from the criminal negligence committed by Rivera or based on the negligence of petitioner under Article 2180. Article 2219 speaks of recovery of moral damages in case of a criminal offense resulting in physical injuries or *quasi-delicts* causing physical injuries, the two instances where Rivera and petitioner are liable for moral damages to respondent Umuyon. Article 2220 does speak of awarding moral damages where there is injury to property, but the injury must be willful and the circumstances show that such damages are justly due. There being no proof that the accident was willful, Article 2220 does not apply.

6. ID.; ID.; EXEMPLARY DAMAGES; IMPOSED BY WAY OF EXAMPLE OR CORRECTION OF THE PUBLIC GOOD, IN ADDITIONAL TO MORAL, TEMPERATE, LIQUIDATED OR COMPENSATORY DAMAGES; AWARD AFFIRMED IN CASE AT BAR.— Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages. Exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated. In *quasi-delicts,* exemplary damages may be granted if the defendant acted with gross negligence. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the

question of whether or not exemplary damages should be awarded. As correctly pointed out by the Court of Appeals, Spouses Lomotan have shown that they are entitled to compensatory damages while respondent Umuyon can recover both compensatory and moral damages. To serve as an example for the public good, the Court affirms the award of exemplary damages in the amount of ₱100,000.00 to respondents. Because exemplary damages are awarded, attorney's fees may also be awarded in consonance with Article 2208 (1). The Court affirms the appellate court's award of attorney's fees in the amount of ₱25,000.00.

APPEARANCES OF COUNSEL

Daniel S. Morga, Jr. for petitioner.

Atienza Madrid & Formento for respondents.

D E C I S I O N

TINGA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, assailing the award of damages against petitioner in the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. CV No. 58655. The Court of Appeals affirmed with modification the Decision of the Regional Trial Court (RTC), Branch 72, Antipolo, Rizal in Civil Case No. 1567-A, which found petitioner corporation and its driver, Onofre V. Rivera, solidarily liable to respondents for damages.

The following factual antecedents are not disputed.

In the morning of 03 May 1989, respondent Rico Umuyon ("Umuyon") was driving the owner-type jeep owned by respondents, Spouses Rolando and Linaflor Lomotan ("Spouses

[1] Dated 13 April 2005 and penned by *J.* Santiago Javier Ranada and concurred in by *JJ.* Marina L. Buzon, Chairman of the Tenth Division, and Mario L. Guariña III; *rollo*, p. 27.

[2] Dated 12 December 2005; *id.* at 46.

Lomotan"). The jeep was cruising along Felix Avenue in Cainta, Rizal at a moderate speed of 20 to 30 kilometers per hour. Suddenly, at the opposite lane, the speeding ten-wheeler truck driven by Onofre Rivera overtook a car by invading the lane being traversed by the jeep and rammed into the jeep. The jeep was a total wreck while Umuyon suffered "blunt thoracic injury with multiple rib fracture, fractured scapula (L), with pneumohemothorax," which entailed his hospitalization for 19 days. Also in view of the injuries he sustained, Umuyon could no longer drive, reducing his daily income from ₱150.00 to ₱100.00.

On 27 October 1989, respondents instituted a separate and independent civil action for damages against petitioner BF Metal Corporation ("petitioner") and Rivera before the Regional Trial Court (RTC) of Antipolo, Rizal. The complaint essentially alleged that defendant Rivera's gross negligence and recklessness was the immediate and proximate cause of the vehicular accident and that petitioner failed to exercise the required diligence in the selection and supervision of Rivera. The complaint prayed for the award of actual, exemplary and moral damages and attorney's fees in favor of respondents.

In the Answer, petitioner and Rivera denied the allegations in the complaint and averred that respondents were not the proper parties-in-interest to prosecute the action, not being the registered owner of the jeep; that the sole and proximate cause of the accident was the fault and negligence of Umuyon; and that petitioner exercised due diligence in the selection and supervision of its employees.

During the trial, respondents offered the testimonies of Umuyon, SPO1 Rico Canaria, SPO4 Theodore Cadaweg and Nicanor Fajardo, the auto-repair shop owner who gave a cost estimate for the repair of the wrecked jeep. Among the documentary evidence presented were the 1989 cost estimate of Pagawaan Motors, Inc.,[3] which pegged the repair cost of the jeep at ₱96,000.00, and the cost estimate of Fajardo Motor Works[4]

[3] Exhibit "B", RTC records (Vol. II), p. 2.

[4] Exhibit "M", *id*. at 51.

done in 1993, which reflected an increased repair cost at ₱130,655.00. They also presented in evidence a copy of the Decision of the RTC, Assisting Branch 74, Cainta, Rizal in Criminal Case No. 4742, entitled *People of the Philippines v. Onofre V. Rivera*, finding Rivera guilty of reckless imprudence resulting in damage to property with physical injuries.

For its part, petitioner presented at the hearing Rivera himself and Habner Revarez, petitioner's production control superintendent. Included in its documentary evidence were written guidelines in preventive maintenance of vehicles and safety driving rules for drivers.

On 21 April 1997, the trial court rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering defendants to pay jointly and severally to herein plaintiffs the following sums:
>
> | | | |
> |---|---|---|
> | (a) Actual Damages — | i. | ₱96,700.00 for cost of the owner-type jeep |
> | | ii. | ₱15,000.00 medical expenses |
> | | iii. | ₱50,000.00 for loss of earnings |
> | (b) Moral Damages — | | ₱100,000.00 |
> | (c) Exemplary Damages — | | ₱100,000.00 |
> | (d) Attorney's Fees — | | ₱25,000.00 plus ₱1,000.00 for every Court appearance |
>
> Costs of Suit.
>
> SO ORDERED.[5]

The trial court declared Rivera negligent when he failed to determine with certainty that the opposite lane was clear before overtaking the vehicle in front of the truck he was driving. It also found petitioner negligent in the selection and supervision of its employees when it failed to prove the proper dissemination of safety driving instructions to its drivers.

[5] *Rollo*, p. 52.

Petitioner and Rivera appealed the decision to the Court of Appeals.

On 13 April 2005, the Court of Appeals rendered the assailed Decision. It affirmed the trial court's finding that Rivera's negligence was the proximate cause of the accident and that petitioner was liable under Article 2180 [6] of the Civil Code for its negligence in the selection and supervision of its employees. However, the appellate court modified the amount of damages awarded to respondents. The dispositive portion of the Decision reads:

WHEREFORE, the decision appealed from is AFFIRMED with MODIFICATION to read as follows:

"WHEREFORE, premises considered, judgment is hereby rendered ordering defendants to pay jointly and severally to herein plaintiffs the following sums:

(a) Actual Damages —	i.	₱130,655.00, for cost of repairing the owner-type jeep.
	ii.	₱10,167.99 in medical expenses.
	iii.	₱2,850.00 for lost earnings during medical treatment.
(b) Moral Damages —		₱100,000.00
(c) Exemplary Damages —		₱100,000.00
(d) Attorney's Fees —		₱25,000.00

Costs of suit."

---

[6] CIVIL CODE, Article 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those persons for whom one is responsible. xxx

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry. xxx

The responsibility treated of in this article shall cease when the persons herein mentioned proved that they observed all the diligence of a good father of a family to prevent damage.

SO ORDERED.[7]

On 12 December 2005, the Court of Appeals denied the motion for reconsideration of its Decision. Only petitioner filed the instant petition, expressly stating that it is assailing only the damages awarded by the appellate court.

The instant petition raises the following issues: (1) whether the amount of actual damages based only on a job estimate should be lowered; (2) whether Spouses Lomotan are also entitled to moral damages; and (3) whether the award of exemplary damages and attorneys is warranted. For their part, respondents contend that the aforementioned issues are factual in nature and therefore beyond the province of a petitioner for review under Rule 45.

This is not the first instance where the Court has given due course to a Rule 45 petition seeking solely the review of the award of damages.[8] A party's entitlement to damages is ultimately a question of law because not only must it be proved factually but also its legal justification must be shown. In any case, the trial court and the appellate court have different findings as to the amount of damages to which respondents are entitled. When the factual findings of the trial and appellate courts are conflicting, the Court is constrained to look into the evidence presented before the trial court so as to resolve the herein appeal.[9]

The trial court split the award of actual damages into three items, namely, the cost of the wrecked jeep, the medical expenses incurred by respondent Umuyon and the monetary value of his earning capacity. On appeal, the Court of Appeals reduced the amount of medical expenses and loss of earning capacity to which respondent Umuyon is entitled but increased from

---

[7] *Rollo*, p. 35-36.

[8] See *Filinvest Land, Inc. v. Court of Appeals*, G.R. No. 138980, 20 September 2005, 470 SCRA 260; *Almeda v. Cariño*, G.R. No. 152143, 13 January 2003, 395 SCRA 144.

[9] *China Airlines, Ltd. v. Court of Appeals*, G.R. No. 129988, 14 July 2003, 406 SCRA 113, 126.

₱96,700.00 to ₱130,655.00 the award in favor of Spouses Lomotan for the cost of repairing the wrecked jeep.

The instant petition assails only the modified valuation of the wrecked jeep. Petitioner points out that the alleged cost of repairing the jeep pegged at ₱130,655.00 has not been incurred but is only a job estimate or a sum total of the expenses yet to be incurred for its repair. It argues that the best evidence obtainable to prove with a reasonable degree of certainty the value of the jeep is the acquisition cost or the purchase price of the jeep minus depreciation for one year of use equivalent to 10% of the purchase price.

Petitioner's argument is partly meritorious.

Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.[10] Actual damages are such compensation or damages for an injury that will put the injured party in the position in which he had been before he was injured. They pertain to such injuries or losses that are actually sustained and susceptible of measurement. To justify an award of actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts.[11]

In *People v. Gopio*,[12] the Court allowed the reimbursement of only the laboratory fee that was duly receipted as "the rest of the documents, which the prosecution presented to prove the actual expenses incurred by the victim, were merely a doctor's prescription and a handwritten list of food expenses."[13] In *Viron Transportation Co., Inc. v. Delos Santos*,[14] the Court particularly

[10] CIVIL CODE, Art. 2199.

[11] *People v. Olermo*, G.R. No. 127848, 17 July 2003, 406 SCRA 412, 430.

[12] *People v. Gopio*, G.R. No. 133925, 29 November 2000, 346 SCRA 408.

[13] *Id*. at 431.

[14] G.R. No. 138296, 22 November 2000, 345 SCRA 509.

disallowed the award of actual damages, considering that the actual damages suffered by private respondents therein were based only on a job estimate and a photo showing the damage to the truck and no competent proof on the specific amounts of actual damages suffered was presented.

In the instant case, no evidence was submitted to show the amount actually spent for the repair or replacement of the wrecked jeep. Spouses Lomotan presented two different cost estimates to prove the alleged actual damage of the wrecked jeep. Exhibit "B", is a job estimate by Pagawaan Motors, Inc., which pegged the repair cost of the jeep at ₱96,000.00, while Exhibit "M", estimated the cost of repair at ₱130,655.00. Following *Viron*, neither estimate is competent to prove actual damages. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages.[15]

As correctly pointed out by petitioner, the best evidence to prove the value of the wrecked jeep is reflected in Exhibit "I", the Deed of Sale showing the jeep's acquisition cost at ₱72,000.00. However, the depreciation value of equivalent to 10% of the acquisition cost cannot be deducted from it in the absence of proof in support thereof.

Petitioner also questions the award of moral and exemplary damages in favor of Spouses Lomotan. It argues that the award of moral damages was premised on the resulting physical injuries arising from the *quasi-delict*; since only respondent Umuyon suffered physical injuries, the award should pertain solely to him. Correspondingly, the award of exemplary damages should pertain only to respondent Umuyon since only the latter is entitled to moral damages, petitioner adds.

In the case of moral damages, recovery is more an exception rather than the rule. Moral damages are not punitive in nature but are designed to compensate and alleviate the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar harm unjustly caused to a person. In order that an award of

[15] *Id*. at 519.

moral damages can be aptly justified, the claimant must be able to satisfactorily prove that he has suffered such damages and that the injury causing it has sprung from any of the cases listed in Articles 2219[16] and 2220[17] of the Civil Code. Then, too, the damages must be shown to be the proximate result of a wrongful act or omission. The claimant must establish the factual basis of the damages and its causal tie with the acts of the defendant. In fine, an award of moral damages would require, firstly, evidence of besmirched reputation or physical, mental or psychological suffering sustained by the claimant; secondly, a culpable act or omission factually established; thirdly, proof that the wrongful act or omission of the defendant is the proximate cause of the damages sustained by the claimant; and fourthly, that the case is predicated on any of the instances expressed or envisioned by Article 2219 and Article 2220 of the Civil Code.[18]

---

[16] CIVIL CODE, Art. 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;
(2) *Quasi-delicts* causing physical injuries;
(3) Seduction, abduction, rape or other lascivious acts;
(4) Adultery or concubinage;
(5) Illegal or arbitrary detention or arrest;
(6) Illegal search;
(7) Libel, slander or any other form of defamation;
(8) Malicious prosecution;
(9) Acts mentioned in Article 309;
(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[17] CIVIL CODE, Article 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently and in bad faith.

[18] *Philippine Telegraph & Telephone Corporation v. Court of Appeals*, G.R. No. 139268, 3 September 2002, 388 SCRA 270, 276.

In *culpa aquiliana*, or *quasi-delict*, (a) when an act or omission causes physical injuries, or (b) where the defendant is guilty of intentional tort, moral damages may aptly be recovered. This rule also applies, as aforestated, to breaches of contract where the defendant acted fraudulently or in bad faith. In *culpa criminal*, moral damages could be lawfully due when the accused is found guilty of physical injuries, lascivious acts, adultery or concubinage, illegal or arbitrary detention, illegal arrest, illegal search, or defamation.[19]

Undoubtedly, petitioner is liable for the moral damages suffered by respondent Umuyon. Its liability is based on a *quasi-delict* or on its negligence in the supervision and selection of its driver, causing the vehicular accident and physical injuries to respondent Umuyon. Rivera is also liable for moral damages to respondent Umuyon based on either *culpa criminal* or *quasi-delict*. Since the decision in the criminal case, which found Rivera guilty of criminal negligence, did not award moral damages, the same may be awarded in the instant civil action for damages.

Jurisprudence show that in criminal offenses resulting to the death of the victim, an award within the range of ₱50,000.00 to ₱100,000.00 as moral damages has become the trend.[20] Under the circumstances, because respondent Umuyon did not die but had become permanently incapacitated to drive as a result of the accident, the award of ₱30,000.00 for moral damages in his favor is justified.[21]

However, there is no legal basis in awarding moral damages to Spouses Lomotan whether arising from the criminal negligence committed by Rivera or based on the negligence of petitioner

---

[19] *Expert Travel & Tours, Inc. v. Court of Appeals*, G.R. No. 130030, 25 June 1999, 309 SCRA 141, 146.

[20] See *Victory Liner, Inc. v. Heirs of Malecdan*, G.R. No.154278, 27 December 2002, 394 SCRA 520; *People v. Ortiz*, G.R. No. 133814, 17 July 2001, 361 SCRA 274; *People v. Cortez*, G.R. No. 131924, 26 December 2000, 348 SCRA 663; *People v. Tambis*, G.R. No. 124452, 28 July 1999, 311 SCRA 430.

[21] See *People v. Tambis*, G.R. No. 124452, 28 July 1999, 311 SCRA 430.

under Article 2180.[22] Article 2219[23] speaks of recovery of moral damages in case of a criminal offense resulting in physical injuries or *quasi-delicts* causing physical injuries, the two instances where Rivera and petitioner are liable for moral damages to respondent Umuyon. Article 2220[24] does speak of awarding moral damages where there is injury to property, but the injury must be willful and the circumstances show that such damages are justly due. There being no proof that the accident was willful, Article 2220 does not apply.

Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages.[25] Exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated.[26] In *quasi-delicts*, exemplary damages may be granted if the defendant acted with gross negligence.[27] While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded.[28]

As correctly pointed out by the Court of Appeals, Spouses Lomotan have shown that they are entitled to compensatory damages while respondent Umuyon can recover both compensatory and moral damages. To serve as an example for the public good, the Court affirms the award of exemplary damages in the amount of ₱100,000.00 to respondents. Because exemplary damages are awarded, attorney's fees may also be

[22] *Supra* note 6 at 4.

[23] *Supra* note 16 at 9.

[24] *Supra* note 17 at 4.

[25] CIVIL CODE, Art. 2229.

[26] CIVIL CODE, Art. 2233.

[27] CIVIL CODE, Art. 2232.

[28] CIVIL CODE, Art. 2234.

awarded in consonance with Article 2208 (1).[29] The Court affirms the appellate court's award of attorney's fees in the amount of ₱25,000.00.

WHEREFORE, the instant petition for *certiorari* is *PARTIALLY GRANTED*. The Decision of the Court of Appeals in CA-G.R. CV No. 58655 is *AFFIRMED* with *MODIFICATION*. The award of actual damages for the cost of repairing the owner-type jeep is hereby *REDUCED* to ₱72,000.00 while the moral damages of ₱30,000.00 is awarded solely to respondent Umuyon. All other awards of the Court of Appeals are *AFFIRMED*. Following jurisprudence,[30] petitioner is ordered to PAY legal interest of 6% per annum from the date of promulgation of the Decision dated 21 April 1997 of the Regional Trial Court, Branch 72, Antipolo, Rizal and 12% per annum from the time the Decision of this Court attains finality, on all sums awarded until their full satisfaction.

SO ORDERED.

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

---

[29] CIVIL CODE, Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered except:

(1) When exemplary damages are awarded. xxx

[30] *Eastern Shipping Lines, Inc. v. Court of Appeals,* G.R. No. 97412, 12 July 1994, 234 SCRA 78.

THIRD DIVISION

[G.R. No. 174672. April 16, 2008]

MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY (MCIAA), *petitioner, vs.* **HEIRS OF MARCELINA L. SERO, SUPREMO S. ANCAJAS, MAXIMA S. ANCAJAS-NUÑEZ, HEIRS OF JULIAN L. ANCAJAS, AGRIPINO ANCAJAS, MARIA ORBISO, MIGUELA ANCAJAS, INESIA ANCAJAS, PACENCIA ANCAJAS, CLAUDIA DOBLE, HEIRS OF ERACLEO S. ANCAJAS, MARCIANO ANCAJAS, LUCIA ANCAJAS, HEIRS OF ANASTACIO S. ANCAJAS, MARIA A. AMAMANGPANG, JOSE S. ANCAJAS, AMADO S. ANCAJAS, HEIRS OF PORCESO S. ANCAJAS, CRISOLOGO ANCAJAS, HEIRS OF SILVESTRA ANCAJAS, ANICETO A. INVENTO, ENRIQUIETA I. GIER, NORMA PACHO, EDGARDO A. INVENTO, PROCOLO A. INVENTO, ESTRELLA I. MAGLASANG, HEIRS OF GERMOGENA S. ANCAJAS, NENITA ANCAJAS-OSTIA, PAULA A. AMADEO, NEMESIO A. AMADEO, PASTORA A. RUSTIA, CONCEPCION A. ORBISO, BALBINA A. AMADEO, ANASTACIA A. AMADEO, RUFINO AMADEO, VALERIANO AMADEO, HERMOGENIS AMADEO, PEDRO AMADEO, OPING AMADEO, HEIRS OF CRESENCIA AMADEO, EDITHO A. SERTEMO, HEIRS OF DEMETRIO L. SERO, AURELIA L. SERO, MONICA S. YUBAL, HEIRS OF SOLEDAD SERO-VILLACSE, PAQUITA S. VILLACSE, CONCEPCION VILLARIN, JOSE S. OSTIA, HEIRS OF BASILISA S. SERO, HEIRS OF TOMAS S. CUNA, FERNANDO CUNA, HEIRS OF MARGARITO S. CUNA, LEONARDO CUNA, CONSOLACION CUNA, SALOME CUNA, HEIRS OF PEREGRINA SERO CUNA, CARMEN CUNA, HEIRS OF ALEJANDRO SERO CUNA, LETICIA CUNA, HEIRS OF SENANDO SERO CUNA, SONIA CUNA, ANTONIO S. CUNA, COLOMBA SERO CUNA, All represented by their attorney-in-fact-ANECITO INVENTO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; IN THE RESOLUTION OF A MOTION TO DISMISS BASED ON FAILURE TO STATE A CAUSE OF ACTION, ONLY THE FACTS ALLEGED IN COMPLAINT MUST BE CONSIDERED.— A cause of action is an act or omission of one party in violation of the legal right of the other. Its elements are the following: (1) the legal right of plaintiff; (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant in violation of said legal right. The existence of a cause of action is determined by the allegations in the complaint. Thus, in the resolution of a motion to dismiss based on failure to state a cause of action, only the facts alleged in the complaint must be considered. The test in cases like these is whether a court can render a valid judgment on the complaint based upon the facts alleged and pursuant to the prayer therein. Hence, it has been held that a motion to dismiss generally partakes of the nature of a demurrer which hypothetically admits the truth of the factual allegations made in a complaint.

2. ID.; ID.; ID.; IN RESOLVING A MOTION TO DISMISS, EVERY COURT MUST TAKE JUDICIAL NOTICE OF DECISIONS THE COURT HAS RENDERED AS PROVIDED BY SECTION 1 OF RULE 129 OF THE RULES OF COURT.— While a trial court focuses on the factual allegations in a complaint, it cannot disregard statutes and decisions material and relevant to the proper appreciation of the questions before it. In resolving a motion to dismiss, every court must take judicial notice of decisions this Court has rendered as provided by Section 1 of Rule 129 of the Rules of Court, to wit: SECTION 1. *Judicial notice, when mandatory*. — A court shall take judicial notice, without the 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, laws of nature, the measure of time, and the geographical divisions.

3. ID.; ID.; ID.; HAD THE APPELLATE COURT CONSIDERED THE IMPORT OF THE RULING IN *MACTAN-CEBU INTERNATIONAL AIRPORT V. COURT OF APPEALS,* IT WOULD HAVE FOUND THAT RESPONDENTS CAN INVOKE NO RIGHT AGAINST THE PETITIONER SINCE THE SUBJECT LANDS WERE ACQUIRED BY THE STATE IN FEE SIMPLE, THUS, THE FIRST ELEMENT OF CAUSE OF ACTION, THAT IS, THE PLAINTIFF'S LEGAL RIGHT, IS NOT PRESENT CASE AT BAR.— In reversing the Orders of the RTC, the Court of Appeals failed to consider the decision of this Court in *Mactan-Cebu International Airport v. Court of Appeals,* rendered on November 27, 2000, which settled the issue of whether the properties expropriated under Civil Case No. R-1881 will be reconveyed to the original owners if the purpose for which it was expropriated is ended or abandoned or if the property was to be used other than the expansion or improvement of the Lahug airport. In said case, the Court held that the terms of the judgment in Civil Case No. R-1881 were clear and unequivocal. It granted title over the expropriated land to the Republic of the Philippines in fee simple without any condition that it would be returned to the owners or that the owners had a right to repurchase the same if the purpose for which it was expropriated is ended or abandoned or if the property was to be used other than as the Lahug airport. When land has been acquired for public use in fee simple, unconditionally, either by the exercise of eminent domain or by purchase, the former owner retains no rights in the land, and the public use may be abandoned, or the land may be devoted to a different use, without any impairment of the estate or title acquired, or any reversion to the former owner. Had the appellate court considered the import of the ruling in *Mactan-Cebu International Airport v. Court of Appeals,* it would have found that respondents can invoke no right against the petitioner since the subject lands were acquired by the State in fee simple. Thus, the first element of a cause of action, *i.e.*, plaintiff's legal right, is not present in the instant case.

4. ID.; ID.; ID.; RESPONDENTS' LEGAL RIGHT TO THE SUBJECT PROPERTIES IS FORECLOSED BY PRESCRIPTION, IF NOT BY *LACHES*; AN ACTION FOR RECONVEYANCE MUST BE FILED WITHIN 10 YEARS FROM THE ISSUANCE OF THE TITLE SINCE THE ISSUANCE OPERATES AS A CONSTRUCTIVE NOTICE.—

Even assuming that respondents have a right to the subject properties being the heirs of the alleged real owner Ysabel Limbaga, they still do not have a cause of action against the petitioner because such right has been foreclosed by prescription, if not by *laches*. Respondents failed to take the necessary steps within a reasonable period to recover the properties from the parties who caused the alleged fraudulent reconstitution of titles. Respondents' action in the court below is one for reconveyance based on fraud committed by Isabel Limbaga in reconstituting the titles to her name. It was filed on July 6, 1999, or *38* years after the trial court in Civil Case No. R-1881 granted the expropriation, or even longer if we reckon from the time of the fraudulent reconstitution of titles, which date is not stated in the complaint but presumably before the complaint for expropriation was filed by CAA on April 16, 1952. An action for reconveyance is a legal remedy granted to a landowner whose property has been wrongfully or erroneously registered in another's name. However, such action must be filed within *10 years* from the issuance of the title since the issuance operates as a constructive notice. Thus, the cause of action which respondents may have against the petitioner is definitely barred by prescription.

5. ID.; ID.; ID.; AN ALLEGATION OF PRESCRIPTION CAN EFFECTIVELY BE USED IN A MOTION TO DISMISS WHEN THE COMPLAINT ON ITS FACE SHOWS THAT INDEED THE ACTION HAS PRESCRIBED AT THE TIME IT WAS FILED.— Rule 9, Section 1 of the Rules of Court provides that when it appears from the pleadings or the evidence on record that the action is already barred by statute of limitations, the court shall dismiss the claim. Further, contrary to respondents' claim that a complaint may not be dismissed based on prescription without trial, an allegation of prescription can effectively be used in a motion to dismiss when the complaint on its face shows that indeed the action has prescribed at the time it was filed. Thus, in *Gicano v. Gegato*: We have ruled that trial courts have authority and discretion to dismiss an action on the ground of prescription when the parties' pleadings or other facts on record show it to be indeed time-barred; and it may do so on the basis of a motion to dismiss, or an answer which sets up such ground as an affirmative defense; or even if the ground is alleged after judgment on the merits, as in a motion for reconsideration; or even if the defense

has not been asserted at all, as where no statement thereof is found in the pleadings, or where a defendant has been declared in default. What is essential only, to repeat, is that the facts demonstrating the lapse of the prescriptive period, be otherwise sufficiently and satisfactorily apparent on the record: either in the averments of the plaintiffs complaint, or otherwise established by the evidence. In the instant case, although the complaint did not state the date when the alleged fraud in the reconstitution of titles was perpetuated, it is however clear from the allegations in the complaint that the properties sought to be recovered were acquired by the petitioner in Civil Case No. R-1881 which was granted by the trial court on December 29, 1961. Clearly, the filing of the action in 1999 is way beyond the ten *10* year prescriptive period.

6. ID.; ID.; ID.; RESPONDENT'S INACTION FOR A PERIOD OF 38 YEARS TO VINDICATE THEIR ALLEGED RIGHTS HAD CONVERTED THEIR CLAIM TO STALE DEMAND.— While it is by express provision of law that no title to registered land in derogation of that of the registered owner shall be acquired by prescription or adverse possession, it is likewise an enshrined rule that even a registered owner may be barred from recovering possession of property by virtue of *laches*. The negligence or omission to assert a right within a reasonable time warrants a presumption that the party entitled to assert it had either abandoned it or declined to assert it also casts doubt on the validity of the claim of ownership. Such neglect to assert a right taken in conjunction with the lapse of time, more or less great, and other circumstances causing prejudice to the adverse party, operates as a bar in a court of equity. Respondents' inaction for a period of 38 years to vindicate their alleged rights had converted their claim into a stale demand. The allegation that petitioner employed threat or intimidation is an afterthought belatedly raised only in the Court of Appeals. As such it deserves scant attention.

7. POLITICAL LAW; POWERS OF THE STATE; EMINENT DOMAIN; THE DETERMINATION OF THE RIGHTS AND OBLIGATIONS OF LANDOWNERS WHOSE PROPERTIES WERE EXPROPRIATED REST ON THE CHARACTER BY WHICH THE TITLES THEREOF WERE ACQUIRED BY THE GOVERNMENT; IF THE DECREE OF EXPROPRIATION GIVES THE ENTITY A FEE SIMPLE

TITLE, LIKE IN THE PRESENT CASE, THEN THE LAND BECOMES THE ABSOLUTE PROPERTY OF THE EXPROPRIATOR.— We are not unaware of the ruling in *Heirs of Timoteo Moreno v. Mactan-Cebu International Airport Authority,* concerning still another set of owners of lands which were declared expropriated in the judgment in Civil Case No. R-1881, but were ordered by the Court to be reconveyed to their previous owners because there was preponderant proof of the existence of the right of repurchase. However, we qualified our Decision in that case, thus: **We adhere to the principles enunciated in Fery and in Mactan-Cebu International Airport Authority, and do not overrule them.** Nonetheless the weight of their import, particularly our ruling as regards the properties of respondent Chiongbian in *Mactan-Cebu International Airport Authority,* must be commensurate to the facts that were established therein as distinguished from those extant in the case at bar. Chiongbian put forth inadmissible and inconclusive evidence, while in the instant case we have preponderant proof as found by the trial court of the existence of the right of repurchase in favor of petitioners. Thus, the determination of the rights and obligations of landowners whose properties were expropriated but the public purpose for which eminent domain was exercised no longer subsist, must rest on the character by which the titles thereof were acquired by the government. If the land is expropriated for a particular purpose with the condition that it will be returned to its former owner once that purpose is ended or abandoned, then the property shall be reconveyed to its former owner when the purpose is terminated or abandoned. If, on the contrary, the decree of expropriation gives to the entity a fee simple title, as in this case, then the land becomes the absolute property of the expropriator. Non-use of the property for the purpose by which it was acquired does not have the effect of defeating the title acquired in the expropriation proceedings.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Gica Del Socorro Espinoza Villarmia Fernandez & Tan for R. Inocian, *et al.*

Balorio & Pintor Law Office and *Palma Ybañez & Teleron* for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition assails the May 12, 2006 Decision[1] of the Court of Appeals in CA-G.R. CV No. 73159, which reversed the June 14, 2001 and August 10, 2001 Orders of the Regional Trial Court (RTC) of Cebu City, Branch 8, in Civil Case No. CEB-24012. Also assailed is the September 12, 2006 Resolution denying the motion for reconsideration.

The facts of the case are as follows:

On July 6, 1999, respondents, through their attorney-in-fact Anecito Invento, filed a complaint against several defendants for recovery of ownership and declaration of nullity of several Transfer Certificates of Title (TCTs), four of which are registered in the names of the petitioner Mactan-Cebu International Airport Authority (MCIAA) and the Republic. They alleged that the subject properties were owned by their predecessor Ysabel Limbaga, but the Original Certificates of Title were lost during the Second World War. Respondents alleged that the mother of therein defendants Ricardo Inocian, Emilia I. Bacalla, Olympia I. Esteves and Restituta I. Montana pretended to be "Isabel Limbaga" and fraudulently succeeded in reconstituting the titles over the subject properties to her name and in selling some of them to the other defendants.[2]

It will be recalled that the subject properties were acquired by the Civil Aeronautics Administration (CAA) through expropriation proceedings for the expansion and improvement of the Lahug Airport,[3] which was granted by the Court of First Instance (CFI) of Cebu City, Branch 3, in Civil Case No. R-1881, on December 29, 1961. Subsequently, however, Lahug airport

---

[1] Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Enrico A. Lanzanas and Apolinario D. Bruselas, Jr.

[2] *Rollo*, pp. 59-60.

[3] *Id.* at 62.

was ordered closed on November 29, 1989,[4] and all its functions and operations were transferred to petitioner MCIAA[5] after its creation in 1990 pursuant to Republic Act (R.A.) No. 6958, otherwise known as the *Charter of the Mactan-Cebu International Airport Authority*.

In its Answer, petitioner denied the allegations in the complaint and by way of special and affirmative defenses moved for the dismissal of the complaint. Likewise, defendants Ricardo Inocian, Haide Sun and spouses Victor Arcinas and Marilyn Dueñas filed their separate motions to dismiss.

On June 14, 2001, the RTC dismissed the complaint on the grounds that the respondents had no cause of action, and that the action was barred by prescription and laches.[6] Respondents filed a motion for reconsideration which was denied; hence, they filed an appeal with the Court of Appeals which reversed the Orders of the RTC. The appellate court held that the complaint alleged "ultimate facts" constituting respondents' cause of action; that the respondents cannot be faulted for not including therein "evidentiary facts," thus causing confusion or doubt as to the existence of a cause of action; and assuming the complaint lacked some definitive statements, the proper remedy for the petitioner and other defendants should have been a motion for bill of particulars, not a motion to dismiss. Further, the determination of whether respondents have a right to recover the ownership of the subject properties, or whether their action is barred by prescription or *laches* requires evidentiary proof which can be threshed out, not in a motion to dismiss, but in a full-blown trial.[7] The dispositive portion of the Decision reads:

WHEREFORE, the assailed orders dated 14 June 2001 and 10 August 2001, both issued by the Regional Trial Court of Cebu City, Branch 8 in Civil Case No. CEB-24012, are hereby REVERSED

[4] See *Air Transportation Office v. Gopuco*, Jr., G.R. No. 158563, June 30, 2005, 462 SCRA 544, 548.

[5] See *Heirs of Timoteo Moreno v. Mactan-Cebu International Airport Authority*, G.R. No. 156273, August 9, 2005, 466 SCRA 288, 294.

[6] *Rollo*, p. 78.

[7] *Id.* at 50-53.

and SET ASIDE. Accordingly, we REMAND the case to the court *a quo* for further proceedings. We are also directing the RTC of Cebu City, Branch 8 to REINSTATE the case, and to conduct a TRIAL ON THE MERITS and thereafter render a decision.

SO ORDERED.[8]

Petitioner moved for reconsideration, however, it was denied in a Resolution dated September 12, 2006.[9] Hence, this petition for review based on the following grounds:

> THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT RESPONDENTS HAVE A CAUSE OF ACTION AGAINST PETITIONER IN CIVIL CASE NO. CEB-24012.
>
> THE COURT OF APPEALS GRAVELY ERRED IN NOT AFFIRMING THE LOWER COURT'S FINDING THAT RESPONDENTS ARE GUILTY OF LACHES AND THAT THEIR CAUSE OF ACTION, IF ANY, HAS PRESCRIBED.[10]

Respondents argue that the properties which were expropriated in connection with the operation of the Lahug Airport should be reconveyed to the real owners considering that the purpose for which the properties were expropriated is no longer relevant in view of the closure of the Lahug Airport.[11]

A cause of action is an act or omission of one party in violation of the legal right of the other. Its elements are the following: (1) the legal right of plaintiff; (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant in violation of said legal right.[12] The existence of a cause of action is determined by the allegations in the complaint.[13] Thus, in the resolution of a motion to dismiss based on failure to state a

---

[8] *Id*. at 53.

[9] *Id*. at 56.

[10] *Id*. at 28.

[11] *Id*. at 62.

[12] *Heirs of the Late Faustina Adalid v. Court of Appeals*, G.R. No. 122202, May 26, 2005, 459 SCRA 27, 40.

[13] *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, G.R. No. 143896, July 8, 2005, 463 SCRA 64, 73.

cause of action, only the facts alleged in the complaint must be considered. The test in cases like these is whether a court can render a valid judgment on the complaint based upon the facts alleged and pursuant to the prayer therein. Hence, it has been held that a motion to dismiss generally partakes of the nature of a demurrer which hypothetically admits the truth of the factual allegations made in a complaint.[14]

However, while a trial court focuses on the factual allegations in a complaint, it cannot disregard statutes and decisions material and relevant to the proper appreciation of the questions before it. In resolving a motion to dismiss, every court must take judicial notice of decisions this Court has rendered as provided by Section 1 of Rule 129 of the Rules of Court,[15] to wit:

> SECTION 1. *Judicial notice, when mandatory*. — A court shall take judicial notice, without the 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, laws of nature, the measure of time, and the geographical divisions.

In reversing the Orders of the RTC, the Court of Appeals failed to consider the decision of this Court in *Mactan-Cebu International Airport v. Court of Appeals*,[16] rendered on November 27, 2000, which settled the issue of whether the properties expropriated under Civil Case No. R-1881 will be reconveyed to the original owners if the purpose for which it was expropriated is ended or abandoned or if the property was to be used other than the expansion or improvement of the Lahug airport.

In said case, the Court held that the terms of the judgment in Civil Case No. R-1881 were clear and unequivocal. It granted

---

[14] *Peltan Development, Inc. v. Court of Appeals*, 336 Phil. 824, 833-834 (1997).

[15] *Id*.

[16] 399 Phil. 695 (2000).

title over the expropriated land to the Republic of the Philippines in fee simple without any condition that it would be returned to the owners or that the owners had a right to repurchase the same if the purpose for which it was expropriated is ended or abandoned or if the property was to be used other than as the Lahug airport.[17] When land has been acquired for public use in fee simple, unconditionally, either by the exercise of eminent domain or by purchase, the former owner retains no rights in the land, and the public use may be abandoned, or the land may be devoted to a different use, without any impairment of the estate or title acquired, or any reversion to the former owner.[18]

Had the appellate court considered the import of the ruling in *Mactan-Cebu International Airport v. Court of Appeals*, it would have found that respondents can invoke no right against the petitioner since the subject lands were acquired by the State in fee simple. Thus, the first element of a cause of action, *i.e.*, plaintiff's legal right, is not present in the instant case.

We are not unaware of the ruling in *Heirs of Timoteo Moreno v. Mactan-Cebu International Airport Authority*,[19] concerning still another set of owners of lands which were declared expropriated in the judgment in Civil Case No. R-1881, but were ordered by the Court to be reconveyed to their previous owners because there was preponderant proof of the existence of the right of repurchase. However, we qualified our Decision in that case, thus:

We adhere to the principles enunciated in *Fery* and in *Mactan-Cebu International Airport Authority*, and do not overrule them. Nonetheless the weight of their import, particularly our ruling as regards the properties of respondent Chiongbian in *Mactan-Cebu International Airport Authority,* must be commensurate to the facts that were established therein as distinguished from those extant in the case at bar. Chiongbian put forth inadmissible and inconclusive evidence, while in the instant case we have preponderant proof as

[17] *Id*. at 706, citing the case of *Fery v. Municipality of Cabanatuan*, 42 Phil. 28 (1921).

[18] *Id*. at 705.

[19] G.R. No. 156273, October 15, 2003, 413 SCRA 502.

found by the trial court of the existence of the right of repurchase in favor of petitioners.[20] (Emphasis provided)

Thus, the determination of the rights and obligations of landowners whose properties were expropriated but the public purpose for which eminent domain was exercised no longer subsist, must rest on the character by which the titles thereof were acquired by the government. If the land is expropriated for a particular purpose with the condition that it will be returned to its former owner once that purpose is ended or abandoned, then the property shall be reconveyed to its former owner when the purpose is terminated or abandoned. If, on the contrary, the decree of expropriation gives to the entity a fee simple title, as in this case, then the land becomes the absolute property of the expropriator. Non-use of the property for the purpose by which it was acquired does not have the effect of defeating the title acquired in the expropriation proceedings.[21]

Even assuming that respondents have a right to the subject properties being the heirs of the alleged real owner Ysabel Limbaga, they still do not have a cause of action against the petitioner because such right has been foreclosed by prescription, if not by *laches*. Respondents failed to take the necessary steps within a reasonable period to recover the properties from the parties who caused the alleged fraudulent reconstitution of titles.

Respondents' action in the court below is one for reconveyance based on fraud committed by Isabel Limbaga in reconstituting the titles to her name. It was filed on July 6, 1999, or *38* years after the trial court in Civil Case No. R-1881 granted the expropriation, or even longer if we reckon from the time of the fraudulent reconstitution of titles, which date is not stated in the complaint but presumably before the complaint for expropriation was filed by CAA on April 16, 1952.[22]

An action for reconveyance is a legal remedy granted to a landowner whose property has been wrongfully or erroneously

---

[20] *Id*. at 509.

[21] *Id*. at 508.

[22] See *Air Transportation Office v. Gopuco*, *supra* note 4 at 547.

registered in another's name.[23] However, such action must be filed within *10* years from the issuance of the title since the issuance operates as a constructive notice.[24] Thus, the cause of action which respondents may have against the petitioner is definitely barred by prescription.

Rule 9, Section 1 of the Rules of Court provides that when it appears from the pleadings or the evidence on record that the action is already barred by statute of limitations, the court shall dismiss the claim. Further, contrary to respondents' claim that a complaint may not be dismissed based on prescription without trial, an allegation of prescription can effectively be used in a motion to dismiss when the complaint on its face shows that indeed the action has prescribed[25] at the time it was filed.

Thus, in *Gicano v. Gegato*:[26]

> We have ruled that trial courts have authority and discretion to dismiss an action on the ground of prescription when the parties' pleadings or other facts on record show it to be indeed time-barred; and it may do so on the basis of a motion to dismiss, or an answer which sets up such ground as an affirmative defense; or even if the ground is alleged after judgment on the merits, as in a motion for reconsideration; or even if the defense has not been asserted at all, as where no statement thereof is found in the pleadings, or where a defendant has been declared in default. What is essential only, to repeat, is that the facts demonstrating the lapse of the prescriptive period, be otherwise sufficiently and satisfactorily apparent on the record: either in the averments of the plaintiffs complaint, or otherwise established by the evidence.[27] (Citations omitted)

In the instant case, although the complaint did not state the date when the alleged fraud in the reconstitution of titles was perpetuated, it is however clear from the allegations in the complaint that the properties sought to be recovered were acquired by the

[23] *Declaro v. Court of Appeals*, 399 Phil. 616, 623-624 (2000).

[24] *Id*.

[25] *Balo v. Court of Appeals*, G.R. No. 129704, September 30, 2005, 471 SCRA 227, 240.

[26] G.R. No. 63574, January 20, 1988, 157 SCRA 140.

[27] G.R. No. 63575, January 20, 1988, 157 SCRA 140, 145-146.

petitioner in Civil Case No. R-1881 which was granted by the trial court on December 29, 1961. Clearly, the filing of the action in 1999 is way beyond the ten *10* year prescriptive period.

Further, while it is by express provision of law that no title to registered land in derogation of that of the registered owner shall be acquired by prescription or adverse possession, it is likewise an enshrined rule that even a registered owner may be barred from recovering possession of property by virtue of *laches*.[28] The negligence or omission to assert a right within a reasonable time warrants a presumption that the party entitled to assert it had either abandoned it or declined to assert it also casts doubt on the validity of the claim of ownership. Such neglect to assert a right taken in conjunction with the lapse of time, more or less great, and other circumstances causing prejudice to the adverse party, operates as a bar in a court of equity.[29]

Respondents' inaction for a period of 38 years to vindicate their alleged rights had converted their claim into a stale demand. The allegation that petitioner employed threat or intimidation is an afterthought belatedly raised only in the Court of Appeals. As such it deserves scant attention.

WHEREFORE, in view of the foregoing, the petition for review is *GRANTED*. The May 12, 2006 Decision and September 12, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 73159 are *REVERSED* and *SET ASIDE*. The Orders of the Regional Trial Court of Cebu City, Branch 8 dated June 14, 2001 and August 10, 2001 in Civil Case No. CEB-24012, dismissing respondent's complaint for reconveyance on grounds of lack of cause of action, prescription and laches and denying the motion for reconsideration, respectively, are *REINSTATED* and *AFFIRMED*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.*, concur.

---

[28] *Rumarate v. Hernandez*, G.R. No. 168222, April 18, 2006, 487 SCRA 317, 335-336.

[29] *Guerrero v. Court of Appeals*, 211 Phil. 295, 305 (1983).

THIRD DIVISION

[G.R. No. 176324. April 16, 2008]

ABAYA INVESTMENTS CORPORATION, *petitioner, vs.* **MERIT PHILIPPINES and SERVULO C. DOMINISE,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; LEASE; RULING OF THE COURT OF APPEALS REQUIRING PRIOR RESCISSION OF THE SUBJECT LEASE CONTRACT IS MISPLACED; CASES OF *NERA V. VACANTE* AND *ZULUETA VS. MARIANO* ARE INAPPLICABLE IN CASE AT BAR.— The ruling of the Court of Appeals requiring prior rescission of the subject lease contract is misplaced. *Nera v. Vacante* and *Zulueta v. Mariano* are inapplicable to the instant case. In the cases cited, the basis for the occupation of the parties thereon are contracts to sell the premises on installment. Thus, the contractual relations between the parties are more than that of a lessor-lessee. They involved violations of contracts to sell in installments the validity of which was the basis of the defendants' possession of the subject premises.

2. ID.; ID.; ID.; THE AVAILABILITY OF AN ACTION FOR RESCISSION DOES NOT PRECLUDE THE LESSOR TO AVAIL OF THE REMEDY OF EJECTMENT.— The instant case however involves a contract of lease. Article 1673 of the Civil Code provides that the lessor may judicially eject the lessee for non-payment of the price stipulated and violation of any of the conditions agreed upon in the contract. In instituting an action for unlawful detainer, Section 2, Rule 70 of the Rules of Court requires the lessor to make a demand upon the lessee to comply with the conditions of the lease and to vacate the premises. It is the owner's demand for the tenant to vacate the premises and the tenant's refusal to do so which makes unlawful the withholding of possession. Such refusal violates the owner's right of possession giving rise to an action for unlawful detainer. The availability of the action for rescission does not preclude the lessor to avail of the remedy of ejectment. In *Dayao v. Shell Company of the Philippines,*

Ltd., where a complaint for unlawful detainer on the ground of violation of contract was filed, the Court held that a lessor is not required to bring first an action for rescission but could ask the Court to do so and simultaneously seek to eject the lessee in a single action for illegal detainer.

3. REMEDIAL LAW; CIVIL PROCEDURE; CERTIFICATION AGAINST FORUM SHOPPING; MAY BE EXCUSED IN CASES WHERE THERE IS COMPLIANCE BUT THE CERTIFICATION FAILS TO SHOW THAT THE SIGNATORY IS AUTHORIZED.— Section 5, Rule 7 of the Rules of Court requires the plaintiff or principal party to execute a certification against forum shopping simultaneous with the filing of the complaint. In *Fuentebella v. Castro*, the Court ruled that, if, for any reason, the principal party cannot sign the petition, the one signing on his behalf must have been duly authorized. Where such party is a corporate body, an officer of the corporation can sign the certification against forum shopping so long as he has been duly authorized by a resolution of its board of directors and a certification which had been signed without the proper authorization is defective and constitutes a valid cause for the dismissal of the petition. However, in *Shipside Inc. v. Court of Appeals*, the Court ruled that technical rules of procedure should be used to promote, and not frustrate justice. While the requirement of the 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. The Court also held that on several occasions, it has excused non-compliance with the requirement as to the certificate of non-forum shopping and with more reason should it allow the petition submitted therein since petitioner did submit a certification on non-forum shopping, failing only to show that the signatory was authorized.

4. ID.; ID.; ID.; FACT THAT THE SIGNATORY'S AUTHORITY TO SIGN THE CERTIFICATION WAS SUBSEQUENTLY RATIFIED BY ITS BOARD JUSTIFIES THE RELAXATION OF THE PROCEDURAL RULES AND SUSTAIN THE VALIDITY OF THE PROCEEDINGS BEFORE THE TRIAL COURTS IN CASE AT BAR AND TO AVOID A RE-LITIGATION OF THE ISSUES AND FURTHER DELAY THE ADMINISTRATION OF JUSTICE.— In view of the

merits of the case and to avoid a re-litigation of the issues and further delay in the administration of justice, we find it more in accord with substantial justice to relax the application of procedural rules and sustain the validity of the proceedings before the trial courts in the present case. In any event, we note that Ms. Abaya's authority to sign the certification was ratified by the Board. In *Benguet Corporation v. Cordillera Caraballo Mission, Inc*., the Court gave due course to the petition considering that the signatory's authority to sign the certification was ratified by the Board and the purpose of the certification, which is to prohibit and penalize the evils of forum shopping, was not circumvented. Likewise, in *China Banking Corporation v. Mondragon International Philippines, Inc*., the Court ruled that the complaint be decided on the merits despite the failure to attach the required proof of authority, because the board resolution subsequently attached recognized the signatory's preexisting status as an authorized signatory.

APPEARANCES OF COUNSEL

Rudolph Dilla Bayot for petitioner.

Leonardo P. Ansaldo for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This Petition for Review on *Certiorari* assails the August 24, 2006 Decision[1] of the Court of Appeals in CA-G.R. SP No. 79495 which reversed and set aside the Decision of the Regional Trial Court of Manila, Branch 36 affirming with modification the Decision of the Metropolitan Trial Court of Manila, Branch 12, as well as the January 17, 2007 Resolution[2] denying the motion for reconsideration.

[1] *Rollo*, pp. 31-41; penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin.

[2] *Id*. at 93-95.

Petitioner leased a commercial building known as "Carmen Building" located at Sampaloc, Manila to respondents for the period September 1, 2000 to August 31, 2005. The contract contained a stipulation prohibiting respondents from subleasing any portion of the building.

Thereafter, respondents failed to pay the rentals for the months of January, February, March and April 2001 totaling ₱450,000.00. After several demands, respondents paid petitioner ₱150,000.00 in April 2001, ₱150,000.00 on May 7, 2001 and ₱150,000.00 on May 9, 2001.

However, respondents again failed to pay the rentals for the succeeding months. Petitioner also discovered that respondents subleased a portion of the building to a computer gaming entity without its consent. Hence, on July 30, 2001, petitioner sent a letter demanding respondents to pay the arrearages, electricity and water bills in the amount of ₱531,069.50 and to terminate the sublease.

Respondents made payments in August and September, 2001. However, they again reneged on their obligation to pay the rents due and to terminate the sublease contract which compelled petitioner to send another demand letter dated October 22, 2001. Petitioner categorically demanded payment of the balance due and for respondents to vacate the premises.

Respondents made partial payments in November and December, 2001. However, with the accrual of rentals, interest, and electricity bill, respondents' obligation amounted to ₱352,232.70. Finally, on January 2, 2002, petitioner filed a Complaint for Unlawful Detainer against respondents for non-payment of rentals and illegal subleasing before the Metropolitan Trial Court of Manila, docketed as Civil Case No. 171849-CV.

Respondents admitted that as of December 10, 2001, it owed petitioner ₱352,232.70 but denied subleasing a portion of the premises to another entity and repudiated petitioner's right to damages. It also assailed petitioner's personality to file the Complaint for ejectment stating that Ms. Abaya was not duly authorized to file the same.

During the pendency of the case, respondents paid petitioner ₱300,000.00 and vacated the premises in May, 2002. Petitioner however claimed that respondents left the premises stealthily sometime in June 2002 without paying the rentals due for the period January to May 2002.

On December 10, 2002, the Metropolitan Trial Court of Manila, Branch 12, rendered a Decision[3] in favor of petitioner the dispositive portion of which reads:

> WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in favor of the plaintiff and against the defendants and all persons claiming rights under them, ordering them to immediately vacate the premises located at Carmen Building, 886 Espana corner Cataluna Street, Sampaloc Manila and to solidarily pay herein plaintiff:
>
> 1. Php 482,885.02 - As earlier indicated; and
> 2. Php 20,000.00 - Representing reasonable reimbursement of attorney's fees and litigation expenses.
>
> SO ORDERED.[4]

Respondents appealed before the Regional Trial Court of Manila arguing that petitioner is not properly clothed with authority to file the ejectment case; that the case was considered moot since it vacated the premises; and that the award of damages is not proper.

On July 28, 2003, the Regional Trial Court of Manila, Branch 36, rendered a Decision[5] sustaining the ruling of the Metropolitan Trial Court but deleted the award of damages.

Thus, respondents filed a Petition for Review before the Court of Appeals which rendered the assailed Decision reversing the decisions of the Regional Trial Court and the Metropolitan Trial Court. The dispostive portion of the Decision reads:

---

[3] *Id*. at 180-186; penned by Judge Jose A. Mendoza.

[4] *Id*. at 186.

[5] *Id*. at 211-214; penned by Judge Wilfredo D. Reyes.

WHEREFORE, premises considered, the instant petition for review is hereby GRANTED. ACCORDINGLY, the decision of the Regional Trial Court of Manila, Branch 36, dated July 28, 2003, affirming with modification the decision of the Metropolitan Trial Court of Manila is hereby SET ASIDE.

SO ORDERED.[6]

The Court of Appeals ruled that the trial court was without jurisdiction when it took cognizance of the complaint filed before it. It held that the issue was not one of possession but rather rescission of contracts over which the Metropolitan Trial Court is without jurisdiction, thus:

Evidently, under those circumstances, ejectment is not the proper remedy. This is because proof of any violation is a condition precedent to resolution or rescission of the contract. It is only when the violation has been established that the contract can be declared rescinded. Hence, it is only upon such rescission that there can be a pronouncement that possession of the realty has become unlawful. *Thus, the basic issue is not possession but one of rescission of a contract, which is beyond the jurisdiction of the trial court to hear and determine.*

In the case of *Nera vs. Vacante*, the Supreme Court said that:

> "A violation by a party of any of the stipulations of a contract on agreement to sell real property would entitle the other party to resolve or rescind it. An allegation of such violation in a detainer suit may be proved by competent evidence. And if proved a justice of the peace court might make a finding to that effect, but it certainly cannot declare and hold that the contract is resolved or rescinded. It is beyond its power so to do. And as the illegality of the possession of realty by a party to a contract to sell is premised upon the resolution of the contract, it follows that an allegation and proof of such violation, a condition precedent to such resolution or rescission, to render unlawful the possession of the land or building erected thereon by the party who has violated the contract, cannot be taken cognizance of by a justice of the peace court..."

[6] *Id.* at 40.

Hence, where the unlawful possession of the property by a party to a contract is premised upon the rescission of the contract, an allegation and proof of such violation is a condition precedent to such rescission to render unlawful the possession of the property by the party who has violated the contract which cannot be taken cognizance of by a Metropolitan Trial Court.

The rescission of the contract is the basis of, and therefore a condition precedent for, the illegality of a party's possession of a piece of realty. Without judicial intervention and determination, even a stipulation entitling one party to take possession of the land and building in case the other party violates the contract cannot confer upon the former the right to take possession thereof, if that move is objected to.

In the instant case, the ejectment case filed by respondent before the trial court will not prosper. This is because the proof of violation is a condition precedent to rescission of the contract. Since violation has not been established, the pronouncement by the trial court that the possession by the petitioners of the building has become unlawful is premature.

While it is true that the contract between the parties provided for extrajudicial rescission, nevertheless, a judicial determination is necessary where it is objected to by the other party. As said by the Supreme Court in the case of *JOSE ZULUETA vs. HON. HERMINIANO MARIANO*, "*A stipulation entitling one party to take possession of the land and building if the other party violates the contract does not ex proprio vigore confer upon the former the right to take possession thereof if objected to without judicial intervention and determination.*"[7] (Citations omitted)

Petitioner filed a motion for reconsideration but it was denied.

Hence, the instant petition for review on *certiorari* raising the following errors:

1. The MTC and the RTC saw the Complaint as one for ejectment, but the Court of Appeals erroneously read it out of context and saw it as one for rescission, contrary to the very allegations of said Complaint;

2. The Decision of the Court of Appeals is contrary to Art. 1673 of the New Civil Code, among others, existing Rules,

[7] *Id*. at 38-40.

opinions of experts and jurisprudence. It even encourages multiplicity of suit, and it is based on inapplicable decisions with totally different factual milieu;

3. The Court of Appeals went beyond its jurisdiction over the case and the issue raised in the petition for review; and it deprived herein petitioner of due process of law.[8]

Petitioner argues that the subject Complaint is one for unlawful detainer and not rescission of contract; that the Complaint alleged the existence of the lease of land and building evidenced by a lease contract; that the lessee was in arrears for several months; and that the lessee, without any right, subleased part of the building in violation of the lease contract; that the legal bases of the ejectment case were violation of law and contract, specifically, Articles 1673, 1650, 1159, and 1315 of the Civil Code; that the reliefs prayed for in the Complaint are constitutive of those in an ejectment suit: vacate the subject premises, to pay the unpaid rentals and attorney's fees and other damages.

On the other hand, respondents contend that the filing of a complaint for rescission is a condition *sine qua non* before the ejectment; that in unilaterally terminating the lease contract without first rescinding the same, the respondents' right to address the alleged violation was effectively foreclosed.

This Court has consistently held that jurisdiction is determined by the nature of the action as pleaded in the complaint. The test of the sufficiency of the facts alleged in the complaint is whether or not admitting the facts alleged therein, the court could render a valid judgment upon the same in accordance with the prayer of the plaintiff.[9] In a complaint for unlawful detainer an allegation that the withholding of the possession or the refusal to vacate is unlawful without necessarily employing the terminology of the law is sufficient.[10]

---

[8] *Id*. at 5.

[9] *Huibonhua v. Court of Appeals*, 378 Phil. 386, 418 (1999).

[10] *Santos v. Spouses Ayon*, G.R. No. 137013, May 6, 2005, 458 SCRA 83, 91.

A review of the averments of the Complaint reveals that there is an allegation that respondents' occupancy of the premises was by virtue of a lease contract and that infractions were committed which served as basis for terminating the same and for respondents to vacate the premises. Clearly, the complaint avers ultimate facts required for a cause of action in an unlawful detainer case which is within the jurisdiction of the Metropolitan Trial Court.

The ruling of the Court of Appeals requiring prior rescission of the subject lease contract is misplaced. *Nera v. Vacante*[11] and *Zulueta v. Mariano*[12] are inapplicable to the instant case. In the cases cited, the basis for the occupation of the parties thereon are contracts to sell the premises on installment. Thus, the contractual relations between the parties are more than that of a lessor-lessee. They involved violations of contracts to sell in installments the validity of which was the basis of the defendants' possession of the subject premises.

The instant case however involves a contract of lease. Article 1673 of the Civil Code [13] provides that the lessor may judicially eject the lessee for non-payment of the price stipulated and violation of any of the conditions agreed upon in the contract. In instituting an action for unlawful detainer, Section 2, Rule 70 of the Rules of Court [14] requires the lessor to make a demand upon the lessee to comply with the conditions of the lease and to vacate the premises. It is the owner's demand for the tenant to vacate the premises and the tenant's refusal to do so which

[11] G.R. No. L-15725, November 29, 1961, 3 SCRA 505.

[12] G.R. No. L-29360, January 30, 1982, 197 SCRA 195.

[13] See the *Separate Opinion* of Justice Vitug in *Dio v. Concepcion*, 357 Phil. 578, 595 (1998).

[14] Section 2. *Lessor to proceed against lessee only after demand.*— Unless otherwise stipulated, such action by the lessor **shall be commenced only after demand to pay or comply with the conditions of the lease and to vacate is made upon the lessee**, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no person be found thereon, **and the lessee fails to comply therewith after fifteen (15) days in the case of land or five (5) days in the case of buildings.**

makes unlawful the withholding of possession. Such refusal violates the owner's right of possession giving rise to an action for unlawful detainer.[15]

The availability of the action for rescission does not preclude the lessor to avail of the remedy of ejectment. In *Dayao v. Shell Company of the Philippines, Ltd.*,[16] where a complaint for unlawful detainer on the ground of violation of contract was filed, the Court held that a lessor is not required to bring first an action for rescission but could ask the Court to do so and simultaneously seek to eject the lessee in a single action for illegal detainer.[17]

Respondents next claim that the Complaint before the Metropolitan Trial Court of Manila was instituted by Ofelia C. Abaya, petitioner's Chairman and President, who signed the Verification and Certification against Forum Shopping without however proof of authority to sign for plaintiff-corporation.

Section 5, Rule 7 of the Rules of Court requires the plaintiff or principal party to execute a certification against forum shopping simultaneous with the filing of the complaint. In *Fuentebella v. Castro*,[18] the Court ruled that, if, for any reason, the principal party cannot sign the petition, the one signing on his behalf must have been duly authorized. Where such party is a corporate body, an officer of the corporation can sign the certification against forum shopping so long as he has been duly authorized by a resolution of its board of directors and a certification which had been signed without the proper authorization is defective and constitutes a valid cause for the dismissal of the petition.[19]

However, in *Shipside Inc. v. Court of Appeals*,[20] the Court ruled that technical rules of procedure should be used to promote,

---

[15] *Dio v. Concepcion*, 357 Phil. 578, 591 (1998).

[16] 186 Phil. 266 (1980).

[17] *Id*. at 274. See also *Dio v. Concepcion*, *supra* and *Huibonhua v. Court of Appeals*, *supra* note 9.

[18] G.R. No. 150865, June 30, 2006, 494 SCRA 183.

[19] *Id*. at 191.

[20] 404 Phil. 981 (2001).

and not frustrate justice. While the requirement of the 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. The Court also held that on several occasions, it has excused non-compliance with the requirement as to the certificate of non-forum shopping and with more reason should it allow the petition submitted therein since petitioner did submit a certification on non-forum shopping, failing only to show that the signatory was authorized.[21]

In view of the merits of the case and to avoid a re-litigation of the issues and further delay in the administration of justice, we find it more in accord with substantial justice to relax the application of procedural rules and sustain the validity of the proceedings before the trial courts in the present case. In any event, we note that Ms. Abaya's authority to sign the certification was ratified by the Board.[22]

In *Benguet Corporation v. Cordillera Caraballo Mission, Inc*,[23] the Court gave due course to the petition considering that the signatory's authority to sign the certification was ratified by the Board and the purpose of the certification, which is to prohibit and penalize the evils of forum shopping, was not circumvented.[24] Likewise, in *China Banking Corporation v. Mondragon International Philippines, Inc.*,[25] the Court ruled that the complaint be decided on the merits despite the failure to attach the required proof of authority, because the board resolution subsequently attached recognized the signatory's preexisting status as an authorized signatory.[26]

WHEREFORE, premises considered, the petition for review on *certiorari* is *GRANTED*. The Decision and Resolution of

[21] *Id*. at 996.

[22] *Rollo*, p. 224.

[23] G.R. No. 155343, September 2, 2005, 469 SCRA 381.

[24] *Id*. at 384-385.

[25] G.R. No. 164798, November 17, 2005, 475 SCRA 332.

[26] *Id*. at 339.

the Court Appeals dated August 24, 2006 and January 17, 2007, respectively, in CA-G.R. SP No. 79495 setting aside the Decision of the Regional Trial Court of Manila, Branch 36, are *REVERSED and SET ASIDE*. The Decision of the Regional Trial Court of Manila, Branch 36, affirming with modification the Decision of the Metropolitan Trial Court of Manila, Branch 12, is *REINSTATED and AFFIRMED.*

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.*, concur.

SECOND DIVISION

[G.R. No. 179035. April 16, 2008]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JESUS PAYCANA, JR.,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; APPELLANT FAILED TO DISCHARGE THE BURDEN TO PROVE SELF-DEFENSE.— Appellant failed to discharge the burden to prove self-defense. An accused who interposes self-defense admits the commission of the act complained of. The burden to establish self-defense is on the accused who must show by strong, clear and convincing evidence that the killing is justified and that, therefore, no criminal liability has attached. The first paragraph of Article 11 of the Revised Penal Code requires, in a plea of self-defense, (1) an unlawful aggression on the part of the victim, (2) a reasonable necessity of the means employed by the accused to prevent or repel it, and (3) the lack of sufficient provocation on the part of the person defending himself.

2. ID.; ID.; ID.; ELEMENTS; UNLAWFUL AGGRESSION; BELIED BY TESTIMONY OF EYEWITNESS AND BY THE NATURE OF INJURIES SUFFERED BY APPELLANT.— Unlawful aggression is a condition *sine qua non* for the justifying circumstance of self-defense. Without it, there can be no self-defense, whether complete or incomplete, that can validly be invoked. Appellant's claim of self-defense was belied by the eyewitness testimony of his own daughter Angelina, which was corroborated by the testimony of his father-in-law Tito and the medical findings. Angelina's testimony was very clear on how her father strangled and stabbed her mother just as she was about to greet him upon arriving home. She begged her father to stop, and even tried to grab her father's hand but to no avail. Tito ran to appellant's house as he heard his daughter Lilybeth's screaming for help, and he saw her lying prostate near the door with her feet trembling. He moved back as he saw appellant armed with a weapon. Angelina told him by the window that appellant had held her mother's neck and stabbed her. Moreover, Dr. Rey Tanchuling, a defense witness who attended to appellant's wound, testified on cross-examination that the injuries suffered by appellant were possibly self-inflicted considering that they were mere superficial wounds.

3. ID.; ID.; ID.; SELF-DEFENSE IS NEGATED BY THE PHYSICAL EVIDENCE; NUMBER OF WOUNDS INFLICTED COULD NO LONGER BE CONSIDERED AS AN ACT OF SELF-DEFENSE BUT A DETERMINED EFFORT TO KILL THE VICTIM.— Self-defense on the part of appellant is further negated by the physical evidence in the case. Specifically, the number of wounds, fourteen (14) in all, indicates that appellant's act was no longer an act of self-defense but a determined effort to kill his victim. The victim died of multiple organ failure secondary to multiple stab wounds. The Court agrees with the trial court's observation, thus: Angelina who is 15 years old will not testify against her father were it not for the fact that she personally saw her father to be the aggressor and stab her mother. Telling her grandfather immediately after the incident that accused stabbed her mother is part of the *res gestae* hence, admissible as evidence. Between the testimony of Angelica who positively identified accused to have initiated the stabbing and continuously stabbed her mother and on the other hand, the testimony of accused that he killed the victim in self-defense, the testimony of the former prevails.

4. ID.; COMPLEX CRIMES; PARRICIDE WITH UNINTENTIONAL ABORTION; COMMITTED IN CASE AT BAR.— The RTC, as affirmed by the Court of Appeals, properly convicted appellant of the complex crime of parricide with unintentional abortion in the killing of his seven (7)-month pregnant wife. Bearing the penalty of *reclusion perpetua* to death, the crime of parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; and (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of the accused. The key element in parricide is the relationship of the offender with the victim. In the case of parricide of a spouse, the best proof of the relationship between the accused and the deceased would be the marriage certificate. The testimony of the accused of being married to the victim, in itself, may also be taken as an admission against penal interest. As distinguished from infanticide, the elements of unintentional abortion are as follows: (1) that there is a pregnant woman; (2) that violence is used upon such pregnant woman without intending an abortion; (3) that the violence is intentionally exerted; and (4) that as a result of the violence the fetus dies, either in the womb or after having been expelled therefrom. In the crime of infanticide, it is necessary that the child be born alive and be viable, that is, capable of independent existence. However, even if the child who was expelled prematurely and deliberately were alive at birth, the offense is abortion due to the fact that a fetus with an intrauterine life of 6 months is not viable. In the present case, the unborn fetus was also killed when the appellant stabbed Lilybeth several times.

5. ID.; ID.; INSTANT CASE IS GOVERNED BY THE FIRST CLAUSE OF ARTICLE 48 BECAUSE BY A SINGLE ACT, THAT OF STABBING HIS WIFE, APPELLANT COMMITTED THE GRAVE FELONY OF PARRICIDE AS WELL AS THE LESS GRAVE FELONY OF UNINTENTIONAL ABORTION.— The case before us is governed by the first clause of Article 48 because by a single act, that of stabbing his wife, appellant committed the grave felony of parricide as well as the less grave felony of unintentional abortion. A complex crime is committed when a single act constitutes two or more grave or less grave felonies. Under the aforecited article, when a single act constitutes two

or more grave or less grave felonies the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period irrespective of the presence of modifying circumstances. Applying the aforesaid provision of law, the maximum penalty for the most serious crime (parricide) is death. However, the Court of Appeals properly commuted the penalty of death imposed on the appellant to *reclusion perpetua,* pursuant to Republic Act No. 9346.

6. ID.; CIVIL INDEMNITY; DAMAGES AWARDED; CASE AT BAR.— Civil indemnity in the amount of ₱50,000.00 (consistent with prevailing jurisprudence) is automatically granted to the offended party, or his/her heirs in case of the former's death, without need of further evidence other than the fact of the commission of any of the aforementioned crimes (murder, homicide, parricide and rape). Moral and exemplary damages may be separately granted in addition to indemnity. Moral damages can be awarded only upon sufficient proof that the complainant is entitled thereto in accordance with Art. 2217 of the Civil Code, while exemplary damages can be awarded if the crime is committed with one or more aggravating circumstances duly proved. The amounts thereof shall be at the discretion of the courts. Hence, the civil indemnity of ₱50,000.00 awarded by the trial court to the heirs of Lilybeth is in order. They are also entitled to moral damages in the amount of ₱50,000.00 as awarded by the trial court. In addition to the civil liability and moral damages, the trial court correctly made appellant account for ₱25,000.00 as exemplary damages on account of relationship, a qualifying circumstance, which was alleged and proved, in the crime of parricide.

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 Jesus Paycana, Jr. was charged[1] with the complex crime of parricide with unintentional abortion before the Regional Trial Court (RTC) of Iriga City, Branch 37. Appellant pleaded not guilty during the arraignment.[2] Pre-trial ensued, in which appellant admitted that the victim Lilybeth Balandra-Paycana (Lilybeth) is his legitimate wife.[3]

Appellant sought to exculpate himself from the crime by setting up self-defense, claiming that it was his wife who attacked him first. In view of the nature of self-defense, it necessarily follows that appellant admits having killed his seven (7)-month pregnant wife, and in the process put to death their unborn child.

The prosecution presented Tito Balandra (Tito), the father of the victim; Angelina Paycana (Angelina), appellant's eldest daughter who personally witnessed the whole gruesome incident; Barangay Tanod Juan Parañal, Jr.; Dr. Stephen Beltran, who conducted the autopsy; and Santiago Magistrado, Jr., the embalmer who removed the fetus from the deceased's body.

The evidence for the prosecution established that on 26 November 2002, at around 6:30 in the morning, appellant, who worked as a butcher, came home from the slaughter house carrying his tools of trade, a knife, a bolo, and a sharpener.[4] His

---

[1] CA *rollo*, p. 12. The accusatory portion of the information reads:

That on or about the 26th day of November, 2002, at about 6:30 in the morning at Sitio Sogod, Sto. Domingo, Nabua, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the said accused, while armed with a kitchen knife and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab Lilybeth Balandra-Paycana, his legitimate wife, for several times, the latter being seven (7) months pregnant, fatally hitting the different parts of her body, causing her immediate death and abortion, to the damage and prejudice of the decease(d)'s deserving heir.

CONTRARY TO LAW.

[2] Record, p. 35.

[3] *Id*. at 43-44. See also *id*. at 117, Certificate of Marriage.

[4] TSN, 21 January 2004, p. 6.

wife was preparing their children for school and was waiting for him to come home from his work. For reasons known to him alone, appellant stabbed his wife 14 times.[5] Tito, whose house is at the back of appellant's house, heard his daughter shouting for help. When he arrived, he saw his daughter lying prostrate near the door and her feet were trembling. But seeing appellant, who was armed, he stepped back. Angelina told Tito by the window that appellant had held her mother's neck and stabbed her.[6]

Appellant claimed that he wrested the weapon from Lilybeth after she stabbed him first. According to him, they had an altercation on the evening of 25 November 2002 because he saw a man coming out from the side of their house and when he confronted his wife about the man, she did not answer. On the following morning, he told her that they should live separately. As appellant got his things and was on his way out of the door, Lilybeth stabbed him. But he succeeded in wresting the knife from Lilybeth. And he stabbed her. He added that he was not aware of the number of times he stabbed his wife because he was then dizzy and lots of blood was coming out of his wound.[7]

The trial court found appellant guilty in a decision dated 14 April 2005.[8] The case was automatically appealed to the Court of Appeals pursuant to Rule 122 Section 3(d) of the Rules of Criminal Procedure.[9] The appellate court denied appellant's

---

[5] TSN, 10 June 2004, p.5.

[6] TSN, 21 January 2004, p. 6.

[7] TSN, 8 November 2004, pp. 5-9.

[8] CA *rollo*, pp.20-27. As penned by Judge Alfredo Agawa, the dispositive portion reads as follows:

WHEREFORE, in view of all the foregoing, the Court finds accused Jesus Paycana, Jr. *y* Audal guilty beyond reasonable doubt for the complex crime(s) of Parricide with Unintentional Abortion and he is sentenced to suffer the maximum penalty of DEATH and to indemnify the heirs of Lilybeth Balandra-Paycana in the amount of ₱50,000.00, moral damages of ₱50,000.00 and ₱25,000.00 as exemplary damages.

SO ORDERED.

[9] As amended by A.M. No. 00-5-03-SC (Re: Amendments to the Revised Rules of Criminal Procedure to Govern Death Penalty Cases), to wit: x x x

appeal in a decision dated 30 May 2007.[10] Appellant filed a notice of appeal dated 14 June 2007 before the Court of Appeals.[11]

The Court is not convinced by appellant's assertion that the trial court erred in not appreciating the justifying circumstance of self-defense in his favor.

Rule 122 Sec. 3. *How appeal taken.*— x x x (d) No notice of appeal is necessary in cases where the Regional Trial Court imposed the death penalty. **The Court of Appeals shall automatically review the judgment as provided in Section 10 of this Rule**. x x x

Sec. 10. *Transmission of records in case of death penalty.* — In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Court of Appeals for automatic review and judgment within twenty days but not earlier than fifteen days from the promulgation of the judgment or notice of denial of a motion for new trial or reconsideration. The transcript shall also be forwarded within ten days after the filing thereof by the stenographic reporter.

[10] *Rollo*, pp. 2-10. Penned by Associate Justice Bienvenido Reyes, and concurred by Associate Justices Aurora Santiago Lagman and Apolinario Bruselas, Jr. The dispositive portion reads as follows:

WHEREFORE, all premises considered, the decision appealed from is hereby AFFIRMED with a MODIFICATION in that, instead of death, the accused-appellant is sentenced to suffer the penalty of *reclusion perpetua.*

SO ORDERED.

[11] CA *rollo*, pp. 109-110. The notice of appeal was filed pursuant to A.M. No. 00-5-03-SC (Re: Amendments to the Revised Rules of Criminal Procedure to Govern Death Penalty Cases), to wit: x x x

Sec. 13. *Certification or appeal of case to the Supreme Court.*—(a) Whenever the Court of Appeals finds that the penalty of death should be imposed, the court shall render judgment but refrain from making an entry of judgment and forthwith certify the case and elevate its entire record to the Supreme Court for review.

(b) Where the judgment also imposes a lesser penalty for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more severe offense for which the penalty of death is imposed, and the accused appeals, the appeal shall be included in the case certified for review to, the Supreme Court.

(c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by **notice of appeal** filed with the Court of Appeals.

Self-defense, being essentially a factual matter, is best addressed by the trial court.[12] In the absence of any showing that the trial court failed to appreciate facts or circumstances of weight and substance that would have altered its conclusion, the court below, having seen and heard the witnesses during the trial, is in a better position to evaluate their testimonies. No compelling reason, therefore, exists for this Court to disturb the trial court's finding that appellant did not act in self-defense.

Appellant failed to discharge the burden to prove self-defense. An accused who interposes self-defense admits the commission of the act complained of. The burden to establish self-defense is on the accused who must show by strong, clear and convincing evidence that the killing is justified and that, therefore, no criminal liability has attached. The first paragraph of Article 11 of the Revised Penal Code[13] requires, in a plea of self-defense, (1) an unlawful aggression on the part of the victim, (2) a reasonable necessity of the means employed by the accused to prevent or repel it, and (3) the lack of sufficient provocation on the part of the person defending himself.[14]

Unlawful aggression is a condition *sine qua non* for the justifying circumstance of self-defense. Without it, there can be no self-defense, whether complete or incomplete, that can validly be invoked.[15] Appellant's claim of self-defense was belied

---

[12] *People v. Maceda*, G.R. No. 91106, 27 May 1991, 197 SCRA 499, 510.

[13] Art. 11. Justifying circumstances.- The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

[14] *People v. Rosaria Ignacio*, G.R. No. 107801, 26 March 1997, 270 SCRA 445, 450.

[15] *Id*. at 451. See *People v. Jotoy*, 222 SCRA 801; *People v. Sazon*, 189 SCRA 700.

by the eyewitness testimony of his own daughter Angelina, which was corroborated by the testimony of his father-in-law Tito and the medical findings. Angelina's testimony was very clear on how her father strangled and stabbed her mother just as she was about to greet him upon arriving home. She begged her father to stop, and even tried to grab her father's hand but to no avail.[16] Tito ran to appellant's house as he heard his daughter Lilybeth's screaming for help, and he saw her lying prostate near the door with her feet trembling. He moved back as he saw appellant armed with a weapon. Angelina told him by the window that appellant had held her mother's neck and stabbed her.[17]

Moreover, Dr. Rey Tanchuling, a defense witness who attended to appellant's wound, testified on cross-examination that the injuries suffered by appellant were possibly self-inflicted considering that they were mere superficial wounds.[18]

In any event, self-defense on the part of appellant is further negated by the physical evidence in the case. Specifically, the number of wounds, fourteen (14) in all, indicates that appellant's act was no longer an act of self-defense but a determined effort to kill his victim.[19] The victim died of multiple organ failure secondary to multiple stab wounds.[20]

The Court agrees with the trial court's observation, thus:

> Angelina who is 15 years old will not testify against her father were it not for the fact that she personally saw her father to be the aggressor and stab her mother. Telling her grandfather immediately after the incident that accused stabbed her mother is part of the *res gestae* hence, admissible as evidence. Between the testimony of Angelica who positively identified accused to have initiated the

---

[16] TSN, 10 June 2004, pp. 4-11.

[17] TSN, 21 January 2004, p. 6.

[18] TSN, 1 September 2004, pp. 9-10.

[19] *Cabuslay v. People*, G.R. No. 129875, 30 September 2005, 471 SCRA 241, 262-263.

[20] Records, p. 120.

stabbing and continuously stabbed her mother and on the other hand, the testimony of accused that he killed the victim in self-defense, the testimony of the former prevails.[21]

The RTC, as affirmed by the Court of Appeals, properly convicted appellant of the complex crime of parricide with unintentional abortion in the killing of his seven (7)-month pregnant wife.

Bearing the penalty of *reclusion perpetua* to death, the crime of parricide[22] is committed when: (1) a person is killed; (2) the deceased is killed by the accused; and (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of the accused. The key element in parricide is the relationship of the offender with the victim. In the case of parricide of a spouse, the best proof of the relationship between the accused and the deceased would be the marriage certificate. The testimony of the accused of being married to the victim, in itself, may also be taken as an admission against penal interest.[23]

As distinguished from infanticide,[24] the elements of unintentional abortion [25] are as follows: (1) that there is a pregnant

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

[22] Art 246. *Parricide*.—Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his **spouse**, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

[23] *People v. Dominador Velasco*, 404 Phil. 369, 379 (2001). Citing *People v. Malabago*, G.R. No. 115686, 2 December 1996, 265 SCRA 198. See Note 3.

[24] Art. 255. *Infanticide*.—The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill **any child less than three days of age**.

If any crime penalized in this article be committed by the mother of the child for the purpose of concealing her dishonor, she shall suffer the penalty of *prision mayor* in its medium and maximum periods, and if said crime be committed for the same purpose by the maternal grandparents or either of them, the penalty shall be *reclusion temporal*.

[25] Art. 257. *Unintentional abortion*. —The penalty of *prision correctional* in its minimum and medium periods shall be imposed upon any person who shall cause an abortion by violence, but unintentionally.

woman; (2) that violence is used upon such pregnant woman without intending an abortion; (3) that the violence is intentionally exerted; and (4) that as a result of the violence the fetus dies, either in the womb or after having been expelled therefrom. In the crime of infanticide, it is necessary that the child be born alive and be viable, that is, capable of independent existence.[26] However, even if the child who was expelled prematurely and deliberately were alive at birth, the offense is abortion due to the fact that a fetus with an intrauterine life of 6 months is not viable.[27] In the present case, the unborn fetus was also killed when the appellant stabbed Lilybeth several times.

The case before us is governed by the first clause of Article 48[28] because by a single act, that of stabbing his wife, appellant committed the grave felony of parricide as well as the less grave felony of unintentional abortion. A complex crime is committed when a single act constitutes two or more grave or less grave felonies.

Under the aforecited article, when a single act constitutes two or more grave or less grave felonies the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period irrespective of the presence of modifying circumstances. Applying the aforesaid provision of law, the maximum penalty for the most serious crime (parricide) is death. However, the Court of Appeals properly commuted the penalty of death imposed on the appellant to *reclusion perpetua*, pursuant to Republic Act No. 9346.[29]

---

[26] *U.S. v. Vedra*, 12 Phil. 96 (1909).

[27] REGALADO, FLORENZ, *CRIMINAL LAW CONSPECTUS*, p. 460. Citing *People v. Detablan*, CA, 40 O.G. No. 9, p. 30.

[28] Art. 48. *Penalty for complex crimes*.—When a **single act constitutes two or more grave or less grave felonies**, or when an offense is a necessary means of committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

[29] SEC. 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

Civil indemnity in the amount of ₱50,000.00 (consistent with prevailing jurisprudence) is automatically granted to the offended party, or his/her heirs in case of the former's death, without need of further evidence other than the fact of the commission of any of the aforementioned crimes (murder, homicide, parricide and rape). Moral and exemplary damages may be separately granted in addition to indemnity. Moral damages can be awarded only upon sufficient proof that the complainant is entitled thereto in accordance with Art. 2217 of the Civil Code, while exemplary damages can be awarded if the crime is committed with one or more aggravating circumstances duly proved. The amounts thereof shall be at the discretion of the courts.[30] Hence, the civil indemnity of ₱50,000.00 awarded by the trial court to the heirs of Lilybeth is in order. They are also entitled to moral damages in the amount of ₱50,000.00 as awarded by the trial court.[31] In addition to the civil liability and moral damages, the trial court correctly made appellant account for ₱25,000.00 as exemplary damages on account of relationship, a qualifying circumstance, which was alleged and proved, in the crime of parricide.[32]

WHEREFORE, the appeal is *DISMISSED*. The Decision of the Court of Appeals is *AFFIRMED*.

SO ORDERED.

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

---

b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Pursuant to the same law, appellant shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law.

[30] *People v. SPO1 Jose Bangcado and PO3 Cesar Banisa*, G.R. No. 132330, 28 November 2000, 346 SCRA 189, 210.

[31] *People v. PO3 Armando Dalag y Custodio*, G.R. No. 129895, 30 April 2003, 402 SCRA 254, 278. Citing *People v. Velasco, supra*.

[32] *People v. Domingo Arnante y Dacpano*, G. R. No. 148724, 15 October 2002, 391 SCRA 155, 161.

INDEX

INDEX

CONJUGAL PARTNERSHIP OF GAINS

Conjugal property — Absent the consent of the other spouse, the sale of the conjugal property by the husband is entirely null and void. (Sps. Alinas *vs.* Sps. Alinas, G.R. No. 158040, April 14, 2008) p. 311

CORPORATE PERSONALITY

Piercing the veil of corporate fiction — Elements determinative of the applicability thereof, elucidated. (Yamamoto *vs.* Nishino Leather Industries, Inc., G.R. No. 150283, April 16, 2008) p. 587

CORPORATE REHABILITATION

Interim Rules of Procedure on Corporate Rehabilitation — A creditor can demand payment from the surety solidarily liable with the corporation seeking rehabilitation. (Banco De Oro-EPCI, Inc. *vs.* JAPRL Dev't. Corp., G.R. No. 179901, April 14, 2008) p. 495

— Effect of a stay order. *(Id.)*

CORPORATIONS

Intra-corporate controversy — Elements. (Atwel *vs.* Concepcion Progressive Ass'n., Inc., G.R. No. 169370, April 14, 2008) p. 430

Trust fund doctrine — Explained. (Yamamoto *vs.* Nishino Leather Industries, Inc., G.R. No. 150283, April 16, 2008) p. 587

COURT PERSONNEL

Conduct unbecoming a court employee — Committed by willful failure to pay a just debt; the administrative liability is not exculpated with the settlement of the obligation during the pendency of the complaint. (Rosales *vs.* Monesit, Sr., A.M. No. P-08-2447, April 10, 2008) p. 240

Duties — Should at all times strictly observe official time. (*Re*: Habitual Absenteeism of Mr. Erwin A. Abdon, A.M. No. 2007-13-SC, April 14, 2008) p. 287

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

REFERENCES

I. LOCAL AUTHORITIES
A. CONSTITUTION

Page

A. STATUTES

Page

Page

Page

Page

Page

Page

C. OTHERS

D. BOOKS
(Local)

Page

Ruben E. Agpalo, Legal Ethics, 1989 Edition, p. 359 668
H. De Leon & H. De Leon, Jr., The Fundamentals of Taxation (14th Ed., 2004), at 12-13 630
De Leon and De Leon, Jr., Partnership, Agency and Trusts, 1996 Ed., p. 330 582
Ricardo J. Francisco, Evidence, Third Edition (1996), p. 487 652
Francisco, The Revised Rules of Court in the Philippines, Volume IV-A, 1971, p. 101 55
J. Nolledo, The National Internal Revenue Code Annotated (5th Ed., 1994), at 471-472 630
J. Nolledo, National Internal Revenue Code of the Philippines (1973 Ed.), at 678-679 629
Regalado, Florenz, Criminal Law Conspectus, p. 460 790
Vicente Valdepeñas, Jr., The Bangko Sentral and The Philippine Economy, pp. 123-124 507

II. FOREIGN AUTHORITIES

BOOKS

51 Am. Jur., pp. 1068-1069 628
58 Am.Jur. 443 652
R. E. Keeton & A. I. Widiss, Insurance Law – A Guide to Fundamental Principles, Legal Doctrines and Commercial Practices 77-78 174
Frederic Mishkin, The Economics of Money, Banking and Financial Matters, 5th Ed., pp. 231-238 507
Wigmore on Evidence, Sec. 1191, p. 334 656