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OF THE

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FROM

APRIL 30, 2008 TO MAY 07, 2008

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2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. No. 00-10-496-RTC. April 30, 2008]

GLORIA ESPIRITU, *complainant, vs.* **JUDGE ERLINDA PESTAÑO-BUTED, RTC, Branch 40, Palayan City,** *respondent.*

[A.M. No. RTJ-02-1681. April 30, 2008]

GLORIA ESPIRITU, *complainant, vs.* **JUDGE ERLINDA PESTAÑO-BUTED, RTC, Branch 40, Palayan City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; SUPERVISION OVER JUDGES; COURT WILL NOT SHIRK FROM ITS RESPONSIBILITY OF IMPOSING DISCIPLINE AMONG MEMBERS OF THE BENCH.— The Court has always been punctilious about any conduct, act or omission that would violate the norm of public accountability or diminish the people's faith in the judiciary. Along this line, the Court will not shirk from its responsibility of imposing discipline among members of the bench.

2. ID.; ID.; ID.; COURT WILL NOT HESITATE TO PROTECT THE INNOCENT AGAINST ANY GROUNDLESS ACCUSATION THAT TRIFLES WITH JUDICIAL

PROCESS.— However, when an administrative charge against a judge holds no basis whatsoever in fact or in law, this Court will not hesitate to protect the innocent against any groundless accusation that trifles with judicial process. Neither will We falter in shielding them from unfounded suits that only serve to disrupt rather than promote the orderly administration of justice.

APPEARANCES OF COUNSEL

Cortina Buted & Coloma Law Offices for respondent.

R E S O L U T I O N

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

INVESTIGATING Court of Appeals Justice Mario Guariña found that none of the charges against Judge Erlinda Pestaño-Buted was duly substantiated by evidence. His full Report and Recommendation,[1] which We have verified to be duly-supported by the record, follows:

I. Adm. Matter 00-10-496-RTC

1. The first of the two unsworn letter-complaints of Espiritu was dated October 31, 1999 and received by the Office of the Chief Justice on November 12, 1999. The accusations contained in this complaint may be summarized as follows:

(a) Judge Buted treats her personnel like servants, scolding then and calling them names in front of lawyers and litigants like *tanga, bobo, gago*.

(b) She sends her employees on personal errands and requires them to accompany her to Manila and back to Palayan or Cabanatuan City until past midnight.

(c) She arrives at her office every Monday at 3 p.m. and with 17-20 cases set for the day, she hears the cases up to 6 p.m., resetting most of them. She returns home to Manila on Thursday noon. Upon reporting, she immediately closes

[1] Dated March 9, 2005, consisting of twenty-two (22) pages.

the logbook to the prejudice of the employees who have not yet signed the logbook being out on errands for her.

(d) She is font of asking favors from lawyers and litigants. She borrows the cars of Mayor Arquillo and Ex-mayor Ganila of Bongabon who have a pending reelection case before her. She seeks living accommodations from anybody she pleases, borrows money from her employees and their relatives and requires her employees to provide snacks for her guests.

(e) At hearings, she makes side comments as if she is a counsel of a party and not the judge.

(f) She does not read her cases and depends on her clerk of court and legal researcher.

(g) She flaunts her influence with the Chief Justice whom she says was her classmate at UP.

(h) Despite representations by the complainant and accused that they would dismiss the case, she would still have the accused arrested (Records, pp. 62-63).

2. On March 28, 2000, the complainant wrote to the Chief Justice another letter-complaint which was received on April 7, 2000, making additional charges against Judge Buted, as follows:

(a) Judge Buted asks for orchids from litigants. One Philip Rivera of Laur, Nueva Ecija had sent her orchids through her aide one Mang Erning de Guzman of Laur.

(b) Although he has no case in her sala, Erning de Guzman brings *litson* to social occasions hosted by her.

(c) She requires the court's security guard Harold Rufac to drive her to Manila and there do some housecleaning. Rufac last accompanied her from February 18 to 22.

(d) She assigned a maintenance man of the court Jun Jimenez to build the perimeter wall of her house at Bless ng Palayan City.

(e) She has been told to leave her boarding house at Bongabong, but up to now, she has not yet removed belongings and continues to have free meals there.

(f) Although she went on forfeitable leave for one month, she

did not reset her cases so that the litigants and lawyers had to report to court everyday much to their inconvenience.

(g) She asks applicants to positions in her court to work as her apprentices and eventually do not accept them. Examples were a utility worker named Romero who used to drive for her before his appointment came, and Michelle Supnet, whom she made to work from November 1999 to February 2000 as a legal researcher before she was scolded and told not to report anymore.

(h) She makes her personnel write the court orders, having them retyped 5 times before finalizing them.

(i) She utilizes one stenographer Rachelle Lugtu as a nursemaid for her granddaughter.

(j) She orders food from the GSP canteen at Cabanatuan without paying, thus, her employees who order the food for her have to pay. She got food from a small canteen operating at the side of the Hall of Justice at Palayan City, and when the canteen tried to collect, she had it closed. The previous month, she ordered food from a rolling store which she did not pay.

(k) She borrows money from her employees and holds parties at their expense.

(l) Her attire is not appropriate. She wears blouses with slits at the sides and blouses with plunging necklines.

(m) On February 22, a Palayan City MTCC employee Milagros Supnet brought to her attention the complaints of her staff, but instead of changing for the better, she hurled invectives at her employees saying *punyeta kayong lahat*.

3. On October 12, 2000, Ma. Carina Matammu-Cunanan, Judicial Supervisor, made a report and recommendation on the discreet investigation conducted by her with respect to the complaints of Gloria Espiritu in the letters of October 31, 1999 and March 28, 2000. She reported that she was able to conduct an interview of several persons, namely, Henri Cajucom, Harold Rufac, Rachelle Lugtu, Milagros Supnet and Ardentor Ramos. (Records, pp. 1-18, 47-60) On the basis of their unsworn statements, Cunanan made the following findings:

a. that Judge Buted collects allowances from at least four local government units.

b. that she uses the security guard as her personal driver. In the same breath, she mentions that the Supreme Court has been paying 3 guards to secure the premises of the Hall of Justice of Palayan City – the service of one only to be utilized for the personal benefit of Judge Buted.

c. that she demanded a service vehicle from a litigant who had previously won his case before her.

She recommended that the Legal Office of the Court Administrator be authorized to file an administrative complaint against Judge Buted. (Records, pp. 4-5)

4. In a Resolution issued on January 15, 2001, the Second Division of the Supreme Court acted on the recommendation of Judicial Supervisor Cunanan and authorized the Legal Office of the Office of the Court Administration to file an administrative complaint against Judge Buted. (Records, p. 98)

5. On March 19, 2001, in a motion for reconsideration of the January 15, 2001 Resolution, Judge Buted asked the Supreme Court that, in the interest of fair play, she be allowed to present controverting evidence for evaluation to determine whether there are sufficient grounds to file formal charges against her. (Records, pp. 119-123)

II. Adm. Matter RTJ-02-1681

(Formerly OCA IPI No. 02-1401-RTJ)

6. On April 25, 2001, another unsworn letter-complaint from Gloria Espiritu was sent to the Chief Justice through DCA Zenaida Elepaño and received by the Office of the Court Administrator on May 4, 2001. The allegations are:

(a) A memorandum from the Supreme Court was issued to Judge Buted in the first week of March 2001 to report to RTC of Guimba, Nueva Ecija, but up to the present, she is still holding office at her regular station in Branch 40, Palayan City.

(b) She approached Atty. Ildefonso Cruz, President of the IBP-Cabanatuan, who has cases in her court to ask for her retention in Branch 40.

(c) On April 25, Wednesday, she heard cases past 10 o'clock a.m. until 12 noon. She then told the parties to return in the afternoon, but she resumed only at 3 p.m. after sleeping until 2:40. This is her practice everyday.

(d) The ones who make her orders are the stenographers. She does not dictate orders. What the stenographers can only do is to pattern the orders after past orders.

(e) She forbade Gerry Mongaya, an aide provided by the MAMS Agency to the Halls of Justice, to continue working after he refused to drive her home to Fairview, Quezon City.

(f) She asked Judge Lauro Sandoval of Baloc, Nueva Ecija to obtain the signatures of the RTC Judges to a petition not to transfer her from her original station.

(g) The court employees who reported her to the Supreme Court are being harassed by her. (Records, pp. 7-8)

7. Told to comment by DCA Jose Perez, Judge Buted made a comment on June 5, 2001:

(a) Gloria Espiritu appears to be the same complainant in AM-00-01-496-RTC.

(b) There is no employee in Branch 40 by the name of Gloria Espiritu.

(c) She did not solicit the support of Atty. Cruz or Judge Sandoval. She was surprised that the Philippine Judges Association made the resolution of April 26 emphasizing her right to due process.

(d) She did not conduct an afternoon session on April 25. The calendar shows that the hearings were all in the morning.

(e) Some of her orders are only pro forma so that the stenographers are directed to draft them subject to her final review. She does not make the stenographer draft orders in general. She submitted a written statement of the stenographers attesting to this.

(f) Jerry Mongaya did not submit any application paper for employment to MAMS Agency so that there was no employment to speak of that was terminated by her.

(g) She does not harass her staff. (Records, pp. 10-22)

8. In a Resolution on March 4, 2002, the Supreme Court ordered the complaint to be redocketed as a regular administrative matter and consolidated with Adm. Matter 00-10-496-RTC. (Records, p. 25)

III. Proceedings after the consolidation of

Adm. Matters RTJ-02-1681 and 00-10-496-RTC

9. In a memorandum to the Chief Justice on March 13, 2003, DCA Perez narrated the action taken so far on the October 31, 1999/ March 28, 2000 letter-complaints as well on the April 25, 2001 letter-complaint, mentioning in particular that a discreet investigation was conducted by Judicial Supervisor Cunanan on the October 31, 1999/March 28, 2000 letter-complaints. It is recommended:

(a) That Judge Buted be required to submit her comment on the discreet investigation to afford her the right to refute the allegations.

(b) A formal investigation be conducted on the complaint. (Records in RTJ-02-1681, pp. 26-33)

10. In a resolution on July 7, 2003, the Supreme Court referred the two administrative cases to the undersigned Justice Mario L. Guariña III of the Court of Appeals for investigation, report and recommendation. (Records, p. 35)

IV. Proceedings before the Undersigned Investigating Justice

11. In response to a query by the undersigned as to whether there was a formal complaint filed by the OCAD as required by the Supreme Court's resolution of January 15, 2001, CA Velasco transmitted a memorandum to Senior Associate Justice Josue Bellosillo opining that the report of his Office on the discreet investigation be considered the formal complaint and Judge Buted be directed to file her comment with the Investigating Justice. In a resolution on December 8, 2003, the Supreme Court directed the undersigned to proceed even without the formal complaint. Thus, the undersigned considered the OCAD's report on the discreet investigation as the charging instrument and ordered Judge Buted to file a comment. Initial hearings were scheduled for March 2004 with notices sent to the potential witnesses Gloria Espiritu, Henri Cajucom, Harold Rufac, and Rachelle Lugtu. (Records, pp. 37-38)

12. On April 12, 2004, the respondent, through her lawyer Atty. Juan Orendain, Buted filed a comment stating as follows:

a. There is no record of a report of the OCAD on the discreet investigation report. The only documents enumerating her alleged misdeed were the Gloria Espiritu letters filed with the Supreme Court.

b. The respondent has not seen or received the Cunanan memorandum and, hence, was not apprised of the allegations therein.

c. The letter-complaints of Gloria Espiritu, being anonymous complaints, are not supported by public records of indubitable integrity.

d. The letter-complaints should have been summarily dismissed. Instead, the OCAD had kept the respondent in anguish for three years with these cases hanging over her. This only gives impetus to a multitude of Gloria Espiritu to harass and pressure members of the bench on the basis of unsubstantiated anonymous complaints.

13. At the hearing on April 21, 2004, there being no record of an OCAD report on the Cunanan discreet investigation report, this Investigating Justice furnished the respondent copy of the Cunanan report itself and directed her to submit a comment to it. The comment already filed by her to the unsworn April 2001 letter of Espiritu was to stand as the answer to the second administrative charge. The hearings were reset to May 2004. (Records, pp. 120-124)

14. On May 4, 2004, the OCAD entered its appearance in the cases. (Records, p. 125) Henceforth, they were to handle the prosecution of the cases against Judge Buted.

15. On May 12, 2004, the respondent, through counsel, filed the comment to the Cunanan report. Stating that there were three particular acts of the respondent which Cunanan found to be improper, the comment made the following remarks:

- Judge are entitled to allowance from LGUs. The respondent is the executive judge of the lone RTC of Palayan City. The right of judges to receive allowances from LGUs within the jurisdiction was the subject of a circular from the Philippine

Judge Association on August 27, 1996. As acknowledged by complainant's witness Henri Cajucom, the allowances were disbursed pursuant to resolutions of the LGUs concerned.

- The respondents' act of utilizing Harold Rufac, a security guard, as her driver is not misconduct. As Cunanan herself stated in her report: *The Supreme Court has been paying 3 security guards to secure the premises of the Hall of Justice at Palayan City, the service of one only to be utilized for the personal benefit of Judge Buted*. The respondent's advanced age and failing health have prevented her from doing the driving herself. There is no indication that she coerced Rufac to assist her.

- She has no (sic) availed of any service vehicle from the town of Bongabon whose mayor won an election case in her sala. (Records, pp. 127-136)

16. The OCAD presented Atty. Ma. Carina Cunanan as its first witness on May 13, 2004. She took the witness stand to identify her memorandum as well as the transcripts of the unsworn statements of several witnesses. With this disclosure, the OCAD asked for subpoena for four witnesses, Henri Cajucom, Harold Rufac, Milagros Supnet, Ardentor Ramos. (Records, pp. 144-145)

17. At the next hearing on June 16, OCAD completed the presentation of three more witnesses – Henri Cajucom, Harold Rufac and Milagros Supnet. Ardentor Ramos was told to report at the next hearing for completion of his testimony. (Records, pp. 153-154)

18. The next hearings were postponed when the OCAD could not immediately secure additional witnesses. (Records, pp. 156, 164)

19. The OCAD presented its last two witnesses Victorino Samin and Alejandro Fabian on September 29. (Records, p. 168) Thereafter, the OCAD submitted a formal offer to which the respondent made a comment. The admitted exhibits were:

- Exh. A – Memorandum of October 12, 2000 of Cunanan to the Chief Justice, with the transcripts A-1, A-2, A-3.

- Exh. B – transcript of interview of Milagros Supnet.

- Exh. C – transcript of interview of Ardentor Ramos.

- Exh. D – memorandum of Justice Benipayo to Rachelle Lugtu, with D-1 and D-2, the memorandum to Harold Rufac and Henri Cajucom.

- Exh. E – 1st Indorsement dated July 31, 2000 from Atty. Danilo Mendoza.

- Exh. F – 1st Indorsement dated July 20, 2000 from the Chief Justice.

- Exh. G – Oct. 31, 1991 letter of Gloria Espiritu.

- Exh. H – March 28, 2000 letter of Gloria Espiritu.

- Exh. I – April 25, 2001 letter of Gloria Espiritu. (Records, pp. 196-174)

20. On November 4, 2004, Judge Buted testified in her defense. She had no more witness and made a formal offer of the following exhibits:

- Exh. 1 – the July 22, 1996 memorandum of the Secretary of DBM to the Presidential Legal Counsel.

- Exh. 2 – August 14, 1996 letter of Presidential Legal Counsel Cayetano to Chief Justice Narvasa.

- Exh. 3 – August 27, 1996 letter of DCA Abesamis to the PJA.

- Exh. 4 – August 27, 1996 letter of the Secretary General of PJA to all member judges.

- Exh. 5 – Resolution of the Sangguniang Bayan of Bongabong.

- Exh. 6 – April 26, 2001 letter of PJA Nueva Ecija Chapter to Chief Justice Davide.

21. These exhibits were admitted on November 25, 2004 after the OCAD filed its comment. The parties were, pursuant to their request, given 30 days from receipt of the Resolution on the offer to submit memoranda. (Records, p. 218)

22. Both the OCAD and the respondent Buted filed their respective memoranda in January 2005. (Records, pp. 219-239, 240-275)

V. The Charges

23. The proceedings emanate from three letter-complaints of one Gloria Espiritu, namely, the letter-complaints of October 31, 1999, March 28, 2000 and April 25, 2001. The first two letters became the subject of a discreet investigation by Judicial Supervisor Cunanan who issued her report on October 12, 2000.

24. It is to the April 25, 2001 letter-complaint that Judge Buted made a comment before the Supreme Court referred the case to the undersigned for formal investigation.

25. After the endorsement of the cases to the undersigned, CA Velasco opined in a memorandum that the report of his Office on the Cunanan discreet investigation report be considered the formal complaint *vis-à-vis* the Espiritu letters of October 31, 1999 and November 28, 2000. But as counsel of Judge Buted noted, there is no record of an OCAD report on the discreet investigation report.

26. Consequently, it is the position of the undersigned Investigating Justice that the charging instruments in this case should consist of:

a) The Cunanan discreet investigation report itself with respect to the October 31, 1999 and March 28, 2000 Espiritu letters.

b) The April 25, 2001 Espiritu letter to which Judge Buted has commented.

VI. The Evidence of OCAD

27. The testimonies of the witnesses of OCAD are as follows:

A. Atty. Ma. Carina M. Cunanan

- She identified her October 12, 2000 memorandum, Exh. A, and A-1, testimony of Cajucom, A-2, Rufac, A-3, Lugtu.
- There is no person by the name of Gloria Espiritu.
- Milagros Supnet, one of the persons she interviewed, refused to identify Gloria Espiritu.
- She did not make any findings with respect to the statements of Supnet, having concentrated on three employees Rufac,

Lugtu and Cajucom as per instruction from the DCA. Hence, they were the persons primarily mentioned in the letter-complaint.

- The Investigating Justice caused the Supnet statement to be marked Exhibit B and Ramos, Exhibit C.

- The witnesses were not sworn. Their statements are not sworn statements.

- The memoranda of Justice Benipayo were marked Exhibit D, D-1, D-2, the First Indorsement dated July 31, 2000 to Atty. Cunanan, Exhibit E, the First Indorsement dated July 20, 2000, as Exh. F, the Espiritu October 31, 1999, March 25, 2000 and April 25, 2001 letters as G, H, I.

B. <u>Henri Cajucom (June 16, 2004)</u>

- He is the cash clerk of the MTCC Palayan City since 1997.

- Judge Buted is then Executive Judge. There is only one sala in the RTC of Palayan City.

- He does not know Gloria Espiritu.

- He made a statement to Atty. Cunanan regarding the complaint of Espiritu against Judge Buted. This exhibit is the one marked Exh. A-1.

- He affirms the veracity of his answers in his statement Exh. A-1 but makes the following modifications:

I. On page 7 regarding the collection of her allowances, there is a resolution from the Sangguniang Bayan authorizing the release of the allowances.

II. On page 8, regarding the question that Judge Buted never paid a single centavo for her stay in the house of his cousin, he later learned from the person concerned named Ruth, that Judge Buted paid for her stay in Ruth's house and repaired the bathroom.

III. On page 9, regarding his answer that after the case of Mayor Luisito of Bongabong was resolved by Judge Buted, she was able to obtain a service vehicle from the municipality,

he has ascertained that there was only one occasion when Judge Buted used the municipal vehicle. That was when her car broke down and she asked to be brought to the court. There is no regular service vehicle provided to Judge Buted.

C. Harold Rufac (June 16, 2004)

- He is a utility worker of RTC Palayan City, Branch 40.
- Before that, he was a security guard of the Court from January 2, 2000 to July 2000.
- Judge Buted recommended him as a security guard. His duties were to watch over the facilities of the Hall of Justice which include the RTC and the MTCC. He got his salary from the agency, the Northern Security Agency.
- He drove for Judge Buted bringing her to her house at Fairview, Quezon City and back. They usually left on a Thursday or Friday after lunchtime. Travel time was 3 hours.
- When they left on a Thursday, they would go back the following day, Friday.
- At their house in Fairview, he helped in cleaning the house and watering the plants.
- He is not paid for his services.
- The RTC then had 3 security guards on a rotation basis of 8 hours. When he drove for Judge Buted, the other guards assumed his shift.
- Since he became utility worker of the Court on August 1, 2000, he no longer drove for Judge Buted to Quezon City. But he drove for her several times within Palayan City. In order not to delay his work, he reports earlier than 8 a.m. to do the cleaning.
- He affirms the statements he has given to Cunanan.
- He drove for Judge Buted to the Supreme Court from Palayan City on weekdays.
- He did driving chores for Judge Buted voluntarily. There were instances when he declined to drive for her.

D. Milagros Supnet (June 16, 2004)

- She is a court sheriff of the MTCC, Branch 40. Her office is near RTC 40 in the same building.

- Her daughter Michelle is presently Clerk III, RTC, Branch 23, Cabanatuan City.

- She had asked Judge Buted for a recommendation for her daughter to Judge Buted's Branch 40. Judge Buted had her work as a trainee without compensation or allowance.

- Judge Buted got angry at Michelle and did not recommend her as an interpreter for Branch 40. Supnet confronted Judge Buted when the latter shouted at her daughter.

- She affirms the statements she gave to Atty. Cunanan.

- She admits that her information came from the employees of Judge Buted who wanted her investigated.

- She does not know Gloria Espiritu.

- She told Judge Buted of the complaints of her employees.

E. Ardentor Ramos

- He is a stenographer of the MTCC Palayan City since 2000. Before that, he was Clerk III in RTC, Palayan City, Br. 40.

- He did not affirm Exh. C, as he still had to react (sic) it. The statement is long.

- Jun Jimenez is a maintenance man of the entire premises of the Hall of Justice. He sees him often in the RTC.

- He has no personal knowledge of the statement attributed to him in the interview of Cunanan that Jimenez reports his attendance in the logbook and then goes to Judge Buted's house.

(Ramos' testimony was discontinued. He was told to come back for the continuation of his testimony, as counsel for respondent had yet to make his cross-examination. OCAD did not recall him anymore.)

F. Victorino Samin (September 29, 2004)

- He is Clerk III, RTC, Palayan City, Branch 40.
- He was requested by Judge Buted to drive for her to Fairview and back to Palayan City.
- This took place many times from 1995 to 1998.
- He does not drive for her anymore.
- He fetched her at Fairview Quezon City on Monday morning and arrive at Palayan City at 9 a.m. On Tuesday to Thursday, she would drive her from the boarding house to the court between 7 and 8 a.m. In the afternoon, they left the office at 5 or 5:30 a.m. On Friday at 5 p.m., he drives her to Fairview.
- After driving for Judge Buted, he goes back to his work.
- The only time when he was not yet in court was between 8 a.m. to 9 a.m. when he was on the road with Judge Buted from Fairview to Palayan City.

G. Alejandro Fabian (September 29, 2001)

- He is the process server of RTC Palayan City, Branch 40.
- It is Judge Buted's natural disposition to raise her voice when she gives instructions, scolding the stenographer if they have not transcribed correctly.
- She knows Rachelle Lugtu, formerly his officemate and stenographer.
- He saw her taking care of the granddaughter of Judge Buted, bringing her to school and giving her medicines when she is sick.
- He goes out of the office to serve court processes and whenever Judge Buted directs him to serve her orders.
- When Judge Buted held hearings, that would be the time when Lugtu would go to the judge's chambers to take care of the child.

- Lugtu was an employee in their branch for two years from 2000 to 2002.

- She would take the judge's granddaughter to school while the judge held trial.

VII. Respondent's evidence

28. Judge Buted testified in her defense on November 4, 2004 as follows:

- She is the presiding judge of the RTC Palayan City, Br. 40 and the Executive Judge of her station which comprises a single sala. She oversees the performance of three first-level court judges in the MTCC of Bongabong and Palayan City.

- She identified the following communications, to wit: the July 22, 1996 memoranda to the Presidential Legal Counsel from the Secretary of the Department of Budget and Management, the subject of which is the grant of honoraria to judges assigned in local government units, marked Exhibit 1, the August 14, 1996 letter of the Presidential Legal Counsel to Chief Justice Narvasa, Exh. 2, the August 27, 1996 letter from DCA Abesamis to the president and board of directors of the PJA regarding increased local allowances for judges, Exh. 3, the August 22, 1996 memoranda of the Secretary General of the PJA to all member-judges on increased local allowances, Exh. 4.

- That, as an executive judge, she had received allowances from LGUs in her jurisdiction which were willing to give, such as the Municipality of Bongabong, as reflected in a duly-approved resolution of its Sangguniang Bayan, Exh. 5.

- She does her driving herself. On selected occasions when she is called to the Supreme Court, she leaves her station on Thursday or Friday to catch up with office hours, and then goes back Monday very early in the morning. Eventually, she has become weak, and her eyesight deteriorated because of complications brought about by her diabetes.

- Rufac came into the picture when an urgent occasions she would request his help. She preferred being accompanied

by a member of her staff rather than a stranger because of her delicate position.

- She goes home on weekends to Fairview only when there are matters that she has to report to the Supreme Court. She will leave by Friday to catch up with the afternoon office hours and then be in the house at Fairview during the weekend. She returns early morning on Mondays.

- With Rufac, they would start on a Friday. Otherwise, she remained on duty on Saturdays being the executive judge.

- When Rufac drove for her, which was not often, the other security guards took over his shift willingly, as it augmented their income. Rufac also was more than happy to drive for her because she gave him extra money.

- She never approached Mayor Ronquillo of Bongabong for a service vehicle. She has never borrowed a car from the municipality of Bongabong.

- She has not borrowed money from the staff, nor shouted at them, nor got orchids. These accusations of Supnet are all hearsay.

- Michelle has not formally applied for the position of interpreter in her court, as she never gave her papers. But she did some apprentice work for her because she wanted to be tested. Judge Buted was approached in 1999 by DCA Suarez to endorse Michelle, but she told him that she had endorsed another one. No one for a while was appointed. It was only recently when the position was filled. Supnet got mad and entered her court shouting.

- Lugtu did not act as a nanny to their granddaughter. She did not pick up the child at school, as she, Judge Buted, drove the child to school and fetched her personally. There were times when, after picking the child from school, she brought her to the court, because she still had functions to perform. On a particular occasion, she saw Lugtu who was a nurse giving medicine to the child. This must have been the occasion when Lugtu was misinterpreted as being a nanny to the child.

- In connection with this administrative case, the PJA of Cabanatuan City passed a resolution in her favor claiming that they might themselves be victims of undocumented anonymous letters. The resolution of the Nueva Ecija PJA was marked Exhibit 6.

- Rufac was not a government employee when he served as a security guard. He belonged to an agency that had a contract with the Supreme Court.

- She has no employee by the name of Gloria Espiritu. Neither did the municipal courts under her supervision have any employee by that name.

- The election case of Mayor Ronquillo was terminated before the anonymous letter against her was sent.

- She sent a formal request to Mayor Ronquillo of Bongabong in November 1996 requesting endorsement of the matter of allowances of those concerned to the municipal council. This was marked Exhibit J.

- She would bring her granddaughter to school early in the morning before office hours. She would fetch the child after she got out of the courtroom. Her school hours were almost the whole day.

- When DCA Suarez told her to endorse Supnet, she made it clear that she had already endorsed another one. Her policy was to determine the qualifications of all who applied, even if she had already endorsed someone, provided there was no action taken yet on the endorsement.

- Actually, she wanted Cajucom, a first-guide (sic) eligible, to apply for the position. But he did not apply. So she allowed Michelle to work as an apprentice when she volunteered.

- Aside from Bongabong, she also received allowances from Palayan City because that was her station, and this LGU outrightly gives to all the judges assigned there, including the prosecutors. She remembers having written also to the municipality of Laur.

VIII. Findings and Recommendations

29. My findings and recommendations on the charges are:

A. On the charge in the Cunanan report that Judge Buted collects allowances from at least 4 LGUs in her jurisdiction.

We find nothing irregular in these acts.

i) Pursuant to Section 447 of RA 7160, otherwise known as the Local Government Code of 1991, the LGUs are empowered to provide additional allowances and other benefits to the judges, prosecutors, public elementary and high school teachers and other national government officials stationed in or assigned to them.

ii) The allowances granted to Judge Buted were covered by duly-passed resolutions of the legislative bodies of the LGUs concerned. See Exhibit 5.

iii) The matter of the grant of additional allowance by the LGU pursuant to RA 7160 was approved by the Department of Budget and Management as per the communications of the Secretary of the DBM to Chief Presidential Legal Counsel, and by the latter to Chief Justice Narvasa (Exh. 2).

iv) Since Judge Buted is an Executive Judge whose sphere of administrative jurisdiction covers several municipalities, she may be considered assigned to them under RA 7160 and entitled to such allowances as the LGUs may grant subject to the limitations of the law and its implementing rules and regulations.

RECOMMENDATION: That Judge Buted be absolved from this charge.

B. On the charge that she used Harold Rufac, the security guard of the court, as her personal driver:

i) As per Atty. Cunanan's own admission in her report to the Chief Justice dated October 12, 2000, the Supreme Court has given 3 guards to secure the premises of the Hall of Justice of Palayan City – the service of one to be utilized for the personal benefit of Judge Buted.

ii) Judge Buted had been utilizing the services of only one security guard, Harold Rufac, to drive for her when she had to leave her station to attend to official business at the Supreme Court in Manila.

iii) There was no prejudice to the service when Rufac drove for her on these occasions because the other security guards extended their duties to cover his shift. This arrangement was being done on a purely voluntary basis on the part of Rufac and other security guards.

iv) Be that as it may, on the occasions when Rufac drove for her to the Supreme Court, she was on official business to report on her administrative duties as an executive judge. In this sense, the driving chores of Rufac were within the scope of his duties to serve the Executive Judge.

v) Rufac reveals that when they left for Manila in Thursday, they would come back the next day. Only when they leave on a Friday do they stay at Judge Buted's residence in Fairview for the weekend.

RECOMMENDATION: There being no irregularity in Judge Buted's use of the services of the security guard in connection with the performance of her duties as executive judge, she should be absolved from the charge.

C. On the charge that she demanded a service vehicle from Mayor Ronquillo of Bongabong, Nueva Ecija after deciding an election case in his favor.

i) There is no evidence to prove this allegation. The OCA appears to have relied solely on the unsworn statement of Henri Cajucom during Atty. Cunanan's discreet investigation. On the witness stand, Cajucom modified his previous statements. He said that since then, he has ascertained that there was only one occasion when Judge Buted was able to use a service vehicle of the municipality, and that was during an emergency. Her car broke down compelling her to ask for assistance.

ii) Judge Buted denied having any regular service vehicle from the municipality.

RECOMMENDATION: That Judge Buted be absolved from this charge.

D. On the charges contained in Gloria Espiritu's letter of April 25, 2001.

i) That she still holds office at Palayan City despite a Supreme Court memorandum to her to report to Guimba, Nueva Ecija:

- The record shows that Judge Buted had a pending motion for reconsideration of the resolution of the High Court on this matter citing her advanced age and poor health. The High Court then directed the OCAD to submit a report on the respondent's motion. The OCAD has not apprised us of the results of this pending incident.

ii) On the charge that she approached Atty. Ildefonso Cruz, President of the IBP, Cabanatuan City and Judge Lauro Sandoval to ask for her retention in Branch 40.

- This accusation is found only in the unsworn letter of Gloria Espiritu to the Chief. Espiritu never appeared to confirm the facts in her letter. Nor was there any witness presented by OCAD to prove these allegations.

- Be that as it may, Judge Buted in her comment denied having solicited their help.

RECOMMENDATION: There is no evidence to prove these allegations. Judge Buted should be absolved.

iii) On the charge that on April 25, 2001, she resumed her afternoon session only by 3 p.m.

- Judge Buted denies that she conducted an afternoon session on April 25. The calendar of the Court would show that the hearing on that date was in the morning.

RECOMMENDATION: This charge is not corroborated or substantiated. Judge Buted should be exonerated.

iv) On the charge that the stenographers were the ones making her orders.

- Judge Buted explained that some of her orders were pro forma so that all that the stenographers had to do was to follow a form or pattern subject to her final review. She dictates the rest of the other orders.

- A written statement of the stenographer corroborates Judge Buted's explanation.

RECOMMENDATION: We find the explanation satisfactory. This is what most trial judges do.

v. On the charge that she forbade Gerry Mongaya, an aide from the MAMS Agency, to continue working after he refused to drive her home to Fairview, Quezon City.

- Gerry Mongaya did not execute any affidavit to affirm this charge. Nor was he presented on the witness stand.

RECOMMENDATION: The charge is unproved.

vi. The court employees who reported her to the Supreme Court were being harassed by her.

- There is no written statement or testimony to this effect, and Judge Buted denies the accusation.

RECOMMENDATION: The charge is unproved.

30. The OCAD tried to prove additional charges not mentioned in the Cunanan report and in the third Espiritu letter of April 25, 2001 to which Judge Buted had commented.

The additional evidence consists of the testimonies of (a) Milagros Supnet on what transpired to her daughter Michelle Supnet in Judge Buted's court, (b) Victorino Samin, a Clerk III, who said that he drove Judge Buted home to Fairview on Fridays at 5 p.m. and brought her back to Palayan City on Monday mornings, and during week days, fetched her early before office hours and drove her back to her boarding house after office hours at 5 p.m. and (c) Alejandro Fabian, process server, who saw his officemate Rachelle Lugtu bring Judge Buted's granddaughter to school and give her medicines when she was sick.

Judge Buted, through her lawyer, has objected to the presentation of these testimonies because they have no relevance to the charges

against the respondent as presented in the Cunanan report and the Espiritu April 25, 2001 letter. Technically, the respondent is correct. But as we have seen, she also had the opportunity during our formal investigation to refute the testimonies of these three witnesses. Brushing aside technicalities, we will review the evidence.

A. On the charge that Samin also drove for Judge Buted.

Admittedly, the driving chores that Judge Buted assigned to him fell outside his job description as a Clerk III. But we cannot fail to notice that as Samin himself acknowledged, he drives for the respondent before and after office hours. What a court employee does on his own free time is his decision.

RECOMMENDATION. There is no irregularity. Judge Buted should be absolved.

B. On the charge that Lugtu was made to act as a nanny for Judge Buted's granddaughter.

There are two things that Fabian says he saw Lugtu do for Judge Buted's granddaughter during office hours – she took the child to school and gave medicines to the child when the latter fell ill.

I think we have no quarrel with an employee's giving medicine to the child when she fell ill. Nor to any other sick human being for that matter. It is an act of mercy that precedes all other obligations, and as Shakespeare says, is never strained. What is objectionable is if the respondent requires or permits one of her employees to bring her grandchild to school during office hours. This is clearly outside the scope of the official duty of the employee concerned.

Judge Buted, however, denies that Lugtu brings or picks up the child at school. The respondent says that she does these chores herself. She brings the child to school before office hours and fetches her after office hours. The child is practically in school the whole day. When there were occasions when she had to fetch the child during the day, she would bring her with her to the office.

RECOMMENDATION. We find the explanation of the respondent to be satisfactory. Faced with a decision of whether to believe Judge Buted or Fabian, we are inclined to resolve the benefit of the doubt in favor of the respondent, considering that the testimony of Fabian

is unsubstantiated or uncorroborated. The OCAD has not sufficiently discharged the burden of proof.

C. On the charge that Judge Buted made Michelle Supnet work in the court as a trainee without compensation or allowance.

Judge Buted admits letting Michelle Supnet work for her in court as a trainee. But she says that it was Michelle who volunteered to work, saying that she wanted to test her skills. It is not an unusual occurrence for persons, especially students or fresh graduates, to volunteer for work for the primary purpose of gaining experience. We have learned that, as part of their school curricula, graduating students are made to undergo the so-called practicum where they earn credits by actually doing volunteer work in the work place.

Whether a trainee should be allowed to work in a government office is a different matter. We are not aware if this is covered by any administrative regulation, but if there is none yet, it is suggested that rules be issued. Until the relevant circular or regulation is handed down, it would not be right to penalize the respondent. No one should be held to account for an act that is not forbidden at the time it is done. It is offensive to due process of law.

We adopt the findings and recommendations of the Investigating Justice.

The Court has always been punctilious about any conduct, act or omission that would violate the norm of public accountability or diminish the people's faith in the judiciary. Along this line, the Court will not shirk from its responsibility of imposing discipline among members of the bench.[2]

However, when an administrative charge against a judge holds no basis whatsoever in fact or in law, this Court will not hesitate to protect the innocent against any groundless accusation that trifles with judicial process. Neither will We falter in shielding them from unfounded suits that only serve to disrupt rather than promote the orderly administration of justice.[3]

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[2] *Ong v. Rosete,* A.M. No. MTJ-04-1538, October 22, 2004, 441 SCRA 150, 160-161.

[3] *De la Cruz v. Bato,* A.M. No. P-05-1959, February 15, 2005, 451 SCRA 330, 337; *Ong v. Rosete, supra*; *Sarmiento v. Salamat,* 416 Phil. 684, 695 (2001).

Moreover, from her motion for early resolution,[4] it appears that respondent Judge had compulsorily retired in January 2005, and she is suffering from many illnesses with no ostensible source of income.[5]

ACCORDINGLY, the administrative charges are *DISMISSED* for lack of merit and insufficiency of evidence.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. P-04-1914. April 30, 2008]

GLANIE FLORES, SYLVIA FLORES, RICHARD FLORES, TIMOTEO FLORES, LEONARDO FLORES, VIRGILIO FLORES, and DANNY FLORES, *complainants, vs.* **MYRNA S. LOFRANCO, Clerk III, RTC, Br. 20, Digos City, Davao Sur,** *respondent.*

SYLLABUS

REMEDIAL LAW; EVIDENCE; ADMINISTRATIVE COMPLAINTS; ALLEGATIONS MUST BE PROVEN WITH SUBSTANTIAL EVIDENCE; ORIGINAL AFFIDAVIT OF WITNESS OF COMPLAINANT NOT IDENTIFIED BY AFFIANT MAKING SAME HEARSAY.— It is well settled that in administrative cases, the complainant has the burden of

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[4] *Rollo,* pp. 129-136. Dated December 4, 2007.

[5] *Id.* at 130.

proving the allegations in the complaint with substantial evidence. It bears stressing that Jestoni's original affidavit had not been identified by him. It thus remains hearsay, bereft of substantial evidentiary value. The failure of the petitioner's counsel to put [the affiant] on the stand is fatal to the case of petitioner and renders the affidavit . . . inadmissible under the hearsay rule. Affidavits are classified as hearsay evidence since they are not generally prepared by the affiant but by another who uses his own language in writing the affiants statements, which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.

APPEARANCES OF COUNSEL

Paras Law Office for complainants.

D E C I S I O N

CARPIO MORALES, *J.*:

Myrna S. Lofranco (Lofranco), Clerk III of the Regional Trial Court (RTC), Branch 20, Digos City, stands administratively charged with immorality, misconduct and violation of Republic Act (R.A.) No. 6713 (The Code of Conduct and Ethical Standards) by complainants-brothers Richard, Danny, Virgilio, Timoteo, and Leonardo, all surnamed Flores, along with Leonardo and Timoteo's respective wives Glanie and Sylvia.

In their Affidavit-Complaint[1] dated November 15, 2002 filed before the Ombudsman for Mindanao which endorsed it to the Office of the Court Administrator (OCA) for appropriate action,[2] complainants alleged that respondent*,* whose marriage to one

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[1] *Rollo*, Vol. 1, pp. 5-7.

[2] *Id*. at 1. The Affidavit-Complaint was endorsed by Deputy Ombudsman for Mindanao to the OCA on February 12, 2003.

Venanie Lofranco, Jr. remains subsisting, is illicitly living with Sabino Flores (Sabino), a brother of the gentlemen complainants, at Emily Subdivision, Digos City.

Complainants attached to their Affidavit-Complaint, the Affidavit of Sabino's son Jestoni Flores (Jestoni),[3] a certified true copy of the *barangay* blotter[4] containing the alleged admission of Sabino that he was living with respondent at the abovementioned address, and a private document denominated as "*Kasabutan*"[5] upon which respondent had signed as "Myrna Soledad Flores."

Complainants further alleged that on September 28, 2002, respondent destroyed the fence that they had erected on their late father's lot at Tanwalang, Sulop, Davao del Sur, which incident was duly reported to the *barangay* captain the next day as shown by the *barangay* blotter also attached to their Affidavit-Complaint; that while they were with their mother repairing the fence on October 5, 2002, respondent, together with Sabino and three hired persons who appeared to be armed, started taking their photographs; that respondent, who was enraged when their mother asked Sabino why he had brought other persons to the lot, proceeded to destroy the work already done thereon; and that respondent threatened them that if complainants set foot on the lot again, somebody would die.

Finally, complainants alleged that respondent turned the tables on them by filing cases against them upon the claim that they had threatened to kill, and uttered defamatory words against her, and that respondent is the same Myrna Lofranco who was reprimanded by this Court, by Resolution dated March 26, 2001, for discourtesy in the performance of official duty in A.M. No. P-01-1469.

In her Counter-Affidavit[6] submitted to the OCA, respondent denied having any amorous relationship with Sabino, she claiming

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[3] *Id*. at 13. The Affidavit of Jestoni Flores dated November 11, 2002 was appended to the Affidavit- Complaint as Annex "D".

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

[5] *Id*. at 16-18.

[6] *Id*. at 38-40.

that her relationship with him was purely professional as she was the financer in their joint business venture "of inducing [*sic*] the mangoes planted in the two-hectare parcel of land constituting [*sic*] the share of Sabino Flores to bear fruits."

Admitting that she maintains her residence at Emily Homes, Digos City, respondent claimed, however, that Sabino lives at Lim Extension, Digos City.

Respondent further claimed that her marriage to Venanie Flores had failed after 14 years and that he is now living with his new family, leaving her to care for, support and send her three children to school.

Respondent's claims were corroborated by her daughter, Theresse Jade S. Lofranco, in an Affidavit[7] respondent annexed to her Counter-Affidavit.

On Sabino's son Jestoni's claim in his Affidavit that she and Sabino were living together, respondent proffered that Jestoni was merely prevailed upon by his grandmother and uncles to falsely allege the same, but that, anyway, Jestoni had recanted his claim in an Affidavit of Recantation,[8] which she also attached to her Comment.

Respondent maintained that contrary to their assertion, complainants were trying to force Sabino out of his share of the property which he had planted to mangoes-subject of their joint venture. Complainants, she added, had twice destroyed the fence around the property – first, on September 28, 2002 and later on October 5, 2002 –, replacing it with theirs, thereby evicting Sabino in the process; and that between October 15 and October 17, 2002, complainants destroyed the fruits and other improvements on the property and put up a "NO TRESPASSING" sign. These acts of complainants, she claimed, resulted in financial losses to her investment.

Respondent admitted having taken photographs of complainants, but explained that that was only to protect her

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[7] *Id*. at 49. The Affidavit was appended as Annex "I" to the Comment.

[8] *Id.* at 48.

and the three men she had hired to spray the mangoes with chemicals.

Respondent furthermore claimed that it was in fact complainants who threatened her and her companions with harm to thus draw her to file criminal complaints against them for grave threats, grave oral defamation and grave coercion.[9]

Respecting the police blotter allegedly showing Sabino's admission that they were living together, respondent submitted that "it is a mere typographical error on the part of the desk officer taking down the report of the crime complained of."

On the "*Kasabutan*" adverted to by complainants, she claimed that it was prepared by armed members of the Moro National Liberation Front during a very volatile situation in which she was unaware that she was mistaken as the wife of Sabino.

On recommendation of the OCA,[10] the Court, by Resolution of November 8, 2004,[11] re-docketed the complaint as a regular administrative case and referred it to the Executive Judge of the RTC of Digos City for investigation, report and recommendation.

In her Report and Recommendation,[12] Executive Judge Marivic Trabajo Daray reported that complainants did not show up, despite notice,[13] during the preliminary conference, hence, they were declared to have waived their right to present evidence; and that respondent was accordingly allowed to present her evidence[14] which consisted of her testimony and those of her witnesses[15] and a Joint Affidavit of Desistance dated February 9, 2005 executed by complainants.

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

[10] *Id.* at 50-53.

[11] *Id.* at 54.

[12] *Rollo*, Vol. 2, pp. 127- 132.

[13] *Id*. at 57. Order of Executive Judge Daray dated December 15, 2004.

[14] *Id*. at 59. Order dated March 1, 2005, Records, p. 63.

[15] Aside from respondent, three other witnesses were presented. Theresse Jade S. Lofranco, 17, identified the Affidavit she had executed on September 26, 2003 and marked as Exhibit "9", in which she had stated

On the charge of immorality, the investigating judge found that the only evidence to prove the same was the Affidavit of Sabino's son Jestoni who, however, was not presented to affirm the affidavit and in fact he executed an affidavit of recantation.

As for the charges of misconduct and violation of R.A. No. 6713, the investigating judge found the same wanting in support.

Judge Daray thus recommended the dismissal of the present complaint.

The findings and recommendations of the Investigating Judge *vis-à-vis* the documentary and testimonial evidence of respondent are well taken.

It is well settled that in administrative cases, the complainant has the burden of proving the allegations in the complaint with substantial evidence.[16]

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that: (1) she is a daughter of the respondent, (2) her parents were separated since 1989, (3) from the time of such separation, she and her two brothers were living with respondent, and (4) she has no knowledge that her mother was living with another man other than her father.

On the other hand, Sabino Flores, 41, single, identified the Affidavit he executed on October 7, 2002 (Exhibit "10"), stating that: (1) he was with his son Jestoni Flores when the latter executed an Affidavit dated November 13, 2002 recanting a previous Affidavit in which he had stated that his father was living with respondent, that affidavit having been executed by Jestoni under duress. Sabino also identified the *barangay* and police blotters of the incidents involving complainants as well as the criminal compliant he had filed against complainants.

The third witness for respondent, Remedios Flores, testified that she executed an affidavit dated April 29, 2005 (Exhibit "12") in which she stated that she was present when Jestoni Flores executed his Affidavit of Recantation before City Prosecutor Norma Calatrava, and that Jestoni was living with her from 2001 to 2004 as she was exercising parental care and custody over him.

[16] *Re: Dishonesty and/or Falsification of Official Document of Mr. Rogelio M. Valdezco, Jr.*, A.M. No. 2005-22-SC, May 31, 2006, 490 SCRA 27, 35; *Adajar v. Develos*, A.M. No. P-05-2056, November 18, 2005, 475 SCRA 361, 376-377; *Go v. Achas*, A.M. No. MTJ-04-1564, March 11, 2005, 453 SCRA 189, 195; *Melchor v. Gironella,* G.R. No. 151138, February 16, 2005, 451 SCRA 476, 483.

It bears stressing that Jestoni's original affidavit had not been identified by him.[17] It thus remains hearsay, bereft of substantial evidentiary value.[18]

> The failure of the petitioner's counsel to put [the affiant] on the stand is fatal to the case of petitioner and renders the affidavit . . . inadmissible under the hearsay rule. Affidavits are classified as hearsay evidence since they are not generally prepared by the affiant but by another who uses his own language in writing the affiants statements, which may thus be either omitted or misunderstood by he (sic) one writing them. Moreover, the adverse party is deprived of the opportunity to cross examine the affiant (sic). For this reason, affidavits are generally rejected for being hearsay, unless the affiant themselves are placed on the witness stand to testify theteon (sic).[19]

WHEREFORE, the administrative case against respondent, Myrna S. Lofranco is *DISMISSED*.

SO ORDERED.

*Quisumbing (Chairperson), Tinga, Nachura,** and *Brion, JJ.,* concur.

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[17] *Vide Atty. Osias v. CA*, 326 Phil. 107, 128-129 (1996); *People's Bank and Trust Company v. Leonidas*, G.R. No. 47815, March 11, 1992, 207 SCRA 164, 166.

[18] *People v. Santos*, G.R. No. 62072, November 11, 1985, 139 SCRA 583, 586; *People v. Lavarias*, G.R. No. L-24339, June 29, 1968, 23 SCRA 1301, 1306-1307.

[19] *People's Trust Company v. Leonidas*, G.R. No. 47815, March 11, 1992, 207 SCRA 164, 166.

* Additional member per Raffle dated April 21, 2008.

FIRST DIVISION

[A.M. No. P-05-2054. April 30, 2008]
(Formerly A.M. No. 05-6-374-RTC)

MILA L. DACDAC, *complainant, vs.* **VICTOR C. RAMOS, Sheriff IV, Regional Trial Court, Branch 26, Sta. Cruz, Laguna,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; PUBLIC OFFICERS; SHERIFFS; RESPONSIBILITY IN EXECUTION OF A WRIT IS MANDATORY AND PURELY MINISTERIAL.—** Those who are tasked to implement court orders and processes must see to it that the final stage of the litigation process – the execution of judgment – should be carried out promptly. A sheriff, specifically, must exert every effort and should consider it his bounden duty to do so at all times, having at heart the genuine concern that a decision left unexecuted or delayed indefinitely would be nothing but an empty victory on the part of the prevailing party. Hence, several times over, this Court has held that a sheriff's responsibility in the execution of a writ is mandatory and purely ministerial, not directory; once it is placed in his hands, it is his duty, ***unless restrained by the court,*** to proceed with reasonable speed to enforce the writ to the letter, ensuring at all times that the implementation of the judgment is not unjustifiably deferred.

2. **REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENT; ONLY UPON REGISTRATION OF CERTIFICATE OF SALE WITH REGISTRY OF DEEDS DOES ONE-YEAR REDEMPTION PERIOD OF THE JUDGMENT DEBTOR BEGIN TO RUN.—** To note, the immediate issuance of a certificate of sale after the conduct of an execution sale is significant since it is only upon its registration with the appropriate Registry of Deeds that the one-year redemption period of the judgment debtor begins to run. Unless the certificate of sale is issued and registered, and until the redemption period expires without the debtor exercising his right to redeem the property, all that the highest

bidder could do is to wait. Unlike the rule on extrajudicial foreclosure of mortgage, the purchaser in an execution sale has no right to possess the property by posting a bond during the period of redemption. A writ of possession may only be issued in favor of the winning bidder when the deed of conveyance has been executed and delivered to him ***after*** the period of redemption has expired and no redemption has been made. This is plainly in accordance with the last paragraph of Section 33, Rule 39 of the Rules of Court.

3. **POLITICAL LAW; PUBLIC OFFICERS; SHERIFFS; ADMINISTRATIVE LIABILITY FOR NOT IMPLEMENTING WRIT OF EXECUTION; NOT A DEFENSE THAT THERE WAS A PENDING INCIDENT BEFORE THE TRIAL COURT REGARDING EXECUTION OF WRIT.—** Awaiting resolution on a pending incident brought before the trial court is a defense that will not relieve respondent from administrative liability. What counts is the evident lack of any court order proscribing the issuance of a certificate of sale. His good faith or lack of it is, therefore, wholly immaterial since a sheriff is chargeable with the knowledge that being an officer of the court it behooves him to make compliance in due time.

4. **ID.; ID.; ID.; ID.; GUILTY OF SIMPLE NEGLECT OF DUTY; CASE AT BAR.—** No doubt, respondent's deliberate omission only evinces that he was remiss in performing the duty of his office to diligently and expeditiously implement the writ of execution to the very end. Under the Revised Uniform Rules on Administrative Cases in the Civil Service, he is 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. Considering that this is respondent's first administrative offense and taking into account this Court's pronouncements in a number of cases, the Court deems it best, in the interest of justice, to impose a fine in the amount of ₱5,000.

D E C I S I O N

AZCUNA, *J.:*

This is an administrative case filed by Gemma Mila L. Dacdac against Victor C. Ramos, Sheriff IV, Regional Trial Court, Branch 26, Sta. Cruz, Laguna (the RTC), charging him with dereliction of duty for his alleged refusal to implement the trial court's order to issue a certificate of sale despite the absence of any restraining order or injunction from any court.

Vivien Kristel Dacdac Alvarado, minor, represented by her mother, complainant herein, filed an action for support against Mario A. Alvarado. The case was docketed as S.P. PROC. No. SC-1904 before the RTC. After trial, the court ruled in favor of the plaintiff. When the decision became final and executory, a writ of execution was issued on July 16, 2003. Upon service of the Notice of Levy on Execution and Sheriff's Sale, a public auction was held on November 14, 2003 over a 304 sq. m. parcel of land (together with improvements thereon) owned by the defendant, covered by TCT No. T-216819 and located at Barangay Biñan, Pagsanjan, Laguna. The property was sold in favor of the plaintiff, the lone bidder, in the amount of ₱1,585,000 representing the total support in arrears plus attorney's fees.

On November 2, 2004, the trial court issued an Order directing respondent to execute a certificate of sale in favor of the plaintiff. Respondent, however, withheld the issuance of said certificate pending the plaintiff's payment of the amount of ₱45,600 as legal fee pursuant to Section 9 (1) of Supreme Court A.M. No. 04-2-04.[1] The issue was submitted for resolution. When the trial court ruled that an action for support is not within the scope of the rule, it ordered, on February 23, 2005, respondent to execute the certificate within ten (10) days from his receipt of the Order.

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[1] Re: Proposed Revision of Rule 141, Revised Rules of Court (effective August 16, 2004).

Despite the directive, respondent refused to execute a certificate of sale. Consequently, on April 5, 2005, complainant wrote a letter-complaint addressed to the then Chief Justice Hilario Davide, Jr. The letter was thereafter indorsed to Deputy Court Administrator Jose P. Perez for appropriate action.

In his Explanation dated April 26, 2005, respondent commented that he deemed it proper not to comply with the February 23, 2005 Order of the trial court because of the Manifestation filed by the defendant's counsel on March 4, 2005 requesting to hold in abeyance the execution of said Order and, as to which, an *Ex-Parte* Motion to Strike Out the manifestation was also filed by plaintiff's counsel. Respondent alleged that he was awaiting the hearing and resolution of these motions before undertaking any action. He noted that the motions were set for hearing on May 30, 2005.[2]

In its July 6, 2005 Report, the Office of the Court Administrator (OCA) opined that:

> Evidently, [respondent] was remiss in his duties when he failed to implement the 23 February 2005 order. He is guilty of dereliction of duty as a sheriff when he failed to execute the writ within thirty (30) days from receipt of the order.
>
> We find his explanation utterly wanting. His actuations constitute disrespect, if not outright defiance of the court's order. In the absence of instructions to the contrary, it was his duty to execute the certificate of sale with utmost diligence and dispatch in accordance with its mandate.
>
> In the subject case, neither a temporary restraining order nor injunction was issued by the court. There was[,]therefore[,] no reason for [respondent] to wait for the resolution of the motion filed by [defendant's counsel].

The OCA recommended that respondent be fined in the amount of ₱5,000.

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[2] The May 30, 2005 hearing was cancelled and re-scheduled on June 29, 2005. On said date, the court heard the motions and considered the incidents submitted for resolution.

On August 8, 2005, the Court resolved to re-docket the matter as a regular administrative case and to require the parties to manifest their willingness to submit the case for decision on the basis of the documents on record. Complainant filed her Manifestation to that effect while respondent informed the Court that, in compliance with the trial court's Order dated March 1, 2007, he already issued the corresponding certificate of sale on March 12, 2007.

We agree with the OCA findings as well as its proposed penalty.

Those who are tasked to implement court orders and processes must see to it that the final stage of the litigation process – the execution of judgment – should be carried out promptly. A sheriff, specifically, must exert every effort and should consider it his bounden duty to do so at all times, having at heart the genuine concern that a decision left unexecuted or delayed indefinitely would be nothing but an empty victory on the part of the prevailing party. [3] Hence, several times over, this Court has held that a sheriff's responsibility in the execution of a writ is mandatory and purely ministerial, not directory; once it is placed in his hands, it is his duty, ***unless restrained by the court,*** to proceed with reasonable speed to enforce the writ to the letter, ensuring at all times that the implementation of the judgment is not unjustifiably deferred.[4]

To note, the immediate issuance of a certificate of sale after the conduct of an execution sale is significant since it is only upon its registration with the appropriate Registry of Deeds that the one-year redemption period of the judgment debtor begins to run.[5] Unless the certificate of sale is issued and

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[3] *Sps. Morta v. Judge Bagagñan*, 461 Phil. 312, 322-323 (2003).

[4] *Velasco v. Tablizo*, A.M. No. P-05-1999, February 22, 2008, p. 5; *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.

[5] Section 25 (d), Rule 39 of the Revised Rules on Civil Procedure (See *Landrito, Jr. v. Court of Appeals*, G.R. No. 133079, August 9, 2005, 466 SCRA 107, 116).

registered, and until the redemption period expires without the debtor exercising his right to redeem the property, all that the highest bidder could do is to wait. Unlike the rule on extrajudicial foreclosure of mortgage,[6] the purchaser in an execution sale has no right to possess the property by posting a bond during the period of redemption. A writ of possession may only be issued in favor of the winning bidder when the deed of conveyance has been executed and delivered to him ***after*** the period of redemption has expired and no redemption has been made.[7] This is plainly in accordance with the last paragraph of Section 33, Rule 39 of the Rules of Court.[8]

In this case, in spite of the fact that ***no*** restraining or injunction order was issued by the trial court, the certificate of sale was only issued by respondent on March 12, 2007, or almost four

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[6] Section 7, Act No. 3135, as amended by Act No. 4118 (See *Idolor v. Court of Appeals*, G.R. No. 161028, January 31, 2005, 450 SCRA 396, 401).

[7] *Cometa v. Intermediate Appellate Court*, No. 69294, June 30, 1987, 151 SCRA 563, 568.

[8] Section 33, Rule 39 of the Rules of Court states:

SEC. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.*—If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor.

(See also *Oliveros v. Presiding Judge, RTC, Br. 24, Biñan, Laguna*, G.R. No. 165963, September 3, 2007, 532 SCRA 109, 117).

years after the execution sale was held on November 14, 2003. With the lapse of time brought about by respondent's adamant insistence to defer the issuance of the certificate, material prejudice had already been caused to the welfare of complainant's minor daughter, the plaintiff in S.P. PROC. No. SC-1904. To be precise, during the intervening period, complainant could not consolidate the plaintiff's ownership over the property and possess it to enjoy its fruits or sell the same to any interested buyer/s so as to conveniently use the cash payment to back up the expenses of her daughter's daily sustenance and education. In short, the timely realization of the action for support which complainant won in behalf of her minor child was unnecessarily delayed, if not almost defeated.

Awaiting resolution on a pending incident brought before the trial court is a defense that will not relieve respondent from administrative liability. What counts is the evident lack of any court order proscribing the issuance of a certificate of sale. His good faith or lack of it is, therefore, wholly immaterial since a sheriff is chargeable with the knowledge that being an officer of the court it behooves him to make compliance in due time.[9]

No doubt, respondent's deliberate omission only evinces that he was remiss in performing the duty of his office to diligently and expeditiously implement the writ of execution to the very end. Under the Revised Uniform Rules on Administrative Cases in the Civil Service,[10] he is 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

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[9] *Bunagan v. Ferraren*, A.M. No. P-06-2173, January 28, 2008, pp. 8-9.

[10] 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).

first offense and dismissal for the second offense.[11] Considering that this is respondent's first administrative offense and taking into account this Court's pronouncements in a number of cases,[12] the Court deems it best, in the interest of justice, to impose a fine in the amount of ₱5,000.

WHEREFORE, respondent Victor C. Ramos, Sheriff IV, Regional Trial Court, Branch 26, Sta. Cruz, Laguna, is found GUILTY of simple neglect of duty and is FINED in the amount of Five Thousand Pesos (₱5,000), 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 record of respondent in the Office of the Administrative Services, Office of the Court Administrator.

SO ORDERED.

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

Corona, J., on leave.

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[11] See *Vargas v. Primo*, *supra* at 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* at 278.

[12] See *Patawaran v. Nepomuceno*, *id.*

SECOND DIVISION

[A.M. No. P-08-2455. April 30, 2008]
(Formerly OCA I.P.I. No. 05-2175-P)

Judge FATIMA GONZALES-ASDALA, *petitioner, vs.* **VICTOR PEDRO A. YANEZA (Legal Researcher II),** *respondent.*

[A.M. No. P-08-2456. April 30, 2008]
(Formerly OCA I.P.I. No. 05-2228-P)

Judge FATIMA GONZALES-ASDALA, *petitioner, vs.* **VICTOR PEDRO A. YANEZA (Legal Researcher),** *respondent.*

[A.M. No. RTJ-08-2113. April 30, 2008]
(Formerly OCA I.P.I. No. 06-2449-RTJ)

VICTOR PEDRO A. YANEZA, *petitioner, vs.* **JUDGE FATIMA GONZALES-ASDALA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; PUBLIC OFFICERS; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; RESPONDENT YANEZA'S FAILURE TO FILE REPORTS, A VIOLATION OF CIVIL SERVICE RULES.— Section 52 (c) (14) of Rule 11 of the Revised Uniform Rules on Administrative Cases in the Civil Service provides that failure to process documents and complete action on documents and papers within a reasonable time from preparation thereof, except as otherwise provided in the rules implementing the Code of Conduct and Ethical Standards for Public Officials and Employees, shall be penalized with *a* reprimand on the first offense, a suspension for one to 30 days on the second offense, and dismissal on the third offense. It bears noting that, as the Hearing Officer Designate himself notes, Yaneza was **"duty**

bound to prepare and submit the reports" on time. It is in this light that the Court finds Yaneza to have violated Civil Service Rules.

2. ID.; ID.; ID.; FREQUENT ABSENTEEISM; CASE AT BAR.— The Revised Rules for Administrative Cases in the Civil Service penalizes <u>frequent unauthorized</u> absences with suspension of six months and one day to one year on the first offense, and dismissal on the second offense. Civil Service Memorandum Circular No. 4, series of 1991 penalizes, for habitual absenteeism, any civil service employee who incurs unauthorized absences in excess of the allowable 2.5 monthly leave credit under the Leave Law for at least three months in a semester or at least three consecutive months during the year, which Supreme Court Circular No. 2-99 equates with <u>frequent</u> absenteeism. As there is no record of Yaneza's available leave credits when he was absent on the dates involved in the case, he cannot be faulted for frequent unauthorized absenteeism.

3. ID.; ID.; ID.; ID.; ID.; RESPONDENT YANEZA MUST RETURN SALARIES RECEIVED, IF ANY, CORRESPONDING TO THE PERIOD OF HIS UNAUTHORIZED ABSENCES.— In the absence then of evidence that Yaneza's unauthorized absences were frequent or habitual, or that he falsified his daily time record, or that his absence was inimical to the interest of public service, the Court may not administratively discipline him. He is, however, not entitled to receive his salary corresponding to the period of his unauthorized absences. Following the provision of Article 2154 of the Civil Code that "[i]f something is received where there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises," he must return the same if he had already received it.

D E C I S I O N

CARPIO MORALES, *J.*:

The first two complaints subject of the present resolution merited a counter-complaint — the third subject case.

In OCA I.P.I. No. 05-2175-P, complainant Judge Fatima Gonzales Asdala (Judge Asdala), then Presiding Judge of Branch 87 of the Regional Trial Court (RTC) of Quezon City, charged[1] Legal Researcher II Victor Pedro A. Yaneza (Yaneza) with gross neglect for failure to inform her of a Notice of Appeal filed by the petitioner in Special Proceeding No. Q-01043860, *"Estate of Li Guat and Chua Kay,"* and to prepare a draft of the *proforma* order normally issued under the circumstances.

It appears that the Notice of Appeal was filed on June 11, 2004 during which Yaneza was the Officer-in-Charge of the Branch Clerk's Office. Judge Asdala only got wind of the filing of the Notice of Appeal on February 18, 2005 after Amy Soneja (Soneja), the Officer-in Charge on Judicial Matters, informed her about it.

In his Explanation[2] in compliance with Judge Asdala's February 19, 2005 memorandum to him, Yaneza stated that since appeals in special proceedings should be by record of appeal and not by notice of appeal, "there was no necessity to call the attention of the Presiding Judge for the reason that she is not under any obligation to act on a wrongful pleading or a wrong method of appeal."[3]

In the Comment[4] he filed on June 14, 2005 in compliance with the May 10, 2005 First Indorsement[5] of the Office of the Court Administrator (OCA), Yaneza reiterated his above-said explanation, adding that

> x x x there is a more sinister motive behind Judge Asdala's actions and inaction in relation to the Estate of Li Guat and Chua Kay. xxx Sometime in February 2003 Judge Asdala misused her office and meddled in a case represented by Atty. Marcelino Bautista, former RTC Judge of Quezon City. This became the subject of an administrative

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[1] *Rollo* (A.M. No. P-08-2455), pp. 1-4.

[2] *Id*. at 5-7.

[3] *Id*. at 6.

[4] *Id*. at 16-20.

[5] *Id*. at 15.

case filed by the latter against Judge Asdala [AM No. RTJ-05-1916] and as an offshoot Atty. Bautista together with his client went to the media to expose Judge Asdala's alleged misuse of her office xxx. [T]he Supreme Court decided the case against Judge Asdala on May 1[0], 2005 and fined her ₱40,000.00.[6] The TV Program Direct Connect was hosted by Atty. Batas Mauricio. Judge Asdala retaliated and filed a libel case against Atty. Bautista and his client which is now pending before RTC Branch 100, Quezon City under Crim. Case No. 03-119215 entitled ["]*People of the Philippines vs. Melencio P. Manansala III and Marcelino Bautista Jr.*"] Judge Adsala did not include the TV host Atty. Batas Mauricio xxx in her complaint for libel [as] she had other plans of getting even. It so happens that counsel on record in SPECIAL PROCEEDINGS NO. Q-01-43860 entitled ["]Estate of Li Guat and Chua Kay["] is the law firm of Atty. Mauricio. xxx Judge Asdala after several hearings finally dismissed the case. Thereafter, when the notice of appeal was filed she did not act on it. Now she wants to make me a convenient escape [*sic*] goat to cover for her sins.[7] (Underscoring supplied.)

Yaneza later claimed, during the hearing of OCA I.P.I. No. 05-2175-P conducted by the OCA, that on Judge Asdala's instruction, he inserted the Notice of Appeal in a folder of pending incidents which was placed on a table near the entrance to Judge Asdala's chamber.[8]

In OCA I.P.I. No. 05-2228-P, Judge Asdala, by letter of April 18, 2005 addressed to the RTC Executive Judge of Quezon City, charged Yaneza with abandonment, insubordination, misconduct, and acts prejudicial to the interest of the service.[9]

In support of her charges, Judge Asdala alleged as follows: She issued to Yaneza Memorandum No. 24 directing him to submit case reports, together with their attachments, for November and December 2005, and to make the necessary corrections therein following their rejection by the OCA, but

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[6] *Manansala III v. Asdala*, A.M. No. RTJ-05-1916, May 10, 2005, 458 SCRA 349, 367.

[7] *Rollo* (OCA I.P.I. No. 05-2175-P), pp. 18-19.

[8] TSN, February 6, 2007, pp. 6, 31-32.

[9] *Rollo* (OCA I.P.I. No. 05-2228-P), pp. 2-5.

that despite repeated verbal instructions, Yaneza failed to comply therewith; and that on April 1, 2005, Yaneza wrote her that it was not his responsibility to submit the attachments and correct the reports.

Judge Asdala further alleged:

From April 3, 2005 when she admonished him even up to the time of writing of the abovesaid letter of April 18, 2005 to the Executive Judge, Yaneza went on leave without accomplishing a "proper and timely" application as required by Civil Service Rules. She thus issued Memorandum No. 26 directing him to report back for work within eight hours from receipt thereof. The process server of the branch, who was tasked to deliver the memorandum, reported however that Yaneza refused to open the door of his house, constraining him to leave the memorandum by the door of Yaneza's house.

By letter of May 10, 2005 to the Executive Judge,[10] and by way of Comment/Complaint[11] filed before the OCA, Yaneza explained that he tried to have the reports brought to the OCA by the process server but failed because Judge Asdala had been sending the process server on private errands and she did not allow anyone other than herself to give orders to him (process server).

Yaneza added that Judge Asdala has a "propensity to order the Court Process Server to do unusual tasks like driving her children to school,"[12] and that she was in fact fined by this Court for utilizing the Court Deputy Sheriff to do things for her own interest.[13]

Explaining further, Yaneza alleged that he requested Rowena Agulo, the clerk in charge of civil cases, bring the reports to

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[10] *Id*. at 6-9.

[11] *Id*. at 28-37.

[12] *Id*. at 29.

[13] *Ibid*. *Vide* *Manansala III v. Adsala*, A.M. No. RTJ-05-1916, May 10, 2005, 458 SCRA 349, 367.

the OCA but she was not allowed by Myrla Nicandro who acted as officer-in-charge (OIC) of Branch 87. Furthermore, Yaneza claimed:

The trouble with the Office is that there is much confusion, there are two (2) OIC[s], one Ms. Amy Soneja who was properly designated by the Supreme Court and the other Ms. Myrla Nicandro who was **not appointed by the Supreme Court** but presents herself [as] and [is] **treated** by the Presiding Judge as **the** OIC, thus appearing to be a usurper;

x x x x x x x x x

In Branch 87, Ms. Soneja is the properly appointed OIC by the Supreme Court[,] meaning[,] she is the only one who can exercise the powers of the Office of the Clerk of Court and no other. Myrla Nicandro not being properly appointed by the Supreme Court has no authority to present herself as OIC. It is a public misrepresentation. Any exercise of the powers of the Clerk of Court by Ms. Nicandro is [a] usurpation before our eyes. xxx Myrla Nicandro is only a stenographer by rank and has no item in the plantilla of Branch 87. She is only detailed, has been transferred from several offices[;] maybe her best qualification is that she is a *kumare* of the Presiding Judge and a constant companion in various activities. x x x

x x x x x x x x x

It is very difficult to ask any of the clerical staff to go and file the reports [with] the Supreme Court, since they have to secure permission from a usurper OIC Myrla Nicandro[. I]n fact I requested Rowena Agulo[,] clerk in charge of civil cases[,] to file the reports but the usurper turned down her request for permission;

By way of comment [on] my application for leave, it is the practice of the Presiding Judge to allot the time in which the staff will take leave. x x x But for several years now, the Presiding Judge has not allocated any period for us to go on leave. Thus, I did not have any vacation for years. x x x

After conferring with the properly appointed OIC Ms. Amy Soneja, **I submitted an application for leave dated April 1, 2005, and she in turn submitted it to the usurper OIC Myrla Nicandro, and it is only lately thru this complaint that [I] became aware that my application for leave was not approved**.[14] (Emphasis and underscoring supplied)

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[14] *Rollo* (A.M. No. P-08-2456), pp. 7-9.

Annexed to Yaneza's May 10, 2005 letter of the Executive Judge was, among others, a copy of his application for leave covering the period April 4, 5 and 6, 2005, which was received by Branch 87 of the Quezon City RTC at 10:00 A.M. on April 1, 2005.[15]

On recommendation of the OCA,[16] the Court considered Yaneza's above-stated Comment filed at the OCA on June 14, 2005 to Judge Asdala's letter-complaint as well as the Comment/Complaint Yaneza filed at the OCA on August 30, 2005, as counter-complaints which were docketed as OCA IPI No. 06-2449-RTJ, and required her to file her comment thereon.[17]

In her Comment[18] in OCA I.P.I. No. 06-2449-RTJ, Judge Asdala alleged that the charges against her were ill-motivated, reiterated her own charges against Yaneza, and emphasized Yaneza's alleged incompetence and laziness.

After receiving evidence on the three cases, Hearing Officer Designate Romulo S. Quimbo made the following findings and recommendations:

> In **OCA-IPI No. 05-2175-P**, x x x [t]he evidence does not show that the failure of Yaneza to bring the [Notice of Appeal] to the attention of Judge Asdala was motivated by any corrupt motives. As a matter of fact, while he admitted his failure to call the attention of Judge Asdala regarding said notice of appeal, he reasoned that there was no necessity to bring it to her because it was not the proper pleading. x x x
>
> However, although the notice of appeal filed in the case may have been insufficient to satisfy the rules, still it was not for him to decide. He should have brought the matter to the complainant's attention. When he ruled that the said notice of appeal was not the correct pleading, he was performing a judicial power reserved for the presiding judge.

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[15] *Id*. at 19.

[16] *Rollo* (A.M. No. P-08-2455), p. 55; *id*. at 94.

[17] *Id*. at 56; *id* at 95.

[18] *Rollo* (A.M. No. RTJ-08-2113), pp. 60-63.

Yaneza, however, averred that in obedience to the instructions of Judge Asdala, he had placed the notice of appeal on a table near complainant's door together with other pending incidents. This is denied by Judge Asdala. Be that as it may, we cannot hold respondent Yaneza liable for willful concealment of the notice of appeal. No motive has been ascribed or proven against Yaneza. On the other hand, it is not denied that the counsel for the petitioners in the Li Guat case was Atty. Mauricio, the television host where the acts of Judge Asdala amounting to obstruction of justice and for which she was fined ₱40,000.00 in A.M. No. RTJ-05-1916 had been aired. It is not farfetched to think that the dismissal of Special Proceedings No. A-01-43860 and her failure to act on the notice of appeal was the result of some animosity which she felt against Atty. Mauricio.

In **OCA-IPI No. 05-2228-P**, x x x respondent **Yaneza was in duty bound to prepare and submit the reports** within the first week of the following month. Hence, his failure to submit the November 2004 report during December and his failure to submit the December 2004 report in early January amounts to **inefficiency**. His excuse that there was confusion in the office because of the two OICs is rather lame.

This inefficiency, although not particularly listed in Section 23, Rule XIV of Book V of Executive Order No. 292 (Administrative Code) as among the offenses that may be committed by government employees, deserves a **reprimand** and **a stern warning** that any repetition of the same would be dealt with more drastically.

Judge Asdala further charges Yaneza for abandonment of his position. She averred that she had directed her OIC to inform Yaneza that his application for leave had been disapproved. She also issued a memorandum directing Yaneza to report to the office and this memorandum was served on Yaneza by the process server who was, however, unable to serve the same personally on Yaneza.

Yaneza was unable to substantiate his charges against Judge Asdala [in OCA-IPI No. 06-2449-RTJ]. xxx

There appears to be some merit in the statement of Yaneza as regards the confusion of the personnel because of the presence of two (2) OIC's – Ms. Amy So[n]eja, who was regularly appointed by the Supreme Court and Ms. Myrla Nicandro, who was appointed by Judge Asdala. This act of Judge Asdala is covered by x x x Memorand[a] No. 0009, s. of 2005 (pp. 81-82, *Rollo*, 05-2228-P)

and No. 0019, s. of 2005 (*Ibid*., pp. 83-85). This is the reason advanced by Yaneza as regards the inefficiency of Branch 87. x x x

The undersigned **recommends** that OCA-IPI No. 2175-P [*sic*] be re-docketed as a regular administrative matter and that respondent Victor Pedro A. Yaneza be reprimanded and sternly warned that a repetition of the same offense or the commission of a similar one in the future would be more drastically dealt with; that OCA-IPI No. 05-2228-P [*sic*] be dismissed for lack of merit and that OCA-IPI No. 06-2449-RTJ be also dismissed but Judge Asdala be required to explain why she appointed another OIC Branch Clerk considering that one had already been designated by the Court.[19] (Emphasis and underscoring supplied)

In OCA IPI No. 05-2175-P, this Court finds the immediately quoted findings, as well as the recommendation, of Hearing Officer Designate Romulo S. Quimbo well-taken.

In OCA IPI No. 05-2228-P, the Hearing Officer Designate observes that Yaneza's failure to file the reports, while constituting inefficiency, is "not particularly listed in Sec. 23, Rule IV of Book V of Executive Order No. 292 (Administrative Code) as among the offenses that maybe committed by government employees." He nevertheless recommends that Yaneza be reprimanded.

Section 52 (c) (14) of Rule 11 of the Revised Uniform Rules on Administrative Cases in the Civil Service provides that failure to process documents and complete action on documents and papers within a reasonable time from preparation thereof, except as otherwise provided in the rules implementing the Code of Conduct and Ethical Standards for Public Officials and Employees, shall be penalized with a reprimand on the first offense, a suspension for one to 30 days on the second offense, and dismissal on the third offense.[20] It bears noting that, as the Hearing Officer Designate himself notes, Yaneza was **"duty bound to prepare and submit the reports" on time**. It is in this light that the Court finds Yaneza to have violated Civil Service Rules.

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[19] Consolidated Report (not paginated).

[20] Revised Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52 (C) (14).

Respecting Yaneza's unauthorized absences, he admits that he did not report for work from April 3, 2005 until sometime in May of the same year,[21] he claiming that he applied for a vacation leave. The copy of his approved application for vacation leave submitted before this Court was, however, only for April 4-6, 2005.[22] While he claims to have subsequently applied for a second vacation leave,[23] he did not present a copy of any such application. In fact he admits having gone on leave without verifying whether his purported applications for the purpose were approved.[24]

The Revised Rules for Administrative Cases in the Civil Service penalizes frequent unauthorized absences with suspension of six months and one day to one year on the first offense, and dismissal on the second offense.[25] Civil Service Memorandum Circular No. 4, series of 1991 penalizes, for habitual absenteeism, any civil service employee who incurs unauthorized absences in excess of the allowable 2.5 monthly leave credit under the Leave Law for at least three months in a semester or at least three consecutive months during the year,[26] which Supreme Court Circular No. 2-99 equates with frequent absenteeism.[27] As there is no record of Yaneza's available leave credits when he was absent on the dates involved in the case, he cannot be faulted for frequent unauthorized absenteeism. *Judge Aquino v. Fernandez*[28] enlightens:

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[21] TSN, February 6, 2007, p. 17.

[22] *Rollo* (A.M. No. P-08-2456), p. 19.

[23] TSN, February 6, 2007, 11-12.

[24] *Vide id*. at 14-17.

[25] Revised Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52 (A)(17).

[26] *Vide* Supreme Court Circular No. 1-91; *Atty. Talion v. Ayupan,* 425 Phil. 41, 52 (2002).

[27] The said circular mentions absenteeism and tardiness, even if such do not qualify as "habitual" or "frequent" under Civil Service Commission Memorandum Circular No. 04, Series of 1991." However, Civil Service Memorandum Circular No. 04, Series of 1991 only defines "habitual" and not "frequent" absences. Thus, by implication, Supreme Court Circular No. 2-99 equates "frequent" with "habitual" absences.

[28] 460 Phil. 1 (2003).

The reason for the requirement that employees applying for vacation leave, *whenever possible*, must submit in advance their applications [for] vacation leave, is to enable heads of offices to make the necessary adjustments in the work assignments among the staff so that the work may not be hampered or paralyzed. However, it is clear from [Sections 49-54 of Rule XVI of the Omnibus Civil Service Rules and Regulations] that mere failure to file a leave of absence in advance does not *ipso facto* render an employee administratively liable. In case the application for vacation leave of absence is filed after the employee reports back to work but disapproved by the head of the agency, then, under Section 50[29] xxx, **the employee shall not be entitled to receive his salary corresponding to the period of his unauthorized leave of absence**. The unauthorized leave of absence becomes punishable only if the absence is frequent or habitual under Section 23 (q), Rule XIV of the omnibus Civil Service Rules and Regulations or detrimental to the service under Section 23 (r) [*sic*][30] or the official or employee falsified his daily time record under Section 23 (a) or (f) of the same Omnibus Civil Service Rules.[31] (Italics in the original; emphasis and underscoring supplied)

In the absence then of evidence that Yaneza's unauthorized absences were frequent or habitual, or that he falsified his daily time record, or that his absence was inimical to the interest of public service, the Court may not administratively discipline him.[32] He is, however, not entitled to receive his salary corresponding to the period of his unauthorized absences. Following the provision of Article 2154 of the Civil Code that "[i]f something is received where there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises," he must return the same if he had already received it.

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[29] Omnibus Civil Service Rules and Regulations, Rule XVI, Section 50:

Sec. 50. *Effect of unauthorized leave.* – An official/employee who is absent without approved leave shall not be entitled to receive his salary corresponding to the period of his unauthorized absence. It is understood, however, that his absence shall no longer be deducted from his accumulated leave credits, if there is any.

[30] Section 23 (r) refers to "refusal to perform official duty." "Conduct grossly prejudicial to the best interest of the service" is in Section 23 (t).

[31] *Judge Aquino v. Fernandez, supra* note 28 at 11-12. Citations omitted.

[32] *Vide id*. at 12.

Finally, in OCA IPI No. 06-2449-RTJ, this Court finds well-taken the findings and recommendation of the Hearing Officer Designate.

In *Edaño v. Asdala,*[33] the Court, by Decision of July 26, 2007, dismissed Judge Asdala from the service for gross insubordination and gross misconduct unbefitting of a member of the judiciary.[34] This leaves it unnecessary to still consider the complaint against her for personally designating her choice of an OIC Branch Clerk of Court despite the previous official designation of one by the Court.

WHEREFORE, OCA-I.P.I. No. 05-2175-P is *DISMISSED* for lack of merit.

OCA-I.P.I. No. 05-2228-P is *REDOCKETED* as a regular administrative matter. Victor Pedro A. Yaneza is found *GUILTY* of violation of the Revised Uniform Rules on Administrative Cases in the Civil Service for failure to process documents and complete action on documents and papers within a reasonable time from preparation thereof, and is accordingly *REPRIMANDED* with WARNING that a repetition of the same offense will be dealt with more severely.

If Yaneza had received his salary corresponding to his unauthorized absences from April 3, 2005 to May 31, 2005, he is *ORDERED* to return the same. The Office of the Court Administrator is ordered to verify the matter and, if in the affirmative, to implead the order.

OCA-I.P.I. No. 06-2449-RTJ is *DISMISSED* for mootness.

SO ORDERED.

*Quisumbing (Chairperson), Tinga, Azcuna,** and *Brion, JJ.,* concur.

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[33] *Edaño v. Asdala,* A.M. No. RTJ-06-1974, July 26, 2007, 528 SCRA 212.

[34] *Id.* at 226.

* Additional member per Raffle dated April 23, 2008.

SECOND DIVISION

[A.M. No. RTJ-08-2109. April 30, 2008]
(Formerly A.M. OCA I.P.I. No. 06-2463-RTJ,
formerly A.M. OCA I.P.I. No. 06-1-45-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *petitioner, vs.* **JUDGE MOISES M. PARDO and CLERK OF COURT JESSIE W. TULDAGUE, RTC-CABARROGUIS, QUIRINO (FORMERLY LETTER-COMPLAINT OF JUDGE MOISES M. PARDO, EXEC. JUDGE, RTC-CABARROGUIS, QUIRINO AGAINST ATTY. JESSIE W. TULDAGUE, CLERK OF COURT, SAME COURT),** *respondents.*

SYLLABUS

1. POLITICAL LAW; PUBLIC OFFICERS; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; GROSS DISCOURTESY; CASE AT BAR.— The Court additionally finds that respondent Tuldague is guilty of **gross discourtesy** in the course of official duties under Rule IV, Section 52 (B) (3) of the Revised Uniform Rules on Administrative Cases in the Civil Service for failure to accord respect for the person and rights of the Judge. The belligerence he showed to the Judge, reflected in his above-quoted letter to the Judge – a case of *res ipsa loquitur* – which was even noted by the OCA, betrays his below-par conduct as a court employee. In *Amane v. Atty. Mendoza-Arce*, the Court had the occasion to expound on the matter: x x x As succinctly held in *Macalua v. Tiu, Jr.,* an employee of the judiciary is expected to accord respect for the person and rights of others at all times, and his every act and word characterized by prudence, restraint, courtesy and dignity. Government service is people-oriented and where high-strung and belligerent behavior is not allowed. No matter how commendable respondent's motives may be, as a public officer, courtesy should be his policy always. This applies with more force in the case of Atty. Mendoza-Arce

because as Clerk of Court of RTC-Roxas City she is supposed to be the model of all court employees not only with respect to the performance of their assigned tasks but also in the manner of conducting themselves with propriety and decorum ever mindful that their conduct, official or otherwise, necessarily reflects on the court of which they are a part.

2. ID.; ID.; ID.; ID.; COURT IMPOSES A FINE TO PREVENT DISRUPTION IN DELIVERY OF JUDICIAL SERVICES; CASE AT BAR.— Under the Uniform Rules on Administrative Cases in the Civil Service, gross discourtesy in the course of official duties is punishable with suspension for one month and one day to six months on the first offense. To prevent the disruption in the delivery of judicial services, however, the Court deems it appropriate to instead impose on Tuldague a fine equivalent to his salary for one month and one day.

D E C I S I O N

CARPIO MORALES, *J.*:

By letter dated August 9, 2005 addressed to Deputy Court Administrator Jose Perez, respondent Judge Moises M. Pardo (Judge Pardo or the Judge) who was, at the time material to the present administrative matter, Executive Judge and Presiding Judge of Branch 31 and acting Presiding Judge of Branch 32 of the two-sala Regional Trial Court (RTC) of Cabarroguis, Quirino, complained against respondent Clerk of Court Jessie W. Tuldague (Tuldague). The body of the letter reads:

> I am calling your attention [to] the **Grave and Disrespect[ful] conduct** of Atty. Jessie W. Tuldague, Clerk of Court VI, RTC Cabarroguis, Quirino, **in the conduct of raffle of cases** by calling only the OIC Branch Clerks of Court, and furnishing only the undersigned about the said raffle [*sic*]. The xerox copy of said letter is hereto attached for your perusal.
>
> The said act of said Atty. Tuldague is an affront to the prerogatives of the Executive Judge and x x x he should be penalized for it.

Your fast action hereon is very much sought for.[1] (Emphasis and underscoring supplied)

The form-notice of raffle issued by Tuldague, which the Judge attached to his letter, reads:

THE OIC[-]BRANCH CLERK OF COURT
RTC, Branch 31
Cabarroguis, Quirino

THE OIC-BRANCH CLERK OF COURT
RTC, Branch 32
Cabarroguis, Quirino

Greetings:

Please be informed that we will be conducting the raffle of cases on August 9, 2005 at the session hall of RTC, Br. ___, Cabarroguis, Quirino at 8:15 A.M.

August 4, 2005 at Cabarroguis, Quirino.

Very truly yours,

ATTY. JESSIE W. TULDAGUE
Clerk of Court VI

COPY FURNISHED:
HON. MOISES M. PARDO
Executive Judge-RTC-Br. 31[2] (Emphasis and underscoring supplied)

In his Comment,[3] Tuldague denied that the notice of raffle was in any way disrespectful to Judge Pardo, he claiming that he has been using the above-quoted form-notice of raffle for the past years without Judge Pardo questioning it. He averred that from the time of his appointment as Clerk of Court of the RTC of Cabarroguis, Quirino, he has been the one who initiated and insisted that the raffle of cases be done in open court. He further averred that Judge Pardo filed the letter-complaint in

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[1] *Rollo*, p. 23.

[2] *Id*. at 24.

[3] *Id*. at 26-27.

retaliation for his filing of an administrative complaint against him.

Tuldague in turn charged Judge Pardo for having

x x x x x x x x x

x x x disregarded procedures and committed impropriety when he ordered the civil docket clerk of his sala (Branch 31), on April 28, 2005, to get the records of Land Registration Case No. 264-05, *Leoncio Daquioag v. Registry of Deeds*, directly from the Office of the Clerk of Court without the benefit of raffle. There was no special raffle conducted to justify the act of Judge Pardo x x x[4] (Underscoring supplied)

The Office of the Court Administrator (OCA) subsequently received on November 3, 2005 a copy of an October 18, 2005 letter of Tuldague addressed to Judge Pardo reading:

x x x x x x x x x

I was informed by Sheriff Tanching Wee that you refuse to sign the Sheriff's Certificate of Sale of Extra-Judicial Foreclosure Cases that we raffled in your absence on the ground that your physical absence during the raffle makes the sale null and void. Please be informed that under A.M. No. 99-10-05-0 as Amended, your absence during the raffle is not a valid ground to declare the sale as void. I hope you will realize that **your line of thinking is not to my detriment** but to the damage and prejudice of court users. **If you want to make the issue big, then you can bring this small matter up to the Supreme Court** again and I'm willing and ready to answer. From now on, I will be forwarding to your office all Petitions for Extra-Judicial Foreclosure **so you can always be present and conduct the raffle yourself**. I'm doing this in the interest of service and so as not to prejudice innocent court users who have nothing to do with the **legal controversy and friction between us**.[5] (Emphasis and underscoring supplied)

On even date, the OCA also received a copy of Judge Pardo's letter-reply to said October 18, 2005 of Tuldague reading:

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[4] *Ibid*.

[5] *Id*. at 30.

x x x x x x x x x

In relation to your letter dated October 18, 2005 regarding the raffle of extra-judicial foreclosure cases which you did without my presence although you know that I am very much present, you know pretty well that what you did was in contravention of A.M. No. 99-10-05-0, as amended by Circular No. 7-2002, and the pertinent provision of which is quoted hereunder, to wit:

> "Section 1. All applications for extra-judicial foreclosure of mortgage, whether under the direction of the Sheriff or a notary public pursuant to Act No. 3135, as amended, and Act 1508, as amended, ***SHALL BE FILED WITH THE EXECUTIVE JUDGE THROUGH THE CLERK OF COURT***, who is also the *Ex-Officio* Sheriff (A.M. No. 99-10-05-0, as amended, March 1, 2001).
>
> Section 3. The application for extra-judicial foreclosure ***SHALL BE RAFFLED*** under the ***SUPERVISION of the EXECUTIVE JUDGE***, with the ***ASSISTANCE*** of the Clerk of Court and *Ex-Officio* Sheriff, among all Sheriffs including those assigned to the Office of the Clerk of Court and Sheriffs assigned in the branches of the Court. A Sheriff to whom the case only after all other Sheriffs shall have been assigned a case each by raffle (Administrative Circular No. 3-98, February 5, 1998)."

From the above-quoted provisions, you are only to assist in the raffling of the cases and not to act as the Chairman of the Raffle Committee. [Regarding y]our statement that you will be forwarding all petitions received by your office, you should be informed that under the said circular you are to receive all petitions including the corresponding payment of fees.

x x x[6] (Emphasis and italics in the original; underscoring supplied)

Acting on the complaint and counter-complaint, the OCA submitted to the Court its Memorandum-Report[7] dated January 9, 2006 containing its evaluation and recommendation thereon, a portion pertinent to the Judge's complaint against Tuldague of which reads:

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[6] *Id.* at 29.

[7] *Id.* at 2-8.

Minutes of Raffled Cases dated 8 February 2005, 8 March 2005 and 26 September 2005 submitted to the Court Management Office were noted by Judge Pardo, which, to our mind, only manifest the scheduled date and time of the raffling of cases as well as the actual raffling of cases were with his consent [*sic*]. Moreover, the absence of any evidence showing that he has ever called the attention of Atty. Tuldague as to the alleged "affront to his prerogatives as Executive Judge" strengthens the defense of Atty. Tuldague that he has long been using the same notice without the judge questioning the same. Such tolerance on the part of the complaining judge is considered acquiescence [with] the adopted procedure and, therefore, negates the act complained of.[8] (Underscoring supplied)

In its Resolution of February 8, 2006, the Court approved the OCA's recommendation and accordingly resolved:

(a) to ***NOTE*** the following, to wit: 1) the letter-complaint dated 9 August 2005 and letters dated 18 October 2005 and 25 October 2005 of Judge Moises M. Pardo, Executive judge, RTC, Cabarroguis, Quirino; and 2) comment dated 13 September 2005 and letter dated 18 october 2005 of Atty. Jessie W. Tuldague, Clerk of Court, same court;

(b) to ***DISMISS*** the complaint against Atty. Jessie W. Tuldague, Office of the Clerk of Court, Cabarroguis, Quirino, for 'Grave and Disrespect Conduct' for lack of merit;

(c) to ***DIRECT*** Atty. Tuldague:

(1) to ***REFRAIN*** from personally conducting the raffling of cases (regular raffle as well as raffle of applications for extrajudicial foreclosure of mortgage);

(2) to ***ASSIST*** the Raffle Committee (Executive Judge and presiding Judge of the other branch – Judge Pardo only, in the instant case) in the raffling and assignment of cases;

(3) to ***LEAVE*** the preparation of the Minutes of the Raffle to the two stenographers designated to record the raffle proceedings; and

(4) to ***EXPLAIN*** why no administrative sanction should be imposed on him for proceeding with the raffle of cases/

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

applications for extra-judicial foreclosure of mortgage in the absence of the Executive Judge;

(d) to ***DIRECT*** Judge Moises M. Pardo, Executive Judge, RTC, Cabarroguis, Quirino:

(1) to ***EXPLAIN*** why no administrative sanction should be imposed on him for allowing the Clerk of Court to conduct the raffle of cases in his station without his being personally present thereat for a long period of time prior to the filing of his complaint dated 9 August 2005; and

(2) ***DISREGARD*** the 2nd Indorsement dated 10 October 2005 of this Office requiring him to submit his Reply to the Comment dated 13 September 2005 of Atty. Tuldague and, instead, submit his comment on the allegation of Atty. Tuldague that he took the records of Land Registration Case No. 264-05, entitled "*Leoncio Daquioag vs. Registry of Deeds*" from the Office of the Clerk of Court which has no yet been included in the raffled cases;

(e) to ***DIRECT*** the Raffle Committee, Judge Pardo as Executive Judge and pairing Judge of the other branch, Atty. Tuldague, as the Clerk of Court, and the two (2) stenographers designated to record the proceedings to ***STRICTLY OBSERVE*** the procedure in the raffle of cases including the preparation of the minutes thereof (Sec. 4, Chapter V of the Guidelines on the Selection and Appointment of Executive Judges and Defining their Powers, Prerogatives and Duties dated February 1, 2004); and

(f) to ***TREAT*** the matter, with respect to the irregularity in the raffling of cases, as an OCA-Informal Preliminary Inquiry and to ***CONSOLIDATE*** the same with the other complaints subject of our Memorandum dated October 7, 2005 in order to join all issues concerning the courts at Cabarroguis, Quirino. (Emphasis and italics in the original; underscoring supplied)[9]

In compliance with the Court's foregoing directive, Tuldague, in his Comment/Explanation,[10] denied that he personally conducted

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

[10] *Id*. at 49-51.

regular raffle of cases and applications for extrajudicial foreclosure of mortgage, and averred that he only once conducted a raffle of applications for extrajudicial foreclosure of mortgage because he "thought that [Judge Pardo] is no longer interested, considering that he verbally ordered us to raffle cases in open court without him conducting the raffle himself x x x."[11]

In his March 28, 2006 letter,[12] Judge Pardo denied that he did not participate in the raffle of cases, to prove which he submitted Transcripts of Stenographic Notes taken thereon.[13] He averred that when he discovered on August 12, 2005 the irregularity in the raffling of foreclosure cases the day before, he prepared and issued Notices of Regular Raffling of Cases effective August 22, 2005.[14]

With regard to the charge that he allowed Tuldague to conduct the raffle of cases in his absence, Judge Pardo cited his earlier quoted reply-letter to Tuldague's October 18, 2005 letter to refute the same.[15]

Judge Pardo likewise denied the charge that he took the records of Land Registration Case No. 264-05, claiming that

> x x x Due to the voluminous records of cases in my sala, and that of the other sala where I am designated, I learned sometime [in] September 2005 or after deciding the case on the merits that the same was not raffled. As a judge, every case which the then Branch Clerk of Court presents to me and schedules for hearing, [is] presumed to have been regularly docketed in said branch, and that it was regularly delivered to the same, and moreover, … I discovered that the said case [called for] a special raffle, as shown by the Official Receipt No. 0866080A (**Annex "H"**) dated April 28, 2005 issued by the Office of the Clerk of Court Atty. Tuldague in payment of the "Motion Fee

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[11] *Id.* at 55. *Vide* pp. 49, 55-57.

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

[13] *Id.* at 83-85.

[14] *Id.* at 86.

[15] *Id.* at 78, 88.

for Special Raffle" in the amount of Five Hundred Pesos (Php500.00).[16] (Emphasis in the original; underscoring supplied)

By Resolution of April 26, 2006, this Court referred the Judge's letter and Tuldague's comment/explanation to the OCA for evaluation, report, and recommendation.[17]

In its July 21, 2006 Memorandum,[18] the OCA evaluated the case against Tuldague, thus:

> With respect to respondent Tuldague, we find that his action and deportment properly call for scrutiny by this Court. He admits that in one instance, he proceeded with the raffle of a foreclosure of mortgage on the presumption that Judge Pardo may not be interested in conducting it himself. Certainly such is not an acceptable and valid reason that could justify his act of usurping the authority of the judge. We cannot accept his explanation that he did that out of pure concern for the service. The circumstances point to **defiance of authority** considering that there are indications that bad blood exists between them. As respondent Tuldague himself admitted in his letter dated 18 October 2005, there is a "legal controversy and friction" between them. Moreover, his statement in his comment that personally **he has no more respect for respondent Pardo**, his statement in his letter dated 18 October 2005 that ***"from now on I will be forwarding to your office all petitions for extrajudicial foreclosure so you can always be present and conduct the raffle yourself,"*** his statement that ***"if you want to make the issue big, then you can bring this small matter up to the Supreme Court again,*** *and I'm willing and ready to answer,"* and his assertion that it is respondent Pardo's *"misguided principles and bloated pride that keeps him [in] his wrong court practices despite honest to goodness corrections being undertaken by him"* **speak volumes about Tuldague's disrespect towards his superior**. The **belligerence** too evident to ignore indicates that respondent's act of personally conducting the raffle in the absence of respondent judge was **intentional**.[19] (Italics in the original; emphasis and underscoring supplied)

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[16] *Id*. at 78. *Vide* p. 89.

[17] *Id*. at 90-91.

[18] *Id*. at 92-99.

[19] *Id*. at 98.

As for the case against the judge, the OCA observed:

> With respect to respondent Judge Pardo, we find that the records of the case do not sufficiently establish enough basis for his liability. Respondent Judge denied that he ever allowed respondent Clerk of Court impliedly or expressly to conduct the raffle of cases/application of extrajudicial foreclosure of mortgage in his absence as Executive Judge. Such denial is supported by the records which show his vehement objection against respondent Tuldague's act of raffling cases even in his absence as chairman of the raffle committee and which is the very root of the present administrative matter. In fact respondent Tuldague denies that he personally conducts the raffle of cases which denial supports respondent Judge['s] assertion that it is [he] who personally presides over the proceedings. As regards his alleged act of assigning an LRC Case to Branch 32 without the benefit of a raffle, the accusation is not supported by the records of the case. The evidence submitted by respondent Tugaldue [*sic*] to support his accusation is an incompletely filled-pro-forma form of minutes of special raffle, the only entries of which were the case name and number under the space provided for the cases assigned to Branch 32 and the name and signature of the receiving Clerk of Court of said court. This evidence does not speak of any capricious, arbitrary or whimsical disposition on respondent Pardo's part to unilaterally assign the subject LRC case to Branch 32 or of any deliberate intent on his part to violate the rule on raffle of cases. On the contrary, we find acceptable respondent Pardo's explanation that he presumed said case to be regularly docketed in said court. Besides, no ill motive can be attributed to him which could have moved him to disregard the rules on raffle to ensure that Branch 32 would get the case. There are only two branches of the RTC in Cabarroguis, Quirino, Branches 31 and 32. Respondent is the presiding judge of Branch 31 and then acting presiding judge of Branch 32. Regardless therefore of where the case would be assigned, it would still be respondent Pardo who would be hearing and deciding the case, **which in fact was what happened.**[20] (Emphasis and underscoring supplied)

The OCA accordingly recommended that:

[1] the explanation of respondent Judge Moises Pardo with respect to his alleged act of allowing the Clerk of Court to

[20] *Id*. at 97.

conduct the raffle of cases in his station without being personally present thereat for a long period of time and comment on the allegation that he took the records of LRC Case No. 264-05 without the benefit of a raffle be considered **SUFFICIENT** and **SATISFACTORY**.

[2] that respondent Clerk of Court Atty. Jessie W. Tuldague be **FOUND GUILTY** of violation of Supreme Court Circular No. 7-2002 and be **REPRIMANDED** for such violation.[21] (Emphasis in the original; underscoring supplied)

By Manifestation of October 11, 2006, Tuldague submitted the case for decision.[22] By Manifestation[23] filed on October 26, 2006, Judge Pardo expressed his preference that the case be decided on the basis of his memorandum which he attached to the Manifestation.

The Court finds the OCA's evaluation and recommendation on the complaint against Tuldague and his counter charge against the Judge well-taken.

The Court additionally finds that respondent Tuldague is guilty of **gross discourtesy** in the course of official duties under Rule IV, Section 52 (B) (3) of the Revised Uniform Rules on Administrative Cases in the Civil Service for failure to accord respect for the person and rights of the Judge. The belligerence he showed to the Judge, reflected in his above-quoted letter to the Judge – a case of *res ipsa loquitur*[24] – which was even noted by the OCA, betrays his below-par conduct as a court employee. In *Amane v. Atty. Mendoza-Arce*,[25] the Court had the occasion to expound on the matter:

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[21] *Id*. at 99.

[22] *Id*. at 102-104; *vide* also Resolution of November 29, 2006; *id* at 153-154.

[23] *Id*. at 118-121, 153.

[24] This Court has applied the *res ipsa loquitur* in disciplining judicial officers and personnel whose actuations, on their face, show gross incompetence, ignorance of the law or misconduct. *Vide De los Santos v. Mangino*, A.M. No. MTJ-03-1496, July 10, 2003, 405 SCRA 521, 528; *Cruz v. Yaneza*, A.M. No. MTJ-99-1175, March 9, 1999, 304 SCRA 285, 305; *Sy v. Mongcupa*, A.M. No. P-94-1110, February 6, 1997, 267 SCRA 517, 521.

[25] 376 Phil. 575 (1999).

x x x As succinctly held in *Macalua v. Tiu, Jr.,*[26] an employee of the judiciary is expected to accord respect for the person and rights of others at all times, and his every act and word characterized by prudence, restraint, courtesy and dignity. Government service is people-oriented and where high-strung and belligerent behavior is not allowed. No matter how commendable respondent's motives may be, as a public officer, courtesy should be his policy always. This applies with more force in the case of Atty. Mendoza-Arce because as Clerk of Court of RTC-Roxas City she is supposed to be the model of all court employees not only with respect to the performance of their assigned tasks but also in the manner of conducting themselves with propriety and decorum ever mindful that their conduct, official or otherwise, necessarily reflects on the court of which they are a part.[27] (Italics in the original; underscoring supplied)

Lest it be misunderstood that the finding of "gross discourtesy" on the part of Tuldague had been considered by the Court when it, by Resolution of February 8, 2006, approved the OCA Recommendation to Dismiss the complaint against him by Judge Pardo for "Grave and Disrespect [*sic*] Conduct," it bears emphasis that the charge of the judge referred to Tuldague's failure to notify him of the raffle of cases.

Under the Uniform Rules on Administrative Cases in the Civil Service, gross discourtesy in the course of official duties is punishable with suspension for one month and one day to six months on the first offense. To prevent the disruption in the delivery of judicial services, however, the Court deems it appropriate to instead impose on Tuldague a fine equivalent to his salary for one month and one day.[28]

WHEREFORE, the charge against respondent Judge Moises M. Pardo is *DISMISSED*.

Respondent Clerk of Court Atty. Jessie W. Tuldague is found *GUILTY* of violation of Supreme Court Circular No. 7-2002 and is *REPRIMANDED* therefor. He is likewise found

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[26] A.M. No. P-97-1236, July 11, 1997, 275 SCRA 320, 326-327.

[27] *Supra* note 25 at 596-597.

[28] *Vide Angeles v. Base*, 443 Phil. 723, 731 (2003).

GUILTY of gross discourtesy in the course of official duties and is *FINED* the equivalent of his salary for one month and one day.

SO ORDERED.

Quisumbing (Chairperson), Austria-Martinez, Tinga,* and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 105608. April 30, 2008]

TIRSO D. MONTEROSO, *petitioner, vs.* **COURT OF APPEALS, SOLEDAD MONTEROSO-CAGAMPANG, REYGULA MONTEROSO-BAYAN, PERFECTO L. CAGAMPANG, SR., SOFIA PENDEJITO *VDA. DE* MONTEROSO, FLORENDA MONTEROSO, ALBERTO MONTEROSO, HEIRS OF FABIAN MONTEROSO, JR., REYNATO MONTEROSO, RUBY MONTEROSO, MARLENE MONTEROSO-POSPOS, ADELITA MONTEROSO-BERENGUEL, and HENRIETO MONTEROSO,** *respondents.*

[G.R. No. 113199. April 30, 2008]

SOFIA PENDEJITO *VDA. DE* MONTEROSO, SOLEDAD MONTEROSO-CAGAMPANG, PERFECTO L. CAGAMPANG, SR., REYGULA MONTEROSO-BAYAN, FLORENDA MONTEROSO, ALBERTO MONTEROSO, RUBY MONTEROSO, MARLENE MONTEROSO-POSPOS, HENRIETO MONTEROSO,

* Additional member per Raffle dated April 2, 2008.

ADELITA MONTEROSO-BERENGUEL, and REYNATO MONTEROSO, *petitioners, vs.* **COURT OF APPEALS and TIRSO D. MONTEROSO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; LATE PAYMENT OF FEES AND NON-COMPLIANCE WITH PROCEDURAL REQUIREMENTS; CASE AT BAR.—** Per its Resolution dated June 29, 1992, the Court denied Tirso D. Monteroso's petition under **G.R. No. 105608** for late payment of fees and non-compliance with the requirements of the Rules of Court and Circular Nos. 1-88 and 28-91 on the submission of a certified copy of the assailed decision/order and a certification of non-forum shopping. Another Resolution of August 12, 1992 followed, this time denying with finality Tirso D. Monteroso's motion for reconsideration filed on July 29, 1992. On August 31, 1992, an Entry of Judgment was issued. In net effect, the March 31, 1992 CA Decision in CA-G.R. CV No. 15805 is final and executory as to Tirso D. Monteroso, and the Court need not pass upon the issues he raised in his petition under **G.R. No. 105608,** albeit we shall take stock of his Comment and Memorandum in **G.R. No. 113199.**

2. **ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; LIMITED TO REVIEWING ERRORS OF LAW; EXCEPTIONS.—** It is a rule of long standing that: [T]he jurisdiction of the Court in cases brought before it from the Court of Appeals *via* Rule 45 of the Rules of Court is limited to reviewing errors of law. Findings of fact of the latter are conclusive, except in the following instances: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of 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; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record. None of the above exceptions, however, obtains in the instant case.

3. **CIVIL LAW; SPECIAL CONTRACTS; SALES; SIMULATED; *INDICIA*.—** The antecedent facts, as borne by the records, strongly indicate the simulated character of the sale covered by the deeds of absolute sale over Parcels F-1 (Exhibit "C"), F-2 (Exhibit "D"), F-3, F-5, F-7, and F-8 (Exhibit "E"). As found below, Don Fabian never relinquished possession of the covered properties during his lifetime. The first deed, **Exhibit "E",** was executed on May 1, 1939; the second, **Exhibit "C",** on May 10, 1939; and the third, **Exhibit "D",** on September 24, 1939. Soledad Monteroso-Cagampang, however, only took possession of the subject properties after Don Fabian's death in 1948 or nine years after contract execution. The gap, unexplained as it were, makes for a strong case that the parties to the sale never intended to be bound thereby. The more telling circumstance, however, is the fact that Perfecto had judicially sought the amendment of the corresponding TCTs so that only the name of his wife, Soledad, shall be inscribed as **real party-in-interest** on the Memorandum of Encumbrances at the back portion of the titles. If only to stress the point, when the deeds were executed in 1939, Soledad and Perfecto Cagampang, the notarizing officer, were already married. A property acquired during the existence of a marriage is presumed conjugal. This postulate notwithstanding, Perfecto Cagampang went out of his way to make it appear that the subject parcels of land were effectively his wife's paraphernal properties. No explanation was given for this unusual move. Hence, we agree with the trial and appellate courts that the unexplained situations described above sufficiently show that the purported conveyances were simulated. We also accord credence to Tirso's allegation that the Cagampang spouses tricked Don Fabian into believing that his creditors were after the properties which have to be "hidden" by means of simulated conveyances to Soledad Monteroso-Cagampang. The fact that only one of the subject lots was used as collateral for a PhP 600 loan which the Cagampang spouses took out does not weaken the conclusion on the simulated character of the contracts, as logically drawn from the twin circumstances adverted to.

4. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PARTITION; CO-OWNERSHIP; REPUDIATION OF CO-OWNERSHIP, PRESENT; CASE AT BAR.—** From the foregoing disquisition, what the appellate court tried to convey is clear and simple: partition is the proper remedy available to Tirso who is a co-owner of the subject properties by virtue of his being a compulsory heir, like siblings Soledad, Reygula, and Benjamin, of Don Fabian. The right to seek partition is imprescriptible and cannot be barred by laches. Consequently, acquisitive prescription or laches does not lie in favor of the Cagampang spouses and against Tirso, the general rule being that prescription does not run against a co-owner or co-heir. The only exception to the imprescriptibility of an action for partition against a co-owner is when a co-owner repudiates the co-ownership. Thus, the appellate court ruled that by invoking extinctive prescription as a defense, the lone exception against imprescriptibility of action by a co-owner, the Cagampang spouses are deemed to have contextually recognized the co-ownership of Tirso and must have repudiated such co-ownership in order for acquisitive prescription to set in. Taking off from that premise, the appellate court then proceeded to tackle the issue of repudiation by the Cagampang spouses. Therefore, we hold that the appellate court did not err in finding that the Cagampang spouses are effectively barred from invoking prescription, given that the subject properties are conjugal properties of the decedent, Don Fabian, which cannot be subjected to acquisitive prescription, the necessary consequence of recognizing the co-ownership stake of other legal heirs.

5. **REMEDIAL LAW; ID.; ID.; ACTION FOR PARTITION IS AN ACTION FOR DECLARATION OF CO-OWNERSHIP AND ACTION FOR SEGRETATION AND CONVEYANCE OF A DETERMINATE PROPORTION OF THE PROPERTIES INVOLVED.—** Consequently, we are one with the trial and appellate courts that partition is the proper remedy for compulsory or legal heirs to get their legitime or share of the inheritance from the decedent. An action for partition is at once an action for declaration of co-ownership and for segregation and conveyance of a determinate portion of the properties involved. Also, Sec. 1, Rule 69 of the Rules of Court pertinently provides: SECTION 1. *Complaint in action for partition of real estate.* — A **person having the right to compel the partition of real estate** may do so as provided

in this Rule, setting forth in his complaint the nature and extent of his title and an adequate description of the real estate of which partition is demanded and joining as defendants all other persons interested in the property.

6. **CIVIL LAW; PRESCRIPTION; CO-OWNERSHIP; REPUDIATION MUST BE AN EXPRESS DISAVOWAL OF THE CO-OWNERSHIP; CASE AT BAR.—** Acquisitive prescription, however, may still set in in favor of a co-owner, "where there exists a clear repudiation of the co-ownership, and the co-owners are apprised of the claim of adverse and exclusive ownership." In the instant case, however, no extinctive or acquisitive prescription has set in against Tirso and other compulsory heirs in favor of the Cagampang spouses because effective repudiation had not timely been made against the former. As aptly put by the appellate court, the repudiation which must be clear and open as to amount to an express disavowal of the co-ownership relation happened not when the deeds of absolute sale were executed in 1939, as these could not have amounted to a clear notice to the other heirs, but in 1961 when the Cagampang spouses refused upon written demand by Tirso for the partition and distribution of the intestate estate of Don Fabian. Since then, Tirso was deemed apprised of the repudiation by the Cagampang spouses.

7. **ID.; ID.; ID.; ID.; PERIOD TO FILE ACTION.—** However, considering that the new Civil Code was already then in effect, Art. 1141 of said Code applies; thus, Tirso has at the very least 10 years and at the most 30 years to file the appropriate action in court. The records show that Tirso's cause of action has not prescribed as he instituted an action for partition in 1970 or only nine years after the considered express repudiation. Besides, acquisitive prescription also does not lie against Tirso even if we consider that a valid express repudiation was indeed made in 1961 by the Cagampang spouses since in the presence of evident bad faith, the required extraordinary prescription period of 30 years has not yet lapsed, counted from said considered repudiation. Such would still be true even if the period is counted from the time of the death of Don Fabian when the Cagampang spouses took exclusive possession of the subject properties.

8. **ID.; ID.; ID.; ID.; IT BEHOOVES ON THE PERSON DESIRING TO EXCLUDE ANOTHER FROM THE CO-OWNERSHIP TO DO THE REPUDIATING.—** Tirso's acknowledgment of

Pendejito and her children's possession of Parcels S-1, S-2, S-3, and S-4 cannot be viewed as the required repudiation to bar Tirso from pursuing his right to seek partition. Under the law on co-ownership, it behooves on the person desiring to exclude another from the co-ownership to do the repudiating. Verily, the records do not show that Pendejito and her children performed acts clearly indicating an intention to repudiate the co-ownership and then apprising Tirso and other co-owners or co-compulsory heirs of such intention.

9. **ID.; HOMESTEAD PATENT; TO BE ISSUED IN THE NAME OF COMPULSORY HEIRS OF APPLICANT WHO, BEFORE DEATH SUPERVENED, MET ALL REQUIRMENTS OF THE LAW; CASE AT BAR.—** It is undisputed that Don Fabian was the homestead patent applicant who was subrogated to the rights of the original applicants, spouses Simeon Cagaanan and Severina Naranjo, by purchasing from the latter Parcel S-1 on **May 8, 1943.** Don Fabian **cultivated** the applied area and declared it for taxation purposes. The application, however, would be rejected because death supervened. In 1963, Pendejito filed her own homestead application for Parcel S-1. Assayed against the foregoing undisputed facts in the light of the aforequoted Sec. 105 of CA 141, the heirs of Don Fabian are entitled to Parcel S-1. Said Sec. 105 has been interpreted in *Soliman v. Icdang* as having abrogated the right of the widow of a deceased homestead applicant to secure under Sec. 3 of Act No. 926, otherwise known as the Public Land Act of 1903, a patent in her own name. It appearing that Don Fabian was responsible for meeting the requirements of law for homesteading Parcel S-1, said property, following *Soliman*, cannot be categorized as the paraphernal property of Pendejito. Thus, the homestead patent thereto, if eventually issued, must be made in the name of the compulsory heirs of Don Fabian. Over it, Pendejito shall be entitled, pursuant to Art. 834 of the Spanish Civil Code of 1889, only to a usufructuary right over the property equal to the corresponding share of each of Don Fabian's compulsory heirs, *i.e.*, his eight children.

10. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; COURTS; HAVE DISCRETION TO APPLY EQUITY IN THE ABSENCE OR INSUFFICIENCY OF THE LAW; CASE AT**

BAR.— Petitioners' lament, while understandable, is specious. Our judicial system requires courts to apply the law and grant remedies when appropriately called for by law and justice. In the exercise of this mandate, courts have the discretion to apply equity in the absence or insufficiency of the law. Equity has been defined as justice outside law, being ethical rather than jural and belonging to the sphere of morals than of law. It is grounded on the precepts of conscience and not on any sanction of positive law, for equity finds no room for application where there is law. In the instant case, a disposition only ordering partial partition and without accounting, as petitioners presently urge, would be most impractical and against what we articulated in *Samala v. Court of Appeals.* There, we cautioned courts against being dogmatic in rendering decisions, it being preferable if they take a complete view of the case and in the process come up with a just and equitable judgment, eschewing rules tending to frustrate rather than promote substantial justice.

11. **CIVIL LAW; CONTRACTS; VOID CONTRACTS; CANNOT BE RATIFIED, EXPRESSLY OR IMPLIEDLY.—** The fact that nobody objected to the donation is of little consequence, for as the CA aptly observed, "The circumstance that parties to a void contract choose to ignore its nullity can in no way enhance the invalid character of such contract. It is axiomatic that void contracts cannot be the subject of ratification, either express or implied."

APPEARANCES OF COUNSEL

De Castro & Cagampang Law Offices for S.P. *Vda. de* Monteroso, *et al*.

Humphrey T. Monteroso for T. D. Monteroso.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before us are two petitions for review under Rule 45, the first docketed as **G.R. No. 105608**, and the second docketed

as **G.R. No. 113199**, both assailing the Decision [1] dated March 31, 1992 of the Court of Appeals (CA) in CA-G.R. CV No. 15805 which modified the June 9, 1987 Decision [2] of the Regional Trial Court (RTC), Branch 4 in Butuan City in **Civil Case Nos. 1292** and **1332**.

The Facts

It is not unusual. Acrimonious litigation between and among siblings and immediate relatives over inheritance does occur. It is unfortunate when the decedent had, while still alive, taken steps to precisely avoid a bruising squabble over inheritance.

In a sense, Don Fabian B. Monteroso, Sr., a former justice of the peace and municipal mayor of Cabadbaran, Agusan del Norte, started it all. During his lifetime, Don Fabian married twice and sired eight children, four from each union.

In 1906, Don Fabian married Soledad Doldol. Out of this marriage were born Soledad, Reygula, Benjamin, and Tirso. On April 8, 1927, Soledad Doldol Monteroso passed away.

A little over a year later, Don Fabian contracted a second marriage with Sofia Pendejito. From this union were born Florenda, Reynato, Alberto, and Fabian, Jr.

After the death of his first wife, but during the early part of his second marriage, Don Fabian filed before the Court of First Instance (CFI) of Agusan an intestate proceeding for the estate of his deceased first wife, Soledad D. Monteroso, docketed as **Special Proceeding (SP) No. 309**, apparently to obviate any dispute over the inheritance of his children from his first marriage. Subsequently, the CFI received — and later approved per an *Orden*[3] (Order) dated March 11, 1936 — a *Proyecto de Particion*[4] (Project of Partition) dated February 21, 1935.

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[1] *Rollo* (G.R. No. 113199), pp. 66-172. Penned by Associate Justice Cancio C. Garcia (now a retired member of this Court) and concurred in by Associate Justices Serafin E. Camilon and Jorge S. Imperial (both retired).

[2] Records, Vol. 1, pp. 999-1092.

[3] Exhibit "A-9", exhibits folder, p. 16.

[4] Exhibit "A-8", *id*. at 11-15.

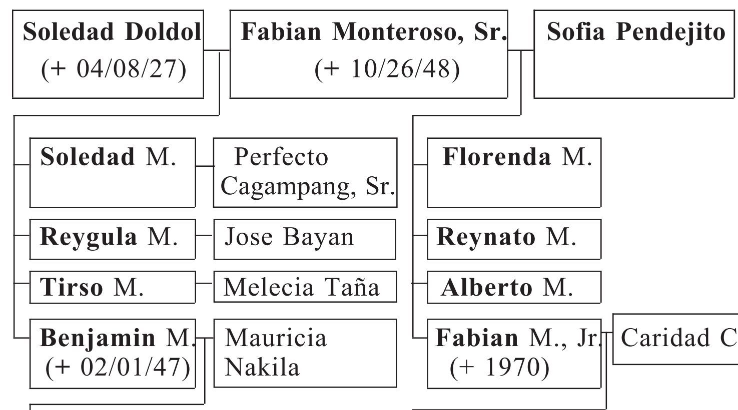
The partition in SP No. 309 covered Parcels F-1 to F-5, and adjudicated to Don Fabian the whole of Parcels F-1, F-2, and F-3, and one-half of Parcel F-5, while the intestate estate of Soledad D. Monteroso comprised the whole of Parcel F-4 and one-half of Parcel F-5. The intestate estate of Soledad D. Monteroso was partitioned and distributed to her four children in equal shares.

Subsequently, a *Mocion*[5] (Motion) was filed for the delivery to Soledad D. Monteroso's four children, her legal heirs, their respective shares in her intestate estate, as adjudicated among them under the duly CFI-approved Project of Partition.

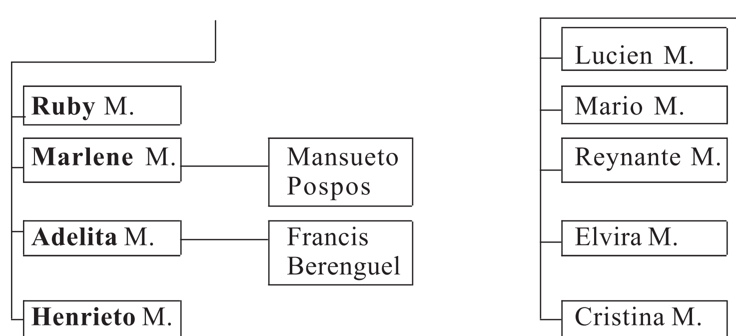
In the meantime, the children of Don Fabian from his first marriage married accordingly: The eldest, Soledad to Atty. Perfecto Cagampang, Sr.; Reygula to Jose Bayan; Benjamin to Mauricia Nakila; and Tirso to Melecia Taña. Benjamin died on February 1, 1947 leaving behind four children with wife Nakila, namely: Ruby, Marlene, Adelita, and Henrieto. A year and a half later, or on **October 26, 1948**, Don Fabian also passed away.

Before and shortly after Don Fabian's demise, conveyances involving certain of parcels thus mentioned were purportedly made.

The following is an illustration of the lineal relation of the parties or the family tree of the direct descendants of Don Fabian from his two marriages:



[5] Exhibit "A-10", *id*. at 17.



This brings us to the objects of the squabble: the conjugal patrimonies of Don Fabian from his two successive marriages.

During the lifetime of Don Fabian, the following properties were acquired, *viz*:

PARCEL F-ONE

A parcel of coconut plantation on sitio Pandanon, Cabadbaran, Agusan described as follows: North by the property of Telesforo Ago and Gregorio Cupay; East by Miguel Y Climaco Cabonce, Isidro Maamo and Buenaventura Sandigan and Pandanon River, and West by Gregorio Axamin, Alex Fores and Ventura Sandigan with a superficial extension of 10 has. 62 ares and 42 centares.

PARCEL F-TWO

A parcel of coconut land situated on sitio Pandanon, Cabadbaran, Agusan, with a superficial extension of 6 hectares, 50 ares bearing Tax No. 14801 of the Municipality of Cabadbaran, Agusan, x x x.

PARCEL F-THREE

A parcel of coconut land under Tax No. 17167 situated on sitio Calibunan, Cabadbaran, Agusan with superficial extension of 8 hectares and 34 centares x x x.

PARCEL F-FOUR

A parcel of coconut land under Tax No. 14600 situated on sitio Pandanon, Cabadbaran, Agusan, with a superficial extension of 27 hectares, 96 ares and 28 centares x x x.

PARCEL F-FIVE

A parcel of residential lot under Tax No. 18477 situated within the Poblacion of the Municipality of Cabadbaran, Agusan, with a house of strong materials found on the same lot with a superficial extension of 660 square meters x x x.

PARCEL F-SIX

A parcel of residential lot under Tax No. 5374 situated within the Poblacion of the Municipality of Cabadbaran, Agusan, with a superficial extension of 3,890 square meters x x x.

PARCEL F-SEVEN

A parcel of coconut and corn land under Tax No. 1769 situated at Ambahan, Tubay, Agusan, with a superficial extension of 8 hectares x x x.

PARCEL F-EIGHT

A parcel of coconut land situated at Ambahan, Tubay, Agusan, under Tax No. 2944, with a superficial extension of 7 hectares, 59 ares and 96 centares x x x.[6]

PARCEL S-ONE

A parcel of land situated at Tagbongabong, Cabadbaran, Agusan under Tax Dec. No. 5396 with an area of 24 hectares more or less x x x.

PARCEL S-TWO

A parcel of coconut land situated at Dal-as, Bay-ang, Cabadbaran, Agusan under Tax No. 69 with an area of 24 hectares more or less x x x.

PARCEL S-THREE

A parcel of coconut land situated at Pandanon, Mabini, Cabadbaran, Agusan, under Tax No. 21639 with an area of 1.4080 hectares more or less x x x.

PARCEL S-FOUR

A parcel of land situated at Mabini, Cabadbaran, Agusan under Tax No. 3367 with an area of 1,000 sq. m. bounded x x x.[7]

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[6] Records, Vol. 1, pp. 2-4.

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

The "F" designation signified that the covered properties were acquired during the first marriage, to distinguish them from those acquired during the second marriage which are designated as "S" properties.

On July 28, 1969, the children of the late Benjamin D. Monteroso, namely: Ruby Monteroso, Marlene M. Pospos, Henrieto Monteroso, and Adelita Monteroso-Berenguel, filed with the RTC a Complaint for *Recovery of Property with Damages* against their uncle, Tirso D. Monteroso. Docketed as **Civil Case No. 1292**, and later raffled to Branch 4 of the court, the complaint involved a portion of Parcel F-4, described in the Project of Partition, as follows:

> (1) One parcel of coconut land with the improvements thereon existing, Tax No. 14600 with a superficial extension of 6 hectares, 99 ares and 32 centares, bounded as follows: on the North, Regula Monteroso; on the East by the Provincial Road Butuan-Cabadbaran; on the Sourth Tirso Monteroso and on the West Diego Calo.[8]

As the heirs of Benjamin alleged in their complaint, their uncle, Tirso, was entrusted with the above-described one-fourth portion of Parcel F-4 as part of the share from the estate of Soledad D. Monteroso allotted to their father per SP No. 309. However, their uncle refused to surrender and deliver the same when they demanded such delivery upon their reaching the majority age.

Tirso countered that the portion pertaining to Benjamin was never entrusted to him; it was in the possession of their sister, Soledad Monteroso-Cagampang, who was not entitled to any share in Parcel F-4, having previously opted to exchange her share in said property for another parcel of land, *i.e.*, Parcel F-7, then being occupied by her.

On April 14, 1970, Tirso, in turn, filed a Complaint for *Partition and Damages with Receivership* docketed as **Civil Case No. 1332**, involving 12 parcels of land (*i.e.*, Parcels F-1 to F-8 and Parcels S-1 to S-4, mentioned above) against his

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[8] *Id.* at 677.

stepmother, Pendejito, and all his full and half-siblings and/or their representatives. The complaint in Civil Case No. 1332 was subsequently amended to include Perfecto, as co-defendant, and Pendejito, as guardian *ad litem* for the minor children of Fabian P. Monteroso, Jr., who died in 1970 after the filing of the complaint.

In Civil Case No. 1332, Tirso, *inter alia*, alleged the following: (1) the aforementioned 12 parcels of land belong to the conjugal partnerships of the first and second marriages contracted by Don Fabian; (2) SP No. 309, which purportedly judicially settled the intestate estate of his mother, is null and void for the reason that the project of partition failed to comprehend the entire estate of the decedent as Parcels F-6, F-7, and F-8 were excluded, thereby depriving Tirso of his one-fourth share or legitime over the said three parcels of land; and (3) Parcels S-1 to S-4, having been acquired during the second marriage of Don Fabian, are not paraphernal properties of Sofia Pendejito *Vda. de* Monteroso.

Answering, the defendants in Civil Case No. 1332 contended that Don Fabian acquired Parcel F-6 during the second marriage, while Parcels F-7 and F-8 were Don Fabian's exclusive properties having been acquired through a donation from the heirs of one Benito Tinosa. They further maintained the validity of the judicial partition under SP No. 309 which operates as *res judicata* insofar as Parcels F-1 to F-5 are concerned. In particular, they asserted that Parcels F-1, F-2, F-3, and one-half of F-5 were adjudicated to Don Fabian as his share in the conjugal partnership of the first marriage, while Parcel F-4 and the other half of Parcel F-5 were equally divided among the four children of the first marriage; that during his lifetime, Don Fabian sold Parcels F-1, F-2, F-3, F-7, and F-8 to Soledad Monteroso-Cagampang; that Soledad Monteroso-Cagampang, Tirso D. Monteroso, and Mauricia Nakila *Vda. de* Benjamin Monteroso donated Parcel F-6 to Reygula Monteroso-Bayan; and that Parcels S-1 to S-4 are truly paraphernal properties of Sofia Pendejito *Vda. de* Monteroso as Parcel S-1 was acquired by her through a homestead patent, Parcel S-2 through adverse possession, and Parcels S-3 and S-4 by purchase.

The Initial Ruling of the RTC

Involving practically the same properties and parties, Civil Case Nos. 1292 and 1332 were consolidated and jointly heard. After a long drawn-out trial spanning almost 15 years, with six different judges successively hearing the case, the RTC, presided by Judge Miguel Rallos, rendered on July 22, 1985 a Decision,[9] dismissing Civil Case No. 1292 on the ground of failure to state a cause of action, but finding, in Civil Case No. 1332, for Tirso.

What appears to be a victory for Tirso was, however, short-lived. Acting on four separate motions for reconsideration duly filed by the various defendants in Civil Case No. 1332, a new judge, who took over the case from Judge Rallos who inhibited himself from the case, rendered a new decision.

The Subsequent Ruling of the RTC

Dated June 9, 1987, the new Decision set aside the July 22, 1985 RTC Decision of Judge Rallos and gave due course to both Civil Case Nos. 1292 and 1332. In full, the *fallo* of the new decision reads:

> WHEREFORE, premises considered, both complaints in Civil Cases No. 1292 and 1332 are hereby given due course and judgment is hereby rendered as follows:
>
> 1. Declaring, confirming and ordering that Lot 380, Pls-736 located at Pandanon, Cabadbaran, belongs to the children of first marriage and partitioned as per subdivision survey map made by Geodetic Engineer Antonio Libarios, Exh. '7', page 72 of the records as follows:
>
> (a.) Lot 380-A, Share of Soledad Monteroso Cagampang with an area of 5.3376 hectares, with technical description therein;
>
> (b.) Lot 380-B, Share of Reygula Monteroso Bayan with an area of 5.3376 hectares, with technical description therein;
>
> (c.) Lot 380-C, Share of the Heirs of Benjamin D. Monteroso with an area of 5.3376 hectares with technical description therein;

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[9] *Id.* at 799-826.

(d.) Lot 380-D, Share of Tirso D. Monteroso with an area of 5.3376 hectares and Lot 351, Pls-736 with an area of 6,099 sq. meters, with both technical description therein;

2. It is hereby ordered that Tirso D. Monteroso must deliver, return, relinquish, cede, waive and/or quit claim immediately the area of 3.7815 hectares being portion of Lot 380-C, Pls-736 indicated in the subdivision survey plan by Engr. Libarios, page 72, Records, Civil Case No. 1292, Folio 2, Exh. "V", to the Heirs of Benjamin D. Monteroso who are absolute owners of Lot 380-C, Pls-736 and to pay, return and deliver immediately to the said Heirs of Benjamin D. Monteroso the net income in arrears from 1948 to 1983, the total sum of Two Hundred Sixty Thousand Eight Hundred Forty Four and 70/100 (₱260,844.70) Pesos with interest of 12% per annum compounded annually from January 1, 1984 up to the present and until fully paid;

3. It is hereby ordered that Reygula Monteroso Bayan must deliver, return, relinquish, cede, waive and/or quit claim immediately the area of 1.6128 hectares which is part of Lot 380-C, Pls-736, indicated in the subdivision survey plan by Engr. Libarios, page 72, Records (Civil Case No. 1292, Folio 2), Exh. 'V', to the Heirs of Benjamin D. Monteroso who are the absolute owners of Lot 380-C, Pls-736 and to pay, return and deliver immediately to the said Heirs of Benjamin D. Monteroso the net income in arrears from 1948 to 1983 the total sum of One Hundred Six Thousand Nine Hundred Sixty and 40/100 (₱106,960.40) Pesos with interest of 12% per annum compounded annually from January 1, 1984 up to the present and until fully paid;

4. It is hereby ordered that Soledad Monteroso Cagampang must deliver, return, relinquish, cede, waive and/or quit claim immediately the area of 1.0929 hectares being portion of Lot 380-C, Pls-736, indicated in the subdivision survey plan by Engr. Libarios, page 72, Records (Civil Case No. 1292, Folio 2), Exh. 'V', to her sister Reygula Monteroso Bayan who is the absolute owner of Lot 380-C, Pls-736 and to pay, return and deliver immediately to the said Reygula Monteroso Bayan the net income in arrears from 1948 to 1983, the total sum of Seventy Seven Thousand Six Hundred Twenty Five and 96/100 (₱77,625.96) Pesos with interest of 12% per annum compounded annually from January 1, 1984 up to the present and until fully paid, subject to deduction of whatever cash advances, if any, was ever received by Reygula M. Bayan.

5. The three alleged Absolute Sale, Exh. 'C', 'D' and 'E' with all its submarkings are declared fictitious, simulated and no consideration. It can never be considered a donation because aside from being inofficious and impairing the legitime of other heirs, the vendee had not signed therein which could be considered acceptance and above all, these documents were prepared and acknowledged by Notary Public squarely disqualified and highly prohibited. Therefore, all are declared null and void and of no legal effect.

So, parcels F-1, F-2, F-3, F-6, F-7 and F-8 [remain] as part of the intestate estate of Don Fabian B. Monteroso, Sr.

6. The Register of Deeds and the Provincial Assessor, both in the Province of Agusan del Norte are hereby ordered to cancel as the same are cancelled and nullified, all transfer of certificates and tax declarations now in the name of Soledad Monteroso de Cagampang and Atty. Perfecto L. Cagampang, Sr. which parcels of land originally were registered and declared in the name of Don Fabian B. Monteroso, Sr., and to register and declare again in the name of Heirs of Don Fabian B. Monteroso, Sr., more particularly the following:

(a.) [TCT No. RT-203] (420) for Lot 432, Cad. 121, with an area of 10.0242 hectares under Tax Dec. No. 02-018-0224, Series of 1980, PIN-02-019-05-050 known as Parcel F-1;

(b.) TCT No. RT-205 (424) for Lot 100, Cad. 121, with an area of 1.9083 hectares under Tax Dec. No. 02-019-0488, Series of 1980, PIN-02-019-08-002 known as F-2;

(c.) TCT No. RT-204 (423) for Lot 103, Cad. 121, with an area of 2.8438 hectares under Tax Declaration No. 02-019-0335, Series of 1980, PIN-02-019-08-017 known as F-2;

(d.) Parcel of coconut land located at Poblacion, Cabadbaran, known as F-3 with area of 6.3100 hectares under Tax Dec. No. 02-001-1810, Series of 1980 and PIN-02-001-30-027;

(e.) Residential Lot, known as F-5 located at Poblacion, Cabadbaran under Tax Dec. No. 18447 then under Tax Dec. No. 1922, containing an area of 660 sq. meters bounded on the North by Washington Street; on the East by Progresso Street; on the South by Rizal Street; and on the West by Ramon Cabrera.

(f.) Residential Lot known as F-6 located at Poblacion under Tax Dec. No. 5374, Series of 1949 and Tax Dec. No. 499, Series of 1954, consisting of 3,890 sq. meters bounded as follows:

North – Andres Atega

South – Rill

East – Luis Jamboy now Celestino Udarbe, Sixto Ferrer and New Road

West – Atega Street;

(g.) Coconut land known as F-7, located at Ambajan, Tubay, Agusan del Norte under Tax Dec. No. 1769, Series of 1955 and Tax Dec. No. 10-03-0273, Series of 1980 with an area of [8.000] hectares;

(h.) Parcel of coconut land known as F-8, located at Ambajan, Tubay, Agusan del Norte with an area of 7.5996 hectares under Tax Dec. No. 2944 and Tax Dec. No. 10-03-0273, Series of 1980;

(i.) Parcel of S-1, located at Tagbongabong, Cabadbaran under Tax Dec. No. 11506, Series of 1963 with an area of 24 hectares in the name of Sofia *Vda. de* Monteroso;

(j.) Parcel of S-2, located at Dal-as, Bay-ang, Cabadbaran, under Tax Dec. No. 1888, Series of 1948, Tax Dec. No. 669, Series of 1952, and subsequently transferred in fraud of other heirs, in the name of Florenda P. Monteroso under Tax Dec. No. 11507, Series of 1964, Tax Dec. No. 3381, Series of 1972, Tax Dec. No. 5036, Series of 1974, Tax Dec. No. 02-006-0047, Series of 1980;

(k.) Parcel of S-3, located at Pandanon, Mabini, Cabadbaran, under Tax Dec. No. 5373, Series of 1949 with an area of 1.4080 hectares and bounded as follows:

North – Pandanon River

South – Crisanto Dolleroso

East – Pandanon River

West – Pandanon River and Peregrino Aznar;

(l.) Parcel S-4, located at Mabini, Cabadbaran, under Tax Dec. No. 3367 with an area of 1.6500 hectares and bounded as follows:

North – Hrs. of G. Corvera

South – C. *Vda. de* Alburo

East – Ellodoro Delleroso

West – A. Ventura

7. It is hereby declared that upon the death of Don Fabian B. Monteroso, Sr. on March 26, 1948, the following are the properties belonging to his intestate estate:

(a.) Whole parcel Lot 432, F-1;

(b.) Whole parcels Lot 100 and 103, F-2;

(c.) Whole parcel cocoland, Calibunan, F-3;

(d.) One-half (1/2) parcel F-5;

(e.) One-half (1/2) parcel F-6;

(f.) One-half (1/2) parcel F-7;

(g.) One-half (1/2) parcel F-8;

(h.) One-half (1/2) parcel S-1;

(i.) One-half (1/2) parcel S-2;

(j.) One-half (1/2) parcel S-3;

(k.) One-half (1/2) parcel S-4.

8. It is hereby ordered that Lot 432 under TCT [No.] RT-203 (420) with an area of 10.0242 hectares under Tax Dec. No. 02-018-0224 (1980) is hereby divided into nine (9) equal shares for the eight (8) children of Don Fabian B. Monteroso and the one-ninth (1/9) share be held in usufruct by the widow Sofia Pendejito Monteroso during her lifetime.

Sofia Pendejito Monteroso being in possession and enjoying the fruits or income of F-1 is hereby ordered to pay and deliver

immediately to the following heirs the corresponding amount of net income of F-1, Lot 432, from 1948 to 1983:

(a.) To Soledad Monteroso Cagampang – ₱78,521.32

(b.) To Reygula Monteroso Bayan – ₱78,521.32

(c.) To Hrs. of Benjamin D. Monteroso – ₱78,521.32

(d.) To Tirso D. Monteroso – ₱78,521.32

(e.) To Florenda P. Monteroso – ₱78,521.32

(f.) To Reynato P. Monteroso – ₱78,521.32

(g.) To Alberto P. Monteroso – ₱78,521.32

(h.) To Hrs. of Fabian P. Monteroso, Jr. – ₱78,521.32

The above-mentioned [amounts] shall be subject to deduction for whatever cash advance any heir may have received. Then the net balance of said [amounts] shall be subject to interest at the rate of twelve percent (12%) per annum compounded annually from January 1, 1984 to the present until fully paid.

9. It is hereby ordered that Lot 100 under [TCT No. RT-205] (424) with an area of 1.9083 hectares under Tax Dec. No. 02-019-0488, Series of 1980 and Lot No. 103 under [TCT No. RT-204] (423) with an area of 2.8438 hectares and under Tax Dec. No. 02-019-0335, Series of 1980, [both known as Parcel F-2,] shall be divided into nine (9) equal shares for the eight (8) children of Fabian B. Monteroso, Sr. and one-ninth (1/9) share shall be held in usufruct by the widow, Sofia P. Monteroso, during her lifetime.

Soledad Monteroso Cagampang and Atty. Perfecto L. Cagampang, Sr. are ordered to deliver to [their] co-heirs their shares in these parcels of land, F-2, free from any lien and encumbrances whatsoever, and to pay each of them the net income in arrears from 1948 to 1983, namely:

(a.) To Reygula Monteroso Bayan – ₱34,976.85

(b.) To Hrs. of Benjamin D. Monteroso – ₱34,976.85

(c.) To Tirso D. Monteroso – ₱34,976.85

(d.) To Florenda P. Monteroso – ₱34,976.85

(e.) To Reynato P. Monteroso – ₱34,976.85

(f.) To Alberto P. Monteroso – ₱34,976.85

(g.) To Hrs. of Fabian P. Monteroso, Jr. – ₱34,976.85

(h.) To Sofia P. Monteroso (usufruct) – ₱34,976.85

The above-mentioned [amounts] shall be subjected to deduction of whatever amount any heir may have received by way of cash advances.

The net amount shall be subjected to an interest at the rate of twelve percent (12%) per annum compounded annually from January 1, 1984 to the present or until fully paid.

10. Soledad Monteroso Cagampang and Atty. Perfecto L. Cagampang, Sr. being in possession and enjoying the fruits and income of Parcel F-3, are hereby ordered to pay to the following heirs, the net income in arrears from 1948 to 1983:

(a.) To Reygula Monteroso Bayan – ₱49,727.35

(b.) To Hrs. of Benjamin D. Monteroso — ₱49,727.35

(c.) To Tirso D. Monteroso – ₱49,727.35

(d.) To Florenda P. Monteroso – ₱49,727.35

(e.) To Reynato P. Monteroso – ₱49,727.35

(f.) To Alberto P. Monteroso – ₱49,727.35

(g.) To Hrs. of Fabian P. Monteroso, Jr. – ₱49,727.35

(h.) To Sofia P. Monteroso (usufruct) – ₱49,727.35

The above-mentioned [amounts] shall be subject to deduction for whatever cash advance, if any, such heir may have received. Then the net [amounts] shall be subject to interest at the rate of twelve percent (12%) per annum compounded annually from January 1, 1984 to the present until fully paid.

Soledad Monteroso Cagampang and Atty. Perfecto L. Cagampang, Sr. are both ordered to deliver to the above-mentioned co-heirs their respective shares free from any lien and encumbrances whatsoever.

11. Parcels F-5, F-6, F-7 and F-8 are declared real properties belonging to the first marriage. Hence one-half (1/2) of each of these four parcels shall equally be divided by the four (4) children of the first marriage and the other half must be divided into nine (9) equal shares for the eight (8) children of Fabian B. Monteroso, Sr., and one-ninth (1/9) shall be held in usufruct by the widow, Sofia Pendejito *Vda. de* Monteroso.

Therefore, it is hereby ordered that F-6 is divided as follows:

(a.) To Soledad Monteroso Cagampang - - - - - 702 sq. m.

(b.) To Reygula Monteroso Bayan - - - - - - - - 702 sq. m.

(c.) To Hrs. of Benjamin D. Monteroso - - - - - 702 sq. m.

(d.) To Tirso D. Monteroso - - - - - - - - - - - - - 702 sq. m.

(e.) To Florenda P. Monteroso - - - - - - - - - - 216 sq. m.

(f.) To Reynato P. Monteroso - - - - - - - - - - - 216 sq. m.

(g.) To Alberto P. Monteroso - - - - - - - - - - 216 sq. m.

(h.) To Hrs. of Fabian Monteroso, Jr. - - - - - - - 216 sq. m.

(i.) To Sofia P. Monteroso - - - - - - - - - - - - 216 sq. m.

12. It is hereby ordered, that Soledad Monteroso Cagampang and Atty. Perfecto L. Cagampang, Sr. must deliver to all heirs their respective shares on F-7 and F-8 including usufruct of Sofia P. Monteroso as declared in paragraph five (5) and in addition, must pay and deliver the net income in arrears from 1948 to 1983, summarized as follows:

(a.) To Reygula Monteroso Bayan - - - - - - - - ₱189,665.88

(b.) To Hrs. of Benjamin D. Monteroso - - - - - ₱189,665.88

(c.) To Tirso D. Monteroso - - - - - - - - - - - - -₱189,665.88

(d.) To Florenda P. Monteroso - - - - - - - - - - ₱ 58,358.73

(e.) To Reynato P. Monteroso - - - - - - - - - - - ₱ 58,358.73

(f.) To Alberto P. Monteroso - - - - - - - - - - - ₱ 58,358.73

(g.) To Hrs. of Fabian Monteroso, Jr. - - - - - - ₱ 58,358.73

(h.) To Sofia P. Monteroso (usufruct) - - - - - - ₱ 58,358.73

all with interest at the rate of twelve percent (12%) per annum compounded annually from January 1, 1984 to the present until fully paid. However, it is subject to deduction of whatever cash advances, if ever any heir, may have received.

13. The Deed of Donation in 1948, Exh. "F", over parcel known as F-5, is declared null and void because the same was prepared and acknowledged before a Notary Public disqualified and prohibited to do so under Notarial Law (*Barretto vs. Cabreza*, 33 Phil. Reports 112). Hence, the transfer of tax declaration is hereby ordered cancelled and the same must be declared again in the name of the Heirs of Fabian B. Monteroso, Sr. and ordered partitioned in the proportion stated in paragraph eleven (11) hereof.

14. Parcels of land known as S-1, S-2, S-3 and S-4 are declared conjugal properties of the second marriage. Hence, one-half (1/2) thereof belongs to Sofia Pendejito Monteroso and one-half (1/2) shall be equally divided into nine (9) shares for the eight (8) children of Don Fabian B. Monteroso, Sr. where the one-ninth (1/9) shall be held in usufruct by Sofia P. Monteroso during her lifetime.

15. For the net income in arrears of S-1 located at Tagbongabong, Cabadbaran, from 1948 to 1983, Sofia Pendejito Monteroso is hereby ordered to pay and deliver to the following heirs the corresponding share:

(a.) To Soledad Monteroso Cagampang - - - - - - ₱93,998.12

(b.) To Reygula Monteroso Bayan - - - - - - - - - ₱93,998.12

(c.) To Hrs. of Benjamin D. Monteroso - - - - - ₱93,998.12

(d.) To Tirso D. Monteroso - - - - - - - - - - - - - - ₱93,998.12

(e.) To Florenda P. Monteroso - - - - - - - - - - ₱93,998.12

(f.) To Reynato P. Monteroso - - - - — - - - - - ₱93,998.12

(g.) To Alberto P. Monteroso - - - - - - - - - - - - ₱93,998.12

(h.) To Hrs. of Fabian P. Monteroso, Jr. - - - - - ₱93,998.12

However, all these amounts shall be subject to deduction, if any cash advance was ever made or received by any heir.

The above-mentioned [amounts are] subject to an interest at the rate of twelve percent (12%) compounded annually from January 1, 1948 to the present until fully paid.

16. The alleged Deed of Absolute Sale executed by Sofia P. Monteroso in favor of Florenda P. Monteroso over a coconut land located at Dal-as, Bay-ang, Cabadbaran, consisting of 24 hectares is hereby declared null and void being in fraud of other heirs. It is clearly inofficious and impairs the legitime of her brothers, sisters and nephews and nieces. Therefore, the tax declaration in the name of Florenda P. Monteroso under Tax Dec. No. 11507, Series of 1964, Tax Dec. No. 3381, Series of 1972, Tax Dec. No. 5036, Series of 1974 and Tax Dec. No. 02-006-0047, PIN-02-006-02-002 are hereby ordered cancelled and the said land shall be declared again in the name of Heirs of Fabian B. Monteroso.

Sofia Pendejito Monteroso is not required to render accounting as to the income of S-2 because the coconut trees therein were planted by her while being already a widow. One-half (1/2) of the land where the coconut trees are planted shall be her share and the other one-half (1/2) shall be divided into nine (9) shares for the eight (8) children of Fabian B. Monteroso including her 1/9 usufruct thereon.

17. Sofia Pendejito Monteroso is hereby ordered to pay and deliver immediately the net income in arrears of parcel S-3 located at Pandanon to the following heirs with the corresponding amount:

(a.) To Soledad Monteroso Cagampang - - - - ₱49,349.02

(b.) To Reygula Monteroso Bayan - - - - - - - - ₱49,349.02

(c.) To Hrs. of Benjamin D. Monteroso - - - - - - ₱49,349.02

(d.) To Tirso D. Monteroso - - - - - - - - - - - - - - - ₱49,349.02

(e.) To Florenda P. Monteroso - - - - - - - - - - - ₱49,349.02

(f.) To Reynato P. Monteroso - - - - - - - - - - - ₱49,349.02

(g.) To Alberto P. Monteroso - - - - - - - - - - - - - ₱49,349.02

(h.) To Hrs. of Fabian P. Monteroso, Jr. - - - - - ₱49,349.02

However, [the] above-mentioned [amounts] shall be subject to deductions, if any cash advance was ever made or received by any heir.

Then the net amount receivable shall be subject to an interest at the rate of twelve percent (12%) compounded annually from January 1, 1984 to the present until fully paid.

18. For the net income in arrears of parcel S-4, located at Mabini, Cabadbaran, from 1948 to 1983, Sofia P. Monteroso is hereby ordered to pay and deliver to the following heirs their corresponding shares:

(a.) To Soledad Monteroso Cagampang - - - - - - ₱6,477.54

(b.) To Reygula Monteroso Bayan - - - - - - - - - ₱6,477.54

(c.) To Hrs. of Benjamin D. Monteroso - - - - - - - ₱6,477.54

(d.) To Tirso D. Monteroso - - - - - - - - - - - - - - - - ₱6,477.54

(e.) To Florenda P. Monteroso - - - - - - - - - - - - - ₱6,477.54

(f.) To Reynato P. Monteroso - - - - - - - - - - - - ₱6,477.54

(g.) To Alberto P. Monteroso - - - - - - - - - - - - - - ₱6,477.54

(h.) To Hrs. of Fabian P. Monteroso, Jr. - - - - - - ₱6,477.54

However, all these amounts shall be subject to deductions, if any cash advance was ever made or received by any heir.

The above-mentioned amount is subject to an interest at the rate of twelve percent (12%) compounded annually from January 1, 1984 to the present until fully paid.

Sofia Pendejito Monteroso is ordered to deliver to the above-mentioned heirs their respective shares free from any lien and encumbrances whatsoever.

19. These cases involved inheritance, hence the Bureau of Internal Revenue (BIR) of Agusan del Norte at Butuan City is hereby notified for prompt, proper and appropriate action. Likewise, the

Provincial Treasurer of Agusan del Norte and the Municipal Treasurers of Cabadbaran and Tubay are hereby informed and reminded for their prompt, proper and appropriate action in the assessment and collection of real estate taxes including transfer's tax.

20. That all the heirs are hereby directed, and ordered to pay all taxes due in favor of the Government of the Republic of the Philippines within thirty (30) days from the finality of judgment hereof, otherwise, upon proper application or manifestation by appropriate or concerned government agency, a portion of the intestate estate of Don Fabian B. Monteroso, Sr., shall be sold at public auction for such purpose.

21. Under Civil Case No. 1292, Tirso D. Monteroso or his heirs, assigns and successors-in-interest, is hereby ordered to pay Ruby Monteroso, Marlene Monteroso-Pospos, Adelita Monteroso-Berenguel and Henrieto Monteroso the following sums of money:

(a.) ₱10,000.00 for moral damages;

(b.) ₱10,000.00 for exemplary damages;

(c.) ₱3,000.00 for costs of suit; and

(d.) ₱10,000.00 for attorney's fees.

22. Under Civil Case No. 1292, Soledad Monteroso de Cagampang and Reygula Monteroso Bayan are hereby ordered jointly and severally to pay Ruby Monteroso, Marlene Monteroso-Pospos, Adelita Monteroso-Berenguel and Henrieto Monteroso the following sums of money:

(a.) ₱10,000.00 for moral damages;

(b.) ₱10,000.00 for exemplary damages;

(c.) ₱2,000.00 for costs of suit; and

(d.) ₱10,000.00 for attorney's fees.

23. Under Civil Case No. 1332, Soledad Monteroso Cagampang, Atty. Perfecto L. Cagampang, Sr. and Sofia Pendejito *Vda. de* Monteroso or their heirs, assigns and successors-in-interest, are hereby ordered to pay jointly and severally, unto and in favor of

Tirso D. Monteroso or his heirs, assigns and successors-in-interest, the following sums of money:

(a.) ₱20,000.00 for moral damages;

(b.) ₱20,000.00 for exemplary damages;

(c.) ₱5,000.00 for costs of suit; and

(d.) ₱10,000.00 for attorney's fees.

24. It is hereby ordered that a judicial administrator of the intestate estate of Don Fabian B. Monteroso, Sr. shall be appointed by this Court upon written recommendation by all the parties within thirty (30) days from promulgation of this decision. Should the parties fail to submit unanimously a recommendee, the Court at its discretion may appoint an administrator, unless none of the parties appeal this decision and this judgment is complied with by all the parties and/or so executed in accordance with the provisions of the New Rules of Court.

SO ORDERED.[10]

As regards Civil Case No. 1292, the RTC found that the heirs of Benjamin have indeed been deprived of their inheritance which corresponds to one-fourth share due their father from the intestate estate of their grandmother, Soledad D. Monteroso. Thus, the court ordered the equal distribution of Parcel F-4, *i.e.*, Lot 380, Pls-736 located in Pandanon, Cabadbaran, Agusan del Norte, among the children of the first marriage of Don Fabian, and partitioned it based on the subdivision survey map prepared by a geodetic engineer.

Turning on the alleged sale of Parcels F-1, F-2, F-3, F-7, and F-8 by Don Fabian to Soledad Monteroso-Cagampang, the RTC found the covering three deeds of absolute sale[11] to be null and void for the reason that the alleged conveyances were fictitious, simulated, and/or without sufficient consideration. Alternatively, the RTC ruled that the conveyances, even if considered as donation, would be inofficious for impairing the

[10] *Supra* note 2, at 1076-1092.

[11] Exhibits "C", "D", and "E", exhibits folder, pp. 31, 39, 56-57.

legitime of the other compulsory heirs, not to mention the lack of due acceptance of the donation by Soledad Monteroso-Cagampang. Adding a vitiating element to the conveyances, as the RTC noted, was the fact that the corresponding documents were prepared by and acknowledged before Perfecto, who happened to be the husband of the alleged vendee, Soledad Monteroso-Cagampang.

The RTC also declared as null and void the donation of Parcel F-5 to Reygula Monteroso-Bayan owing to clear legal infirmities attaching to the covering deed of donation.[12] For one, the parcel in question, while purportedly donated free from any liens or encumbrance, was in fact the subject of a deed of absolute sale between Don Fabian and the Cagampang spouses. For another, one of the signatory-donors, Mauricia Nakila, Benjamin's widow, did not have the right to effect a donation because she was not a compulsory heir of her husband by representation. The RTC added that the real owners of the rights and interests of Benjamin over Parcel F-5 are her children as representative heirs.

Finally, the RTC declared the Order dated March 11, 1936 issued in SP No. 309 approving the Project of Partition to be valid, and that it constitutes *res judicata* on the affected properties, *i.e.*, Parcel F-4 and one-half of Parcel F-5, which were equally distributed to the heirs of Soledad D. Monteroso. Pursuing this point and on the finding that Parcels F-1 to F-8 were acquired during the first marriage and Parcels S-1 to S-4 during the second, the RTC thus held that Don Fabian's intestate estate consisted of the whole of Parcels F-1, F-2, and F-3; and half of Parcels F-5 to F-8 and half of Parcels S-1 to S-4, to be distributed in accordance with the law on intestate succession. This means, the RTC concluded, that the estate shall descend to Don Fabian's compulsory heirs and their representatives, as in the case of the late Benjamin and Fabian, Jr., subject to accounting of the income or produce of the subject properties for the applicable period, less advances made or received by any heir, if any.

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[12] Exhibit "F", *id*. at 63.

The Ruling of the CA

From the above June 9, 1987 Decision, Tirso, defendant in Civil Case No. 1292, appealed to the CA, so did the Cagampang spouses, defendants in Civil Case No. 1332. The other defendants in Civil Case No. 1332, namely: Sofia Pendejito *Vda. de* Monteroso, Florenda Monteroso, Alberto Monteroso, Heirs of Fabian Monteroso, Jr., Reynato Monteroso, and Reygula Monteroso-Bayan, also interposed their own appeal. The separate appeals were consolidated and docketed as CA-G.R. CV No. 15805.

On March 31, 1992, the CA rendered the assailed decision, affirming with modification the June 9, 1987 RTC Decision, disposing as follows:

WHEREFORE, the decision appealed from is hereby modified, as follows:

> a) In the event that a homestead patent over Parcel S-1 is issued by the Bureau of Lands pursuant to the patent application of Sofia Pendejito *Vda. de* Monteroso, said patent shall issue not in the name of the applicant but in favor of the eight heirs of Fabian Monteroso, Sr. who thereafter shall be declared absolute owners of the said parcel of land in the proportion stated in this decision but who nevertheless shall allow Sofia Pendejito *Vda. de* Monteroso to exercise during her lifetime usufructuary rights over a portion of the said parcel of land equivalent to the share therein of each of the heirs of her deceased husband;
>
> b) The said heirs of Fabian Monteroso, Sr. are hereby declared absolute owners of Parcel F-6 to the extent of their respective shares therein as presently individually possessed by them pursuant to an extrajudicial partition of the said parcel of land which the Court hereby declares as a valid contract among the said heirs; and
>
> c) With the exception of those pertaining to Parcel F-4 as stated in this decision, the parties thus found to have unjustly misappropriated the fruits of the subject parcels of land are hereby directed to render an accounting thereof consistent with our findings in the case at bar.

With the exception of the foregoing modifications, the decision under review is hereby AFFIRMED in all other respects.

No pronouncement as to costs.

SO ORDERED.[13]

The CA summarized into three issues the multifarious assignments of errors raised by the parties, to wit: *first*, whether or not the intestate estate of Soledad Doldol Monteroso was settled in SP No. 309, thus according the Project of Partition approved therein the effect of *res judicata*; *second*, whether or not it was appropriate to partition Parcels F-1, F-2, and F-3, and half of Parcels F-5, F-6, F-7, F-8, S-1, S-2, S-3, and S-4; and *third*, whether or not Tirso D. Monteroso is entitled to damages.

The CA resolved the first issue in the affirmative, SP No. 309 being a valid and binding proceedings insofar as the properties subject thereof are concerned, *i.e.*, Parcels F-1 to F-5 of which the whole of Parcel F-4 and one-half of Parcel F-5, as Soledad D. Monteroso's intestate estate, were distributed to her heirs. This is not to mention that the authenticity and due execution of the documents filed or issued in relation therewith—referring to the *Proyecto de Particion* dated February 12, 1935 which is a carbon copy of the original, the *Orden* issued by the CFI on March 11, 1936, and the *Mocion* dated March 18, 1936—having duly been established. Affirming the RTC, the CA rejected Tirso's claim that SP No. 309 is void for settling only a part of the estate of Soledad D. Monteroso. The CA held that partial settlement is not a ground for the nullification of the judicial partition under either the Spanish Civil Code of 1889 or the present Civil Code. The appellate court added that the proper remedy in such a situation is to ask for the partition and the subsequent distribution of the property omitted.

The CA likewise disposed of the second issue in the affirmative, dismissing the opposition of the Cagampang spouses and Reygula

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[13] *Supra* note 1, at 170-172.

Monteroso-Bayan who all claimed ownership over some of the parcels of land on the strength of the deeds of conveyance executed in their favor. The CA upheld the RTC's finding that the three deeds of absolute sale in which Don Fabian purportedly sold Parcels F-1, F-2, F-3, F-7, and F-8 to Soledad Monteroso-Cagampang were infirm. The CA noted that even the Cagampang spouses recognized these infirmities, and instead of denying their existence, they tried to justify the same and seek an exception therefrom.

On the alleged donation of Parcel F-5 by Don Fabian to Reygula Monteroso-Bayan, the CA likewise agreed with the RTC's finding on the nullity thereof. The CA pointed out that Reygula Monteroso-Bayan did not controvert the RTC's finding, except to gratuitously say that the trial court's declaration of nullity was wrong since nobody questioned the authenticity of the donation in the first place.

Apropos Parcel S-1, a disposable agricultural land of the public domain which is the subject of a homestead patent application by Don Fabian, the CA, as opposed to the RTC's disposition, held that a patent, if eventually issued, ought to be in the name of the legal heirs of Don Fabian, not of his surviving spouse, Pendejito. This conclusion, so the CA explained, is in line with the provision of Section 105 of the Public Land Act or Commonwealth Act No. 141 (CA 141), as amended.

As to Parcel S-2, the CA agreed with the RTC that it is a conjugal property acquired during the second marriage through a deed of sale[14] executed on August 15, 1947 by Marcelo Morancel. Likewise, the CA said that Parcels S-3 and S-4 are conjugal properties as no evidence was adduced supporting the alleged purchase by Pendejito of said properties with her own funds.

Anent the RTC's order partitioning Parcel F-6, the CA agreed with the defendants in Civil Case No. 1332 that Parcel F-6 has long been partitioned equitably among all the eight children of Don Fabian. Thus, the CA further modified the RTC on this point.

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[14] Exhibit "K-1", exhibits folder, p. 137.

On the third and last issues, the CA set aside all awards of actual damages made by the RTC premised on the income generating capacity of the subject properties, except that of Parcel F-4, as an order of accounting of the fruits of the other subject properties unjustly appropriated by them would address the issue of damages.

It bears to stress at this juncture that, save for the grant of damages and the disposition of Parcels F-6 and S-1, the CA affirmed the questioned RTC Decision on all other points. On June 15, 1992, Tirso D. Monteroso thereafter filed before the Court his partial petition for review under Rule 45, docketed as **G.R. No. 105608**.

On the other hand, Pendejito, together with the other defendants in Civil Case No. 1332, first interposed a joint motion for partial reconsideration, which the CA denied per its equally assailed December 16, 1993 Resolution,[15] before elevating the case via a petition for review under Rule 45, docketed as **G.R. No. 113199**.

G.R. No. 105608 Denied with Finality

Per its Resolution[16] dated June 29, 1992, the Court denied Tirso D. Monteroso's petition under **G.R. No. 105608** for late payment of fees and non-compliance with the requirements of the Rules of Court and Circular Nos. 1-88 and 28-91 on the submission of a certified copy of the assailed decision/order and a certification of non-forum shopping. Another Resolution[17] of August 12, 1992 followed, this time denying with finality Tirso D. Monteroso's motion for reconsideration filed on July 29, 1992. On August 31, 1992, an Entry of Judgment[18] was issued.

In net effect, the March 31, 1992 CA Decision in CA-G.R. CV No. 15805 is final and executory as to Tirso D. Monteroso,

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[15] *Rollo* (G.R. No. 113199), p. 194.

[16] *Rollo* (G.R. No. 105608), p. 227.

[17] *Id*. at 353.

[18] *Id*. at 498.

and the Court need not pass upon the issues he raised in his petition under **G.R. No. 105608**, albeit we shall take stock of his Comment[19] and Memorandum[20] in **G.R. No. 113199**.

The Issues

Petitioners in **G.R. No. 113199** raise the following issues for our consideration:

1. Whether the finding that the Deeds of Sale (Exhibits "C", "D" and "E") were not supported by valuable consideration and sham, fictitious and simulated is supported by the evidence.

2. Whether the finding or conclusion that petitioners Spouses Atty. Perfecto and Soledad Cagampang did not dispute the finding of the trial Court that the Deeds of Sale in question are sham, fictitious and simulated is supported by evidence.

3. Whether the [CA] committed reversible error in concluding that, "By invoking the benefits of prescription in their favor, the Cagampang spouses are deemed to have admitted the existence of a co-ownership."

4. Whether the [CA] committed reversible error in upholding partition as the proper remedy of private respondent Tirso Monteroso to recover the properties sold by Fabian Monteroso, Sr. to Soledad D. Monteroso de Cagampang when co-ownership is not pleaded as theory in the Complaint.

5. Whether the [CA] committed reversible error in holding that the cause of action of private respondent Tirso Monteroso is not barred by extinctive prescription and laches.

6. Whether the [CA] committed reversible error in granting reliefs not prayed for in the Complaint in favor of parties who did not assert or claim such relief, such as partition and accounting among the parties and the nullification of the donation in favor of petitioner Reygula Bayan when x x x Tirso Monteroso and the petitioners herein who are signatories to the Deed of Donation did not question or ask for the nullification of the donation in favor of Reygula Bayan.

7. Whether the [CA] committed reversible error in ordering the partition of parcels S-1, S-2, S-3 and S-4 which are admitted in the

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[19] *Rollo* (G.R. No. 113199), pp. 202-267.

[20] *Id.* at 311-425.

Complaint to be in the exclusive, adverse possession of petitioners Sofia *vda. de* Monteroso, Florenda, Alberto and Reynato and the Heirs of Fabian Monteroso, Jr. since the death of Fabian Monteroso, Sr. in 1948, appropriating the harvests unto themselves, to the exclusion of plaintiff (private respondent Tirso Monteroso) who was deprived of his share continuously up to the present.[21]

The Court's Ruling

After a circumspect consideration of the arguments earnestly pressed by the parties and in the light of the practically parallel findings of the RTC and CA, we find the petition under **G.R. No. 113199** to be devoid of merit.

It is a rule of long standing that:

> [T]he jurisdiction of the Court in cases brought before it from the Court of Appeals *via* Rule 45 of the Rules of Court is limited to reviewing errors of law. Findings of fact of the latter are conclusive, except in the following instances: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of 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; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[22]

None of the above exceptions, however, obtains in the instant case.

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[21] *Id*. at 455-456.

[22] *Maglucot-aw v. Maglucot*, G.R. No. 132518, March 28, 2000, 329 SCRA 78, 88-89; citing *Sta. Maria v. Court of Appeals*, G.R. No. 27549, January 28, 1998, 285 SCRA 351 and *Medina v. Asistio, Jr.*, G.R. No. 75450, November 8, 1990, 191 SCRA 218, 223-224.

First and Second Issues: Simulated Sale

In connection with the first two related issues, petitioners maintain that the CA erred when it affirmed the RTC's conclusion on the fictitious or simulated nature, for lack or inadequate consideration, of the Deeds of Sale (Exhibits "C", "D", and "E"), noting that Tirso failed to present substantial evidence to support the alleged infirmity of the underlying sale. The fact that one of the lots sold under **Exhibit "C"** on May 10, 1939 for PhP 2,500 was used as collateral for a PhP 600 loan is not, so petitioners claim, proof that the amount of PhP 600 represents the maximum loan value of the property or that the sale in question is not supported by valuable consideration.

Moreover, petitioners belabored to explain that the trial court erred in concluding that the property conveyed under **Exhibit "C"** and covered by Transfer Certificate of Title (TCT) No. RT-203 (420) in the name of Soledad Monteroso-Cagampang, married to Perfecto, was fictitious on the ground that the certificate did not indicate that it was a conjugal property. Petitioners assert that the registration of a property only in the name of one of the spouses is not proof that no consideration was paid therefor. As petitioners would stress, what determines whether a given property is conjugal or separate is the law itself, not what appears in the certificate of title.

Lastly, petitioners take exception from the appellate court's posture that the Cagampang spouses did not dispute the trial court's finding that the deeds of sale (Exhibits "C", "D", and "E") were simulated and fictitious for lack of consideration. Petitioners insist that they in fact contested such conclusion of the RTC in their brief before the CA, adding they only raised the issue of prescription as an alternative defense without conceding the RTC's findings on contract infirmity.

We are not persuaded.

The antecedent facts, as borne by the records, strongly indicate the simulated character of the sale covered by the deeds of absolute sale over Parcels F-1 (Exhibit "C"), F-2 (Exhibit "D"), F-3, F-5, F-7, and F-8 (Exhibit "E"). As found below, Don

Fabian never relinquished possession of the covered properties during his lifetime. The first deed, **Exhibit "E",** was executed on May 1, 1939; the second, **Exhibit "C",** on May 10, 1939; and the third, **Exhibit "D",** on September 24, 1939. Soledad Monteroso-Cagampang, however, only took possession of the subject properties after Don Fabian's death in 1948 or nine years after contract execution. The gap, unexplained as it were, makes for a strong case that the parties to the sale never intended to be bound thereby.

The more telling circumstance, however, is the fact that Perfecto had judicially sought the amendment of the corresponding TCTs so that only the name of his wife, Soledad, shall be inscribed as **real party-in-interest** on the Memorandum of Encumbrances at the back portion of the titles. If only to stress the point, when the deeds were executed in 1939, Soledad and Perfecto Cagampang, the notarizing officer, were already married.

A property acquired during the existence of a marriage is presumed conjugal. This postulate notwithstanding, Perfecto Cagampang went out of his way to make it appear that the subject parcels of land were effectively his wife's paraphernal properties. No explanation was given for this unusual move.

Hence, we agree with the trial and appellate courts that the unexplained situations described above sufficiently show that the purported conveyances were simulated. We also accord credence to Tirso's allegation that the Cagampang spouses tricked Don Fabian into believing that his creditors were after the properties which have to be "hidden" by means of simulated conveyances to Soledad Monteroso-Cagampang. The fact that only one of the subject lots was used as collateral for a PhP 600 loan which the Cagampang spouses took out does not weaken the conclusion on the simulated character of the contracts, as logically drawn from the twin circumstances adverted to.

The Court can allow that petitioners indeed attempted to traverse, before the CA, the RTC's findings on the area of simulated sale and that they only raised the matter of acquisitive prescription as an alternative defense. However, as we shall

explain shortly, the fact of petitioners having made the attempt aforestated will not carry the day for them.

Third Issue: Recognition of Co-ownership in Acquisitive Prescription

In its assailed decision, the CA declared, "By invoking the benefits of prescription in their favor, the Cagampang spouses are deemed to have admitted the existence of a co-ownership x x x." The petitioners tag this declaration as flawed since the benefit of prescription may be availed of without necessarily recognizing co-ownership. Prescription and co-ownership, they maintain, are so diametrically opposed legal concepts, such that one who invokes prescription is never deemed to admit the existence of co-ownership.

Petitioners are mistaken; their error flows from compartmentalizing what the CA wrote. The aforecited portion of the CA's decision should not have been taken in isolation. It should have been read in the context of the appellate court's disquisition on the matter of Tirso being a co-owner of the subject undivided properties whose rights thereto, as a compulsory heir, accrued at the moment of death of Don Fabian, *vis-à-vis* the defense of acquisitive prescription foisted by the Cagampang spouses. For clarity, we reproduce the pertinent portion of the assailed decision:

> Nor do we find any merit in the third. From the allegation in the Complaint in Civil Case No. 1332 as well as from the arguments advanced by the parties on the issues raised therein, this Court is convinced that therein plaintiff Tirso Monteroso's principal cause of action is unmistakably one for partition which by its very nature is imprescriptible and cannot be barred by laches x x x. The only exception to the rule on the imprescriptibility of an action for partition is provided in a case where the co-ownership of the properties sought to be partitioned had been properly repudiated by a co-owner at which instance the remedy available to the aggrieved heirs lies not in action for partition but for reconveyance which is subject to the rules on extinctive prescription. **By invoking the benefits of prescription in their favor, the Cagampang spouses are deemed to have admitted the existence of a co-ownership among the heirs of Fabian**

Monteroso, Sr. over the properties forming the decedent's estate.[23] (Emphasis ours.)

From the foregoing disquisition, what the appellate court tried to convey is clear and simple: partition is the proper remedy available to Tirso who is a co-owner of the subject properties by virtue of his being a compulsory heir, like siblings Soledad, Reygula, and Benjamin, of Don Fabian. The right to seek partition is imprescriptible and cannot be barred by laches. Consequently, acquisitive prescription or laches does not lie in favor of the Cagampang spouses and against Tirso, the general rule being that prescription does not run against a co-owner or co-heir. The only exception to the imprescriptibility of an action for partition against a co-owner is when a co-owner repudiates the co-ownership. Thus, the appellate court ruled that by invoking extinctive prescription as a defense, the lone exception against imprescriptibility of action by a co-owner, the Cagampang spouses are deemed to have contextually recognized the co-ownership of Tirso and must have repudiated such co-ownership in order for acquisitive prescription to set in. Taking off from that premise, the appellate court then proceeded to tackle the issue of repudiation by the Cagampang spouses. Therefore, we hold that the appellate court did not err in finding that the Cagampang spouses are effectively barred from invoking prescription, given that the subject properties are conjugal properties of the decedent, Don Fabian, which cannot be subjected to acquisitive prescription, the necessary consequence of recognizing the co-ownership stake of other legal heirs.

Fourth and Fifth Issues: Partition Proper, not Barred by Laches nor by Acquisitive Prescription

Being inextricably intertwined, we tackle both issues together. Petitioners, citing Article 494 of the Civil Code[24] and Art. 1965

[23] *Rollo* (G.R. No. 113199), p. 140.

[24] Art. 494. No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

of the Spanish Civil Code, aver that the right to ask partition is proper only where co-ownership is recognized. They also suggest that no co-ownership obtains in this case considering that no less than Tirso avers in his complaint in Civil Case No. 1332 that from the time of Don Fabian's death in 1948, the lots in question have been in the exclusive, adverse, and public possession of the Cagampang spouses. Assayed against this perspective, petitioners submit that partition is not proper, ergo unavailing, but an action for reconveyance which is subject to the rules on extinctive prescription.

Corollary to the posture above taken, petitioners assert that there being no co-ownership over the properties sold by Don Fabian to Soledad Monteroso-Cagampang, Tirso's cause of action, under the Code of Civil Procedure (Act No. 190) in relation to Art. 1116 of the Civil Code,[25] had already prescribed, either in 1949, *i.e.*, 10 years after the subject properties were registered in Soledad Monteroso-Cagampang's name, or in 1958, *i.e.*, 10 years after the cause of action accrued in 1948 (death of Don Fabian), citing *Osorio v. Tan*.[26] Tirso's complaint in Civil Case No. 1332 was commenced in 1970.

Petitioners contend that the evidence adduced clearly demonstrates that Soledad Monteroso-Cagampang acquired ownership of the subject properties by virtue of the deeds of sale executed in 1939 by Don Fabian. After the sale, she registered them under her name and then took exclusive, adverse, and public possession over them. Thus, they submit that the

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Nevertheless, an agreement to keep the thing undivided for a certain period of time, not exceeding ten years shall be valid. This term may be extended by a new agreement.

A donor or testator may prohibit partition for a period which shall not exceed twenty years.

[25] Art. 1116. Prescription already running before the effectivity of this Code shall be governed by laws previously in force; but if since the time this Code took effect the entire period herein required from prescription should elapse, the present Code shall be applicable, even though by the former laws a longer period might be required.

[26] 98 Phil. 55 (1955).

prescriptive period applicable to the instant case under Act No. 190 had long expired, adding that the CA erred in finding that Soledad Monteroso-Cagampang repudiated the co-ownership only in 1961 when she and the other heirs ignored the demand of Tirso for partition.

As a final point, petitioners alleged that the exclusion of Tirso from the enjoyment of the fruits of the subject properties since after the death of Don Fabian in 1948 is consistent with Soledad Monteroso-Cagampang's claim of exclusive ownership and dominion.

We cannot subscribe to petitioners' theory.

The fact that Tirso and the other compulsory heirs of Don Fabian were excluded from the possession of their legitime and the enjoyment of the fruits thereof does not per se argue against the existence of a co-ownership. While Tirso may not have expressly pleaded the theory of co-ownership, his demand from, and act of initiating Civil Case No. 1332 against, the Cagampang spouses for his share necessarily implies that he was asserting his right as co-owner or co-heir of the properties unjustly withheld by the Cagampang spouses through the instrumentality of simulated deeds of sale covering some of the hereditary properties. By asserting his right as a compulsory heir, Tirso has effectively brought into the open the reality that the Cagampang spouses were holding some of the subject properties in trust and that he is a co-owner of all of them to the extent of his legal share or legitime thereon.

Consequently, we are one with the trial and appellate courts that partition is the proper remedy for compulsory or legal heirs to get their legitime or share of the inheritance from the decedent. An action for partition is at once an action for declaration of co-ownership and for segregation and conveyance of a determinate portion of the properties involved.[27] Also, Sec. 1, Rule 69 of the Rules of Court pertinently provides:

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[27] *Balo v. Court of Appeals*, G.R. No. 129704, September 30, 2005, 471 SCRA 227, 239.

SECTION 1. *Complaint in action for partition of real estate.* — A **person having the right to compel the partition of real estate** may do so as provided in this Rule, setting forth in his complaint the nature and extent of his title and an adequate description of the real estate of which partition is demanded and joining as defendants all other persons interested in the property. (Emphasis ours.)

Being a compulsory heir of Don Fabian, Tirso has the right to compel partition of the properties comprising the intestate estate of Don Fabian as a measure to get his hereditary share. His right as an heir to a share of the inheritance covers all the properties comprising the intestate estate of Don Fabian at the moment of his death,[28] *i.e.,* on October 26, 1948. Before partition and eventual distribution of Don Fabian's intestate estate, a regime of co-ownership among the compulsory heirs existed over the undivided estate of Don Fabian. Being a co-owner of that intestate estate, Tirso's right over a share thereof is imprescriptible.[29] As a matter of law, acquisitive prescription does not apply nor set in against compulsory heirs insofar as their *pro-indiviso* share or legitime is concerned, unless said heirs repudiate their share.[30] Contrary to petitioners' stance, reconveyance is not the proper remedy available to Tirso. Be it remembered in this regard that Tirso is not asserting total ownership rights over the subject properties, but only insofar as his legitime from the intestate estate of his father, Don Fabian, is concerned.

Acquisitive prescription, however, may still set in in favor of a co-owner, "where there exists a clear repudiation of the

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[28] Art. 777 of the Civil Code pertinently provides: The rights to the succession are transmitted from the moment of the death of the decedent.

[29] See *Heirs of Flores Restar v. Heirs of Dolores R. Chichon*, G.R. No. 161720, November 22, 2005, 475 SCRA 731.

[30] Art. 856 of the Civil Code pertinently provides: A voluntary heir who dies before the testator transmits nothing to his heirs.

A compulsory heir who dies before the testator, a person incapacitated to succeed, and **one who renounces the inheritance**, shall transmit no right to his own heirs except in cases expressly provided for in this Code. (Emphasis ours.)

co-ownership, and the co-owners are apprised of the claim of adverse and exclusive ownership."[31] In the instant case, however, no extinctive or acquisitive prescription has set in against Tirso and other compulsory heirs in favor of the Cagampang spouses because effective repudiation had not timely been made against the former. As aptly put by the appellate court, the repudiation which must be clear and open as to amount to an express disavowal of the co-ownership relation happened not when the deeds of absolute sale were executed in 1939, as these could not have amounted to a clear notice to the other heirs, but in 1961 when the Cagampang spouses refused upon written demand by Tirso for the partition and distribution of the intestate estate of Don Fabian. Since then, Tirso was deemed apprised of the repudiation by the Cagampang spouses.

However, considering that the new Civil Code was already then in effect, Art. 1141 of said Code[32] applies; thus, Tirso has at the very least 10 years and at the most 30 years to file the appropriate action in court. The records show that Tirso's cause of action has not prescribed as he instituted an action for partition in 1970 or only nine years after the considered express repudiation. Besides, acquisitive prescription also does not lie against Tirso even if we consider that a valid express repudiation was indeed made in 1961 by the Cagampang spouses since in the presence of evident bad faith, the required extraordinary prescription period[33] of 30 years has not yet lapsed, counted from said considered repudiation. Such would still be true even if the period is counted from the time of the death of Don Fabian when the Cagampang spouses took exclusive possession of the subject properties.

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[31] *Bargayo v. Camumot*, 40 Phil. 857, 862 (1920) and *Heirs of Segunda Maningding v. Court of Appeals*, G.R. No. 121157, July 31, 1997, 276 SCRA 601, 608.

[32] Art. 1141. Real actions over immovables prescribe after thirty years.

This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription.

[33] Art. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

Sixth Issue: Partition Proper for Conjugal Properties of Second Marriage

On the ground of prescription under Act No. 190, petitioners assert that Tirso lost the right to seek the partition of Parcels S-1, S-2, S-3, and S-4, he having admitted, as early as 1948, the adverse, exclusive, and public possession thereof by Pendejito and her children. This type of possession, they maintain, works as a repudiation by Pendejito and her children of the co-ownership claim of Tirso. They further argue that Parcel S-1 pertains to Pendejito as her paraphernal property since the homestead application therefor was under her name.

We are not persuaded.

Tirso's acknowledgment of Pendejito and her children's possession of Parcels S-1, S-2, S-3, and S-4 cannot be viewed as the required repudiation to bar Tirso from pursuing his right to seek partition. Under the law on co-ownership, it behooves on the person desiring to exclude another from the co-ownership to do the repudiating. Verily, the records do not show that Pendejito and her children performed acts clearly indicating an intention to repudiate the co-ownership and then apprising Tirso and other co-owners or co-compulsory heirs of such intention.

To be sure, Tirso and his siblings from the first marriage have a stake on Parcels S-2, S-3, and S-4, even if these parcels of land formed part of the conjugal partnership of gains of the second marriage. There can be no serious dispute that the children of the first marriage have a hereditary right over the share of Don Fabian in the partnership assets of the first marriage.

Anent Parcel S-1, we join the CA in its holding that it belongs to the heirs of Don Fabian under Sec. 105 of CA 141, which pertinently provides:

> Sec. 105. If at any time the applicant or grantee shall die before the issuance of the patent or the final grant of the land, or during the life of the lease, or while the applicant or grantee still has obligations pending towards the Government, in accordance with this Act, he

shall be **succeeded in his rights and obligations with respect to the land applied for or granted or issued under this Act by his heirs in law, who shall be entitled to have issued to them the patent or final concession** if they show that they have complied with the requirements therefor, and who shall be subrogated in all his rights and obligations for the purposes of this Act. (Emphasis ours.)

It is undisputed that Don Fabian was the homestead patent applicant who was subrogated to the rights of the original applicants, spouses Simeon Cagaanan and Severina Naranjo, by purchasing from the latter Parcel S-1 on **May 8, 1943**. Don Fabian **cultivated** the applied area and declared it for taxation purposes. The application, however, would be rejected because death supervened. In 1963, Pendejito filed her own homestead application for Parcel S-1.

Assayed against the foregoing undisputed facts in the light of the aforequoted Sec. 105 of CA 141, the heirs of Don Fabian are entitled to Parcel S-1. Said Sec. 105 has been interpreted in *Soliman v. Icdang*[34] as having abrogated the right of the widow of a deceased homestead applicant to secure under Sec. 3 of Act No. 926, otherwise known as the Public Land Act of 1903, a patent in her own name, thus:

[W]e should bear in mind that, although Adolfo Icdang was married to plaintiff when he filed the homestead application, "an applicant may be said to have acquired a vested right over a homestead only by the presentation of the final proof and its approval by the Director of Lands." (*Ingara vs. Ramelo*, 107 Phil., 498; *Balboa vs. Farrales*, 51 Phil., 498; *Republic vs. Diamon*, 97 Phil., 838.) In the case at bar, the final proof appears to have been presented to, and approved by the Director of Lands, in 1954, or several years after the death of Adolfo Icdang and the dissolution of his conjugal partnership with plaintiff herein. Hence, the land in question could not have formed part of the assets of said partnership. It belonged to the heirs of Adolfo Icdang, pursuant to Section 105 of Commonwealth Act No. 141, reading:

x x x x x x x x x

[34] No. L-15924, May 31, 1961, 2 SCRA 515.

It is worthy of notice that, under the Public Land Act of 1903 (Act No. 926, Section 3), "in the event of the death of an applicant prior to the issuance of a patent, his widow shall be entitled to have a patent for the land applied for issue to her upon showing that she has consummated the requirements of law for homesteading the lands," and that only in case the deceased applicant leaves no widow shall his interest in the land descend and the patent issue to his legal heirs. Incorporated substantially in Section 103 of the Public Land Act of 1919 (Act No. 2874), this policy was changed by Act No. 3517, pursuant to which **the deceased shall be succeeded no longer by his widow, but "by his heirs in law, who shall be entitled to have issued to them the patent—if they show that they have complied with the requirements therefor."** And this is, in effect, the rule maintained in the above quoted Section 105 of Commonwealth Act No. 141.[35] (Emphasis added.)

It appearing that Don Fabian was responsible for meeting the requirements of law for homesteading Parcel S-1, said property, following *Soliman*, cannot be categorized as the paraphernal property of Pendejito. Thus, the homestead patent thereto, if eventually issued, must be made in the name of the compulsory heirs of Don Fabian. Over it, Pendejito shall be entitled, pursuant to Art. 834 of the Spanish Civil Code of 1889, only to a usufructuary right over the property equal to the corresponding share of each of Don Fabian's compulsory heirs, *i.e.*, his eight children.

Seventh Issue: Judgment Must not Only be Clear but Must Also be Completes

Petitioners bemoan the fact that both the trial and appellate courts granted relief and remedies not prayed for by the parties. As argued, Civil Case No. 1292, initiated by the heirs of Benjamin against Tirso, basically sought recovery of real properties; while Civil Case No. 1332, a countersuit filed by Tirso, was for partition and damages, the main thrust of which is to recover his alleged share from properties in the exclusive possession and enjoyment of other heirs since the death of Don Fabian in 1948. Thus,

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[35] *Id.* at 519-520.

petitioners take issue against both decisions of the trial and appellate courts which ordered partition not only in favor of Tirso but also in favor of the other petitioners he sued. What is particularly appalling, according to them, is the order for accounting which no one requested.

Petitioners' lament, while understandable, is specious. Our judicial system requires courts to apply the law and grant remedies when appropriately called for by law and justice. In the exercise of this mandate, courts have the discretion to apply equity in the absence or insufficiency of the law. Equity has been defined as justice outside law, being ethical rather than jural and belonging to the sphere of morals than of law. It is grounded on the precepts of conscience and not on any sanction of positive law, for equity finds no room for application where there is law.[36]

In the instant case, a disposition only ordering partial partition and without accounting, as petitioners presently urge, would be most impractical and against what we articulated in *Samala v. Court of Appeals*.[37] There, we cautioned courts against being dogmatic in rendering decisions, it being preferable if they take a complete view of the case and in the process come up with a just and equitable judgment, eschewing rules tending to frustrate rather than promote substantial justice.

Surely, the assailed path taken by the CA on the grant of relief not specifically sought is not without precedent. In *National Housing Authority v. Court of Appeals*, where the petitioner questioned the competence of the courts *a quo* to resolve issues not raised in the pleadings, and to order the disposition of the subject property when what was raised was the issue of right to possession, this Court in dismissing the challenge stated that "a case should be decided in its totality, resolving all interlocking issues in order to render justice to all concerned and to end the

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[36] *Philippine Long Distance Telephone Co. v. NLRC*, No. 80609, August 23, 1988, 164 SCRA 671, 681.

[37] *Samala v. Court of Appeals*, G.R. No. 128628, August 23, 2001, 363 SCRA 535.

litigation once and for all."[38] Verily, courts should always strive to settle the entire controversy in a single proceeding leaving no root or branch to bear the seed of future litigation.[39]

Eighth Issue: Deed of Donation Null and Void

Finally, as an incidental issue, petitioners asseverate that the deed of donation (Exhibit "F") executed on September 19, 1948, or after the death of Don Fabian, in favor of Reygula M. Bayan, is valid, particularly so since Tirso and the heirs of Benjamin, as represented by their mother, Nakila, do not question the validity of said deed as they in fact signed the same. That the donated property was the same property described and included in the deed of sale (Exhibit "E") in favor of Soledad Monteroso-Cagampang is not, they contend, an invalidating factor since what Don Fabian sold under **Exhibit "E"** did not extend beyond his conjugal share thereon.

Just like the issue of the nullity of the three deeds of absolute sale (Exhibits "C", "D", and "E") heretofore discussed, we agree with the determination of the RTC and CA as to the invalidity of the donation of Parcel F-5 to Reygula M. Bayan. We need not repeat the reasons for such determination, except the most basic. We refer to the authority of the person who executed the deed of donation. As it were, the widow of Benjamin, Nakila, signed the deed of donation. She, however, cannot give consent to the donation as she has no disposable right thereto. The legal maxim *nemo dat quod non habet*[40] applies to this instance as Nakila only has usufructuary right equal to the share of her children under Art. 834 of the Spanish Civil Code of 1889. Besides, Nakila signed the deed of donation in her name and not in the name of her children who are the heirs

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[38] *National Housing Authority v. Court of Appeals*, No. 50877, April 28, 1983, 121 SCRA 777, 783.

[39] *Latchme Motomull v. Dela Paz*, G.R. No. 45302, July 24, 1990, 187 SCRA 743, 754; citing *Alger Electric, Inc. v. Court of Appeals*, No. L-34298, February 28, 1985, 135 SCRA 43 and *Gayos v. Gayos*, No. L-27812, September 26, 1975, 67 SCRA 146.

[40] One cannot give what one does not have.

in representation of their father, Benjamin. Lest it be overlooked, the then minor children were not under the legal guardianship of Nakila, a situation which thus disqualifies her from signing on their behalf.

The fact that nobody objected to the donation is of little consequence, for as the CA aptly observed, "The circumstance that parties to a void contract choose to ignore its nullity can in no way enhance the invalid character of such contract. It is axiomatic that void contracts cannot be the subject of ratification, either express or implied."[41]

WHEREFORE, the petition in G.R. No. 113199 is *DENIED* for lack of merit. The assailed Decision and Resolution dated March 31, 1992 and December 16, 1993, respectively, of the CA in CA-G.R. CV No. 15805 are hereby *AFFIRMED IN TOTO.* Costs against the petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 140944. April 30, 2008]

RAFAEL ARSENIO S. DIZON, in his capacity as the Judicial Administrator of the Estate of the deceased JOSE P. FERNANDEZ, *petitioner, vs.* **COURT OF TAX APPEALS and COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

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[41] *Rollo* (G.R. No. 113199), pp. 149-150.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; OFFER OF; APPLICABLE TO THE COURT OF TAX APPEALS.—** Under Section 8 of RA 1125, the CTA is categorically described as a court of record. As cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases. Indubitably, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads: **SEC. 34.** *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

2. **ID.; ID.; ID.; ID.; EXCEPTION AS HELD IN *VDA. DE* OÑATE.—** Indubitably, the doctrine laid down in *Vda. De Oñate* still subsists in this jurisdiction. In *Vda. de Oñate*, we held that: From the foregoing provision, it is clear that for evidence to be considered, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles* [186 SCRA 385], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same. However, in *People v. Napat-a*, citing *People v. Mate*, **we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, viz.: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case.** From the foregoing declaration, however, it is clear that *Vda. de Oñate* is merely an exception to the general rule. Being an exception, it may be applied only when there is strict compliance with the requisites mentioned

therein; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court should prevail.

3. ID.; ID.; ID.; ID.; ID.; CASE AT BAR.— In this case, we find that these requirements have not been satisfied. The assailed pieces of evidence were presented and marked during the trial particularly when Alberto took the witness stand. Alberto identified these pieces of evidence in his direct testimony. He was also subjected to cross-examination and re-cross examination by petitioner. But Alberto's account and the exchanges between Alberto and petitioner did not sufficiently describe the contents of the said pieces of evidence presented by the BIR. In fact, petitioner sought that the lead examiner, one Ma. Anabella A. Abuloc, be summoned to testify, inasmuch as Alberto was incompetent to answer questions relative to the working papers. The lead examiner never testified. Moreover, while Alberto's testimony identifying the BIR's evidence was duly recorded, the BIR documents themselves were not incorporated in the records of the case. A common fact threads through *Vda. de Oñate* and *Ramos* that does not exist at all in the instant case. In the aforementioned cases, the exhibits were marked at the pre-trial proceedings to warrant the pronouncement that the same were duly incorporated in the records of the case.

4. ID.; ID.; ID.; ID.; ID.; PRESENTATION OF BIR EVIDENCE NOT A MERE PROCEDURAL TECHNICALITY WHICH MAY BE DISREGARDED CONSIDERING THAT IT IS THE ONLY MEANS BY WHICH THE CTA MAY ASCERTAIN AND VERIFY THE TRUTH OF THE BIR'S CLAIMS AGAINST THE ESTATE.— While the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves and are primarily intended as tools in the administration of justice, the presentation of the BIR's evidence is not a mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of BIR's claims against the Estate. The BIR's failure to formally offer these pieces of evidence, despite CTA's directives, is fatal to its cause. Such failure is aggravated by the fact that not even a single reason was advanced by the BIR to justify such fatal omission. This, we take against the BIR. Per the records of this case, the BIR was directed to present its evidence in the hearing of

February 21, 1996, but BIR's counsel failed to appear. The CTA denied petitioner's motion to consider BIR's presentation of evidence as waived, with a warning to BIR that such presentation would be considered waived if BIR's evidence would not be presented at the next hearing. Again, in the hearing of March 20, 1996, BIR's counsel failed to appear. Thus, in its Resolution dated March 21, 1996, the CTA considered the BIR to have waived presentation of its evidence. In the same Resolution, the parties were directed to file their respective memorandum. Petitioner complied but BIR failed to do so. In all of these proceedings, BIR was duly notified.

5. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; EXTINGUISHMENT BY CONDONATION OR REMISSION OF DEBT.—** It is admitted that the claims of the Estate's aforementioned creditors have been condoned. As a mode of extinguishing an obligation, condonation or remission of debt is defined as: an act of liberality, by virtue of which, without receiving any equivalent, the creditor renounces the enforcement of the obligation, which is extinguished in its entirety or in that part or aspect of the same to which the remission refers. It is an essential characteristic of remission that it be gratuitous, that there is no equivalent received for the benefit given; once such equivalent exists, the nature of the act changes. It may become *dation* in payment when the creditor receives a thing different from that stipulated; or novation, when the object or principal conditions of the obligation should be changed; or compromise, when the matter renounced is in litigation or dispute and in exchange of some concession which the creditor receives.

6. **STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; DECISIONS OF AMERICAN COURTS CONSTRUING THE FEDERAL TAX CODE AS SOURCE OF PHILIPPINE TAX LAWS, ENTITLED TO GREAT WEIGHT IN THE INTERPRETATION OF PHILIPPINE TAX LAWS.—** "Claims against the estate," as allowable deductions from the gross estate under Section 79 of the Tax Code, are basically a reproduction of the deductions allowed under Section 89 (a) (1) (C) and (E) of Commonwealth Act No. 466 (CA 466), otherwise known as the National Internal Revenue Code of 1939, and which was the first codification of Philippine tax laws. Philippine tax laws were, in turn, based on the federal

tax laws of the United States. Thus, pursuant to established rules of statutory construction, the decisions of American courts construing the federal tax code are entitled to great weight in the interpretation of our own tax laws.

7. ID.; ID.; ID.; CASE AT BAR.— We express our agreement with the date-of-death valuation rule, made pursuant to the ruling of the U.S. Supreme Court in *Ithaca Trust Co. v. United States*. *First*. There is no law, nor do we discern any legislative intent in our tax laws, which disregards the date-of-death valuation principle and particularly provides that post-death developments must be considered in determining the net value of the estate. It bears emphasis that tax burdens are not to be imposed, nor presumed to be imposed, beyond what the statute expressly and clearly imports, tax statutes being construed *strictissimi juris* against the government. Any doubt on whether a person, article or activity is taxable is generally resolved against taxation. *Second*. Such construction finds relevance and consistency in our Rules on Special Proceedings wherein the term "claims" required to be presented against a decedent's estate is generally construed to mean debts or demands of a pecuniary nature which could have been enforced against the deceased in his lifetime, or liability contracted by the deceased before his death. Therefore, the claims existing at the time of death are significant to, and should be made the basis of, the determination of allowable deductions.

APPEARANCES OF COUNSEL

R.A.S. Dizon Law Offices for petitioner.
The Solicitor General for respondents.

D E C I S I O N

NACHURA, *J*.:

Before this Court is a Petition for Review on *Certiorari* [1] under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision[2] dated April 30, 1999

[1] Dated January 20, 2000, *rollo,* pp. 8-20.

[2] Particularly docketed as CA-G.R. SP No. 46947; penned by Associate Justice Marina L. Buzon, with Presiding Justice Jesus M. Elbinias

which affirmed the Decision[3] of the Court of Tax Appeals (CTA) dated June 17, 1997.[4]

The Facts

On November 7, 1987, Jose P. Fernandez (Jose) died. Thereafter, a petition for the probate of his will[5] was filed with Branch 51 of the Regional Trial Court (RTC) of Manila (probate court).[6] The probate court then appointed retired Supreme Court Justice Arsenio P. Dizon (Justice Dizon) and petitioner, Atty. Rafael Arsenio P. Dizon (petitioner) as Special and Assistant Special Administrator, respectively, of the Estate of Jose (Estate). In a letter[7] dated October 13, 1988, Justice Dizon informed respondent Commissioner of the Bureau of Internal Revenue (BIR) of the special proceedings for the Estate.

Petitioner alleged that several requests for extension of the period to file the required estate tax return were granted by the BIR since the assets of the estate, as well as the claims against it, had yet to be collated, determined and identified.

(now retired) and Associate Justice Eugenio S. Labitoria (now retired), concurring; *id*. at 22-31.

[3] Particularly docketed as CTA Case No. 5116; penned by Associate Judge Ramon O. De Veyra and concurred in by Presiding Judge Ernesto D. Acosta and Associate Judge Amancio Q. Saga; *id*. at 33-61.

[4] This case was decided before the CTA was elevated by law to the same level as the CA by virtue of Republic Act (RA) No. 9282 otherwise known as "*An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, otherwise known as The Law Creating the Court of Tax Appeals, and for other purposes,*" which was approved on March 30, 2004. Hence, upon its effectivity, decisions of the CTA are now appealable directly to the Supreme Court.

[5] BIR Records, pp. 1-88.

[6] The said petition is entitled: In the Matter of the Petition to Approve the Will of Jose P. Fernandez, Carlos P. Fernandez, Petitioner, particularly docketed as Special Proceedings No. 87-42980; BIR Record, pp. 107-108.

[7] *Id*. at 126.

Thus, in a letter[8] dated March 14, 1990, Justice Dizon authorized Atty. Jesus M. Gonzales (Atty. Gonzales) to sign and file on behalf of the Estate the required estate tax return and to represent the same in securing a Certificate of Tax Clearance. Eventually, on April 17, 1990, Atty. Gonzales wrote a letter[9] addressed to the BIR Regional Director for San Pablo City and filed the estate tax return[10] with the same BIR Regional Office, showing therein a NIL estate tax liability, computed as follows:

COMPUTATION OF TAX

Conjugal Real Property (Sch. 1)		₱10,855,020.00
Conjugal Personal Property (Sch.2)		3,460,591.34
Taxable Transfer (Sch. 3)		
Gross Conjugal Estate		14,315,611.34
Less: Deductions (Sch. 4)		187,822,576.06
Net Conjugal Estate		NIL
Less: Share of Surviving Spouse		NIL .
Net Share in Conjugal Estate		NIL
x x x	x x x	x x x
Net Taxable Estate		NIL .
Estate Tax Due		NIL .[11]

On April 27, 1990, BIR Regional Director for San Pablo City, Osmundo G. Umali issued Certification Nos. 2052[12] and 2053[13] stating that the taxes due on the transfer of real and personal properties[14] of Jose had been fully paid and said properties

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[8] *Id.* at 184.

[9] *Id.* at 183.

[10] *Id.* at 182.

[11] *Id.*

[12] *Rollo,* p. 68.

[13] *Id.* at 69.

[14] Lists of Personal and Real Properties of Jose; *id.* at 70-73.

may be transferred to his heirs. Sometime in August 1990, Justice Dizon passed away. Thus, on October 22, 1990, the probate court appointed petitioner as the administrator of the Estate.[15]

Petitioner requested the probate court's authority to sell several properties forming part of the Estate, for the purpose of paying its creditors, namely: Equitable Banking Corporation (₱19,756,428.31), Banque de L'Indochine et. de Suez (US$4,828,905.90 as of January 31, 1988), Manila Banking Corporation (₱84,199,160.46 as of February 28, 1989) and State Investment House, Inc. (₱6,280,006.21). Petitioner manifested that Manila Bank, a major creditor of the Estate was not included, as it did not file a claim with the probate court since it had security over several real estate properties forming part of the Estate.[16]

However, on November 26, 1991, the Assistant Commissioner for Collection of the BIR, Themistocles Montalban, issued Estate Tax Assessment Notice No. FAS-E-87-91-003269,[17] demanding the payment of ₱66,973,985.40 as deficiency estate tax, itemized as follows:

Deficiency Estate Tax- 1987

Estate tax	₱31,868,414.48
25% surcharge- late filing	7,967,103.62
late payment	7,967,103.62
Interest	19,121,048.68
Compromise-non filing	25,000.00
non payment	25,000.00
no notice of death	15.00
no CPA Certificate	300.00
Total amount due & collectible	₱66,973,985.40[18]

[15] CTA Record, p. 102.

[16] *Rollo*, p. 10.

[17] BIR Records, p. 169.

[18] *Id*.

In his letter[19] dated December 12, 1991, Atty. Gonzales moved for the reconsideration of the said estate tax assessment. However, in her letter[20] dated April 12, 1994, the BIR Commissioner denied the request and reiterated that the estate is liable for the payment of ₱66,973,985.40 as deficiency estate tax. On May 3, 1994, petitioner received the letter of denial. On June 2, 1994, petitioner filed a petition for review[21] before respondent CTA. Trial on the merits ensued.

As found by the CTA, the respective parties presented the following pieces of evidence, to wit:

> In the hearings conducted, petitioner did not present testimonial evidence but merely documentary evidence consisting of the following:

	Nature of Document (sic)	Exhibits
1.	Letter dated October 13, 1988 from Arsenio P. Dizon addressed to the Commissioner of Internal Revenue informing the latter of the special proceedings for the settlement of the estate (p. 126, BIR records);	"A"
2.	Petition for the probate of the will and issuance of letter of administration filed with the Regional Trial Court (RTC) of Manila, docketed as Sp. Proc. No. 87-42980 (pp. 107-108, BIR records);	"B" & "B-1"

[19] *Id*. at 171.

[20] By then BIR Commissioner Liwayway Vinzons-Chato; *id*. at 277-278.

[21] CTA Records, pp. 1-7.

3.	Pleading entitled "Compliance" filed with the probate Court submitting the final inventory of all the properties of the deceased (p. 106, BIR records);	"C"
4.	Attachment to Exh. "C" which is the detailed and complete listing of the properties of the deceased (pp. 89-105, BIR rec.);	"C-1" to "C-17"
5.	Claims against the estate filed by Equitable Banking Corp. with the probate Court in the amount of ₱19,756,428.31 as of March 31, 1988, together with the Annexes to the claim (pp. 64-88, BIR records);	"D" to "D-24"
6.	Claim filed by Banque de L' Indochine et de Suez with the probate Court in the amount of US $4,828,905.90 as of January 31, 1988 (pp. 262-265, BIR records);	"E" to "E-3"
7.	Claim of the Manila Banking Corporation (MBC) which as of November 7, 1987 amounts to ₱65,158,023.54, but recomputed as of February 28, 1989 at a total amount of ₱84,199,160.46; together with the demand letter from MBC's lawyer (pp. 194-197, BIR records);	"F" to "F-3"

8.	Demand letter of Manila Banking Corporation prepared by Asedillo, Ramos and Associates Law Offices addressed to Fernandez Hermanos, Inc., represented by Jose P. Fernandez, as mortgagors, in the total amount of ₱240,479,693.17 as of February 28, 1989 (pp. 186-187, BIR records);	"G" & "G-1"
9.	Claim of State Investment House, Inc. filed with the RTC, Branch VII of Manila, docketed as Civil Case No. 86-38599 entitled "*State Investment House, Inc., Plaintiff, versus Maritime Company Overseas, Inc. and/or Jose P. Fernandez, Defendants*," (pp. 200-215, BIR records);	"H" to "H-16"
10.	Letter dated March 14, 1990 of Arsenio P. Dizon addressed to Atty. Jesus M. Gonzales, (p. 184, BIR records);	"I"
11.	Letter dated April 17, 1990 from J.M. Gonzales addressed to the Regional Director of BIR in San Pablo City (p. 183, BIR records);	"J"
12.	Estate Tax Return filed by the estate of the late Jose P.	

	Fernandez through its authorized representative, Atty. Jesus M. Gonzales, for Arsenio P. Dizon, with attachments (pp. 177-182, BIR records);	"K" to "K-5"
13.	Certified true copy of the Letter of Administration issued by RTC Manila, Branch 51, in Sp. Proc. No. 87-42980 appointing Atty. Rafael S. Dizon as Judicial Administrator of the estate of Jose P. Fernandez; (p. 102, CTA records) and	"L"
14.	Certification of Payment of estate taxes Nos. 2052 and 2053, both dated April 27, 1990, issued by the Office of the Regional Director, Revenue Region No. 4-C, San Pablo City, with attachments (pp. 103-104, CTA records.).	"M" to "M-5"

Respondent's [BIR] counsel presented on June 26, 1995 one witness in the person of Alberto Enriquez, who was one of the revenue examiners who conducted the investigation on the estate tax case of the late Jose P. Fernandez. In the course of the direct examination of the witness, he identified the following:

	Documents/ Signatures	BIR Record
1.	Estate Tax Return prepared by the BIR;	p. 138

2.	Signatures of Ma. Anabella Abuloc and Alberto Enriquez, Jr. appearing at the lower Portion of Exh. "1";	-do-
3.	Memorandum for the Commissioner, dated July 19, 1991, prepared by revenue examiners, Ma. Anabella A. Abuloc, Alberto S. Enriquez and Raymund S. Gallardo; Reviewed by Maximino V. Tagle	pp. 143-144
4.	Signature of Alberto S. Enriquez appearing at the lower portion on p. 2 of Exh. "2";	-do-
5.	Signature of Ma. Anabella A. Abuloc appearing at the lower portion on p. 2 of Exh. "2";	-do-
6.	Signature of Raymund S. Gallardo appearing at the Lower portion on p. 2 of Exh. "2";	-do-
7.	Signature of Maximino V. Tagle also appearing on p. 2 of Exh. "2";	-do-
8.	Summary of revenue Enforcement Officers Audit Report, dated July 19, 1991;	p. 139
9.	Signature of Alberto Enriquez at the lower portion of Exh. "3";	-do-

10.	Signature of Ma. Anabella A. Abuloc at the lower portion of Exh. "3";	-do-
11.	Signature of Raymond S. Gallardo at the lower portion of Exh. "3";	-do-
12.	Signature of Maximino V. Tagle at the lower portion of Exh. "3";	-do-
13.	Demand letter (FAS-E-87-91-00), signed by the Asst. Commissioner for Collection for the Commissioner of Internal Revenue, demanding payment of the amount of ₱66,973,985.40; and	p. 169
14.	Assessment Notice FAS-E-87-91-00	pp. 169-170[22]

The CTA's Ruling

On June 17, 1997, the CTA denied the said petition for review. Citing this Court's ruling in *Vda. de Oñate v. Court of Appeals*,[23] the CTA opined that the aforementioned pieces of evidence introduced by the BIR were admissible in evidence. The CTA ratiocinated:

Although the above-mentioned documents were not formally offered as evidence for respondent, considering that respondent has been declared to have waived the presentation thereof during the hearing

[22] *Rollo*, pp. 37-40 (Emphasis supplied).

[23] G.R. No. 116149, November 23, 1995, 250 SCRA 283, 287, citing *People v. Napat-a*, 179 SCRA 403 (1989) and *People v. Mate*, 103 SCRA 484 (1981).

on March 20, 1996, still they could be considered as evidence for respondent since they were properly identified during the presentation of respondent's witness, whose testimony was duly recorded as part of the records of this case. Besides, the documents marked as respondent's exhibits formed part of the BIR records of the case.[24]

Nevertheless, the CTA did not fully adopt the assessment made by the BIR and it came up with its own computation of the deficiency estate tax, to wit:

Conjugal Real Property	₱ 5,062,016.00
Conjugal Personal Prop.	33,021,999.93
Gross Conjugal Estate	38,084,015.93
Less: Deductions	26,250,000.00
Net Conjugal Estate	₱ 11,834,015.93
Less: Share of Surviving Spouse	5,917,007.96
Net Share in Conjugal Estate	₱ 5,917,007.96
Add: Capital/Paraphernal	
Properties – ₱44,652,813.66	
Less: Capital/Paraphernal	
Deductions	44,652,813.66
Net Taxable Estate	₱ 50,569,821.62
	============
Estate Tax Due	₱ 29,935,342.97
Add: 25% Surcharge for Late Filing	7,483,835.74
Add: Penalties for-No notice of death	15.00
No CPA certificate	300.00
Total deficiency estate tax	₱ 7,419,493.71
	============

[24] CTA Records, p. 148.

exclusive of 20% interest from due date of its payment until full payment thereof

[Sec. 283 (b), Tax Code of 1987].[25]

Thus, the CTA disposed of the case in this wise:

WHEREFORE, viewed from all the foregoing, the Court finds the petition unmeritorious and denies the same. Petitioner and/or the heirs of Jose P. Fernandez are hereby ordered to pay to respondent the amount of ₱37,419,493.71 plus 20% interest from the due date of its payment until full payment thereof as estate tax liability of the estate of Jose P. Fernandez who died on November 7, 1987.

SO ORDERED.[26]

Aggrieved, petitioner, on March 2, 1998, went to the CA via a petition for review.[27]

The CA's Ruling

On April 30, 1999, the CA affirmed the CTA's ruling. Adopting in full the CTA's findings, the CA ruled that the petitioner's act of filing an estate tax return with the BIR and the issuance of BIR Certification Nos. 2052 and 2053 did not deprive the BIR Commissioner of her authority to re-examine or re-assess the said return filed on behalf of the Estate. [28]

On May 31, 1999, petitioner filed a Motion for Reconsideration[29] which the CA denied in its Resolution[30] dated November 3, 1999.

Hence, the instant Petition raising the following issues:

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[25] *Id*. at 166-167.

[26] *Id*. at 167.

[27] CA *rollo*, pp. 3-17.

[28] Citing Section 16 of the 1993 National Internal Revenue Code.

[29] *Rollo*, pp. 22-31.

[30] *Id*. at 32.

1. Whether or not the admission of evidence which were not formally offered by the respondent BIR by the Court of Tax Appeals which was subsequently upheld by the Court of Appeals is contrary to the Rules of Court and rulings of this Honorable Court;

2. Whether or not the Court of Tax Appeals and the Court of Appeals erred in recognizing/considering the estate tax return prepared and filed by respondent BIR knowing that the probate court appointed administrator of the estate of Jose P. Fernandez had previously filed one as in fact, BIR Certification Clearance Nos. 2052 and 2053 had been issued in the estate's favor;

3. Whether or not the Court of Tax Appeals and the Court of Appeals erred in disallowing the valid and enforceable claims of creditors against the estate, as lawful deductions despite clear and convincing evidence thereof; and

4. Whether or not the Court of Tax Appeals and the Court of Appeals erred in validating erroneous double imputation of values on the very same estate properties in the estate tax return it prepared and filed which effectively bloated the estate's assets.[31]

The petitioner claims that in as much as the valid claims of creditors against the Estate are in excess of the gross estate, no estate tax was due; that the lack of a formal offer of evidence is fatal to BIR's cause; that the doctrine laid down in *Vda. de Oñate* has already been abandoned in a long line of cases in which the Court held that evidence not formally offered is without any weight or value; that Section 34 of Rule 132 of the Rules on Evidence requiring a formal offer of evidence is mandatory in character; that, while BIR's witness Alberto Enriquez (Alberto) in his testimony before the CTA identified the pieces of evidence aforementioned such that the same were marked, BIR's failure to formally offer said pieces of evidence and depriving petitioner

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[31] *Id*. at 114-115.

the opportunity to cross-examine Alberto, render the same inadmissible in evidence; that assuming *arguendo* that the ruling in *Vda. de Oñate* is still applicable, BIR failed to comply with the doctrine's requisites because the documents herein remained simply part of the BIR records and were not duly incorporated in the court records; that the BIR failed to consider that although the actual payments made to the Estate creditors were lower than their respective claims, such were compromise agreements reached long after the Estate's liability had been settled by the filing of its estate tax return and the issuance of BIR Certification Nos. 2052 and 2053; and that the reckoning date of the claims against the Estate and the settlement of the estate tax due should be at the time the estate tax return was filed by the judicial administrator and the issuance of said BIR Certifications and not at the time the aforementioned Compromise Agreements were entered into with the Estate's creditors.[32]

On the other hand, respondent counters that the documents, being part of the records of the case and duly identified in a duly recorded testimony are considered evidence even if the same were not formally offered; that the filing of the estate tax return by the Estate and the issuance of BIR Certification Nos. 2052 and 2053 did not deprive the BIR of its authority to examine the return and assess the estate tax; and that the factual findings of the CTA as affirmed by the CA may no longer be reviewed by this Court via a petition for review.[33]

The Issues

There are two ultimate issues which require resolution in this case:

First. Whether or not the CTA and the CA gravely erred in allowing the admission of the pieces of evidence which were not formally offered by the BIR; and

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[32] *Id*.

[33] Respondent BIR's Memorandum dated October 16, 2000; *id*. at 140-144.

Second. Whether or not the CA erred in affirming the CTA in the latter's determination of the deficiency estate tax imposed against the Estate.

The Court's Ruling

The Petition is impressed with merit.

Under Section 8 of RA 1125, the CTA is categorically described as a court of record. As cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases. Indubitably, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA.[34] Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:

SEC. 34. *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

The CTA and the CA rely solely on the case of *Vda. de Oñate*, which reiterated this Court's previous rulings in *People v. Napat-a*[35] and *People v. Mate*[36] on the admission and consideration of exhibits which were not formally offered during the trial. Although in a long line of cases many of which were decided after *Vda. de Oñate*, we held that courts cannot consider evidence which has not been formally offered,[37] nevertheless,

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[34] *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005, 468 SCRA 571, 588-589.

[35] *Supra* note 23.

[36] *Supra* note 23.

[37] *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, G.R. No. 149589, September 15, 2006, 502 SCRA 87; *Ala-Martin v. Sultan*, G.R. No. 117512, October 2, 2001, 366 SCRA 316, citing *Ong v. Court of Appeals*, 301 SCRA 391 (1999), which further cited *Candido v. Court of Appeals*, 253 SCRA 78, 82-83 (1996); *Republic v. Sandiganbayan*, 255 SCRA 438, 456 (1996); *People v. Peralta*, 237 SCRA 218, 226 (1994); *Vda. De Alvarez vs. Court of Appeals*, 231 SCRA 309, 317-318 (1994); and *People v. Cariño, et al.*, 165 SCRA 664, 671 (1988); See also *De los Reyes v.*

petitioner cannot validly assume that the doctrine laid down in *Vda. de Oñate* has already been abandoned. Recently, in *Ramos v. Dizon*,[38] this Court, applying the said doctrine, ruled that the trial court judge therein committed no error when he admitted and considered the respondents' exhibits in the resolution of the case, notwithstanding the fact that the same were not formally offered. Likewise, in *Far East Bank & Trust Company v. Commissioner of Internal Revenue*,[39] the Court made reference to said doctrine in resolving the issues therein. Indubitably, the doctrine laid down in *Vda. De Oñate* still subsists in this jurisdiction. In *Vda. de Oñate*, we held that:

From the foregoing provision, it is clear that for evidence to be considered, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles* [186 SCRA 385], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.

However, in *People v. Napat-a* [179 SCRA 403] citing *People v. Mate* [103 SCRA 484], **we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, *viz.*: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case**.[40]

Intermediate Appellate Court, G.R. No.74768, August 11, 1989, 176 SCRA 394, 401-402 (1989) and *People v. Mate*, *supra* note 23, at 493.

[38] G.R. No. 137247, August 7, 2006, 498 SCRA 17, 30-31.

[39] *Supra* note 29, at 91.

[40] Underscoring supplied.

From the foregoing declaration, however, it is clear that *Vda. de Oñate* is merely an exception to the general rule. Being an exception, it may be applied only when there is strict compliance with the requisites mentioned therein; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court should prevail.

In this case, we find that these requirements have not been satisfied. The assailed pieces of evidence were presented and marked during the trial particularly when Alberto took the witness stand. Alberto identified these pieces of evidence in his direct testimony.[41] He was also subjected to cross-examination and re-cross examination by petitioner.[42] But Alberto's account and the exchanges between Alberto and petitioner did not sufficiently describe the contents of the said pieces of evidence presented by the BIR. In fact, petitioner sought that the lead examiner, one Ma. Anabella A. Abuloc, be summoned to testify, inasmuch as Alberto was incompetent to answer questions relative to the working papers.[43] The lead examiner never testified. Moreover, while Alberto's testimony identifying the BIR's evidence was duly recorded, the BIR documents themselves were not incorporated in the records of the case.

A common fact threads through *Vda. de Oñate* and *Ramos* that does not exist at all in the instant case. In the aforementioned cases, the exhibits were marked at the pre-trial proceedings to warrant the pronouncement that the same were duly incorporated in the records of the case. Thus, we held in *Ramos*:

> In this case, we find and so rule that these requirements have been satisfied. **The exhibits in question were presented and marked during the pre-trial of the case thus, they have been incorporated into the records.** Further, Elpidio himself explained the contents of these exhibits when he was interrogated by respondents' counsel...

x x x x x x x x x

[41] TSN, June 26, 1995.

[42] TSN, July 12, 1995.

[43] *Id*. at 42-49.

But what further defeats petitioner's cause on this issue is that respondents' exhibits were marked and admitted during the pre-trial stage as shown by the Pre-Trial Order quoted earlier.[44]

While the CTA is not governed strictly by technical rules of evidence,[45] as rules of procedure are not ends in themselves and are primarily intended as tools in the administration of justice, the presentation of the BIR's evidence is not a mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of BIR's claims against the Estate.[46] The BIR's failure to formally offer these pieces of evidence, despite CTA's directives, is fatal to its cause.[47] Such failure is aggravated by the fact that not even a single reason was advanced by the BIR to justify such fatal omission. This, we take against the BIR.

Per the records of this case, the BIR was directed to present its evidence[48] in the hearing of February 21, 1996, but BIR's counsel failed to appear.[49] The CTA denied petitioner's motion to consider BIR's presentation of evidence as waived, with a warning to BIR that such presentation would be considered waived if BIR's evidence would not be presented at the next hearing. Again, in the hearing of March 20, 1996, BIR's counsel failed to appear.[50] Thus, in its Resolution[51] dated March 21,

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[44] *Supra* note 29, at 31 and 34, citing *Marmont Resort Hotel Enterprises v. Guiang*, 168 SCRA 373, 379-380 (1988).

[45] *Calamba Steel Center, Inc. (formerly JS Steel Corporation) v. Commissioner of Internal Revenue*, G.R. No. 151857, April 28, 2005, 457 SCRA 482, 494.

[46] *Commissioner of Internal Revenue v. Manila Mining Corporation*, *supra* note 28, at 593-594.

[47] *Far East Bank & Trust Company v. Commissioner of Internal Revenue, supra* note 29, at 90.

[48] CTA Resolution dated January 19, 1996; CTA Records, p. 113-114.

[49] CTA Records, p. 117.

[50] *Id*. at 119.

[51] *Id*. at 120.

1996, the CTA considered the BIR to have waived presentation of its evidence. In the same Resolution, the parties were directed to file their respective memorandum. Petitioner complied but BIR failed to do so.[52] In all of these proceedings, BIR was duly notified. Hence, in this case, we are constrained to apply our ruling in *Heirs of Pedro Pasag v. Parocha:*[53]

> A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.
>
> Strict adherence to the said rule is not a trivial matter. The Court in *Constantino v. Court of Appeals* ruled that **the formal offer of one's evidence is deemed waived after failing to submit it within a considerable period of time. It explained that the court cannot admit an offer of evidence made after a lapse of three (3) months because to do so would "condone an inexcusable laxity if not non-compliance with a court order which, in effect, would encourage needless delays and derail the speedy administration of justice."**
>
> Applying the aforementioned principle in this case, we find that the trial court had reasonable ground to consider that petitioners had waived their right to make a formal offer of documentary or object evidence. Despite several extensions of time to make their formal offer, petitioners failed to comply with their commitment and allowed almost five months to lapse before finally submitting it. **Petitioners' failure to comply with the rule on admissibility of evidence is anathema to the efficient, effective, and expeditious dispensation of justice.**

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[52] CTA Order dated June 17, 1996, CTA Records, p. 138.

[53] G.R. No. 155483, April 27, 2007, 522 SCRA 410, 416, citing *Constantino v. Court of Appeals*, G.R. No. 116018, November 13, 1996, 264 SCRA 59 (Other citations omitted; Emphasis supplied).

Having disposed of the foregoing procedural issue, we proceed to discuss the merits of the case.

Ordinarily, the CTA's findings, as affirmed by the CA, are entitled to the highest respect and will not be disturbed on appeal unless it is shown that the lower courts committed gross error in the appreciation of facts.[54] In this case, however, we find the decision of the CA affirming that of the CTA tainted with palpable error.

It is admitted that the claims of the Estate's aforementioned creditors have been condoned. As a mode of extinguishing an obligation,[55] condonation or remission of debt[56] is defined as:

an act of liberality, by virtue of which, without receiving any equivalent, the creditor renounces the enforcement of the obligation, which is extinguished in its entirety or in that part or aspect of the same to which the remission refers. It is an essential characteristic of remission that it be gratuitous, that there is no equivalent received for the benefit given; once such equivalent exists, the nature of the

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[54] *Filinvest Development Corporation v. Commissioner of Internal Revenue and Court of Tax Appeals*, G.R. No. 146941, August 9, 2007, 529 SCRA 605, 609-610, citing *Carrara Marble Philippines, Inc. v. Commissioner of Customs*, 372 Phil. 322, 333-334 (1999) and *Commissioner of Internal Revenue v. Court of Appeals*, 358 Phil. 562, 584 (1998).

[55] Article 1231 of the Civil Code of the Philippines provides:

Art. 1231. Obligations are extinguished:

(1) By payment or performance;

(2) By the loss of the thing due;

(3) **By the condonation or remission of the debt;**

(4) By the confusion or merger of the rights of creditor and debtor;

(5) By compensation;

(6) By novation. (Emphasis ours.)

[56] Article 1270 of the Civil Code of the Philippines provides:

Art. 1270. Condonation or remission is essentially gratuitous, and requires the acceptance by the obligor. It may be made expressly or impliedly.

One and the other kind shall be subject to the rules which govern inofficious donations. Express condonation shall, furthermore, comply with the forms of donation.

act changes. It may become dation in payment when the creditor receives a thing different from that stipulated; or novation, when the object or principal conditions of the obligation should be changed; or compromise, when the matter renounced is in litigation or dispute and in exchange of some concession which the creditor receives.[57]

Verily, the second issue in this case involves the construction of Section 79[58] of the National Internal Revenue

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[57] Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. IV, 1991 ed., p. 353, citing 8 Manresa 365.

[58] SEC. 79. *Computation of net estate and estate tax*. — For the purpose of the tax imposed in this Chapter, the value of the net estate shall be determined:

(a) In the case of a citizen or resident of the Philippines, by deducting from the value of the gross estate —

(1) *Expenses, losses, indebtedness, and taxes*. — Such amounts —

(A) For funeral expenses in an amount equal to five *per centum* of the gross estate but in no case to exceed ₱50,000.00;

(B) For judicial expenses of the testamentary or intestate proceedings;

(C) For claims against the estate; *Provided*, That at the time the indebtedness was incurred the debt instrument was duly notarized and, if the loan was contracted within three years before the death of the decedent, the administrator or executor shall submit a statement showing the disposition of the proceeds of the loan. (As amended by PD No. 1994)

(D) For claims of the deceased against insolvent persons where the value of decedent's interest therein is included in the value of the gross estate; and

(E) For unpaid mortgages upon, or any indebtedness in respect to property, where the value of decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate, but not including any income taxes upon income received after the death of the decedent, or property taxes not accrued before his death, or any estate tax. The deduction herein allowed in the case of claims against the estate, unpaid mortgages, or any indebtedness, shall when founded upon a promise or agreement, be limited to the extent that they were contracted *bona fide* and for an adequate and full reconsideration in money or money's worth. There shall also be deducted losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualties, or from robbery, theft, or embezzlement, when such losses are not compensated for by insurance or otherwise, and if at the time of the filing of the return such losses have not been claimed as a deduction for income tax purposes in an income tax return, and provided that such losses were incurred not later than last day for the payment of the estate tax as prescribed in sub-section (a) of Section 84.

Code[59] (Tax Code) which provides for the allowable deductions from the gross estate of the decedent. The specific question is whether the actual claims of the aforementioned creditors may be fully allowed as deductions from the gross estate of Jose despite the fact that the said claims were reduced or condoned through compromise agreements entered into by the Estate with its creditors.

"Claims against the estate," as allowable deductions from the gross estate under Section 79 of the Tax Code, are basically a reproduction of the deductions allowed under Section 89 (a) (1) (C) and (E) of Commonwealth Act No. 466 (CA 466), otherwise known as the National Internal Revenue Code of 1939, and which was the first codification of Philippine tax laws. Philippine tax laws were, in turn, based on the federal tax laws of the United States. Thus, pursuant to established rules of statutory construction, the decisions of American courts construing the federal tax code are entitled to great weight in the interpretation of our own tax laws.[60]

It is noteworthy that even in the United States, there is some dispute as to whether the deductible amount for a claim against the estate is fixed as of the decedent's death which is the general rule, or the same should be adjusted to reflect post-death developments, such as where a settlement between the parties results in the reduction of the amount actually paid.[61] On one hand, the U.S. court ruled that the appropriate deduction is the "value" that the claim had at the date of the decedent's death.[62] Also, as held in *Propstra v. U.S.*,[63] where a lien claimed against the estate was certain and enforceable on the date of the decedent's

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[59] This refers to the 1977 National Internal Revenue Code, as amended which was effective at the time of Jose's death on November 7, 1987.

[60] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 123206, March 22, 2000, 328 SCRA 666, 676-677 (citations omitted).

[61] 47B *Corpus Juris Secundum*, Internal Revenue § 533.

[62] *Smith v. C.I.R.*, 82 T.C.M. (CCH) 909 (2001), aff'd 54 Fed. Appx. 413.

[63] 680 F.2d 1248.

death, the fact that the claimant subsequently settled for lesser amount did not preclude the estate from deducting the entire amount of the claim for estate tax purposes. These pronouncements essentially confirm the general principle that post-death developments are not material in determining the amount of the deduction.

On the other hand, the Internal Revenue Service (Service) opines that post-death settlement should be taken into consideration and the claim should be allowed as a deduction only to the extent of the amount actually paid.[64] Recognizing the dispute, the Service released Proposed Regulations in 2007 mandating that the deduction would be limited to the actual amount paid.[65]

In announcing its agreement with *Propstra*,[66] the U.S. 5th Circuit Court of Appeals held:

> We are persuaded that the Ninth Circuit's decision...in *Propstra* correctly apply the *Ithaca Trust* date-of-death valuation principle to enforceable claims against the estate. As we interpret *Ithaca Trust*, when the Supreme Court announced the date-of-death valuation principle, it was making a judgment about the nature of the federal estate tax specifically, that it is a tax imposed on the act of transferring property by will or intestacy and, because the act on which the tax is levied occurs at a discrete time, *i.e.*, the instance of death, the net value of the property transferred should be ascertained, as nearly as possible, as of that time. This analysis supports broad application of the date-of-death valuation rule.[67]

We express our agreement with the date-of-death valuation rule, made pursuant to the ruling of the U.S. Supreme Court in *Ithaca Trust Co. v. United States*.[68] *First*. There is no law, nor

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[64] 47B *Corpus Juris Secundum*, Internal Revenue § 524.

[65] Prop. Treas. Reg. §. 20.2053-1 (b) (1), published as REG-143316-03.

[66] *Supra* note 63.

[67] '*Smith's Est. v. CIR*, 198 F3d 515, 525 (5th Cir. 1999). See also *O'Neal's Est. v. US*, 228 F. Supp. 2d 1290 (ND Ala. 2002).

[68] 279 U.S. 151, 49 S. Ct. 291, 73 L.Ed. 647 (1929).

do we discern any legislative intent in our tax laws, which disregards the date-of-death valuation principle and particularly provides that post-death developments must be considered in determining the net value of the estate. It bears emphasis that tax burdens are not to be imposed, nor presumed to be imposed, beyond what the statute expressly and clearly imports, tax statutes being construed *strictissimi juris* against the government.[69] Any doubt on whether a person, article or activity is taxable is generally resolved against taxation.[70] *Second*. Such construction finds relevance and consistency in our Rules on Special Proceedings wherein the term "claims" required to be presented against a decedent's estate is generally construed to mean debts or demands of a pecuniary nature which could have been enforced against the deceased in his lifetime, or liability contracted by the deceased before his death.[71] Therefore, the claims existing at the time of death are significant to, and should be made the basis of, the determination of allowable deductions.

WHEREFORE, the instant Petition is *GRANTED*. Accordingly, the assailed Decision dated April 30, 1999 and the Resolution dated November 3, 1999 of the Court of Appeals in CA-G.R. S.P. No. 46947 are *REVERSED* and *SET ASIDE*. The Bureau of Internal Revenue's deficiency estate tax assessment against the Estate of Jose P. Fernandez is hereby *NULLIFIED*. No costs.

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[69] *Commissioner of Internal Revenue v. The Court of Appeals, Central Vegetable Manufacturing Co., Inc., and the Court of Tax Appeals*, G.R. No. 107135, February 23, 1999, 303 SCRA 508, 516-517, citing *Province of Bulacan v. Court of Appeals,* 299 SCRA 442 (1998); *Republic v. IAC*, 196 SCRA 335 (1991); *CIR v. Firemen's Fund Ins. Co.*, 148 SCRA 315 (1987); and *CIR v. CA*, 204 SCRA 182 (1991).

[70] *Manila International Airport Authority v. Court of Appeals*, G.R. No. 155650, July 20, 2006, 495 SCRA 591, 619.

[71] *Quirino v. Grospe*, G.R. No. 58797, January 31, 1989, 169 SCRA 702, 704-705, citing *Gabin v. Melliza,* 84 Phil. 794, 796 (1949).

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 146053. April 30, 2008]

DIOSCORO F. BACSIN, *petitioner, vs.* **EDUARDO O. WAHIMAN,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; PUBLIC OFFICERS; ADMINISTRATIVE CASES; WHAT IS CONTROLLING IS THE ALLEGATION OF THE ACTS COMPLAINED OF AND NOT THE DESIGNATION OF THE OFFENSE.—** As *Dadubo v. Civil Service Commission* teaches: The charge against the respondent in an administrative case need not be drafted with the precision of an information in a criminal prosecution. It is sufficient that he is apprised of the substance of the charge against him; what is controlling is the allegation of the acts complained of, not the designation of the offense. It is clear that petitioner was sufficiently informed of the basis of the charge against him, which was his act of improperly touching one of his students. Thus informed, he defended himself from such charge. The failure to designate the offense specifically and with precision is of no moment in this administrative case.

2. **CRIMINAL LAW; SPECIAL LAWS; THE ANTI-SEXUAL HARASSMENT ACT OF 1995; SEXUAL FAVORS; NEED NOT BE EXPLICIT OR STATED AS THE SAME MAY BE DISCERNED, WITH EQUAL CERTITUDE, FROM THE ACTS OF THE OFFENDER.—** The formal charge, while

not specifically mentioning RA 7877, *The Anti-Sexual Harassment Act of 1995*, imputes on the petitioner acts covered and penalized by said law. Contrary to the argument of petitioner, the demand of a sexual favor need not be explicit or stated. In *Domingo v. Rayala*, it was held, "It is true that this provision calls for a 'demand, request or requirement of a sexual favor.' But it is not necessary that the demand, request, or requirement of a sexual favor be articulated in a categorical oral or written statement. It may be discerned, with equal certitude, from the acts of the offender." The CSC found, as did the CA, that even without an explicit demand from petitioner his act of mashing the breast of AAA was sufficient to constitute sexual harassment. Moreover, under Section 3 (b) (4) of RA 7877, sexual harassment in an education or training environment is committed "(w)hen the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice." AAA even testified that she felt fear at the time petitioner touched her.

3. **POLITICAL LAW; PUBLIC OFFICERS; ADMINISTRATIVE CASES; GRAVE MISCONDUCT; SEXUALLY MOLESTING A CHILD IS, BY ANY NORM, A REVOLTING ACT THAT IT CANNOT BUT BE CATEGORIZED AS A GRAVE OFFENSE.—** In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifest. The act of petitioner of fondling one of his students is against a law, RA 7877, and is doubtless inexcusable. The particular act of petitioner cannot in any way be construed as a case of simple misconduct. Sexually molesting a child is, by any norm, a revolting act that it cannot but be categorized as a grave offense. Parents entrust the care and molding of their children to teachers, and expect them to be their guardians while in school. Petitioner has violated that trust. The charge of grave misconduct proven against petitioner demonstrates his unfitness to remain as a teacher and continue to discharge the functions of his office.

4. **ID.; ID.; ID.; DUE PROCESS; AN OPPORTUNITY TO EXPLAIN ONE'S SIDE.—** Petitioner was not denied due process of law, contrary to his claims. The essence of due process is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's

side or an opportunity to seek for a reconsideration of the action or ruling complained of. These elements are present in this case, where petitioner was properly informed of the charge and had a chance to refute it, but failed.

APPEARANCES OF COUNSEL

Romualdo Arnado Romualdo & Associates Law Offices for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

In this Petition for Review on *Certiorari*, petitioner Dioscoro F. Bacsin questions the Decision[1] dated August 23, 2000 of the First Division of the Court of Appeals (CA) in CA-G.R. SP No. 51900, which affirmed Resolution No. 98-0521 dated March 11, 1998 and Resolution No. 99-0273 dated January 28, 1999, both issued by the Civil Service Commission (CSC), dismissing petitioner from the service for Grave Misconduct.

Facts of the Case

Petitioner is a public school teacher of Pandan Elementary School, Pandan, Mambajao, Camiguin Province. Respondent Eduardo O. Wahiman is the father of AAA an elementary school student of the petitioner.

Lovely claimed that on August 16, 1995, petitioner asked her to be at his office to do an errand.[2] Once inside, she saw him get a folder from one of the cartons on the floor near his table, and place it on his table. He then asked her to come closer, and when she did, held her hand, then touched and fondled

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[1] Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Presiding Justice Salome A. Montoya (retired) and Associate Justice Romeo J. Callejo, Sr. (now retired member of the Court).

[2] *Rollo*, p. 86.

her breast. She stated that he fondled her breast five times, and that she felt afraid.[3] A classmate of hers, one Vincent B. Sorrabas, claiming to have witnessed the incedent, testified that the fondling incident did happen just as AAA related it.[4]

Petitioner was charged with Misconduct in a Formal Charge dated February 12, 1996 by Regional Director Vivencio N. Muego, Jr. of the CSC.[5]

In his defense, petitioner claimed that the touching incident happened by accident, just as he was handing AAA a lesson book.[6] He further stated that the incident happened in about two or three seconds, and that the girl left his office without any complaint.[7]

Resolution of the CSC

In Resolution No. 98-0521 dated March 11, 1998, the CSC found petitioner guilty of Grave Misconduct (Acts of Sexual Harassment), and dismissed him from the service.[8] Specifically, the CSC found the petitioner to have committed an act constituting sexual harassment, as defined in Sec. 3 of Republic Act No. (RA) 7877, the *Anti-Sexual Harassment Act of 1995*.

Petitioner filed a motion for reconsideration, but the same was denied in Resolution No. 99-0273 dated January 28, 1999.

Decision of the Court of Appeals

Petitioner then brought the matter to the CA under Rule 43 of the 1997 Rules of Civil Procedure, the recourse docketed as CA-G.R. SP No. 51900.

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[3] *Id*. at 89-90.

[4] *Id*. at 87.

[5] *Id*. at 46.

[6] *Id*. at 70.

[7] *Id*. at 87.

[8] *Id*. at 92.

Petitioner raised the following issues before the CA:

1. Whether or not there were efforts by AAA her parents and the Honorable Civil Service Commission to magnify the accidental touching incident on August 16, 1995;

2. Whether or not the guilt of the petitioner was supported by the evidence on record; and

3. Whether or not there was irregularity in the imposition of the penalty of removal.[9]

In resolving the case, the CA determined that the issue revolved around petitioner's right to due process, and based on its finding that petitioner had the opportunity to be heard, found that there was no violation of that right. The CA ruled that, even if petitioner was formally charged with "disgraceful and immoral conduct and misconduct," the CSC found that the allegations and evidence sufficiently proved petitioner's guilt of grave misconduct, punishable by dismissal from the service.

The Issues Before Us

The petitioner now raises the following issues in the present petition:

1. Whether or not the petitioner could be guilty of acts of sexual harassment, grave misconduct, which was different from or an offense not alleged in the formal charge filed against him at the inception of the administrative case.

2. Assuming petitioner was guilty of disgraceful and immoral conduct and misconduct as charged by complainant, whether or not the penalty of dismissal from the service imposed by the Civil Service Commission and affirmed by the Court of Appeals is in accord with Rule XIV, Section (23) of the Omnibus Civil Service Rules and applicable rulings.

3. Whether or not the charge of Misconduct, a lesser offense, includes the offense of Grave Misconduct; a greater offense.

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[9] *Id.* at 29-30.

The petition is without merit.

Petitioner argues that the CSC cannot validly adjudge him guilty of an offense, such as "Grave Misconduct (Acts of Sexual Harassment)," different from that specified in the formal charge which was "Misconduct." He further argues that the offense of "Misconduct" does not include the graver offense of "Grave Misconduct."

This argument is unavailing.

As *Dadubo v. Civil Service Commission* teaches:

> The charge against the respondent in an administrative case need not be drafted with the precision of an information in a criminal prosecution. It is sufficient that he is apprised of the substance of the charge against him; what is controlling is the allegation of the acts complained of, not the designation of the offense.[10]

It is clear that petitioner was sufficiently informed of the basis of the charge against him, which was his act of improperly touching one of his students. Thus informed, he defended himself from such charge. The failure to designate the offense specifically and with precision is of no moment in this administrative case.

The formal charge, while not specifically mentioning RA 7877, *The Anti-Sexual Harassment Act of 1995*, imputes on the petitioner acts covered and penalized by said law. Contrary to the argument of petitioner, the demand of a sexual favor need not be explicit or stated. In *Domingo v. Rayala*,[11] it was held, "It is true that this provision calls for a 'demand, request or requirement of a sexual favor.' But it is not necessary that the demand, request, or requirement of a sexual favor be articulated in a categorical oral or written statement. It may be discerned, with equal certitude, from the acts of the offender." The CSC found, as did the CA, that even without an explicit demand from petitioner his act of mashing the breast of AAA was sufficient to constitute sexual harassment. Moreover, under

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[10] G.R. No. 106498, June 28, 1993, 223 SCRA 747, 754.

[11] G.R. No. 155831, February 18, 2008.

Section 3 (b) (4) of RA 7877, sexual harassment in an education or training environment is committed "(w)hen the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice." AAA even testified that she felt fear at the time petitioner touched her.[12] It cannot then be said that the CSC lacked basis for its ruling, when it had both the facts and the law. The CSC found the evidence presented by the complainant sufficient to support a finding of grave misconduct. It is basic that factual findings of administrative agencies, when supported by substantial evidence, are binding upon the Court.

Leaving aside the discrepancy of the designation of the offense in the formal charge, it must be discussed whether or not petitioner is indeed guilty, as found by the CA and CSC, of "Grave Misconduct," as distinguished from "Simple Misconduct." From the findings of fact of the CSC, it is clear that there is misconduct on the part of petitioner. The term "misconduct" denotes intentional wrongdoing or deliberate violation of a rule of law or standard of behavior.[13]

We agree with the rulings of the CSC and the CA.

In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifest.[14] The act of petitioner of fondling one of his students is against a law, RA 7877, and is doubtless inexcusable. The particular act of petitioner cannot in any way be construed as a case of simple misconduct. Sexually molesting a child is, by any norm, a revolting act that it cannot but be categorized as a grave offense. Parents entrust the care and molding of their children to teachers, and expect them to be their guardians while in school. Petitioner has violated that trust. The charge of grave misconduct proven against petitioner demonstrates

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[12] *Rollo*, p. 90.

[13] *Civil Service Commission v. Manzano*, G.R. No. 160195, October 30, 2006, 506 SCRA 113, 127.

[14] *Baylon v. Fact-finding Intelligence Bureau*, G.R. No. 150870, December 11, 2002, 394 SCRA 21, 34-35.

his unfitness to remain as a teacher and continue to discharge the functions of his office.

Petitioner's second argument need not be discussed further, as he was rightly found guilty of grave misconduct. Under Rule IV, Section 52 of the CSC Uniform Rules on Administrative Cases, "Grave Misconduct" carries with it the penalty of dismissal for the first offense. Thus, the penalty imposed on petitioner is in accordance with the Rules.

Petitioner was not denied due process of law, contrary to his claims. The essence of due process is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek for a reconsideration of the action or ruling complained of.[15] These elements are present in this case, where petitioner was properly informed of the charge and had a chance to refute it, but failed.

A teacher who perverts his position by sexually harassing a student should not be allowed, under any circumstance, to practice this noble profession. So it must be here.

WHEREFORE, in view of the foregoing, this petition is hereby *DISMISSED*, and the decision of the CA in CA-G.R. SP No. 51900 is hereby *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

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

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[15] *Zacarias v. National Police Commission*, G.R. No. 119847, October 24, 2003, 414 SCRA 387, 393.

THIRD DIVISION

[G.R. No. 151243. April 30, 2008]

LOLITA R. ALAMAYRI, *petitioner, vs.* **ROMMEL, ELMER, ERWIN, ROILER and AMANDA, all surnamed PABALE,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; *RES JUDICATA*; MEANING.—** *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.

2. **ID.; ID.; ID.; TWO MAIN RULES.—** The doctrine of *res judicata* thus lays down two main rules which may be stated as follows: (1) The judgment or decree of a court of competent jurisdiction on the merits concludes the parties and their privies to the litigation and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) Any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claims or demands, purposes, or subject matters of the two suits are the same. These two main rules mark the distinction between the principles governing the two typical cases in which a judgment may operate as evidence. In speaking of these cases, the first general rule above stated, and which corresponds to the afore-quoted paragraph (b) of Section 47, Rule 39 of the Rules of Court, is referred to as "bar by former judgment"; while the second general rule,

which is embodied in paragraph (c) of the same section and rule, is known as "conclusiveness of judgment."

3. **ID.; SPECIAL PROCEEDINGS; PETITION FOR APPOINTMENT OF A GUARDIAN UNDER RULE 93; OBJECTIVES.—** The objectives of an RTC hearing a petition for appointment of a guardian under Rule 93 of the Rules of Court is to determine, *first*, whether a person is indeed a minor or an incompetent who has no capacity to care for himself and/or his properties; and, *second*, who is most qualified to be appointed as his guardian. The rules reasonably assume that the people who best could help the trial court settle such issues would be those who are closest to and most familiar with the supposed minor or incompetent, namely, his relatives living within the same province and/or the persons caring for him.

4. **ID.; ID.; ID.; ID.; PRESENCE OF CREDITORS NOT ESSENTIAL TO THE PROCEEDINGS FOR APPOINTMENT OF A GUARDIAN.—** It is significant to note that the rules do not necessitate that creditors of the minor or incompetent be likewise identified and notified. The reason is simple: because their presence is not essential to the proceedings for appointment of a guardian. It is almost a given, and understandably so, that they will only insist that the supposed minor or incompetent is actually capacitated to enter into contracts, so as to preserve the validity of said contracts and keep the supposed minor or incompetent obligated to comply therewith.

5. **ID.; COURT OF APPEALS; POWERS; APPELLATE COURT CONDUCTS HEARINGS AND RECEIVES EVIDENCE PRIOR TO SUBMISSION OF CASE FOR JUDGMENT; CASE AT BAR.—** It is true that the Court of Appeals has the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. In general, however, the Court of Appeals conducts hearings and receives evidence **prior** to the submission of the case for judgment. It must be pointed out that, in this case, Alamayri filed her Motion to Schedule Hearing to Mark Exhibits in Evidence on **21 November 2001**.

She thus sought to submit additional evidence as to the identity of Jose Pabale, not only after CA-G.R. CV No. 58133 had been submitted for judgment, but **after** the Court of Appeals had already promulgated its Decision in said case on **10 April 2001**.

6. **CIVIL LAW; PERSONS; CAPACITY TO ACT; PRESUMED TO CONTINUE SO LONG AS THE CONTRARY BE NOT PROVED.—** Capacity to act is supposed to attach to a person who has not previously been declared incapable, and such capacity is presumed to continue so long as the contrary be not proved; that is, that at the moment of his acting he was incapable, crazy, insane, or out of his mind. The burden of proving incapacity to enter into contractual relations rests upon the person who alleges it; if no sufficient proof to this effect is presented, capacity will be presumed.

7. **ID.; ID.; ID.; ID.; CASE AT BAR.—** Nave was examined and diagnosed by doctors to be mentally incapacitated only in 1986, when the RTC started hearing SP. PROC. No. 146-86-C; and she was not judicially declared an incompetent until 22 June 1988 when a Decision in said case was rendered by the RTC, resulting in the appointment of Atty. Leonardo C. Paner as her guardian. Thus, prior to 1986, Nave is still presumed to be capacitated and competent to enter into contracts such as the Deed of Sale over the subject property, which she executed in favor of the Pabale siblings on 20 February 1984. The burden of proving otherwise falls upon Alamayri, which she dismally failed to do, having relied entirely on the 22 June 1988 Decision of the RTC in SP. PROC. No. 146-86-C.

APPEARANCES OF COUNSEL

Donald E. Javier for petitioner.
Untaan Law Offices for respondents.

DECISION

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Lolita R. Alamayri (Alamayri) seeking the reversal and setting aside of the Decision,[2] dated 10 April 2001, of the Court of Appeals in CA-G.R. CV No. 58133; as well as the Resolution,[3] dated 19 December 2001 of the same court denying reconsideration of its aforementioned Decision. The Court of Appeals, in its assailed Decision, upheld the validity of the Deed of Absolute Sale, dated 20 February 1984, executed by Nelly S. Nave (Nave) in favor of siblings Rommel, Elmer, Erwin, Roiler and Amanda, all surnamed Pabale (the Pabale siblings) over a piece of land (subject property) in Calamba, Laguna, covered by Transfer Certificate of Title (TCT) No. T-3317 (27604); and, thus, reversed and set aside the Decision,[4] dated 2 December 1997, of the Regional Trial Court (RTC) of Pasay City, Branch 119 in Civil Case No. 675-84-C.[5] The 2 December 1997 Decision of the RTC declared null and void the two sales agreements involving the subject property entered into by Nave with different parties, namely, Sesinando M. Fernando (Fernando) and the Pabale siblings; and ordered the reconveyance of the subject property to Alamayri, as Nave's successor-in-interest.

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[1] *Rollo*, pp. 9-37.

[2] Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Conrado M. Vasquez, Jr. and Eliezer R. de los Santos, concurring; *id.* at 39-46.

[3] *Id.* at 47-51.

[4] Penned by Judge Salvador P. de Guzman, Jr.; *id.* at 67-77.

[5] It must be noted that Civil Case No. 675-84-C was originally instituted before the Regional Trial Court (RTC) of Calamba, Laguna, Branch 36. All cases involving Nelly S. Nave (Nave cases) were then assigned to the same Calamba RTC, Branch 36, to which Judge Salvador P. de Guzman was appointed effective 3 February 1987. Judge de Guzman was eventually detailed as presiding judge of the Makati RTC, Branch 142; but would be temporarily detailed at the Pasay RTC, Branch 119. Pursuant to a petition

There is no controversy as to the facts that gave rise to the present Petition, determined by the Court of Appeals to be as follows:

> This is a Complaint for Specific Performance with Damages filed by Sesinando M. Fernando, representing S.M. Fernando Realty Corporation [Fernando] on February 6, 1984 before the Regional Trial Court of Calamba, Laguna presided over by Judge Salvador P. de Guzman, Jr., docketed as Civil Case No. 675-84-C against Nelly S. Nave [Nave], owner of a parcel of land located in Calamba, Laguna covered by TCT No. T-3317 (27604). [Fernando] alleged that on January 3, 1984, a handwritten "*Kasunduan Sa Pagbibilihan*" (Contract to Sell) was entered into by and between him and [Nave] involving said parcel of land. However, [Nave] reneged on their agreement when the latter refused to accept the partial down payment he tendered to her as previously agreed because she did not want to sell her property to him anymore. [Fernando] prayed that after trial on the merits, [Nave] be ordered to execute the corresponding Deed of Sale in his favor, and to pay attorney's fees, litigation expenses and damages.
>
> [Nave] filed a Motion to Dismiss averring that she could not be ordered to execute the corresponding Deed of Sale in favor of [Fernando] based on the following grounds: (1) she was not fully apprised of the nature of the piece of paper [Fernando] handed to her for her signature on January 3, 1984. When she was informed that it was for the sale of her property in Calamba, Laguna covered by TCT No. T-3317 (27604), she immediately returned to [Fernando] the said piece of paper and at the same time repudiating the same. Her repudiation was further bolstered by the fact that when [Fernando] tendered the partial down payment to her, she refused to receive the same; and (2) she already sold the property in good faith to Rommel, Elmer, Erwin, Roller and Amanda, all surnamed Pabale [the Pabale siblings] on February 20, 1984 after the complaint was filed against her but before she received a copy thereof. Moreover, she alleged that [Fernando] has no cause of action against her as he is

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filed by Atty. Vedasto Gesmundo, docketed as Administrative Matter No. 96-9-343-RTC, the Supreme Court assigned the Nave cases to Judge de Guzman; ordered the executive judge of the Calamba RTC to send the records of the Nave cases to the Pasay RTC, Branch 119; and directed Judge de Guzman to act on the Nave cases. (*Rollo*, pp. 69-70)

suing for and in behalf of S.M. Fernando Realty Corporation who is not a party to the alleged Contract to Sell. Even assuming that said entity is the real party in interest, still, [Fernando] cannot sue in representation of the corporation there being no evidence to show that he was duly authorized to do so.

Subsequently, [the Pabale siblings] filed a Motion to Intervene alleging that they are now the land owners of the subject property. Thus, the complaint was amended to include [the Pabale siblings] as party defendants. In an Order dated April 24, 1984, the trial court denied [Nave's] Motion to Dismiss prompting her to file a Manifestation and Motion stating that she was adopting the allegations in her Motion to Dismiss in answer to [Fernando's] amended complaint.

Thereafter, [Nave] filed a Motion to Admit her Amended Answer with Counterclaim and Cross-claim praying that her husband, Atty. Vedasto Gesmundo be impleaded as her co-defendant, and including as her defense undue influence and fraud by reason of the fact that she was made to appear as widow when in fact she was very much married at the time of the transaction in issue. Despite the opposition of [Fernando] and [the Pabale siblings], the trial court admitted the aforesaid Amended Answer with Counterclaim and Cross-claim.

Still unsatisfied with her defense, [Nave] and Atty. Vedasto Gesmundo filed a Motion to Admit Second Amended Answer and Amended Reply and Cross-claim against [the Pabale siblings], this time including the fact of her incapacity to contract for being mentally deficient based on the psychological evaluation report conducted on December 2, 1985 by Dra. Virginia P. Panlasigui, M. A., a clinical psychologist. Finding the motion unmeritorious, the same was denied by the court *a quo*.

[Nave] filed a motion for reconsideration thereof asseverating that in Criminal Case No. 1308-85-C entitled "*People vs. Nelly S. Nave*" she raised therein as a defense her mental deficiency. This being a decisive factor to determine once and for all whether the contract entered into by [Nave] with respect to the subject property is null and void, the Second Amended Answer and Amended Reply and Cross-claim against [the Pabale siblings] should be admitted.

Before the motion for reconsideration could be acted upon, the proceedings in this case was suspended sometime in 1987 in

view of the filing of a Petition for Guardianship of [Nave] with the Regional Trial Court, Branch 36 of Calamba, Laguna, docketed as SP No. 146-86-C with Atty. Vedasto Gesmundo as the petitioner. On June 22, 1988, a Decision was rendered in the said guardianship proceedings, the dispositive portion of which reads:

> "Under the circumstances, specially since Nelly S. Nave who now resides with the Brosas spouses has categorically refused to be examined again at the National Mental Hospital, the Court is constrained to accept the Neuro-Psychiatric Evaluation report dated April 14, 1986 submitted by Dra. Nona Jean Alviso-Ramos and the supporting report dated April 20, 1987 submitted by Dr. Eduardo T. Maaba, both of the National Mental Hospital and hereby finds Nelly S. Nave an incompetent within the purview of Rule 92 of the Revised Rules of Court, a person who, by reason of age, disease, weak mind and deteriorating mental processes cannot without outside aid take care of herself and manage her properties, becoming thereby an easy prey for deceit and exploitation, said condition having become severe since the year 1980. She and her estate are hereby placed under guardianship. Atty. Leonardo C. Paner is hereby appointed as her regular guardian without need of bond, until further orders from this Court. Upon his taking his oath of office as regular guardian, Atty. Paner is ordered to participate actively in the pending cases of Nelly S. Nave with the end in view of protecting her interests from the prejudicial sales of her real properties, from the overpayment in the foreclosure made by Ms. Gilda Mendoza-Ong, and in recovering her lost jewelries and monies and other personal effects.
>
> SO ORDERED."

Both [Fernando] and [the Pabale siblings] did not appeal therefrom, while the appeal interposed by spouses Juliano and Evangelina Brosas was dismissed by this Court for failure to pay the required docketing fees within the reglementary period.

In the meantime, [Nave] died on December 9, 1992. On September 20, 1993, Atty. Vedasto Gesmundo, [Nave's] sole heir, she being an orphan and childless, executed an Affidavit of Self-Adjudication pertaining to his inherited properties from [Nave].

On account of such development, a motion for the dismissal of the instant case and for the issuance of a writ of execution of the Decision dated June 22, 1988 in SP No. 146-86-C (petition for guardianship) was filed by Atty. Vedasto Gesmundo on February 14, 1996 with the court *a quo*. [The Pabale siblings] filed their Opposition to the motion on grounds that (1) they were not made a party to the guardianship proceedings and thus cannot be bound by the Decision therein; and (2) that the validity of the Deed of Absolute Sale executed by the late [Nave] in their favor was never raised in the guardianship case.

The case was then set for an annual conference. On January 9, 1997, Atty. Vedasto Gesmundo filed a motion seeking the court's permission for his substitution for the late defendant Nelly in the instant case. Not long after the parties submitted their respective pre-trial briefs, a motion for substitution was filed by Lolita R. Alamayre (*sic*) [Alamayri] alleging that since the subject property was sold to her by Atty. Vedasto Gesmundo as evidenced by a Deed of Absolute Sale, she should be substituted in his stead. In refutation, Atty. Vedasto Gesmundo filed a Manifestation stating that what he executed is a Deed of Donation and not a Deed of Absolute Sale in favor of [Alamayri] and that the same was already revoked by him on March 5, 1997. Thus, the motion for substitution should be denied.

On July 29, 1997, the court *a quo* issued an Order declaring that it cannot make a ruling as to the conflicting claims of [Alamayri] and Atty. Vedasto Gesmundo. After the case was heard on the merits, the trial court rendered its Decision on December 2, 1997, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered as follows:

1. Declaring the handwritten Contract to Sell dated January 3, 1984 executed by Nelly S. Nave and Sesinando Fernando null and void and of no force and effect;

2. Declaring the Deed of Absolute Sale dated February 20, 1984 executed by Nelly S. Nave in favor of the [Pabale siblings] similarly null and void and of no force and effect;

3. Recognizing Ms. Lolita P. [Alamayri] as the owner of the property covered by TCT No. 111249 of the land records of Calamba, Laguna;

4. Ordering the [Pabale siblings] to execute a transfer of title over the property in favor of Ms. Lolita P. [Alamayri] in the concept of reconveyance because the sale in their favor has been declared null and void;

5. Ordering the [Pabale siblings] to surrender possession over the property to Ms. [Alamayri] and to account for its income from the time they took over possession to the time the same is turned over to Ms. Lolita [Alamayri], and thereafter pay the said income to the latter;

6. Ordering [Fernando] and the [Pabale siblings], jointly and severally, to pay Ms. [Alamayri]:

a. attorney's fees in the sum of ₱30,000.00; and

b. the costs.[6]

S.M. Fernando Realty Corporation, still represented by Fernando, filed an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 58133, solely to question the portion of the 2 December 1997 Decision of the RTC ordering him and the Pabale siblings to jointly and severally pay Alamayri the amount of ₱30,000.00 as attorney's fees.

The Pabale siblings intervened as appellants in CA-G.R. CV No. 58133 averring that the RTC erred in declaring in its 2 December 1997 Decision that the Deed of Absolute Sale dated 20 February 1984 executed by Nave in their favor was null and void on the ground that Nave was found incompetent since the year 1980.

The Court of Appeals, in its Decision, dated 10 April 2001, granted the appeals of S.M. Fernando Realty Corporation and the Pabale siblings. It ruled thus:

WHEREFORE, premises considered, the appeal filed by S. M. Fernando Realty Corporation, represented by its President, Sesinando M. Fernando as well as the appeal interposed by Rommel, Elmer, Erwin, Roller and Amanda, all surnamed Pabale, are hereby GRANTED. The Decision of the Regional Trial Court of Pasay City,

[6] *Id*. at 39-43.

Branch 119 in Civil Case No. 675-84-C is hereby REVERSED and SET ASIDE and a new one rendered upholding the VALIDITY of the Deed of Absolute Sale dated February 20, 1984.

No pronouncements as to costs.[7]

Alamayri sought reconsideration of the afore-quoted Decision of the appellate court, invoking the Decision,[8] dated 22 June 1988, of the RTC in the guardianship proceedings, docketed as SP. PROC. No. 146-86-C, which found Nave incompetent, her condition becoming severe since 1980; and thus appointed Atty. Leonardo C. Paner as her guardian. Said Decision already became final and executory when no one appealed therefrom. Alamayri argued that since Nave was already judicially determined to be an incompetent since 1980, then all contracts she subsequently entered into should be declared null and void, including the Deed of Sale, dated 20 February 1984, which she executed over the subject property in favor of the Pabale siblings.

According to Alamayri, the Pabale siblings should be bound by the findings of the RTC in its 22 June 1988 Decision in SP. PROC. No. 146-86-C, having participated in the said guardianship proceedings through their father Jose Pabale. She pointed out that the RTC explicitly named in its orders Jose Pabale as among those present during the hearings held on 30 October 1987 and 19 November 1987 in SP. PROC. No. 146-86-C. Alamayri thus filed on 21 November 2001 a Motion to Schedule Hearing to Mark Exhibits in Evidence so she could mark and submit as evidence certain documents to establish that the Pabale siblings are indeed the children of Jose Pabale.

Atty. Gesmundo, Nave's surviving spouse, likewise filed his own Motion for Reconsideration of the 10 April 2001 Decision of the Court of Appeals in CA-G.R. CV No. 58133, asserting Nave's incompetence since 1980 as found by the RTC in SP. PROC. No. 146-86-C, and his right to the subject property as

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[7] *Id*. at 46.

[8] Penned by Judge Salvador P. De Guzman, Jr.; *id*. at 52-59.

owner upon Nave's death in accordance with the laws of succession. It must be remembered that Atty. Gesmundo disputed before the RTC the supposed transfer of his rights to the subject property to Alamayri, but the court *a quo* refrained from ruling thereon.

In a Resolution, dated 19 December 2001, the Court of Appeals denied for lack of merit the Motions for Reconsideration of Alamayri and Atty. Gesmundo.

Hence, Alamayri comes before this Court *via* the present Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, with the following assignment of errors:

I

THE COURT OF APPEALS ERRED IN HOLDING THAT THE FINDING THAT NELLY S. NAVE WAS INCOMPETENT IN SPECIAL PROCEEDING NO. 146-86-C ON JUNE 22, 1988 CANNOT RETROACT TO AFFECT THE VALIDITY OF THE DEED OF SALE SHE EXECUTED ON FEBRUARY 20, 1984 IN FAVOR OF RESPONDENTS PABALES.

II

THE COURT OF APPEALS ERRED IN HOLDING THAT THE DECISION IN SPECIAL PROCEEDING NO. 146-86-C DATED JUNE 22, 1988 IS NOT BINDING ON RESPONDENTS PABALES.

III

THE COURT OF APPEALS ERRED IN DENYING PETITIONER'S MOTION TO SCHEDULE HEARING TO MARK DOCUMENTARY EXHIBITS IN EVIDENCE TO ESTABLISH THE IDENTITY OF JOSE PABALE AS THE FATHER OF RESPONDENTS PABALES.[9]

It is Alamayri's position that given the final and executory Decision, dated 22 June 1988, of the RTC in SP. PROC.

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[9] *Id.* at 18.

No. 146-86-C finding Nave incompetent since 1980, then the same fact may no longer be re-litigated in Civil Case No. 675-84-C, based on the doctrine of *res judicata*, more particularly, the rule on conclusiveness of judgment.

This Court is not persuaded.

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.[10]

It is espoused in the Rules of Court, under paragraphs (b) and (c) of Section 47, Rule 39, which read:

SEC. 47. Effect of judgments or final orders. – The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

x x x x x x x x x

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

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[10] *Oropeza Marketing Corporation v. Allied Banking Corporation*, 441 Phil. 551, 563 (2002).

The doctrine of *res judicata* thus lays down two main rules which may be stated as follows: (1) The judgment or decree of a court of competent jurisdiction on the merits concludes the parties and their privies to the litigation and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) Any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claims or demands, purposes, or subject matters of the two suits are the same. These two main rules mark the distinction between the principles governing the two typical cases in which a judgment may operate as evidence.[11] In speaking of these cases, the first general rule above stated, and which corresponds to the afore-quoted paragraph (b) of Section 47, Rule 39 of the Rules of Court, is referred to as "bar by former judgment"; while the second general rule, which is embodied in paragraph (c) of the same section and rule, is known as "conclusiveness of judgment."

The Resolution of this Court in *Calalang v. Register of Deeds* provides the following enlightening discourse on conclusiveness of judgment:

> The doctrine *res judicata* actually embraces two different concepts: (1) bar by former judgment and (b) conclusiveness of judgment.
>
> The second concept — conclusiveness of judgment — states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of

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[11] *Vda. de Cruzo v. Carriaga, Jr.,* G.R. Nos. 75109-10, 28 June 1989, 174 SCRA 330, 338.

action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit (*Nabus vs. Court of Appeals*, 193 SCRA 732 [1991]). Identity of cause of action is not required but merely identity of issues.

Justice Feliciano, in *Smith Bell & Company (Phils.), Inc. vs. Court of Appeals* (197 SCRA 201, 210 [1991]), reiterated *Lopez vs. Reyes* (76 SCRA 179 [1977]) in regard to the distinction between bar by former judgment which bars the prosecution of a second action upon the same claim, demand, or cause of action, and conclusiveness of judgment which bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.

> The general rule precluding the relitigation of material facts or questions which were in issue and adjudicated in former action are commonly applied to all matters essentially connected with the subject matter of the litigation. Thus, it extends to questions necessarily implied in the final judgment, although no specific finding may have been made in reference thereto and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself.[12]

Another case, *Oropeza Marketing Corporation v. Allied Banking Corporation*, further differentiated between the two rules of *res judicata*, as follows:

There is **"bar by prior judgment"** when, as between the first case where the judgment was rendered and the second case that is

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[12] G.R. No. 76265, 11 March 1994, 231 SCRA 88, 99-100.

sought to be barred, **there is identity of parties, subject matter, and causes of action**. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal.

But where **there is identity of parties** in the first and second cases, **but no identity of causes of action**, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as **"conclusiveness of judgment."** Stated differently, any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.[13]

In sum, conclusiveness of judgment bars the re-litigation in a second case of a fact or question already settled in a previous case. The second case, however, may still proceed provided that it will no longer touch on the same fact or question adjudged in the first case. Conclusiveness of judgment requires only the identity of issues and parties, but not of causes of action.

Contrary to Alamayri's assertion, conclusiveness of judgment has no application to the instant Petition since there is no identity of parties and issues between SP. PROC. No. 146-86-C and Civil Case No. 675-84-C.

No identity of parties

SP. PROC. No. 146-86-C was a petition filed with the RTC by Atty. Gesmundo for the appointment of a guardian over the person and estate of his late wife Nave alleging her incompetence.

A guardian may be appointed by the RTC over the person and estate of a minor or an incompetent, the latter being described

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[13] *Supra* note 10 at 564.

as a person "suffering the penalty of civil interdiction or who are hospitalized lepers, prodigals, deaf and dumb who are unable to read and write, those who are of unsound mind, even though they have lucid intervals, and persons not being of unsound mind, but by reason of age, disease, weak mind, and other similar causes, cannot, without outside aid, take care of themselves and manage their property, becoming thereby an easy prey for deceit and exploitation."[14]

Rule 93 of the Rules of Court governs the proceedings for the appointment of a guardian, to wit:

Rule 93
APPOINTMENT OF GUARDIANS

SECTION 1. *Who may petition for appointment of guardian for resident.* – Any relative, friend, or other person on behalf of a resident minor or incompetent who has no parent or lawful guardian, or the minor himself if fourteen years of age or over, may petition the court having jurisdiction for the appointment of a general guardian for the person or estate, or both, of such minor or incompetent. An officer of the Federal Administration of the United States in the Philippines may also file a petition in favor of a ward thereof, and the Director of Health, in favor of an insane person who should be hospitalized, or in favor of an isolated leper.

SEC. 2. *Contents of petition.* – A petition for the appointment of a general guardian must show, so far as known to the petitioner:

(a) The jurisdictional facts;

(b) The minority or incompetency rendering the appointment necessary or convenient;

(c) The names, ages, and residences of the relatives of the minor or incompetent, and of the persons having him in their care;

(d) The probable value and character of his estate;

(e) The name of the person for whom letters of guardianship are prayed.

The petition shall be verified; but no defect in the petition or verification shall render void the issuance of letters of guardianship.

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[14] Rule 92, Section 1 of the Rules of Court.

SEC. 3. *Court to set time for hearing. Notice thereof.* – When a petition for the appointment of a general guardian is filed, the court shall fix a time and place for hearing the same, and shall cause reasonable notice thereof to be given to the persons mentioned in the petition residing in the province, including the minor if above 14 years of age or the incompetent himself, and may direct other general or special notice thereof to be given.

SEC. 4. *Opposition to petition*. – Any interested person may, by filing a written opposition, contest the petition on the ground of majority of the alleged minor, competency of the alleged incompetent, or the unsuitability of the person for whom letters are prayed, and may pray that the petition be dismissed, or that letters of guardianship issue to himself, or to any suitable person named in the opposition.

SEC. 5. *Hearing and order for letters to issue.* – At the hearing of the petition the alleged incompetent must be present if able to attend, and it must be shown that the required notice has been given. Thereupon the court shall hear the evidence of the parties in support of their respective allegations, and, if the person in question is a minor or incompetent it shall appoint a suitable guardian of his person or estate, or both, with the powers and duties hereinafter specified.

x x x x x x x x x

SEC. 8. *Service of judgment*. – Final orders or judgments under this rule shall be served upon the civil registrar of the municipality or city where the minor or incompetent person resides or where his property or part thereof is situated.

A petition for appointment of a guardian is a special proceeding, without the usual parties, *i.e.*, petitioner versus respondent, in an ordinary civil case. Accordingly, SP. PROC. No. 146-86-C bears the title: *In re: Guardianship of Nelly S. Nave for Incompetency, Verdasto Gesmundo y Banayo, petitioner*, with no named respondent/s.

Sections 2 and 3 of Rule 93 of the Rules of Court, though, require that the petition contain the names, ages, and residences of relatives of the supposed minor or incompetent and those having him in their care, so that those residing within the same province as the minor or incompetent can be notified of the time and place of the hearing on the petition.

The objectives of an RTC hearing a petition for appointment of a guardian under Rule 93 of the Rules of Court is to determine, *first*, whether a person is indeed a minor or an incompetent who has no capacity to care for himself and/or his properties; and, *second*, who is most qualified to be appointed as his guardian. The rules reasonably assume that the people who best could help the trial court settle such issues would be those who are closest to and most familiar with the supposed minor or incompetent, namely, his relatives living within the same province and/or the persons caring for him.

It is significant to note that the rules do not necessitate that creditors of the minor or incompetent be likewise identified and notified. The reason is simple: because their presence is not essential to the proceedings for appointment of a guardian. It is almost a given, and understandably so, that they will only insist that the supposed minor or incompetent is actually capacitated to enter into contracts, so as to preserve the validity of said contracts and keep the supposed minor or incompetent obligated to comply therewith.

Hence, it cannot be presumed that the Pabale siblings were given notice and actually took part in SP. PROC. No. 146-86-C. They are not Nave's relatives, nor are they the ones caring for her. Although the rules allow the RTC to direct the giving of other general or special notices of the hearings on the petition for appointment of a guardian, it was not established that the RTC actually did so in SP. PROC. No. 146-86-C.

Alamayri's allegation that the Pabale siblings participated in SP. PROC. No. 146-86-C rests on two Orders, dated 30 October 1987[15] and 19 November 1987,[16] issued by the RTC in SP. PROC. No. 146-86-C, expressly mentioning the presence of a Jose Pabale, who was supposedly the father of the Pabale siblings, during the hearings held on the same dates. However, the said Orders by themselves cannot confirm that Jose Pabale

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[15] *Rollo*, p. 60.

[16] *Id.* at 61.

was indeed the father of the Pabale siblings and that he was authorized by his children to appear in the said hearings on their behalf.

Alamayri decries that she was not allowed by the Court of Appeals to submit and mark additional evidence to prove that Jose Pabale was the father of the Pabale siblings.

It is true that the Court of Appeals has the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. In general, however, the Court of Appeals conducts hearings and receives evidence **prior** to the submission of the case for judgment.[17] It must be pointed out that, in this case, Alamayri filed her Motion to Schedule Hearing to Mark Exhibits in Evidence on **21 November 2001**. She thus sought to submit additional

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[17] Rule 51, Section 1 of the Rules of Court reads:

SECTION 1. *When case deemed submitted for judgment*. – A case shall be deemed submitted for judgment:

A. *In ordinary appeals*. –

1) Where no hearing on the merits of the main case is held, upon the filing of the last pleading, brief, or memorandum required by the Rules or by the court itself, or the expiration of the period for its filing.

2) Where such a hearing is held, upon its termination or upon the filing of the last pleading or memorandum as may be required or permitted to be filed by the court, or the expiration of the period for its filing.

B. In original actions and petitions for review. –

1) Where no comment is filed, upon the expiration of the period to comment.

2) Where no hearing is held, upon the filing of the last pleading required or permitted to be filed by the court, or the expiration of the period for its filing.

3) Where a hearing on the merits of the main case is held, upon its termination or upon the filing of the last pleading or memorandum as may be required or permitted to be filed by the court, or the expiration of the period for its filing.

evidence as to the identity of Jose Pabale, not only after CA-G.R. CV No. 58133 had been submitted for judgment, but **after** the Court of Appeals had already promulgated its Decision in said case on **10 April 2001**.

The parties must diligently and conscientiously present all arguments and available evidences in support of their respective positions to the court before the case is deemed submitted for judgment. Only under exceptional circumstances may the court receive new evidence after having rendered judgment;[18] otherwise, its judgment may never attain finality since the parties may continually refute the findings therein with further evidence. Alamayri failed to provide any explanation why she did not present her evidence earlier. Merely invoking that the ends of justice would have been best served if she was allowed to present additional evidence is not sufficient to justify deviation from the general rules of procedure. Obedience to the requirements of procedural rules is needed if the parties are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.[19] Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in

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[18] *Newly Discovered* Evidence. – In order that a new trial may be granted on the ground of newly discovered evidence, but the following requisites must be present: (a) that the evidence was discovered after the trial; (b) that such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence, and (c) that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, it will probably change the judgment. Accordingly, where the evidence was known to the movant and was obtainable at the trial, or if not known, it is not satisfactorily shown why it was not available at the trial, or that due diligence was not employed in securing it, the motion for new trial should be denied. So, also, where the evidence consists merely in improbable or unreasonable testimonies of witnesses, or is merely cumulative or corroborative, and will not thus alter the results, the motion will be denied. Forgotten evidence is not a ground for new trial. [*People v. Evaristo*, 121 Phil. 186, 200 (1965)].

[19] *Clavecilla v. Quitain,* G.R. No. 147989, 20 February 2006, 482 SCRA 623, 631.

some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only to proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.[20]

Moreover, contrary to Alamayri's assertion, the Court of Appeals did not deny her Motion to Schedule Hearing to Mark Exhibits in Evidence merely for being late. In its Resolution, dated 19 December 2001, the Court of Appeals also denied the said motion on the following grounds:

> While it is now alleged, for the first time, that the [herein respondents Pabale siblings] participated in the guardianship proceedings considering that the Jose Pabale mentioned therein is their late father, [herein petitioner Alamayri] submitting herein documentary evidence to prove their filiation, even though admitted in evidence at this late stage, cannot bind [the Pabale siblings] as verily, notice to their father is not notice to them there being no allegation to the effect that he represented them before the Calamba Court.[21]

As the appellate court reasoned, even if the evidence Alamayri wanted to submit do prove that the Jose Pabale who attended the RTC hearings on 30 October 1987 and 19 November 1987 in SP. PROC. No. 146-86-C was the father of the Pabale siblings, they would still not confirm his authority to represent his children in the said proceedings. Worth stressing is the fact that Jose Pabale was not at all a party to the Deed of Sale dated 20 February 1984 over the subject property, which was executed by Nave in favor of the Pabale siblings. Without proper authority, Jose Pabale's presence at the hearings in SP. PROC.

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[20] *Garbo v. Court of Appeals*, 327 Phil. 780, 784 (1996).

[21] *Rollo,* p. 50.

No. 146-86-C should not bind his children to the outcome of said proceedings or affect their right to the subject property.

Since it was not established that the Pabale siblings participated in SP. PROC. No. 146-86-C, then any finding therein should not bind them in Civil Case No. 675-84-C.

No identity of issues

Neither is there identity of issues between SP. PROC. No. 146-86-C and Civil Case No. 675-84-C that may bar the latter, by conclusiveness of judgment, from ruling on Nave's competency in 1984, when she executed the Deed of Sale over the subject property in favor the Pabale siblings.

In SP. PROC. No. 146-86-C, the main issue was whether Nave was incompetent at the time of filing of the petition with the RTC in 1986, thus, requiring the appointment of a guardian over her person and estate.

In the cross-claim of Nave and Atty. Gesmundo against the Pabale siblings in Civil Case No. 675-84-C, the issue was whether Nave was an incompetent when she executed a Deed of Sale of the subject property in favor of the Pabale siblings on 20 February 1984, hence, rendering the said sale void.

While both cases involve a determination of Nave's incompetency, it must be established at two separate times, one in 1984 and the other in 1986. A finding that she was incompetent in 1986 does not automatically mean that she was so in 1984. In *Carillo v. Jaojoco*,[22] the Court ruled that despite the fact that the seller was declared mentally incapacitated by the trial court only nine days after the execution of the contract of sale, it does not prove that she was so when she executed the contract. Hence, the significance of the two-year gap herein cannot be gainsaid since Nave's mental condition in 1986 may vastly differ from that of 1984 given the intervening period.

Capacity to act is supposed to attach to a person who has not previously been declared incapable, and such capacity is

[22] 46 Phil. 957, 960 (1924).

presumed to continue so long as the contrary be not proved; that is, that at the moment of his acting he was incapable, crazy, insane, or out of his mind.[23] The burden of proving incapacity to enter into contractual relations rests upon the person who alleges it; if no sufficient proof to this effect is presented, capacity will be presumed.[24]

Nave was examined and diagnosed by doctors to be mentally incapacitated only in 1986, when the RTC started hearing SP. PROC. No. 146-86-C; and she was not judicially declared an incompetent until 22 June 1988 when a Decision in said case was rendered by the RTC, resulting in the appointment of Atty. Leonardo C. Paner as her guardian. Thus, prior to 1986, Nave is still presumed to be capacitated and competent to enter into contracts such as the Deed of Sale over the subject property, which she executed in favor of the Pabale siblings on 20 February 1984. The burden of proving otherwise falls upon Alamayri, which she dismally failed to do, having relied entirely on the 22 June 1988 Decision of the RTC in SP. PROC. No. 146-86-C.

Alamayri capitalizes on the declaration of the RTC in its Decision dated 22 June 1988 in SP. PROC. No. 146-86-C on Nave's condition "having become severe since the year 1980."[25] **<u>But there is no basis for such a declaration.</u>** The medical reports extensively quoted in said Decision, prepared by: (1) Dr. Nona Jean Alviso-Ramos, dated 14 April 1986,[26] and (2) by Dr. Eduardo T. Maaba, dated 20 April 1987,[27] both stated that upon their examination, Nave was suffering from "organic brain syndrome secondary to cerebral arteriosclerosis with psychotic episodes," which impaired her judgment. There was nothing in the said medical reports, however, which may shed

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[23] *Standard Oil Company of New York v. Arenas*, 19 Phil. 363, 368 (1911).

[24] *Catalan v. Basa*, G.R. No. 159567, 31 July 2007, 528 SCRA 645, 654.

[25] *Rollo*, p. 58.

[26] *Id*. at 53-54.

[27] *Id*. at 54-55.

light on when Nave began to suffer from said mental condition. All they said was that it existed at the time Nave was examined in 1986, and again in 1987. Even the RTC judge was only able to observe Nave, which made him realize that her mind was very impressionable and capable of being manipulated, on the occasions when Nave visited the court from 1987 to 1988. Hence, for this Court, the RTC Decision dated 22 June 1988 in SP. PROC. No. 146-86-C may be conclusive as to Nave's incompetency from 1986 onwards, but not as to her incompetency in 1984. And other than invoking the 22 June 1988 Decision of the RTC in SP. PROC. No. 146-86-C, Alamayri did not bother to establish with her own evidence that Nave was mentally incapacitated when she executed the 20 February 1984 Deed of Sale over the subject property in favor of the Pabale siblings, so as to render the said deed void.

All told, there being no identity of parties and issues between SP. PROC. No. 146-86-C and Civil Case No. 675-84-C, the 22 June 1988 Decision in the former on Nave's incompetency by the year 1986 should not bar, by conclusiveness of judgment, a finding in the latter case that Nave still had capacity and was competent when she executed on 20 February 1984 the Deed of Sale over the subject property in favor of the Pabale siblings. Therefore, the Court of Appeals did not commit any error when it upheld the validity of the 20 February 1984 Deed of Sale.

WHEREFORE, premises considered, the instant Petition for Review is hereby *DENIED*. The Decision, dated 10 April 2001, of the Court of Appeals in CA-G.R. CV No. 58133, is hereby *AFFIRMED in toto***.** Costs against the petitioner Lolita R. Alamayri.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Nachura,* and *Reyes, JJ.,* concur.

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* In place of Associate Justice Ma. Alicia Austria-Martinez, who was the presiding judge of the Regional Trial Court of Calamba, Laguna, Branch 36, who heard the early stages of Civil Case No. 675-84-C.

EN BANC

[G.R. No. 152457. April 30, 2008]

RODOLFO R. MAHINAY, *petitioner, vs.* **COURT OF APPEALS, CIVIL SERVICE COMMISSION & PHILIPPINE ECONOMIC ZONE AUTHORITY,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL FROM QUASI JUDICIAL AGENCY; PETITION FOR REVIEW FILED WITH THE COURT OF APPEALS IS THE PROPER MODE OF APPEAL.—** As provided by Rule 43 of the Rules of Court, the proper mode of appeal from the decision of a quasi-judicial agency, like the CSC, is a petition for review filed with the CA. The special civil action of *certiorari* under Rule 65 of the Rules of Court may be resorted to only when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its/his 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. In this case, petitioner clearly had the remedy of appeal provided by Rule 43 of the Rules of Court.

2. **ID.; ID.; ID.; ID.; EXCEPTIONS.—** The Court is aware of instances when the special civil action of *certiorari* may be resorted to despite the availability of an appeal, such as when public welfare and the advancement of public policy dictate; when the broader interests of justice so require; when the writs issued are null; and when the questioned order amounts to an oppressive exercise of judicial authority. However, the circumstances in this case do not warrant the application of the exception to the general rule provided by Rule 43 of the Rules of Court.

3. **ID.; ID.; ID.; ID.; PETITION FOR *CERTIORARI* IN SOME INSTANCES TREATED AS PETITION FOR REVIEW AS LONG AS IT IS FILED WITHIN THE REGLEMENTARY PERIOD.—** There have been instances when a petition for

certiorari would be treated as a petition for review if filed within the reglementary period. In this case, the petition was filed beyond the reglementary period for filing an appeal under Rule 43, which period is within 15 days from notice of the judgment. Petitioner received a copy of the CSC Resolution dated July 21, 2000 on August 11, 2000, so his last day to file an appeal would be August 26, 2000. However, petitioner filed his Motion for Extension of Time to File a Petition for *Certiorari* on September 12, 2000, while the petition was actually filed on November 9, 2000. Thus, the Court of Appeals correctly held that the appeal was filed out of time.

APPEARANCES OF COUNSEL

Nestor C. Tambio for petitioner.
The Solicitor General for respondents.

D E C I S I O N

AZCUNA, *J*.:

This is a petition for *certiorari*[1] alleging that the Court of Appeals (CA) acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolutions dated October 30, 2000, April 6, 2001 and March 6, 2002, dismissing petitioner's petition for *certiorari*, which in effect sustained the Decision of the Civil Service Commission (CSC) dismissing petitioner from the service.

The facts are as follows:

On June 10, 1998, the Philippine Economic Zone Authority (PEZA), through Officer-in-charge Jesus S. Sirios, charged its employee, petitioner Rodolfo R. Mahinay, for receiving unofficial fees from FRITZ Logistics Phils. Inc. by reason of his office and in consideration of the latter's rendering escort service to FRITZ' trucks from Baguio City to Manila and vice-versa. The formal charge reads:

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[1] Under Rule 65 of the Rules of Court.

That from 1996 to receipt by the BCEZ Police Station Command of P/Major JOSE C. PANOPIO's February 19, 1998 directive prohibiting all BCEZ Policemen from accepting unofficial fees from FRITZ Logistics Phils. Inc., respondent P/Capt. RODOLDO R. MAHINAY of the BCEZ Station Command received unofficial fees from FRITZ Logistics Phils. Inc. by reason of his office and in consideration of the latter's rendering escort service to FRITZ' trucks . . . from Baguio City to Manila and vice-versa, and whose presence during such escort service is to help lessen delay in the scheduled trip of FRITZ' cargo by police checkpoints and unscrupulous traffic enforcers encountered along the way, particularly during implementation of the truck ban policy in Metro Manila.[2]

The said conduct of petitioner was alleged to be in violation of Sec. 46 (b) (9), Chapter 6, Subtitle A, Title I, Book V of the Administrative Code of 1987 in relation to Sec. 22 (i), Rule XIV of the Omnibus Civil Service Rules and Regulations.[3]

In his Answer, petitioner admitted receiving the fees from Fritz Logistics Phils., Inc., thus:

x x x x x x x x x

3. That respondent hereby states that the very purpose on why he, or any other special PEZA Police Officer for that matter, is escorting freight trucks from Baguio City to their point of destination is to ensure that the goods will be intact and safely and completely delivered to their destinations; that it would therefore be inaccurate to state that their rendering escort duty is purposely to "lessen delay in the scheduled trip xxx by police checkpoints and unscrupulous traffic enforcers encountered along the way, particularly during the

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[2] *Rollo*, p. 34.

[3] The Administrative Code of 1987, Sec. 46. *Discipline; General Provisions*.—x x x

(b) The following shall be grounds for disciplinary action:

x x x x x x x x x

(9) Receiving for personal use of a fee, gift or other valuable thing in the course of official duties or in connection therewith when such fee, gift, or other valuable thing is given by any person in the hope or expectation of receiving favor or better treatment than that accorded other persons, or committing acts punishable under the anti-graft laws.

implementation of the truck ban policy in Metro Manila," that the latter act would just be incidental and relative to their main task above-mentioned;

4. That anent the charge, respondent hereby admits that before the directive by SPL. P/MAJOR JOSE C. PANOPIO dated February 19, 1998, ALL police officers stationed at the Baguio City Economic Zone (BCEZ) were receiving and amount of ₱300 VOLUNTARILY GIVEN by the FRITZ LOGISTICS PHILS., INC. (FRITZ, for brevity) as and by way of traveling and meal allowance of an escort in proceeding back to Baguio City after coming from NAIA; that hereto attached and made an integral part hereof as Annex "I" is a copy of a confirmation letter by JERRY H. STEHMEIER, Managing Director of FRITZ;

5. That herein respondent declares that his, as well as the other police officers' receipt of the aforesaid amount of PhP 300.00 was done in all good faith with no intention whatsoever of enriching themselves therefrom;

6. That, concededly, there is remitted by FRITZ to the BCEZ an amount of ₱500 for the escorts as escort fee resulting into receipt by the escort in the amount of ₱400 NET; that is, however, indisputable that the same will be received by the particular police officer who went on escort duty after he shall have arrived from Manila and upon presentation of the Certificate of Appearance secured from the Security Services Department of the Philippine Economic Zone Authority x x x;

7. That, at first, there was no such thing as additional allowance from FRITZ but after the transportation fare from Manila/Pasay City to Baguio City increased substantially by half, as well as the costs of other incidental expenses ballooned, FRITZ voluntarily offered the additional allowance after understanding very well that the ₱400 escort fee is not reasonably sufficient; simple mathematics applied;

8. That, without being repetitive, it must be straightened for the record, that the giving of the ₱300 by FRITZ was on its own volition without any demand from the escorts;

9. That after receipt of the DIRECTIVE from SPL. P/MAJOR PANOPIO, herein respondent no longer received the ₱300.00 tendered by FRITZ through its drivers whenever he does escort duty, that in fact, herein respondent directed all his men to stop receiving the ₱300 allowance from FRITZ in compliance with the directive of their superior, SPL. P/MAJOR PANOPIO;

10. That, like himself, respondent could very well say that all of the other Police Officers in the BCEZ Force never received the additional allowance from FRITZ thereafter, that almost every after an escort duty by a Police Officer, he silently complains that the ₱400 escort duty received from the Financial Services Division as remitted officially by FRITZ to BCEZ was not sufficient in covering all the incidental expenses he incurred in escorting;

11. That it would not be amiss to state even that considering that these FRITZ closed trucks being escorted leave Baguio City at 2:00 o'clock in the morning, more or less; that considering the time, the escorts could not make cash advances for their expenses and really have to shell out their personal money in the meantime to be reimbursed only after the duty;

12. That on another point, herein respondent feels that this charge against him was only maliciously hurled by some officers who take in slight the prudent and conscientious acts of the respondent in protecting foremost the interest of PEZA;

13. That more particularly, BCEZ Officer-in-Charge Digna D. Torres maliciously imputed these things to malign my reputation and personality after having learned that herein respondent filed several criminal charges against her before the Office of the City Prosecutor, Baguio City solely for the purpose of redressing a wrong committed against his person and honor by Mrs. Torres.[4]

At the hearing of September 30, 1998, petitioner appeared with two counsels who manifested that they were reiterating the defenses stated in petitioner's Answer. The Hearing Committee required petitioner to put the manifestation in writing because it was, in effect, a waiver of his right to be present and to be heard. Petitioner and his counsels left after submitting the written waiver.

Thereafter, the Special Prosecutor presented his lone witness, Mr. Jerry H. Stehmeier, managing director of FRITZ, who affirmed the contents of his Affidavit[5] dated September 9, 1998. He testified

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[4] Annex "F", *Rollo*, pp. 36-39.

[5] Affidavit of Jerry H. Stehmeier:

I, JERRY H. STEHMEIER, of legal age, Managing Director of Fritz Logistics Phils., Inc., x x x after having duly sworn to in accordance with law hereby depose and say that:

that the "extra amount" of ₱300 was in fact actually received by petitioner, who exacted the same from FRITZ, for escorting their "trucks all the way to the airport or all the way to our FRITZ office in Manila." The testimony was a recantation of his earlier statement contained in a letter dated February 10, 1998 that the extra amount was voluntarily given by FRITZ.

On January 8, 1999, the PEZA rendered a decision finding petitioner guilty of the offense charged. The dispositive portion of the Decision reads:

> VIEWED IN THE LIGHT OF THE FOREGOING, the Authority finds the Respondent guilty of the offense as charged and is hereby meted out the penalty of forced resignation without prejudice to the grant of monetary and other fringe benefits, as allowed by existing law and the Civil Service Rules and Regulations.[6]

The PEZA held that all the elements of the offense charged were present in the case. The testimony of Jerry H. Stehmeier proved that the amount of ₱300 per escort was received by petitioner, and that the receipt of the money was done in the course of official duties. Petitioner's receipt of ₱300 per escort

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1. I am recanting my statements contained in my letter dated 10 February 1998 [a]ddressed to Capt. Rodolfo Mahinay to the effect that the extra amount of Three Hundred Pesos (₱300.00) representing meals and travel allowance being paid to PEZA Police Officers was given purely on a voluntary basis. The fact is the extra amount given to them was extracted from our company.

2. This arrangement where Baguio PEZA Police Officers under Capt. Mahinay demanded from our Company the extra fee for escorting our service vehicles on our scheduled second trip from Baguio to Manila has been going on since August 1997.

3. Our regular PEZA Police Escorts during our second trip from Baguio to Manila were Capt. Mahinay, Police Officers Cesar De los Reyes and Renato Irorita.

4. The letter dated February 10, 1998 was done under duress and was executed merely to accommodate the request of Capt. Mahinay to absolve him of his wrongdoing.

5. I am executing this affidavit to attest to the truth of the foregoing facts and to recant my statements contained in my February 10, 1998 letter.

[6] *Rollo*, p. 45.

from FRITZ was over and above what was officially paid by PEZA to petitioner for escort services rendered.

Petitioner's motion for reconsideration was denied by the PEZA in a Resolution dated March 11, 1999.

Petitioner appealed to the CSC. In Resolution No. 000878 dated March 30, 2000, the CSC upheld the PEZA's decision, but modified the penalty of forced resignation to dismissal from the service in accordance with Sec. 52 (A.9), Rule IV, Uniform Rules on Administrative Cases in the Civil Service and Sec. 22 (i),[7] Rule XIV of the Omnibus Civil Service Rules and Regulations. The dispositive portion of the CSC Decision reads:

> WHEREFORE, the appeal of Rodolfo Mahinay is hereby dismissed. Accordingly, the decision dated January 8, 1999 of PEZA finding Mahinay guilty of violating Sec. 46 (b) No. 9, Book V of E.O. 292 is affirmed. However the penalty of Forced Resignation is modified to Dismissal pursuant to Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service.[8]

Petitioner's motion for reconsideration was denied by the CSC in Resolution No. 001698 dated July 21, 2000. Petitioner received a copy of the resolution on August 11, 2000.

On September 12, 2000, petitioner filed with the CA a Motion for Extension of Time to File a Petition for *Certiorari*, requesting for a period of up to November 10, 2000 within which to file his petition.

On October 30, 2000, the CA issued a Resolution denying the said motion for being the wrong mode of appeal and for being filed out of time. The CA stated that since the assailed Resolution was rendered by a quasi-judicial body, the proper

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[7] Receiving for personal use of a fee, gift or other valuable thing in the course of official duties or in connection therewith when such fee, gift or other valuable thing is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded to other persons, or committing acts punishable under the anti-graft laws.

1st Offense – Dismissal.

[8] *Rollo*, p. 61.

mode of appeal is a petition for review under Rule 43 of the Rules of Court, which petition should be filed within 15 days from notice of the resolution.

On November 9, 2000, petitioner filed the petition for *certiorari* under Rule 65 of the Rules of Court, seeking the nullification of the CSC Resolution dismissing him from the service.

On April 6, 2001, the CA issued a Resolution stating that it had promulgated the Resolution dated October 30, 2000 dismissing the petition for *certiorari*, and that the Judicial Records Division Report showed that neither a motion for reconsideration nor a Supreme Court petition on the resolution had been filed. Consequently, the CA ordered the issuance of the corresponding entry of judgment, and noted without action the petition for *certiorari* filed on November 9, 2000.

Petitioner's motion for reconsideration was denied by the CA of Appeals in a Resolution dated March 6, 2002.

Hence, this petition.

The issue in this case is whether or not the CA acted with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing petitioner's appeal by way of special civil action for *certiorari* on the ground that it was the wrong mode of appeal and that the appeal was filed out of time.

Petitioner contends that the CA erred in ruling that the petition for *certiorari* was made to substitute a lost appeal because while a petition for review under Rule 43 was available, it was not an adequate remedy for petitioner considering that he was dismissed from the service on June 9, 1999 by PEZA even before the case was appealed to the Civil Service on June 22, 1999.

The contention is without merit.

As provided by Rule 43 of the Rules of Court, the proper mode of appeal from the decision of a quasi-judicial agency, like the CSC, is a petition for review filed with the CA.

The special civil action of *certiorari* under Rule 65 of the Rules of Court may be resorted to only when any tribunal,

board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its/his 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.

In this case, petitioner clearly had the remedy of appeal provided by Rule 43 of the Rules of Court. *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*[9] held:

> Where appeal is available to the aggrieved party, the action for *certiorari* will not be entertained. Remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.

The Court is aware of instances when the special civil action of *certiorari* may be resorted to despite the availability of an appeal, such as when public welfare and the advancement of public policy dictate; when the broader interests of justice so require; when the writs issued are null; and when the questioned order amounts to an oppressive exercise of judicial authority.[10] However, the circumstances in this case do not warrant the application of the exception to the general rule provided by Rule 43 of the Rules of Court.

The CA, therefore, properly denied petitioner's Motion for Extension of Time to File a Petition for *Certiorari,* which in effect dismissed his Petition for *Certiorari*.

There have been instances when a petition for *certiorari* would be treated as a petition for review if filed within the

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[9] G.R. No. 156067, August 11, 2004, 43 SCRA 123, 136-137.

[10] *Jan-Dec Construction Corporation v. Court of Appeals*, G.R. No. 146818, February 6, 2006, 481 SCRA 556, 564. See also *Sanchez v. Court of Appeals,* G.R. No. 108947, September 29, 1997, 279 SCRA 547, 671

reglementary period. In this case, the petition was filed beyond the reglementary period for filing an appeal under Rule 43, which period is within 15 days from notice of the judgment. Petitioner received a copy of the CSC Resolution dated July 21, 2000 on August 11, 2000, so his last day to file an appeal would be August 26, 2000. However, petitioner filed his Motion for Extension of Time to File a Petition for *Certiorari* on September 12, 2000, while the petition was actually filed on November 9, 2000. Thus, the Court of Appeals correctly held that the appeal was filed out of time.

Consequently, the decision of the CSC dismissing petitioner from the service stands. The Court deems it proper to reiterate that dismissal from the service carries with it disqualification for reemployment in the government service, and forfeiture of retirement benefits except leave credits. Petitioner is, therefore, entitled to receive the monetary equivalent of his accrued leave credits.[11]

WHEREFORE, the Petition is *DISMISSED* for lack of merit.

No costs.

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.

Corona, J., on leave.

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[11] See *Igoy v. Soriano*, A.M. No. 2001-9-SC, July 14, 2006, 495 SCRA 1, 5-6.

SECOND DIVISION

[G.R. No. 156470. April 30, 2008]

FREDERICK DAEL, *petitioner, vs.* **SPOUSES BENEDICTO and VILMA BELTRAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; RULE ON DISMISSAL UPON NOTICE BY PLAINTIFF, EXPLAINED.—** As to the propriety of dismissal of the complaint with prejudice, Section 1, Rule 17 of the 1997 Rules of Civil Procedure provides: **SECTION 1.** *Dismissal upon notice by plaintiff*. – A complaint may be dismissed by the plaintiff by filing a notice of dismissal ***at any time before service of the answer or of a motion for summary judgment***. Upon such notice being filed, the court shall issue an order confirming the dismissal. ***Unless otherwise stated in the notice, the dismissal is without prejudice***, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim. Under this provision, it is mandatory that the trial court issue an order confirming such dismissal and, unless otherwise stated in the notice, the dismissal is without prejudice and could be accomplished by the plaintiff through mere notice of dismissal, and not through motion subject to approval by the court. Dismissal is *ipso facto* upon notice, and without prejudice unless otherwise stated in the notice. The trial court has no choice but to consider the complaint as dismissed, since the plaintiff may opt for such dismissal as a matter of right, regardless of the ground.

2. **ID.; ID.; ID.; MOTION TO DISMISS NOT ENCOMPASSED BY RULE.—** Respondents argue that the Motion to Dismiss they filed precedes the Notice of Dismissal filed by petitioner and hence, the trial court correctly gave it precedence and ruled based on the motion. This argument is erroneous. Section 1 of Rule 17 does not encompass a Motion to Dismiss. The provision specifically provides that a plaintiff may file a notice of dismissal before service of the answer or a motion for summary judgment. Thus, upon the filing of the Notice of

Dismissal by the plaintiff, the Motion to Dismiss filed by respondents became moot and academic and the trial court should have dismissed the case without prejudice based on the Notice of Dismissal filed by the petitioner.

3. **ID.; ID.; ID.; TO ALLOW THE CASE TO BE DISMISSED WITH PREJUDICE WOULD ERRONEOUSLY RESULT IN *RES JUDICATA*.—** Moreover, to allow the case to be dismissed with prejudice would erroneously result in *res judicata* and imply that petitioner can no longer file a case against respondents without giving him a chance to present evidence to prove otherwise.

4. **ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; A PARTY MAY DIRECTLY APPEAL TO THE SUPREME COURT ON PURE QUESTIONS OF LAW.—** As to the second issue, petitioner's recourse to this Court by way of a petition for review on *certiorari* under Rule 45 is proper. An order of dismissal, whether correct or not, is a final order. It is not interlocutory because the proceedings were terminated; it leaves nothing more to be done by the lower court. Therefore, the remedy of the plaintiff is to appeal the order. Under the Rules of Court, a party may directly appeal to the Supreme Court from a decision of the trial court only on pure questions of law.

APPEARANCES OF COUNSEL

EDLAW Office for petitioner.
Paras & Associates for respondents.

D E C I S I O N

QUISUMBING, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure raising pure questions of law, and seeking a reversal of the Resolution[1] dated May 28, 2002 of the Regional Trial Court (RTC), Branch 34, Negros Oriental, Dumaguete City, in Civil Case No. 13072,

[1] Records, pp. 50-52. Penned by Judge Rosendo B. Bandal, Jr.

which dismissed with prejudice, petitioner's complaint for breach of contract and damages against the respondents. Also assailed is the trial court's Resolution[2] dated December 5, 2002, denying petitioner's motion for reconsideration.

The facts are as follows:

On November 23, 2001, petitioner Frederick Dael filed before the RTC, Branch 34, Negros Oriental, a Complaint [3] for breach of contract and damages against respondent-spouses Benedicto and Vilma Beltran. In his complaint, petitioner alleged that respondents sold him a parcel of land covering three hectares located at Palayuhan, Siaton, Negros Oriental. Petitioner alleged that respondents did not disclose that the land was previously mortgaged. Petitioner further alleged that it was only on August 6, 2001 when he discovered that an extrajudicial foreclosure over the property had already been instituted, and that he was constrained to bid in the extrajudicial sale of the land conducted on August 29, 2001. Possession and ownership of the property was delivered to him when he paid the bid price of ₱775,100. Petitioner argued that respondents' non-disclosure of the extrajudicial foreclosure constituted breach of contract on the implied warranties in a sale of property as provided under Article 1547[4] of the New Civil Code. He likewise claimed that he was entitled to damages because he had to pay for the property twice.

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[2] *Id.* at 77-79.

[3] *Id.* at 2-9.

[4] Art. 1547. In a contract of sale, unless a contrary intention appears, there is:

(1) An implied warranty on the part of the seller that he has a right to sell the thing at the time when the ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing;

(2) An implied warranty that the thing shall be free from any hidden faults or defects, or any charge or encumbrance not declared or known to the buyer.

This article shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, pledgee, or other person professing to sell by virtue of authority in fact or law, for the sale of a thing in which a third person has a legal or equitable interest.

On January 10, 2002, respondents filed a Motion to Dismiss[5] on the ground that petitioner had no cause of action since the contract to sell stated that the vendor was Benedicto Beltran and the vendee was Frederick George Ghent Dael, not the petitioner.

On February 12, 2002, in a hearing on the motion, Atty. Dirkie Y. Palma, petitioner's counsel, disclosed that petitioner is the father of Frederick George Ghent Dael whose name appears as the contracting party in the Contract to Sell dated July 28, 2000. Atty. Palma moved to reset the hearing to enable the petitioner to withdraw and have the complaint dismissed, amended, or to enter into a compromise agreement with respondents.

The RTC on the same day ordered petitioner to clarify whether or not he and Frederick George Ghent Dael were one and the same person; whether or not they were Filipinos and residents of Dumaguete City; and whether or not Frederick George Ghent Dael was of legal age, and married, as stated in the Contract to Sell.[6] Petitioner did not comply. Instead, he filed a Notice of Dismissal on February 20, 2002. The Notice of Dismissal states:

> Plaintiff, through counsel, unto this Honorable Court, respectfully files this notice of dismissal of the above-captioned case without prejudice by virtue of Rule 17, Section 1 of the 1997 Rules of Civil Procedure. By this notice, defendants['] Motion to Dismiss is then rendered moot and academic.
>
> WHEREFORE, plaintiff Frederick Dael respectfully prays that this Honorable Court dismiss the above-captioned case without prejudice.
>
> RESPECTFULLY SUBMITTED.[7]

On May 28, 2002, the RTC dismissed the complaint <u>with prejudice</u>. The dispositive portion of the Resolution reads thus:

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[5] Records, pp. 32-37.

[6] *Id*. at 42-43, 126-128.

[7] *Id*. at 44.

WHEREFORE, finding merit to defendants' contention that plaintiff Frederick Dael has no cause of action against them since said plaintiff is not one of the contracting parties in the Contract to Sell, which is allegedly breached, the Motion to Dismiss filed by defendants is granted. Consequently, the case at bar is *DISMISSED, with prejudice*.

SO ORDERED.[8] [Emphasis supplied.]

Arguing that the RTC erred in dismissing the complaint with prejudice based on respondents' Motion to Dismiss, and not without prejudice based on his Notice of Dismissal, petitioner filed a Motion for Reconsideration[9] but it was denied by the RTC in a Resolution dated December 5, 2002.

Hence, this petition.

Petitioner raises the following issues for our resolution:

I.

WHETHER [OR] NOT THE REGIONAL TRIAL COURT ERRED IN DISMISSING THE COMPLAINT FOR BREACH OF CONTRACT AND DAMAGES BASED ON THE MOTION TO DISMISS FILED BY HEREIN RESPONDENTS AND NOT ON THE NOTICE OF DISMISSAL PROMPTLY [FILED] BY HEREIN PETITIONER BEFORE RESPONDENTS COULD FILE A RESPONSIVE PLEADING, UNDER RULE 17, SECTION 1 OF THE 1997 RULES O[F] CIVIL PROCEDURE.

II.

WHETHER OR NOT THE REGIONAL TRIAL COURT ERRED IN DISMISSING THE COMPLAINT FOR BREACH OF CONTRACT AND DAMAGES WITH PREJUDICE. [10]

On the other hand, respondents raise the following issues:

I.

WHETHER OR NOT THE REGIONAL TRIAL COURT ERRED IN DISMISSING THE ACTION FOR BREACH OF CONTRACT AND DAMAGES ON THE BASIS OF THE MOTION TO DISMISS FILED

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[8] *Id.* at 52.

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

[10] *Id.* at 148.

BY THE DEFENDANT AND NOT ON THE BASIS OF THE NOTICE OF DISMISSAL FILED BY THE PLAINTIFF.

II.

WHETHER OR NOT THE REGIONAL TRIAL COURT IS CORRECT IN DISMISSING THE CASE WITH PREJUDICE.

III.

WHETHER OR NOT PETITIONER'S RECOURSE UNTO THIS HONORABLE COURT BY WAY OF PETITION FOR REVIEW ON *CERTIORARI* IS PROPER.[11]

Essentially, the issues are (1) Did the RTC err in dismissing the complaint with prejudice? and (2) Was petitioner's recourse to this Court by way of a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure proper?

Petitioner, citing *Serrano v. Cabrera and Makabulo*[12] in his Memorandum,[13] argues that the 1997 Rules of Civil Procedure expressly states that before the defendant has served his answer or moved for a summary judgment, he has, as a matter of right, the prerogative to cause the dismissal of a civil action filed, and such dismissal may be effected by a mere notice of dismissal. He further argues that such dismissal is without prejudice, except (a) where the notice of dismissal so provides; (b) where the plaintiff has previously dismissed the same case in a court of competent jurisdiction; or (c) where the dismissal is premised on payment by the defendant of the claim involved. He asserts it is the prerogative of the plaintiff to indicate if the Notice of Dismissal filed is with or without prejudice and the RTC cannot exercise its own discretion and dismiss the case with prejudice.

On the other hand, respondents in their Memorandum,[14] counter that the RTC is correct in dismissing the case with prejudice based on their Motion to Dismiss because they filed

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[11] *Id*. at 163-164.

[12] 93 Phil. 774 (1953).

[13] *Rollo*, pp. 143-157.

[14] *Id*. at 162-168.

their motion on January 10, 2002, ahead of petitioner who filed his Notice of Dismissal only on February 20, 2002. They further argue that although it is correct that under the 1997 Rules of Civil Procedure a complaint may be dismissed by the plaintiff by filing a notice of dismissal before service of the answer or of a motion for summary judgment, the petitioner filed the Notice of Dismissal only as an afterthought after he realized that the Motion to Dismiss was meritorious.

Further, they point out that petitioner deceived the court when he filed the action knowing fully well that he was not the real party-in-interest representing himself as Frederick George Ghent Dael.

Respondents also argue that petitioner's recourse to this Court by way of a petition for review on *certiorari* was not proper since the proper remedy should have been to file an appeal of the order granting the Motion to Dismiss. He contends that the petitioner should have appealed to the Court of Appeals under Rule 41[15] instead of assailing the ruling of the RTC by way of a petition for review on *certiorari* before the Supreme Court.

As to the propriety of dismissal of the complaint with prejudice, Section 1, Rule 17 of the 1997 Rules of Civil Procedure provides:

> **SECTION 1.** *Dismissal upon notice by plaintiff*. – A complaint may be dismissed by the plaintiff by filing a notice of dismissal ***at any time before service of the answer or of a motion for summary judgment***. Upon such notice being filed, the court shall issue an order confirming the dismissal. ***Unless otherwise stated in the notice, the dismissal is without prejudice***, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim. [Emphasis supplied.]

Under this provision, it is mandatory that the trial court issue an order confirming such dismissal and, unless otherwise stated in the notice, the dismissal is without prejudice and could be accomplished by the plaintiff through mere notice of dismissal,

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[15] APPEAL FROM THE REGIONAL TRIAL COURTS.

and not through motion subject to approval by the court. Dismissal is *ipso facto* upon notice, and without prejudice unless otherwise stated in the notice.[16] The trial court has no choice but to consider the complaint as dismissed, since the plaintiff may opt for such dismissal as a matter of right, regardless of the ground.[17]

Respondents argue that the Motion to Dismiss they filed precedes the Notice of Dismissal filed by petitioner and hence, the trial court correctly gave it precedence and ruled based on the motion.

This argument is erroneous. Section 1 of Rule 17 does not encompass a Motion to Dismiss. The provision specifically provides that a plaintiff may file a notice of dismissal before service of the answer or a motion for summary judgment. Thus, upon the filing of the Notice of Dismissal by the plaintiff, the Motion to Dismiss filed by respondents became moot and academic and the trial court should have dismissed the case without prejudice based on the Notice of Dismissal filed by the petitioner.

Moreover, to allow the case to be dismissed with prejudice would erroneously result in *res judicata*[18] and imply that petitioner

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[16] *O.B. Jovenir Construction and Development Corporation v. Macamir Realty and Development Corporation*, G.R. No. 135803, March 28, 2006, 485 SCRA 446, 453.

[17] *Id*. at 454.

[18] *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." *Res judicata* lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.

The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second actions, identity of parties, subject matter, and causes of action. (*Republic v. Yu*, G.R. No. 157557, March 10, 2006, 484 SCRA 416, 420-421.)

can no longer file a case against respondents without giving him a chance to present evidence to prove otherwise.

As to the second issue, petitioner's recourse to this Court by way of a petition for review on *certiorari* under Rule 45 is proper. An order of dismissal, whether correct or not, is a final order. It is not interlocutory because the proceedings were terminated; it leaves nothing more to be done by the lower court. Therefore, the remedy of the plaintiff is to appeal the order.[19] Under the Rules of Court, a party may directly appeal to the Supreme Court from a decision of the trial court only on pure questions of law.[20]

WHEREFORE, the petition is *GRANTED*. The assailed Resolutions dated May 28, 2002 and December 5, 2002 of the Regional Trial Court, Branch 34, Negros Oriental are *AFFIRMED with MODIFICATION* such that the case is *dismissed without prejudice*. No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

THIRD DIVISION

[G.R. No. 158788. April 30, 2008]

ELY AGUSTIN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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[19] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, G.R. No. 156067, August 11, 2004, 436 SCRA 123, 138.

[20] *Cebu Woman's Club v. De la Victoria*, G.R. No. 120060, March 9, 2000, 327 SCRA 533, 537.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; MATERIAL MATTER; EXPLAINED.—** As held in *United States v. Estraña*, a material matter is the main fact which is the subject of inquiry **or any circumstance which tends to prove that fact or any fact or circumstance which tends to corroborate or strengthen the testimony relative to the subject of inquiry or which legitimately affects the credit of any witness who testifies.**

2. **ID.; ID.; ID.; CONFLICTING TESTIMONIES OF PROSECUTION WITNESSES ARE MATERIAL MATTERS AS THEY RELATE DIRECTLY TO A FACT IN ISSUE-WHETHER A GUN HAS BEEN FOUND IN THE HOUSE OF THE PETITIONER.—** The conflicting testimonies of the prosecution witnesses as to who actually entered the house and conducted the search, who "discovered" the gun, and who witnessed the "discovery" are material matters because they relate directly to a fact in issue; in the present case, whether a gun has been found in the house of petitioner; or to a fact to which, by the process of logic, an inference may be made as to the existence or non-existence of a fact in issue.

3. **ID.; ID.; TESTIMONY; FRAME-UP; RULE REQUIRING A CLAIM OF FRAME-UP TO BE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE WAS NEVER INTENDED TO SHIFT TO THE ACCUSED THE BURDEN OF PROOF IN A CRIMINAL CASE.—** Although the Court has held that frame-up is inherently one of the weakest defenses, as it is both easily concocted and difficult to prove, in the present case, the lower courts seriously erred in ignoring the weakness of the prosecution's evidence and its failure to prove the guilt of petitioner beyond reasonable doubt. **The rule requiring a claim of frame-up to be supported by clear and convincing evidence was never intended to shift to the accused the burden of proof in a criminal case.** As the Court held in *People of the Philippines v. Ambih*: [W]hile the lone defense of the accused that he was the victim of a frame-up is easily fabricated, this claim assumes importance when faced with the rather shaky nature of the prosecution evidence. It is well to remember that the prosecution must rely, not on the weakness of the defense evidence, but rather on its own proof which must be strong enough to convince this Court that the prisoner in the dock deserves to be punished. **The constitutional**

presumption is that the accused is innocent even if his defense is weak as long as the prosecution is not strong enough to convict him.

4. **ID.; ID.; ID.; WHERE THERE ARE MATERIAL AND UNEXPLAINED INCONSISTENCIES BETWEEN THE TESTIMONIES OF TWO PRINCIPAL PROSECUTION WITNESSES RELATING TO THE ALLEGED TRANSACTION ITSELF, BOTH TESTIMONIES LOSE THEIR PROBATIVE VALUE.—** In *People of the Philippines v. Gonzales*, the Court held that where there was material and unexplained inconsistency between the testimonies of two principal prosecution witnesses relating not to inconsequential details but to the alleged transaction itself which is subject of the case, the inherent improbable character of the testimony given by one of the two principal prosecution witnesses had the effect of vitiating the testimony given by the other principal prosecution witness. The Court ruled that it cannot just discard the improbable testimony of one officer and adopt the testimony of the other that is more plausible. In such a situation, both testimonies lose their probative value. The Court further held: Why should two (2) police officers give two (2) contradictory descriptions of the same sale transaction, which allegedly took place before their very eyes, on the same physical location and on the same occasion? We must conclude that a reasonable doubt was generated as to whether or not the "buy-bust" operation ever took place.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General 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, seeking to annul the Decision[1] of the Court of Appeals (CA) dated January 22, 2003, affirming

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[1] Penned by Associate Justice Roberto A. Barrios, with the concurrence of Associate Justices Perlita J. Tria Tirona and Edgardo F. Sundiam; *rollo*, pp. 104-114.

the Decision of the Regional Trial Court, Branch 24 of Cabugao, Ilocos Sur (RTC) convicting Ely Agustin (petitioner) of the crime of Illegal Possession of Firearms under Presidential Decree (P.D.) No. 1866, and the CA Resolution[2] dated June 23, 2003, denying petitioner's Motion for Reconsideration.

The records reveal that on October 1, 1995, at 7:20 in the evening, armed men robbed the house of spouses George and Rosemarie Gante in Barangay Pug-os, Cabugao, Ilocos Sur, forcibly taking with them several valuables, including cash amounting to ₱600,000.00.[3] Forthwith, the spouses reported the matter to the police, who, in turn, immediately applied for a search warrant with the Municipal Trial Court (MTC) of Cabugao, Ilocos Sur.[4] The MTC issued Search Warrant No. 5-95,[5] directing a search of the items stolen from the victims, as well as the firearms used by the perpetrators. One of the target premises was the residence of petitioner, named as one of the several suspects in the crime.

On October 6, 1995, armed with the warrant, policemen searched the premises of petitioner's house located in Sitio Padual, Barangay Pug-os, Cabugao, Ilocos Sur. The search resulted in the recovery of a firearm and ammunitions which had no license nor authority to possess such weapon, and, consequently, the filing of a criminal case, docketed as Criminal Case No. 1651-K, for violation of P.D. No. 1866 or Illegal Possession of Firearms, against petitioner before the RTC. The Information against petitioner reads as follows:

That on or about the 6th day of October 1995, in the municipality of Cabugao, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have in his possession, control and custody one (1) revolver caliber .38 (Cebu Made) with Serial No. 439575 with five (5) live ammunitions, without

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[2] *Id*. at 128-129.

[3] RTC records, p. 90.

[4] *Id*. at 84.

[5] *Id*. at 98.

the necessary license or authority to possess and carry the same being usual instrument in the commission of crimes or acts of violence.

Contrary to law.[6]

Thereafter, trial ensued. The prosecution presented eight witnesses namely: (1) P/Insp. Anselmo Baldovino[7] (P/Insp. Baldovino), a police investigator and the applicant for the search warrant; (2) Rosemarie Gante (Gante), the victim of the robbery and private complainant; (3) Ignacio Yabes (Yabes), a Municipal Local Government Operations Officer of the Department of Interior and Local Government who was the civilian witness to the search; (4) P/Supt. Bonifacio Abian [8] (P/Supt. Abian), Deputy Provincial Director of the Philippine National Police and part of the search team; (5) SPO4 Marino Peneyra (SPO4 Peneyra); (6) SPO1 Franklin Cabaya (SPO1 Cabaya); (7) SPO1 James Jara (SPO1 Jara); and (8) SPO2 Florentino Renon (SPO2 Renon).

For his defense, petitioner and his wife Lorna Agustin (Lorna) testified.

The prosecution's case centered mainly on evidence that during the enforcement of the search warrant against petitioner, a .38 caliber revolver firearm was found in the latter's house.[9] In particular, SPO1 Cabaya testified that while poking at a closed rattan cabinet near the door, he saw a firearm on the lower shelf.[10] The gun is a .38 caliber revolver[11] with five live ammunitions,[12] which he immediately turned over to his superior, P/Insp. Baldovino.[13]

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[6] *Id.* at 1.

[7] Also referred to as "Baldomino" in some parts of the records.

[8] Also referred to as "Avian" in some parts of the records.

[9] Exhibit "G"; TSN, October 1, 1996, p. 3; TSN January 19, 1996, p. 16; TSN, April 18, 1996, pp. 7-8; TSN, June 4, 1996, pp. 6, 15; TSN, August 1, 1996, p. 5; TSN, October 24, 1996, p. 5.

[10] TSN, October 6, 1998, p. 3.

[11] Exhibit "G".

[12] Part of Exhibit "F".

[13] TSN, October 6, 1998, p. 5.

Petitioner anchored his defense on denial and frame-up. The petitioner and his wife Lorna assert that petitioner does not own a gun.[14] Lorna testified that she saw a "military" man planting the gun.[15]

After trial, the RTC rendered its Decision[16] dated July 7, 1999, finding petitioner guilty beyond reasonable doubt, as follows:

> WHEREFORE, finding the accused, Ely Agustin @ "Belleng" GUILTY beyond reasonable doubt of Illegal Possession of Firearm, he is hereby sentenced to a prison term ranging from FOUR (4) YEARS and TWO (2) MONTHS, as minimum, to SIX (6) YEARS, as maximum, both of *prision correccional,* with the accessories of the law [sic], to pay a fine of ₱15,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs. The gun (Exh. "G") is confiscated and forfeited in favor of the Government.
>
> SO ORDERED.[17]

Petitioner filed an appeal with the CA, docketed as CA-G.R. CR No. 25452.

The CA rendered herein assailed Decision[18] dated January 22, 2003, affirming with modification the decision of the trial court, thus:

> WHEREFORE, except for the MODIFICATION reducing and changing the maximum of the prison term imposed to Five (5) Years Four (4) Months and Twenty (20) Days, the appealed Decision is otherwise AFFIRMED.
>
> SO ORDERED.[19]

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[14] TSN, June 26, 1997, p. 8; TSN, November 5, 1997, p. 8.

[15] TSN, November 5, 1997, pp. 6-8.

[16] *Rollo,* pp. 38-43.

[17] *Id*. at 43.

[18] *Id*. at 104-114.

[19] *Id* at 113.

Hence, the instant Petition for Review, on the principal ground that the CA gravely erred in finding that the guilt of petitioner has been proven beyond reasonable doubt; and more specifically, in giving weight and credence to the testimonies of the police officers who searched the house of the petitioner which are replete with material and irreconcilable contradictions and in giving SPO1 Cabaya the presumption of regularity in the performance of duty despite the claim of Lorna that the.38 caliber revolver was planted.

Petitioner insists that the trial court and the CA committed reversible error in giving little credence to his defense that the firearm found in his residence was planted by the policemen. He also alleges material inconsistencies in the testimonies of the policemen as witnesses for the prosecution, which amounted to failure by the prosecution to prove his guilt beyond reasonable doubt.

The petition has merit.

The paramount issue in the present case is whether the prosecution established the guilt of petitioner beyond reasonable doubt; and in the determination thereof, a factual issue, that is, whether a gun was found in the house of petitioner, must necessarily be resolved.

It is a well-entrenched rule that appeal in criminal cases opens the whole case wide open for review.[20]

In convicting petitioner, the RTC relied heavily on the testimony of SPO1 Cabaya, who testified that he discovered the subject firearm in a closed cabinet inside the former's house. The trial court brushed aside petitioner's defense of denial and protestations of frame-up. The RTC justified giving full credence to Cabaya's testimony on the principles that the latter is presumed to have performed his official duties regularly; that he had no ill motive

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[20] *Andaya v. People of the Philippines,* G.R. No. 168486, June 27, 2006, 493 SCRA 539, 551; *Brillante v. Court of Appeals*, G.R. Nos. 118757 & 121571, November 11, 2005, 474 SCRA 480, 483.

to frame-up petitioner; and that his affirmative testimony is stronger than petitioner's negative testimony.[21]

For its part, the CA justified its affirmation of the trial court's decision on the basis of long-standing principles that denials, such as the one made by petitioner, "cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters," and reiterated that "absent evidence x x x that the prosecution witness was moved by improper motive, the presumption is that no such ill motive exists, and his testimony is entitled to full faith and credit."[22] The CA upheld the trial court's findings of presumption of regular performance of duty on the part of the searching policemen and the weakness of the petitioner's defense of frame-up.[23]

Weighing these findings of the lower courts against the petitioner's claim that the prosecution failed to prove its case beyond reasonable doubt due to the material inconsistencies in the testimonies of its witnesses, the Court finds, after a meticulous examination of the records that the lower courts, indeed, committed a reversible error in finding petitioner guilty beyond reasonable doubt of the crime he was charged with. The RTC and the CA have overlooked certain facts and circumstances that would have interjected serious apprehensions absolutely impairing the credibility of the witnesses for the prosecution.

The conflicting testimonies of the prosecution witnesses as to who actually entered the house and conducted the search, who "discovered" the gun, and who witnessed the "discovery" are material matters because they relate directly to a fact in issue; in the present case, whether a gun has been found in the house of petitioner; or to a fact to which, by the process of logic, an inference may be made as to the existence or non-existence of a fact in issue.[24] As held in *United States v.*

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[21] *Rollo,* p. 42.

[22] *Id*. at 111.

[23] *Id*. at 112.

[24] RULES OF COURT, Rule 128, Section 4; Sibal and Salazar, *Compendium on Evidence*, 2006, p. 7.

Estraña,[25] a material matter is the main fact which is the subject of inquiry **or any circumstance which tends to prove that fact or any fact or circumstance which tends to corroborate or strengthen the testimony relative to the subject of inquiry or which legitimately affects the credit of any witness who testifies**.

The evidence of prosecution is severely weakened by several contradictions in the testimonies of its witnesses. Especially damaged is the credibility of SPO1 Cabaya, none of whose declarations on material points jibes with those of the other prosecution witnesses. In the face of the vehement and consistent protestations of frame-up by petitioner and his wife, the trial court and the CA erred in overlooking or misappreciating these inconsistencies. To repeat, the inconsistencies are material as they delve into the very bottom of the question of whether or not SPO1 Cabaya really found a firearm in the house of petitioner.

First material inconsistency: On SPO1 Cabaya's companions and the circumstances of his discovery of the subject firearm

SPO1 Cabaya testified that he entered the house with four other policemen, among whom were SPO1 Jara, SPO4 Peneyra, SPO3 Bernabe Ocado (SPO3 Ocado) and another one whose name he does not remember.[26] While searching, he discovered the firearm in the kitchen, inside a closed cabinet near the door.[27] He said that SPO1 Jara was standing right behind him, at a distance of just one meter, when he (Cabaya) saw the firearm;[28] and that he picked up the gun, held it and showed it to SPO1 Jara.[29] He asserted that SPO2 Renon was not one of those who went inside the house.[30]

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[25] 16 Phil. 520, 529 (1910).

[26] TSN, October 1, 1996, pp. 4-5.

[27] TSN, October 6, 1998, pp. 2, 3 and 5.

[28] TSN, October 1, 1996, p. 12; TSN, October 6, 1998, p. 2.

[29] TSN, October 1, 1996, *id*.

[30] *Id*. at 5.

The following is the testimony of SPO1 Cabaya on direct examination:

Q. You mentioned that you were able to recover a firearm from the house of Ely Agustin. Who actually recovered the firearm?
A. I was the one, sir.

Q. In what particular place in the house of Ely Agustin were you able to recover the firearm?
A. Inside a cabinet, sir.

Q. Where is that cabinet located in relation to the main house?
A. At the door of the house, sir.

Court

Q. Before or after the door?
A. Inside the house already, Your Honor.

Court

Q. Continue, Fiscal.

APP Gascon

Q. Will you describe that cabinet?
A. It is made of rattan, sir.

Q. Does it have covers and doors of its own?
A. Yes, sir.

Q. What part of the cabinet did you discover the firearm?
A. On the lower shelf, sir.

Q. That **lower shelf**, was it closed or opened when you discovered the firearm?
A. It was **closed**, sir.

Q. How far was that cabinet to the door?
A. About 70 centimeters, sir.

Q. How many police officers including you entered the house of Ely Agustin to conduct the search?
A. Five (5), sir.

Q. When you discovered that firearm, do you remember who was or were the persons near you?
A. SPO1 James Jara, sir.

Q. Who else, if any, aside from SPO1 James Jara?
A. SPO4 Marino Peneyra, sir.

Q. Who else?
A. SPO3 Bernabe Ocado, sir.

Q. Were those the only police officers who were with you when you discovered the firearm?
A. Yes, sir.

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Q. So, who were with you then inside the house when you discovered the firearm?
A. SPO4 Peneyra, SPO3 Ocado and SPO1 Jara, sir.

Q. You mentioned a while ago that there were five (5) of you who conducted the search?
A. I cannot recall the other one, sir.

Q. Do you know SPO2 Florentino Renon?
A. Yes, sir, but he was not there at the time.

x x x x x x x x x

Q. Not even any one of your companions who were inside the house actually witnessed the taking of the gun inside that cabinet?
A. They saw it, sir.

Q. You mean to say that SPO4 Peneyra, SPO3 Ocado and SPO1 Jara witnessed the taking of the gun by you inside the cabinet?
A. SPO1 Jara only, sir.

Q. How about SPO4 Peneyra and SPO3 Ocado?
A. They were inside the sala, sir.

Q. You did not call for them before you took the gun from the cabinet?
A. I shouted, sir.

Q. But they did not come to your place?
A. They did not, sir.

Q. And who was that companion of yours whom you said witnessed the taking of the gun?
A. SPO1 Jara was at my back, sir.

Q. But you were already holding the gun when SPO1 Jara saw the gun?
A. Yes, sir.

x x x x x x x x x

Q. And where was SPO1 Jara when you discovered the firearm?
A. He was at my back, sir.

Q. How near or how far was he to you when you discovered the firearm?
A. One (1) meter, sir.[31] (Emphasis supplied)

SPO1 Cabaya's testimony is contradicted by the testimonies of four other **prosecution witnesses** on material points, making Cabaya's testimony in particular, and the prosecution's evidence in general, not credible, and therefore, of no probative weight, thus:

1. SPO1 Jara, the best witness who could have corroborated SPO1 Cabaya's testimony, related a different story as to the circumstances of the firearm's discovery. SPO1 Jara testified that he merely conducted perimeter security during the search and did not enter or participate in searching the house.[32] SPO1 Jara testified that he remained outside the house throughout the search, and when SPO1 Cabaya shouted and showed a gun, he was seven to eight meters away from him.[33] He could not

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[31] TSN, October 1, 1996, pp. 3-5, 11-12; TSN, June 16, 1999, p. 2.

[32] TSN, October 24, 1996, pp. 2-4.

[33] *Id*. at 5.

see the inside of the house and could see Cabaya only from his chest up.[34] He did not see the firearm at the place where it was found, but saw it only when Cabaya raised his arm to show the gun, which was a revolver.[35] **He is certain that he was not with Cabaya at the time the latter discovered the firearm**.[36] He further testified that SPO3 Ocado, who, according to SPO1 Cabaya was one of those near him when he (Cabaya) discovered the firearm, stayed outside and did not enter or search the house.[37]

2. P/Insp. Baldovino testified that only SPO2 Renon conducted the search and entered the house together with SPO1 Cabaya,[38] directly contradicting SPO1 Cabaya's testimony that he, together with SPO1 Jara, SPO4 Peneyra, SPO3 Ocado, and another one whose name he cannot recall, were inside the house when he discovered the gun[39] and that SPO2 Renon did not enter the house of petitioner.[40]

3. P/Supt. Abian categorically testified that it was SPO4 Peneyra, not SPO1 Cabaya, who recovered the firearm from petitioner's house.[41]

4. SPO4 Peneyra contradicted SPO1 Cabaya and P/Supt. Abian. He testified that he did not enter the house, but stayed outside, during the search.[42] He also said that it was SPO1 Cabaya and SPO2 Renon who discovered the firearm.[43]

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[34] *Id*. at 6.

[35] *Id*. at 6, 12.

[36] *Id*. at 13.

[37] *Id*. at 12, 14.

[38] TSN, January 19, 1996, p. 14.

[39] TSN, October 1, 1996, p. 5.

[40] TSN, March 26, 1996, pp. 18, 30.

[41] TSN, June 4, 1996, pp. 6, 15.

[42] TSN, August 1, 1996, pp. 7, 16, 19.

[43] *Id*. at 15.

5. SPO2 Renon contradicted SPO4 Peneyra and SPO1 Cabaya when he (Renon) testified on rebuttal that **Cabaya was alone** in the kitchen [44] when the latter allegedly discovered the gun.[45]

Second inconsistency:
On the reaction of petitioner
to SPO1 Cabaya's alleged
discovery of the subject firearm

SPO1 Cabaya testified that when he turned over the firearm to his superior, P/Insp. Baldovino, petitioner was present and did not utter a single word of protest.[46] This was contradicted, however, by P/Insp. Baldovino, who testified that petitioner protested, claimed that he did not know anything about the gun and refused to sign the certification that a search was conducted in his house.[47] Likewise, prosecution witnesses – P/Supt. Abian, SPO4 Peneyra and SPO1 Jara – all confirmed that petitioner vehemently denied possession of the firearm as soon as its "discovery" was announced.[48]

Third inconsistency:
On the witnessing of the actual
discovery of the subject firearm
by civilian Yabes

At first, SPO1 Cabaya testified that Municipal Local Government Operations Officer Yabes was outside the house when the firearm was discovered, but later, he clarified that Yabes was actually inside the house when it happened.[49] He informed Yabes of the discovery by shouting,[50] but he did not

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[44] TSN, August 25, 1998, p. 6.

[45] TSN, October 6, 1998, pp. 5-8; TSN, June 16, 1999, pp. 2-3.

[46] TSN, October 1, 1996, p. 6.

[47] Exhibit "A"; TSN, March 26, 1996, p. 17.

[48] TSN, June 4, 1996, p. 16; TSN, August 1, 1996, pp. 7, 20; TSN, October 24, 1996, p. 9.

[49] TSN, October 1, 1996, pp. 5, 10.

[50] *Id*. at 11.

call Yabes to witness the actual taking of the gun from its hiding place because he had to show it to his officer;[51] and that Yabes saw the gun when he showed the gun outside.[52] However, Yabes contradicted SPO1 Cabaya. Yabes claimed to have seen the gun in an open shelf, after hearing the shouts of a policeman who was not one of those who entered the house to conduct the search, to wit:

Q. You said that three (3) policemen entered the house. All the time that they where inside the house, where were you in relation to them?
A. At the door of the house, sir.

Q. When they conducted the actual search inside the house, what were you doing?
A. I was looking at them, sir.

Q. Will you describe the inside of the house of Ely Agustin?
A. On the northeast corner of the house, there is a bed, no room, sir.

Q. Where did and the three (3) policemen conduct the search?
A. They requested Mrs. Agustin to make the "halungkat" and they were only watching her, sir.

Q. Aside from you, Mrs. Agustin and the three (3) policemen, who else was or were inside the house?
A. No more, sir.

Q. How about Ely Agustin?
A. He was conversing with the Chief of Police, sir.

Q. And while Mrs. Agustin was the one who was actually making the search, as requested by the three (3) policemen, what happened?
A. None, sir. They did not see anything. Nothing was found.

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[51] *Id*.

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

Q. In what place of the house did Mrs. Agustin do the "*halungkat*" or the search?

A. At the "*duag*" (extension). We entered from the north which is actually the "*duag*" (extension) of the house and then proceeded towards the west, and then, towards the south, and then, we entered the main building, sir.

Q. Then, what happened next?

A. While we were already about through, a certain policeman shouted that he found something near the door of the annex, sir, the place where we first entered. <u>But that policeman was not one of those who entered the house to conduct the search</u>.

Q. The three (3) policemen, you and Mrs. Agustin were still inside the main house when that policeman shouted that he found something?

A. Yes, sir.

Q. What were the three (3) policemen actually doing when you heard the shout of that policemen?

A. They were still inside the house, but I did not pay particular attention what they were actually doing, sir.

x x x x x x x x x

Q. After hearing the shouts of that policeman that he found something, what did you, personally, do?

A. I was taken aback and so I went out to see what it was all about, sir.

Q. Among you five (5), who went out of the house first?

A. I was the one, sir.

Q. Who followed you next?

A. I cannot remember who followed me, sir.

Q. You said you went out to see what they found. What did you see?

A. There was a sort of an **open shelf** and on the second rung where they placed the floor mat, the gun was there, sir.

Q. You said there was a floor mat and then the gun. Which was exposed, the floor mat or the gun?

A. Only the barrel of the gun was hidden, sir.

Court

Q. The body of the gun was exposed when you saw it?

A. Yes, Your Honor.[53]

x x x (Emphasis and underscoring supplied)

Yabes had to go out of the house to see what was found at the "*duag*" or extension.[54] Yabes further testified:

Q. From the time you heard the shouts of the policemen, up to the time you went out and saw the barrel covered by the floor mat, how many seconds or minutes elapsed?

A. Less than a minute because I rushed outside, sir.

Q. From the time you rushed outside after hearing the shouts that something was found, did you see any person near the place?

A. Some policemen, sir.

Q. What were those policemen doing when you saw them?

A. They were looking at the gun, sir.

Court

Q. Did you see any policeman placed [sic] the gun there?

A. No, your Honor, because I was far.

App Gascon

Q. The place where you were standing near the door of the main house, could you see the place where the shelf is?

A. No, sir.

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[53] TSN, April 18, 1996, pp. 5-7, 8-9.

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

Court

Q. Let us clarify this. Is that shelf outside [or] inside of the extension?

A. Inside the extension, just beside the door, Your Honor.[55]

Although Yabes did not see that the gun was planted, neither could he attest that the gun was not planted. In fact, P/Insp. Baldovino testified that Yabes refused to sign the receipt, Exhibit "O",[56] wherein it is stated that the seizure was done in the presence of Yabes, for reasons he (Baldovino) does not know.[57] And yet, Yabes, when asked about Exhibit "O", testified, thus:

Q. Showing to you another document related to this which you were earlier confronted by the Fiscal, Exh. "O", there is a statement here that the seized property was found in the presence of Ignacio Yabes and that in his testimony before this court, Police Inspector Baldovino testified that when you were aked [sic] to sign this piece of paper, you refused. Can you recall now?

A. I was not shown any paper, except Exh. "E", Your Honor.

Q. What can you say then to the testimony of Police Inspector Baldovino that you refused to sign Exh. "O"?

A. I never refused, Your Honor, to sign Exh. "O". I could not have refused because they did not show any paper and **had they shown to me, I must have uttered some derogatory remarks against them**.

Q. Exh. "O" purports to show that a gun, caliber .38 with serial number 439575 with five (5) live ammunitions for caliber .38 were seized from the residence of Ely Agustin at Sitio Padual, Brgy. Pug-os, Cabugao, Ilocos Sur on October 6, 1995. What can you say then with respect to the contents of Exh. "O"? Do you agree that a gun, caliber .38, with five (5) live ammunitions were seized from the house of Ely Agustin, in your presence?

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

[56] Records, p. 94.

[57] TSN, March 26, 1996, p. 19.

A. **As I have testified earlier, Your Honor, the gun was not found by the policemen who conducted the search of the house. It was only mentioned by a policeman outside that the gun was seen at the shelf, second rung, with a floor mat covering the barrel**.[58] (Emphasis supplied)

The testimonies of the other prosecution witnesses further muddled the prosecution evidence with more inconsistencies as to matters material to the determination of whether a gun had in fact been found in the house of petitioner. SPO4 Peneyra testified that Yabes stayed outside of the house during the search;[59] whereas SPO1 Jara testified that Yabes was inside, at the sala, but the latter saw the gun only when SPO1 Cabaya raised it.[60]

Such inconsistencies on the material details of the firearm's discovery are so glaring that they ought not to have been ignored or brushed aside by the lower courts. The contradictions of the prosecution witnesses not only undermine all efforts to reconstruct the event in question, but altogether erode the evidentiary value of the prosecution evidence.

Given the incoherent story presented by the prosecution, it is hardly persuasive that SPO1 Cabaya indeed found the firearm in a regular manner. Serious doubts are raised on whether petitioner really possessed or owned that weapon and hid it in his house. On the face of the contradicting evidence presented by the prosecution, petitioner's denial and his wife's emphatic claim of frame-up from day one, that is, at the time and on the very spot of the alleged discovery of the gun, gained substantial significance.

Although the Court has held that frame-up is inherently one of the weakest defenses,[61] as it is both easily concocted and

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[58] TSN, April 18, 1996, pp. 13-14.

[59] TSN, August 1, 1996, pp. 7, 17 and 18.

[60] TSN, October 24, 1996, p. 8.

[61] *People of the Philippines v. Bustamante*, 445 Phil. 345, 360 (2003); *People of the Philippines v. Padao*, 334 Phil. 726, 739 (1997).

difficult to prove,[62] in the present case, the lower courts seriously erred in ignoring the weakness of the prosecution's evidence and its failure to prove the guilt of petitioner beyond reasonable doubt. **The rule requiring a claim of frame-up to be supported by clear and convincing evidence**[63] **was never intended to shift to the accused the burden of proof in a criminal case**. As the Court held in *People of the Philippines v. Ambih*:[64]

> [W]hile the lone defense of the accused that he was the victim of a frame-up is easily fabricated, this claim assumes importance when faced with the rather shaky nature of the prosecution evidence. It is well to remember that the prosecution must rely, not on the weakness of the defense evidence, but rather on its own proof which must be strong enough to convince this Court that the prisoner in the dock deserves to be punished. **The constitutional presumption is that the accused is innocent even if his defense is weak as long as the prosecution is not strong enough to convict him**.[65] (Emphasis supplied)

In *People of the Philippines v. Gonzales*,[66] the Court held that where there was material and unexplained inconsistency between the testimonies of two principal prosecution witnesses relating not to inconsequential details but to the alleged transaction itself which is subject of the case, the inherent improbable character of the testimony given by one of the two principal prosecution witnesses had the effect of vitiating the testimony given by the other principal prosecution witness.[67] The Court ruled that it cannot just discard the improbable testimony of one officer and adopt the testimony of the other that is more

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[62] *People of the Philippines v. Ting Uy,* 430 Phil. 516, 527 (2002).

[63] *Id.*; *People of the Philippines v. Enriquez*, 346 Phil. 84, 95 (1997).

[64] G.R. No. 101006, September 3, 1993, 226 SCRA 84.

[65] *Id.* at 90.

[66] G.R. Nos. 67801-02, September 10, 1990, 189 SCRA 343.

[67] *Id.* at 352-353.

plausible.[68] In such a situation, both testimonies lose their probative value. The Court further held:

> Why should two (2) police officers give two (2) contradictory descriptions of the same sale transaction, which allegedly took place before their very eyes, on the same physical location and on the same occasion? We must conclude that a reasonable doubt was generated as to whether or not the "buy-bust" operation ever took place.[69]

In the present case, to repeat, the glaring contradictory testimonies of the prosecution witnesses generate serious doubt as to whether a firearm was really found in the house of petitioner. The prosecution utterly failed to discharge its burden of proving that petitioner is guilty of illegal possession of firearms beyond reasonable doubt. The constitutional presumption of innocence of petitioner has not been demolished and therefore petitioner should be acquitted of the crime he was with.

WHEREFORE, the petition is *GRANTED*. The Decisions of the Court of Appeals and the Regional Trial Court of Cabugao, Ilocos Sur are *REVERSED* and *SET ASIDE*. The petitioner is *ACQUITTED* of the crime charged in Criminal Case No. 1651-K.

SO ORDERED.

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

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[68] *Id.* at 352.

[69] *Id.* at 353.

THIRD DIVISION

[G.R. No. 160113. April 30, 2008]

CHINA BANKING CORPORATION, *petitioner, vs.* **TA FA INDUSTRIES, INC., J & H INDUSTRIES, INC., and JEAN LONG INDUSTRIES, INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; GROUNDS FOR THE ISSUANCE THEREOF.—** The grounds for the issuance of a writ of preliminary injunction are enumerated in Rule 58, Section 3 of the Revised Rules of Court, which reads as follows: Sec. 3. *Grounds for issuance of preliminary injunction*. – A preliminary injunction may be granted when it is established; (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual**.** Under the rule, it is incumbent upon respondents to prove that they are entitled to the relief of having the public auction sale of their properties restrained.
2. **ID.; EVIDENCE; BURDEN OF PROOF; REST UPON THE PARTY WHO HAS A LEGAL RIGHT TO BE PROTECTED; NOT PRESENT IN THE CASE AT BAR.—** Petitioner has a valid ground for questioning the sufficiency of the evidence presented by respondents to support their application for a writ of preliminary injunction. Section 1, Rule 131 of the Rules of Court provides, thus: Sec. 1. *Burden of proof*. – Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. Here, the burden of proof rests

with respondents to establish their claim that they have a legal right that should be protected by a writ of preliminary injunction. In *L.C. Ordoñez Construction v. Nicdao*, the Court reiterated the ruling that "the burden of proof is on the part of the party who makes the allegations – *ei incumbit probatio*, *qui dicit*, *non qui negat*. **If he claims a right granted by law, he must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weakness of that of his opponent."** x x x A simple perusal of the testimony of respondents' witness readily reveals that he admitted that he does not participate in money matters of respondents; that he does not know the alleged amount that had not been released to respondents, or the balance of the loan. Verily, the foregoing testimony glaringly shows that the witness is incompetent to shed any light on the transactions involved in this case, much less establish that respondents, as plaintiffs, do have a clear and unmistakable right that should be judicially protected through the issuance of a writ of preliminary injunction.

3. **ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; REQUISITES FOR THE ISSUANCE THEREOF.—** The oft-repeated rule, as stated in *Republic of the Philippines v. Caguioa*, is that: For a writ of preliminary injunction to issue, the **plaintiff must be able to establish** that (1) there is **a clear and unmistakable right to be protected,** (2) the invasion of the right sought to be protected is material and substantial, and (3) there is an urgent and paramount necessity for the writ to prevent serious damage. Conversely, **failure to establish either the existence of a clear and positive right which should be judicially protected through the writ of injunction,** or of the acts or attempts to commit any act which endangers or tends to endanger the existence of said right, or of the urgent need to prevent serious damage, **is a sufficient ground for denying the preliminary injunction.** Furthermore, in *Ocampo v. Vda. de Fernandez*, the Court emphasized thus: It is worthy to reiterate herein the ruling of this Court in *Almeida v. Court of Appeals* – In general, a trial court's decision to grant or to deny injunctive relief will not be set aside on appeal unless the court abused its discretion. **In granting or denying injunctive relief, a court abuses its discretion when it** lacks jurisdiction, fails to consider and make a record of the factors relevant to its

determination, **relies on clearly erroneous factual findings, considers clearly irrelevant or improper factors, clearly gives too much weight to one factor, relies on erroneous conclusions of law or equity, or misapplies its factual or legal conclusions.** In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion. As the Court had the occasion to state in *Olalia v. Hizon*: It has been consistently held that **there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction.** It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages. **Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it.** In this case, the unreliable and unconvincing testimony of respondents' main witness is utterly deficient to establish the existence of the aforementioned requisites for the issuance of a writ of preliminary injunction.

APPEARANCES OF COUNSEL

Lim Vigilia Alcala Dumlao & Orencia for petitioner.
M.B. Tomacruz & Associates Law Offices 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 filed by China Banking Corporation (petitioner), praying that the Decision[1] of the Court of Appeals (CA) dated June 30, 2003, and the CA Resolution[2] dated September 26, 2003, be reversed and set aside.

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[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Eugenio S. Labitoria and Regalado E. Maambong, concurring; *rollo*, pp. 8-16.

[2] *Id.* at 18.

The undisputed facts of the case as summarized by the CA are as follows:

On different dates, private respondent Ta Fa Industries, Inc., through its authorized signatory, Hung Chen Chen, for value received, signed and delivered in favor of petitioner bank:

Promissory Note	Date	Amount
(a) MK-T-22165	November 15, 1995	₱19,000,000.00
(b) TS-25175	August 23, 1996	₱37,928,416.67
(c) TS-29078-8	July 30, 1997	₱12,000,000.00

In order to secure the payment of the aforesaid promissory notes, private respondents respectively executed in favor of petitioner bank, the following real estate mortgages, to wit:

Date of Mortgage	Mortgagor	Property Mortgaged
(a) April 10, 1995 Amended on July 10, 1995	Ta Fa Industries, Inc. Thru: Hung Chen Chen	TCT No. 98056
(b) May 20, 1996	Jean Long Industries, Inc. Thru: Hung Chen Chen	TCT No. PT-89703 TCT No. PT-89704 TCT No. PT-89705
(c) July 21, 1997	J & H Industries, Inc. Thru: Hung Chen Chen	TCT No. PT-106315

For private respondents' failure to pay the quarterly amortizations, petitioner Bank instituted a *Petition for Extra-judicial Foreclosure of Real Estate Mortgages* with the Executive Judge of the court *a quo*.

Acting upon the petition, the *Notice of Auction Sale by Notary Public* was duly published and posted in accordance with the requirements of the law, and a copy was duly served upon private respondents through Hung Chen Chen. The auction

sale was set on 22 November 2001 at 10:00 o'clock in the morning at the Main Entrance, City Hall Building.

On 16 November 2001, private respondents filed their *Verified Complaint for Accounting/Reconciliation of Accounts, Specific Performance, Write (sic) of Preliminary Injunction with Temporary Restraining Order, and Damages* against petitioner. This was docketed as Civil Case No. 68747 and raffled to RTC - Pasig City, Branch 71.

On 22 November 2001, after summary hearing, respondent Judge issued an *Order* granting private respondents' application for temporary restraining order. And on 21 January 2002, respondent Judge issued the herein assailed Order, granting private respondents' application for the issuance of a writ of preliminary injunction.

Aggrieved by the denial of its Motion for Reconsideration by respondent Judge in an Order dated 10 April 2002, petitioner Bank elevated the case before this Tribunal.[3]

On June 30, 2003, the CA promulgated its Decision dismissing the petition for *certiorari*, concluding that the Regional Trial Court of Pasig City, Branch 71 (RTC) did not commit any grave abuse of discretion amounting to lack of jurisdiction in issuing the temporary restraining order and, eventually, the writ of preliminary injunction, based on the RTC's finding that petitioner failed to refute respondents' claim that the loan proceeds had not been released in full.

The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the Petition is **DISMISSED** for lack of merit and the assailed 21 January 2002 Order of the trial court is hereby **AFFIRMED** in toto. No costs.

SO ORDERED.[4]

Petitioner moved for reconsideration but the CA denied said motion per Resolution dated September 26, 2003.

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[3] *Rollo*, pp. 63-65.

[4] *Rollo*, p. 16.

Hence, herein petition alleging that:

I

THE HONORABLE COURT OF APPEALS' DECISION AFFIRMING THE TRIAL COURT'S IMPROVIDENT GRANT OF RESPONDENTS' APPLICATION FOR WRIT OF PRELIMINARY INJUNCTION PROMOTED AN ERRONEOUS CONCLUSION OF FACTS BASED ON PURE CONJECTURE AND NOT ON THE EVIDENCE ON RECORD, WHICH THE TRIAL COURT EVEN UNFAIRLY CREATED IN FAVOR OF THE RESPONDENTS, IN CLEAR DISPLAY OF PARTIALITY.

(a) Hence, the conclusion of facts that formed the basis of the erroneous Decision (*Annex "A"*) would not attain conclusiveness and deserves to be reviewed by this Honorable Court.

II

THE HONORABLE COURT OF APPEALS' DECISION ERRONEOUSLY SANCTIONED THE TRIAL COURT'S DEPARTURE FROM THE ESTABLISHED PROCEDURAL AND JURISPRUDENTIAL RULE ON THE LEGAL GROUNDS FOR ISSUANCE OF WRIT OF PRELIMINARY INJUNCTION.[5]

The Court finds the petition meritorious.

The grounds for the issuance of a writ of preliminary injunction are enumerated in Rule 58, Section 3 of the Revised Rules of Court, which reads as follows:

Sec. 3. *Grounds for issuance of preliminary injunction*. – A preliminary injunction may be granted when it is established;

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening,

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[5] *Id*. at 34.

> or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Under the rule, it is incumbent upon respondents to prove that they are entitled to the relief of having the public auction sale of their properties restrained. Petitioner claims that respondents failed to adduce proof that they are entitled to a writ of preliminary injunction; hence, the trial court gravely abused its discretion in granting the application for said writ.

Petitioner's allegation that the factual findings of the trial court, as affirmed by the CA, are based on conjecture, misapprehension and misinterpretation of respondents' evidence, are borne out by the records. Indubitably, it is a clear exception to the general rule that findings of fact of the CA are conclusive upon this Court.[6]

The CA conclusion that there was no grave abuse of discretion committed by the RTC is based mainly on its finding that "petitioner is silent as to the factual finding of the trial court that it (petitioner) failed to remit in full the considerations for the real estate mortgages. Thus, it renders such findings conclusive against petitioner."[7] However, an examination of the records reveals that in petitioner's motion for reconsideration of the RTC Order dated January 21, 2002 granting the application for a writ of preliminary injunction, and again in its petition for *certiorari* before the CA, petitioner had consistently assailed the RTC finding that there was no full remittance of the consideration for the real estate mortgages. Thus, the CA seriously erred in ruling that the trial court's factual finding that petitioner failed to release the loan proceeds in full to respondent Ta Fa Industries, Inc. (Ta Fa) is conclusive on petitioner.

Moreover, petitioner has a valid ground for questioning the sufficiency of the evidence presented by respondents to support

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[6] *Citibank, N.A. (Formerly First National City Bank) v. Sabeniano*, G.R. No. 156132, October 12, 2006, 504 SCRA 378, 409.

[7] *Rollo*, p. 66.

their application for a writ of preliminary injunction. Section 1, Rule 131 of the Rules of Court provides, thus:

> Sec. 1. *Burden of proof*. – Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

Here, the burden of proof rests with respondents to establish their claim that they have a legal right that should be protected by a writ of preliminary injunction. In *L.C. Ordoñez Construction v. Nicdao*,[8] the Court reiterated the ruling that "the burden of proof is on the part of the party who makes the allegations – *ei incumbit probatio*, *qui dicit*, *non qui negat*. **If he claims a right granted by law, he must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weakness of that of his opponent**." (Emphasis ours)

Respondents failed to discharge said burden of proof. They do not dispute petitioner's claim that the main evidence in support of their application for the writ of preliminary injunction is the testimony of Atty. Jesus S. Silo. We note the salient points of his testimony, to wit:

> Atty. Tomacruz:
>
> Q Under subparagraph A of paragraph 3 it is alleged that plaintiffs have not received in full the consideration for the real estate mortgages being foreclosed. What can you say to that?
>
> A That is true. That is the reason why, because it is a little complicated, I advised the plaintiffs herein to consult directly with a lawyer who's very knowledgeable on the details on this.
>
> Q When you said that is true, will you explain a little further?
>
> A I mean when I gone through the records, from just a cursory observation of the documents, the companies itself on the plaintiffs herein have not received yet the full amount of the loan from the bank.
>
> x x x x x x x x x

[8] G.R. No. 149669, July 27, 2006, 496 SCRA 745, 752-753.

Q When you say balance, to which amount are you referring, balance of what?
A Balance of the loan being obtained by the plaintiffs.

Q Which according to you has not yet been given to the plaintiffs?
A That's right, Sir.

Q **Do you know how much balance has not yet been given to the plaintiffs?**
A **I'm sorry, I would not be able to tell you the amount. The exact amount because as I said this is complicated and the details of this I have not gone through.**

Q Is it substantial?
A It is substantial. I know it is ranging to millions.

x x x x x x x x x

COURT:

Q You mean the loan amounted to 67 Million?
A That is the demand of the bank, your Honor.

Q No, I'm asking you how much is the loan obtained by the plaintiffs from defendant bank?
A I would not know exactly the amount, your Honor, because I came to know about this one only when the letter already was shown to me by the plaintiffs.

Q How can you say that there is still a balance?
A Because in the records, I've seen in the documents there is still in the documents.

Q More or less how much is the balance?
A I would not remember exactly, your Honor.

x x x x x x x x x[9]

On cross-examination, the same witness gave the following answers:

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[9] TSN, November 21 2001, pp. 8-11; *rollo*, pp. 120-123.

Q **Would you know in how many times or in how many branches were the loan proceeds released to the plaintiffs corporation?**

A **These are money matter, I did not participate in this.**

x x x x x x x x x

Q My question is, do you know how many promissory notes were executed to evidence the loan?

A The exact number of promissory notes I would not know.

Q And you would not even know also the actual status of the loan before a demand letter was sent to the plaintiffs corporations, is it not?

A I was informed by the companies itself, that we have not received the full amount of the loans.

Q Okay we go to the point. What evidence can you show to this Honorable Court that not all of the proceeds of the loan were not released to plaintiffs corporations?

A I do not have documents to show right now, Sir.

x x x x x x x x x

Q We're just curious *Compañero* because if you are claiming that there was no full release of the loan, you would not even know how many promissory notes were executed, the nature of the loan you would not know even, how can you say now that full amount of the loan were not yet released to the plaintiffs corporations?

A I just based it on the records of the corporation.

Q Precisely, I'm asking you again the question. What records are these or evidence are these which you can show to this Honorable Court that the loans were not released fully to the plaintiffs corporations?

A I do not have the documents right now.

Q Can you be specific what documents is that if you don't have it with you now?

A As I was telling you I just gone a cursory look over the records, the details I said, this is a complicated thing which

I think you should approach a lawyer who is familiar with all these things.

x x x x x x x x x

Q You declared Mr. Witness that the balance of the loan being paid by the plaintiffs are not yet due and demandable, what is your basis in saying so?

A As I said, I saw a figure there of 67 Million in the demand letter itself and a demand of the same type, interest and other charges. I told the treasurer of the companies involved. As I said this is a complicated matter, on interest, *etc*. I think you better consult or refer it to a lawyer more familiar with this.

x x x x x x x x x

Q One final question Mr. Witness. Would you know, if you are claiming that the loan were not fully released to plaintiffs corporations, would you know how much if any were released to plaintiffs corporation?

A If I am not mistaken, Your Honor, I answered it earlier that I do not know the exact figure on how much the balance of the loan.

COURT:

Q More or less how many millions?

A Frankly, Your Honor, when it comes to money computation, etc., I do not want to . . .

Q And you are not the accountant?

A Yes, Your Honor, and I want to avoid that.

x x x[10] (Emphasis supplied)

A simple perusal of the testimony of respondents' witness readily reveals that he admitted that he does not participate in money matters of respondents; that he does not know the alleged amount that had not been released to respondents, or the balance of the loan. Verily, the foregoing testimony glaringly shows

[10] TSN, November 21, 2001, pp. 17-21, 31; *rollo*, pp. 129-133, 143.

that the witness is incompetent to shed any light on the transactions involved in this case, much less establish that respondents, as plaintiffs, do have a clear and unmistakable right that should be judicially protected through the issuance of a writ of preliminary injunction.

The oft-repeated rule, as stated in *Republic of the Philippines v. Caguioa*,[11] is that:

For a writ of preliminary injunction to issue, the **plaintiff must be able to establish** that (1) there is **a clear and unmistakable right to be protected**, (2) the invasion of the right sought to be protected is material and substantial, and (3) there is an urgent and paramount necessity for the writ to prevent serious damage.

Conversely, **failure to establish either the existence of a clear and positive right which should be judicially protected through the writ of injunction**, or of the acts or attempts to commit any act which endangers or tends to endanger the existence of said right, or of the urgent need to prevent serious damage, **is a sufficient ground for denying the preliminary injunction**.[12] (Emphasis supplied)

Furthermore, in *Ocampo v. Vda. de Fernandez*,[13] the Court emphasized thus:

It is worthy to reiterate herein the ruling of this Court in *Almeida v. Court of Appeals* –

In general, a trial court's decision to grant or to deny injunctive relief will not be set aside on appeal unless the court abused its discretion**. In granting or denying injunctive relief, a court abuses its discretion when it** lacks jurisdiction, fails to consider and make a record of the factors relevant to its determination, **relies on clearly erroneous factual findings, considers clearly irrelevant or improper factors, clearly gives too much weight to one factor, relies on erroneous conclusions of law or equity, or misapplies its factual or legal conclusions.** In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion. As the Court had the occasion to state in *Olalia v. Hizon*:

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[11] G.R. No. 168584, October 15, 2007, 536 SCRA 193.

[12] *Id*. at 212.

[13] G.R. No. 164529, June 19, 2007, 525 SCRA 79.

> It has been consistently held that **there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction.** It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.
>
> **Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately.** ***It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it.***[14] (Emphasis ours)

In this case, the unreliable and unconvincing testimony of respondents' main witness is utterly deficient to establish the existence of the aforementioned requisites for the issuance of a writ of preliminary injunction.

The trial court also, wittingly or unwittingly, misinterpreted the testimony of petitioner's witnesses by concluding that petitioner failed to release the entire amount of the loan to respondent Ta Fa, when what the witness said was that ₱6 million out of the ₱19 million loan granted to Ta Fa was applied as payment to Ta Fa's previous outstanding loans. Such application of proceeds of the subsequent loan bears the consent of Ta Fa since all three Promissory Notes uniformly contain the following stipulation:

x x x x x x x x x

and each of us, do hereby authorize and empower the CHINA BANKING CORPORATION at its option without notice, to apply to the payment of this note and/or any other particular obligation or all or any of us to the CHINA BANKING CORPORATION as the said Corporation may select, the dates of the maturity, whether or nor said obligation are then due, any or all moneys, securities, value which are now or which may hereafter be in its hands on deposit or otherwise to the credit of all or any one of us, and the CHINA BANKING CORPORATION is hereby authorized to sell at public

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

such securities or things of value for the purpose of applying their proceeds to such payments.[15]

Hence, it cannot be said that the ₱6 million was not released for the account of respondent Ta Fa who benefitted from the ₱6 million as said amount was used to clear his previous obligations.

Such patently capricious and whimsical exercise of the trial court's judgment is tantamount to grave abuse of discretion amounting to lack of jurisdiction. The CA erred in dismissing the petition for *certiorari* filed before it by herein petitioner.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals dated June 30, 2003, and the Resolution dated September 26, 2003 are *REVERSED and SET ASIDE*. The Order dated January 21, 2002 and the Order dated April 10, 2002 issued by the Regional Trial Court of Pasig, Branch 71, in Civil Case No. 68747 are declared null and void; hence, the writ of preliminary injunction is *DISSOLVED*.

Costs against respondents.

SO ORDERED.

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

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[15] Annexes "R", "S" and "T", *rollo*, pp. 337, 338, 339, respectively,

THIRD DIVISION

[G.R. No. 160671. April 30, 2008]

LUIS L. CO, *petitioner, vs.* **HON. RICARDO R. ROSARIO, in his capacity as the Presiding Judge of the Regional Trial Court, Branch 66, Makati City, ELIZABETH RACHEL CO, ASTRID MELODY CO-LIM, GENEVIEVE CO-CHUN, CAROL CO, KEVIN CO, EDWARD CO and the ESTATE OF LIM SEE TE,** *respondents.*

SYLLABUS

REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE; SPECIAL ADMINISTRATOR; COURTS MAY APPOINT AND REMOVE SPECIAL ADMINISTRATORS BASED ON THE GROUNDS OTHER THAN THOSE ENUMERATED IN THE RULE; LIMITATION.— Settled is the rule that the selection or removal of *special* administrators is not governed by the rules regarding the selection or removal of *regular* administrators. Courts may appoint or remove *special* administrators based on grounds other than those enumerated in the Rules, at their discretion. As long as the said discretion is exercised without grave abuse, higher courts will not interfere with it. This, however, is no authority for the judge to become partial, or to make his personal likes and dislikes prevail over, or his passions to rule, his judgment. The exercise of such discretion must be based on reason, equity, justice and legal principles. Thus, even if a special administrator had already been appointed, once the court finds the appointee no longer entitled to its confidence, it is justified in withdrawing the appointment and giving no valid effect thereto. The special administrator is an officer of the court who is subject to its supervision and control and who is expected to work for the best interest of the entire estate, especially with respect to its smooth administration and earliest settlement.

APPEARANCES OF COUNSEL

Cortez & Associates for petitioner.
Siguion Reyna Montecillo & Ongsiako for E.R. Co.

Teresita Gandionco Oledan for Estate of Lim See Te.

Britanico Sarmiento & Franco Law Offices for Astrid Melody Co-Lim, *et al*.

DECISION

NACHURA, *J*.:

For the resolution of the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court questioning the October 28, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 72055.

The relevant facts and proceedings follow.

On March 4, 1998, the Regional Trial Court (RTC) OF Makati City, Branch 66, in Sp. Proc. No. M-4615, appointed petitioner and Vicente O. Yu, Sr. as the special administrators of the estate of the petitioner's father, Co Bun Chun.[2] However, on motion of the other heirs, the trial court set aside petitioner's appointment as special co-administrator.[3] Petitioner consequently, nominated his son, Alvin Milton Co (Alvin, for brevity), for appointment as co-administrator of the estate.[4] On August 31, 1998, the RTC appointed Alvin as special co-administrator.[5]

Almost four years thereafter, the RTC, acting on a motion[6] filed by one of the heirs, issued its January 22, 2002 Order[7]

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[1] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Mariano C. Del Castillo and Rosalinda Asuncion-Vicente, concurring; *rollo*, pp. 20-26.

[2] *Id*. at 41-42.

[3] *Id*. at 43-45.

[4] *Id*. at 46-48.

[5] *Id*. at 49-50.

[6] Captioned as *Motion to Disqualify Alvin Milton S. Co as Special Administrator*; *rollo*, pp. 51-54.

[7] *Rollo*, pp. 58-60.

revoking and setting aside the appointment of Alvin. The trial court reasoned that Alvin had become unsuitable to discharge the trust given to him as special co-administrator because his capacity, ability or competence to perform the functions of co-administrator had been beclouded by the filing of several criminal cases against him, which, even if there was no conviction yet, had provided the heirs ample reason to doubt his fitness to handle the subject estate with utmost fidelity, trust and confidence.

Aggrieved, petitioner moved for the reconsideration of the said Order, but this was denied in the RTC Order[8] of May 14, 2002.

Subsequently, petitioner brought the matter to the CA on petition for *certiorari* under Rule 65. In the aforesaid challenged October 28, 2003 Decision,[9] the appellate court affirmed the revocation of the appointment and dismissed the petition. Thus, the instant petition for review on *certiorari* under Rule 45.

The petition is bereft of merit.

We affirm the appellate court's ruling that the trial court did not act with grave abuse of discretion in revoking Alvin's appointment as special co-administrator. Settled is the rule that the selection or removal of *special* administrators is not governed by the rules regarding the selection or removal of *regular* administrators.[10] Courts may appoint or remove *special*

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[8] *Id*. at 68.

[9] *Supra* note 1.

[10] *Heirs of Belinda Dahlia A. Castillo v. Lacuata-Gabriel*, G.R. No. 162934, November 11, 2005, 474 SCRA 747, 760, citing *Roxas v. Pecson*, 82 Phil. 407, 410 (1948); see *Rivera v. Hon. Santos;* 124 Phil. 1557, 1561 (1966), in which the Court ruled that the selection of a special administrator is left to the sound discretion of the court, and that the need to first pass upon and resolve the issues of fitness or unfitness as would be proper in the case of a regular administrator, does not obtain; see also *Alcasid v. Samson*, 102 Phil. 735, 737 (1957), in which the Court declared that the appointment and removal of a special administrator are interlocutory proceedings incidental to the main case and lie in the sound discretion of the court.

administrators based on grounds other than those enumerated in the Rules, at their discretion.[11] As long as the said discretion is exercised without grave abuse, higher courts will not interfere with it.[12] This, however, is no authority for the judge to become partial, or to make his personal likes and dislikes prevail over, or his passions to rule, his judgment. The exercise of such discretion must be based on reason, equity, justice and legal principles.[13]

Thus, even if a special administrator had already been appointed, once the court finds the appointee no longer entitled to its confidence, it is justified in withdrawing the appointment and giving no valid effect thereto.[14] The special administrator is an officer of the court who is subject to its supervision and control and who is expected to work for the best interest of the entire estate, especially with respect to its smooth administration and earliest settlement.[15]

In this case, we find that the trial court's judgment on the issue of Alvin's removal as special co-administrator is grounded on reason, equity, justice and legal principle. It is not characterized by patent and gross capriciousness, pure whim and abuse, arbitrariness or despotism, as to be correctible by the writ of *certiorari*.[16] In fact, the appellate court correctly observed that:

> In ruling to revoke the appointment of Alvin Milton Co, the lower court took into consideration the fiduciary nature of the office of a special administrator which demands a high degree of trust and

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[11] Regalado, *Remedial Law Compendium*, Sixth Revised Edition, Vol. 2, p. 45.

[12] See *Esler v. Tad-y*, G.R. No. L-20902, October 9, 1923.

[13] *Fule v. Court of Appeals,* 165 Phil. 785, 800 (1976).

[14] Herrera, *Remedial Law,* 1996 Edition, Vol. III-A, p. 93, citing *Cobarrubias v. Dizon,* 76 Phil. 209 (1946).

[15] *Heirs of Belinda Dahlia A. Castillo v. Lacuata-Gabriel*, *supra* note 10, at 757.

[16] See *Machica v. Roosevelt Services Center, Inc.,* G.R. No. 168664, May 4, 2006, 489 SCRA 534, 547.

confidence in the person to be appointed. The court *a quo* observed that, burdened with the criminal charges of falsification of commercial documents leveled against him (sic), and the corresponding profound duty to defend himself in these proceedings, Alvin Milton Co's ability and qualification to act as special co-administrator of the estate of the decedent are beclouded, and the recall of his appointment is only proper under the attendant circumstances. Such reasoning by the court *a quo* finds basis in actual logic and probability. Without condemning the accused man (sic) as guilty before he is found such by the appropriate tribunal, the court merely declared that it is more consistent with the demands of justice and orderly processes that the petitioner's son, who is already bidden to defend himself against criminal charges for falsification in other fora be relieved of his duties and functions as special administrator, to avoid conflicts and possible abuse.

The Court finds no grave abuse of discretion attending such ruling, as it was reached based on the court *a quo's* own fair assessment of the circumstances attending the case below, and the applicable laws.[17]

As a final note, the Court observes that this prolonged litigation on the simple issue of the removal of a special co-administrator could have been avoided if the trial court promptly appointed a regular administrator. We, therefore, direct the trial court to proceed with the appointment of a regular administrator as soon as practicable.

WHEREFORE, the petition for review on *certiorari* is hereby *DENIED*. The October 28, 2003 Decision of the Court of Appeals in CA-G.R. SP No. 72055 is *AFFIRMED*.

SO ORDERED.

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

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[17] *Rollo*, p. 25.

SECOND DIVISION

[G.R. No. 163013. April 30, 2008]

EUREKA PERSONNEL AND MANAGEMENT SERVICES, INC., *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION and APOLONIO A. BUENO,** *respondents.*

SYLLABUS

REMEDIAL LAW; RULES OF COURT; LIBERAL CONSTRUCTION OF THE RULES; WHEN ALLOWED; NOT PRESENT IN CASE AT BAR.— Liberal construction of the Rules of Court has been allowed by this Court in the following cases: (1) where a rigid application will result in manifest failure or miscarriage of justice, especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein; (2) where the interest of substantial justice will be served; (3) where the resolution of the motion is addressed solely to the sound and judicious discretion of the court; and (4) where the injustice to the adverse party is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Here, petitioner has not shown any cogent reason for the Court to be liberal in the application of the rules. Petitioner cannot evade its responsibility of complying with the rules by faulting the Court of Appeals of not stating in its first resolution the particular deficiencies of the petition. We note that despite having the chance to rectify its omission, petitioner still did not submit the necessary documents with its motion for reconsideration.

APPEARANCES OF COUNSEL

Public Attorney's Office for private respondent.

DECISION

QUISUMBING, *J.*:

This is a petition for review on *certiorari* seeking to set aside the Resolutions[1] dated December 3, 2003 and February 20, 2004, of the Court of Appeals in CA-G.R. SP No. 80746, which dismissed petitioner's special civil action for *certiorari* assailing the June 30, 2003 Decision[2] of the National Labor Relations Commission (NLRC) in NLRC NCR CA 031851-02 (OFW-01-08-1742-00).

The facts are undisputed.

Private respondent Apolonio A. Bueno was hired by petitioner Eureka Personnel and Management Services, Inc. in behalf of its principal, Saudi Archirodon, Ltd., as mechanic with a monthly salary of SR$1,763.

On June 14, 1999, private respondent was deployed but was made to work as carpenter with a monthly salary of SR$750. In the course of his employment, private respondent injured his right eyebrow and was treated at the Gosi Hospital in New Jeddah. Subsequent examinations showed that private respondent's eyes were still normal. However, private respondent remained in his quarters and refused to work.

On March 21, 2001, private respondent was repatriated. He also signed a receipt acknowledging that he received SR$3,000 from Saudi Archirodon, Ltd.

Private respondent filed a complaint for illegal dismissal, non-payment and underpayment of salaries, and moral and exemplary damages against petitioner.

On February 28, 2002, the Labor Arbiter rendered a Decision[3] which reads:

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[1] *Rollo*, pp. 18, 20-21. Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Jose L. Sabio, Jr. and Hakim S. Abdulwahid concurring.

[2] Records, pp. 247-252.

[3] *Id*. at 62-65.

WHEREFORE, the respondents are hereby ordered, jointly and severally, 1) to pay the complainant the equivalent of 3 months salary for the unexpired portion of the contract in the sum of SR$5,289.00 (SR$1763 x 3 = SR$5,289); 2) to pay the complainant the sum of SR$9,117.00 (SR$1763 – SR$750 = SR$1,013 x 9 mos. = SR$9,117.00) as salary differential. The rest of the claims are dismissed for lack of sufficient basis to make an award.

SO ORDERED.[4]

Petitioner appealed to the NLRC, which modified the Decision of the Labor Arbiter on June 30, 2003, as follows:

WHEREFORE, premises considered, judgment is hereby rendered MODIFYING the Decision dated 28 February 2002 by deleting the award of three (3) months salary but awarding salary differential for the whole period of its original contract, computed as follows:

SR$1,763 – SR$750 = SR$1,013 x 12 mos. = SR$12,156

SO ORDERED.[5]

Petitioner filed a special civil action for *certiorari* with the Court of Appeals which was dismissed for failure to comply with the provisions of Section 1, Rule 65 in relation to Section 3, Rule 46 of the Rules of Court. Petitioner moved for reconsideration alleging that it had complied with the Rules of Court and that the resolution did not point out the particular deficiencies of the petition.

The appellate court denied the motion noting that petitioner still failed to rectify the procedural deficiencies by not submitting the documents required under Section 3, Rule 46, such as the (1) complaint for illegal dismissal; (2) medical records; (3) contract of employment; (4) position papers; and (5) Labor Arbiter's decision.

Petitioner submits the following as issues for the consideration of the Court:

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[4] *Id*. at 65.

[5] *Id*. at 251.

I.

THE DOCUMENTS NOTED BY THE COURT OF APPEALS AS NOT SUBMITTED BY PETITIONER AND WHOSE ABSENCE WAS GROUND FOR THE DISMISSAL OF THE PETITION ARE NOT MATERIAL TO THE ISSUE.

II.

THE COURT OF APPEALS ONLY POINTED OUT THE DEFICIENCIES AFTER PETITIONER FILED ITS MOTION FOR RECONSIDERATION.[6]

In our view, the main issue is whether the Court of Appeals erred in dismissing the petition due to petitioner's failure to attach the documents required under Section 3, Rule 46 of the Rules of Court.

Worth noting in this regard is Section 1, Rule 65 in relation to Section 3, Rule 46 of the Rules of Court, which provide that:

SECTION 1. *Petition for certiorari*. — . . .

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

SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements*. — . . .

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It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. . . .

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[6] *Rollo*, p. 7.

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (Emphasis supplied.)

In this case, annexed to the petition before the Court of Appeals were the following documents: (1) photocopy of the board resolution authorizing Divine Laus to file the petition; (2) certified true copy of the NLRC Decision dated June 30, 2003 modifying the Labor Arbiter's decision; and (3) certified true copy of the NLRC Resolution dated September 5, 2003, denying petitioner's motion for reconsideration.

Petitioner's lone issue presented before the appellate court was the propriety of awarding salary differentials to private respondent using the salary rate of a mechanic. While it may appear that petitioner was merely assailing the proper computation of the salary differentials, it is actually disputing the basis of the private respondent's salary. Petitioner posits that since private respondent actually worked as a carpenter, he was not entitled to the salary rate of a mechanic as stipulated in his employment contract. This issue is not entirely new as private respondent had consistently complained of underpayment of wages in his complaint and position paper. Thus, to resolve this, it was necessary for the appellate court to review the parties' respective arguments, which were premised on the following documents: (1) complaint for illegal dismissal; (2) contract of employment; (3) position papers; and (4) Labor Arbiter's decision.

Under the circumstances, we hold that the documents attached to the petition were insufficient to support petitioner's allegations before the Court of Appeals. Besides, even petitioner recognized that the certified true copy of the NLRC Decision dated June 30, 2003 modifying the Labor Arbiter's decision was blurred and illegible, thus making it doubly difficult for the appellate court to resolve the issue raised.

Liberal construction of the Rules of Court has been allowed by this Court in the following cases: (1) where a rigid application will result in manifest failure or miscarriage of justice, especially

if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein; (2) where the interest of substantial justice will be served; (3) where the resolution of the motion is addressed solely to the sound and judicious discretion of the court; and (4) where the injustice to the adverse party is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[7]

Here, petitioner has not shown any cogent reason for the Court to be liberal in the application of the rules.[8] Petitioner cannot evade its responsibility of complying with the rules by faulting the Court of Appeals of not stating in its first resolution the particular deficiencies of the petition. We note that despite having the chance to rectify its omission, petitioner still did not submit the necessary documents with its motion for reconsideration.

In sum, we sustain the dismissal of the petition by the Court of Appeals for failure to comply with pertinent provision of Rules 65 and 46 of the Rules of Court, now the Rules of Civil Procedure.

WHEREFORE, the petition is *DENIED* for lack of merit. The appealed Resolutions dated December 3, 2003 and February 20, 2004, of the Court of Appeals in CA-G.R. SP No. 80746 are *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

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[7] *Manila Hotel Corporation v. Court of Appeals*, G.R. No. 143574, July 11, 2002, 384 SCRA 520, 524.

[8] *Jose v. Court of Appeals*, G.R. No. 128646, March 14, 2003, 399 SCRA 83, 89.

THIRD DIVISION

[G.R. No. 164195. April 30, 2008]

APO FRUITS CORPORATION and HIJO PLANTATION, INC., *petitioners, vs.* **THE HON. COURT OF APPEALS and LAND BANK OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; JUDICIARY; SUPREME COURT *EN BANC* IS NOT AN APPELLATE COURT OF ITS DIVISIONS; RATIONALE.—** The Supreme Court sitting *En Banc* is not an appellate court *vis-à-vis* its Divisions, and it exercises no appellate jurisdiction over the latter. Each division of the Court is considered not a body inferior to the Court *en banc*, and sits veritably as the Court *en banc* itself. It bears to stress further that a resolution of the Division denying a party's motion for referral to the Court *en banc* of any Division case, shall be final and not appealable to the Court *en banc*.

2. **REMEDIAL LAW; APPEALS; MOTION FOR RECONSIDERATION; SECOND MOTION FOR RECONSIDERATION, PROHIBITED; APPLICATION IN CASE AT BAR.—** In addition, the Omnibus Motion of LBP, to the extent that it seeks reconsideration of the amount of just compensation which the Court affirmed in its Decision dated 6 February 2007, is a second motion for reconsideration, because the Court already denied an identical prayer in its previous Resolution dated 19 December 2007. Thus, the prayer of LBP for leave to file a second motion for reconsideration must be denied for a second motion for reconsideration is a prohibited pleading under Rule 52, Section 2 of the Rules of Court, which provides that, "No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained."

APPEARANCES OF COUNSEL

Herrera Teehankee & Cabrera for petitioners.
LBP Legal Department for respondent LBP.

RESOLUTION

CHICO-NAZARIO, *J.*:

On 6 February 2007, the Third Division of this Court promulgated its Decision in this case, partially granting the Petition for Review on *Certiorari* of Apo Fruits Corporation (AFC) and Hijo Plantation, Inc. (HPI). According to the dispositive portion of said Decision:

> WHEREFORE, premises considered, the instant Petition is **PARTIALLY GRANTED**. While the Decision, dated 12 February 2004, and Resolution, dated 21 June 2004, of the Court of Appeals in CA-G.R. SP No. 76222, giving due course to LBP's appeal, are hereby **AFFIRMED**, this Court, nonetheless, **RESOLVES**, in consideration of public interest, the speedy administration of justice, and the peculiar circumstances of the case, to give **DUE COURSE** to the present Petition and decide the same on its merits. Thus, the Decision, dated 25 September 2001, as modified by the Decision, dated 5 December 2001, of the Regional Trial Court of Tagum City, Branch 2, in Agrarian Cases No. 54-2000 and No. 55-2000 is **AFFIRMED.** No costs.[1]

The *fallo* of the affirmed Decision of the Regional Trial Court (RTC) in Agrarian Cases No. 54-2000 and No. 55-2000, as it was originally promulgated on 25 September 2001, reads:

WHEREFORE, consistent with all the foregoing premises, judgment is hereby rendered by this Special Agrarian Court where it has determined judiciously and now hereby fixed the just compensation for the 1,388.6027 hectares of lands and its improvements owned by the plaintiffs: APO FRUITS CORPORATION and HIJO PLANTATION, INC., as follows:

> **First** — Hereby ordering after having determined and fixed the fair, reasonable and just compensation of the 1,338.6027 hectares of land and standing crops owned by plaintiffs – APO FRUITS CORPORATION and HIJO PLANTATION, INC., based at only ₱103.33 per sq. meter, **ONE BILLION THREE HUNDRED EIGHTY-THREE MILLION ONE HUNDRED SEVENTY-NINE THOUSAND PESOS**

[1] *Rollo,* pp. 439-440.

(₱1,383,179,000.00), Philippine Currency, under the current value of the Philippine Peso, to be paid jointly and severally to the herein PLAINTIFFS by the Defendants-Department of Agrarian Reform and its financial intermediary and co-defendant Land Bank of the Philippines, thru its Land Valuation Office;

Second — Hereby ordering Defendants – DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay plaintiffs-APO FRUITS CORPORATION and HIJO PLANTATION, INC., interests on the above-fixed amount of fair, reasonable and just compensation equivalent to the market interest rates aligned with 91-day Treasury Bills, from the date of the taking in December 9, 1996, until fully paid, deducting the amount of the previous payment which plaintiffs received as/and from the initial valuation;

Third — Hereby ordering Defendants – DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay jointly and severally the Commissioners' fees herein taxed as part of the costs pursuant to Section 12, Rule 67 of the 1997 Rules of Civil Procedure, equivalent to, and computed at Two and One-Half (2 ½) percent of the determined and fixed amount as the fair, reasonable and just compensation of plaintiffs' land and standing crops plus interest equivalent to the interest of the 91-Day Treasury Bills from date of taking until full payment;

Fourth — Hereby ordering Defendants – DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay jointly and severally the attorney's fees to plaintiffs equivalent to, and computed at ten (10%) Percent of the determined and fixed amount as the fair, reasonable and just compensation of plaintiffs' land and standing crops, plus interest equivalent to the 91-Day Treasury Bills from date of taking until the full amount is fully paid;

Fifth — Hereby ordering Defendants – DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office to deduct from the total amount fixed as fair, reasonable and just

compensation of plaintiffs' properties the initial payment paid to the plaintiffs;

Sixth — Hereby ordering Defendants – DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay the costs of the suit; and

Seventh — Hereby ordering Defendants – DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay all the aforementioned amounts thru The Clerk of Court of this Court, in order that said Court Officer could collect for payment any docket fee deficiency, should there be any, from the plaintiffs.[2]

It was subsequently modified, as follows, by the RTC in an Order dated 5 December 2001:

WHEREFORE, premises considered, IT IS HEREBY ORDERED that the following modifications as they are hereby made on the dispositive portion of this Court's consolidated decision be made and entered in the following manner, to wit:

On the Second Paragraph of the Dispositive Portion which now reads as follows, as modified:

Second — Hereby ordering Defendants – DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay plaintiffs-APO FRUITS CORPORATION and HIJO PLANTATION, INC., interest at the rate of Twelve (12%) Percent per annum on the above-fixed amount of fair, reasonable and just compensation computed from the time the complaint was filed until the finality of this decision. After this decision becomes final and executory, the rate of TWELVE (12%) PERCENT per annum shall be additionally imposed on the total obligation until payment thereof is satisfied, deducting the amounts of the previous payments by Defendant-LBP received as initial valuation;

On the Third Paragraph of the Dispositive Portion which Now Reads As Follows, As Modified:

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[2] *Id*. at 122-124.

Third — Hereby ordering Defendants – DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay jointly and severally the Commissioners' fees herein taxed as part of the costs pursuant to Section 12, Rule 67 of the 1997 Rules of Civil Procedure, equivalent to, and computed at Two and One-Half (2 ½) percent of the determined and fixed amount as the fair, reasonable and just compensation of plaintiffs' land and standing crops and improvements;

On the Fourth Paragraph of the Dispositive Portion which Now Reads As follows, As Modified:

Fourth — Hereby ordering Defendants – DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay jointly and severally the attorney's fees to plaintiffs equivalent to, and computed at ten (10%) Percent of the determined and fixed amount as the fair, reasonable and just compensation of plaintiffs' land and standing crops and improvements.

Except for the above-stated modifications, the consolidated decision stands and shall remain in full force and effect in all other respects thereof.[3]

From the 6 February 2007 Decision of the Third Division, the Land Bank of the Philippines (LBP) filed an Omnibus Motion seeking the (a) reconsideration of the said decision; (b) referral of the case to the Supreme Court sitting *en banc*; and (c) setting of its motion for oral argument.[4]

In its 19 December 2007 Resolution, the Third Division partially granted the Motion for Reconsideration of LBP by modifying its 6 February 2007 Decision, and ruled:

WHEREFORE, premises considered, the Motion for Reconsideration is PARTIALLY GRANTED as follows:

(1) The award of 12% interest rate per annum in the total amount of just compensation is DELETED.

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[3] *Id*. at 142-144.

[4] *Id*. at 442-488.

(2) This case is ordered REMANDED to the RTC for further hearing on the amount of Commissioners' Fees.

(3) The award of attorney's fees is DELETED.

(4) The Motion for Referral of the case to the Supreme Court sitting *En Banc* and the request or setting of the Omnibus Motion for Oral Arguments are all DENIED for lack of merit. In all other respects, our Decision dated 6 February 2007 is MAINTAINED.[5]

Consequently, all the parties sought reconsideration of the afore-quoted Resolution.

LBP filed another Omnibus Motion seeking (a) reconsideration of the Resolution dated 19 December 2007 of the Third Division denying LBP's motion to refer the case to the Supreme Court *en banc*; and (b) leave of court to file a second Motion for Reconsideration[6] on the issue of just compensation for the subject properties. LBP thus prays –

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court (Third Division), TO REFER this case to the Honorable Court sitting *En Banc*, and upon referral thereof, for this Honorable Court sitting *En Banc* to rule as follows:

1. ALLOW respondent LBP to file a Second Motion for Reconsideration on the issue of just compensation for subject properties, and ADMIT and CONSIDER the said motion in the resolution of the instant case;

2. RECONSIDER the Resolution dated 19 December 2007 which affirmed the Special Agrarian Court's valuation for subject properties amounting to One Billion Three Hundred Eighty Three Million One Hundred Seventy Nine Thousand Pesos (Php1,383,179,000.00) which is almost TRIPLE the landowner-petitioners' offered sum of only Four Hundred Sixty Eight Million Pesos (Php468,000,000.00) as just compensation for subject properties under the Voluntary Offer to Sell (VOS) Scheme;

3. AFFIRM *in toto* respondent LBP's revaluation for subject properties amounting to Four Hundred Eleven Million Seven Hundred

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[5] *Id*. at 621.

[6] Dated 22 January 2008, *id*. at 624-665.

Sixty Nine Thousand One Hundred Sixty Eight Pesos & 32/100 (Php 411,769,168.32) as just compensation.[7]

On the other hand, AFC and HPI filed their Motion for Partial Reconsideration of the Resolution dated 19 December 2007, based on the following grounds:

I.

PETITIONERS RESPECTFULLY SUBMIT THAT THE HONORABLE COURT MAY HAVE OVERLOOKED MATERIAL FACTS AND CIRCUMSTANCES AND THEREFORE ERRED IN NOT HOLDING THAT:

a. PETITIONERS' RECOURSE TO THE DARAB, AFTER REJECTING THE INITIAL VALUATIONS OF RESPONDENT LBP, IS WARRANTED UNDER EXISTING LAWS AND JURISPRUDENCE WHEN THE TWO COMPLAINTS FOR DETERMINATION OF THE JUST COMPENSATION WERE FILED ON 14 FEBRUARY 1997 WITH DARAB.

b. AT THE VERY LEAST, LBP SHOULD BE MADE TO PAY TWELVE PERCENT (12%) INTEREST ON THE BALANCE OF ₱975,223,885.21 (REPRESENTING THE DIFFERENCE BETWEEN THE JUDGMENT AWARD OF ₱1,383,179,000.00 AND THE AMOUNT ALREADY PAID FOR THE SUBJECT PROPERTIES TOTALING ₱407,955,114.79.

II.

RESPONDENT LBP DELIBERATELY DELAYED THE PROCEEDINGS, THUS FAILED TO COMPLY WITH ITS CONSTITUTIONAL OBLIGATION TO MAKE A PROMPT AND FULL PAYMENT OF JUST COMPENSATION; THIS FACT ALONE SHOULD WARRANT THE AWARD OF ATTORNEYS' FEES.[8]

While all the foregoing motions were still pending resolution, the LPB filed on 28 February 2008 a very urgent/verified motion/ application for issuance of temporary restraining order/writ of preliminary injunction, praying that this Court —

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[7] *Id*. at 736-737.

[8] *Id*. at 765-766.

a) ISSUE a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction, to enjoin during the pendency of the proceedings and until the issue raised on appeal and the amount of just compensation of subject property are finally resolved, Hon. Justino G. Aventurado, Judge, Regional Trial Court of Tagum City, Davao del Norte, Branch 2, Sheriffs and/or all persons acting on his behalf, from executing the Partial Writ of Execution implementing the Resolution dated 19 December 2007.

b) QUASH or INVALIDATE the Notices of Garnishment dated 27 February 2008 and similar notices covering "goods, effects, interests, credits, monies, stocks, shares, any interests in shares and stocks, and any other personal properties" in the name of respondent LBP which are in the possession of the Treasurer of the Philippines, Deutsche Bank, and other financial institutions.[9]

On 12 March 2008, this Court issued a Temporary Restraining Order —

[E]njoining Hon. Justino G. Aventurado, Judge, Regional Trial Court of Tagum City, Davao del Norte, Branch 2, Sheriffs and all persons acting on his behalf from implementing the Partial Writ of Execution dated 26 February 2008 effective immediately and to DIRECT the parties and all concerned to MAINTAIN the STATUS QUO prior to the issuance of the notice of Garnishment to different financial institutions or entities dated 27 February 2008 until further orders from this Court.[10]

The Court shall now resolve the pending motions of LBP, AFC and HPI.

As to LBP's Omnibus Motion for Reconsideration of the Resolution dated 19 December 2007 denying its Motion for the referral of the case to the Supreme Court *en banc*, LBP argues that the reversal of the Supreme Court's rulings in *Land Bank of the Philippines v. Sps. Banal,*[11] *Land Bank of the Philippines v. Celada*[12] and *Land Bank of the Philippines*

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[9] *Id*. at 920-921.

[10] *Rollo*, p. 1159.

[11] 478 Phil. 701 (2004).

[12] G.R. No. 164876, 23 January 2006, 479 SCRA 495.

v. Lim,[13] constitute a clear and significant constitutional issue that should be passed upon by this Court sitting *en banc* pursuant to Article VIII, Section 4(2) of the 1987 Constitution mandating that "no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*."

The argument of LBP is without basis.

The Third Division has explained at length in its 19 December 2007 Resolution that:

> [I]t is abundantly clear that this case does not in any way modify or reverse our holdings in *Land Bank of the Philippines v. Banal* and *Land Bank of the Philippines v. Celada*. To reiterate, in *Land Bank of the Philippines v. Celada*, the RTC acting as SAC arrived at the determination of just compensation based only on one single factor, namely, its observation that there was a patent disparity between the price given to the landowner as compared to the other landowners in that case. This is not true in the present case as we have repeatedly held that the RTC acting as SAC considered all material and relevant factors to arrive at a correct and proper determination of just compensation. On the other hand, in *Land Bank of the Philippines v. Banal*, the valuation of the RTC acting as SAC was set aside for the reason that the same was arrived at without a hearing and based only on the memoranda of the parties. In this case, the trial court conducted several hearings and ocular inspections before it rendered its decision.[14]

Similarly, the Resolution dated 19 December 2007 of the Third Division, refusing to reconsider its Decision dated 6 February 2007, on the just compensation due to AFC and HPI, does not effectively reverse the Court's *en banc* Decision in *Lim*,[15] contrary to the persistent averment of the LBP.

The Third Division is not evading the prescription in *Lim*. As is stark in the assailed *ponencia*, the Court affirmed the due

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[13] G.R. No. 171941, 2 August 2007, 529 SCRA 129.

[14] *Rollo,* pp. 619-620.

[15] Note that the Decision in *Lim* was promulgated on 2 August 2007, after the promulgation of the Decision in this case on 6 February 2007 but before the issuance of the Resolution dated 19 December 2007.

consideration given by the RTC of the factors specified in Section 17, Republic Act No. 6657. Again, the proper valuation of the subject premises was reached with clear regard for the acquisition cost of the land, current market value of the properties, its nature, actual use and income, *inter alia* – factors that are material and relevant in determining just compensation. These are the very same factors laid down in a formula by DAR A.O. No. 5. Due regard was thus given by the RTC to Republic Act No. 6657, DAR A.O. No. 5 and prevailing jurisprudence when it arrived at the value of just compensation due to AFC and HPI in this case.

Moreover, the Court *en banc* in *Luz Lim* found that the RTC erred in determining the just compensation due therein respondents, by simply adopting the price previously paid by therein petitioner LBP for the land of respondents' brother, absolutely disregarding the mandatory factors in the appropriate administrative orders. While the RTC therein did refer to other factors which it supposedly considered, ultimately, it only made use of the same value paid by the LBP for the land of respondents' brother. The same is not true in this case. It cannot be said herein that the RTC anchored its determination of just compensation for the land of AFC and HPI on only one particular factor.

Given the differences in the factual background of the case at bar and those cited by LBP, it cannot be said that the Third Division is reversing any doctrine or principle laid down by jurisprudence. There is therefore no basis for the prayer of LBP to refer the case to the Supreme Court *en banc*. The Supreme Court sitting *En Banc* is not an appellate court *vis-à-vis* its Divisions, and it exercises no appellate jurisdiction over the latter. Each division of the Court is considered not a body inferior to the Court *en banc*, and sits veritably as the Court *en banc* itself.[16] It bears to stress further that a resolution of the Division denying a party's motion for referral to the

[16] *Firestone Ceramics, Inc. v. Court of Appeals*, 389 Phil. 810, 818 (2000). In accordance with Supreme Court Circular No. 2-89, providing *"Guidelines and Rules in the Referral to the Court En Banc of Cases Assigned to A Division."*

Court *en banc* of any Division case, shall be final and not appealable to the Court *en banc*.[17] Since, at this point, the Third Division already **twice** denied the motion of LBP to refer the present Petition to the Supreme Court *en banc*, the same must already be deemed final for no more appeal of its denial thereof is available to LBP.

In addition, the Omnibus Motion of LBP, to the extent that it seeks reconsideration of the amount of just compensation which the Court affirmed in its Decision dated 6 February 2007, is a second motion for reconsideration, because the Court already denied an identical prayer in its previous Resolution dated 19 December 2007. Thus, the prayer of LBP for leave to file a second motion for reconsideration must be denied for a second motion for reconsideration is a prohibited pleading under Rule 52, Section 2 of the Rules of Court, which provides that, "No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained."

Anent AFC and HPI's Motion for Partial Reconsideration praying for the reinstatement of the award of interest and attorney's fees, the Court finds the same to be devoid of merit.

The Court has already thoroughly discussed in its 19 December 2007 Resolution the reasons for reversing its award to AFC and HPI of interest and attorney's fees. It has duly considered all matters attendant to these issues in its assailed 19 December 2007 Resolution, and since AFC and HPI failed to present any new arguments thereon, there is no reason for the Court to delve further on the same.

WHEREFORE, premises considered, the Court hereby *DENIES WITH FINALITY* the following:

1. The Omnibus Motion for Reconsideration of Land Bank of the Philippines, for being a second motion for reconsideration, which is a prohibited pleading; and

2. The Motion for Partial Reconsideration of Apo Fruits Corporation and Hijo Plantation, Inc., for being without merit.

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[17] Supreme Court Circular No. 2-89, paragraph 5.

Necessarily, the Court *LIFTS* the Temporary Restraining Order it issued dated 12 March 2008. Let entry of judgment be made in this case in due course.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 164298. April 30, 2008]

ENGR. ROGER F. BORJA, *petitioner, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

POLITICAL LAW; GOVERNMENT OWNED AND CONTROLLED CORPORATION (GOCC); LOCAL WATER DISTRICTS DERIVED THEIR EXISTENCE FROM PRESIDENTIAL DECREE NO. 198, AS AMENDED; SUSTAINED.— Borja's contention that a prejudicial question exists in his case is clearly devoid of any legal basis, considering that it had been settled, long before the *Feliciano* case, that local water districts are GOCCs, and not private corporations. This is because local water districts do not derive their existence from the Corporation Code, but from Presidential Decree No. 198, as amended. Thus, being a public officer, Borja can certainly be indicted for violation of Rep. Act No. 3019. Moreover, it did not also escape our notice that at the time Borja filed his petition before us on July 21, 2004, he no longer has any basis to question the Decision and Resolution of the Court of Appeals. This is because more than six months have elapsed by then since we had decided the *Feliciano* case.

APPEARANCES OF COUNSEL

Gregorio D. Cañeda, Jr. for petitioner.
The Solicitor General for respondent.

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* are the Decision[1] dated March 19, 2004 and Resolution[2] dated June 28, 2004, of the Court of Appeals in CA-G.R. SP. No. 77453.

The facts are as follows:

In three Informations[3] filed with the Regional Trial Court of San Pablo City, Laguna, Branch 30, petitioner Engr. Roger F. Borja, in his capacity as General Manager C of the San Pablo

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[1] *Rollo*, pp. 172-178. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Buenaventura J. Guerrero and Regalado E. Maambong concurring.

[2] *Id*. at 192.

[3] Records, Criminal Case No. 13758-SP (02), p. 1.

x x x x x x x x x

That sometime on August 12, 1997 or immediately sometime prior or subsequent thereto, in San Pablo City, Laguna, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Roger F. Borja, a public officer, being then the General Manager C, with Salary Grade 26, of the San Pablo City Water District, while in the performance of his official functions, with evident bad faith, manifest partiality or gross inexcusable negligence, did, then and there, willfully, unlawfully and feloniously give unwarranted benefit to Teresita B. Rivera by retaining her as Division Manager of Commercial C of the San Pablo City Water District, although her promotional appointment had been revoked by the Civil Service Commission, enabling said Teresita B. Rivera to receive all the benefits due said position without legal basis, to the prejudice of the government and public interest.

CONTRARY TO LAW.

Records, Criminal Case No. 13759-SP (02), p. 1.

x x x x x x x x x

Water District, was charged with violation of Section 3 (e)[4] of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

That on or about July 15, 1995 or immediately sometime prior or subsequent thereto, in San Pablo City, Laguna, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Roger F. Borja, a public officer, being then the General Manager C, with Salary Grade 26, of the San Pablo City Water District, while in the performance of his official functions, with evident bad faith, manifest partiality or gross inexcusable negligence, did, then and there, willfully, unlawfully and criminally use the funds of the San Pablo City Water District, instead of his own, to pay the back wages of Evelyn Eje in the amount of ₱969,822.73, thereby causing undue injury to the San Pablo City Water District and to the public in the aforestated amount.

CONTRARY TO LAW.

Records, Criminal Case No. 13760-SP (02), p. 1.

x x x x x x x x x

That on [or] about July 17, 1995 or immediately sometime prior or subsequent thereto, in San Pablo City, Laguna, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Roger F. Borja, a public officer, being then the General Manager C, with Salary Grade 26, of the San Pablo City Water District, while in the performance of his official functions, with evident bad faith, manifest partiality or gross inexcusable negligence, did, then and there, willfully, unlawfully and criminally use the funds of the San Pablo City Water District, instead of his own, to pay the back wages of Raquel Tolentino in the amount of ₱972,209.69, thereby causing undue injury to the San Pablo City Water District and to the public in the aforestated amount.

CONTRARY TO LAW.

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

x x x x x x x x x

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

x x x x x x x x x

On January 13, 2003, Borja filed a Motion to Suspend Arraignment.[5] Borja alleged that there is a pending civil case entitled *Feliciano v. Commission on Audit*,[6] docketed before this Court as G.R. No. 147402, which involves the issue of whether local water districts are private or government-owned or controlled corporations (GOCCs).[7] He argued that the issue is a prejudicial question, the resolution of which determines whether or not the criminal actions against him may proceed. If this Court resolves that local water districts are private corporations, the graft cases against him will not prosper since then he would not be a public officer covered by Rep. Act No. 3019.

On February 18, 2003, the trial court denied the motion. Later it also denied his motion for reconsideration.

Aggrieved, Borja filed a petition for *certiorari* before the Court of Appeals, which, however, dismissed his petition for lack of merit after noting the previous cases wherein we held that local water districts are GOCCs.[8] Borja sought reconsideration, but it was likewise denied. Hence, this petition.

Borja raises the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS SECOND DIVISION ERRED IN DISMISSING THE PETITION FOR *CERTIORARI* IN CA-[G.R.] SP NO. 77453 AS WELL AS PETITIONER'S MOTION FOR RECONSIDERATION DATED 23 MARCH 2004[.]

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[5] Records, Criminal Case No. 13758-SP (02), pp. 48-55.

[6] G.R. No. 147402, January 14, 2004, 419 SCRA 363.

[7] *Id*. at 368.

[8] *Rollo*, p. 177. See cases of *Hagonoy Water District v. NLRC*, No. 81490, August 31, 1988, 165 SCRA 272, 279; *Davao City Water District v. Civil Service Commission*, G.R. Nos. 95237-38, September 13, 1991, 201 SCRA 593, 606; *Tanjay Water District v. Gabaton*, G.R. No. 63742, April 17, 1989, 172 SCRA 253, 261.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS SECOND DIVISION ERRED IN NOT APPLYING ESTABLISHED JURISPRUDENCE IN RESOLVING TO DISMISS THE PETITION FOR *CERTIORARI* IN CA-[G.R.] SP NO. 77453[.][9]

Simply, the issue is: Did the Court of Appeals err in ruling that there was no prejudicial question warranting the suspension of the proceedings of the graft cases?

Petitioner reiterates his arguments before the Court of Appeals and insists that the appellate court should have ordered the suspension of his arraignment while the *Feliciano* case is pending before us.

For the People, the Office of the Solicitor General pointed out that we had already rendered a decision on the *Feliciano* case on January 14, 2004 and that we had ruled therein that local water districts are not private corporations but GOCCs. Therefore, the criminal cases against Borja must proceed because he is a public officer covered by Rep. Act No. 3019.

The petition is bereft of merit.

Borja's contention that a prejudicial question exists in his case is clearly devoid of any legal basis, considering that it had been settled, long before the *Feliciano* case, that local water districts are GOCCs, and not private corporations.[10] This is because local water districts do not derive their existence from the Corporation Code,[11] but from Presidential Decree No. 198,[12] as amended.

Thus, being a public officer, Borja can certainly be indicted for violation of Rep. Act No. 3019.

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[9] *Rollo*, pp. 269-270.

[10] *Supra*, note 8.

[11] Batas Pambansa Blg. 68.

[12] "THE PROVINCIAL WATER UTILITIES ACT OF 1973." Done on May 25, 1973.

Moreover, it did not also escape our notice that at the time Borja filed his petition before us on July 21, 2004, he no longer has any basis to question the Decision and Resolution of the Court of Appeals. This is because more than six months have elapsed by then since we had decided the *Feliciano* case.

WHEREFORE, the petition is *DENIED* for lack of merit. The assailed Decision dated March 19, 2004 and Resolution dated June 28, 2004 of the Court of Appeals in CA-G.R. SP. No. 77453 are hereby *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

Carpio Morales, Azcuna, Tinga,* and *Velasco, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 164805. April 30, 2008]

SOLIDBANK CORPORATION, NOW KNOWN AS METROPOLITAN BANK AND TRUST COMPANY, *petitioner, vs.* **GATEWAY ELECTRONICS CORPORATION, JAIME M. HIDALGO AND ISRAEL MADUCDOC,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MODES OF DISCOVERY; PRODUCTION OF DOCUMENTS AND INSPECTION OF THINGS DURING PENDENCY OF A CASE; REQUIREMENTS.—**Section 1, Rule 27 of the Rules of Court provides the mechanics for the production of documents and the inspection of things during the pendency of a case. It also deals with the inspection of sources of evidence other than

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* Additional member in place of Justice Arturo D. Brion, who inhibited due to close relation to a party.

documents, such as land or other property in the possession or control of the other party. This remedial measure is intended to assist in the administration of justice by facilitating and expediting the preparation of cases for trial and guarding against undesirable surprise and delay; and it is designed to simplify procedure and obtain admissions of facts and evidence, thereby shortening costly and time-consuming trials. It is based on ancient principles of equity. More specifically, the purpose of the statute is to enable a party-litigant to discover material information which, by reason of an opponent's control, would otherwise be unavailable for judicial scrutiny, and to provide a convenient and summary method of obtaining material and competent documentary evidence in the custody or under the control of an adversary. It is a further extension of the concept of pretrial.

2. **ID.; ID.; ID.; ID.; WHEN THE RULES PERMITS "FISHING" FOR EVIDENCE; LIMITATIONS.—**The modes of discovery are accorded a broad and liberal treatment. Rule 27 of the Revised Rules of Court permits "fishing" for evidence, the only limitation being that the documents, papers, *etc*., sought to be produced are not privileged, that they are in the possession of the party ordered to produce them and that they are material to any matter involved in the action. The lament against a fishing expedition no longer precludes a party from prying into the facts underlying his opponent's case. Mutual knowledge of all relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession. However, fishing for evidence that is allowed under the rules is not without limitations. In *Security Bank Corporation v. Court of Appeals*, the Court enumerated the requisites in order that a party may compel the other party to produce or allow the inspection of documents or things, *viz*.: (a) The party must file a motion for the production or inspection of documents or things, showing good cause therefor; (b) Notice of the motion must be served to all other parties of the case; (c) The motion must designate the documents, papers, books, accounts, letters, photographs, objects or tangible things which the party wishes to be produced and inspected; (d) Such documents, *etc*., are not privileged; (e) Such documents, *etc*., constitute or contain evidence material to any matter involved in the action, and (f) Such documents, *etc*., are in the possession, custody or control of the other party. x x x A motion for production and inspection of documents should not demand a roving inspection of a promiscuous

mass of documents. The inspection should be limited to those documents designated with sufficient particularity in the motion, such that the adverse party can easily identify the documents he is required to produce.

3. ID.; EVIDENCE; BURDEN OF PROOF; EXPLAINED.— Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. Throughout the trial, the burden of proof remains with the party upon whom it is imposed, until he shall have discharged the same.

APPEARANCES OF COUNSEL

Cayetano Sebastian Ata Dado & Cruz for petitioner.
Rondain & Mendiola for respondents.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for *review* on *certiorari*[1] assailing the Decision dated June 2, 2004 and the Resolution dated July 29, 2004 of the Court of Appeals in CA-G.R. SP No. 73684.

The Facts

In May and June 1997, Gateway Electronics Corporation (Gateway) obtained from Solidbank Corporation (Solidbank) four (4) foreign currency denominated loans to be used as working capital for its manufacturing operations.[2] The loans were covered by promissory notes[3] (PNs) which provided an interest of eight and 75/100 percent (8.75%), but was allegedly increased to ten percent (10%) per annum, and a penalty of two percent (2%) per month based on the total amount due computed from the date of default until full payment of the total amount due.[4] The particulars of the loans are:

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[1] RULES OF COURT, RULE 45.

[2] *Rollo*, pp. 117-136.

[3] *Id*. at 208-211.

[4] *Id*. at 9.

To secure the loans covered by PN 97-375[5] and PN 97-408,[6] Gateway assigned to Solidbank the proceeds of its Back-end

	Promissory Note No.	Date of Loan	Amount of Loan	Date Due
a)	PN 97-375	20 May 1997	US$ 190,000.00	11 Nov. 1998
b)	PN 97-408	29 May 1997	US$ 570,000.00	11 Nov. 1998
c)	PN 97-435	09 June 1997	US$1,150,000.00	04 June 1998
d)	PN 97-458	15 June 1997	US$ 130,000.00	15 June 1998

Services Agreement[7] dated June 25, 2000 with Alliance Semiconductor Corporation (Alliance). The following stipulations are common in both PNs:

3. This Note or Loan shall be paid from the foreign exchange proceeds of Our/My Letter(s) of Credit, Purchase Order or Sales Contract described as follows: *** Back-end Services Agreement dated 06-25-96 by and between Gateway Electronics Corporation and Alliance Semiconductor Corporation.

4. We/I assign, transfer and convey to Solidbank all title and interest to the proceeds of the foregoing Letter(s) of Credit to the extent necessary to satisfy all amounts and obligations due or which may arise under this Note or Loan, and to any extension, renewal, or amendments of this Note or Loan. We/I agree that in case the proceeds of the foregoing Letter(s) of Credit prove insufficient to pay Our/My outstanding liabilities under this Note or Loan, We/I shall continue to be liable for the deficiency.

5. We/I irrevocably undertake to course the foreign exchange proceeds of the Letter(s) of Credit directly with Solidbank. Our/My failure to comply with the above would render Us or Me in default of the loan or credit facility without need of demand.[8]

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[5] *Id*. at 208.

[6] *Id*. at 209.

[7] The Back-end Services Agreement is a business venture entered into by Gateway and Alliance wherein Gateway for consideration, agreed to perform services on integrated circuit devices owned by Alliance. It contains provisions on wafer sort, burn-in, test, engineering, marking, assembly, packaging and associated services on integrated circuit devices; *rollo*, pp. 212-227.

[8] *Rollo*, pp. 208-209.

Gateway failed to comply with its loan obligations. By January 31, 2000, Gateway's outstanding debt amounted to US$1,975,835.58. Solidbank's numerous demands to pay were not heeded by Gateway. Thus, on February 21, 2000, Solidbank filed a Complaint[9] for collection of sum of money against Gateway.

On June 16, 2002, Solidbank filed an Amended Complaint[10] to implead the officers/stockholders of Gateway, namely, Nand K. Prasad, Andrew S. Delos Reyes, Israel F. Maducdoc, Jaime M. Hidalgo and Alejandro S. Calderon – who signed in their personal capacity a Continuing Guaranty[11] to become sureties for any and all existing indebtedness of Gateway to Solidbank. On June 20, 2002, the trial court admitted the amended complaint and impleaded the additional defendants.

Earlier, on October 11, 2000, Solidbank filed a Motion for Production and Inspection of Documents[12] on the basis of an information received from Mr. David Eichler, Chief Financial Officer of Alliance, that Gateway has already received from Alliance the proceeds/payment of the Back-end Services Agreement. The pertinent portions of the motion read:

> 8. Therefore, plaintiffs request that this Honorable Court issue an *Order* requiring defendant GEC, through its Treasurer/Chief Financial Officer, Chief Accountant, Comptroller or any such officer, to bring before this Honorable Court for inspection and copying the following documents:
>
> a) The originals, duplicate originals and copies of **all documents** pertaining to, arising from, in connection with or involving the *Back-end Services Agreement* of defendant GEC and Alliance Semiconductors;
>
> b) The originals, duplicate originals and copies **of all books of account, financial statements, receipts, checks, vouchers, invoices, ledgers and other financial/accounting records and documents** pertaining to or

[9] *Id*. at 200-206.

[10] *Id*. at 117-136.

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

[12] *Id*. at 127-132.

evidencing financial and money transactions arising from, in connection with or involving the *Back-end Services Agreement* of defendant GEC and Alliance Semiconductors; and

c) The originals, duplicate originals and copies of all documents from whatever source pertaining to the proceeds/payments received by GEC from Alliance Semiconductors.

d) Documents, as used in this section, means all writings of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including without limitation, correspondence, memoranda, notes diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, inter-office and intra-office communications, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer records, diskettes or print-outs, teletypes, telefax, e-mail, invoices, worksheets, all drafts, alterations, modifications, changes and amendments of any of the foregoing, graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotapes, recordings, motion pictures, CD-ROM's), and any electronic, mechanical or electric records or representations (including, without limitation, tapes, cassettes, discs, recordings and computer or computer-related memories).

9. Furthermore, plaintiffs request that said *Order* to the Treasurer/Chief Financial Officer, Chief Accountant, Comptroller of defendant GEC include the following instructions:

a. If the response is that the documents are not in defendant GEC's or the officers' possession or custody, said officer should describe in detail the efforts made to locate said records or documents;

b. If the documents are not in defendant GEC's or the officer's possession and control, said officer should identify who has control and the location of said documents or records;

c. If the request for production seeks a specific document or itemized category that is not in defendant GEC's or the officer's possession, control or custody, the officer should

provide any documents he has that contain all or part of the information contained in the requested document or category;

d. If the officer cannot furnish the originals of the documents requested, he should explain in detail the reasons therefore; and

e. The officer should identify the source within or outside GEC of each of the documents he produces.[13]

On January 30, 2001, the trial court issued an Order[14] granting the motion for production and inspection of documents, *viz*.:

WHEREFORE, the defendant GEC is hereby ordered to bring all the records and documents, not privileged, arising from, in connection with and/or involving the Back-end Services Agreement between defendant GEC and Alliance Semiconductor Corporation, particularly to those pertaining to all payments made by Alliance Semiconductor Corporation to GEC pursuant to said Agreement, incorporating the instructions enumerated in par. 9 of the instant motion, for inspection and copying by the plaintiff, the same to be made before the Officer-In-Charge, Office of the Branch Clerk of Court on February 27, 2001 at 9:00 a.m.

SO ORDERED.[15]

Gateway filed a motion to reset the production and inspection of documents to March 29, 2001 in order to give them enough time to gather and collate the documents in their possession. The trial court granted the motion.[16]

On April 30, 2001, Solidbank filed a motion for issuance of a show cause order for Gateway's failure to comply with the January 30, 2001 Order of the trial court.[17] In response, Gateway filed a manifestation that they appeared before the trial court on March 29, 2001 to present the documents in their possession,

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[13] *Id*.

[14] Penned by Judge Renato G. Quilala of the Regional Trial Court of Makati City, Branch 57; *rollo*, p. 133.

[15] *Id*.

[16] *Id*. at 16.

[17] *Id*.

however, Solidbank's counsel failed to appear on the said date.[18] In the manifestation, Gateway also expressed their willingness to make available for inspection at Gateway's offices any requested document.[19]

On May 31, 2001, the trial court issued an Order setting the production and inspection of documents on June 7, 2001 in the premises of Gateway.[20] It was subsequently moved to July 24, 2001. On the said date, Gateway presented the invoices representing the billings sent by Gateway to Alliance in relation to the Back-end Services Agreement.[21]

Solidbank was not satisfied with the documents produced by Gateway. Thus, on December 13, 2001, Solidbank filed a motion to cite Gateway and its responsible officers in contempt for their refusal to produce the documents subject of the January 30, 2001 Order. In opposition thereto, Gateway claimed that they had complied with the January 30, 2001 Order and that the billings sent to Alliance are the only documents that they have pertaining to the Back-end Services Agreement.[22]

On April 15, 2002, the trial court issued an Order[23] denying the motion to cite Gateway for contempt. However, the trial court chastised Gateway for exerting no diligent efforts to produce the documents evidencing the payments received by Gateway from Alliance in relation to the Back-end Services Agreement, *viz.*:

Before this Court is a *Motion to Cite Defendant GEC In Contempt For Refusing To Produce Documents Pursuant to the Order Dated 30 January 2001* filed by plaintiff dated December 12, 2001, together with defendant GEC's Opposition thereto dated January 14, 2002, as well as plaintiff's Reply dated February 6, 2002 and GEC's Rejoinder dated February 27, 2002.

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[18] *Id*. at 1317.

[19] *Id*. at 16.

[20] *Id*. at 17.

[21] *Id*. at 17; 1318.

[22] *Id*. at 17.

[23] *Id*. at 114.

As Courts are cautioned to utilize the power to punish for contempt on the preservative and not on the vindictive, contempt being drastic and extraordinary in nature (*Wicker vs. Arcangel*, 252 SCRA 444; *Paredes-Garcia vs. CA*, 261 SCRA 693), this Court is inclined to DENY the present motion.

However, as no diligent effort was shown to have been exerted by defendant GEC to produce the documents enumerated in the Order dated January 30, 2001, this Court hereby orders, in accordance with Sec. 3(a), Rule 29 of the Rules of Court, that the matters regarding the contents of the documents sought to be produced but which were not otherwise produced by GEC, shall be taken to be established in accordance with plaintiff's claim, but only for the purpose of this action.

SO ORDERED.[24]

Gateway filed a partial motion for reconsideration of the April 15, 2002 Order. However, the same was denied in an Order[25] dated August 27, 2002.

On November 5, 2002, Gateway filed a petition for *certiorari*[26] before the Court of Appeals (CA) seeking to nullify the Orders of the trial court dated April 15, 2002 and August 27, 2002.

On June 2, 2004, the CA rendered a Decision[27] nullifying the Orders of the trial court dated April 15, 2002 and August 27, 2002. The CA ruled that both the Motion for Production of Documents and the January 30, 2001 Order of the trial court failed to comply with the provisions of Section 1, Rule 27 of the Rules of Court. It further held that the trial court committed grave abuse of discretion in ruling that the matters regarding the contents of the documents sought to be produced but which were not produced by Gateway shall be deemed established in accordance with Solidbank's claim. The *fallo* of the Decision reads:

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[24] *Id*. at. 114.

[25] *Id*. at 116.

[26] RULES OF COURT, Rule 65.

[27] Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Roberto A. Barrios and Magdangal M. De Leon concurring; *rollo*, pp. 6-26.

WHEREFORE, the instant petition is hereby **GRANTED**. Accordingly, the assailed portion of the Order dated April 15, 2002 and Order dated August 27, 2002, both issued by public respondent, are hereby **NULLIFIED** and **SET ASIDE** without prejudice to the filing by private respondent of a new Motion for Production and Inspection of Documents in accordance with the requirements of the Rules.

SO ORDERED.[28]

Solidbank filed a motion for reconsideration of the Decision of the CA. On July 29, 2004, the CA rendered a Resolution[29] denying the same. Thus, this petition.

The Issues

I. Whether Solidbank's motion for production and inspection of documents and the Order of the trial court dated January 30, 2001 failed to comply with Section 1, Rule 27 of the Rules of Court; and

II. Whether the trial court committed grave abuse of discretion in holding that the matters subject of the documents sought to be produced but which were not produced by Gateway shall be deemed established in accordance with Solidbank's claim.

The Ruling of the Court

We resolve to deny the petition.

I

Section 1, Rule 27 of the Rules of Court provides:

SECTION 1. *Motion for production or inspection; order.* – Upon motion of any party showing good cause therefor, the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter

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[28] *Rollo*, p. 26.

[29] *Id*. at 28.

involved in the action and which are in his possession, custody or control; or (b) order any party or permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just.

The aforecited rule provides the mechanics for the production of documents and the inspection of things during the pendency of a case. It also deals with the inspection of sources of evidence other than documents, such as land or other property in the possession or control of the other party.[30] This remedial measure is intended to assist in the administration of justice by facilitating and expediting the preparation of cases for trial and guarding against undesirable surprise and delay; and it is designed to simplify procedure and obtain admissions of facts and evidence, thereby shortening costly and time-consuming trials. It is based on ancient principles of equity. More specifically, the purpose of the statute is to enable a party-litigant to discover material information which, by reason of an opponent's control, would otherwise be unavailable for judicial scrutiny, and to provide a convenient and summary method of obtaining material and competent documentary evidence in the custody or under the control of an adversary. It is a further extension of the concept of pretrial.[31]

The modes of discovery are accorded a broad and liberal treatment.[32] Rule 27 of the Revised Rules of Court permits "fishing" for evidence, the only limitation being that the documents, papers, *etc*., sought to be produced are not privileged, that they are in the possession of the party ordered to produce them and that they are material to any matter involved in the action.[33]

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[30] Regalado, Florenz D., *Remedial Law Compendium*, Vol. II, 8th ed., p. 650.

[31] 27 C.J.S. Discovery § 71 (2008).

[32] *Rosseau v. Langley*, 7 F.R.D. 170 (1945).

[33] *Supra* note 30.

The lament against a fishing expedition no longer precludes a party from prying into the facts underlying his opponent's case. Mutual knowledge of all relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession.[34] However, fishing for evidence that is allowed under the rules is not without limitations. In *Security Bank Corporation v. Court of Appeals*, the Court enumerated the requisites in order that a party may compel the other party to produce or allow the inspection of documents or things, *viz.*:

(a) The party must file a motion for the production or inspection of documents or things, showing good cause therefor;

(b) Notice of the motion must be served to all other parties of the case;

(c) The motion must designate the documents, papers, books, accounts, letters, photographs, objects or tangible things which the party wishes to be produced and inspected;

(d) Such documents, *etc*., are not privileged;

(e) Such documents, *etc*., constitute or contain evidence material to any matter involved in the action, and

(f) Such documents, *etc*., are in the possession, custody or control of the other party.[35]

In the case at bench, Gateway assigned to Solidbank the proceeds of its Back-end Services Agreement with Alliance in PN Nos. 97-375 and 97-408. By virtue of the assignment, Gateway was obligated to remit to Solidbank all payments received from Alliance under the agreement. In this regard, Solidbank claims that they have received information from the Chief Financial Officer of Alliance that Gateway had already received payments under the agreement. In order to ascertain the veracity of the information, Solidbank availed of the discovery procedure under Rule 27. The purpose of Solidbank's motion is to compel Gateway

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[34] *Security Bank Corporation v. Court of Appeals*, G.R. No. 135874, January 25, 2000, 323 SCRA 330.

[35] *Id*.

to produce the documents evidencing payments received from Alliance in connection with the Back-end Services Agreement.

Solidbank was able to show good cause for the production of the documents. It had also shown that the said documents are material or contain evidence relevant to an issue involved in the action. However, Solidbank's motion was fatally defective and must be struck down because of its failure to specify with particularity the documents it required Gateway to produce. Solidbank's motion for production and inspection of documents called for a blanket inspection. Solidbank's request for inspection of "all documents pertaining to, arising from, in connection with or involving the *Back-end Services Agreement*"[36] was simply too broad and too generalized in scope.

A motion for production and inspection of documents should not demand a roving inspection of a promiscuous mass of documents. The inspection should be limited to those documents designated with sufficient particularity in the motion, such that the adverse party can easily identify the documents he is required to produce.[37]

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[36] *Supra* note 12.

[37] In *Archer v. Cornillaud* [41 F.Supp. 435(1941)], an action was filed to recover wages allegedly due from employer under Fair Labor Standards Act of 1938, plaintiff's motion to require defendant to produce and to permit plaintiff to inspect, copy and photograph all records, papers, books, *etc*., pertaining to nature and extent of defendant's business and his wholesale and retail transactions and interstate and intrastate transactions, and names and addresses of those with whom the transactions were had was too broad. The plaintiff's motion does not ask for designated documents but demands "all records, papers, books," *etc*. The motion goes far beyond the scope and purpose of the rule on discovery. It is well settled by numerous decisions that the rule was never intended to permit a party to engage in a "fishing expedition" among the books and papers of the adverse party.

In *Dickie v. Austin* [4 N.Y.Civ.Proc.R. 123, 65 How. Pr. 420 (1883)], plaintiff claimed that he was to receive one-third of the gross profits on certain sales made by him for the defendants; that settlements were had from time to time on statements furnished by the defendants, and defendants unlawfully deducted from the plaintiff's share of the profits "certain sums," amounting in the aggregate to $2,000, for which action was brought; that

Furthermore, Solidbank, being the one who asserts that the proceeds of the Back-end Services Agreement were already received by Gateway, has the burden of proof in the instant case. Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.[38] Throughout the trial, the burden of proof remains with the party upon whom it is imposed,[39] until he shall have discharged the same.

II

The trial court held that as a consequence of Gateway's failure to exert diligent effort in producing the documents subject of the Order dated January 30, 2001, in accordance with Section 3(a), Rule 29[40] of the Rules of Court, the matters regarding the contents

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plaintiff was "unable to name specifically all the books which would be necessary," and desired an inspection of any books which defendants might have relating to the transactions in which plaintiff was interested. *Held* that, the discovery sought being unusually broad and sweeping, and not such as courts are in the habit of granting in aid of common-law actions for the recovery of a specific sum of money, the application should be refused.

[38] RULES OF COURT, Rule 131, Sec. 1.

[39] *Bautista v. Sarmiento*, No. L-45137, September 23, 1985.

[40] SEC. 3. *Other consequences*. – If any party or an officer or managing agent of a party refuses to obey an order made under Section 1 of this Rule requiring him to answer designated questions, or an order under Rule 27 to produce any document or other thing for inspection copying or photographing or to permit it to be done, or to permit entry upon land or other property, or an order made under Rule 28 requiring him to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:

(a) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental condition;

of the documents sought to be produced but which were not produced by Gateway, shall be considered as having been established in accordance with Solidbank's claim.

We hold that the trial court committed grave abuse of discretion in issuing the aforesaid Order. It is not fair to penalize Gateway for not complying with the request of Solidbank for the production and inspection of documents, considering that the documents sought were not particularly described. Gateway and its officers can only be held liable for unjust refusal to comply with the modes of discovery if it is shown that the documents sought to be produced were specifically described, material to the action and in the possession, custody or control of Gateway.

Neither can it be said that Gateway did not exert effort in complying with the order for production and inspection of documents since it presented the invoices representing the billings sent by Gateway to Alliance in relation to the Back-end Services Agreement. Good faith effort to produce the required documents must be accorded to Gateway, absent a finding that it acted willfully, in bad faith or was at fault in failing to produce the documents sought to be produced.[41]

(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party; and

(d) In lieu of any of the foregoing orders or in addition thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental examination.

[41] GOOD-FAITH EFFORT

"We do not, however, completely rest our holding on this factor of 'control.' We find instead that the primary dispositive issue is whether Stripling made a good faith effort to obtain the documents over which he may have indicated he had 'control' in whatever sense, and whether after making such a good faith effort he was unable to obtain and thus produce them. … There is no evidence Stripling acted willfully, in bad faith or was at fault in failing to produce the documents which he attempted and was unable to obtain. Since Stripling's noncompliance with the production order was due to his inability, after a good faith effort, to obtain these documents, the district court abused its discretion in dismissing his counterclaim." Federal Practice and Procedure, 8A FPF § 2210, citing *Searock v. Stripling*, C.A. 11th, 1984, 736 F.2d 650, 654.

One final note. The CA decision nullifying the orders of the trial court was without prejudice to the filing by herein petitioner of a new motion for Production and Inspection of Documents in accordance with the Rules. It would have been in the best interest of the parties, and it would have saved valuable time and effort, if the petitioner simply heeded the advice of the CA.

WHEREFORE, in view of the foregoing, the instant petition is *DENIED* for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 164824. April 30, 2008]

ROLANDO V. AROMIN, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, BANK OF THE PHILIPPINE ISLANDS, XAVIER P. LOINAZ, President, and EDMUNDO A. BARCELON, Senior Vice-President,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; LOSS OF CONFIDENCE, AS A GROUND; WHEN PROPER.—** As we held in *Mabeza v. National Labor Relations Commission*, loss of confidence, as a ground for dismissal, is premised on the fact that the employee concerned holds a position of responsibility or of trust and confidence. As such, the employee must be invested with confidence on

delicate matters, such as the custody, handling, or care of the employer's money and other assets. We further held in *Mabeza*: Loss of confidence as a just cause for dismissal was never intended to provide employers with a blank check for terminating their employees. Such a vague, all-encompassing pretext as loss of confidence, if unqualifiedly given the seal of approval by this Court, could readily reduce to barren form the words of the constitutional guarantee of security of tenure. Having this in mind, **loss of confidence should ideally apply only to cases involving employees occupying positions of trust and confidence or to those situations where the employee is routinely charged with the care and custody of the employer's money or property.** To the **first class belong <u>managerial employees</u>**, *i.e.,* those vested with the powers or prerogatives to lay down management policies [effect personnel movements] x x x or effectively recommend such managerial actions; and to the second class belong cashiers, auditors, property custodians, *etc*., or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.

2. **ID.; ID.; ID.; ID.; EMPLOYER'S LIMITATIONS.—** But while employers are given a wide latitude of discretion in the termination of services of managerial employees for loss of confidence, there must be substantial proof thereof. This means that the employer must clearly **and convincingly** establish the charges, or, in fine, the facts and incidents upon which the loss of confidence may fairly be made to rest, that is, it must be based on a willful breach of trust and founded on clearly established or proven facts. Moreover, loss of confidence, as a ground for termination, **should not be** (1) simulated; (2) used as a subterfuge for causes which are improper, illegal, or unjustified; (3) arbitrarily asserted; and (4) a mere afterthought to justify earlier action taken in bad faith.

3. **ID.; ID.; ID.; ID.; PRESENT IN CASE AT BAR.—** It is abundantly clear to the Court, as it was to the CA and the NLRC earlier, that Aromin indeed committed acts which formed the basis for BPI's loss of trust and confidence in him. Undeniably, the acts committed, inclusive of those done before he took the witness stand to testify falsely against the interest of the employer, adversely reflected on his competence, loyalty, and

integrity. Said acts were sufficient enough for his employer to lose trust and confidence in him. Thus, before us is a real case of betrayal of trust and confidence, duly substantiated, to justify the *bona fide* dismissal of an employee.

4. **ID.; ID.; ID.; DUE PROCESS REQUIRES TWO WRITTEN NOTICES AND A HEARING OR CONFERENCE; PROPERLY COMPLIED WITH IN CASE AT BAR.—** Due process, under the Implementing Rules of the Labor Code, specifically Book VI, Rule I on *Termination of Employment and Retirement*, requires **two written notices** and **a hearing or conference** before a valid and legal termination of employees can be implemented. The first notice is intended to apprise the concerned employees of the particular acts or omissions for which their dismissal is sought, and the second is to inform them of the decision to terminate them. As borne out by the records, BPI complied with the mandatory two-notice rule, the first effected through the May 6, 1991 show-cause memorandum which Aromin even answered, and the second via the June 14, 1991 notice of termination, both issued by Barcelon. Aromin's contention that the show-cause memorandum did not specify the charges against him is specious, for the same memorandum, albeit tersely couched, clearly conveyed the message that his testimony in Civil Case No. 56316 was prejudicial to the best interests of BPI. The termination of Aromin was effected on June 14, 1991. The prevailing jurisprudence at that time was that as long as the employee was given an opportunity to be heard, due process with respect to the first notice was deemed complied with, even if incidentally no actual hearing was conducted. Thus, respondents BPI, Loinaz, and Barcelon did not breach the due process requirements.

5. **ID.; ID.; ID.; EMPLOYEE FOUND GUILTY OF WILLFUL BETRAYAL OF TRUST SHALL NOT BE ENTITLED TO FINANCIAL ASSISTANCE OR SEPARATION PAY; SUSTAINED.—** *Philippine Long Distance Telephone Company v. National Labor Relations Commission* teaches that an employee validly dismissed for causes other than serious misconduct or that which reflects adversely on the employee's moral character may be given financial assistance or severance pay. Of similar tenor is *Toyota Motor Phils. Corp. Workers*

Association (TMPCWA) v. National Labor Relations Commission where the Court, after a brief overview of relevant cases dealing with the termination for any valid ground under Art. 282 of the Labor Code and where separation pay was not allowed, wrote: In all of the foregoing situations, the Court declined to grant termination pay because the causes for dismissal recognized under Art. 282 of the Labor Code were serious or grave in nature and attended by willful or wrongful intent or they reflected adversely on the moral character of the employees. **We therefore find that in addition to serious misconduct, in dismissals based on other grounds under Art. 282 like willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, and commission of a crime against the employer or his family, separation pay should not be conceded to the dismissed employee.** Guided by the foregoing doctrinal pronouncements and with the reality that Aromin is guilty of willful betrayal of trust, a serious offense akin to dishonesty, he is not entitled to financial assistance or separation pay. It may be that his 26 years of service might generally be considered for a severance pay award or some form of financial assistance to cushion the effects of his termination. But as aptly observed by both the NLRC and the CA, Aromin's length of service is of little moment for purposes of financial award since his willful breach of trust reflects a regrettable lack of loyalty to his employer. Indeed, if length of service is to be regarded as justification for moderating the penalty of dismissal, then we would be giving a premium to disloyalty, distorting in the process the meaning of social justice and undermining the efforts of labor to cleanse its ranks of undesirables.

APPEARANCES OF COUNSEL

Herrera Teehankee Faylona and Cabrera for petitioner.

Benedicto Verzosa Gealogo and Burkley and *Law Firm of Alonso and Partners* for private respondent.

DECISION

VELASCO, JR., *J.*:

The Case

In this Petition for Review on *Certiorari* under Rule 45, petitioner Rolando V. Aromin assails and seeks to nullify the Decision[1] dated April 15, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 77016, as effectively reiterated in its Resolution[2] of August 3, 2004, affirming the Resolutions of April 29, 1998 and February 28, 2003 of the National Labor Relations Commission (NLRC) in NLRC NCR CA 010693-96.

The Facts

Aromin worked for respondent Bank of the Philippine Islands (BPI) for 26 years, rising from the ranks to become an assistant vice-president (AVP) in 1980, a position he held until his termination from the service.

Aromin headed the BPI's Real Property Management Unit (RPMU) when the botched purchase by Limketkai Sons Milling, Inc. (Limketkai) of a trust asset held by BPI happened. The failed transaction was the subject matter in *Limketkai Sons Milling, Inc. v. Court of Appeals*.[3]

The trust asset (Pasig property) adverted to, a 33,056-square meter expanse located at Barrio Bagong Ilog, Pasig City and covered by Transfer Certificate of Title No. 493122, belonged to Philippine Remnants Co., Inc. (Philrem). On June 23, 1988, BPI, with Philrem's concurrence, authorized Pedro Revilla, Jr.,

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[1] *Rollo*, pp. 45-60. Penned by Associate Justice Buenaventura J. Guerrero (now retired) and concurred in by Associate Justices Andres B. Reyes, Jr. and Regalado E. Maambong.

[2] *Id.* at 75.

[3] G.R. No. 118509. Decision rendered on December 1, 1995 affirming the RTC Decision in Civil Case No. 56316, reported in 250 SCRA 523. The decision was vacated via a Resolution dated March 29, 1996 (255 SCRA 626), as later reiterated with finality on September 5, 1996 (261 SCRA 464).

a licensed real estate broker of Assetrade, to sell the subject lot for PhP 1,000 per square meter.

On July 8, 1988, Aromin, as then head of BPI's RPMU, permitted Limketkai and Revilla to inspect the Pasig property. The next day, Revilla informed BPI he has a buyer in Limketkai. On July 11, 1988, brothers Alfonso Lim and Albino Limketkai met with Aromin and BPI Vice-President Merlin Albano to negotiate and discuss whether they can pay the purchase price on terms instead of in cash. On the same date, Limketkai wrote BPI offering the amount of PhP 33,056,000 for the property.

A few days after, Limketkai, apprised that BPI had deferred action on what it considered as a done deal, tendered full payment for the property but BPI refused to receive payment. Alleging that there was already a meeting of contracting minds during the **July 11, 1988** negotiation session or, in effect, a perfected contract of sale, Limketkai, in a bid to consummate the sale, wrote BPI several letters, but to no avail. Consequently, on August 25, 1988, Limketkai filed a suit for specific performance against BPI and its officers before the Regional Trial Court (RTC) in Pasig City. Docketed as Civil Case No. 56316, the complaint was later raffled to Branch 151 of the court.

Asked to comment on the material allegations of the said complaint, Aromin and Albano sent to the BPI Legal Services Division a **September 6, 1988 memorandum**[4] embodying the desired comments.

On the heels of the filing of the above suit, BPI Senior VP Edmundo A. Barcelon, herein respondent, asked Aromin to explain certain instances of alleged problems and inefficiencies in the RPMU. Aromin complied via a memorandum[5] dated September 23, 1988.

On February 9, 1989, Aromin received another memorandum[6] from BPI Assistant Manager Caridad P. Ibarra, warning him

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[4] *Rollo*, pp. 390-392.

[5] *Id*. at 379-386.

[6] *Id*. at 389.

about belated submission of work assignments, tardiness, and unexplained absences. On February 13, 1989, BPI management designated Aromin as Head of the Payroll Section.[7] Another memorandum[8] followed on February 15, 1989, with Barcelon this time informing and warning Aromin about his unsatisfactory performance.

In the course of the trial in Civil Case No. 56316, the complaint was amended to implead the National Book Store (NBS) which had meanwhile bought the property. Despite a subpoena to testify as complainant's hostile witness, Aromin failed to appear in the scheduled November 14, 1990 setting, apparently upon BPI's instructions. In the **December 3, 1990** hearing, however, Aromin, in obedience to another subpoena, appeared and testified to the surprise of BPI's legal counsel.

On May 6, 1991, a show-cause memorandum[9] came from Barcelona, giving Aromin five days within which to explain why no disciplinary action shall be taken against him for testifying during the December 3, 1990 hearing. It appears that Aromin's testimony, apart from being inimical to BPI's interests, contradicted what he and Albano wrote, by way of comments, in their September 6, 1988 memorandum. Aromin's explanation to the show-cause order came by way of a memorandum[10] dated May 24, 1991.

As events later unfolded, the RTC found the testimony of Aromin vital in determining a "meeting-of-the-minds" regarding the sale of, and the price for, the Pasig property. On June 10, 1991, the RTC rendered judgment finding for Limketkai, the BPI-NBS sale being annulled and BPI being assessed for damages.

On June 14, 1991, BPI served on Aromin a Notice of Termination,[11] citing willful breach of trust arising from acts

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[7] *Id*. at 309.

[8] *Id*. at 387-388.

[9] *Id*. at 393-394.

[10] *Id*. at 395-396.

[11] *Id*. at 397-398.

that occurred long before his December 3, 1990 court appearance and loss of confidence, as grounds for termination, among others.

On June 28, 1991, Aromin filed before the National Capital Region (NCR) Arbitration Board a complaint for illegal dismissal, reinstatement, payment of backwages, and other employment benefits, damages, and attorney's fees against BPI, respondent Xavier P. Loinaz, its then president, and Barcelon, docketed as NLRC-NCR Case No. 06-03713-91.

The Ruling in NLRC-NCR Case No. 06-03713-91

On January 3, 1996, the Executive Labor Arbiter, on the finding that Aromin was terminated from the service for a just cause, issued a Decision dismissing Aromin's complaint. For humanitarian consideration, however, and taking into account Aromin's length of service with the bank, the labor arbiter awarded Aromin, by way of financial assistance, a sum equivalent to the total of one month salary for every year of service. The *fallo* of the Decision reads:

WHEREFORE, in view of all the foregoing, Judgment is hereby rendered:

A. Dismissing Complainant's charge of illegal dismissal for lack of merit; and

B. Ordering the respondent Bank to pay Complainant the sum of ₱679,729.58 as financial assistance.

All other claims and counterclaims are denied for lack of legal and factual basis.

SO ORDERED.[12]

Explaining his ruling, the labor arbiter stated that Aromin occupied a sensitive bank position that required the employer's full trust and confidence. According to the labor arbiter, Aromin, by his past actions, such as his unsatisfactory performance and poor attendance record, had given BPI more than enough reasons to lose that needed trust and confidence. Foremost of

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

these was his act of giving false testimony in Civil Case No. 56316, given the statements entered in his and Albano's September 6, 1988 memorandum. The falsity, so the labor arbiter declared, referred primarily to Aromin's claim or allegations of being a trust officer when he negotiated with Limketkai for the sale of the Pasig property; of being authorized to agree on the purchase price; that there was a "meeting of minds" between BPI and Limketkai; that he merely counter-signed the September 6, 1988 memorandum when Albano, his superior, prodded him to; that BPI was obligated to sell the Pasig property at PhP 1,000 per square meter since Philrem had already agreed to a sale at that price level; and that the approval of the sale by BPI's Trust Committee was merely "ministerial." Another testimony considered false was one relating to the alteration of the price from PhP 1,000 to PhP 1,100 per square meter in the letter-authority to sell issued to Assetrade.

Unable to accept the above ruling in view of the financial assistance aspect thereof, BPI interposed a partial appeal. Aromin also appealed to the NLRC which docketed the case as NLRC NCR CA 010693-96.

The Ruling of the NLRC in NLRC NCR CA 010693-96 (NLRC-NCR Case No. 06-03713-91)

The January 26, 1998 NLRC Decision

The NLRC saw the dismissal of Aromin in a perspective different from that of the labor arbiter, for, in its Decision of January 26, 1998, the NLRC ordered payment of full backwages and separation pay, in lieu of reinstatement, in favor of Aromin. The dispositive portion of the decision reads:

> WHEREFORE, the appeal of respondent [BPI] is Dismissed for want of merit.
>
> On the other hand, the decision of [the] Labor Arbiter is Reversed and Set Aside.
>
> Accordingly, complainant is entitled to payment of full backwages from June 14, 1991 up to the promulgation of this resolution.

Complainant should be awarded separation pay instead of reinstatement at one month for every year of service, a fraction of six months be considered as one whole year.

All other monetary claims are Dismissed for being unsubstantiated.

SO ORDERED.[13]

In this decision, the NLRC noted that the criminal case for false testimony under Article 182 of the Revised Penal Code against Aromin had been dismissed, whereas the RTC's decision in Civil Case No. 56316 was affirmed by this Court on December 1, 1995 in G.R. No. 118509, proof of the veracity of Aromin's testimony in said civil case.

The April 29, 1998 NLRC Resolution

In time, Aromin, desirous to be reinstated, sought reconsideration. BPI also interposed a similar recourse, reiterating its allegations on Aromin's disloyalty and breach of trust and confidence, among other offenses. BPI also faulted the NLRC for not taking judicial notice of the March 29, 1996 Resolution[14] of the Court which set aside its earlier decision dated December 1, 1995, thus overturning an earlier holding on the existence of a perfected Limketkai-BPI contract of sale.

By a Resolution dated April 29, 1998, the NLRC, taking particular stock of the adverted Court's Resolution of March 29, 1996 in G.R. No. 118509, reversed itself and reinstated the decision of the labor arbiter, except as regards the award therein of financial assistance to Aromin which the NLRC ordered deleted. The *fallo* of the NLRC's reversal action reads:

WHEREFORE, in view of the foregoing, our Decision dated 26 January 1998 is hereby REVERSED and SET ASIDE and a new one rendered AFFIRMING the original Decision dated 03 January 1996 of the Honorable Labor Arbiter Valentin C. Guanio with the modification that respondent [BPI] is no longer under obligation to pay financial assistance to complainant ROLANDO V. AROMIN.

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[13] *Id*. at 117-118.

[14] *Supra* note 3.

SO ORDERED.[15]

Aromin moved for reconsideration but the motion, per a Resolution[16] dated February 28, 2003, was denied pursuant to the one-motion rule prescribed by Section 15, Rule VII of the 2002 NLRC New Rules of Procedure.

Thus, ascribing grave abuse of discretion on the NLRC, Aromin went to the CA on a petition for *certiorari*, docketed as CA-G.R. SP No. 77016.

The Ruling of the CA

On April 15, 2004, the CA rendered judgment affirming the appealed resolutions of the NLRC and the premises holding them together, disposing as follows:

WHEREFORE, premises considered, the NLRC resolutions dated on 28 February 2003 and 29 April 1998 are hereby SUSTAINED and the petition DENIED.

SO ORDERED.

Like the NLRC, the CA, among other things, found Aromin to have violated the trust reposed on him by the bank and exacted by the nature of his duties, noting that BPI had complied with the requirements set forth in *Concorde Hotel v. Court of Appeals*[17] for dismissing an employee on the ground of loss of trust. The CA added the observation that Aromin's guilt for acts which amounted to dishonesty militates against his entitlement to financial assistance, as decreed by the labor arbiter.

Significantly, the CA took judicial notice of this Court's March 29, 1996 Resolution in G.R. No. 118509 which made it clear that as early as June 23, 1988 and prior to the negotiation with Limketkai, real estate agent Revilla was authorized to sell the Pasig property at the price of PhP 1,100 per square meter and not PhP 1,000, as Aromin insisted.

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[15] *Rollo*, p. 134.

[16] *Id.* at 136-141.

[17] G.R. No. 144089, August 9, 2001, 362 SCRA 583.

Aromin's motion for reconsideration was denied by the appellate court through the assailed Resolution dated August 3, 2004.

The Issues

Hence, the instant petition with Aromin raising the following issues for our consideration:

I.

A. THE NLRC AND [CA] HAD NO JURISDICTION TO SUBSTITUTE ITS FINDINGS OF FACTS FROM THE FINDINGS OF FACTS OF THE SUPREME COURT IN THE CASE OF *LIMKETKAI SONS MILLING INC. VS. COURT OF APPEALS*, 250 SCRA 523, 532 WHICH FOUND THAT THERE WAS NO JUST AND LAWFUL CAUSE FOR PETITIONER'S DISMISSAL.

B. PRIVATE RESPONDENTS ABUSED THE PARAMETERS FOR THE LAWFUL EXERCISE OF MANAGEMENT PREROGATIVE IN THE DISMISSAL OF PETITIONER.

II.

PETITIONER'S TOTALITY OF EMPLOYMENT WORK PERFORMANCE AND CONTINUOUS ASSUMPTION OF POSITION AS ASSISTANT VICE PRESIDENT TWO (2) YEARS AFTER THE DISPUTED TRANSACTION ABSOLUTELY NEGATE ANY UNLAWFUL, JUST OR EQUITABLE BASIS FOR HIS DISMISSAL.

III.

PETITIONER'S DISMISSAL WAS WITHOUT DUE PROCESS.

IV.

HAVING BEEN ILLEGALLY DISMISSED PETITIONER IS ENTITLED TO ALL THE RELIEFS PRAYED FOR IN HIS COMPLAINT.[18]

The main issue to be resolved and to which all others must yield is whether or not Aromin was illegally dismissed, given BPI's loss of trust and confidence in him.

The Court's Ruling

The petition is bereft of merit.

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[18] *Rollo*, p. 175.

Core Issue: No Illegal Dismissal

Aromin argues that the NLRC and the CA had no jurisdiction to substitute their own findings of facts with that of this Court which, in its December 1, 1995 Decision, supposedly found his dismissal not for a lawful cause. In particular, Aromin takes umbrage to the finding of both the CA and NLRC that he gave false and damaging testimony when, as a matter of fact, the criminal case against him for false testimony had already been dismissed. According to him, he cannot be sanctioned for speaking out the truth and that any damage resulting from his testimony would fall under the category of *damnum absque injuria*.

Aromin also contends that his over-all work performance and his continuous exercise of the duties as AVP two years after the botched sale transaction argue against the existence of any lawful basis for his dismissal. And shifting to another point, Aromin alleges that BPI, without regard to the imperatives of due process, went straight full ahead with his dismissal without hearing and without so much as apprising him of the particular acts or omissions for which he was eventually dismissed.

After a review of the circumstances surrounding the case and the evidence on record, we are inclined to affirm, with minor modification, the appealed CA decision and resolution.

Petitioner Validly Dismissed for Loss of Confidence

As we held in *Mabeza v. National Labor Relations Commission*,[19] loss of confidence, as a ground for dismissal, is premised on the fact that the employee concerned holds a position of responsibility or of trust and confidence. As such, the employee must be invested with confidence on delicate matters, such as the custody, handling, or care of the employer's money and other assets. We further held in *Mabeza*:

Loss of confidence as a just cause for dismissal was never intended to provide employers with a blank check for terminating their employees. Such a vague, all-encompassing pretext as loss of

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[19] G.R. No. 118506, April 18, 1997, 271 SCRA 670.

confidence, if unqualifiedly given the seal of approval by this Court, could readily reduce to barren form the words of the constitutional guarantee of security of tenure. Having this in mind, **loss of confidence should ideally apply only to cases involving employees occupying positions of trust and confidence or to those situations where the employee is routinely charged with the care and custody of the employer's money or property**. To the **first class belong managerial employees**, *i.e.,* those vested with the powers or prerogatives to lay down management policies [effect personnel movements] x x x or effectively recommend such managerial actions; and to the second class belong cashiers, auditors, property custodians, *etc*., or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.[20] (Emphasis ours.)

Being, during the period material, an AVP, Aromin doubtless falls under the category of a managerial employee upon whom trust and confidence had been reposed by the employing bank. Violating that trust and confidence is a valid cause for dismissal under Art. 282[21] of the Labor Code.

But while employers are given a wide latitude of discretion in the termination of services of managerial employees for loss of confidence, there must be substantial proof thereof. This means that the employer must clearly **and convincingly** establish the charges, or, in fine, the facts and incidents upon which the loss of confidence may fairly be made to rest,[22] that is, it must be based on a willful breach of trust and founded on clearly established or proven facts.[23] Moreover, loss of confidence, as a ground for termination, **should not be** (1) simulated; (2) used as a subterfuge for causes which are improper, illegal, or

[20] *Id*. at 682.

[21] Art. 282. Termination by Employer.—An employer may terminate an employment for any of the following causes: x x x c) Fraud or **willful breach by the employee of the trust reposed in him by his employer** or duly authorized representative. (Emphasis ours.)

[22] *Wah Yuen Restaurant v. Jayona*, G.R. No. 159448, December 16, 2005, 478 SCRA 315, 321; citations omitted.

[23] *Manuel v. N.C. Construction Supply*, G.R. No. 127553, November 28, 1997, 282 SCRA 326, 333.

unjustified; (3) arbitrarily asserted; and (4) a mere afterthought to justify earlier action taken in bad faith.[24]

With the foregoing parameters in mind, an assiduous review of the antecedent facts and the evidence on record readily yields the conclusion that BPI had indeed a valid case for dismissal against Aromin on the ground of loss of confidence.

Ground for Loss of Confidence Duly Proven

There is no dispute about the fact of Aromin and Albano signing the September 6, 1988 memorandum that embodied their joint comments to what Limketkai averred in its complaint in Civil Case No. 56316. In said memorandum, Aromin and Albano, refuting Limketkai's averments, stated, in gist, the following:

1) They made it clear to Limketkai that securing the approval of BPI's Trust Committee for the sale in cash or terms of the Pasig property is imperative;

2) They only assisted Limketkai on the tenor of the letter-offer to be submitted to the Trust Committee;

3) They gave no assurance on the approval by the BPI Trust Committee of the term payment proposal of Limketkai, but instead made it clear to the latter that they can only recommend approval;

4) The allegation depicting Limketkai as having tendered payment to Albano is not true; and

5) Limketkai was directed to deal with Vice-President Nelson Bona as Albano and Aromin were no longer the authorized handling officers for the Pasig property sale.

What Aromin said while in the witness box on December 3, 1990 was evidently inconsistent with, if not the exact opposite of, what he represented in his September 6, 1988 memorandum. Consider: Aromin testified that he and Albano were authorized to sell the Pasig property; that there was a perfected contract of sale as they have agreed on the purchase price of the property;[25]

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[24] *Wah Yuen Restaurant v. Jayona*, *supra*; citations omitted.

[25] See *Limketkai Sons Milling, Inc.*, *supra* note 3, December 1, 1995, 250 SCRA 523, 533.

and that what was submitted for the approval of the Trust Committee related only to the proposed term payment.[26] As a measure to extricate himself from the effects of the September 6, 1988 memorandum, Aromin testified having just been made to countersign the document prepared by Albano.

Needless to stress, the position assumed and the answers given by Aromin when he testified proved to be adverse to his employer's interest, as evidenced by the RTC's decision which, in finding for Limketkai, gave much to Aromin's testimony. BPI's legal unit or counsel, which relied on and crafted the bank's answer to Limketkai's complaint along the lines embodied in the September 6, 1988 memorandum of Aromin and Albano, was doubtless placed in an embarrassing situation by the otherwise backhanded tactics employed by Aromin.

We can concede hypothetically that Aromin's testimony reflected the truth about the circumstances surrounding the sale or proposed sale in question, while the September 6, 1988 memorandum did not so reflect, in which case he was under no moral and legal obligation to hide the truth. In his favor, it can be argued that he was testifying under pain of a perjury suit if he lied, while the memorandum he signed was not under oath. On the other hand, however, why would he, an employee, not be candid with his employer whose interests he is expected to uphold unless he has something to hide?

At any rate, Aromin's testimony in Civil Case No. 56316 on the "meeting of the minds" between BPI, represented by Aromin and Albano, and Limketkai, having come to pass during the July 11, 1988 discussion, is peremptorily belied by the Court's Resolution[27] of March 29, 1996 in G.R. No. 118509. In it, the Court declared that the documentary pieces of evidence adduced in the case militate against the existence of a BPI-Limketkai perfected contract of sale. Corollarily, such declaration provides a complementary dimension to the September 6, 1988

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[26] *Id*. at 534.

[27] *Supra* note 3.

memorandum of Aromin and Albano which, to repeat, posits the non-existence of such perfected contract. We can logically say, therefore, that the testimony of Aromin on such perfection of the contract was inaccurate and completely false.

Aromin's contention that he merely signed, upon Albano's urging, but had no hand in the preparation of the September 6, 1988 memorandum cannot be accorded credence. For one, it is hardly believable that a lettered man occupying a responsible position, like Aromin, would affix his signature on a document containing false entries. For the other, Albano, as found by the labor arbiter, had at that time just assumed the top position in RPMU. Hence, as aptly observed by the labor arbiter, Albano could not have plausibly mentioned in the second page of the memorandum that:

> [W]e have conveyed an understanding that we will recommend for approval of the TrustCom the terms and conditions that the plaintiff is willing to offer and which the undersigned believe to be acceptable, **based on previous TrustCom approvals on previous sales of properties owned by the same trust account**.[28] (Emphasis ours.)

since it was Aromin who had been with RPMU for some years and was familiar with such transactions and sale recommendations forwarded to the Trust Committee.

In all then, we agree with the parallel factual conclusions of the labor arbiter, NLRC, and CA on what they considered as false statements made by Aromin before the RTC on December 3, 1990. These statements were distinctly set forth in the decision of January 3, 1996 of the labor arbiter in NLRC-NCR Case No. 06-03713-91. We need only to highlight one: that there was "meeting of the minds" between BPI and Limketkai, or, in net effect, a perfected contract of sale involving the Pasig property.

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[28] *Rollo*, p. 391.

No Finding of Illegal Dismissal in G.R. No. 118509

Aromin's reliance on the Court's December 1, 1995 Decision in G.R. No. 118509 to support his underlying complaint for illegal dismissal is misplaced. He cannot validly seek refuge in what the Court said in the same decision that:

> x x x There is no allegation of fraud, nor is there the least indication that Aromin was acting for his own ultimate benefit. BPI later dismissed Aromin because it appeared that a top official of the bank was personally interested in the sale of the Pasig property, and did not like Aromin's testimony. Aromin was charged with poor performance but his dismissal was only sometime after he testified in court. More than two long years after the disputed transaction, he was still Assistant Vice-President of BPI.[29]

First, the above decision had been annulled and set aside. *Second*, the above-quoted portion of the nullified decision recites undisputed facts, *i.e*., that there is no allegation of fraud and no showing that Aromin was acting for his own benefit, and that he still occupied the same AVP position two years after the litigated transaction happened. These facts do not in any way rule out or rule in the absence of any lawful, just, or equitable basis for his dismissal. After all, G.R. No. 118509 was not about his dismissal.

Foregoing considered, it is abundantly clear to the Court, as it was to the CA and the NLRC earlier, that Aromin indeed committed acts which formed the basis for BPI's loss of trust and confidence in him. Undeniably, the acts committed, inclusive of those done before he took the witness stand to testify falsely against the interest of the employer, adversely reflected on his competence, loyalty, and integrity. Said acts were sufficient enough for his employer to lose trust and confidence in him. Thus, before us is a real case of betrayal of trust and confidence, duly substantiated, to justify the *bona fide* dismissal of an employee.

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[29] *Limketkai Sons Milling, Inc.*, *supra* note 3, at 532.

No Denial of Due Process

The remaining question then to be resolved, in the light of Aromin's lament about being denied due process, is whether or not procedural infirmity attended his dismissal.

Due process, under the Implementing Rules of the Labor Code, specifically Book VI, Rule I on *Termination of Employment and Retirement*, requires **two written notices** and **a hearing or conference** before a valid and legal termination of employees can be implemented.[30] The first notice is intended to apprise the concerned employees of the particular acts or omissions for which their dismissal is sought, and the second is to inform them of the decision to terminate them.[31]

As borne out by the records, BPI complied with the mandatory two-notice rule, the first effected through the May 6, 1991 show-cause memorandum which Aromin even answered, and the second via the June 14, 1991 notice of termination, both issued by Barcelon.

Aromin's contention that the show-cause memorandum did not specify the charges against him is specious, for the same memorandum, albeit tersely couched, clearly conveyed the message that his testimony in Civil Case No. 56316 was prejudicial to the best interests of BPI.

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[30] SEC. 2. Security of tenure.—x x x

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii) A written notice of termination served on the employee, indicting that upon due consideration of all the circumstances, grounds have been established to justify his termination.

[31] *Santos v. San Miguel Corporation*, G.R. No. 149416, March 14, 2003, 399 SCRA 172, 185; citations omitted.

The termination of Aromin was effected on June 14, 1991. The prevailing jurisprudence at that time was that as long as the employee was given an opportunity to be heard, due process with respect to the first notice was deemed complied with, even if incidentally no actual hearing was conducted.[32] Thus, respondents BPI, Loinaz, and Barcelon did not breach the due process requirements.

No Entitlement to Financial Assistance

With the issue on the legality of Aromin's dismissal put to rest, the resolution of the question on his entitlement to financial assistance granted by the labor arbiter but denied by the NLRC and then by the CA should not be difficult.

Philippine Long Distance Telephone Company v. National Labor Relations Commission teaches that an employee validly dismissed for causes other than serious misconduct or that which reflects adversely on the employee's moral character may be given financial assistance or severance pay.[33] Of similar tenor is *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*[34] where the Court, after a brief overview of relevant cases[35] dealing with the termination for any valid ground under Art. 282 of the Labor Code and where separation pay was not allowed, wrote:

> In all of the foregoing situations, the Court declined to grant termination pay because the causes for dismissal recognized under

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[32] *Panuncillo v. CAP Philippines, Inc*., G.R. No. 161305, February 9, 2007, 515 SCRA 323, 335-336; citing *Standard Electric Manufacturing Corporation v. Standard Electric Employees Union-NAFLU-KMU*, G.R. No. 166111, August 25, 2005, 468 SCRA 316, 329.

[33] G.R. No. 80609, August 23, 1988, 164 SCRA 671, 682.

[34] G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171, 223.

[35] *House of Sara Lee v. Rey*, G.R. No. 149013, August 31, 2006, 500 SCRA 419; *Ha Yuan Restaurant v. National Labor Relations Commission*, G.R. No. 147719, January 27, 2006, 480 SCRA 328; *Gustilo v. Wyeth Phils., Inc.*, G.R. No. 149629, October 4, 2004, 440 SCRA 67; *San Miguel v. Lao*, G.R. Nos. 143136-37, July 11, 2002, 384 SCRA 504.

Art. 282 of the Labor Code were serious or grave in nature and attended by willful or wrongful intent or they reflected adversely on the moral character of the employees. **We therefore find that in addition to serious misconduct, in dismissals based on other grounds under Art. 282 like willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, and commission of a crime against the employer or his family, separation pay should not be conceded to the dismissed employee**. (Emphasis ours.)

Guided by the foregoing doctrinal pronouncements and with the reality that Aromin is guilty of willful betrayal of trust, a serious offense akin to dishonesty, he is not entitled to financial assistance or separation pay. It may be that his 26 years of service might generally be considered for a severance pay award or some form of financial assistance to cushion the effects of his termination. But as aptly observed by both the NLRC and the CA, Aromin's length of service is of little moment for purposes of financial award since his willful breach of trust reflects a regrettable lack of loyalty to his employer. Indeed, if length of service is to be regarded as justification for moderating the penalty of dismissal, then we would be giving a premium to disloyalty, distorting in the process the meaning of social justice and undermining the efforts of labor to cleanse its ranks of undesirables.[36]

WHEREFORE, this petition is *DENIED* for lack of merit. The appealed Decision and Resolution dated April 15, 2004 and August 3, 2004, respectively, of the CA in CA-G.R. SP No. 77016 are hereby *AFFIRMED IN TOTO.*

No pronouncement as to costs.

SO ORDERED.

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

Brion, J., in the result.

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[36] *Ectuban, Jr. v. Sulpicio Lines, Inc.*, G.R. No. 148410, January 17, 2005, 448 SCRA 516, 533-534; citing *Flores v. NLRC*, G.R. No. 96969, March 2, 1993, 219 SCRA 350, 355.

SECOND DIVISION

[G.R. No. 164909. April 30, 2008]

RONNIE AMBAIT *y* SAURA, *petitioner, vs.* **THE COURT OF APPEALS and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT; ENTITLED TO THE HIGHEST RESPECT AND WILL NOT BE DISTURBED ON APPEAL; RATIONALE.—** We reiterate the doctrine that the trial court's assessment of a witness' credibility will not be disturbed on appeal, in the absence of palpable error or grave abuse of discretion on the part of the trial judge. As a rule, the findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal, absent any clear showing that it overlooked, misunderstood or misapplied some weighty and substantial facts or circumstances that would have affected the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court is deemed to have been in a better position to weigh the evidence. Well-settled is the rule that findings of trial courts which are factual in nature and which revolve on matters of credibility of witnesses deserve to be respected when no glaring errors bordering on a gross misapprehension of the facts, or where no speculative, arbitrary and unsupported conclusions, can be gleaned from such findings. Moreover, having been affirmed by the Court of Appeals, the trial court's findings carry even more weight. In the appeal before us, we find no reason to deviate from the rule.

2. **ID.; ID.; ID.; NOT AFFECTED BY MINOR INCONSISTENCIES.—** We agree with the Court of Appeals that such inconsistencies are minor matters and that the testimonies dovetail on material points. The inconsistency does not impugn the fact that the gun, ammunition and *shabu* were all recovered and retrieved from the petitioner when he was confronted and frisked at the

ground floor. Minor inconsistencies, far from detracting from the veracity of the testimony, even enhance the credibility of the witnesses, for they remove any suspicion that the testimony was contrived or rehearsed.

3. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; WHEN WARRANTLESS SEARCH AND SEIZURES ARE VALID.—** After a frisking made on the person of the petitioner, an unlicensed gun with three bullets were also confiscated. Patently, the warrantless search and seizure of the unlicensed gun, ammunition and *shabu* was lawfully made in plain view and as an incident to a lawful arrest. The interdiction against warrantless searches and seizures is not absolute. The recognized exceptions established by jurisprudence are (1) search of moving vehicles; (2) seizure in plain view; (3) customs searches; (4) waiver or consented searches; (5) stop and frisk situations; and (6) search incidental to a lawful arrest. Patently, the warrantless search and seizure of the incriminating objects found in the possession of petitioner falls under the exceptions enumerated. Therefore, their admissibility in evidence cannot be questioned.

APPEARANCES OF COUNSEL

De Castro and Cagampang Law Offices for petitioner.
The Solicitor General for respondents.

D E C I S I O N

QUISUMBING, *J.*:

This is an appeal to reverse and set aside the Decision[1] dated July 25, 2003 and the Resolution [2] dated August 11, 2004 of the Court of Appeals in CA-G.R. CR No. 26050. The appellate

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[1] *Rollo*, pp. 73-85. Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Edgardo P. Cruz and Noel G. Tijam concurring.

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

court affirmed the Decision[3] dated September 5, 2000 of the Regional Trial Court (RTC) of Bacolod City, Branch 41, in Criminal Case Nos. 95-17377 and 95-17378.

On September 5, 2000, the trial court found petitioner guilty beyond reasonable doubt of violation of Presidential Decree No. 1866,[4] Illegal Possession of Firearms, and violation of Section 16,[5] Article III of Republic Act No. 6425, the Dangerous Drugs Act of 1972, as amended by Batas Pambansa Blg. 179[6] and Rep. Act No. 7659.[7]

Petitioner had been found, on October 13, 1995, to unlawfully possess one unlicensed/unauthorized Smith and Wesson revolver, caliber .38, and three rounds of live ammunition. On that same day, he was also found to have in his possession, one small sachet of methamphetamine hydrochloride, otherwise known as *shabu*, weighing more or less 0.10 gram without the corresponding license or prescription.

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[3] *Id*. at 48-65-A. Penned by Judge Ray Alan T. Drilon.

[4] CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES, done on June 29, 1983.

[5] SEC. 16. *Possession or Use of Regulated Drugs*. – The penalty of imprisonment ranging from six years and one day to twelve years and a fine ranging from six thousand to twelve thousand pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription.

[6] AN ACT FURTHER AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED SIXTY-FOUR HUNDRED AND TWENTY-FIVE, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES, approved on March 2, 1982.

[7] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES, approved on December 13, 1993.

Affirming the trial court's decision, the Court of Appeals predicated its judgment on the following facts.

On October 13, 1995 just before midnight, Bacolod City PNP Chief Inspector Pedro Merced, SPO2 Freddie Natividad and SPO1 Arthur Yusay were on routine police patrol when an informant codenamed "Savio" tipped them that a certain Teddy Sta. Rita[8] of San Patricio, Banago District, Bacolod City was committing certain illegal activities within his residence. The patrol proceeded to the place reported by the informant. It was learned that the dwelling place was owned by one Nelia[9] Sta. Rita.[10]

Having been informed that petitioner Ronnie Ambait maintained an illegal gambling operation in the said house, the policemen conducted a surveillance and stake-out operation. Using an entrapment procedure, the group was expecting the informant to turn-over some *jai-alai* paraphernalia and bet collections to petitioner; thereupon they would swoop down on the latter. As the policemen watched the informant hand over the tally sheet and bet collections to a certain Barry, the latter handed the paraphernalia to petitioner who was sitting behind a table with an open compartment.[11] The policemen thereafter entered the house and found three persons namely, petitioner, Teddy Sta. Rita and a Eufran Serfino. Noticing a bulge in petitioner's pocket, SPO2 Natividad asked him to stand up and empty his pocket. Petitioner let out a brown coin purse containing a small sachet. SPO1 Yusay then frisked petitioner and found a .38 caliber revolver and three live ammunitions. Gambling paraphernalia and bets amounting to ₱1,799 were found on the table.[12]

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[8] Also known as "Teddy De Arroz" in other parts of the records.

[9] Also known as "Nelly" in other parts of the records.

[10] *Rollo*, p. 75.

[11] *Id*. at 75-76.

[12] *Id*. at 76.

Thereafter, Informations against petitioner were filed as follows:

In Criminal Case No. 95-17377:

x x x x x x x x x

That on or about the 13th day of October, 1995, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, did, then and there wilfully, unlawfully and feloniously keep, possess, hold and carry in his possession one (1) Revolver Caliber .38 Smith and Wesson (homemade) without Serial Number with three (3) rounds of live ammunitions without license and/or authority duly and legally issued and obtained for that purpose, in violation of the aforementioned law.

Act contrary to law.[13]

In Criminal Case No. 95-17378:

x x x x x x x x x

That on or about the 13th day of October, 1995, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused not being lawfully authorized to possess, prepare, administer or otherwise use any regulated drug, did, then and there wilfully, unlawfully and feloniously have in his possession and under his custody one (1) small sachet of methamphetamine hydrochloride, otherwise known as *shabu*, weighing more or less 0.10 gram without the corresponding license or prescription therefor.

Act contrary to law.[14]

During trial, SPO4 Vicente Jalocon of the Firearms and Explosive Unit of the Bacolod City PNP testified that petitioner was not a registered firearm holder and had no license to possess any firearm.[15] Forensic chemist Rhea Villavicencio of the Bacolod City PNP, another prosecution witness, testified that on October 14, 1995, the Chief of the Vice & Narcotic

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[13] Records (Criminal Case No. 95-17377), p. 2.

[14] Records (Criminal Case No. 95-17378), p. 1.

[15] TSN, May 16, 1996, pp. 6-7.

Division requested for laboratory examination of the following specimen in connection with the case namely: an improvised tooter and an aluminum foil containing 1.5 grams suspected to be "*shabu*" in a coin purse. In her report, she found that the specimen, particularly the one placed in the coin purse weighing 1.5 grams, was positive for shabu.[16]

On September 5, 2000, the trial court rendered its decision convicting the petitioner of the offenses charged. The dispositive portion of the decision states:

> WHEREFORE, judgment is hereby rendered: (a) finding the accused guilty beyond reasonable doubt of the crime of Violation of P.D. 186[6], and sentenced to suffer imprisonment of four (4) months and one (1) day to six (6) years and a fine of ₱15,000.00 in Crim. Case No. 17377; and (b) finding the accused guilty beyond reasonable doubt of the crime of Violation of Sec. 16, Art. III of RA 6425, as amended by B.P. Blg. 179 and RA 7659, and is sentenced to suffer imprisonment of *prision correc[c]ional*, ranging from six (6) months and one (1) day to two (2) years and four (4) months, as minimum to four (4) months and [one] (1) day to six (6) years, as maximum.
>
> SO ORDERED.[17]

On appeal, the Court of Appeals in its Decision dated July 25, 2003 affirmed the decision of the trial court.

> WHEREFORE, finding no reversible error in the assailed Decision, the same is AFFIRMED.
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> SO ORDERED.[18]

A motion for reconsideration filed by the petitioner was also denied. Hence, this petition.

Petitioner cites the following grounds for the allowance of the petition:

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[16] TSN, February 14, 1996, pp. 6, 12-14 (Rhea Villavicencio).

[17] *Rollo,* p. 65-A.

[18] *Id.* at 85.

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GIVING FULL FAITH AND CREDIT TO THE TESTIMONIES OF PROSECUTION WITNESSES DESPITE THE GLARING INCONSISTENCIES AND IMPROBABILITIES THEREIN.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE FINDINGS OF FACT OF THE TRIAL COURT ARE SUPPORTED BY THE EVIDENCE ON RECORD.

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE GUN, LIVE AMMUNITIONS AND *SHABU* THAT WERE CONFISCATED FROM PETITIONER ARE ADMISSIBLE IN EVIDENCE.

IV.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE SEARCH AND SEIZURE OF THE GUN, AMMUNITIONS AND *SHABU* FROM PETITIONER WAS INCIDENTAL TO A LAWFUL ARREST AND THE SEIZURE WAS MADE IN PLAIN VIEW.

V.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ADOPTING THE THEORY THAT PETITIONER WAS CAUGHT *IN FLAGRANTE DELICTO* OF THE OFFENSE OF ILLEGAL GAMBLING.

VI.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT EXONERATING PETITIONER OF ILLEGAL POSSESSION OF FIREARMS IN VIEW OF THE AMENDMENTS INTRODUCED BY R.A. [NO.] 8294.

VII.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT THE PROSECUTION MISERABLY FAILED TO PROVE THE GUILT OF THE PETITIONER BEYOND REASONABLE DOUBT.[19]

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

Simply put, the issues for disposition are: (1) Did the Court of Appeals err in giving full faith and credit to the testimonies of the prosecution witnesses? and (2) Was the evidence seized admissible in evidence?

On the first issue, petitioner avers that the court *a quo* erred in giving full faith and credence to the testimonies of prosecution witnesses which are replete with inconsistencies and discrepancies. Respondents counter that the inconsistencies were minor details which do not impair the credibility of the witnesses.

We reiterate the doctrine that the trial court's assessment of a witness' credibility will not be disturbed on appeal, in the absence of palpable error or grave abuse of discretion on the part of the trial judge.[20] As a rule, the findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal, absent any clear showing that it overlooked, misunderstood or misapplied some weighty and substantial facts or circumstances that would have affected the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court is deemed to have been in a better position to weigh the evidence.[21] Well-settled is the rule that findings of trial courts which are factual in nature and which revolve on matters of credibility of witnesses deserve to be respected when no glaring errors bordering on a gross misapprehension of the facts, or where no speculative, arbitrary and unsupported conclusions, can be gleaned from such findings.[22] Moreover, having been affirmed by the Court of Appeals, the trial court's findings carry even more weight. In the appeal before us, we find no reason to deviate from the rule.

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[20] *People v. Oliver*, G.R. No. 123099, February 11, 1999, 303 SCRA 72, 79.

[21] *People v. Fabia*, G.R. No. 134764, June 26, 2001, 359 SCRA 656, 664.

[22] *People v. Mirafuentes*, G.R. Nos. 135850-52, January 16, 2001, 349 SCRA 204, 214; *People v. Flores*, G.R. No. 116524, January 18, 1996, 252 SCRA 31, 39; *People v. Bahuyan*, G.R. No. 105842, November 24, 1994, 238 SCRA 330, 345; *People v. Sanchez*, G.R. Nos. 98402-04, November 16, 1995, 250 SCRA 14, 22.

Moreover, the inconsistencies mentioned by the petitioner can be characterized as minor. Petitioner points to alleged inconsistencies and discrepancies in the testimonies of SPO2 Natividad and SPO1 Yusay who, on the one hand, testified that they confined their search and seizure operation on the ground floor of the house, and that the unlicensed gun and the *shabu* were taken from the petitioner; and the testimony of Chief Inspector Merced who, on the other hand, testified that the raiding team went up the second floor of the house then came down with sachets of *shabu*. We agree with the Court of Appeals that such inconsistencies are minor matters and that the testimonies dovetail on material points.[23] The inconsistency does not impugn the fact that the gun, ammunition and *shabu* were all recovered and retrieved from the petitioner when he was confronted and frisked at the ground floor. Minor inconsistencies, far from detracting from the veracity of the testimony, even enhance the credibility of the witnesses, for they remove any suspicion that the testimony was contrived or rehearsed.[24]

On the second issue, petitioner contends that the conduct of the police officers cannot be justified under the exception to the rules against warrantless search and seizure. Respondents counter that the evidence were seized as a result of a lawful search and seizure made in plain view and as an incident to a lawful arrest of petitioner who was caught *in flagrante delicto* committing the crime of illegal gambling.

The police officers led by Chief Inspector Merced conducted a lawful entrapment operation on the petitioner who was reportedly the operator of the said illegal gambling operation. Police officers arrested petitioner while petitioner's companions got away. When SPO2 Natividad noticed a conspicuous bulge in the petitioner's pocket, he asked him to show its contents. Petitioner yielded a brown coin purse which contained a sachet of *shabu*. After a frisking made on the person of the petitioner,

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[23] *Rollo*, p. 83.

[24] *People v. Bustamante*, G.R. Nos. 140724-26, February 12, 2003, 397 SCRA 326, 341.

an unlicensed gun with three bullets were also confiscated. Patently, the warrantless search and seizure of the unlicensed gun, ammunition and *shabu* was lawfully made in plain view and as an incident to a lawful arrest.[25]

The interdiction against warrantless searches and seizures is not absolute. The recognized exceptions established by jurisprudence are (1) search of moving vehicles; (2) seizure in plain view; (3) customs searches; (4) waiver or consented searches; (5) stop and frisk situations; and (6) search incidental to a lawful arrest.[26]

Patently, the warrantless search and seizure of the incriminating objects found in the possession of petitioner falls under the exceptions enumerated. Therefore, their admissibility in evidence cannot be questioned.

WHEREFORE, the Decision dated July 25, 2003 and the Resolution dated August 11, 2004 of the Court of Appeals in CA-G.R. CR No. 26050, denying the motion for reconsideration are *AFFIRMED*.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

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[25] *People v. Elamparo*, G.R. No. 121572, March 31, 2000, 329 SCRA 404, 413, held that objects inadvertently falling 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 introduced in evidence, citing *People v. Doria,* G.R. No. 125299, January 22, 1999, 301 SCRA 668, 710-711.

[26] *People v. Canton*, G.R. No. 148825, December 27, 2002, 394 SCRA 478, 485.

FIRST DIVISION

[G.R. No. 165696. April 30, 2008]

ALEJANDRO B. TY, *petitioner, vs.* **SYLVIA S. TY, in her capacity as Administratrix of the Intestate Estate of Alexander Ty,** *respondent.*

SYLLABUS

CIVIL LAW; TRUSTS; IMPLIED TRUST; NOT PRESENT WHEN THE PERSON TO WHOM THE TITLE IS CONVEYED IS THE CHILD OF THE ONE PAYING THE PRICE OF THE SALE; CASE AT BAR.—Article 1448 of the Civil Code is clear. If the person to whom the title is conveyed is the child of the one paying the price of the sale, and in this case this is undisputed, NO TRUST IS IMPLIED BY LAW. The law, instead, disputably presumes a donation in favor of the child. On the question of whether or not petitioner intended a donation, the CA found that petitioner failed to prove the contrary. This is a factual finding which this Court sees no reason on the record to reverse. The net effect of all the foregoing is that respondent is obliged to collate into the mass of the estate of petitioner, in the event of his death, the EDSA property as an advance of Alexander's share in the estate of his father, to the extent that petitioner provided a part of its purchase price.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala and Cruz for petitioner.
Ongkiko Kalaw Manhit & Acorda Law Offices for respondent.

D E C I S I O N

AZCUNA, ***J.:***

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court against the Decision[1] of the Court of Appeals

[1] Penned by Justice Renato C. Dacudao and concurred in by Justices Lucas P. Bersamin and Celia C. Librea-Leagogo.

(CA) in CA-G.R. No. 66053 dated July 27, 2004 and the Resolution therein dated October 18, 2004.

The facts are stated in the CA Decision:

On May 19, 1988, Alexander Ty, son of Alejandro B. Ty and Bella Torres, died of cancer at the age of 34. He was survived by his wife, Sylvia Ty, and his only daughter, Krizia Katrina Ty. A few months after his death, a petition for the settlement of his intestate estate was filed by Sylvia Ty in the Regional Trial Court of Quezon City.

Meanwhile, on July 20, 1989, upon petition of Sylvia Ty, as Administratrix, for settlement and distribution of the intestate estate of Alexander in the County of Los Angeles, the Superior Court of California ordered the distribution of the Hollywood condominium unit, the Montebello lot, and the 1986 Toyota pick-up truck to Sylvia Ty and Krizia Katrina Ty.

On November 23, 1990, Sylvia Ty submitted to the intestate Court in Quezon City an inventory of the assets of Alexander's estate, consisting of shares of stocks and a schedule of real estate properties, which included the following:

1. EDSA Property – a parcel of land with an area of 1,728 square meters situated in EDSA, Greenhills, Mandaluyong, Metro Manila, registered in the name of Alexander Ty when he was still single, and covered by TCT No. 0006585;
2. Meridien Condominium – A residential condominium with an area of 167.5 square meters situated in 29 Annapolis Street, Greenhills, Mandaluyong, Metro Manila, registered in the name of the spouses Alexander Ty and Sylvia Ty, and covered by Condominium Certificate of Title No. 3395;
3. Wack-Wack Property – A residential land with an area of 1,584 square meters situated in Notre Dame, Wack-Wack, Mandaluyong, Metro Manila, registered in the name of the spouses Alexander Ty and Sylvia Ty, and covered by TCT No. 62670.

On November 4, 1992, Sylvia Ty asked the intestate Court to sell or mortgage the properties of the estate in order to pay the additional estate tax of ₱4,714,560.02 assessed by the BIR.

Apparently, this action did not sit well with her father-in-law, the plaintiff-appellee, for on December 16, 1992, Alejandro Ty, father of

the deceased Alexander Ty, filed a complaint for recovery of properties with prayer for preliminary injunction and/or temporary restraining order. Docketed as Civil Case No. 62714, of the Regional Trial Court of Pasig, Branch 166, the complaint named Sylvia Ty as defendant in her capacity as [Administratrix] of the Intestate Estate of Alexander Ty.

Forthwith, on December 28, 1992, defendant Sylvia Ty, as Administratrix of the Intestate Estate of Alexander Ty, tendered her opposition to the application for preliminary injunction. She claimed that plaintiff Alejandro Ty had no actual or existing right, which entitles him to the writ of preliminary injunction, for the reason that no express trust concerning an immovable maybe proved by parole evidence under the law. In addition, Sylvia Ty argued that the claim is barred by laches, and more than that, that irreparable injury will be suffered by the estate of Alexander Ty should the injunction be issued.

To the aforementioned opposition, plaintiff filed a reply, reiterating the arguments set forth in his complaint, and denying that his cause of action is barred by laches.

In an order dated February 26, 1993, the Regional Trial Court granted the application for a writ of preliminary injunction.

As to the complaint for recovery of properties, it is asserted by plaintiff Alejandro Ty that he owns the EDSA property, as well as the Meridien Condominium, and the Wack-Wack property, which were included in the inventory of the estate of Alexander Ty. Plaintiff alleged that on March 17, 1976, he bought the EDSA property from a certain Purificacion Z. Yujuico; and that he registered the said property in the name of his son, Alexander Ty, who was to hold said property in trust for his brothers and sisters in the event of his (plaintiffs) sudden demise. Plaintiff further alleged that at the time the EDSA property was purchased, his son and name-sake was still studying in the United States, and was financially dependent on him.

As to the two other properties, plaintiff averred that he bought the Meridien Condominium sometime in 1985 and the Wack-Wack property sometime in 1987; that titles to the aforementioned properties were also placed in the name of his son, Alexander Ty, who was also to hold these properties in trust for his brothers and sisters. Plaintiff asserted that at [the] time the subject properties were purchased, Alexander Ty and Sylvia Ty were earning minimal income,

and were thus financially incapable of purchasing said properties. To bolster his claim, plaintiff presented the income tax returns of Alexander from 1980-1984, and the profit and loss statement of defendant's Joji San General Merchandising from 1981-1984.

Plaintiff added that defendant acted in bad faith in including the subject properties in the inventory of Alexander Ty's estate, for she was well aware that Alexander was simply holding the said properties in trust for his siblings.

In her answer, defendant denied that the subject properties were held in trust by Alexander Ty for his siblings. She contended that, contrary to plaintiff's allegations, Alexander purchased the EDSA property with his own money; that Alexander was financially capable of purchasing the EDSA property as he had been managing the family corporations ever since he was 18 years old, aside from the fact that he was personally into the business of importing luxury cars. As to the Meridien Condominium and Wack-Wack property, defendant likewise argued that she and Alexander Ty, having been engaged in various profitable business endeavors, they had the financial capacity to acquire said properties.

By way of affirmative defenses, defendant asserted that the alleged verbal trust agreement over the subject properties between the plaintiff and Alexander Ty is not enforceable under the Statute of Frauds; that plaintiff is barred from proving the alleged verbal trust under the Dead Man's Statute; that the claim is also barred by laches; that defendant's title over the subject properties cannot be the subject of a collateral attack; and that plaintiff and counsel are engaged in forum-shopping.

In her counterclaim, defendant prayed that plaintiff be sentenced to pay attorney's fees and costs of litigation.

On November 9, 1993, a motion for leave to intervene, and a complaint-in-intervention were filed by Angelina Piguing-Ty, legal wife of plaintiff Alejandro Ty. In this motion, plaintiff-intervenor prayed that she be allowed to intervene on the ground that the subject properties were acquired during the subsistence of her marriage with the plaintiff, hence said properties are conjugal. On April 27, 1994, the trial court issued an Order granting the aforementioned motion.

During the hearing, plaintiff presented in evidence the petition filed by defendant in Special Proceedings No. Q-88-648; the income tax returns and confirmation receipts of Alexander Ty from 1980-1984;

the profit and loss statement of defendant's Joji San General Merchandising from 1981-1984; the deed of sale of the EDSA property dated March 17, 1976; the TCT's and CCT of the subject properties; petty cash vouchers, official receipts and checks to show the plaintiff paid for the security and renovation expenses of both the Meridien Condominium and the Wack-Wack property; checks issued by plaintiff to defendant between June 1988 – November 1991 to show that plaintiff provided financial support to defendant in the amount of ₱51,000.00; and the articles of incorporations of various corporations, to prove that he, plaintiff, had put up several corporations.

Defendant for her presented in evidence the petition dated September 6, 1988 in Special Proceedings No. Q-88-648; the TCTs and CCT of the subject properties; the deed of sale of stock dated July 27, 1988 between the ABT Enterprises, Incorporated, and plaintiff; the transcript of stenographic notes dated January 5, 1993 in SEC Case No. 4361; the minutes of the meetings, and the articles of incorporation of various corporations; the construction agreement between the defendant and the Home Construction, for the renovation of the Wack-Wack property; the letters of Home Construction to defendant requesting for payment of billings and official receipts of the same, to show that defendant paid for the renovation of the Wack-Wack property; the agreement between Drago Daic Development International, Incorporated, and the spouses Alexander Ty and Sylvia Ty, dated March, 1987, for the sale of the Wack-Wack property covered by TCT No. 55206 in favor of the late Alexander Ty and the defendant; a photograph of Krizia S. Ty; business cards of Alexander Ty; the Order and the Decree No. 10 of the Superior Court of California, dated July 20, 1989; the agreement between Gerry L. Contreras and the Spouses Alexander Ty and Sylvia Ty, dated January 26, 1988, for the Architectural Finishing and Interior Design of the Wack-Wack property; official receipts of the Gercon Enterprises; obituaries published in several newspapers; and a letter addressed to Drago Daic dated February 10, 1987.[2]

Furthermore, the following findings of facts of the court *a quo*, the Regional Trial Court of Pasig City, Branch 166 (RTC), in Civil Case No. 62714, were adopted by the CA, thus:

We adopt the findings of the trial court in respect to the testimonies of the witnesses who testified in this case, thus:

[2] CA Decision, pp. 5-9, *rollo*, pp. 50-53.

"The gist of the testimony of defendant as adverse witness for the plaintiff:

"Defendant and Alexander met in Los Angeles, USA in 1975. Alexander was then only 22 years old. They married in 1981. Alexander was born in 1954. He finished high school at the St. Stephen High School in 1973. Immediately after his graduation from high school, Alexander went to the USA to study. He was a full-time student at the Woodberry College where he took up a business administration course. Alexander graduated from the said college in 1977. He came back to the Philippines and started working in the Union Ajinomoto, Apha Electronics Marketing Corporation and ABT Enterprises. After their marriage in 1981, Alexander and defendant lived with plaintiff at the latter's residence at 118 Scout Alcaraz St.[,] Quezon City. Plaintiff has been engaged in manufacturing and trading business for almost 50 years. Plaintiff has established several corporations. While in the USA, Alexander stayed in his own house in Montebello, California, which he acquired during his college days. Alexander was a stockholder of companies owned by plaintiff's family and got yearly dividend therefrom. Alexander was an officer in the said companies and obtained benefits and bonuses therefrom. As stockholder of Ajinomoto, Royal Porcelain, Cartier and other companies, he obtained stock dividends. Alexander engaged in buy and sell of cars. Defendant cannot give the exact amount how much Alexander was getting from the corporation since 1981. In 1981, defendant engaged in retail merchandising *i.e.*, imported jewelry and clothes. Defendant leased two (2) units at the Greenhills Shoppesville. Defendant had dividends from the family business which is real estate and from another corporation which is Perway. During their marriage, defendant never received allowance from Alexander. The Wack-Wack property cost ₱5.5 million. A Car Care Center was established by Alexander and defendant was one of the stockholders. Defendant and Alexander spent for the improvement of the Wack-Wack property. Defendant and Alexander did not live in the condominium unit because they followed the Chinese tradition and lived with plaintiff up to the death of Alexander. Defendant and Alexander started putting improvements in the Wack-Wack property in 1988, or a few months before Alexander died.

"The gist of the testimony of Conchita Sarmiento:

"In 1966, Conchita Sarmiento was employed in the Union Chemicals as secretary of plaintiff who was the president. Sarmiento

prepared the checks for the school expenses and allowances of plaintiff's children and their spouses. Sarmiento is familiar with the Wack-Wack property. Plaintiff bought the Wack-Wack property and paid the architect and spent for the materials and labor in connection with the construction of the Wack-Wack property (Exhs. 'M' to 'Z' inclusive; Exhs. 'AA' to 'ZZ', inclusive; Exhs. 'AAA' to 'ZZZ', inclusive; Exhs. 'AAAA' to 'FFFF,' inclusive). Plaintiff entrusted to Alexander the supervision of the construction of the Wack-Wack property, so that Exhibit 'M' shows that the payment was received from Alexander. Plaintiff visited the Wack-Wack property several times and even pointed the room which he intended to occupy. Sarmiento was told by plaintiff that it was very expensive to maintain the house. The documents, referring to the numerous exhibits, were in the possession of plaintiff because they were forwarded to him for payment. Sarmiento knows the residential condominium unit because in 1987 plaintiff purchased the materials and equipments for its renovation, as shown by Exhs. 'GGGG' to 'QQQQ' inclusive. Plaintiff supported defendant after the death of Alexander, as shown by Exhs. 'RRRR' to 'TTTT' inclusive. Sarmiento was plaintiff's secretary and assisted him in his official and personal affairs. Sarmiento knew that Alexander was receiving a monthly allowance in the amount of ₱5,000.00 from Alpha.

"<u>The gist of the testimony of the plaintiff:</u>

Plaintiff is 77 years old and has been engaged in business for about 50 years. Plaintiff established several trading companies and manufacturing firms. The articles of incorporation of the companies are shown in Exhs. 'UUUUU' (Manila Paper Mills, Inc.); 'UUUUU-1' (Union Chemicals Inc.); 'UUUUU-2' (Starlight Industrial Company Inc.); 'UUUUU-3' (Hitachi Union, Inc.); 'UUUUU-4' (Philippine Crystal Manufacturing Corp.). Alexander completed his elementary education in 1969 at the age of 15 years and finished high school education in 1973. Alexander left in 1973 for the USA to study in the Woodberry College in Los Angeles. Alexander returned to the Philippines in 1977. When Alexander was 18 years old, he was still in high school, a full-time student. Alexander did not participate in the business operation. While in High School Alexander, during his free time attended to his hobby about cars – Mustang, Thunderbird and Corvette. Alexander was not employed. Plaintiff took care of Alexander's financial needs. Alexander was plaintiff's trusted son because he lived with him from childhood until his death. In 1977 when Alexander returned to the Philippines from the USA, he did

not seek employment. Alexander relied on plaintiff for support. After Alexander married defendant, he put up a Beer Garden and a Car Care Center. Plaintiff provided the capital. The Beer Garden did not make money and was closed after Alexander's death. Defendant and Alexander lived with plaintiff in Quezon City and he spent for their needs. Plaintiff purchased with his own money the subject properties. The EDSA property was for investment purposes. When plaintiff accompanied Alexander to the USA in 1973, he told Alexander that he will buy some properties in Alexander's name, so that if something happens to him, Alexander will distribute the proceeds to his siblings. When the EDSA property was bought, Alexander was in the USA. Plaintiff paid the real estate taxes. With plaintiff's permission, Alexander put up his Beer Garden and Car Care Center in the EDSA property. It was Alexander who encouraged plaintiff to buy the condominium unit because Alexander knew the developer. The condominium unit was also for investment purposes. Plaintiff gave Alexander the money to buy the condominium unit. After sometime, Alexander and defendant asked plaintiff's permission for them to occupy the condominium unit. Plaintiff spent for the renovation of the condominium unit. It was Alexander who encouraged plaintiff to buy the Wack-Wack property. Plaintiff spent for the renovation of the condominium unit. It was Alexander who encouraged plaintiff to buy the Wack-Wack property. Plaintiff paid the price and the realty taxes. Plaintiff spent for the completion of the unfinished house on the Wack-Wack property. Plaintiff bought the Wack-Wack property because he intended to transfer his residence from Quezon City to Mandaluyong. During the construction of the house on the Wack-Wack property plaintiff together with Conchita Sarmiento, used to go to the site. Plaintiff even told Sarmiento the room which he wanted to occupy. Alexander and defendant were not in a financial position to buy the subject properties because Alexander was receiving only minimal allowance and defendant was only earning some money from her small stall in Greenhills. Plaintiff paid for defendant's and Alexander income taxes (Exhs. 'B', 'C', 'D', 'E', and 'F'). Plaintiff kept the Income Tax Returns of defendant and Alexander in his files. It was one of plaintiff's lawyers who told him that the subject properties were included in the estate of Alexander. Plaintiff called up defendant and told her about the subject properties but she ignored him so that plaintiff was saddened and shocked. Plaintiff gave defendant monthly support of ₱ 51, 000.00 (Exhs. 'RRRR' to 'TTTTT", inclusive) ₱ 50,000.00 for defendant and ₱1,000.00 for the yaya. The Wack-Wack property cost about ₱5.5 million.

"The gist of the testimony of Robert Bassig:

"He is 73 years old and a real estate broker. Bassig acted as broker in the sale of the EDSA property from Purificacion Yujuico to plaintiff. In the Deed of Sale (Exh. 'G') it was the name of Alexander that was placed as the vendee, as desired by plaintiff. The price was paid by plaintiff. Bassig never talked with Alexander. He does not know Alexander.

"The gist of the testimony of Tom Adarne as witness for defendant:

Adarne is 45 years old and an architect. He was a friend of Alexander. Adarne was engaged by defendant for the preparation of the plans of the Wack-Wack property. The contractor who won the bidding was Home Construction, Inc. The Agreement (Exh. '26') was entered into by defendant and Home Construction Inc. The amount of ₱955,555.00 (Exh. '26-A') was for the initial scope of the work. There were several letter-proposals made by Home Construction (Exhs. '27-34-A', inclusive). There were receipts issued by Home Construction Inc. (Exhs. '35', '36' and '37'). The proposal were accepted and performed. The renovation started in 1992 and was finished in 1993 or early 1994.

"The gist of the testimony of Rosanna Regalado:

"Regalado is 43 years old and a real estate broker. Regalado is a close friend of defendant. Regalado acted as broker in the sale of the Wack-Wack property between defendant and Alexander and the owner. The sale Agreement (Exh. '38') is dated March 5, 1987. The price is ₱5.5 million in Far East Bank and Trust Company manager's checks. The four (4) checks mentioned in paragraph 1 of the Agreement were issued by Alexander but she is not sure because it was long time ago.

"The gist of the testimony of Sylvia Ty:

"She is 40 years old, businesswoman and residing at 675 Notre Dame, Wack-Wack Village, Mandaluyong City. Sylvia and Alexander have a daughter named Krizia Katrina Ty, who is 16 years old. Krizia is in 11th grade at Brent International School. Alexander was an executive in several companies as shown by his business cards (Exhs. '40', '40-A', '40-B', '40-C', '40-D', '40-E', '40-F', and '40-G'). Before defendant and Alexander got married, the latter acquired a condominium unit in Los Angeles, USA, another property in Montebello, California and the EDSA property. The properties in the

USA were already settled and adjudicated in defendant's favor (Exhs. '41' and '41-A'). Defendant did not bring any property into the marriage. After the marriage, defendant engaged in selling imported clothes and eventually bought four (4) units of stall in Shoppesville Greenhills and derived a monthly income of ₱50,000.00. the price for one (1) unit was provided by defendant's mother. The other three (3) units came from the house and lot at Wack-Wack Village. The ₱3.5 million manager's check was purchased by Alexander. The sale Agreement was signed by Alexander and defendant (Exhs. '38-A' and '38-B'). After the purchase, defendant and Alexander continued the construction of the property. After Alexander's death, defendant continued the construction. The first architect that defendant and Alexander engaged was Gerry Contreras (Exhs. '42', '42-A' and '42-A-1' to '42-A-7'). The post-dated checks issued by Alexander were changed with the checks of plaintiff. After the death of Alexander, defendant engaged the services of Architect Tom Adarne. Home Construction, Inc. was contracted to continue the renovation. Defendant and Alexander made payments to Contreras from January to May 1998 (Exhs. '43', '43-A' to '43-H', inclusive). A general contractor by the name of Nogoy was issued some receipts (Exhs. '43-J' and '43-K'). a receipt was also issued by Taniog (Exh. '43-L'). the payments were made by defendant and Alexander from the latter's accounts. The Agreement with Home Construction Inc. (Exhs. '26') shows defendant's signature (Exh. '26-A'). the additional works were covered by the progress billings (Exhs. '27' to '34-A'). Defendant paid them from her account. The total contract amount was ₱5,049,283.04. The total expenses, including the furnishings, *etc*. reached the amount of ₱8 to 10 million and were paid from defendant's and Alexander's funds. After the death of Alexander, plaintiff made payments for the renovation of the house (Exh. 'M') which plaintiff considered as advantages but plaintiff did not make any claim for reimbursement from the estate of Alexander. Defendant's relationship with plaintiff became strained when he asked her to waive her right over the Union Ajinomoto shares. Alexander was a friend of Danding Cojuangco and was able to import luxury cars. Alexander made a written offer to purchase the Wack-Wack property. Alexander graduated from the Woodberry College in 1978 or 1979 and returned to the Philippines in 1979 defendant returned to the Philippines about six (6) months later. Plaintiff was financially well off or wealthy. Alexander was very close to plaintiff and he was the most trusted son and the only one who grew up in plaintiff's house. Plaintiff observed Chinese traditions. Alexander was not totally dependent on plaintiff

because he had his own earnings. Upon his return from the USA, Alexander acquired the properties in the USA while studying there. At the time of his death, Alexander was vice president of Union Ajinomoto. Defendant could not say how much was the compensation of Alexander from Union Ajinomoto. Defendant could not also say how much did Alexander earn as vice president of Royal Porcelain Corporation. Alexander was the treasurer of Polymark Paper Industries. Alexander was the one handling everything for plaintiff in Horn Blower Sales Enterprises, Hi-Professional Drilling, Round Consumer, MVR Picture Tubes, ABT Enterprises. Plaintiff supported defendant and her daughter in the amount of ₱51,000.00 per month from 1988-1990. Defendant did not offer to reimburse plaintiff the advances he made on the renovation of the Wack-Wack property because their relationship became strained over the Ajinomoto shares. Defendant could not produce the billings which were indicated in the post-dated checks paid to Architect Contreras. After the birth of her child, defendant engaged in the boutique business. Defendant could not recall how much she acquired the boutique (for). In 1983 or 1984 defendant started to earn ₱50,000.00 a month. The properties in the USA which were acquired by Alexander while still single were known to plaintiff but the latter did not demand the return of the titles to him. The Transfer Certificates of Title of the Wack-Wack and EDSA properties were given to defendant and Alexander. The Condominium Certificate of Title was also given to defendant and Alexander. The plaintiff did not demand the return of the said titles.

"The gist of the testimony of Atty. Mario Ongkiko:

"Atty. Ongkiko prepared the Deed of Sale of the EDSA property. There was only one Deed of Sale regarding the said property. The plaintiff was not the person introduced to him by Yujuico as the buyer.[3]

On January 7, 2000, the RTC rendered its decision, disposing as follows:

WHEREFORE, judgment is hereby rendered:

1. Declaring plaintiff as the true and lawful owner of the subject properties, as follows:

A. A parcel of land with an area of 1728 square meters, situated along EDSA Greenhills, Mandaluyong City, covered by TCT No. 006585.

[3] *Id*. at 53-57.

B. A residential land with an area of 1584 square meters, together with the improvements thereon, situated in Notre Dame, Wack-Wack Village, Mandaluyong City, covered by TCT No. 62670.

C. A residential condominium unit with an area of 167.5 square meters, situated in 29 Annapolis St., Greenhills, Mandaluyong City, covered by Condominium Certificate Title No. 3395.

2. Ordering the defendant to transfer or convey the subject properties in favor of plaintiff and the Register of Deeds for Mandaluyong City to transfer and issue in the name of plaintiff the corresponding certificates of title.

3. Ordering the defendant to pay plaintiff the amount of ₱100,000.00, as moral damages and ₱200,000.00, as attorney's fees plus the cost of the suit.

SO ORDERED.[4]

Respondent herein, Sylvia S. Ty, appealed from the RTC Decision to the CA, assigning the following as errors:

I.

THE TRIAL COURT ERRED IN HOLDING THAT APPELLEE PURCHASED THE EDSA PROPERTY BUT PLACED TITLE THERETO IN THE NAME OF ALEXANDER T. TY, SO THAT AN EXPRESS TRUST WAS CREATED BETWEEN APPELLEE, AS TRUSTOR AND ALEXANDER AS TRUSTEE IN FAVOR OF THE LATTER'S SIBLINGS, AS BENEFICIARIES EVEN WITHOUT ANY WRITING THEREOF; ALTERNATIVELY, THE TRIAL COURT ERRED IN ANY CASE IN HOLDING THAT AN IMPLIED TRUST EXISTED BETWEEN APPELLEE AND ALEXANDER TY IN FAVOR OF APPELLEE UNDER THE SAME CIRCUMSTANCES.

II.

THE TRIAL COURT ERRED IN HOLDING THAT APPELLEE PURCHASED THE WACK-WACK AND MERIDIEN CONDOMINIUM PROPERTIES BUT PLACED ITS TITLES THERETO IN THE NAMES OF SPOUSES ALEXANDER AND APPELLANT BECAUSE HE WAS FINANCIALLY CAPABLE OF PAYING FOR THE PROPERTIES WHILE ALEXANDER OR HIS WIFE, APPELLANT SYLVIA S. TY,

[4] *Id*. at 95.

WERE INCAPABLE. HENCE, A RESULTING TRUST WAS CREATED BETWEEN APPELLEE AND HIS SON, ALEXANDER, WITH THE FORMER, AS OWNER-TRUSTOR AND BENEFICIARY AND THE LATTER AS TRUSTEE CONCERNING THE PROPERTIES.

III.

THE TRIAL COURT ERRED IN AWARDING MORAL DAMAGES OF ₱100,000 AND ATTORNEY'S FEES OF ₱200,000 IN FAVOR OF APPELLEE AND AGAINST DEFENDANT-APPELLANT IN HER CAPACITY AS ADMINISTRATRIX OF THE INTESTATE ESTATE OF ALEXANDER TY, INSTEAD OF AWARDING APPELLANT IN HER COUNTERCLAIM ATTORNEY'S FEES AND EXPENSES OF LITIGATION INCURRED BY HER IN DEFENDING HER HUSBAND'S ESTATE AGAINST THE UNJUST SUIT OF HER FATHER-IN-LAW, HEREIN APPELLEE, WHO DISCRIMINATED AGAINST HIS GRAND DAUGHTER KRIZIA KATRINA ON ACCOUNT OF HER SEX.

The arguments in the respective briefs of appellant and appellee are summarized by the CA Decision, as well as other preliminary matters raised and tackled, thus:

In her Brief, defendant-appellant pointed out that, based on plaintiff-appellee's testimony, he actually intended to establish an express trust; but that the trial court instead found that an implied trust existed with respect to the acquisition of the subject properties, citing Art. 1448 of the Civil Code of the Philippines.

It is defendant-appellant's contention that the trial court erred: In applying Art. 1448 on implied trust, as plaintiff-appellee did not present a shred of evidence to prove that the money used to acquire said properties came from him; and in holding that both she and her late husband were financially incapable of purchasing said properties. On the contrary, defendant-appellant claimed that she was able to show that she and her late husband had the financial capacity to purchase said properties.

Defendant-appellant likewise questioned the admission of the testimony of plaintiff-appellee, citing the Dead Man's Statute; she also questioned the admission of her late husband's income tax returns, citing Section 71 of the NIRC and the case of *Vera v. Cusi, Jr.*

On July 10, 2001, plaintiff-appellee filed his appellee's Brief, whereunder he argued: That the trial court did not err in finding that

the subject properties are owned by him; that the said properties were merely registered in Alexander's name, in trust for his siblings, as it was plaintiff-appellee who actually purchased the subject properties he having the financial capacity to acquire the subject properties, while Alexander and defendant-appellant had no financial capacity to do so; that defendant-appellant should be sentenced to pay him moral damages for the mental anguish, serious anxiety, wounded feelings, moral shock and similar injury by him suffered, on account of defendant-appellant's wrongful acts; and that defendant appellant should also pay for attorney's fees and litigation expenses by him incurred in litigating this case.

In a nutshell, it is plaintiff-appellee's thesis that in 1973, when he accompanied his son, Alexander, to America, he told his son that he would put some of the properties in Alexander's name, so that if death overtakes him (plaintiff-appellee), Alexander would distribute the proceeds of the property among his siblings. According to plaintiff-appellee, the three properties subject of this case are the very properties he placed in the name of his son and name-sake; that after the death of Alexander, he reminded his daughter-in-law, the defendant appellant herein, that the subject properties were only placed in Alexander's name for Alexander to hold trust for his siblings; but that she rejected his entreaty, and refused to reconvey said properties to plaintiff-appellee, thereby compelling him to sue out a case for reconveyance.

On September 5, 2001, defendant-appellant filed her reply Brief and a motion to admit additional evidence. Thereafter, several motions and pleadings were filed by both parties. Plaintiff-appellee filed a motion for early resolution dated May 17, 2002 while defendant-appellant filed a motion to resolve dated August 6, 2003 and a motion to resolve incident dated August 12, 2003.

Plaintiff-appellee then filed a comment on the motion to resolve incident, to which defendant-appellant tendered a reply. Not to be outdone, the former filed a rejoinder.

Thus, on February 13, 2004, this Court issued a resolution, to set the case for the reception of additional evidence for the defendant-appellant.

In support of her motion to admit additional evidence, defendant-appellant presented receipts of payment of real estate taxes for the years 1987 to 2004, obviously for the purpose of proving that she

and her late husband in their own right were financially capable of acquiring the contested properties. Plaintiff-appellee however did not present any countervailing evidence.

Per resolution of March 25, 2004, this Court directed both parties to submit their respective memorandum of authorities in amplification of their respective positions regarding the admissibility of the additional evidence.

Defendant-appellant in her memorandum prayed that the additional evidence be considered in resolving the appeal in the interest of truth and substantial justice. Plaintiff-appellee, on the other hand, in his memorandum, argued that the additional evidence presented by the defendant-appellant is forgotten evidence, which can lo longer be admitted, much less considered, in this appeal. Thereafter, the case was submitted for decision.

Before taking up the main issue, we deem it expedient to address some collateral issues, which the parties had raised, to wit: (a) the admissibility of the additional evidence presented to this Court, (b) the admissibility of plaintiff's testimony, (c) the admissibility of the income tax return, and (d) laches.

On the propriety of the reception of additional evidence, this Court falls backs (sic) upon the holding of the High Court in *Alegre v. Reyes*, 161 SCRA 226 (1961) to the effect that even as there is no specific provision in the Rules of Court governing motions to reopen a civil case for the reception of additional evidence after the case has been submitted for decision, but before judgment is actually rendered, nevertheless such reopening is controlled by no other principle than that of the paramount interest of justice, and rests entirely upon the sound judicial discretion of the court. At any rate, this Court rules that the tax declaration receipts for the EDSA property for the years 1987-1997, and 1999; for the Wack-Wack property for the years 1986-1987, 1990-1999; and for the Meridien Condominium for the years 1993-1998 cannot be admitted as they are deemed forgotten evidence. Indeed, these pieces of evidence should have been presented during the hearing before the trial court.

However, this Court in the interest of truth and justice must hold, as it hereby holds, that the tax declaration receipts for the EDSA property for the years 2000-2004; the Wack-Wack property for the years 2000-2004; and the Meridien Condominium for the years 2000-2001 may be admitted to show that to this date, it is the defendant-

appellant, acting as an administratrix, who has been paying the real estate taxes on the aforestated properties.

As regards the admissibility of plaintiff-appellee's testimony, this Court agrees with the trial court that:

> "Defendant's argument to the effect that plaintiff's testimony proving that the deceased Alexander Ty was financially dependent on him is inadmissible in evidence because he is barred by the Dead Man's Statute (Rule 130, Sec. 20, Rules of Court) for making such testimony, is untenable. A reading of pages 10 to 45 of the TSN, taken on November 16, 1998, which contain the direct-examination testimony of plaintiff, and pages 27, 28, 30, 34, 35, 37, 39, 40 of the TSN, taken on January 15, 1999; page 6 of the TSN taken on December 11, 1998, pages 8, 10, 11, 12, 14, 23 24 of TSN, taken on taken on February 19, 1999; and pages 4,5,6,7,8,11,25 and 27 of the TSN taken on March 22, 1999, will show that defendant's lawyer did not object to the plaintiff as witness against defendant, and that plaintiff was exhaustively cross-examined by defendant's counsel regarding the questioned testimony, hence, the same is not covered by the Dead Man's Statute (*Marella v. Reyes*, 12 Phil. 1; *Abrenica v. Gonda and De Gracia*, 34 Phil. 739; *Tongco v. Vianzon*, 50 Phil. 698).

A perusal of the transcript of stenographic notes will show that counsel for defendant-appellant was not able to object during the testimony of plaintiff-appellee. The only time that counsel for defendant-appellant interposed his objection was during the examination of Rosemarie Ty, a witness (not a party) to this case. Thus the Dead Man's Statute cannot apply.

With regard to the income tax returns filed by the late Alexander Ty, this Court holds that the same are admissible in evidence. Neither Section 71 of the NIRC nor the case of *Vera v. Cusi* applies in this case. The income tax returns were neither obtained nor copied from the Bureau of Internal Revenue, nor produced in court pursuant to a court order; rather these were produced by plaintiff-appellee from his own files, as he was the one who kept custody of the said income tax returns. Hence, the trial court did not err in admitting the income tax returns as evidence.

Anent the issue of laches, this Court finds that the plaintiff-appellee is not guilty of laches. There is laches when: (1) the conduct of the

defendant or one under whom he claims, gave rise to the situation complained of; (2) there was delay in asserting a right after knowledge defendant's conduct and after an opportunity to sue; (3) defendant had no knowledge or notice that the complainant would assert his right; and (4) there is injury or prejudice to the defendant in the event relief is accorded to the complainant. These conditions do not obtain here.

In this case, there was no delay on the part of plaintiff-appellee in instituting the complaint for recovery of real properties. The case was files four years after Alexander's death; two years after the inventory of assets of Alexander's estate was submitted to the intestate court; and one month after defendant-appellant filed a motion to sell or mortgage the real estate properties. Clearly, such length of time was not unreasonable.[5]

The CA then turned to "the critical, crucial and pivotal issue of whether a trust, express or implied, was established by the plaintiff-appellee in favor of his late son and name-sake Alexander Ty."

The CA proceeded to distinguish express from implied trust, then found that no express trust can be involved here since nothing in writing was presented to prove it and the case involves real property. It then stated that it disagrees with the court *a quo*'s application of Art. 1448 of the Civil Code on implied trust, the so-called purchase money resulting trust, stating that the very Article provides the exception that obtains when the person to whom the title is conveyed is the child, legitimate or illegitimate, of the one paying the price of the sale, in which case no trust is implied by law, it being disputably presumed that there is a gift in favor of the child.

The CA therefore reasoned that even assuming that plaintiff-appellee paid at least part of the price of the EDSA property, the law still presumes that the conveyance was a discretion (a gift of devise) in favor of Alexander.

As to plaintiff-appellee's argument that there was no donation as shown by his exercise of dominion over the property, the CA held that no credible evidence was presented to substantiate the claim.

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[5] *Id.* at 58-61.

Regarding the residence condominium and the Wack-Wack property, the CA stated that it did not agree either with the findings of the trial court that an implied trust was created over these properties.

The CA went over the testimonies of plaintiff-appellee and the witness Conchita Sarmiento presented to show that spouses Alexander and Sylvia S. Ty were financially dependent of plaintiff-appellee and did not have the financial means or wherewithals to purchase these properties. It stated:

Consider this testimony of plaintiff-appellee:

Q During the time that Alex was staying with you, did you ever come to know that Alexander and his wife did go to the States?

A Yes, sir. But I do not know the exact date. But they told me they want to go to America for check up.

Q Was that the only time that Alexander went to the States?

A Only that time, sir. Previously, he did not tell me. That last he come (*sic*) to me and tell [*sic*] me that he will go to America for check up. That is the only thing I know.

Q Would you say for the past five years before his death Alex and his wife were going to the States at least once a year?

A I cannot say exactly. They just come to me and say that I [*sic*] will go to "*bakasyon*." They are already grown people. They don't have to tell me where they want to go.

Q You are saying that Alexander did not ask you for assistance whenever he goes to the States?

A Sometimes Yes.

Q In what form?

A I gave him peso, sir.

Q For what purpose?

A Pocket money, sir.

There is no evidence at all that it was plaintiff-appellee who spent for the cancer treatment abroad of his son. Nor is there evidence that he paid for the trips abroad of Alexander and the defendant-

appellant. Admittedly, he only gave his son Alexander pocket money once in a while. Simply put, Alexander was not financially dependent upon the plaintiff-appellee, given that Alexander could afford the costs of his cancer treatment abroad, this on top of the trips he made to the United States at least once a year for five successive years without the support of his father.

The fact that Alexander stayed with his father, the plaintiff-appellee in this case, even after he married Sylvia and begot Krizia, does not at all prove that Alexander was dependent on plaintiff-appellee. Neither does it necessarily mean that it was plaintiff-appellee who was supporting Alexander's family. If anything, plaintiff-appellee in his testimony admitted that Alexander and his family went to live with him in observance of Chinese traditions.

In addition, the income tax returns of Alexander from 1980-1984, and the profit and loss statement of defendant-appellant's Joji San General Merchandising from 1981-1984, are not enough to prove that the spouses were not financially capable of purchasing the said properties. Reason: These did not include passive income earned by these two, such as interests on bank deposits, royalties, cash dividends, and earnings from stock trading as well as income from abroad as was pointed out by the defendant-appellant. More importantly, the said documents only covered the years 1980-1984. The income of the spouses from 1985 to 1987 was not shown. Hence, it is entirely possible that at the time the properties in question were purchased, or acquired, Alexander and defendant-appellant had sufficient funds, considering that Alexander worked in various capacities in the family corporations, and his own business enterprises, while defendant-appellant had thriving businesses of her own, from which she acquired commercial properties.

And this is not even to say that plaintiff-appellee is this case failed to adduce conclusive, incontrovertible proof that the money use to purchase the two properties really came from him; or that he paid for the price of the two properties in order to have the beneficial interest or estate in the said properties.

A critical examination of the testimony of plaintiff-appellee's witness, Conchita Sarmiento, must also show that this witness did not have actual knowledge as to who actually purchased the Wack-Wack property and the Meridien Condominium. Her testimony that plaintiff-appellee visited the Wack-Wack property and paid for the

costs of the construction of the improvements over the said property, in the very nature of things, does not prove that it was the plaintiff-appellee who in fact purchased the Wack-Wack property.[6]

On the other hand, the CA found defendant-appellant's evidence convincing:

In contrast, Rosana Regalado had actual knowledge of the transaction she testified to, considering that she was the real estate broker who negotiated the sale of the Wack-Wack property between its previous owner Drago Daic and the spouses Alexander and Sylvia Ty. In her testimony, she confirmed that the checks, which were issued to pay for the purchase price of the Wack-Wack property, were signed and issued by Alexander, thereby corroborating the testimony of defendant-appellant on this point.

Significantly, during the trial, Conchita Sarmiento identified some receipts wherein the payor was the late Alexander Ty. Apparently, prior to the death of Alexander, it was Alexander himself who was paying for the construction of the Wack-Wack property; and that the only time plaintiff-appellee paid for the costs of the construction was when Alexander died.

Quite compelling is the testimony of defendant-appellant in this respect:

Q And after the death and burial of your husband, will you tell this Honorable Court what happened to the construction of this residence in Wack-Wack?

A Well, of course, during the period I was mourning and I was reorganizing myself and my life, so I was not mainly focused on the construction, so it took a couple of months before I realized that the post-dated checks issued by my husband was changed through checks by my father-in-law Mr. Alejandro Ty.

Q And did you had [*sic*] any conversation with Mr. Alejandro Ty regarding as to why he did that?

A Yes, sir, that was the beginning of our misunderstanding, so I decided to hire a lawyer and that is Atty. Ongkiko, to be able to settle my estate and to protect myself from with the checks that they changed that my husband issued to Architect Gerry Contreras.

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[6] *Id.* at 64-65.

Q Was there any point in time that you yourself took over the construction?

A Yes, sir, right after a year of that property after I was more settled.

Q And did you engaged [*sic*] the services of any professional or construction company for the purpose?

A Yes, sir.

Q Who was that?

A Architect Tom Adarme.

Q What is his first name, if you recall?

A Architect Tommy Adarme.

Q And was there any company or office which helped Architect Adarme in the continuation of the construction?

A Yes, I also signed a contract with Architect Adarme and he hired Home Construction to finish the renovation and completion of the construction in Wack-Wack, sir.

Q Do you have any document to show that you yourself overtook personally the continuation of the construction of your residence?

A Yes, sir I have the whole construction documents and also the documents through Arch. Gerry Contreras, that contract that we signed.

In other words, plaintiff-appellee took over the management of the construction of the Wack-Wack property only because defendant-appellant was still in mourning. And, If ever plaintiff-appellee did pay for the costs of the construction after the death of Alexander, it would be stretching logic to absurd proportions to say that such fact proved that he owns the subject property. If at all, it only shows that he is entitled to reimbursement for what he had spent for the construction.[7]

Accordingly, the CA concluded, as follows:

Going by the records, we hold that plaintiff-appellee in this case was not able to show by clear preponderance of evidence that his son and the defendant-appellant were not financially capable of

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[7] *Id.* at 66-67.

purchasing said property. Neither was plaintiff-appellee able to prove by clear preponderance of evidence (*i.e.*, credible documentary evidence) that the money used to purchase the said properties really came from him. (And even if we assume that it came from him, it would still not establish an implied trust, as it would again be considered a donation, or a gift, by express mandate of the saving clause of Art. 1448 of the Civil Code, as heretofore stated).

If anything, what is clear from the evidence at bench is that Alexander and the defendant-appellant were not exactly bereft of the means, the financial capability or resources, in their own right, to purchase, or acquire, the Meridien Condominium and the Wack-Wack property.

The evidence on record shows that Alexander Ty was 31 years old when he purchased the Meridien Condominium and was 33 years old when he purchased the Wack-Wack property. In short, when he purchased these properties, he had already been working for at least nine years. He had a car care business and a beer garden business. He was actively engaged in the business dealings of several family corporations, from which he received emoluments and other benefits. As a matter of fact, Alexander and plaintiff-appellee had common interest in various family corporations of which they were stockholders, and officers and directors, such as: International Paper Industries, Inc.; Agro-Industries Specialists Services, Inc.; Hi-Professional Drillings and Manufacturing, Inc.; MVR-TV Picture Tube, Inc.; Crown Consumer Products, Inc.; Philippine Crystal Manufacturing Corporation; and Union Emporium, Inc.

Furthermore, at the time of his death, the son Alexander was Vice-President of Union Ajinomoto (Exh. "40"); Executive Vice-President of Royal Porcelain Corporation (Exh. "40-A"); Treasurer of Polymart Paper Industries, Inc. (Exh. "40-B"); General Manager of Hornblower Sales Enterprises and Intercontinental Paper Industries, Inc. (Exh. "40-C"); President of High Professional Drilling and Manufacturing, Inc. (Exh. "40-D"); President of Crown Consumer Products, Inc. (Exh. "40-E"); (Executive Vice-President of MVR-TV Picture Tube, Inc. (Exh."40-F"); and Director of ABT Enterprise, Inc. (Exh. "40-G"). He even had a controlling interest in ABT Enterprises, which has a majority interest in Union Ajinomoto, Inc.

What is more, the tax declaration receipts for the Wack-Wack property covering the years 2000-2004, and the tax declaration receipts for the Meridien Condominium covering the years 2000-2001,

showed that to his date it is still the estate of Alexander that is paying for the real estate taxes thereon.

In the context of this formidable circumstances, we are constrained to overturn the judgment of the trial court, which made these findings:

> Based on the facts at hand and the applicable law, the ineluctable conclusion is that a fiduciary relationship or an implied trust existed between plaintiff and Alexander Ty with the former as the owner, trustor and beneficiary and the latter as the trustee, concerning the subject real properties. The death of Alexander automatically extinguished the said fiduciary relationship, hence, plaintiff's instant action to recover the subject properties from the intestate estate of Alexander Ty is meritorious.

We do not agree. To belabor a point, we are not persuaded that an implied trust was created concerning the subject properties. On the assumption, as elsewhere indicated, the plaintiff-appellee at the very least, paid for part of its purchase price, the EDSA property is presumed to be a gift, or donation, in favor of Alexander Ty, defendant-appellant's late husband, following the saving clause or exception in Art. 1448 of the Civil Code. To repeat, it is the saving clause, or exception, not the general rule, that should here apply, the late Alexander Ty being the son of Plaintiff-appellee.

Nor are we convinced, given the state of the evidence on record, that the plaintiff-appellee paid for the price of the Meridien Condominium and the Wack-Wack property. Therefore, the general rule announced in the first sentence of Art. 1448 of the Civil Code has no application in this case. Or, if the article is to be applied at all, it should be the exception, or the saving clause, that ought to apply here, the deceased Alexander Ty being the son, as stated, of plaintiff-appellee.

To sum up: Since plaintiff-appellee has erected his case upon Art. 1448 of the Civil Code, a prime example of an implied trust, viz.: that it was he who allegedly paid for the purchase price of some of the realties subject of this case, legal title or estate over which he allegedly granted or conveyed unto his son and namesake, Alexander Ty, for the latter to hold these realties in trust for his siblings in case of his (plaintiff-appellee's) demise, plaintiff-appellee is charged with the burden of establishing the existence of an implied trust by evidence described or categorized as "sufficiently strong," "clear

and satisfactory," or "trustworthy." As will be presently discussed. Sad to say, plaintiff-appellee has miserably failed to discharge that burden. For, if the records are any indication, the evidence adduced by plaintiff-appellee on this score, can hardly merit the descriptive attributes "sufficiently strong," or "clear and satisfactory," or "trustworthy."

If only to emphasize and reiterate what the Supreme Court has in the past declared about implied trusts, these case law rulings are worth mentioning –

> Where a trust is to be established by oral proof, the testimony supporting it must be sufficiently strong to prove that the right of the alleged beneficiary with as much certainty as if a document were shown. A trust cannot be established, contrary to the recitals of a Torrens title, upon vague and inconclusive proof.
>
> As a rule, the burden of proving the existence of a trust is on the party asserting its existence, and such proof must be clear and satisfactorily show the existence of the trust and its elements. While implied trusts may be proved by oral evidence, the evidence must be trustworthy and received by the courts with extreme caution and should not be made to rest on loose, equivocal or indefinite declarations. Trustworthy evidence is required because oral evidence can easily be fabricated.

The route to the reversal of the trial court's finding that an implied trust had been constituted over the subject realties is, thus, indubitably clear.

As a final point, this Court finds that the plaintiff-appellee is not entitled to moral damages, attorney's fees and costs of litigation, considering that the instant case is clearly a vexatious and unfounded suit by him filed against the estate of the late Alejandro Ty. Hence, all these awards in the judgment a quo are hereby DELETED.[8]

The CA therefore reversed and set aside the judgment appealed from and entered another one dismissing the complaint.

On October 18, 2004 the CA resolved to deny therein plaintiff-appellee's motion for reconsideration.[9]

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[8] *Id.* at 67-69.

[9] Resolution, *id.* at 72-80.

Hence, this petition.

Petitioner submits the following grounds:

IN REVERSING THE TRIAL COURT'S JUDGMENT, THE COURT OF APPEALS –

1. MADE FACTUAL FINDINGS GROUNDED ON MANIFESTLY MISTAKEN INFERENCES, SPECULATIONS, SURMISES, OR CONJECTURES OR PREMISED ON THE ABSENCE OF, OR ARE CONTRADICTED BY, THE EVIDENCE ON RECORD, AND WITHOUT CITATIONS OF THE SPECIFIC EVIDENCE ON WHICH THEY ARE BASED.

2. RULED THAT THERE WAS A "PRESUMED DONATION," WHICH IS A MATTER NEVER RAISED AS AN ISSUE IN THE CASE AS IT, IN FACT, CONFLICTS WITH THE PARTIES' RESPECTIVE THEORIES OF THE CASE, AND THUS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR THIS HONORABLE COURT'S EXERCISE OF ITS POWER OF SUPERVISION.

3. APPLIED THE PROVISION ON PRESUMPTIVE DONATION IN FAVOR OF A CHILD IN ARTICLE 1448 OF THE CIVIL CODE DESPITE AB TY'S EXPRESS DECLARATION THAT HE DID NOT INTEND TO DONATE THE SUBJECT PROPERTIES TO ALEXANDER AND THUS DECIDED A QUESTION OF SUBSTANCE NOT THERETOFORE DETERMINED BY THIS HONORABLE COURT.

4. REQUIRED THAT THE IMPLIED TRUST BE PROVEN WITH DOCUMENTARY EVIDENCE AND THUS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND JURISPRUDENCE.[10]

The Court disposes of the petition, as follows:

<u>The EDSA Property</u>

Petitioner contends that the EDSA property, while registered in the name of his son Alexander Ty, is covered by an implied trust in his favor under Article 1448 of the Civil Code. This, petitioner argues, is because he paid the price when the property

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

was purchased and did so for the purpose of having the beneficial interest of the property.

Article 1448 of the Civil Code provides:

Art. 1448. There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child.

The CA conceded that at least part of the purchase price of the EDSA property came from petitioner. However, it ruled out the existence of an implied trust because of the last sentence of Article 1448: x x x However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child.

Petitioner now claims that in so ruling, the CA departed from jurisprudence in that such was not the theory of the parties.

Petitioner, however, forgets that it was he who invoked Article 1448 of the Civil Code to claim the existence of an implied trust. But Article 1448 itself, in providing for the so-called purchase money resulting trust, also provides the parameters of such trust and adds, in the same breath, the proviso: "However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, NO TRUST IS IMPLIED BY LAW, it being disputably presumed that there is a gift in favor of the child." (Emphasis supplied.)

Stated otherwise, the outcome is the necessary consequence of petitioner's theory and argument and is inextricably linked to it by the law itself.

The CA, therefore, did not err in simply applying the law.

Article 1448 of the Civil Code is clear. If the person to whom the title is conveyed is the child of the one paying the

price of the sale, and in this case this is undisputed, NO TRUST IS IMPLIED BY LAW. The law, instead, disputably presumes a donation in favor of the child.

On the question of whether or not petitioner intended a donation, the CA found that petitioner failed to prove the contrary. This is a factual finding which this Court sees no reason on the record to reverse.

The net effect of all the foregoing is that respondent is obliged to collate into the mass of the estate of petitioner, in the event of his death, the EDSA property as an advance of Alexander's share in the estate of his father,[11] to the extent that petitioner provided a part of its purchase price.

The Meridien Condominium and the Wack-Wack property.

Petitioner would have this Court overturn the finding of the CA that as regards the Meridien Condominium and the Wack-Wack property, petitioner failed to show that the money used to purchase the same came from him.

Again, this is clearly a factual finding and petitioner has advanced no convincing argument for this Court to alter the findings reached by the CA.

The appellate court reached its findings by a thorough and painstaking review of the records and has supported its conclusions point by point, providing citations from the records. This Court is not inclined to reverse the same.

Among the facts cited by the CA are the sources of income of Alexander Ty who had been working for nine years when he purchased these two properties, who had a car care business, and was actively engaged in the business dealings of several family corporations, from which he received emoluments and other benefits.[12]

The CA, therefore, ruled that with respect to the Meridien Condominium and the Wack-Wack property, no implied trust

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[11] See Article 1061 and subsequent articles of the Civil Code.

[12] See CA Decision, *rollo,* p. 67.

was created because there was no showing that part of the purchase price was paid by petitioner and, on the contrary, the evidence showed that Alexander Ty had the means to pay for the same.

WHEREFORE, the petition is *PARTLY GRANTED* in that the Decision of the Court of Appeals dated July 27, 2004 and its Resolution dated October 18, 2004, in CA-G.R. No. 66053, are *AFFIRMED*, with the *MODIFICATION* that respondent is obliged to collate into the mass of the estate of petitioner, in the event of his death, the EDSA property as an advance of Alexander Ty's share in the estate of his father, to the extent that petitioner provided a part of its purchase price.

No costs.

SO ORDERED.

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

Corona, J., on leave.

EN BANC

[G.R. No. 165776. April 30, 2008]

GENEVIEVE O. GAAS and ADELINA P. GOMERA, *petitioners, vs.* **RASOL L. MITMUG, Regional Director, Region XII, Commission on Audit,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW TO THE SUPREME COURT UNDER RULE 45; DECISION OF THE OFFICE OF THE OMBUDSMAN MAY BE ENTERTAINED BY THE SUPREME COURT ONLY ON PURE QUESTIONS OF LAW; APPLICATION IN CASE AT BAR.—** This Court has held that any appeal or application for remedy against a decision or finding of the Office of the Ombudsman may only be entertained by the Supreme Court on a pure question of law. Section 14 of Republic Act No. 6770, the Ombudsman Act of 1989, provides that "[n]o court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court on a pure question of law." Moreover, Section 27 of the said Act provides further that "[f]indings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive." Findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight especially when they are affirmed by the Court of Appeals. It is only when there is grave abuse of discretion by the Ombudsman that a review of factual findings may aptly be made. We find not grave abuse of discretion on the part of the Ombudsman and uphold its finding which was upheld by the Court of Appeals that there is substantial evidence against petitioners for violating government accounting and auditing rules and making disbursements without proper documentation.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; VIOLATED WHEN THE PROCEEDINGS ARE ATTENDED BY VEXATIOUS, CAPRICIOUS AND OPPRESSIVE DELAYS; NOT PRESENT IN CASE AT BAR.—** The right to speedy disposition of cases, like the right to speedy trial, is violated only when the proceedings are attended by vexatious, capricious and oppressive delays. In the determination of whether said right has been violated, particular regard must be taken of the facts and circumstances peculiar to each case. The conduct of both the prosecution and the defendant, the length of the delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay are the factors to consider and balance. A mere

mathematical reckoning of time involved would not be sufficient. In this case, although it is true that the Complaint was filed on November 18, 1991 and petitioners received an Order directing them to submit their counter-affidavits only three years after or on June 16, 1995, they failed to raise the issue of speedy disposition of the case at that time. Instead, they submitted their counter-affidavits. It was only in this petition that they first raised the issue. Neither have they moved for a speedy resolution of the case. It was only when they lost and pursued their appeal that they first raised the issue. It cannot therefore be said that the proceedings are attended by vexatious, capricious and oppressive delays. Petitioners cannot now seek the protection of the law to benefit from the adverse effects of their failure to raise the issue at the first instance. In effect, they are deemed to have waived their rights when they filed their counter-affidavits after they received the Order dated June 16, 1995 without immediately questioning the alleged violations of their rights to a speedy trial and to a speedy disposition of the case.

APPEARANCES OF COUNSEL

Nasib D. Yasin for petitioners.
The Solicitor General for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking a reversal of the Decision[1] dated February 9, 2004 and the Resolution[2] dated September 9, 2004 of the Court of Appeals in CA-G.R. SP No. 56275. The appellate court affirmed the Decision[3] dated October 23, 1997 of the

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[1] *Rollo*, pp. 126-134. Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Delilah Vidallon-Magtolis and Jose L. Sabio, Jr. concurring.

[2] *Id.* at 135-136.

[3] *Id.* at 74-81.

Office of the Ombudsman for Mindanao in Case No. OMB-MIN-ADM-94-042 finding petitioners Genevieve O. Gaas and Adelina P. Gomera guilty of gross neglect of duty and dismissing them from government service.

The facts, culled from the records, are as follows:

Petitioners Genevieve O. Gaas and Adelina P. Gomera were the bookkeeper and senior clerk, respectively, of the Office of the Municipal Treasurer, Municipality of Bacolod, Lanao del Norte.

On May 15, 1990, in accordance with Regional Office Order No. 90-27-A dated May 7, 1990, the State Auditors and Technical Audit Specialist of the Provincial Auditor's Office and the City Auditor's Office conducted a cash examination as part of a comprehensive audit on the cash and accounts of Officer-in-Charge (OIC)-Assistant Municipal Treasurer Saturnino L. Burgos of Bacolod, Lanao del Norte. They discovered that there was a shortage of cash in the possession of petitioners as follows: (1) ₱19,483.20 in the possession of petitioner Gaas, representing disallowed *vales* or chits; and (2) ₱29,956.28 in the possession of petitioner Gomera, also representing disallowed *vales* or chits. Gaas explained to the auditors that she was tasked to receive liquidations of collections from the Revenue Collection Clerks and was instructed by Burgos to advance ₱25,648.80 from the collections in her possession for the payment of various expenses to be incurred by the General Fund; and that ₱19,483.20 was disallowed for reimbursement. Gomera, on the other hand, explained that she was made to draw a cash advance out of the liquidated collections in the amount of ₱25,648.80; and that the shortage consisted of chits of municipal officers and employees, which were submitted to her for deduction from their respective monthly salaries; but the said chits were disallowed. Both petitioners settled the missing cash upon demand.

Based on the comprehensive audit report submitted by the auditors, the Commission on Audit (COA) sent a Letter[4] dated October 29, 1991 to the Office of the Ombudsman for Mindanao,

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[4] *Id.* at 31-32.

recommending the filing of appropriate disciplinary actions against petitioners. The Office of the Ombudsman administratively charged petitioners, Revenue Collection Clerk Nelson L. Gonzales and Municipal Mayor Warlino M. Relova for dishonesty. They were required to submit counter-affidavits.

On October 23, 1997, the Office of the Ombudsman for Mindanao rendered a Decision finding petitioners and Gonzales guilty of gross neglect of duty and ordered their dismissal. The complaint against Mayor Relova was dismissed without prejudice to the result of the investigation of the criminal aspect of the same acts.

The Office of the Ombudsman for Mindanao found substantial evidence against petitioners for violating government accounting and auditing rules since petitioners made disbursements without proper documentation. It stressed that chits, *vales* and IOU's[5] are not valid means of disbursing funds and are not considered valid cash items, citing the *Manual on Cash Examination* of the COA which states: "*Vales*, chits or IOU's are not allowable under any circumstances." It ruled that by the nature of petitioners' sensitive duties as custodians of government funds, it is their primary duty to ensure that public funds are properly disbursed and the long practice of allowing local officials to obtain cash through *vales* is wrong.[6] The dispositive portion of the decision reads:

> WHEREFORE, PREMISES CONSIDERED, respondents Genevieve O. [G]aas, Adelina P. Gomera and Nelson L. Gonzales are hereby found GUILTY of Gross Neglect of Duty. Pursuant to the provision of Sec. 23 (c), Rule XIV, Civil Service Commission Resolution No. 91-1631 dated December 27, 1991, Rules Implementing Book V, of the Executive Order No. 292 and other pertinent Civil Service Laws, they are dismissed from the service, without prejudice to their right to appeal as provided under Sec. 27, R.A. [No.] 6770.
>
> The Municipal Mayor shall implement this decision within ten (10) days from the date that it shall have become final and executory.

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[5] *Id*. at 22.

[6] *Id*. at 80.

The complaint against Mayor Warlino M. Relova is hereby dismissed, without prejudice to the result of the investigation of the criminal aspect of these same acts.

SO DECREED.[7]

Petitioners filed respective motions for reconsideration which were denied. Thereafter, they filed an appeal before the Court of Appeals which affirmed the decision of the Office of the Ombudsman for Mindanao. The dispositive portion of the Court of Appeals decision reads:

WHEREFORE, the instant petition is hereby **DISMISSED**. The assailed Decision dated October 23, 1997 and Order dated February 24, 1998, of the Office of the Ombudsman-Mindanao in Case No. OMB-MIN-ADM-94-042 are hereby **AFFIRMED**.

SO ORDERED.[8]

The Court of Appeals, in affirming the decision of the Deputy Ombudsman for Mindanao, ruled that the evidence presented was substantial, sufficient to cause the dismissal of petitioners:

. . . The comprehensive audit report submitted by public respondent Commission on Audit, Region [XII], Cotabato City, reported that the shortages of cash by the petitioners was due to the disallowed cash advances (*vales* or chits) made by the municipal employees; that such cash advances were made through the petitioners per instructions of Saturnino Burgos, the Assistant Municipal Treasurer-OIC, who at that time appointed the petitioners as special disbursing officers; that appointing the petitioners as special disbursing officers was strictly prohibited since such [positions were] incompatible to the petitioners' positions as municipal bookkeeper and unbonded senior clerk. The petitioners themselves admitted such findings but raised as a defense the alleged scheme by Burgos under the guise of designating them as special disbursement officers and made them to perform tasks incompatible to their positions.

It is true that their immediate superior, Burgos, in his capacity as Assistant Municipal Treasurer-OIC, was unauthorized to appoint

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[7] *Id*. at 81.

[8] *Id*. at 133.

them as special disbursing officers, hence, tasked to handle public funds. However, by accepting such additional and incompatible task, the petitioners likewise accepted the duty to be accountable [for] the public funds and to make sure that the disbursement thereof are properly documented according to the rules and regulations. The petitioners should have kept in mind the constitutional mandates that a public office is a public trust; that all public officers and employees are held accountable to the people; and that they should serve the people with utmost responsibility, integrity, loyalty and efficiency. Between their duty as public employees and their duty to their immediate superior, who in many cases would order them to do tasks in violation of the rules and regulations, the petitioners should have considered their duty as public employees, burdened with … accountability to the people, as their primary responsibility.[9]

Thus, this petition.

Petitioners argue that there was a misapprehension of facts by the Ombudsman and the Court of Appeals since the shortage happened when the funds were still in the possession of the collectors and not petitioners. They also lament that although the complaint was filed with the Office of the Ombudsman for Mindanao as early as November 18, 1991, the order for them to file their counter-affidavits was made only on June 16, 1995 or more than three years after and the case was resolved only on October 23, 1997. According to them, the delay violated their constitutional rights to due process and to a speedy disposition of the case.

On the other hand, respondent counters that questions of facts, particularly as to who disbursed the funds as argued by petitioners, is not the proper subject of a petition for review on *certiorari* before the Supreme Court. Respondent also argues that petitioners cannot raise the issue on the alleged violation of their right to a speedy trial for the first time on appeal.

The issues raised by petitioners for our resolution are:

I.

WHETHER OR NOT THERE WAS MISAPPREHENSION OF FACTS BY BOTH THE OMBUDSMAN AND THE COURT OF APPEALS; and

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[9] *Id.* at 131-132.

II.

[WHETHER OR NOT] THE OMBUDSMAN VIOLATED ITS RULES OF PROCEDURE, CONSTITUTING DEPRIVATION OF APPELLANT[S']/PETITIONERS' RIGHTS TO SPEEDY TRIAL AND DUE PROCESS.[10]

On the other hand, respondent posits the following issues:

I.

WHETHER OR NOT THE INSTANT PETITION RAISES REVERSIBLE ERRORS OF FACT OR OF LAW AS TO JUSTIFY A REVIEW UNDER RULE 45 OF THE RULES OF COURT.

II.

WHETHER OR NOT THE PETITIONER MAY RAISE BEFORE THIS HONORABLE COURT FOR REVIEW AN ISSUE WHICH WAS NEVER RAISED BELOW.[11]

The primordial issues of the case are: (1) Did the Ombudsman commit an error of fact in concluding that petitioners are guilty of gross neglect of duty? and (2) Were petitioners' rights to a speedy trial and to a speedy disposition of the case violated?

As to the first issue, this Court has held that any appeal or application for remedy against a decision or finding of the Office of the Ombudsman may only be entertained by the Supreme Court on a pure question of law. Section 14 of Republic Act No. 6770, the Ombudsman Act of 1989, provides that "[n]o court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court on a pure question of law." Moreover, Section 27 of the said Act provides further that "[f]indings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive."[12]

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[10] *Id.* at 212.

[11] *Id.* at 233.

[12] *Morong Water District v. Office of the Deputy Ombudsman,* G.R. No. 116754, March 17, 2000, 328 SCRA 363, 369.

Findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight especially when they are affirmed by the Court of Appeals. It is only when there is grave abuse of discretion by the Ombudsman that a review of factual findings may aptly be made.[13]

We find no grave abuse of discretion on the part of the Ombudsman and uphold its finding which was upheld by the Court of Appeals that there is substantial evidence against petitioners for violating government accounting and auditing rules and making disbursements without proper documentation.

As to the second issue, we rule that there was no violation of petitioners' rights to a speedy trial and to a speedy disposition of the case.

The right to speedy disposition of cases, like the right to speedy trial, is violated only when the proceedings are attended by vexatious, capricious and oppressive delays. In the determination of whether said right has been violated, particular regard must be taken of the facts and circumstances peculiar to each case. The conduct of both the prosecution and the defendant, the length of the delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay are the factors to consider and balance. A mere mathematical reckoning of time involved would not be sufficient.[14]

In this case, although it is true that the Complaint was filed on November 18, 1991 and petitioners received an Order[15] directing them to submit their counter-affidavits only three years after or on June 16, 1995, they failed to raise the issue of speedy disposition of the case at that time. Instead, they submitted their counter-affidavits. It was only in this petition that they

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[13] *Bedruz v. Office of the Ombudsman*, G.R. No. 161077, March 10, 2006, 484 SCRA 452, 456.

[14] *Mendoza-Ong v. Sandiganbayan*, G.R. Nos. 146368-69, October 18, 2004, 440 SCRA 423, 425-426.

[15] *Rollo*, p. 70.

first raised the issue. Neither have they moved for a speedy resolution of the case. It was only when they lost and pursued their appeal that they first raised the issue. It cannot therefore be said that the proceedings are attended by vexatious, capricious and oppressive delays. Petitioners cannot now seek the protection of the law to benefit from the adverse effects of their failure to raise the issue at the first instance. In effect, they are deemed to have waived their rights when they filed their counter-affidavits after they received the Order dated June 16, 1995 without immediately questioning the alleged violations of their rights to a speedy trial and to a speedy disposition of the case.

WHEREFORE, the petition is *DENIED*. The assailed Decision dated February 9, 2004 and the Resolution dated September 9, 2004 of the Court of Appeals in CA-G.R. SP No. 56275 are *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Austria-Martinez, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

Corona, J., C.J. Puno certifies that *J.* Corona concurred with the *ponencia.*

Carpio, J., on leave.

SECOND DIVISION

[G.R. No. 166246. April 30, 2008]

ANTONIO NEPOMUCENO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; ESTAFA; ELEMENTS. —** The elements of *estafa* under Article 315 1(b) of the Revised Penal Code are as follows: (1) that money, goods, or other personal properties are received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same; (2) that there is a misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and, (4) that there is a demand made by the offended party on the offender. x x x As for the element of demand, the law does not require demand as a condition precedent to the crime of embezzlement. The consummation of the crime of *estafa* does not depend on the fact that a request for a return of the money is first made and refused in order that the author of the crime should comply with the obligation to return the sum misapplied.

2. **ID.; INDETERMINATE SENTENCE LAW; IMPOSITION OF MINIMUM PENALTY, EXPLAINED. —** In *People v. Gabres*, the Court explained the imposition of the minimum penalty, as follows: Under the Indeterminate Sentence Law, the maximum term of the penalty shall be "that which, in view of the attending circumstances, could be properly imposed" under the Revised Penal Code, and the minimum shall be "within the range of the penalty next lower to that prescribed" for the offense. The penalty next lower should be based on the penalty prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence. The fact that the amounts involved in the instant case exceed ₱22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead, the matter should be so taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence. This

interpretation of the law accords with the rule that penal laws should be construed in favor of the accused. Since the penalty prescribed by law for the estafa charge against accused-appellant is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* minimum to medium. Thus, the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months while the maximum term of the indeterminate sentence should at least be six (6) years and one (1) day because the amounts involved exceeded ₱22,000.00, plus an additional one (1) year for each additional ₱10,000.00. Hence, the minimum term of the indeterminate penalty should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months.

3. **ID.; ID.; IMPOSITION OF THE MAXIMUM PENALTY, EXPLAINED.—** The Court explained further the imposition of the maximum penalty in *People v. Saley*. Thus: [I]n fixing the maximum term, the prescribed penalty of *prision correccional* maximum period to *prision mayor* minimum period should be divided into "three equal portions of time," each of which portion shall be deemed to form one period; hence —

Minimum Period	Medium Period	Maximum Period
From 4 years, 2 months and 1 day to 5 years, 5 months and 10 days	From 5 years, 5 months and 11 days to 6 years, 8 months and 20 days	From 6 years, 8 months and 21 days to 8 years

in consonance with Article 65, in relation to Article 64, of the Revised Penal Code. When the amount involved in the offense exceeds ₱22,000.00, the penalty prescribed in Article 315 of the Code "shall be imposed in its maximum period," adding one year for each additional ₱10,000.00 although the total penalty which may be imposed shall not exceed 20 years. The maximum penalty should then be termed as *prision mayor* or *reclusion*

temporal as the case may be. In fine, the one year period, whenever applicable, shall be added to the maximum period of the principal penalty of anywhere from 6 years, 8 months and 21 days to 8 years. Accordingly, the maximum penalty should be within six (6) years, eight (8) months and twenty-one (21) days to eight (8) years, plus one (1) year for each additional ₱10,000. With fifteen (15) years in excess of the maximum of eight (8) years, Nepomuceno's maximum penalty stands at twenty-three (23) years. Nevertheless, the penalty cannot exceed twenty (20) years.

4. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT; ENTITLED TO GREAT WEIGHT AND RESPECT; RATIONALE.—** Factual findings and conclusions of the trial court and the Court of Appeals are entitled to great weight and respect, and will not be disturbed on review by us, in the absence of any clear showing that the lower courts overlooked certain facts or circumstances which would substantially affect the disposition of the case. The jurisdiction of this Court over cases elevated from the Court of Appeals is limited to reviewing errors of law ascribed to the Court of Appeals. The factual findings of the appellate court generally are conclusive, and carry even more weight when said court affirms the findings of the trial court, absent any showing that the findings are totally devoid of support in the record or that they are so glaringly erroneous as to constitute grave abuse of discretion.

APPEARANCES OF COUNSEL

Joselito M. Dimayacyac and *Law Firm of Lapeña & Associates* for petitioner.

The Solicitor General for respondent.

D E C I S I O N

QUISUMBING, *J.*:

Before us is a petition for review filed by Antonio Nepomuceno, seeking to reverse and set aside the Decision[1] dated

[1] *Rollo*, pp. 31-41. Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Romeo A. Brawner and Magdangal M. De Leon concurring.

July 6, 2004 of the Court of Appeals in CA-G.R. CR No. 26671. The assailed decision had affirmed with modification the Decision[2] dated July 24, 2002 of the Regional Trial Court (RTC), Branch 85, Lipa City, Batangas, convicting petitioner of *estafa* as defined and penalized under Article 315 1(b)[3] of the Revised Penal Code.

Nepomuceno was charged with *estafa* in an Information dated November 8, 1996 which reads:

x x x x x x x x x

That on or about the 22nd day of October, 1994 at Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being [then] employed as manager of Lipa Lending Investor, Inc. and as such has the duty to manage and administer the funds of the said corporation, with grave abuse of confidence reposed upon him by the officers of the aforesaid corporation, did then and there wilfully, unlawfully and feloniously misapply, misappropriate and convert to his own personal use and benefit the amount of One Hundred Eighty Thousand (₱180,000.00) Pesos belonging to Lipa Lending Investor, Inc. by making it appear that the said amount was part of the change or overpayment due to a certain Rommel Villanueva, a borrower of Lipa Lending Investor, Inc., when in truth and in fact as he very well knew he was not authorized to receive the same and despite demands to return the said amount accused failed and refused to do so, to the damage and prejudice of Lipa Lending Investor, Inc. in the aforesaid amount of ₱180,000.00, Philippine currency.

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[2] Records, pp. 239-246. Penned by Judge Avelino G. Demetria.

[3] Art. 315. *Swindling (estafa).*–Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x x x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

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

x x x x x x x x x

Contrary to law.[4]

During arraignment on January 13, 1997, Nepomuceno pleaded not guilty.[5] Thereafter, trial ensued.

Based on the evidence, and as undisputed by both the prosecution and defense, Lipa Lending Investor, Inc. (Lipa Lending) employed petitioner Nepomuceno as manager. Lipa Lending, thru Nepomuceno, granted a certain Rommel Villanueva a loan in the amount of ₱1,167,953 on October 7, 1994.[6] Nepomuceno approved and released the proceeds of the loan in his capacity as an officer of said company.[7] Villanueva received the loan proceeds but failed to abide by his obligation to pay when the promissory note matured on October 14, 1994. Villanueva made a payment in the sum of ₱1,100,000 to Lipa Lending on October 21, 1994. On the following day, Nepomuceno, claiming that there was an overpayment by Villanueva, approved the issuance of three checks by Lipa Lending payable to Villanueva, himself, and a certain Raul Magaling in the amounts of ₱520,308.08, ₱180,000.00 and ₱10,000.00 respectively.[8]

For his defense, Nepomuceno claimed that Villanueva was a customer of good standing of Lipa Lending. Villanueva borrowed ₱1,167,953 as a short-term loan, payable in installments, commencing on October 14, 1994. A promissory note covered the loan but it did not provide the due date of the loan and the exact amount of installment that should be paid by Villanueva. Nepomuceno further averred that on October 21, 1994, Villanueva issued a Real Bank Check in the amount of ₱1,100,000 to Lipa Lending. Of the amount stated in the check, ₱245,000.00 was his partial payment for the loan of ₱1,167,953.00 while another portion in the sum of ₱144,691.92 was to be deducted from the purchase price of the repossessed jeepney of a certain Nicodemo Lebosada which the corporation had taken. The check

[4] Records, pp. 1-2.

[5] *Id*. at 33-34.

[6] *Id*. at 86.

[7] *Id*. at 87.

[8] *Id*. at 38, 40, 42.

issued by Villanueva was cleared the next day, resulting in his request for the balance in the sum of ₱710,308.08. Lipa Lending prepared a cash voucher for the release of said amount as "change or overpayment for short term loan." Nepomuceno argued that this term refers only to the first installment due and not the entire loan. Villanueva requested for a division of the ₱710,308.08 into three checks. The first check was for him in the sum of ₱520,308.08; the second was for Nepomuceno in the amount of ₱180,000.00; and the third was for Magaling in the amount of ₱10,000.00. Nepomuceno then explained that Villanueva gave the check in the sum of ₱180,000 to him.[9]

The RTC found Nepomuceno guilty beyond reasonable doubt of the crime of *estafa* in its Decision dated July 24, 2002, the dispositive portion of which reads:

> WHEREFORE, the Court finds the accused Antonio Nepomuceno guilty beyond reasonable doubt of Estafa defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code, and hereby sentences him to suffer the indeterminate penalty of imprisonment ranging from Six (6) years and One (1) day of *prision mayor* as minimum to Twelve (12) years and One (1) day of *reclusion temporal* as maximum. Furthermore, accused is ordered to restitute to Lipa Lending Investor, Inc. the amount of ₱180,000.00 with legal rate of interest computed from the date of institution of this case until the same is paid in full. Costs *de officio*.
>
> SO ORDERED.[10]

The Court of Appeals affirmed with modification the abovementioned ruling in a Decision promulgated on July 6, 2004 by changing the penalty imposed. The dispositive portion of the appellate court's decision reads:

> WHEREFORE, the Decision of the trial court convicting accused-appellant Antonio Nepomuceno for estafa under Article 315, paragraph 1(b) of the Revised Penal Code is AFFIRMED with the modification that the sentence he shall suffer is an indeterminate

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[9] *Rollo*, pp. 33-34.

[10] Records, p. 246.

penalty of four (4) years and two (2) months of *prision correccional* to twenty (20) years of *reclusion temporal*.

SO ORDERED.[11]

Thus, this petition.

Nepomuceno raises the following issues for our resolution:

I.

[WHETHER OR NOT] THE COURT *A QUO* ERRED IN CONVICTING PETITIONER OF THE OFFENSE OF ESTAFA DESPITE THE FACT THAT THE AMOUNT OF ₱180,000.00 NO LONGER BELONGED TO LIPA LENDING INVESTOR, INC. BUT TO ROMMEL VILLANUEVA. THERE WAS THEREFORE NO DAMAGE CAUSED TO THE PRIVATE COMPLAINANT, WHICH IS ONE OF THE ESSENTIAL ELEMENTS OF THE OFFENSE.

II.

[WHETHER OR NOT] THE COURT *A QUO* ERRED IN NOT HOLDING THAT DEMAND IS AN ESSENTIAL ELEMENT OF THE OFFENSE OF ESTAFA COMMITTED THROUGH ABUSE OF CONFIDENCE; AND THAT THERE WAS NO SUCH DEMAND MADE IN THE INSTANT CASE.

III.

[WHETHER OR NOT] THE COURT *A QUO* ERRED IN NOT APPRECIATING THE CIRCUMSTANCES PROVING THE INNOCENCE OF THE PETITIONER.[12]

Simply, the issues are: (1) Was petitioner guilty of *estafa*? and (2) Is demand necessary to convict for *estafa*?

Petitioner, in his Memorandum[13] filed on February 28, 2006, argues that damage as an element of *estafa* is lacking in this case because the amount of ₱180,000 did not belong to Lipa Lending but to Rommel Villanueva, and there was therefore no harm done to Lipa Lending when Villanueva gave the amount

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[11] *Rollo*, p. 40.

[12] *Id*. at 97.

[13] *Id*. at 93-108.

of ₱180,000 to him. Accordingly, he did not receive the amount of ₱180,000 in trust, on commission, for administration or any other circumstance involving the duty to make delivery of or return the same to Lipa Lending.[14] Petitioner also argues that the element of demand in *estafa* was not present since the prosecution did not present evidence that demand was made to him to account for the amount of ₱180,000.[15]

On the other hand, respondent, thru the Office of the Solicitor General, in its Memorandum[16] filed on May 11, 2006, contends that the issues raised by petitioner are factual issues which are not proper in a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure;[17] that contrary to petitioner's contention, the amount of ₱180,000 belonged to Lipa Lending and not to Rommel Villanueva since the amount was directly received by petitioner from Lipa Lending by way of a company check payable to petitioner himself;[18] and that the absence of demand does not bar petitioner's conviction for *estafa* as held in the case of *Salazar v. People.*[19]

The elements of *estafa* under Article 315 1(b) of the Revised Penal Code are as follows: (1) that money, goods, or other personal properties are received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same; (2) that there is a misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and, (4) that there is a demand made by the offended party on the offender.[20]

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[14] *Id*. at 98.

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

[16] *Id*. at 117-132.

[17] *Id*. at 121.

[18] *Id*. at 125.

[19] G.R. No. 149472, October 15, 2002, 391 SCRA 162.

[20] *Libuit v. People*, G.R. No. 154363, September 13, 2005, 469 SCRA 610, 616.

Is the element of damage or prejudice present in this case? There is no denying that Nepomuceno received ₱1,100,000 from Villanueva. He claims, however, that there is no due date for Villanueva's loan and that the latter only allotted ₱245,000 as payment, with the rest of the amount to be distributed among Villanueva, Magaling, and the petitioner himself.

We cannot give credence to Nepomuceno's claims. As manager of Lipa Lending, it was his duty to see to it that the latter's clients pay their loans. There was no justification for the petitioner to cause the preparation of three checks because the Statement of Account[21] of Villanueva shows Villanueva had an outstanding obligation to Lipa Lending as of October 24, 1994 amounting to ₱938,526, thereby negating the contention of the petitioner that Villanueva had a claim against the corporation due to overpayment. The petitioner, during cross-examination, admitted he appropriated the ₱180,000 for his own use[22] and claimed that the ₱180,000 given to him was his commission from Villanueva.[23] Moreover, the promissory note executed between Lipa Lending and Villanueva did not intend a loan payable in installments. For while said document is a standard form with blanks for the provisions of installment of the loan, the parties only wrote down the amount of the loan and the due date of its payment. If their intention was really to settle the loan on installment, they would have clearly provided the terms thereof. Thus, there is no basis to believe otherwise that the entire amount of the loan became due and demandable on the date agreed upon, which is October 14, 1994.[24] It is thus clear that Nepomuceno caused the preparation of the checks in his name and gave himself money due to the company he works for, to the prejudice and damage of said company.

Given the circumstances on record, we find Nepomuceno's acts inexcusable and his testimony unconvincing. His grounds involve factual issues already passed upon twice below and are inappropriate

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[21] Records, p. 44.

[22] TSN, January 25, 1999, p. 28.

[23] *Id*. at 14.

[24] *Rollo*, pp. 37-38.

in a petition for review on *certiorari* under Rule 45, which allows only questions of law to be raised.

Factual findings and conclusions of the trial court and the Court of Appeals are entitled to great weight and respect, and will not be disturbed on review by us, in the absence of any clear showing that the lower courts overlooked certain facts or circumstances which would substantially affect the disposition of the case. The jurisdiction of this Court over cases elevated from the Court of Appeals is limited to reviewing errors of law ascribed to the Court of Appeals. The factual findings of the appellate court generally are conclusive, and carry even more weight when said court affirms the findings of the trial court, absent any showing that the findings are totally devoid of support in the record or that they are so glaringly erroneous as to constitute grave abuse of discretion.[25]

As for the element of demand, the law does not require demand as a condition precedent to the crime of embezzlement.[26] The consummation of the crime of *estafa* does not depend on the fact that a request for a return of the money is first made and refused in order that the author of the crime should comply with the obligation to return the sum misapplied.[27]

As for the penalty, under Article 315 of the Revised Penal Code, if the amount exceeds ₱22,000, the penalty shall be as follows:

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

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each

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[25] *Libuit v. People*, *supra* note 20, at 618.

[26] *Tubb v. People and Court of Appeals*, 101 Phil. 114, 119 (1957).

[27] *Salazar v. People*, *supra* note 19, at 174, citing *United States v. Ramirez*, 9 Phil. 67, 70 (1907).

additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years.…

x x x x x x x x x

In this case, the amount misappropriated is ₱180,000.

In *People v. Gabres*,[28] the Court explained the imposition of the minimum penalty, as follows:

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

The fact that the amounts involved in the instant case exceed ₱22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead, the matter should be so taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence. This interpretation of the law accords with the rule that penal laws should be construed in favor of the accused. Since the penalty prescribed by law for the estafa charge against accused-appellant is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* minimum to medium. Thus, the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months while the maximum term of the indeterminate sentence should at least be six (6) years and one (1) day because the amounts involved exceeded ₱22,000.00, plus an additional one (1) year for each additional ₱10,000.00.[29]

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[28] G.R. Nos. 118950-54, February 6, 1997, 267 SCRA 581.

[29] *Id*. at 595-596.

Hence, the minimum term of the indeterminate penalty should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months.

The Court explained further the imposition of the maximum penalty in *People v. Saley*.[30] Thus:

[I]n fixing the maximum term, the prescribed penalty of *prision correccional* maximum period to *prision mayor* minimum period should be divided into "three equal portions of time," each of which portion shall be deemed to form one period; hence –

Minimum Period	Medium Period	Maximum Period
From 4 years, 2 months and 1 day to 5 years, 5 months and 10 days	From 5 years, 5 months and 11 days to 6 years, 8 months and 20 days	From 6 years, 8 months and 21 days to 8 years

in consonance with Article 65, in relation to Article 64, of the Revised Penal Code.

When the amount involved in the offense exceeds ₱22,000.00, the penalty prescribed in Article 315 of the Code "shall be imposed in its maximum period," adding one year for each additional ₱10,000.00 although the total penalty which may be imposed shall not exceed 20 years. The maximum penalty should then be termed as *prision mayor* or *reclusion temporal* as the case may be. In fine, the one year period, whenever applicable, shall be added to the maximum period of the principal penalty of anywhere from 6 years, 8 months and 21 days to 8 years.[31]

Accordingly, the maximum penalty should be within six (6) years, eight (8) months and twenty-one (21) days to eight (8) years, plus one (1) year for each additional ₱10,000.[32] With fifteen (15) years in excess of the maximum of eight (8) years,

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[30] 353 Phil. 897 (1998).

[31] *Id.* at 935-936.

[32] *Perez v. People*, G.R. No. 150443, January 20, 2006, 479 SCRA 209, 223.

Nepomuceno's maximum penalty stands at twenty-three (23) years. Nevertheless, the penalty cannot exceed twenty (20) years.

Thus, the Court of Appeals correctly imposed on Nepomuceno the penalty of imprisonment ranging from four (4) years and two (2) months of *prision correccional* to twenty (20) years of *reclusion temporal*.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR No. 26671 promulgated on July 6, 2004 affirming with modification the Decision dated July 24, 2002 of the Regional Trial Court, Branch 85, Lipa City, Batangas, is *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

EN BANC

[G.R. No. 166658. April 30, 2008]

EUSTAQUIO B. CESA, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN and COMMISSION ON AUDIT-REGION VII,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; BASIC DUE PROCESS REQUIREMENTS; EXPLAINED.—** On the first issue, *Ang Tibay v. The Court of Industrial Relations* outlines the basic due process requirements in administrative cases. Foremost are the rights to a hearing and submit evidence in

support of one's case. Its essence: opportunity to explain one's side or seek a reconsideration of the ruling. The standard of due process of administrative tribunals allows certain latitude as long as the element of fairness is practiced. Ther is no denial of due process if records show that hearings were held with prior notice to adverse parties. Even without notice, there is no denial of procedural due process if the parties were given the opportunity to be heard. Due process in administrative proceedings simply means an opportunity to seek a reconsideration of the order complained of and it canot be fully equated with that in strict jurisprudential sense. A respondent is not entitled to be informed of the preliminary findings and recommendations of the investigating agency; he is entitled only to a fair opportunity to be heard and to a decision based on substantial evidence.

2. **ID.; ID.; ID.; ID.; VIOLATION IN CASE AT BAR.—** The appellate court correctly ruled that procedural lapses, if any, were cured when Cesa participated in the preliminary conference, submitted his counter-affidavit and supplemental counter-affidavit, actively participated in the proceedings by cross-examining witnesses, and filed a motion for reconsideration before the Office of the Ombudsman. Cesa was given every opportunity to explain his side and to present evidence in his defense during the administrative investigation. True, the case mutated when the graft investigators discovered evidence against and impleaded the city officials, but Cesa filed a supplemental affidavit to controvert the charges and later participated in the hearings. In fact, he even filed a motion for reconsideration of the Ombudsman's decision.

3. **ID.; ID.; OFFICE OF THE OMBUDSMAN; POWER TO RECOMMEND THE SUSPENSION OF GOVERNMENT OFFICIALS AND EMPLOYEES; SUSTAINED.—** The 1987 Constitution states that the Ombudsman has the power to recommend the suspension of erring government officials and ensure compliance therewith, which means that the recommendation is not merely advisory but mandatory. Under Republic Act No. 6770 and the 1987 Constitution, the Ombudsman has the constitutional power to directly remove from government service an erring public official other than a member of Congress and the Judiciary. The framers of our Constitution intended to create a stronger and more effective

Ombudsman, independent and beyond the reach of political influences and vested with powers that are not merely persuasive in character. The lawmakers envisioned the Ombudsman to be an "activist watchman." Not merely a passive one. In *Office of the Ombudsman v. Court of Appeals*, where the treasury operations assistant of the Bacolod City treasurer's office was suspended for six months without pay for cash shortages due to the machinations and dishonest acts of a paymaster, we ruled that while Section 15(3) of Rep. Act No. 6770 states that the Ombudsman has the power to recommend the suspension of government officials and employees, the same Section 15(3) also states that the Ombudsman in the alternative may "enforce its disciplinary authority as provided in Section 21" of Rep. Act No. 6770. The word "or" in Section 15(3) before the phrase "enforce its disciplinary authority as provided in Section 21" grants the Ombudsman this alternative power. Ergo, the Court of Appeals erred in ruling that the Ombudsman has no power to directly impose administrative sanctions on public officials.

APPEARANCES OF COUNSEL

Alvarez Nuez Galang Espina & Lopez for petitioner.
The Solicitor General for respondents.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review on *certiorari* assails the December 20, 2004 Decision[1] of the Court of Appeals in CA-G.R. SP No. 77359 affirming with modification the Decision[2] dated August 16, 2001 and Order [3] dated October 21, 2002 of the Office of the Ombudsman-Visayas in MB-VIS-ADM-98-0150.

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[1] CA *rollo*, pp. 493-503. Penned by Associate Justice Vicente L. Yap, with Associate Justices Mercedes Gozo-Dadole and Pampio A. Abarintos concurring.

[2] *Id*. at 33-52.

[3] *Id*. at 53-54.

The Office of the Ombudsman suspended Cebu City Treasurer Eustaquio B. Cesa for six months without pay for tolerating illegal practices relative to the granting of cash advances to paymasters.

Here are the facts, culled from the records:

On March 5, 1998, government auditors conducted a surprise audit at the Cash Division of Cebu City Hall. Getting wind of the surprise audit, paymaster Rosalina G. Badana hurriedly left her office and, since then, never returned. From September 20, 1995 to March 5, 1998, Badana had cash advances of more than ₱216 million fraudulently incurred by presenting cash items such as payrolls and vouchers already previously credited to her account to cover the balance or shortage during cash counts. Her unliquidated cash advances were more than ₱18 million. The government auditors discovered that Badana had an average monthly cash advance of ₱7.6 million in excess of her monthly payroll of ₱5.7 million, and was granted more advances without liquidating previous advances.

On March 13, 1998, then City Mayor Alvin B. Garcia administratively charged Badana before the Office of the Ombudsman-Visayas (Ombudsman).[4]

On April 3, 1998, the Ombudsman impleaded Cesa and other city officials.[5] Affirming the audit team's report, graft investigators concluded that the city officials' failure to observe relevant laws[6]

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[4] CA *rollo*, pp. 74-75.

[5] *Id*. at 33, 76. (Badana and Cesa's co-respondents are City Administrator Alan C. Gaviola, City Accountant Edna J. Jaca, Assistant City Treasurer Hilario C. Abella, Secretary to the Mayor Melchor Tormis, Assistant City Accountant Stella Paculaba, Administrative Officer III Aurora Magalang (died on May 18, 1999 due to cardiopulmonary arrest), Accountant IVs Josefina Gonzales and Marietta Gumia, ICO Head Remedios B. Belderol, Assistant City Administrator-Operations Edgardo B. Masongsong and Cash Division Chief Benilda N. Bacasmas.)

[6] Presidential Decree No. 1445 (1978), ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES; Republic Act No. 7160 (1992), AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF THE 1991.

and rules[7] governing the grant, utilization and liquidation of cash advances facilitated, promoted, and encouraged the defalcation of public funds. The irregularities could not have happened without the officials' acts and omissions, as they failed to exercise the diligence of a good father of a family to prevent losses of funds and efficiently supervise the paymasters.[8]

Cesa argued before the Ombudsman that he could not grant cash advances as the authority belongs to a higher officer and that he signed the cash advance vouchers not as approving officer but because his signature was required therein. He further argued that Badana's cash advances were legal and necessary for city workers' salaries and that the matter could be resolved by the city accountant. He also emphasized that since he had under him five department heads, he was not expected to review the work of some 370 workers under them, by virtue of division of labor and delegation of functions.[9]

On August 16, 2001, the Ombudsman found Cesa and the other city officials guilty of neglect of duty and meted to them the penalty of six months suspension without pay.[10] Cesa filed a motion for reconsideration but it was denied.

Before the Court of Appeals, Cesa argued that there was lack of due process because the complaint filed against him was not verified. He also argued in his petition for review[11]

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[7] Commission on Audit Circular No. 90-331 (1990), Circular No. 92-382 (1992), Circular No. 97-002 (1997).

[8] CA *rollo*, p. 35. Other practices that facilitated the incurrence of the shortage were: the accounting division's late submission of financial reports and supporting schedules and vouchers; delay in the verification and reconciliation of paymasters' accountability; failure to indicate on the face of the disbursement voucher the legal purpose for the cash advances, the office or department and number of payees and payroll period covered by it; the amount of cash advance for salary payments were not equal to the net amount of the payroll for a pay period; all the disbursement vouchers covering the cash advances were not supported by payrolls or list of payees.

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

[10] *Id*. at 52.

[11] *Id*. at 2-32.

that the Ombudsman had no power to directly suspend him and that there was no legal and factual basis to suspend him.

On December 20, 2004, the Court of Appeals upheld the findings and conclusions of the Ombudsman, but declared that the imposable penalties therein were merely recommendatory and should be directed to the proper officer or authority concerned for enforcement. The dispositive portion of the decision states:

> WHEREFORE, the instant Petition is partly GRANTED in that the assailed Decision and Order of the Ombudsman (Visayas), in administrative case OMB-VIS-ADM-98-0150, which are hereby AFFIRMED, but MODIFIED in so far as the penalties imposable therein are hereby DECLARED only recommendatory and should be directed to the proper officer or authority concerned, in the City of Cebu, for their enforcement and implementation. No pronouncement as to costs.
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> SO ORDERED.[12]

The Court of Appeals dismissed Cesa's gripe that there was lack of due process as the Ombudsman can undertake criminal or administrative investigations *sans* any complaint. It ruled that procedural infirmities, if any, were cured when petitioner was present during the preliminary conference, submitted his counter-affidavit and supplemental counter-affidavit, actively participated in the proceedings by cross-examining witnesses, and filed a motion for reconsideration. It found Cesa negligent for tolerating the illegal practices on cash advances because he approved the paymasters' requests for cash advances based on pieces of paper without any particulars and without diligent supervision over them. The Court of Appeals ruled that the *Arias* ruling[13] where this Court held that heads of offices have to rely to a reasonable extent on their subordinates, is inapplicable to this case for it had not been alleged that Cesa conspired with Badana. What was proven was that his negligence in carrying out his duties as city treasurer contributed to giving Badana the opportunity to malverse more than ₱18 million in public funds.

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[12] *Id.* at 502.

[13] *Arias v. Sandiganbayan*, G.R. Nos. 81563 and 82512, December 19, 1989, 180 SCRA 309.

Hence, this petition.

On January 21, 2005, the Ombudsman filed a Motion for Partial Reconsideration[14] of the Court of Appeals' ruling that it is precluded from enforcing administrative sanctions. The court deferred its ruling on the motion because of this petition.

Before us, Cesa submits the following issues for our resolution:

I.

WHETHER, AS THE COURT OF APPEALS RULED IN ITS ASSAILED DECISION DATED DECEMBER 20, 2004, THE POWER OF THE OMBUDSMAN TO *MOTU PROPRIO* CONDUCT INVESTIGATIONS AS PROVIDED IN SECTION 13, ARTICLE XI OF THE 1987 CONSTITUTION AND IN SECTION 15 [1] OF THE OMBUDSMAN ACT (RA 6770) EFFECTIVELY DISPENSES WITH PETITIONER'S FUNDAMENTAL RIGHT OF DUE PROCESS AND TO BE SUFFICIENTLY INFORMED OF THE CAUSE AND NATURE OF THE ACCUSATION AGAINST HIM.

II.

WHETHER, IN THE LIGHT OF HIS POWER TO *MOTU PROPRIO* CONDUCT INVESTIGATIONS AS PROVIDED IN SECTION 13, ARTICLE XI OF THE 1987 CONSTITUTION AND IN SECTION 15[1] OF THE OMBUDSMAN ACT (RA 6770), THE OMBUDSMAN CAN VALIDLY REQUIRE A RESPONDENT IN AN ADMINISTRATIVE CASE TO SUBMIT COUNTER-AFFIDAVITS OR COUNTERVAILING EVIDENCE WITHOUT FURNISHING HIM A COPY OF THE COMPLAINT AND THE AFFIDAVITS OR EVIDENCE THAT NEEDED TO BE COUNTERED.

III.

WHETHER, AS THE COURT OF APPEALS RULED IN ITS ASSAILED DECISION DATED DECEMBER 20, 2004, THE RIGHT TO DUE PROCESS IN AN ADMINISTRATIVE CASE IS LIMITED TO THE OPPORTUNITY TO AIR ONE'S SIDE AND TO SEEK RECONSIDERATION OR INCLUDES THE RIGHT TO BE SUFFICIENTLY INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM AND THE RIGHT TO BE PENALIZED ONLY ON THE BASIS OF THE ORIGINAL ACT COMPLAINED OF.

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[14] CA *rollo*, pp. 520-526.

IV.

WHETHER, AS THE COURT OF APPEALS RULED IN ITS ASSAILED DECISION DATED DECEMBER 20, 2004, THE OMBUDSMAN ACCORDED PETITIONER DUE PROCESS WHEN THE OMBUDSMAN PENALIZED HIM FOR NEGLIGENCE WHEN THE COMPLAINT AGAINST BADANA DID NOT INCLUDE AN ACCUSATION FOR NEGLIGENCE.

V.

WHETHER, AS THE COURT OF APPEALS RULED IN ITS ASSAILED DECISION DATED DECEMBER 20, 2004, THE DOCTRINE THAT A HEAD OF OFFICE HAS THE RIGHT TO RELY ON HIS SUBORDINATES AND TO PRESUME REGULARITY IN THE SUBORDINATE'S PERFORMANCE OF OFFICIAL FUNCTIONS APPLIES ONLY IN CRIMINAL CASES INVOLVING CONSPIRACY AND NOT IN CASES OF ALLEGED NEGLIGENCE.[15]

In gist, the issues to be resolved are (1) Was Cesa's right to due process violated when he was suspended for six months as city treasurer? and (2) Did the Court of Appeals err in ruling that the *Arias* ruling is inapplicable to this case?

Cesa stresses that the original administrative complaint, backed by his own affidavit,[16] was filed only against Badana. He was impleaded based only on an order which did not specify any charges, required to submit his counter-affidavit when there was no affidavit, formal charge or complaint against him, and the evidence against him was not divulged to him. These circumstances allegedly violate the Ombudsman Rules of Procedure in administrative cases. He argues that since his employment is his livelihood, which partakes of a constitutionally protected property right, he can only be penalized based on specific acts charged, and the Ombudsman is duty-bound to inform him of the cause or nature of the specific accusation against him.

Cesa also argues that since the accusations and evidence kept on evolving and mutating, he was not properly accorded his

[15] *Rollo*, pp. 238-239.

[16] CA *rollo*, p. 73.

right to be informed. He points out that even after a formal offer of exhibits by the original complainant and after the Ombudsman resolved the criminal aspect of the case, the Ombudsman continued to receive new accusations and even required him to submit countervailing evidence, violating his constitutional right to be informed of the nature and cause of the accusation against him and to be informed of the specific acts or omissions upon which he was sought to be penalized.

Invoking *Arias*, Cesa insists he could rely on his subordinate, the head of the cash division, who performed her functions well, and that no inference of negligence can be drawn from the act of relying on subordinates as government operates by division of labor and delegation of functions.

The Ombudsman and the Commission on Audit counter that Cesa was accorded due process as he was amply heard in the proceedings; administrative due process simply means reasonable opportunity to present a case, not a trial-type proceeding; the evidence overwhelmingly established Cesa's guilt for neglect; and findings of fact of the Ombudsman deserve great weight and must be accorded full respect and credit.[17]

After carefully considering the parties' submissions, we find no cogent reason to reverse the appellate court's ruling.

On the first issue, *Ang Tibay v. The Court of Industrial Relations*[18] outlines the basic due process requirements in administrative cases. Foremost are the rights to a hearing and submit evidence in support of one's case.[19] Its essence: opportunity to explain one's side or seek a reconsideration of the ruling.[20]

The standard of due process of administrative tribunals allows certain latitude as long as the element of fairness is practiced.

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[17] *Rollo,* pp. 306-334.

[18] 69 Phil. 635 (1940).

[19] *Id*. at 642.

[20] *National Police Commission v. Bernabe*, G.R. No. 129914, May 12, 2000, 332 SCRA 74, 81.

There is no denial of due process if records show that hearings were held with prior notice to adverse parties. Even without notice, there is no denial of procedural due process if the parties were given the opportunity to be heard.[21] Due process in administrative proceedings simply means an opportunity to seek a reconsideration of the order complained of and it cannot be fully equated with that in strict jurisprudential sense. A respondent is not entitled to be informed of the preliminary findings and recommendations of the investigating agency; he is entitled only to a fair opportunity to be heard and to a decision based on substantial evidence. No more, no less.[22] In fine, Cesa had no right to be notified of the auditing team's preliminary report while graft investigators were reviewing it. His contention that he was required to file a counter-affidavit *sans* a formal charge against him belies any claim of denial of due process.

The appellate court correctly ruled that procedural lapses, if any, were cured when Cesa participated in the preliminary conference, submitted his counter-affidavit and supplemental counter-affidavit, actively participated in the proceedings by cross-examining witnesses, and filed a motion for reconsideration before the Office of the Ombudsman. Cesa was given every opportunity to explain his side and to present evidence in his defense during the administrative investigation. True, the case mutated when the graft investigators discovered evidence against and impleaded the city officials, but Cesa filed a supplemental affidavit to controvert the charges and later participated in the hearings. In fact, he even filed a motion for reconsideration of the Ombudsman's decision.

On the second issue, in *Alfonso v. Office of the President*,[23] where this Court held that *Arias* was not applicable, we ruled that a public official's foreknowledge of facts and circumstances

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[21] *Adamson & Adamson, Inc. v. Amores*, No. 58292, July 23, 1987, 152 SCRA 237, 250.

[22] *Viva Footwear Manufacturing Corporation v. Securities and Exchange Commission,* G.R. No. 163235, April 27, 2007, 522 SCRA 609, 615-616.

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

that suggested an irregularity constitutes an added reason to exercise a greater degree of circumspection before signing and issuing public documents.[24] By failing to prevent the irregularity that Cesa had reason to suspect all along or to take immediate steps to rectify, Cesa had tolerated the same and allowed it to wreak havoc on the coffers of the city.

Finally, we rectify the incorrect appreciation by the appellate court of the power of the Ombudsman to impose administrative sanctions on government officials and employees. The Court of Appeals' modification of the Ombudsman ruling invoked a constitutional provision[25] which uses the word "recommend."

The 1987 Constitution states that the Ombudsman has the power to recommend the suspension of erring government officials and ensure compliance therewith,[26] which means that the recommendation is not merely advisory but mandatory.[27] Under Republic Act No. 6770[28] and the 1987 Constitution, the Ombudsman has the constitutional power to directly remove from government service an erring public official other than a member of Congress and the Judiciary.[29] The framers of our

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[24] *Id*. at 81.

[25] CONSTITUTION, Art. XI, Sec 13, par. (3).

SEC. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

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(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

x x x x x x x x x

[26] *Id*.

[27] *Office of the Ombudsman v. Santiago*, G.R. No. 161098, September 13, 2007, 533 SCRA 305, 312.

[28] AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES, approved on November 17, 1989.

[29] *Estarija v. Ranada*, G.R. No. 159314, June 26, 2006, 492 SCRA 652, 674; *Commission on Audit v. Hinampas*, G.R. Nos. 158672, 160410, 160605, 160627 and 161099, August 7, 2007, 529 SCRA 245, 258.

Constitution intended to create a stronger and more effective Ombudsman, independent and beyond the reach of political influences and vested with powers that are not merely persuasive in character.[30] The lawmakers envisioned the Ombudsman to be an "activist watchman," not merely a passive one.[31]

In *Office of the Ombudsman v. Court of Appeals*,[32] where the treasury operations assistant of the Bacolod City treasurer's office was suspended for six months without pay for cash shortages due to the machinations and dishonest acts of a paymaster, we ruled that while Section 15(3)[33] of Rep. Act No. 6770 states that the Ombudsman has the power to recommend the suspension of government officials and employees, the same Section 15(3) also states that the Ombudsman in the alternative may "enforce its disciplinary authority as provided in Section 21"[34] of Rep. Act No. 6770.

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[30] *Ledesma v. Court of Appeals*, G.R. No. 161629, July 29, 2005, 465 SCRA 437, 452.

[31] *Office of the Ombudsman v. Court of Appeals,* G.R. No. 160675, June 16, 2006, 491 SCRA 92, 119.

[32] G.R. No. 168079, July 17, 2007, 527 SCRA 798.

[33] SEC. 15. *Powers, Functions and Duties*. — The Office of the Ombudsman shall have the following powers, functions and duties:

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(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: *Provided*, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer;

x x x x x x x x x

[34] SEC. 21. *Officials Subject To Disciplinary Authority; Exceptions*.— The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local

The word "or" in Section 15(3) before the phrase "enforce its disciplinary authority as provided in Section 21" grants the Ombudsman this alternative power.[35] Ergo, the Court of Appeals erred in ruling that the Ombudsman has no power to directly impose administrative sanctions on public officials.

WHEREFORE, the petition is *DENIED*. The assailed Decision dated December 20, 2004 of the Court of Appeals in CA-G.R. SP No. 77359 is *AFFIRMED* with *MODIFICATION*. The Court of Appeals' modification of the Ombudsman Decision dated August 16, 2001 in OMB-VIS-ADM-98-0150 is deleted.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Austria-Martinez, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

Corona J., C.J. Puno certifies that *J.* Corona concurred with the *ponencia*.

Carpio, J., on leave.

EN BANC

[G.R. No. 167011. April 30, 2008]

SPOUSES CARLOS S. ROMUALDEZ and ERLINDA R. ROMUALDEZ, *petitioners, vs.* **COMMISSION ON ELECTIONS and DENNIS GARAY,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; VIOLATION OF REPUBLIC ACT NO. 8189 (THE VOTER'S REGISTRATION ACT OF 1996); THE

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government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.

[35] *Supra* note 32, at 807-808.

COMPLAINT-AFFIDAVIT FILED IS COUCHED IN A LANGUAGE WHICH EMBRACED THE ALLEGATIONS NECESSARY TO SUPPORT THE CHARGE FOR VIOLATION THEREOF; PRESENT IN CASE AT BAR.— The Complaint-Affidavit filed by private respondent with the COMELEC is couched in a language which embraces the allegations necessary to support the charge for violation of Section 10(g) and (j), in relation to Section 45(j) of Republic Act No. 8189. A reading of the relevant laws is in order, thus: Section 10(g) and Section 10(j) of Republic Act No. 8189, provide as follows: SEC. 10 – *Registration of Voters*. – A qualified voter shall be registered in the permanent list of voters in a precinct of the city or municipality wherein he resides to be able to vote in any election. To register as a voter, he shall personally accomplish an application form for registration as prescribed by the Commission in three (3) copies before the Election Officer on any date during office hours after having acquired the qualifications of a voter. The application shall contain the following data: x x x (g) Periods of residence in the Philippines and in the place of registration; x x x (j) A statement that the application is not a registered voter of any precinct; The application for registration shall contain three (3) specimen signatures of the applicant, clear and legible rolled prints of his left and right thumbprints, with four identification size copies of his latest photograph, attached thereto, to be taken at the expense of the Commission. Before the applicant accomplishes his application for registration, the Election Officer shall inform him of the qualifications and disqualifications prescribed by law for a voter, and thereafter, see to it that the accomplished applicaltion contains all the data therein required and that the applicant's specimen signatures, fingerprints, and photographs are properly affixed in all copies of the voter's application. Moreover, Section 45(j) of the same Act, recites, thus: SEC. 45. *Election Offense.* – The following shall be considered election offenses under this Act: x x x (j) Violation of any of the provisions of this Act. Significantly, the allegations in the Complaint-Affidavit which was filed with the Law Department of the COMELEC, support the charge directed by the COMELEC *En Banc* to be filed against petitioners with the RTC. Even a mere perusal of the Complaint-Affidavit would readily show that Section 10 of Republic Act No. 8189 was specifically mentioned therein.

2. **POLITICAL LAW; STATUTES; VOID-FOR-VAGUENESS DOCTRINE; DEFINED; IMPOSITION OF LIMITATIONS,**

EXPLAINED. — The void-for-vagueness doctrine holds that a law is facially invalid if men of common intelligence must necessarily guess at its meaning and differ as to its applicaltion. However, this Court has imposed certain limitations by which a criminal statute, as in the challenged law at bar, may be scrutinized. This Court has declared that facial invalidation or an "on-its-face" invalidation of criminal statutes is not appropriate. We have so enunciated in no uncertain terms in *Romualdez v. Sandiganbayan,* thus: In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that 'one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional.' As has been pointed out, 'vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular defendant."' "To this date, the Court has not declared any penal law unconstitutional on the ground of ambiguity." While mentioned in passing in some cases, the void-for-vagueness concept has yet to find direct application in our jurisdiction. In *Yu Cong Eng v. Trinidad*, the Bookkeeping Act was found unconstitutional because it violated the equal protection clause, not because it was vague. *Adiong v. Comelec* decreed as void a mere Comelec Resolution, not a statute. Finally, *Santiago v. Comelec* held that a portion of RA 6735 was unconstitutional because of undue delegation of legislative powers, not because of vagueness. **Indeed, an "on-its-face" invalidation of criminal statutes would result in a mass acquittal of parties whose cases may not have even reached the courts. Such invalidation would constitute a departure from the usual requirement of "actual case and controversy" and permit decisions to be made in a sterile abstract context having no factual concreteness.** In *Younger v. Harris*, this evil was aptly pointed out by the U.S. Supreme Court in these words: "[T]he task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the relative remoteness of the controversy, the impact on the legislative process

of the relief sought, and above all the speculative and amorphous nature of the required line-by-line analysis of detailed statutes, x x x ordinarily results in a kind of case that is wholly unsatisfactory for deciding constitutional questions, whichever way they might be decided." **For this reason, generally disfavored is an on-its-face invalidation of statutes, described as a "manifestly strong medicine" to be employed "sparingly and only as a last resort." In determining the constitutionality of a statute, therefore, its provisions that have allegedly been violated must be examined in the light of the conduct with which the defendant has been charged.** At the outset, we declare that under these terms, the opinions of the dissent which seek to bring to the fore the purported ambiguities of a long list of provisions in Republic Act No. 8189 can be deemed as a facial challenge. An appropriate "as applied" challenge in the instant Petition should be limited only to Section 45 (j) in relation to Sections 10 (g) and (j) of Republic Act No. 8189—the provisions upon which petitioners are charged. An expanded examination of the law covering provisions which are alien to petitioners' case would be antagonistic to the rudiment that for judicial review to be exercised, there must be an existing case or controversy that is appropriate or ripe for determination, and not conjectural or anticipatory. x x x Be that as it may, the test in determining whether a criminal statute is void for uncertainty is whether the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice. This Court has similarly stressed that the vagueness doctrine merely requires a reasonable degree of certainty for the statute to be upheld – not absolute precision or mathematical exactitude.

3. **ID.; ID.; REPUBLIC ACT NO. 8189 (THE VOTER'S REGISTRATION ACT OF 1996); THE LANGUAGE OF SECTION 45 (J) THEREOF IS PRECISE AND RENDERS ITSELF TO NO OTHER INTERPRETATION; RATIONALE.—** As structured, Section 45 of Republic Act No. 8189 makes a recital of election offenses under the same Act. Section 45(j) is, without doubt, crystal in its specification that a violation of any of the provisions of Republic Act No. 8189 is an election offense. The language of Section 45(j) is precise. The challenged provision renders itself to no other interpretation. A reading of the challenged provision involves no guesswork. We do not see herein an uncertainty that makes the same vague. x x x Perforce, this Court has underlined that an act will not be held invalid merely because

it might have been more explicit in its wordings or detailed in its provisions, especially where, because of the nature of the act it would be impossible to provide all the details in advance as in all other statutes. There is a definitive government purpose when the law requires that such facts should be set forth in the application. The periods of residence in the Philippines and in the place of registration delve into the matter of residency, a requisite which a voter must satisfy to be deemed a qualified voter and registered in the permanent list of voters in a precinct of the city or municipality wherein he resides. Of even rationality exists in the case of the requirement in Section 10 (j), mandating that the applicant should state that he/she is not a registered voter of any precinct. Multiple voting by so-called flying voters are glaring anomalies which this country strives to defeat. The requirement that such facts are required by Section 10 (g) and Section 10 (j) be stated in the voter's application form for registration is directly relevant to the right of suffrage, which the State has the right to regulate. x x x Moreover, every statute has in its favor the presumption of validity. To justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative or argumentative. We hold that petitiones failed to overcome the heavy presumption in favor of the law. Its constitutionality must be upheld in the absence of substantial grounds for overthrowing the same. A salient point. Courts will refrain from touching upon the issue of constitutionality unless it is truly unavoidable and is the very *lis mota*. In the case at bar, the *lis mota* is the alleged grave abuse of discretion of the COMELEC in finding probable cause for the filing of criminal charges against petitioners.

4. **ID.; COMMISSION ON ELECTIONS; PROSECUTORIAL POWER THEREOF, SUSTAINED.—** The constitutional grant of prosecutorial power in the COMELEC finds statutory expression under Section 265 of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code. The task of the COMELEC whenever any election offense charge is filed before it is to conduct the preliminary investigation of the case, and make a determination of probable cause. Under Section 8(b), Rule 34 of the COMELEC Rules of Procedure, the investigating officer makes a determination of whether there is a reasonable ground to believe that a crime has been committed. In *Baytan v. COMELEC,* this Court, sufficiently elucidated on the matter of probable cause in the prosecution of election offenses, *viz:* It is also well-settled that

the finding of probable cause in the prosecution of election offenses rests in the COMELEC's sound discretion. The COMELEC exercises the constitutional authority to investigate and, where appropriate, prosecute cases for violation of election laws, including acts or omissions constituting election frauds, offense and malpractices. Generally, the Court will not interfere with such finding of the COMELEC, absent a clear showing of grave abuse of discretion. This principle enamates from the COMELEC's exclusive power to conduct preliminary investigation of all election offenses punishable under the election laws and to prosecute the same, except as may otherwise be provided by law. **It is succint that courts will not substitute the finding of probable cause by the COMELEC in the absence of grave abuse of discretion. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.** x x x We take occasion to reiterate that the Constitution grants to the COMELEC the power to prosecute cases or violations of election laws. Article IX (C), Section 2 (6) of the 1987 Constitution, provides: (6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and where appropriate, prosecute cases or violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices. This power to prosecute necessarily involves the power to determine who shall be prosecuted, and the corollary right to decide whom not to prosecute. Evidently, must this power to prosecute also include the right to determine under which laws prosecution will be pursued. The courts cannot dictate the prosecution nor usurp its discretionary powers. As a rule, courts cannot interfere with the prosecutor's discretion and control of the criminal prosecution. Its rationale cannot be doubted. For the business of a court of justice is to be an impartial tribunal, and not to get involved with the success or failure of the prosecution to prosecute. Every now and then, the prosecution may err in the selection of its strategies, but such errors are not for neutral courts to rectify, any more than courts should correct the blunders of the defense.

CARPIO, ***J., dissenting opinion:***

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS CLAUSE; FORMULATION OF VOID FOR

VAGUENESS DOCTRINE, CLARIFIED.—The due process clause, which guarantees that no person shall be deprived of life, liberty or property without due process of law, requires that citizens are given sufficient notice or warning of what is lawful and unlawful conduct under a penal statute. To enforce this guarantee, courts have developed the void for vagueness doctrine. The void for vagueness doctrine expresses the rule that for an act to constitute a crime, the law must expressly and clearly declare such act a crime. A related doctrine is that penal statutes are construed strictly against the state and liberally in favor of the accused.

2. **ID.; STATUTES; "AS APPLIED" CHALLENGE PROHIBITS ONE FROM CHALLENGING THE CONSTITUTIONALITY OF A STATUTE BASED SOLELY ON THE VIOLATION OF RIGHTS OF THIRD PERSONS NOT BEFORE THE COURT.—** In an "**as applied**" challenge, the petitioner who claims a violation of his constitutional right can raise **any constitutional ground** – whether absence of due process, lack of fair notice, lack of ascertainable standards, overbreadth, or vagueness. The "as applied" approach embodies the rule that one can challenge the constitutionality of a statute only if he asserts a violation of his own rights. The rule prohibits one from challenging the constitutionality of the statute bases solely on the violation of the rights of third persons not before the court. This rule is also known as the prohibition against third-party standing.

3. **ID.; ID.; ID.; "FACIAL" CHALLENGE AS EXCEPTION; WHEN ALLOWED; RATIONALE.—** The U.S. Supreme Court has created a notable **exception** to the prohibition against third-party standing. Under the exception, a petitioner may mount a "**facial**" challenge to the constitutionality of a statute even if he claims no violation of his own rights under the assailed statute. To mount a "facial" challenge, a petitioner has only to show violation under the assailed statute of the rights of third parties not before the court. **This exception allowing "facial" challenges, however, applies only to statutes involving free speech.** The ground allowed for a "facial" challenge is overbreadth or vagueness of the statute. Thus, the U.S. Supreme Court declared: x x x the Court has altered its traditional rules of standing to permit – **in the First Amendment area** – 'attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity.' x x x Litigants, therefore, are

permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression. The rationale for this exception allowing a "facial" challenge is to counter the "chilling effect" on protected speech that comes from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply refuse to speak to avoid being charged of a crime. The overbroad or vague law chills him into silence. Prof. Erwin Chemerinsky, a distinguished American textbook writer on Constitutional Law, explains clearly the exception of overbreadth to the rule prohibiting third-party standing in this manner: The third exception to the prohibition against third-party standing is termed the "overbreadth doctrine." A person generally can argue that a statute is unconstitutional as it is applied to him or her; the individual cannot argue that a statute is unconstitutional as it is applied to third parties not before the court. For example, a defendant in a criminal trial can challenge the constitutionality of the law that is the basis for the prosecution solely on the claim that the statute unconstitutionally abridges his or her constitutional rights. The overbreadth doctrine is an exception to the prohibition against third-party standing. It permits a person to challenge a statute on the ground that it violates the First Amendment (free speech) rights of third parties not before the court, even though the law is constitutional as applied to that defendant. In other words, the overbreadth doctrine provides that: "Given a case or controversy, a litigant whose own activities are unprotected may nevertheless challenge a statute by showing that it substantially abridges the First Amendment rights of other parties not before the court. The overbreadth doctrine is closely related to the vagueness doctrine. Both doctrines are often simultaneously invoked to mount "facial" challenges to statutes violating free speech.

4. **ID.; ID.; REPUBLIC ACT NO. 8189 (THE VOTER'S REGISTRATION ACT OF 1996); APPLICATION OF VOID FOR VAGUENESS DOCTRINE; JUSTIFIED.—** The threshold issue on the constitutionality of Section 45(j) now turns on three tests: *First*, does Section 45(j) give "fair notice" or warning to ordinary citizens as to what is criminal conduct and what is lawful conduct? Put differently, is Section 45(j) so vague that ordinary

citizens must necessarily guess as to its meaning and differ as to its application? *Second,* is Section 45(j) so vague that it prescribes no ascertainable standard of guilt to guide courts in judging those charged of its violation? *Third,* is Section 45(j) so vague that law enforcers – the police and prosecutors – can arbitrarily or selectively enforce it? If Section 45(j) meets all the three tests, it complies with the due process clause and is therefore constitutional. If it fails any one of the three tests, then it is unconstitutional and the two Informations against petitioners based on Section 45(j) should be quashed. RA No. 8189 contains 52 sections and some 235 sentences, 149 paragraphs, and 7,831 words. Section 45(j) of RA No. 8189 makes **"violation of any of the provisions"** of RA No. 8189 a criminal offense, in addition to violations expressly specified in Section 45(a) to (i). x x x There are many more provisions of RA No. 8189 that may be violated by a voter, Election Officer, or other officials of the Commission on Elections without committing the "Election Offenses" specified in Section 45(a) to (i) of RA No. 8189. However, the ordinary citizen has no way of knowing which provisions of RA No. 8189 are covered by Section 45(j) even if he has before him a copy of RA No. 8189. x x x Under RA No. 8189, law enforcement officers have wide latitude to choose which provisions of the law to consider a crime since there is no specific enumeration of provisions falling under Section 45(j). Prosecutors can choose to prosecute only those who violate certain provisions of RA No. 8189. Judges trying violators of the law have no ascertainable standard to determine the guilt of a person accused of violating Section 45(j). Ther is no certainty which provisions of RA No. 8189 fall under Section 45(j). Section 45(j) makes a **blanket, unconditional declaration** that "violation of any of the provisions" of RA No. 8189 constitutes a crime. In contrast, Section 45(b) states that to constitute a crime the failure to give notice or to submit a report must be **"without cause."** Under Section 45(j), whether the violation or omission is with or without cause, the act constitutes a crime while under Section 45(b) a violation or omission for cause is not a crime. Certainly, the lawmaker did not intend that trivial and harmless violations, or omissions for cause, should constitute a crime under Section 45(j). Unfortunately, there is no way of knowing with certainty what these trivial and harmless violations or omissions are. Everyone will have to guess as to what provisions fall under Section 45(j), and their guesses will most likely

differ from each other. x x x A provision in an elaborate and detailed law that contains a catch-all provision making it a crime to violate ***any*** provision of such law does not give "fair notice" to the ordinary citizen on what constitutes prohibited conduct or permitted conduct under such law. Section 45(j) does not draw reasonably clear lines between lawful and unlawful conduct such that the ordinary citizen has no way of finding out what conduct is a prohibited act. The ordinary citizen will have to guess which provisions of RA No. 8189, other than those mentioned in Section 45(a) to (i), carry a penal sanction. x x x A penal law void for vagueness is not made valid by a specification in the Information correcting the vagueness in the law. No court of law has adopted a doctrine that the prosecutors has the power to correct a vagueness in a penal law. **Whether a law is void for vagueness under an "as applied" challenge must be tested under the provisions of the law as found in the statute books, and not as interpreted by the prosecutor in the Information.** There is also no basis in the claim that any discussion on the ***possible*** provisions of RA No. 8189 that may fall within the coverage of Section 45(j) constitutes a "facial" challenge on such provisions of RA No. 8189. This is gross error. **What is void for vagueness is the provision "*violation of any of the provisions of this Act*," and not any of the unnamed provisions that may be violated.** No other provision in RA No. 8189 is being challenged as unconstitutional, only Section 45(j). The provisions ***possibly*** falling within the coverage of Section 45(j) must be discussed ***to illustrate*** that the ordinary citizen has no way of knowing with certitude what provisions of RA No. 8189 fall within the coverage of Section 45(j). The discussion shows that the ordinary citizen has no ***fair notice*** that these are the provisions falling within the coverage of Section 45(j). What is being challenged is the constitutionality of Section 45(j), which is so vague that it could cover any of the provisions discussed above. x x x To punish as crimes acts not expressly declared unlawful or prohibited by law violates the Bill of Rights. *First,* the Constitution provides that "[N]o person shall be held to answer for a criminal offense without due process of law." Due process requires that the law expressly declares unlawful, and punishes as such, the act for which the accused is held criminally liable. ***The void for vagueness doctrine is aimed precisely to enforce this fundamental***

constitutional right. *Second,* the Constitution provides that "[I]n all criminal prosecutions, the accused shall x x x enjoy the right x x x to be informed of the nature and cause of the accusation against him." This right of the accused requires that the Information states the particular act the accused committed in violation of a specific provision of a law defining such act a crime. A blanket and unconditional declaration that ***any*** violation of an elaborate and detailed law is a crime is **too imprecise and indefinite,** and fails to define with certitude and clarity what acts the law punishes as crimes. Such a shotgun approach to criminalizing human conduct is exactly what the void for vagueness doctrine outlaws, thus: That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with the ordinary notions of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. x x x The dividing line between what is lawful and unlawful conduct cannot be left to conjecture. The citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions. A criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue. x x x

5. ID.; ID.; ID.; FAILED TO SATISFY REQUIREMENTS OF PENAL LAW; SUSTAINED. — Penal statutes are construed strictly against the state and liberally in favor of the accused. The purpose is not to allow a guilty person to escape punishment through a technicality but to provide a precise definition of the prohibited act. To constitute a crime, an act must come clearly within the spirit and letter of the penal statute. Otherwise, the act is outside the coverage of the penal statute. **An act is not a crime unless clearly made so by express provision of law.** This Court has declared: Criminal statutes are to be construed strictly. No person should be brought within their

terms who is not clearly within them, **nor should any act be pronounced criminal which is not made clearly so by the statute.** Section 45(j) does not specify what provisions of RA No. 8189, if violated, carry a penal sanction. Section 45(j) merely states that "violation of any of the provisions" of RA No. 8189 is a crime. In addition to the provisions covered by Section 45(a) to (i), there are many other provisions of RA No. 8189 that are susceptible of violation. Section 45(j), however, does not specify which of these other provisions carry a penal sanction if violated. Thus, Section 45(j) fails to satisfy the requirement that for an act to be a crime it must clearly be made a crime by express provision of law.

TINGA, *J., dissenting opinion:*

1. **POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 8189 (THE VOTER'S REGISTRATION ACT OF 1996); SECTION 45 (J) THEREOF DOES NOT PROVIDE "FAIR NOTICE" TO THE CITIZENRY THUS VIOLATING THE DUE PROCESS CLAUSE; RATIONALE.—** No person shall be deprived of life, liberty or property without due process of law. The due process clause makes legally operative our democratic rights, as it establishes freedom and free will as the normative human conditions which the State is bound to respect. Any legislated restrictions imposed by the State on life, liberty or property must be in accordance with due process of law. The scope of "due process," as we currently understand it, is admittedly ambitious, but in its elemental form, it encompasses aboriginal values ascribed to justice such as equity, prudence, humaneness and fairness. Section 45(j) is vague. It does not provides "fair notice" to the citizenry, as well as the standards for enforcement and adjudication. Thus, the section violates the due process clause and thus deserves to be struck down. The potency of the due process clause has depended on judicial refinement, to allow for the crystallization of its abstract ideals into a set of standards, from which a deliberate determination can be had whether the provision bears operative effect following a given set of facts. As a result, various subsets to due process have emerged, including the distinction between procedural due process and substantive due process. Stated very generally, substantive due process guarantees against the arbitrary exercise of state power, while procedural due process is a guarantee of procedural fairness. Substantive and procedural due process

are equally sacrosanct in the constitutional order, and a law that is infirm in either regard is wholly infirm. Among the components of due process, particularly concerning penal statutes, is the fair notice requirement. The Court, through Justice Sarmiento, acknowledged in *People v. Nazario* that a statute violates due process, and thus repugnant to the Constitution, if it fails "to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid." Such flaw is one characteristic of a vague statute, the other being that "It leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle." Both attributes earmark a statute as "vague," the generally accepted definition of a vague statute being one that lacks comprehensible standards that people "of common intelligence must necessarily guess at its meaning and differ as to its application." Even though the "fair notice" rule is integral to due process itself, it finds realization in still another provision of our Bill of Rights. Section 14(2), Article III **assures that an accused is "to be informed of the nature and cause of the accusation against him."** Both Justice Cruz and Fr. Bernas acknowledge that this constitutional right extends not only to the criminal information against the accused, but also to the language of the statute under which prosecution is pursued. Yet our own jurisprudence has yet to expressly link the fair notice requirement with Section 14(2), Article III, though this need not be a contestable point since the due process clause under Section 1, Article III already embodies the fair notice requirement. As earlier stated, a penal statute that violates the fair notice requirement is marked by vagueness because it leaves its subjects to necessarily guess at its meaning and differ as to its application. What has emerged as the most contentious issue in the deliberations over this petition is whether such vagueness may lead to the nullification of a penal law. Our 2004 ruling in *Romualdez v. Sandiganbayan* states: **"It is best to stress at the outset that the overbreadth and the vagueness doctrines have special application only to free speech cases. They are not appropriate for testing the validity of penal statutes."** The time has come to reconsider that statement. Rooted in unyielding formalism and deprived of guidance from basic constitutional tenets, that *dicta* disenchants the rights of free people, diminishing as it does, the basic right to due process.

2. ID.; ID.; ID.; VAGUENESS DOCTRINE; CLARIFIED.— Employing the terminology preferred by Collings, the vagueness

doctrine is a specie of "unconstitutional uncertainty," which may involve "procedural due process uncertainty cases" and "substantive due process unertainly cases." "Procedural due process uncertainty" involves cases where the statutory language was so obscure that it failed to give adequate warning to those subject t its prohibitious as well as to provide proper standard for adjudication. Such a definition encompasses the vagueness doctrine. This perspective rightly integrates the vagueness doctrine with the due process clause, a necessary interrelation since there is no constitutional provision that explicitly bars statutes that are "void-for-vagueness." Void-for-vagueness derives from the basic tenet of criminal law that conduct may not be treated as criminal unless it has been so defined by an authority having the institutional competence to do so before it has taken place. It requires that a legislative crime definition be meaningfully precise. The inquiry into whether a criminal statute is "meaningfully precise" requires the affirmative satisfaction of two criteria. First, does the statute fairly give notice to those it seeks to bind of its strictures? Second, is the statute precise enough that it does not invite arbitrary and discriminatory enforcement by law enforcement authorities? Unless both criteria are satisfied, the statute is void for vagueness.

3. ID.; ID.; ID.; SIGNIFICANCE THEREOF, CONSTRUED.— There are three concerns animating the vagueness doctrine. First, courts are rightly concerned that citizens be fairly warned of what behavior is being outlawed; second, courts are concerned because vague laws provide opportunities for arbitrary enforcement and put the enforcement decisions in the hands of police officers and prosecutors instead of legislatures; finally, where vague statutes regulate behavior that is even close to constitutionally protected, courts fear a chilling effect will impinge on constitutional rights. These three interests have been deemed by the U.S. Supreme Court as important enough to justify total invalidation of a statute, such invalidation warranted unless there is some intervening act that has eliminated the threat to those interests. In its essence, the vagueness doctrine is a critical implement to the fundamental role of the courts to rule justly and fairly. Uncertainty in statutes enables persons to be penalized for acts which are not precisely defined in law as criminal, or for acts which are constitutionally

protected but cast within an overbroad definition of a crime. x x x The danger of a statute that suffers from the vagueness defect cannot be underestimated. Taken to the extreme, the absence of any clear and definite standards for conviction would leave the matter of freedom of the accused solely upon the discretion of the judge, to whom the language of the statute would offer no guide to adjudication. At worse, it could represent "the coercive force of society run loose at the whim of the [prosecutor] without adequate restraint at the level of the trial court (for want of standards by which to restrain), enforced against indigent and unrepresented defendants." Indeed, the chances for acquittal as against a vague statute are significantly bettered depending on the skill of the defense counsel, and the poorer an accused is, the slimmer the chances that a skilled counsel would be within means. Void-for-vagueness statutes strike special impunity at the impoverished. They smack of unmitigated heelessness of the lot of the likely victims of their built-in uncertainty, especially the undeprivileged.

4. **ID.; ID.; ID.; VAGUE PENAL STATUTE DISTINGUISHED FROM STATUTE THAT SUFFERS FROM OVERBREADTH.—** As earlier explained, a vague penal statute is constitutionally offensive because it fails to give fair notice to those subjected to the regulation as to what conduct is precisely proscribed. On the other hand, a statute that suffers from overbreadth is one drawn so broadly, as it penalizes protected speech or behavior as well as such acts within the right of the State to prohibit. Thus, a statute that prohibits "the commission of illegal acts within state universities" is arguably vague, as it does not sufficiently define what exactly constitutes "illegal acts." On the other hand, a statute that proscribes "the commission of acts within state universities that help promote rebellion" is arguably overbroad. Such a statute may encompass not only those acts of rebellion within the ambit of the State to penalize, but also legitimate political expressions or criticisms of the State which are fundamentally guaranteed under the free expression clause. Another material distinction. In the case of overbroad statutes, it is necessary to inquire into the potential applications of the legislation in order to determine whether it can be unconstitutionally applied. In contrast, the constitutional flaws attacked to a vague statute are evident on its face, as the

testual language in itself is insufficient in defining the proscribed conduct.

5. **ID.; ID.; ID.; "FACIAL CHALLENGE" AND "AS APPLIED CHALLENGE" DISTINGUISHED FROM "FACIAL INVALIDATION" AND "AS APPLIED INVALIDATION."—** Our own jurisprudence must expressly reject *Salerno*, if only because that case has fostered the impression that a "facial challenge," or a "facial invalidation" necessitates a demonstration that the law involved is unconstitutional in whatever application. Even though such impression is not universally accepted, our acceptance of the viability of either the "facial challenge" or "facial invalidation" in this jurisdiction without accompanying comment on *Salerno* might imply that the extremely high bar for judicial review set therein prevails in the Philippines. In order to avoid any further confusion, especially that which may be brought about by *Salerno*, I had proposed during deliberations the following definitions for usage in Philippine jurisprudence: *As to standing* The ability of a petitioner to bring forth a suit challenging the constitutionality of an enactment or provisions thereof, even if the petitioner has yet not been directly injured by the application of the law in question, is referred to as a **"facial challenge."** The ability of a petitioner to judicially challenge a law or provision of law that has been specifically applied against the petitioner is referred to as an **"as-applied challenge."** *As to adjudication on the merits* The nullification on constitutional grounds by the courts of a provision of law, or even of the entire statute altogether, is referred to as **"facial invalidation."** The invalidation of the application of a provision of law or a statute only insofar as it applies to the petitioner and others similarly situated, without need to nullify the law or provision thereof, is referred to as **"as-applied invalidation."**

6. **ID.; ID.; ID.; SECTION 45 (J); A CATCH ALL PENAL PROVISION LACED WITH UNCONSTITUTIONAL INFIRMITY; EXPLAINED.—** Our Philippine criminal laws are predicated on crimes that have precisely defined elements, and the task of the judge is to determine whether these elements have been proven beyond reasonable doubt. For the most part, each crime currently defined in our penal laws consist of only a handful of elements, providing the judge a clearly defined

standard for conviction or acquittal. That is not the case for a penal provision predicated on "any violation of this Act." A legislative enactment can consist of 100 provisions. Each provision may describe just one act, right, duty or prohibition, or there could be several contained in just one provision. The catch-all penal provision ostensibly criminalizes the violation of any one right, duty, or prohibition, of which there could be hundreds in just one statute. Just any one of these possibly hundreds of acts mentioned in the law is an element of the consummated crime under the catch-all provision such as Section 45(j), thus greatly increasing the risk for conviction under such a provision. There could be literally hundreds of ways that a catch-all provision in just one law could become the source of imprisonment. Obviously, broader standards lead to broader discretion on the part of judges. Some judges may tend towards a narrow application of a provision such as Section 45(j), while others might be inclined towards its broad application. What is certain is that no consistent trend will emerge in criminal prosecutions for violations of provisions such as Section 45(j), a development that will not bode well for the fair and consistent administraiton of justice. Provisions such as Section 45(j) do nothing for the efficient administration of justice. Since such a provision is laced with unconstitutional infirmity, I submit it is the task of the Court to say so, in order that the courts will need not be confronted with this hydra of statutory indeterminacy. The practical value of facial invalidation in this case cannot be discounted. Unless Section 45(j) is nullified, it may still be utilized as a means of criminal prosecution. Because there are dozens, if not hundreds, of different contexts under which a criminal offense may carved out of Section 45(j), limiting the challenges to the provision to "as-applied" and its case-by-case method will prove woefully inadequate in addressing the elemental lack of fair notice that plagues the provision. The very vagueness of Section 45(j) makes it an ideal vehicle for political harassment. The election season will undoubtedly see a rise in the partisan political temperature, where competing candidates and their camps will employ every possible legal tactic to gain an advantage over the opponents. Among these possible tactics would be the disenfranchisement of voters who may be perceived as supporters of the other side; or the disqualification of election officers perceived as

either biased or impartial enough to hamper a candidate with ill-motives. The disenfranchisement of voters or the disqualification of election officers could be accomplished through prosecutions for election offenses. Even if these prosecutions doe not see fruition, the mere filing of such charges could be enough to dampen enthusiasm in voting, or strike fear in conducting honest and orderly elections. Unfortunately, Section 45(j) is an all too easy tool for mischief of this sort. One can invent any sort of prosecution using any provision of Rep. Act No. 8189 that would fall within the ambit of the offending Section 45(j). It would not even matter if the charge is meritorious or not, just the systematic filing of complaints based on Section 45(j) is sufficient to alter the political climate in any locality.

APPEARANCES OF COUNSEL

Jaime C. Opinion for petitioners.
The Solicitor General for public respondent.
Constante C. Noriega for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This treats of the Petition for Review on *Certiorari* with a prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction filed by petitioners Spouses Carlos S. Romualdez and Erlinda R. Romualdez seeking to annul and set aside the Resolutions, dated 11 June 2004[1] and 27 January 2005[2] of the Commission on Elections (COMELEC) in

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[1] Penned by Commissioner Florentino A. Tuason, Jr. with the concurrence of Commissioners Rufino S. B. Javier, Mehol K. Sadain, Resurreccion Z. Borra, Virgilio O. Garcillano and Manuel A. Barcelona, Jr.; *Rollo*, pp. 23-27.

[2] Penned by Commissioner Virgilio O. Garcillano with the concurrence of Commissioners Mehol K. Sadain, Resurreccion Z. Borra, Florentino A. Tuason, Jr., and Manuel A. Barcelona, Jr. Chairman Benjamin S. Abalos and Commissioner Rufino S.B. Javier took no part. *Rollo*, pp. 28-30.

E.O. Case No. 2000-36. In the Resolution of 11 June 2004, the COMELEC *En Banc* directed the Law Department to file the appropriate Information with the proper court against petitioners Carlos S. Romualdez and Erlinda Romualdez for violation of Section 10(g) and (j)[3] in relation to Section 45(j)[4] of Republic

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[3] SEC. 10. *Registration of Voters*. – A qualified voter shall be registered in the permanent list of voters in a precinct of the city or municipality wherein he resides to be able to vote in any election. To register as a voter, he shall personally accomplish an application form for registration as prescribed by the Commission in three (3) copies before the Election Officer on any date during office hours after having acquired the qualifications of a voter.

The application shall contain the following data:

a) Name, surname, middle name, and/or maternal surname;

b) Sex;

c) Date, and place of birth;

d) Citizenship;

e) Civil status, if married, name of spouse;

f) Profession, occupation or work;

g) Periods of residence in the Philippines and in the place of registration;

h) Exact address with the name of the street and house number for location in the precinct maps maintained by the local office of the Commission, or in case there is none, a brief description of his residence *sitio* and *Barangay*;

i) A statement that the applicant possesses all the qualifications of a voter;

j) A statement that the applicant is not a registered voter of any precinct; and

k) Such information or data as may be required by the Commission.

The application for registration shall contain three (3) specimen signatures of the applicant, clear and legible rolled prints of his left and right thumbprints, with four identification size copies of his latest photograph, attached thereto, to be taken at the expense of the Commission.

Before the applicant accomplishes his application for registration, the Election Officer shall inform him of the qualifications and disqualifications prescribed by law for a voter, and thereafter, see to it that the accomplished application contains all the data therein required and that the applicant's specimen signatures, fingerprints, and photographs are properly affixed in all copies of the voter's application.

[4] SEC. 45. *Election Offense*. – The following shall be considered election offenses under this Act.

Act No. 8189, otherwise known as The Voter's Registration Act of 1996.[5] Petitioners' Motion for Reconsideration thereon was denied.

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a) to deliver, hand over, entrust or give, directly or indirectly, his voter's identification card to another in consideration of money or other benefit or promise; or take or accept such voter's identification card, directly or indirectly, by giving or causing the giving of money or other benefit or making or causing the making of a promise therefor;

b) to fail, without cause, to post or give any of the notices or to make any of the reports required under this Act;

c) to issue or cause the issuance of a voter's identification number to cancel or cause the cancellation thereof in violation of the provisions of this Act; or to refuse the issuance of registered voters their voter's identification card;

d) to accept an appointment, to assume office and to actually serve as a member of the Election Registration Board although ineligible thereto; to appoint such ineligible person knowing him to be ineligible;

e) to interfere with, impede, abscond for purposes of gain or to prevent the installation or use of computers and devices and the processing, storage, generation and transmission of registration data or information;

f) to gain, cause access to, use, alter, destroy, or disclose any computer data, program, system software, network, or any computer-related devices, facilities, hardware or equipment, whether classified or declassified;

g) failure to provide certified voters and deactivated voters list to candidates and heads or representatives of political parties upon written request as provided in Section 30 hereof;

h) failure to include the approved application form for registration of a qualified voter in the book of voters of a particular precinct or the omission of the name of a duly registered voter in the certified list of voters of the precinct where he is duly registered resulting in his failure to cast his vote during an election, plebiscite, referendum, initiative and/or recall. The presence of the former name in the book of voters or certified list of voters in precincts other than where he is duly registered shall not be an excuse hereof;

i) The posting of a list of voters outside or at the door of a precinct on the day of an election, plebiscite, referendum, initiative and/or recall and which list is different in contents from the certified list of voters being used by the Board of Election Inspectors; and

j) Violation of any of the provisions of this Act. (Italics supplied.)

[5] Entitled, "AN ACT PROVIDING FOR A GENERAL REGISTRATION OF VOTERS, ADOPTING A SYSTEM OF CONTINUING REGISTRATION, PRESCRIBING THE PROCEDURES

The factual antecedents leading to the instant Petition are presented hereunder:

On 12 July 2000, private respondent Dennis Garay, along with Angelino Apostol [6] filed a Complaint-Affidavit[7] with the COMELEC thru the Office of the Election Officer in Burauen, Leyte, charging petitioners with violation of Section 261(y)(2)[8] and Section 261(y)(5)[9] of the Omnibus Election Code, similarly referred to as Batas Pambansa Blg. 881; and Section 12[10] of Republic Act No. 8189.

THEREOF AND AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR."

[6] Angelino Apostol indicated in the Complaint-Affidavit that he is the Municipal Chairman of the Lakas-NUCD, a duly registered political party in the Municipality of Burauen, Leyte. However, on 5 March 2001, he withdrew as complainant due to medical reasons. See *rollo*, pp. 81, 108-111.

[7] *Id*. at 81-88.

[8] Sec. 261. *Prohibited Acts.* – The following shall be guilty of an election offense:

(y) *On Registration of Voters*:

x x x x x x x x x

(2) Any person who knowingly makes any false or untruthful statement relative to any of the data or information required in the application for registration.

[9] Sec. 261. *Prohibited Acts.* – The following shall be guilty of an election offense;

(y) *On Registration of Voters*:

x x x x x x x x x

(5) Any person who, being a registered voter, registers anew without filing an application for cancellation of his previous registration.

[10] SEC. 12. *Change of Residence to Another City or Municipality.* – Any registered voter who has transferred residence to another city or municipality may apply with the Election Officer of his new residence for the transfer of his registration records.

The application for transfer of registration shall be subject to the requirements of notice and hearing and the approval of the Election Registration Board, in accordance with this Act. Upon approval of the application for transfer, and after notice of such approval to the Election Officer of the former residence of the voter, said Election Officer shall transmit by registered mail the voter's registration record to the Election Officer of the voter's new residence.

Private respondent deposed, *inter alia*, that: petitioners are of legal ages and residents of 113 Mariposa Loop, Mariposa Street, Bagong Lipunan ng Crame, Quezon City; on 9 May 2000 and 11 May 2000, petitioners Carlos S. Romualdez and Erlinda R. Romualdez, applied for registration as new voters with the Office of the Election Officer of Burauen, Leyte, as evidenced by Voter Registration Record Nos. 42454095 and 07902952, respectively; in their sworn applications, petitioners made false and untruthful representations in violation of Section 10[11] of Republic Act Nos. 8189, by indicating therein that they are residents of 935 San Jose Street, Burauen, Leyte, when in truth and in fact, they were and still are residents of 113 Mariposa Loop, Mariposa Street, Bagong Lipunan ng Crame, Quezon City, and registered voters of Barangay Bagong Lipunan ng Crame, District IV, Quezon City, Precinct No. 4419-A, as evidenced by Voter Registration Record Nos. 26195824 and 26195823; and that petitioners, knowing fully well said truth, intentionally and willfully, did not fill the blank spaces in said applications corresponding to the length of time which they have resided in Burauen, Leyte. In fine, private respondent charged petitioners, to *wit*:

> Respondent-spouses, Carlos Sison Romualdez and Erlinda Reyes Romualdez committed and consummated election offenses in violation of our election laws, specifically, Sec. 261, paragraph (y), subparagraph (2), for knowingly making any false or untruthful statements relative to any data or information required in the application for registration, and of Sec. 261, paragraph (y), subparagraph (5), committed by any person who, being a registered voter, registers anew without filing an application for cancellation of his previous registration, both of the Omnibus Election Code (BP Blg. 881), and of Sec. 12, RA 8189 (Voter Registration Act) for failure to apply for transfer of registration records due to change of residence to another city or municipality."[12]

The Complaint-Affidavit contained a prayer that a preliminary investigation be conducted by the COMELEC, and if the evidence so warrants, the corresponding Information against petitioners

[11] *Supra* note 3.

[12] *Rollo*, p. 87.

be filed before the Regional Trial Court (RTC) for the prosecution of the same.

Petitioners filed a Joint Counter-Affidavit with Motion to Dismiss[13] dated 2 April 2001. They contended therein that they did not make any false or untruthful statements in their application for registration. They avowed that they intended to reside in Burauen, Leyte, since the year 1989. On 9 May 2000, they took actual residence in Burauen, Leyte, by leasing for five (5) years, the house of Juanito and Fe Renomeron at No. 935, San Jose Street in Burauen, Leyte. On even date, the Barangay District III Council of Burauen passed a Resolution of Welcome, expressing therein its gratitude and appreciation to petitioner Carlos S. Romualdez for choosing the *Barangay* as his official residence.[14]

On 28 November 2003, Atty. Maria Norina S. Tangaro-Casingal, COMELEC Investigating Officer, issued a Resolution, recommending to the COMELEC Law Department (Investigation and Prosecution Division), the filing of the appropriate Information against petitioners, disposing, thus:

> PREMISES CONSIDERED, the Law Department (Investigation and Prosecution Division), RECOMMENDS to file the necessary information against Carlos Sison Romualdez before the proper Regional Trial Court for violation of Section 10 (g) and (j) in relation to Section 45 (j) of Republic Act 8189 and to authorize the Director IV of the Law Department to designate a Comelec Prosecutor to handle the prosecution of the case with the duty to submit periodic report after every hearing of the case.[15]

On 11 June 2004, the COMELEC *En Banc* found no reason to depart from the recommendatory Resolution of 28 November 2003, and ordered, *viz*:

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[13] *Id*. at 31-39.

[14] The Resolution of Welcome states, in part, to wit:

WHEREAS, Mr. Carlos "Caloy" S. Romualdez has established his official residence at No. 935 San Jose Street, Barangay District III, Burauen, Leyte, effective today, May 9th 2000. (*Rollo*, p. 44.)

[15] *Id*. at 26-27; 149.

WHEREFORE, premises considered, the Law Department is hereby directed to file the appropriate information with the proper court against respondents CARLOS S. ROMUALDEZ AND ERLINDA ROMUALDEZ for violation of Section 10 (g) and (j) in relation to Section 45 (j) of the Republic Act No. 8189.[16]

Petitioners filed a Motion for Reconsideration thereon.

Acting on the Motion, the COMELEC found no cogent reason to disturb the assailed *En Banc* Resolution of 11 June 2004,[17] rationalizing, thus:

However, perusal of the records reveal (sic) that the arguments and issues raised in the Motion for Reconsideration are merely a rehash of the arguments advanced by the Respondents in [their] Memorandum received by the Law Department on 17 April 2001, the same [w]as already considered by the Investigating Officer and was discussed in her recommendation which eventually was made as the basis for the *En Banc's* resolution.

As aptly observed by the Investigating Officer, the filing of request for the cancellation and transfer of Voting Registration Record does not automatically cancel the registration records. The fact remains that at the time of application for registration as new voter of the herein Respondents on May 9 and 11, 2001 in the Office of Election Officer of Burauen, Leyte their registration in Barangay 4419-A, Barangay Bagong Lipunan ng Crame Quezon City was still valid and subsisting.[18]

On 12 January 2006, Alioden D. Dalaig, Director IV, Law Department of the COMELEC filed with the RTC, Burauen, Leyte, separate Informations against petitioner Carlos S. Romualdez[19] for violation of Section 10(g), in relation to Section 45(j) of Republic Act No. 8189, and against petitioner

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[16] *Id*. at 27.

[17] *Id*. at 28-30.

[18] *Id*. at 29.

[19] The pertinent portion of the Information, reads, thus:

The undersigned accuses CARLOS SISON ROMUALDEZ, for violation of Section 10(g), in relation to Section 45(j) of Republic Act No. 8189, committed as follows:

Erlinda R. Romualdez[20] for violation of Section 10(g), in relation to Section 45(j) of Republic Act No. 8189, subsequently docketed as Crim. Case No. BN-06-03-4185 and Crim. Case No. BN-06-03-4183, respectively. Moreover, separate Informations for violation of Section 10(j), in relation to Section 45(j) of Republic Act No. 8189 were filed against petitioners.[21]

That on or about May 9, 2000 during the continuing Registration of Voters under Republ ic Act No. 8189, in the Municipality of Burauen, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully and unlawfully, fail to fill up the required period of residence in the place of registration in his Voter Registration Record (VRR) No. 42454095 before the Election Registration Board (ERB) of said municipality, which constitute (sic) material misrepresentation in his application for registration as a new registrant at Precinct No. 11-A, Barangay District No. 3, in said municipality. (*Id*. at 221.)

[20] The Information, states, to wit:

The undersigned accuses ERLINDA REYES ROMUALDEZ, for violation of Section 10 (g), in relation to Section 45 (j) of Republic Act No. 8189, committed as follows:

That on or about May 11, 2000 during the continuing Registration of Voters under Republic Act No. 8189, in the Municipality of Burauen, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully and unlawfully, fail to fill up the required period of residence in the place of registration in her Voter Registration Record (VRR) No. 07902952 before the Election Registration Board (ERB) of said municipality, which constitute (*sic*) material misrepresentation in her application for registration as a new registrant at Precinct No. 11-A, Barangay District No. 3, in said municipality. (*Id*. at 227.)

[21] The Information against petitioner CARLOS SISON ROMUALDEZ, reads, in part:

The undersigned accuses CARLOS SISON ROMUALDEZ, for violation of Section 10(j), in relation to Section 45(j) of Republic Act No. 8189, committed as follows:

That on or about May 9, 2000 during the continuing Registration of Voters, under Republic Act No. 8189, in the Municipality of Burauen, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a registered voter at Precinct No. 4419A of Barangay Bagong Lipunan ng Crame, Quezon City, with Voter Registration Record (VRR) No. 26195824, did, then and there, willfully and unlawfully, file an application for registration on May 9, 2000 at Precinct No. 11-A

Hence, petitioners come to us *via* the instant Petition, submitting the following arguments:

I

RESPONDENT COMMISSION ON ELECTIONS GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF ITS JURISDICTION; *and*

II

COMELEC GRAVELY ABUSED ITS DISCRETION WHEN IT PREMISED ITS RESOLUTION ON A MISAPPREHENSION OF FACTS AND FAILED TO CONSIDER CERTAIN RELEVANT FACTS THAT WOULD JUSTIFY A DIFFERENT CONCLUSION.[22]

On 4 May 2006, petitioners filed a Motion Reiterating Prayer for Issuance of Writ of Preliminary Injunction and to Cite for Indirect Contempt,[23] alleging that two separate Informations,

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of Barangay District III, Burauen, Leyte, as evidenced by Voter Registration Record (VRR) No. 42454095, where he declared under oath constituting material misrepresentation that he is not a registered voter in any precinct in the municipality, when in truth and in fact, he is a registered voter at Precinct No. 4419A of Barangay Bagong Lipunan ng Crame, Quezon City under Voter Registration Record (VRR) No. 26195824 dated June 22, 1997.

The Information against petitioner ERLINDA REYES ROMUALDEZ, for violation of Section 10(j), in relation to Section 45(j) of Republic Act No. 8189, committed as follows:

That on or about May 11, 2000 during the continuing Registration of Voters under Republic Act No. 8189, in the Municipality of Burauen, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a registered voter at Precinct No. 4419A of Barangay Bagong Lipunan ng Crame, Quezon City, with Voter Registration Record (VRR) No. 26195832, did, then and there, willfully and unlawfully, file an application for registration on May 11, 2000 in Barangay District III, Burauen, Leyte, as evidenced by Voter Registration Record (VRR) No. 07902952, where she declared under oath constituting material misrepresentation that she is not a registered voter in any precinct in the municipality, when in truth and in fact, she is a registered voter in Barangay Bagong Lipunan ng Crame, Quezon City under Voter Registration Record (VRR) No. 26195823 dated June 22, 1997. (*Id*. at 224-225.)

[22] *Id*. at 182, 187.

[23] *Id*. at 215.

both dated 12 January 2006, were filed with the RTC by the COMELEC against petitioner Carlos S. Romualdez for violation of Section 10(j), in relation to Section 45(j) of Republic Act No. 8189, in Criminal Case No. BN-06-03-9184; and for violation of Section 10(g), in relation to Section 45(j) of Republic Act No. 8189, in Criminal Case No. BN-06-03-9185. Similarly, the Motion alleged that the COMELEC filed with the RTC, two separate Informations, both dated 12 January 2006, against petitioner Erlinda R. Romualdez, charging her with the same offenses as those charged against petitioner Carlos S. Romualdez, and thereafter, docketed as Criminal Case No. BN-06-03-9182, and No. BN-06-03-9183.

On 20 June 2006, this Court issued a Resolution[24] denying for lack of merit petitioners' Motion Reiterating Prayer for Issuance of Writ of Preliminary Injunction and to Cite for Indirect Contempt.

We shall now resolve*, in seriatim*, the arguments raised by petitioners.

Petitioners contend that the election offenses for which they are charged by private respondent are entirely different from those which they stand to be accused of before the RTC by the COMELEC. According to petitioners, private respondent's complaint charged them for allegedly violating, to wit: 1) Section 261(y)(2) and Section 261(y)(5) of the Omnibus Election Code, and 2) Section 12 of the Voter's Registration Act; however, the COMELEC *En Banc* directed in the assailed Resolutions, that they be charged for violations of Section 10(g) and (j), in relation to Section 45(j) of the Voter's Registration Act. Essentially, petitioners are of the view that they were not accorded due process of law. Specifically, their right to refute or submit documentary evidence against the new charges which COMELEC ordered to be filed against them. Moreover, petitioners insist that Section 45(j) of the Voter's Registration Act is vague as it does not refer to a definite provision of the law, the violation of which would constitute an election offense; hence, it runs

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[24] *Id.* at 235.

contrary to Section 14(1)[25] and Section 14(2),[26] Article III of the 1987 Constitution.

We are not persuaded.

First. The Complaint-Affidavit filed by private respondent with the COMELEC is couched in a language which embraces the allegations necessary to support the charge for violation of Section 10(g) and (j), in relation to Section 45(j) of Republic Act No. 8189.

A reading of the relevant laws is in order, thus:

Section 10(g) and Section 10(j) of Republic Act No. 8189, provide as follows:

SEC. 10 – *Registration of Voters.* - A qualified voter shall be registered in the permanent list of voters in a precinct of the city or municipality wherein he resides to be able to vote in any election. To register as a voter, he shall personally accomplish an application form for registration as prescribed by the Commission in three (3) copies before the Election Officer on any date during office hours after having acquired the qualifications of a voter.

The application shall contain the following data:

x x x x x x x x x

(g) Periods of residence in the Philippines and in the place of registration;

x x x x x x x x x

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[25] Section 14 (1), Article III of the 1987 Constitution, provides, thus:

Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

[26] Section 14 (2). Article III of the 1987 Constitution states:

Section 14 (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable,

(j) A statement that the application is not a registered voter of any precinct;

The application for registration shall contain three (3) specimen signatures of the applicant, clear and legible rolled prints of his left and right thumbprints, with four identification size copies of his latest photograph, attached thereto, to be taken at the expense of the Commission.

Before the applicant accomplishes his application for registration, the Election Officer shall inform him of the qualifications and disqualifications prescribed by law for a voter, and thereafter, see to it that the accomplished application contains all the data therein required and that the applicant's specimen signatures, fingerprints, and photographs are properly affixed in all copies of the voter's application.

Moreover, Section 45(j) of the same Act, recites, thus:

SEC. 45. *Election Offense.* – The following shall be considered election offenses under this Act:

x x x x x x x x x

(j) Violation of any of the provisions of this Act.

Significantly, the allegations in the Complaint-Affidavit which was filed with the Law Department of the COMELEC, support the charge directed by the COMELEC *En Banc* to be filed against petitioners with the RTC. Even a mere perusal of the Complaint-Affidavit would readily show that Section 10 of Republic Act No. 8189 was specifically mentioned therein. On the matter of the acts covered by Section 10(g) and (j), the Complaint-Affidavit, spells out the following allegations, to wit:

5. Respondent-spouses made false and untruthful representations in their applications (Annexes "B" and "C") in violation of the requirements of Section 10, RA 8189 (The Voter's Registration Act):

5.1 Respondent-spouses, in their sworn applications (Annexes "B" and "C", claimed to be residents of 935 San Jose [S]treet, Burauen, Leyte, when in truth and in fact, they were and still are residents of 113 Mariposa Loop,

Mariposa [S]treet, Bagong Lipunan ng Crame, Quezon City and registered voters of Barangay Bagong Lipunan ng Crame, District IV, Quezon City, Precinct No. 4419-A, a copy of the Certification issued by Hon. Emmanuel V. Gozon, Punong Barangay, Bagong Lipunan ng Crame, Quezon City is hereto attached and made an integral part hereof, as Annex "D";

5.2 Respondent-spouses knowing fully well said truth, intentionally and willfully, did not fill the blank spaces in their applications (Annexes "B" and "C") corresponding to the length of time they have resided in Burauen, Leyte;

6. Respondent-spouses, in (sic) all intents and purposes, were and still are residents and registered voters of Quezon City, as evidenced by Voter Registration Record Nos. 26195824 and 26195823, respectively; photocopies of which are hereto attached as Annexes "E" and "F"[.] Likewise, attached is a "Certification" (Annex "G") of Ms. Evelyn B. Bautista, Officer-in-Charge of the Office of the Election Officer, Fourth District, Quezon City, dated May 31, 2000, together with a certified copy of the computer print-out of the list of voters of Precinct No. 4419-A (Annex "G-1") containing the names of voters Carlos Romualdez and Erlinda Reyes Romualdez. The Certification reads as follows:

"THIS IS TO CERTIFY that as per office record MR. CARLOS ROMUALDEZ and MS. ERLINDA REYES ROMUALDEZ are registered voters of Barangay Bagong Lipunan ng Crame, District IV, Quezon City, Precinct Number 4419A with voters affidavit serial nos. 26195824 and 26195823, respectively.

This certification is issued for whatever legal purpose it may serve."

7. Respondent-spouses, registered as new voters of the Municipality of Burauen, Leyte, [in spite of] the fact that they were and still are, registered voters of Quezon City as early as June 22, 1997;

7.1 That, Double Registration is an election offense.

A person qualified as a voter is only allowed to register once.

> If a person registers anew as a voter in spite of a subsisting registration, the new application for registration will be disapproved. The registrant is also liable not only for an election offense of double registration, but also for another election offense of knowingly making any false or untruthful statement relative to any data or information required in the application for registration.
>
> In fact, when a person applies for registration as a voter, he or she fills up a Voter Registration Record form in his or her own handwriting, which contains a Certification which reads:
>
> "I do solemnly swear that the above statements regarding my person are true and correct; that I possess all the qualifications and none of the disqualifications of a voter; that the thumbprints, specimen signatures and photographs appearing herein are mine; and that *I am not registered as a voter in any other precinct.*"[27]

Petitioners cannot be said to have been denied due process on the claim that the election offenses charged against them by private respondent are entirely different from those for which they stand to be accused of before the RTC, as charged by the COMELEC. In the first place, there appears to be no incongruity between the charges as contained in the Complaint-Affidavit and the Informations filed before the RTC, notwithstanding the denomination by private respondent of the alleged violations to be covered by Section 261(y)(2) and Section 261(y)(5) of the Omnibus Election Code and Section 12 of Republic Act No. 8189. Evidently, the Informations directed to be filed by the COMELEC against petitioners, and which were, in fact, filed with the RTC, were based on the same set of facts as originally alleged in the private respondent's Complaint-Affidavit.

Petitioners buttress their claim of lack of due process by relying on the case of *Lacson v. Executive Secretary.*[28] Citing *Lacson,* petitioners argue that the real nature of the criminal

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[27] *Rollo*, pp. 82-83.

[28] G.R. No. 128096, 20 January 1999, 301 SCRA 298.

charge is determined by the actual recital of facts in the Complaint or Information; and that the object of such written accusations was to furnish the accused with such a description of the charge against him, as will enable him to make his defense. Let it be said that, in *Lacson,* this court resolved the issue of whether under the allegations in the subject Informations therein, it is the Sandiganbayan or the Regional Trial Court which has jurisdiction over the multiple murder case against therein petitioner and intervenors. In *Lacson,* we underscored the elementary rule that the jurisdiction of a court is determined by the allegations in the Complaint or Information, and not by the evidence presented by the parties at the trial.[29] Indeed, in *Lacson*, we articulated that the real nature of the criminal charge is determined not from the caption or preamble of the Information nor from the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the actual recital of facts in the Complaint or Information.[30]

Petitioners' reliance on *Lacson*, however, does not support their claim of lack of due process because, as we have said, the charges contained in private respondent's Complaint-Affidavit and the charges as directed by the COMELEC to be filed are based on the same set of facts. In fact, the nature of the criminal charges in private respondent's Complaint-Affidavit and that of the charges contained in the Informations filed with the RTC, pursuant to the COMELEC Resolution *En Banc* are the same, such that, petitioners cannot claim that they were not able to refute or submit documentary evidence against the charges that the COMELEC filed with the RTC. Petitioners were afforded due process because they were granted the opportunity to refute the allegations in private respondent's Complaint-Affidavit. On 2 April 2001, in opposition to the Complaint-Affidavit, petitioners filed a Joint Counter-Affidavit with Motion to Dismiss with the Law Department of the COMELEC. They similarly filed a Memorandum before the said body. Finding that due process was not dispensed with under the circumstances in the case at

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[29] *Id.* at 325.

[30] *Id.* at 327.

bar, we agree with the stance of the Office of the Solicitor General that petitioners were reasonably apprised of the nature and description of the charges against them. It likewise bears stressing that preliminary investigations were conducted whereby petitioners were informed of the complaint and of the evidence submitted against them. They were given the opportunity to adduce controverting evidence for their defense. In all these stages, petitioners actively participated.

The instant case calls to our minds *Orquinaza v. People*,[31] wherein the concerned police officer therein designated the offense charged as sexual harassment; but, the prosecutor found that there was no transgression of the anti-sexual harassment law, and instead, filed an Information charging therein petitioner with acts of lasciviousness. On a claim that there was deprivation of due process, therein petitioner argued that the Information for acts of lasciviousness was void as the preliminary investigation conducted was for sexual harassment. The court held that the designation by the police officer of the offense is not conclusive as it is within the competence of the prosecutor to assess the evidence submitted and determine therefrom the appropriate offense to be charged.

Accordingly, the court pronounced that the complaint contained all the allegations to support the charge of acts of lasciviousness under the Revised Penal Code; hence, the conduct of another preliminary investigation for the offense of acts of lasciviousness would be a futile exercise because the complainant would only be presenting the same facts and evidence which have already been studied by the prosecutor.[32] The court frowns upon such superfluity which only serves to delay the prosecution and disposition of the criminal complaint.[33]

Second. Petitioners would have this court declare Section 45(j) of Republic Act No. 8189 vague, on the ground that it contravenes the fair notice requirement of the 1987

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[31] G.R. No. 165596, 17 November 2005, 475 SCRA 341.

[32] *Id*. at 349.

[33] *Id*.

Constitution, in particular, Section 14(1) and Section 14(2), Article III of thereof. Petitioners submit that Section 45(j) of Republic Act No. 8189 makes no reference to a definite provision of the law, the violation of which would constitute an election offense.

We are not convinced.

The void-for-vagueness doctrine holds that a law is facially invalid if men of common intelligence must necessarily guess at its meaning and differ as to its application.[34] However, this Court has imposed certain limitations by which a criminal statute, as in the challenged law at bar, may be scrutinized. This Court has declared that facial invalidation[35] or an "on-its-face" invalidation of criminal statutes is not appropriate.[36] We have so enunciated in no uncertain terms in *Romualdez v. Sandiganbayan*, [37] thus:

> In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First

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[34] *David v. Macapagal-Arroyo,* G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489, and 171424, 3 May 2006, 489 SCRA 160, 239.

[35] A facial invalidation or a line-by-line scrutiny is an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operations to the parties involved, but on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech, or on the ground that they may be applied to others not before the court whose activities are constitutionally protected. See *David, supra.*

[36] See *Romualdez v. Sandiganbayan,* G.R. No. 152259, 29 July 2004, 435 SCRA 371, 381-382. The Court in *Romualdez*, restated the void-for-vagueness doctrine, thus: "The void-for-vagueness doctrine states that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to the application, violates the first essential of due process," citing the Separate Opinion of Mr. Justice Mendoza in *Estrada v. Sandiganbayan,* 421 Phil. 290, 429-430 (2001), citing *Connally v. General Constr. Co.,* 269 U.S. 385, 391, 70 L. Ed. 328 (1926); in turn cited in *Ermita-Malate Hotel and Motel Operators Association v. City Mayor,* G.R. No. L-24693, 31 July 1967, 20 SCRA 849, 867.

[37] *Id*.

Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that 'one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional.' As has been pointed out, 'vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular defendant.'" (underscoring supplied)

"To this date, the Court has not declared any penal law unconstitutional on the ground of ambiguity." While mentioned in passing in some cases, the void-for-vagueness concept has yet to find direct application in our jurisdiction. In *Yu Cong Eng v. Trinidad,* the Bookkeeping Act was found unconstitutional because it violated the equal protection clause, not because it was vague. *Adiong v. Comelec* decreed as void a mere Comelec Resolution, not a statute. Finally, *Santiago v. Comelec* held that a portion of RA 6735 was unconstitutional because of undue delegation of legislative powers, not because of vagueness.

Indeed, an "on-its-face" invalidation of criminal statutes would result in a mass acquittal of parties whose cases may not have even reached the courts. Such invalidation would constitute a departure from the usual requirement of "actual case and controversy" and permit decisions to be made in a sterile abstract context having no factual concreteness. In *Younger v. Harris,* this evil was aptly pointed out by the U.S. Supreme Court in these words:

"[T]he task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the relative remoteness of the controversy, the impact on the legislative process of the relief sought, and above all the speculative and amorphous nature of the required line-by-line analysis of detailed statutes, x x x ordinarily results in a kind of case that is wholly unsatisfactory for deciding constitutional questions, whichever way they might be decided."

For this reason, generally disfavored is an on-its-face invalidation of statutes, described as a "manifestly strong medicine" to be employed "sparingly and only as a last resort."

In determining the constitutionality of a statute, therefore, its provisions that have allegedly been violated must be examined in the light of the conduct with which the defendant has been charged. (Emphasis supplied.)

At the outset, we declare that under these terms, the opinions of the dissent which seek to bring to the fore the purported ambiguities of a long list of provisions in Republic Act No. 8189 can be deemed as a facial challenge. An appropriate "as applied" challenge in the instant Petition should be limited only to Section 45 (j) in relation to Sections 10 (g) and (j) of Republic Act No. 8189—the provisions upon which petitioners are charged. An expanded examination of the law covering provisions which are alien to petitioners' case would be antagonistic to the rudiment that for judicial review to be exercised, there must be an existing case or controversy that is appropriate or ripe for determination, and not conjectural or anticipatory.

We further quote the relevant ruling in *David v. Arroyo* on the proscription anent a facial challenge:[38]

Moreover, the overbreadth doctrine is not intended for testing the validity of a law that "reflects legitimate state interest in maintaining comprehensive control over harmful, constitutionally unprotected conduct." Undoubtedly, lawless violence, insurrection and rebellion are considered "harmful" and "constitutionally unprotected conduct." In *Broadrick v. Oklahoma,* it was held:

It remains a matter of no little difficulty to determine when a law may properly be held void on its face and when such summary action is inappropriate. **But the plain import of our cases is, at the very least, that facial overbreadth adjudication is an exception to our traditional rules of practice and that its function, a limited one at the outset, attenuates as the otherwise unprotected behavior that it forbids the State to sanction moves from pure speech toward conduct** and **that conduct even if expressive falls within the scope of otherwise valid criminal laws that reflect legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct**.

Thus, claims of facial overbreadth are entertained in cases involving statutes which, **by their terms**, seek to regulate only "**spoken words**"

[38] *Supra* note 34.

and again, that "**overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct**." Here, the incontrovertible fact remains that PP 1017 pertains to a spectrum of **conduct**, not free speech, which is manifestly subject to state regulation.

Second, facial invalidation of laws is considered as "**manifestly strong medicine**," to be used "**sparingly and only as a last resort**," and is "**generally disfavored**"; The reason for this is obvious. Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a law may be applied will not be heard to challenge a law on the ground that it may conceivably be applied unconstitutionally to others, *i.e*., **in other situations not before the Court.** A writer and scholar in Constitutional Law explains further:

The most distinctive feature of the overbreadth technique is that it marks an exception to some of the usual rules of constitutional litigation. Ordinarily, a particular litigant claims that a statute is unconstitutional as applied to him or her; if the litigant prevails, the courts carve away the unconstitutional aspects of the law by invalidating its improper applications on a case to case basis. Moreover, challengers to a law are not permitted to raise the rights of third parties and can only assert their own interests. In overbreadth analysis, those rules give way; challenges are permitted to raise the rights of third parties; and the court invalidates the entire statute "on its face," not merely "as applied for" so that the overbroad law becomes unenforceable until a properly authorized court construes it more narrowly. The factor that motivates courts to depart from the normal adjudicatory rules is the concern with the "chilling"; deterrent effect of the overbroad statute on third parties not courageous enough to bring suit. The Court assumes that an overbroad laws "very existence may cause others not before the court to refrain from constitutionally protected speech or expression." An overbreadth ruling is designed to remove that deterrent effect on the speech of those third parties.

In other words, a facial challenge using the overbreadth doctrine will require the Court to examine PP 1017 and pinpoint its flaws and defects, not on the basis of its actual operation to petitioners, but on the assumption or prediction that its very existence may cause **others not before the Court** to refrain from constitutionally protected speech or expression.

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And *third,* a facial challenge on the ground of overbreadth is the most difficult challenge to mount successfully, since the challenger must establish that **there can be no instance when the assailed law may be valid**. Here, petitioners did not even attempt to show whether this situation exists.

Petitioners likewise seek a facial review of PP 1017 on the ground of vagueness. This, too, is unwarranted.

Related to the "overbreadth" doctrine is the "void for vagueness doctrine" which holds that "**a law is facially invalid if men of common intelligence must necessarily guess at its meaning and differ as to its application**." It is subject to the same principles governing overbreadth doctrine. For one, it is also an analytical tool for testing "on their faces" **statutes in free speech cases**. And like overbreadth, it is said that a litigant may challenge a statute on its face only if it is **vague in all its possible applications**.

Be that as it may, the test in determining whether a criminal statute is void for uncertainty is whether the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice.[39] This Court has similarly stressed that the vagueness doctrine merely requires a reasonable degree of certainty for the statute to be upheld - not absolute precision or mathematical exactitude.[40]

As structured, Section 45[41] of Republic Act No. 8189 makes a recital of election offenses under the same Act. Section 45(j) is, without doubt, crystal in its specification that a violation of any of the provisions of Republic Act No. 8189 is an election offense. The language of Section 45(j) is precise. The challenged provision renders itself to no other interpretation. A reading of the challenged provision involves no guesswork. We do not see herein an uncertainty that makes the same vague.

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[39] *Estrada v. Sandiganbayan, id*. at 352, citing *State v. Hill,* 189 Kan 403, 369 P2d 365, 91 ALR2d 750.

[40] *Romualdez v. Sandiganbayan, supra.*

[41] Section 45 of Republic Act No. 8189, reads, in full, *viz*:

SEC. 45. *Election Offenses***.** - The following shall be considered election offenses under this Act

Notably, herein petitioners do not cite a word in the challenged provision, the import or meaning of which they do not understand. This is in stark contrast to the case of *Estrada v. Sandiganbayan*[42]

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a. to deliver, hand over, entrust or give, directly or indirectly, his voter's identification card to another in consideration of money or other benefit of promise; or take or accept such voter's identification card, directly or indirectly, by giving or causing the giving of money or other benefit or making or causing the making of a promise therefor;

b. to fail, without cause, to post or give any of the notices or to make any of the reports required under this Act;

c. to issue or cause the issuance of a voter's identification number or to cancel or cause the cancellation thereof in violation of the provisions of this Act; or to refuse the issuance of registered voters their voter's identification card;

d. to accept an appointment, to assume office and to actually serve as a member of the Election Registration Board although ineligible thereto; to appoint such ineligible person knowing him to be ineligible;

e. to interfere with, impede, abscond for purpose of gain or to prevent the installation or use of computers and devices and the processing, storage, generation, and transmission of registration data or information;

f. to gain, cause access to, use, alter, destroy, or disclose any computer data, program, system software, network, or any computer-related devices, facilities, hardware or equipment, whether classified or declassified;

g. failure to provide certified voters and deactivated voters list to candidates and heads of representatives of political parties upon written request as provided in Section 30 hereof;

h. failure to include the approved application form for registration of a qualified voter in the book of voters of a particular precinct or the omission of the name of a duly registered voter in the certified list of voters of the precinct where he is duly registered resulting in his failure to cast his vote during an election, plebiscite, referendum, initiative and/or recall. The presence of the form or name in the book of voters or certified list of voters in precincts other than where he is duly registered shall not be an excuse hereof;

i. the posting of a list of voters outside or at the door of a precinct on the day of an election, plebiscite, referendum, initiative and/or recall, and which list is different in contents from the certified list of voters being used by the Board of Election Inspectors; and

j. Violation of any of the provisions of this Act.

[42] G.R. No. 148560, 421 Phil. 290 (2001).

where therein petitioner sought for statutory definition of particular words in the challenged statute. Even then, the Court in *Estrada* rejected the argument.

This Court reasoned:

The rationalization seems to us to be pure sophistry. **A statute is not rendered uncertain and void merely because general terms are used therein, or because of the employment of terms without defining them; much less do we have to define every word we use. Besides, there is no positive constitutional or statutory command requiring the legislature to define each and every word in an enactment.** Congress is not restricted in the form of expression of its will, and its inability to so define the words employed in a statute will not necessarily result in the vagueness or ambiguity of the law so long as the legislative will is clear, or at least, can be gathered from the whole act, which is distinctly expressed in the Plunder Law."

Moreover, it is a well-settled principle of legal hermeneutics that words of a statute will be interpreted in their natural, plain and ordinary acceptation and signification, unless it is evident that the legislature intended a technical or special legal meaning to those words. The intention of the lawmakers who are, ordinarily, untrained philologists and lexicographers to use statutory phraseology in such a manner is always presumed.

Perforce, this Court has underlined that an act will not be held invalid merely because it might have been more explicit in its wordings or detailed in its provisions, especially where, because of the nature of the act, it would be impossible to provide all the details in advance as in all other statutes.[43]

The evident intent of the legislature in including in the catena of election offenses the violation of any of the provisions of Republic Act No. 8189, is to subsume as punishable, not only the commission of proscribed acts, but also the omission of acts enjoined to be observed. On this score, the declared policy of Republic Act No. 8189 is illuminating. The law articulates the policy of the State to systematize the present method of registration in order to establish a clean, complete, permanent

[43] *Supra* Note 35 at 353.

and updated list of voters. A reading of Section 45 (j) conjointly with the provisions upon which petitioners are charged, *i.e.,* Sections 10 (g) and (j) would reveal that the matters that are required to be set forth under the aforesaid sections are crucial to the achievement of a clean, complete, permanent and updated list of voters. The factual information required by the law is sought not for mere embellishment.

There is a definitive governmental purpose when the law requires that such facts should be set forth in the application. The periods of residence in the Philippines and in the place of registration delve into the matter of residency, a requisite which a voter must satisfy to be deemed a qualified voter and registered in the permanent list of voters in a precinct of the city or municipality wherein he resides. Of even rationality exists in the case of the requirement in Section 10 (j), mandating that the applicant should state that he/she is not a registered voter of any precinct. Multiple voting by so-called flying voters are glaring anomalies which this country strives to defeat. The requirement that such facts as required by Section 10 (g) and Section 10 (j) be stated in the voter's application form for registration is directly relevant to the right of suffrage, which the State has the right to regulate.

It is the opportune time to allude to the case of *People v. Gatchalian*[44] where the therein assailed law contains a similar provision as herein assailed before us. Republic Act No. 602 also penalizes any person who willfully violates any of the provisions of the Act. The Court dismissed the challenged, and declared the provision constitutional. The Court in *Gatchalian* read the challenged provision, "any of the provisions of this [A]ct" conjointly with Section 3 thereof which was the pertinent portion of the law upon which therein accused was prosecuted. *Gatchalian* considered the terms as all-embracing; hence, the same must include what is enjoined in Section 3 thereof which embodies the very fundamental purpose for which the law has been adopted. This Court ruled that the law by legislative fiat intends to punish not only those expressly declared unlawful

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[44] G.R. Nos. L-12011-14, 104 Phil. 664 (1958).

but even those not so declared but are clearly enjoined to be observed to carry out the fundamental purpose of the law.[45] *Gatchalian* remains good law, and stands unchallenged.

It also does not escape the mind of this Court that the phraseology in Section 45(j) is employed by Congress in a number of our laws.[46] These provisions have not been declared unconstitutional.

Moreover, every statute has in its favor the presumption of validity.[47] To justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative or argumentative.[48] We hold that petitioners failed to overcome the heavy presumption in favor of the law. Its constitutionality must be upheld in the absence of substantial grounds for overthrowing the same.

A salient point. Courts will refrain from touching upon the issue of constitutionality unless it is truly unavoidable and is

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[45] *Id*. at 672.

[46] Section 124 (4) of Republic Act No. 6938, otherwise known as the Cooperative Code, reads:

"Any violation of any provision of this Code for which no penalty is imposed shall be punished by imprisonment of not less than six (6) months nor more than one (1) year and a fine of not less than One Thousand Pesos (₱1,000.00) or both at the discretion of the Court."

Section 72 of Republic Act No. 8371, otherwise known as The Indigenous Peoples Rights Act, provides:

"Any person who commits violation of any of the provisions of this Act, such as, but not limited to xxx"

Section 12 of Republic Act No. 8762, otherwise known as the Retail Trade Liberalization Act, states:

"Any person who would be found guilty of violation of any provisions of this Act shall be punished by imprisonment of not less than six (6) years and one (1) day but not more than eight (8) years, and a fine of at least One Million (₱1,000,000.00) but not more than Twenty Million (₱20,000,000.00).

[47] See *Philippine Judges Association v. Prado,* G.R. No. 105371, 11 November 1993, 227 SCRA 703,705.

[48] *Arceta v. Mangrobang,* G.R. No. 152895, 15 June 2004.

the very *lis mota*. In the case at bar, the *lis mota* is the alleged grave abuse of discretion of the COMELEC in finding probable cause for the filing of criminal charges against petitioners.

Third. Petitioners maintain that the COMELEC *En Banc,* premised its finding on a misapprehension of facts, and committed grave abuse of discretion in directing the filing of Informations against them with the RTC.

We are once again unimpressed.

The constitutional grant of prosecutorial power in the COMELEC finds statutory expression under Section 265[49] of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code.[50] The task of the COMELEC whenever any election offense charge is filed before it is to conduct the preliminary investigation of the case, and make a determination of probable cause. Under Section 8(b), Rule 34 of the COMELEC Rules of Procedure, the investigating officer makes a determination of whether there is a reasonable ground to believe that a crime has been committed.[51] In *Baytan v.*

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[49] Section 265 of Batas Pambansa Blg. 881, reads:

SEC. 265. *Prosecution.* – The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: *Provided, however,* That in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file the complaint with the office of the fiscal or with the Department of Justice for proper investigation and prosecution, if warranted.

[50] *Kilosbayan v. COMELEC,* 345 Phil. 1141, 1168 (1997).

[51] Section 8(b), Rule 34, COMELEC Rules of Procedure, states as follows:

SEC. 8. *Duty of Investigating Officer.*- The preliminary investigation must be terminated within twenty (20) days after receipt of the counter-affidavits and other evidence of the respondents, and resolution thereof shall be made within five (5) days thereafter.

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(b) If the investigating officer finds cause to hold the respondent for trial, he shall prepare the resolution, and the corresponding information wherein

COMELEC,[52] this Court, sufficiently elucidated on the matter of probable cause in the prosecution of election offenses, *viz*:

> It is also well-settled that the finding of probable cause in the prosecution of election offenses rests in the COMELEC's sound discretion. The COMELEC exercises the constitutional authority to investigate and, where appropriate, prosecute cases for violation of election laws, including acts or omissions constituting election frauds, offense and malpractices. Generally, the Court will not interfere with such finding of the COMELEC absent a clear showing of grave abuse of discretion. This principle emanates from the COMELEC's exclusive power to conduct preliminary investigation of all election offenses punishable under the election laws and to prosecute the same, except as may otherwise be provided by law.[53]

It is succinct that courts will not substitute the finding of probable cause by the COMELEC in the absence of grave abuse of discretion. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[54]

According to the COMELEC *En Banc,* the investigating officer, in the case at bar, held that there was sufficient cause for the filing of criminal charges against petitioners, and found no reason to depart therefrom. Without question, on May 9 and 11 of 2001, petitioners applied for registration as new voters with the Office of the Election Officer of Burauen, Leyte, notwithstanding the existence of petitioners' registration records as registered

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he shall certify under oath that he has examined the complainant and his witnesses, that there is reasonable ground to believe that a crime has been committed and that the accused was informed of the complaint and of the evidence submitted against him and that he was given an opportunity to submit controverting evidence.

[52] 444 Phil. 812, 820 (2003).

[53] *Id*.

[54] *Duero v. Court of Appeals,* 424 Phil. 12, 20 (2002).

voters of Precinct No. 4419-A of Barangay Bagong Lipunan ng Crame, District IV, Quezon City. The directive by the COMELEC which affirmed the Resolution[55] of 28 November 2000 of Investigating Officer Atty. Tangaro-Casingal does not appear to be wanting in factual basis, such that a reasonably prudent man would conclude that there exists probable cause to hold petitioners for trial. Thus, in the aforesaid Resolution, the Investigating Officer, found:

A violation therefore of Section 10 of Republic Act No. 8189 is an election offense.

In the instant case, when respondents Carlos Romualdez and Erlinda Romualdez filed their respective applications for registration as new voters with the Office of the Election Officer of Burauen, Leyte on May 9 and 11, 2001, respectively, they stated under oath that they are not registered voters in other precinct (VRR Nos. 42454095 and 07902941). However, contrary to their statements, records show they are still registered voters of Precinct No. 4419-A, barangay Bagong Lipunan ng Crame, District IV, Quezon City, as per VRR Nos. 26195825 and 26195823. In other words, respondents' registration records in Quezon City is (sic) still in existence.

While it may be true that respondents had written the City Election Officer of District IV, Quezon City for cancellation of their voter's registration record as voter's (sic) therein, they cannot presume that the same will be favorably acted upon. Besides, RA 8189 provides for the procedure in cases of transfer of residence to another city/ municipality which must be complied with, to wit:

"Section 12. Change of Residence to Another City or Municipality. – Any registered voter who has transferred residence to another city or municipality may apply with the Election Officer of his new residence for the transfer of his registration records.

The application for transfer of registration shall be subject to the requirements of notice and hearing and the approval of the Election Registration Board, in accordance with this Act. Upon approval, of the application for transfer, and after notice of such approval to the Election Officer of their former residence of the voter, said Election Officer shall transmit by registered mail the voter's registration record to the Election Officer of the voter's new residence."

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[55] Records, pp. 199-215.

They cannot claim ignorance of the abovestated provision on the procedure for transfer of registration records by reason of transferred new residence to another municipality. Based on the affidavit executed by one Eufemia S. Cotoner, she alleged that the refusal of the Assistant Election Officer Ms. Estrella Perez to accept the letter of respondents was due to improper procedure because respondents should have filed the required request for transfer with the Election Officer of Burauen, Leyte. Despite this knowledge, however, they proceeded to register as new voters of Burauen, Leyte, notwithstanding the existence of their previous registrations in Quezon City.

In their subsequent affidavit of Transfer of Voters Registration under Section 12 of Republic Act 8189, respondents admitted that they erroneously filed an application as a new voter (sic) with the office of the Election Officer of Burauen, Leyte, by reason of an honest mistake, which they now desire to correct. (underscoring ours).

Respondents lose sight of the fact that a statutory offense, such as violation of election law, is *mala prohibita*. Proof of criminal intent is not necessary. Good faith, ignorance or lack of malice is beside the point. Commission of the act is sufficient. It is the act itself that is punished.

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In view of the foregoing, the Law Department respectfully submits that there is probable cause to hold respondents Carlos Romualdez and Erlinda Romualdez for trial in violation of Section 10(g) and (j) in relation to Section 45(j) of Republic Act No. 8189. There is no doubt that they applied for registration as new voters of Burauen, Leyte consciously, freely and voluntarily.[56]

We take occasion to reiterate that the Constitution grants to the COMELEC the power to prosecute cases or violations of election laws. Article IX (C), Section 2 (6) of the 1987 Constitution, provides:

(6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and where appropriate, prosecute cases or violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.

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[56] *Rollo*, pp. 25-26.

This power to prosecute necessarily involves the power to determine who shall be prosecuted, and the corollary right to decide whom not to prosecute.[57] Evidently, must this power to prosecute also include the right to determine under which laws prosecution will be pursued. The courts cannot dictate the prosecution nor usurp its discretionary powers. As a rule, courts cannot interfere with the prosecutor's discretion and control of the criminal prosecution.[58] Its rationale cannot be doubted. For the business of a court of justice is to be an impartial tribunal, and not to get involved with the success or failure of the prosecution to prosecute.[59] Every now and then, the prosecution may err in the selection of its strategies, but such errors are not for neutral courts to rectify, any more than courts should correct the blunders of the defense.[60]

Fourth. In *People v. Delgado*,[61] this Court said that when the COMELEC, through its duly authorized law officer, conducts the preliminary investigation of an election offense and upon a *prima facie* finding of a probable cause, files the Information in the proper court, said court thereby acquires jurisdiction over the case. Consequently, all the subsequent disposition of said case must be subject to the approval of the court. The records show that Informations charging petitioners with violation of Section 10(g) and (j), in relation to Section 45(j) of Republic Act No. 8189 had been filed with the RTC. The case must, thus, be allowed to take its due course.

It may be recalled that petitioners prayed for the issuance of a Temporary Restraining Order or Writ of Preliminary Injunction before this Court to restrain the COMELEC from executing its Resolutions of 11 June 2004 and 27 January 2005. In a Resolution

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[57] *Mapa v. Sandiganbayan,* G.R. No. 100295, 26 April 1994, 231 SCRA 783.

[58] *Alonzo v. Concepcion,* A.M. No. RTC-04-1879, 17 January 2005, citing *People v. Moll,* 68 Phil. 626 (1939).

[59] *Tanchanco v. Sandiganbayan,* G.R. Nos. 141675-96, 25 November 2005.

[60] *Id*.

[61] G.R. Nos. 93419-32, 18 September 1990, 189 SCRA 715, 722.

dated 20 June 2006, this Court *En Banc* denied for lack of merit petitioners' Motion Reiterating Prayer for Issuance of Writ of Preliminary Injunction and to Cite for Indirect Contempt. Logically, the normal course of trial is expected to have continued in the proceedings *a quo*.

WHEREFORE, the Petition is *DENIED*. The assailed Resolutions, dated 11 June 2004 and 27 January 2005 of the COMELEC *En Banc* are *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Quisumbing, Ynares-Santiago, Azcuna, Velasco, Jr., Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

Corona, J., on leave, *C.J.* Puno certify that *J*. Corona voted in favor of the majority opinion.

Puno, C.J., joins the dissent of *J*. Tinga.

Carpio, J., see dissenting opinion.

Austria-Martinez, Carpio Morales, and *Nachura, JJ.,* join Justices Tinga and Carpio in their dissenting opinions.

Tinga, J., see dissenting opinion.

DISSENTING OPINION

CARPIO, *J*.:

Petitioners are charged under two Informations for violation of Section 10(g) and (j)[1] in relation to Section 45(j) of Republic Act

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[1] Section 10(g) and (j) of RA No. 8189 provides:

SEC. 10. Registration of Voters. – x x x

The application shall contain the following data:

a) x x x

x x x x x x x x x

g) Periods of residence in the Philippines and in the place of registration;

x x x x x x x x x

j) A statement that the applicant is not a registered voter of any precinct;

No. 8189.[2] RA No. 8189 does not state that violations of Section 10(g) and (j) are election offenses. However, Section 45(j) makes a blanket declaration that "**[V]iolation of any of the provisions of this Act**" is an election offense.

Petitioners now assail Section 45(j) as unconstitutional for vagueness as it does not refer to any particular provision of RA No. 8189. Petitioners claim a violation of their constitutional right under the **due process clause**.[3] Petitioners assert that a penal statute must provide "fair notice" of what is a criminal act and what is a lawful act. Petitioners claim that Section 45(j), a penal law that carries the penalty of imprisonment from one to six years,[4] violates their constitutional right to "fair notice" because it is vague.

The due process clause, which guarantees that no person shall be deprived of life, liberty or property without due process of law, requires that citizens are given sufficient notice or warning of what is lawful and unlawful conduct under a penal statute. To enforce this guarantee, courts have developed the void for vagueness doctrine. The void for vagueness doctrine expresses the rule that for an act to constitute a crime, the law must expressly and clearly declare such act a crime. A related doctrine is that penal statutes are construed strictly against the state and liberally in favor of the accused.

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[2] The Voter's Registration Act of 1996.

[3] Section 1, Article III of the Constitution provides:

No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[4] Section 46 of RA No. 8189 provides:

Section 46. *Penalties*. — Any person found guilty of any election offense under this Act shall be punished with imprisonment of not less than one (1) year but not more than six (6) years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be deported after the prison term has been served. Any political party found guilty shall be sentenced to pay a fine not less than one hundred thousand pesos (₱100,000) but not more than five hundred thousand pesos (₱500,000).

Petitioners' constitutional attack on Section 45(j) under the due process clause puts in issue two other requirements for the validity of a penal statute. First, a penal statute must prescribe an ascertainable standard of guilt to guide courts in adjudication.[5] Second, a penal statute must confine law enforcers within well-defined boundaries to avoid arbitrary or discriminatory enforcement of the law.[6]

Petitioners challenge the constitutionality of Section 45(j) "**as applied**" to them in a live case under which they face prosecution. This is the traditional "as applied" approach in challenging the constitutionality of any statute. In an "as applied" challenge, the petitioner who claims a violation of his constitutional right can raise **any constitutional ground -** whether absence of due process, lack of fair notice, lack of ascertainable standards, overbreadth, or vagueness.

The "as applied" approach embodies the rule that one can challenge the constitutionality of a statute only if he asserts a violation of his own rights. The rule prohibits one from challenging the constitutionality of the statute based solely on the violation of the rights of third persons not before the court. This rule is also known as the prohibition against third-party standing.

The U.S. Supreme Court has created a notable **exception** to the prohibition against third-party standing. Under the exception, a petitioner may mount a "**facial**" challenge to the constitutionality of a statute even if he claims no violation of his own rights under the assailed statute. To mount a "facial" challenge, a petitioner has only to show violation under the assailed statute of the rights of third parties not before the court. **This exception allowing "facial" challenges, however, applies only to statutes involving free speech**. The ground allowed for a "facial" challenge is overbreadth or vagueness of the statute. Thus, the U.S. Supreme Court declared:

> x x x the Court has altered its traditional rules of standing to permit - **in the First Amendment area** - 'attacks on overly broad statutes with no requirement that the person making the attack demonstrate

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[5] *People v. Nazario*, No. L-44143, 31 August 1988, 165 SCRA186.

[6] *Id*.

that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity.' x x x Litigants, therefore, are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression.[7] (Emphasis supplied)

The rationale for this exception allowing a "facial" challenge is to counter the "chilling effect" on protected speech that comes from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply refuse to speak to avoid being charged of a crime. The overbroad or vague law chills him into silence.

Prof. Erwin Chemerinsky, a distinguished American textbook writer on Constitutional Law, explains clearly the exception of overbreadth to the rule prohibiting third-party standing in this manner:

The third exception to the prohibition against third-party standing is termed the "overbreadth doctrine." A person generally can argue that a statute is unconstitutional as it is applied to him or her; the individual cannot argue that a statute is unconstitutional as it is applied to third parties not before the court. For example, a defendant in a criminal trial can challenge the constitutionality of the law that is the basis for the prosecution solely on the claim that the statute unconstitutionally abridges his or her constitutional rights. The overbreadth doctrine is an exception to the prohibition against third-party standing. It permits a person to challenge a statute on the ground that it violates the First Amendment (free speech) rights of third parties not before the court, even though the law is constitutional as applied to that defendant. In other words, the overbreadth doctrine provides that: "Given a case or controversy, a litigant whose own activities are unprotected may nevertheless challenge a statute by showing that it substantially abridges the First Amendment rights of other parties not before the court."[8]

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[7] *Broadrick v. Oklahoma*, 413 U.S. 601 (1973). This case involved a non-penal statute that prohibited state employees from engaging in partisan political activities. The statute was declared / neither substantially overbroad nor impermissibly vague, thus valid.

[8] Erwin Chemerinsky, *CONSTITUTIONAL LAW*, p. 86, 2nd Edition (2002).

The overbreadth doctrine is closely related to the vagueness doctrine.[9] Both doctrines are often simultaneously invoked to mount "facial" challenges to statutes violating free speech.[10]

The doctrines of overbreadth and vagueness, **as devices to mount "facial" challenges to penal or non-penal statutes violating free speech**, are not applicable to the present petition for two reasons. First, petitioners here assert a violation of their own constitutional rights, not the rights of third-parties. Second, the challenged statute — Section 45(j) of RA No. 8189, does not involve free speech. Thus, any invocation of the doctrines of overbreadth and vagueness to mount a "facial" challenge in the present case is grossly misplaced.

Justice Vicente Mendoza's separate opinion in *Estrada v. Sandiganbayan*,[11] a case involving **both** "facial" and "as applied" challenges to specific provisions of the Anti-Plunder Law, **correctly distinguished** between the inapplicability of the "facial" challenge and the applicability of the "as applied" challenge in that case. Justice Mendoza succinctly stated, "As conduct – not speech – is its object, the challenged provision must be examined only "as applied" to the defendant, herein petitioner, and should not be declared unconstitutional for overbreadth or vagueness [under a "facial" challenge]." Justice Mendoza further explained in his separate opinion denying the motion for reconsideration:

> x x x Accordingly, as the enforcement of the Anti-Plunder Law is not alleged to produce a chilling effect on freedom of speech or religion or some "fundamental rights" to be presently discussed, **only such provisions can be challenged by petitioner as are sought to be applied to him. Petitioner cannot challenge the entire**

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[9] John E. Nowak and Ronal D. Rotunda write, "Closely related to the overbreadth doctrine is the void for vagueness doctrine. The problem of vagueness in statutes regulating speech activities is based on the same rationale as the overbreadth doctrine and the Supreme Court often speaks of them together." CONSTITUTIONAL LAW, p. 1070, 6th Edition (2000).

[10] See note 1, p. 917.

[11] 421 Phil. 290 (2001).

statute on its face. A contrary rule would permit litigation to turn on abstract hypothetical applications of a statute and disregard the wise limits placed on the judicial power by the Constitution. x x x (Emphasis supplied)[12]

In *Romualdez v. Sandiganbayan*,[13] petitioner Romualdez challenged the constitutionality of Section 5 of the Anti-Graft and Corrupt Practices Act for which petitioner Romualdez was being prosecuted. The case clearly involved an "as applied" challenge to the constitutionality of a statute. Thus, petitioner Romualdez could raise any constitutional ground, including overbreadth and vagueness, to strike down Section 5. Indeed, the Court in *Romualdez* stated that "**the challenged provision must be examined only "as applied" to the defendant**." After discussing the void for vagueness doctrine, the Court ruled that "the challenged provision is not vague," thus acknowledging that the constitutionality of a penal statute can be tested by the vagueness doctrine.

Unfortunately, the Court in *Romualdez* also stated: "It is best to stress at the outset that the overbreadth and the vagueness doctrines have special application only to free-speech cases. They are not appropriate for testing the validity of penal statutes." The Court concluded: "In sum, the Court holds that the challenged provision is not vague, and that in any event, the 'overbreadth' and 'void for vagueness' doctrines are not applicable to this case."

However, we must view these statements of the Court on the inapplicability of the overbreadth and vagueness doctrines to penal statutes as appropriate only insofar as these doctrines are used to mount "facial" challenges to penal statutes ***not*** involving free speech. These statements of the Court are also *obiter dicta* since *Romualdez* involved an "as applied" challenge and not a "facial" challenge to the constitutionality of a statute.

The present petition indisputably involves an "as applied" challenge to the constitutionality of Section 45(j) of RA

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[12] Resolution dated 29 January 2002.

[13] 479 Phil. 265 (2004).

No. 8189. As an "as applied" challenge, petitioners may raise **any constitutional ground** to strike down Section 45(j). In this "as applied" challenge, petitioners may invoke the overbreadth and vagueness doctrines to test the constitutionality of Section 45(j).

The threshold issue on the constitutionality of Section 45(j) now turns on three tests: *First*, does Section 45(j) give "fair notice" or warning to ordinary citizens as to what is criminal conduct and what is lawful conduct? Put differently, is Section 45(j) so vague that ordinary citizens must necessarily guess as to its meaning and differ as to its application?[14] *Second*, is Section 45(j) so vague that it prescribes no ascertainable standard of guilt to guide courts in judging those charged of its violation?[15] *Third*, is Section 45(j) so vague that law enforcers — the police and prosecutors — can arbitrarily or selectively enforce it?[16]

If Section 45(j) meets all the three tests, it complies with the due process clause and is therefore constitutional. If it fails any one of the three tests, then it is unconstitutional and the two Informations against petitioners based on Section 45(j) should be quashed.

RA No. 8189 contains 52 sections and some 235 sentences, 149 paragraphs, and 7,831 words. Section 45 (j) of RA No. 8189 makes "**violation of any of the provisions**" of RA No. 8189 a criminal offense, in addition to violations expressly specified in Section 45(a) to (i).[17]

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[14] *Connally v. General Constr. Co*., 269 U.S. 385 (1926), cited in *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, No. L-24693, 31 July 1967, 20 SCRA 849.

[15] *Grayned v. City of Rockford*, 408 U.S. 104 (1972).

[16] *Id*.

[17] Section 45(a) to (i) provides:

Section 45. Election Offenses. — The following shall be considered election offenses under this Act:

a) to deliver, hand over, entrust or give, directly or indirectly, his voter's identification card to another in consideration of money or other

Section 45(j) of RA No. 8189 provides:

SEC. 45. Election Offenses. – The following shall be considered election offenses under this Act:

(a) x x x

x x x x x x x x x

(j) **Violation of any of the provisions of this Act**.

(Emphasis supplied)

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benefit or promise; or take or accept such voter's identification card directly or indirectly, by giving or causing the giving of money or other benefit or making or causing the making of a promise therefor;

b) to fail, without cause, to post or give any of the notices or to make any of the reports reacquire under this Act;

c) to issue or cause the issuance of a voter's identification number or to cancel or cause the cancellation thereof in violation of the provisions of this Act; or to refuse the issuance of registered voters their voter's identification card;

d) to accept an appointment, to assume office and to actually serve as a member of the Election Registration Board although ineligible thereto; to appoint such ineligible person knowing him to be ineligible;

e) to interfere with, impede, abscond for purposes of gain or to prevent the installation or use of computers and devices and the processing, storage, generation and transmission of registration data or information;

f) to gain, cause access to, use, alter, destroy, or disclose any computer data, program, system software, network, or any computer-related devices, facilities, hardware or equipment, whether classified or declassified;

g) failure to provide certified voters and deactivated voters list to candidates and heads or representatives of political parties upon written request as provided in Section 30 hereof;

h) failure to include the approved application form for registration of a qualified voter in the book of voters of a particular precinct or the omission of the name of a duly registered voter in the certified list of voters of the precinct where he is duly registered resulting in his failure to cast his vote during an election, plebiscite, referendum, initiative and/or recall. The presence of the form or name in the book of voters or certified list of voters in precincts other than where he is duly registered shall not be an excuse hereof;

i) The posting of a list of voters outside or at the door of a precinct on the day of an election, plebiscite, referendum, initiative and/or recall and which list is different in contents from the certified list of voters being used by the Board of Election Inspectors; and

x x x x x x x x x

Thus, the violation of any of the following provisions of RA No. 8189, not covered under Section 45(a) to (i), is a crime:

1. Section 10, requiring that the voter's "application shall contain the following data," listing 11 data (a to k) to be written by the applicant. The 11th data required is "such information or data as may be required by the Commission." *If the applicant fails to write the data required by the Commission, he commits a crime.*

   Here, petitioners are charged with violating Section 10(g) and ((j) for their alleged failure to state in their application form the periods of their residence in the Philippines, as well as for allegedly falsely stating that they are not registered voters in any other precinct.

2. Section 10, requiring that the "application for registration shall contain three (3) specimen signatures of the applicant, clear and legible rolled prints of his left and right thumbprints, with four identification size copies of his latest photograph x x x." *If the applicant writes only two specimen signatures or his thumbprints are not clear and legible, he commits a crime.*

3. Section 11(e), stating that insane or incompetent persons "shall be disqualified from registering." *If an insane or incompetent person registers as a voter, he commits a crime.*

4. Section 18, requiring that a challenge to an applicant for registration "shall be under oath." *If the challenger fails to put his challenge under oath, he commits a crime.*

5. Section 27, requiring that the Election Registration Board "shall deactivate the registration and remove the registration records" of "any person who did not vote in the two (2) successive preceding regular elections." *Members of the Election Registration Board commit a crime if they fail to do so.*

6. Section 29, requiring that the Election Registration Board "shall cancel the registration records of those who died as certified by the Local Civil Registrar." *If the members of the Election Registration Board fail to do so, they commit a crime.*

7. Section 40, requiring that the Commission on Elections "shall reconstitute all registration records which have been lost or destroyed." *If the members of the Commission on Elections fail to do so, they commit a crime.*

By no means is the foregoing enumeration exhaustive. There are many more provisions of RA No. 8189 that may be violated by a voter, Election Officer, or other officials of the Commission on Elections without committing the "Election Offenses" specified in Section 45(a) to (i) of RA No. 8189. However, the ordinary citizen has no way of knowing which provisions of RA No. 8189 are covered by Section 45(j) even if he has before him a copy of RA No. 8189.

Even Judges and Justices will differ as to which provisions of RA No. 8189 fall under Section 45(j). The prosecution office of the Comelec has not specified which provisions of RA No. 8189 fall under Section 45(j). There is no legal textbook writer who has attempted to enumerate the provisions of RA No. 8189 that fall under Section 45(j). Members of the Commission on Elections will certainly dispute that failure by the Commission to reconstitute lost or destroyed registration records constitutes a crime on their part.

Under RA No. 8189, law enforcement officers have wide latitude to choose which provisions of the law to consider a crime since there is no specific enumeration of provisions falling under Section 45(j). Prosecutors can choose to prosecute only those who violate certain provisions of RA No. 8189. Judges trying violators of the law have no ascertainable standard to determine the guilt of a person accused of violating Section 45(j). There is no certainty which provisions of RA No. 8189 fall under Section 45(j).

Section 45(j) makes a **blanket, unconditional declaration** that "violation of any of the provisions" of RA No. 8189 constitutes a crime. In contrast, Section 45(b)[18] states that to constitute a

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[18] Section 45(b) provides:

Section 45. Election Offenses. — The following shall be considered election offenses under this Act:

a) x x x

b) to fail, **without cause**, to post or give any of the notices or to make any of the reports reacquired under this Act;

x x x. (Emphasis supplied)

crime the failure to give notice or to submit a report must be "**without cause**." Under Section 45(j), whether the violation or omission is with or without cause, the act constitutes a crime while under Section 45(b) a violation or omission for cause is not a crime.

Certainly, the lawmaker did not intend that trivial and harmless violations, or omissions for cause, should constitute a crime under Section 45(j). Unfortunately, there is no way of knowing with certainty what these trivial and harmless violations or omissions are. Everyone will have to guess as to what provisions fall under Section 45(j), and their guesses will most likely differ from each other.

The last paragraph of Section 4[19] of RA No. 8189 prohibits a change of the precinct assignment of a voter without the voter's written consent. This paragraph expressly declares, "Any violation thereof shall constitute an election offense which shall be punished in accordance with law." The prohibition against such change of precinct assignment is not one of the specific acts penalized under Section 45(a) to (i). Since such change of precinct assignment is expressly declared an election offense in Section 4 itself, such act is clearly a crime and merits the penalty prescribed in Section 46.

However, the provision in the last paragraph of Section 4 declaring a violation of such paragraph an election offense is not found in any other provision of RA No. 8189. The ordinary citizen will not know if the lawmaker also intended other provisions of RA No. 8189 to carry the same penal sanction, even in the

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[19] This paragraph provides:

The precinct assignment of a voter in the permanent list of voters shall not be changed or altered or transferred to another precinct without the express written consent of the voter: Provided, however, That the voter shall not unreasonably withhold such consent: **Any violation thereof shall constitute an election offense which shall be punished in accordance with law**. (Emphasis supplied)

absence of an express declaration that violation of such provisions is an election offense. This adds to the uncertainty of the ordinary citizen as to what constitutes criminal conduct and what constitutes lawful conduct under RA No. 8189.

A provision in an elaborate and detailed law that contains a catch-all provision making it a crime to violate ***any*** provision of such law does not give "fair notice" to the ordinary citizen on what constitutes prohibited conduct or permitted conduct under such law. Section 45(j) does not draw reasonably clear lines between lawful and unlawful conduct such that the ordinary citizen has no way of finding out what conduct is a prohibited act.[20] The ordinary citizen will have to guess which provisions of RA No. 8189, other than those mentioned in Section 45(a) to (i), carry a penal sanction.

If Section 45(j) had enumerated the specific provisions within its coverage, then reasonable clear lines would guide the ordinary citizen as to what acts are prohibited. Section 45(j) does not specify those provisions and thus fails to draw reasonable clear lines. If Section 45(j) is strictly applied, the ordinary citizen may simply decline to exercise his right of suffrage to avoid unintentionally committing a crime. Section 45(j) is a trap even to the most educated citizen.

There is no basis in the claim that since petitioners are being prosecuted under Section 45(j) ***in relation to Section 10 (g) and (j)***, there is no vagueness in the law under which petitioners are charged. Precisely, Section 45(j) does not specify Section 10(g) and (j) as some the provisions of RA No. 8189 that may be violated. Only the Information filed by the prosecutor mentions Section 10(g) and (j) as some of the provisions that may be violated under Section 45(j). The Information, however, is not part of RA No. 8189, and the prosecutor has no legislative power to amend Section 45(j) to cure its vagueness.

A penal law void for vagueness is not made valid by a specification in the Information correcting the vagueness in the law. No court of law has adopted a doctrine that the

[20] *Smith v. Goguen*, 415 U.S. 566 (1974).

prosecutor has the power to correct a vagueness in a penal law. **Whether a law is void for vagueness under an "as applied" challenge must be tested under the provisions of the law as found in the statute books, and not as interpreted by the prosecutor in the Information**.

There is also no basis in the claim that any discussion on the ***possible*** provisions of RA No. 8189 that may fall within the coverage of Section 45(j) constitutes a "facial" challenge on such provisions of RA No. 8189. This is gross error. **What is void for vagueness is the provision "*violation of any of the provisions of this Act*," and not any of the unnamed provisions that may be violated**. No other provision in RA No. 8189 is being challenged as unconstitutional, only Section 45(j). The provisions ***possibly*** falling within the coverage of Section 45(j) must be discussed ***to illustrate*** that the ordinary citizen has no way of knowing with certitude what provisions of RA No. 8189 fall within the coverage of Section 45(j). The discussion shows that the ordinary citizen has no ***fair notice*** that these are the provisions falling within the coverage of Section 45(j). What is being challenged is the constitutionality of Section 45(j), which is so vague that it could cover any of the provisions discussed above.

In *People v. Gatchalian*,[21] the Court declared constitutional a provision penalizing "any person who wilfully violates any of the provisions" of the Minimum Wage Law. There, the Court stated:

> x x x A study of the origin of our Minimum Wage Law (Republic Act 602) may be of help in arriving at an enlightened and proper interpretation of the provisions under consideration. Our research shows that this Act was patterned after the U. S. Fair Labor Standards Act of 1938, as amended, and so a comparative study of the pertinent provisions of both would be enlightening.
>
> The pertinent provisions of the U. S. Fair Labor Standards Act of 1938, as amended, follow:
>
> "MINIMUM WAGES

[21] 104 Phil. 664 (1958).

SEC. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates —

"(1) not less than 75 cents an hour";

x x x x x x x x x

"PROHIBITED ACTS

SEC. 15. (a) After the expiration of one hundred and twenty, days from the date of enactment of this Act, it shall be unlawful for any person —

"(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver; or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of Section 6 or Section 7, or in violation of any regulation or order of the Administrator issued under Section 14; xxx

"(2) to violate any of the provisions of Section 6 or Section 7, or any of the provisions of any regulation or order of the Administrator issued under Section 14;

"(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or cause to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;

"(4) to violate any of the provisions of Section 11 (c) or any regulation or order made or continued in effect under the provisions of Section 11 (d), or to make any statement, report, or record filed or kept pursuant. to the provisions of such Section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

x x x x x x x x x

"PENALTIES

SEC. 16. (a) **Any person who willfully violates any of the provisions of Section 15** shall upon conviction thereof be subject to a line of not more than ₱10,000, or to imprisonment

for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

"(b) Any employer who violates the provisions of Section 6 or 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant costs of the action."

The pertinent provisions of Republic Act 602 read:

SEC. 3. Minimum wage. — (a) Every employer shall pay to each of his employees who is employed by an enterprise other than in agriculture wages at the rate of not less than —

x x x x x x x x x

"(2) Three pesos a day on the effective date of this Act and for one year after the effective date, and thereafter ₱4 a day, for employees of establishments located outside of Manila or its environs: Provided, That this Act shall not apply to any retail or service enterprise that regularly employs not more than five employees."

"SEC. 15. Penalties and recovery of wage due under this Act. — (a) **Any person who willfully violates any of the provisions of this Act** shall upon conviction thereof be subject to a fine of not more than two thousand pesos, or, upon second conviction, to imprisonment of not more than one year, or to both fine and imprisonment, in the discretion of the court.

x x x x x x x x x

"(e) Any employer who underpays an employee in violation of this Act shall be liable to the employee effected in the amount of the unpaid wages with legal interest. Action to recover such liability may be maintained in any competent court by anyone or more employees on behalf of himself or themselves. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee which shall not exceed ten per cent of the amount awarded to the plaintiffs, unless the amount awarded is less than one hundred pesos, in which event the fee may be ten pesos, but not in excess of that amount. Payment of the amount found due to the plaintiffs shall be made directly to the plaintiffs, in the presence of a representative of the Secretary or of the Court. In the event payment is witnessed by the court or its representative, the Secretary shall be notified within ten days of payment that the payment has been made."

x x x x x x x x x

It should also be noted that while Section 16 of the Fair Labor Standards Act which provides for the penalties to be imposed for any willful violation of the provisions of the Act; specifically states that those penalties refer to acts declared unlawful under Section 15 of the same Act, our law does not contain such specification. It merely provides in Section 15 (a) that "Any person who willfully violates any of the provisions of this Act shall upon conviction" be subject to the penalty therein prescribed. This distinction is very revealing. **It clearly indicates that while the Fair Labor Standards Act intends to subject to criminal action only acts that are declared unlawful, our law by legislative fiat intends to punish not only those expressly declared unlawful but even those not so declared but are clearly enjoined to be observed to carry out the fundamental purpose of the law.** One such provision is undoubtedly that which refers to the payment of the minimum wage embodied in Section 3. This is the only rational interpretation that can be drawn from the attitude of our Congress in framing our law in a manner different from that appearing in the mother law.[22] (Boldfacing and underscoring supplied)

This Court must revisit *Gatchalian's* holding that makes a crime "**not only those (acts) expressly declared unlawful**

[22] *Id.* at 668-672.

but even those not so declared but are clearly enjoined to be observed to carry out the fundamental purpose of the law." Unlike the U.S. Fair Labor Standards Act after which our Republic Act No. 602 was patterned, RA 602 does not specify the provisions of the law the violation of which is declared unlawful. This Court must categorically rule that only acts expressly declared unlawful or prohibited by law, and penalized as such, are crimes. Acts not expressly declared unlawful or prohibited can never give rise to criminal liability. Any ambiguity in the law whether an act constitutes a crime is resolved in favor of the accused.

To punish as crimes acts not expressly declared unlawful or prohibited by law violates the Bill of Rights. *First*, the Constitution provides that "[N]o person shall be held to answer for a criminal offense without due process of law."[23] Due process requires that the law expressly declares unlawful, and punishes as such, the act for which the accused is held criminally liable. **The void for vagueness doctrine is aimed precisely to enforce this fundamental constitutional right.** *Second*, the Constitution provides that "[I]n all criminal prosecutions, the accused shall x x x enjoy the right x x x to be informed of the nature and cause of the accusation against him."[24] This right of the accused requires that the Information states the particular act the accused committed in violation of a specific provision of a law defining such act a crime.

A blanket and unconditional declaration that ***any*** violation of an elaborate and detailed law is a crime is **too imprecise and indefinite**, and fails to define with certitude and clarity what acts the law punishes as crimes. Such a shotgun approach to criminalizing human conduct is exactly what the void for vagueness doctrine outlaws, thus:

That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized

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[23] Section 14(1), Article III, Constitution.

[24] Section 14(2), Article III, Constitution.

requirement, consonant alike with the ordinary notions of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.

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The dividing line between what is lawful and unlawful conduct cannot be left to conjecture. The citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions. A criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue. x x x[25]

Section 45(j) is a penal statute. Penal statutes are construed strictly against the state and liberally in favor of the accused. The purpose is not to allow a guilty person to escape punishment through a technicality but to provide a precise definition of the prohibited act.[26] To constitute a crime, an act must come clearly within the spirit and letter of the penal statute.[27] Otherwise, the act is outside the coverage of the penal statute. **An act is not a crime unless clearly made so by express provision of law**. This Court has declared:

Criminal statutes are to be construed strictly. No person should be brought within their terms who is not clearly within them, **nor should any act be pronounced criminal which is not made clearly so by the statute**.[28] (Emphasis supplied)

Section 45(j) does not specify what provisions of RA No. 8189, if violated, carry a penal sanction. Section 45(j) merely states that "violation of any of the provisions" of RA No. 8189 is a crime. In addition to the provisions covered by Section 45(a)

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[25] *Connally v. General Constr. Co*., note 13. This case involved an eight-hour day labor statute which imposed penalties for its violation.

[26] *People v. Purisima,* 176 Phil. 186 (1978).

[27] *Idos v. CA,* 357 Phil. 198 (1998).

[28] *United States v. Abad Santos*, 36 Phil. 243, 246 (1917).

to (i), there are many other provisions of RA No. 8189 that are susceptible of violation. Section 45(j), however, does not specify which of these other provisions carry a penal sanction if violated. Thus, Section 45(j) fails to satisfy the requirement that for an act to be a crime it must clearly be made a crime by express provision of law.

The penal provisions of the Omnibus Election Code[29] (Code) are instructive. Section 261 of the Code enumerates what are the **specific prohibited acts** which constitute election offenses. Section 262[30] penalizes "**Other election offenses**" by specifying the **specific sections** of the Code the violation of which also constitutes election offenses. There is no room for guesswork as to what provisions the violation of which constitutes crimes. There is "fair notice" to all citizens of what acts are prohibited, and what acts are permitted, under the Code. Law enforcers have no discretion to choose what provisions are prohibited as criminal acts. Judges know with certainty what provisions of the Code carry penal sanctions.

This is not the case with Section 45(j) of RA No. 8189. Indisputably, Section 45(j) is so vague that it fails to give "fair notice" to ordinary citizens as to what conduct is a crime and what conduct is lawful under Section 45(j). Section 45(j) is also so vague that it fails to define the prohibited acts in a precise and clear manner, allowing law enforcers to enforce it arbitrarily while leaving courts no standard by which to adjudge the guilt of a person accused of violating it. This substantial vagueness in Section 45(j) violates the due process clause.

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[29] Batas Blg. 881, as amended.

[30] Section 262 of the Omnibus Election Code provides:

Section 262. Other election offenses.—Violation of the provisions, or pertinent portions, of the following sections of this Code shall constitute election offenses: Sections 9, 18, 74, 75, 76, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106 107, 108, 109, 110, 111, 112, 122, 123, 127, 128, 129, 132, 134, 135, 145, 148, 150, 152, 172, 173, 174, 178, 180, 182, 184, 185, 186, 189, 190, 191, 192, 194, 195, 196, 197, 198, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 223, 229, 230, 231, 233, 234, 235, 236, 239 and 240.

I therefore vote to declare Section 45(j) of RA No. 8189 **UNCONSTITUTIONAL**, and to **GRANT** the petition.

DISSENTING OPINION

TINGA, *J.*:

This case presented itself with an alluring promise — the rare opportunity to declare a penal provision unconstitutional and void for vagueness, in the process obliterating the impression, spawned by recent pronouncements of the Court based on an erroneous reading of applicable American jurisprudence, that such a denouement would not unfold in this jurisdiction. Quite lamentably, the majority prevented the promise from blossoming to fruition, perpetuating instead a grievous doctrinal error which is already the subject of strenuous criticism within the legal academe.[1]

A vague criminal statute at its core violates due process, as it deprives fair notice and standards to all – the citizens, the law enforcement officers, prosecutors and judges. The petition in this case has allowed the Court to engage in as thorough inquiry as there ever has been on the constitutional right to due process, to infuse vitality and sophistication in the litigation of such primordial right. Yet, in the end, instead of reinforcing a perspective more attuned to the fullest measure of the people's democratic rights, the Court has chosen not to rise to the challenge.

The petition should have been granted. The assailed Resolution of the Commission on Elections (COMELEC) directs the filing of criminal informations against petitioners Carlos and Erlinda Romualdez for violation of Section 10 (g) and (j) of Republic

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[1] See R. Gorospe, *I CONSTITUTIONAL LAW: NOTES AND READINGS ON BILL OF RIGHTS, CITIZENSHIP AND SUFFRAGE* (2006 ed.), at 307-308; G. Balderama, *Dénouement Of The Human Security Act: Tremors In The Turbulent Odyssey Of Civil Liberties*, LII U.S.T. L. REV 1, 16-21. **"There is an ever-increasing clamor among legal scholars in the Philippines pushing for a re-visit of the *status quo* of the 'void for vagueness' doctrine being applied limitedly to cases involving freedom of speech."** Balderama, *id.* at 16.

Act No. 8189 (Rep. Act 8189), also known as the Voter's Registration Act, in relation to Section 45(j) of the same law. **It is Section 45(j) which criminalizes the violation of Section 10, as well as the violation of any and all other provisions of Rep. Act 8189, as an election offense. Yet in the final analysis, Section 45(j) is unconstitutional, violative as it is of the due process clause, and thus should be voided.**

I.

The case stemmed from a complaint[2] dated 12 July 2000 filed with the Commission on Elections (COMELEC) Law Department by private respondents Dennis Garay and Angelino Apostol[3] against petitioners, spouses Carlos and Erlinda Romualdez. The complaint alleged that petitioners violated Sections 261(y)(2) and 261(y)(5) of the Omnibus Election Code, and Section 12(3) of Republic Act No. 8189 (Rep. Act 8189), also known as the Voter's Registration Act, such violations arising from the acts initiated by petitioners in registering as voters in Burauen, Leyte.

Petitioners had applied for registration as new voters with the Office of the Election Officer in Burauen on 9 and 11 May 2000, respectively. In their respective applications, petitioners stated that they were residents of 935 San Jose St., in Burauen. They left blank the space in the application form requiring them to state the years and months of their "period of residence" in the aforementioned municipality.[4] The complaint alleged that in truth petitioners were actually residents of 113 Mariposa Loop, Mariposa St., Bagong Lipunan ng Crame, Quezon City, as well as registered voters in Precinct No. 4419-A of Barangay Bagong Lipunan ng Crame, District IV, in Quezon City. To support this factual allegation, were various certifications issued by *barangay* and election officers of Quezon City,[5] as well as

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[2] *Rollo*, pp. 81-88.

[3] Who later withdrew as complainant, see *id.*at 23, 108.

[4] See *id.* at 90, 92.

[5] See *id.* at 91, 93-94, 97-98.

the Quezon City Voter Registration Records of the petitioners were attached to the complaint.[6]

The complaint further stated that oppositions had been filed against petitioners' application for registration in Burauen. In response thereto, petitioners filed with the Office of the Election Officer in Burauen various documents evincing not only their intent to transfer their registration as voters from Quezon City to Burauen, which was their new place of residence, but the actuality that they had began to formalize such transfer pursuant to Section 12 of Rep. Act No. 8189. Particularly, said documents include letters from petitioners to the election officer of Burauen manifesting their intent to transfer their registrations, as well as their respective Affidavits of Transfer of Voter's Registration under Section 12, Rep. Act 8189. Petitioners also explained that by reason of honest mistake, they had erroneously filed applications as new voters in Burauen, instead of as transferee voters.

The complaint likewise point out the particular provisions of law for which petitioners could be held accountable. Section 261(y)(2) and (y)(5) of the Omnibus Election Code respectively penalizes knowingly making any false or untruthful statements relative to any data or information required in the application for registration, and the re-registration anew by a previously registered voter without the filing of an application for cancellation of his previous registration. On the other hand, the failure to apply for transfer of registration records due to change of residence to another city or municipality was alleged to be in violation of Section 12 of Rep. Act No. 8189.

The matter was referred to the Commission on Elections and docketed as E.O. Case No. 2000-36. Petitioners filed a Joint Counter-Affidavit with Motion to Dismiss. They alleged that they had been intending to reside in Burauen since 1989, and they actually took up residence therein on 9 May 2000. They claimed having left unanswered the blank space for "period of residence" in their application for registration because they

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

were unsure what period of residence was being required.[7] They also averred that as early as 18 April 2000, they had already written the election officer in Quezon City requesting the cancellation of their registration as voters in Barangay Bagong Lipunan ng Crame, but the Assistant Quezon City Election Officer had refused to acknowledge receipt of the same on the ground that the proper procedure was to file a request for transfer of voter's registration records with the election officer of Burauen. Petitioners noted that they did file an Application for Transfer of Registration Records in Burauen, and that the same was approved. Finally, they claimed that the filing of the case was politically motivated as petitioner Carlos Romualdez was a candidate for Congress in the second district of Leyte in the 2001 elections.

On 28 November 2003, the designated Investigating Officer assigned to hear the case, Atty. Maria Norina Tangaro-Casingal, issued a resolution recommending the prosecution of petitioners for the commission of an election offense, *i.e.*, violation of Section 10(g) and (j) in relation to Section 45(j) of Rep. Act No. 8189. This recommendation was adopted by the COMELEC *en banc* in a Resolution[8] dated 3 February 2004.

Section 10 of Rep. Act No. 8189 states in part:

Sec. 10. *Registration of Voters.*—A qualified voter shall be registered in the permanent list of voters in a precinct of the city or municipality wherein he resides to be able to vote in any election. To register as a voter, he shall personally accomplish an application

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[7] "Indeed, we [the petitioners], left that portion on 'period of residence' blank because we were not sure what period of residence was being required. Was it our period of residence in Burauen, Leyte, as of the date we applied for registration as voters? Or, was it the period from 1989, when we first intended to establish our residence and domicile in Burauen, Leyte until the elections on May 14, 2001? Or, was it the period from May 2000 when we applied for registration, until May 14, 2001, the date of elections? The requirement was simply not clear." Joint Counter-Affidavit with Motion to Dismiss dated 2 April 2001, *rollo*, pp. 32-33.

[8] Resolution signed by COMELEC Chairman Benjamin S. Abalos, Sr., Rufino S.B. Javier, Mehol K. Sadain, Resurreccion Z. Borra, Florentino A. Tuason, Jr., Virgilio O. Garcillano, and Manuel A. Barcelona Jr.

form for registration as prescribed by the Commission in three (3) copies before the Election Officer on any date during office hours after having acquired the qualifications of a voter.

The application shall contain the following data:

(a) Name, surname, middle name, and/or maternal surname;

(b) Sex;

(c) Date, and place of birth;

(d) Citizenship;

(e) Civil status, if married, name of spouse;

(f) Profession, occupation or work;

(g) Periods of residence in the Philippines and in the place of registration;

(h) Exact address with the name of the street and house number for location in the precinct maps maintained by the local office of the Commission, or in case there is none, a brief description of his residence, *sitio*, and *barangay*;

(i) A statement that the applicant possesses all the qualifications of a voter;

(j) A statement that the applicant is not a registered voter of any precinct; and

(k) Such information or data as may be required by the Commission. xxx

The COMELEC observed that a violation of Section 10 of Rep. Act No. 8189 is an election offense, pursuant to Section 45(j) of the same law, which reads:

Sec. 45. *Election Offenses.* - The following shall be considered election offenses under this Act:

x x x x x x x x x

(j) Violation of the provisions of this Act.

The COMELEC found that petitioners violated Section 10 of Rep. Act No. 8189 in two ways. First, petitioners had stated under oath that they were not registered voters in any other precinct, when in fact, the records showed that they still were registered voters of Precinct No. 4419-A in Barangay Bagong Lipunan ng Crame, District IV, Quezon City, at the time they executed their application. The COMELEC pointed out that Section 12 of the same law provided for the procedure to be observed in cases of transfer of residence to another city/ municipality, which involved an application for transfer of registration with the Election Officer of the new place of residence. Even though petitioners subsequently filed an application for transfer pursuant to Section 12, manifesting therein that they had erroneously filed an application as a new voter by reason of honest mistake, the COMELEC pointed out that a statutory offense such as the violation of election law is "*mala prohibita*" and that good faith, ignorance or lack of malice was "beside the point" in such cases.

Second, the COMELEC also stated that petitioners' failure to fill up the blank portion of their application on "period of residence" likewise constituted a violation of Section 10(g), which specifies that the applicant state the periods of residence in the Philippines and in the places of registration.

A motion for reconsideration filed by petitioners was denied by the COMELEC through a Resolution dated 27 January 2005.[9] As a result, the present petition was filed. While the petition was pending with this Court, two separate Informations dated 12 January 2006 were filed against each of the petitioners by the COMELEC with the Regional Trial Court of Burauen, and corresponding Orders of Arrest were issued by the trial court judge.

Petitioners allege before us that the COMELEC Resolution violates their constitutional right to due process, as well as their constitutional rights under Section 14(1) and (2), Article III of

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[9] Signed by the same COMELEC Commissioners who signed the 3 February 2004 Resolution, with the exception of Chairman Abalos and Commissioner Javier, who this time took no part in the case.

the Constitution. In that regard, they point out that while the complaint alleged violations of Sections 261(y)(2) and (5) of the Omnibus Election Code and Section 12 of Rep. Act 8189, they were charged instead with violation of different provisions of law altogether. Petitioners likewise argue that Section 45(j) of Rep. Act 8189 is "vague", as "it does not specifically refer to a definite provision of law the violation of which would constitute an election offense." The provision is thus "not the 'fair notice' required by the Constitution for provisions of this Act."

Section 45(j) is vague. It does not provide "fair notice" to the citizenry and the standards for enforcement and adjudication. In precise legal terms, I submit that Section 45(j) violates the due process clause of the Constitution, and should accordingly be nullified.

II.

No person shall be deprived of life, liberty or property without due process of law. The due process clause makes legally operative our democratic rights, as it establishes freedom and free will as the normative human conditions which the State is bound to respect. Any legislated restrictions imposed by the State on life, liberty or property must be in accordance with due process of law. The scope of "due process," as we currently understand it, is admittedly ambitious, but in its elemental form, it encompasses aboriginal values ascribed to justice such as equity, prudence, humaneness and fairness.

Section 45(j) is vague. It does not provides "fair notice" to the citizentry, as well as the standards for enforcement and adjudication. Thus, the section violates the due process clause and thus deserves to be struck down.

The potency of the due process clause has depended on judicial refinement, to allow for the crystallization of its abstract ideals into a set of standards, from which a deliberate determination can be had whether the provision bears operative effect following a given set of facts. As a result, various subsets to due process have emerged, including the distinction between procedural due process and substantive due process. Stated very generally,

substantive due process guarantees against the arbitrary exercise of state power, while procedural due process is a guarantee of procedural fairness.[10] Substantive and procedural due process are equally sacrosanct in the constitutional order, and a law that is infirm in either regard is wholly infirm.

Among the components of due process, particularly concerning penal statutes, is the fair notice requirement. The Court, through Justice Sarmiento, acknowledged in *People v. Nazario*[11] that a statute violates due process, and thus repugnant to the Constitution, if it fails "to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid."[12] Such flaw is one characteristic of a vague statute, the other being that "it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle."[13] Both attributes earmark a statute as "vague," the generally accepted definition of a vague statute being one that lacks comprehensible standards that people "of common intelligence must necessarily guess at its meaning and differ as to its application."[14]

Even though the "fair notice" rule is integral to due process itself, it finds realization in still another provision of our Bill of Rights. Section 14(2), Article III[15] **assures that an accused is "to be informed of the nature and cause of the accusation**

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[10] See E.CHEMERINSKY, *CONSTITUTIONAL LAW: PRINCIPLES AND POWERS* (2002 ed.) "Procedural due process, as the phrase implies, refers to the procedures that the government must follow before it deprives a person of life, liberty or property. Classic procedural due process issues concern what kind of notice and what form of hearing the government must provide when it takes a particular action. xxx Substantive due process, as that phrase connotes, asks whether the government has an adequate reason for taking away a person's life, liberty or property." *Id*. at 523-524.

[11] G.R. No. L-44143, 31 August 1988, 165 SCRA 186.

[12] *Id*. at 195.

[13] *Id*.

[14] *Id*.

[15] Parenthetically, we note that Section 14(1), Article III likewise states that "no person shall be held to answer for a criminal offense without due process of law," a seeming redundancy considering Section 1, Article III.

against him." Both Justice Cruz and Fr. Bernas acknowledge that this constitutional right extends not only to the criminal information against the accused, but also to the language of the statute under which prosecution is pursued.[16] Yet our own jurisprudence has yet to expressly link the fair notice requirement with Section 14(2), Article III,[17] though this need not be a contestable point since the due process clause under Section 1, Article III already embodies the fair notice requirement.

As earlier stated, a penal statute that violates the fair notice requirement is marked by vagueness because it leaves its subjects to necessarily guess at its meaning and differ as to its application. What has emerged as the most contentious issue in the deliberations over this petition is whether such vagueness may lead to the nullification of a penal law. Our 2004 ruling in *Romualdez v. Sandiganbayan*[18] states: **"It is best to stress at the outset that the overbreadth and the vagueness doctrines have special application only to free-speech cases. They are not appropriate for testing the validity of penal statutes."**[19] The time has come to reconsider that statement. Rooted in unyielding formalism and deprived of guidance from basic

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However, Fr. Bernas explains the reason for the provision in this wise: "It was pointed out that the subject was already adequately covered by Section 1. The retention of the provision, however, was preferred for reasons extraneous to the substance of the provision. Commissioner Bernas noted: "I do not think it is timely to delete this now because we have just experienced a period when there was very little respect for due process in criminal proceedings. For us now to delete this might give the message to the people that we are reducing their rights.'" J. BERNAS, I *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* (2003 *ed*.), at 480.

[16] See BERNAS *supra* note 15, at 506 (2003 *ed*); and I. CRUZ, *CONSTITUTIONAL LAW*, p. 334 (2007 *ed*).

[17] Indeed, in his 1987 commentaries on the Constitution, Fr. Bernas observed, with respect to Section 14, Article III, that "[t]he pre-occupation of the Court has been exclusively with the procedural aspect of the right. Hence, there has been no attempt, unlike the practice in American courts, to subsume the 'void for vagueness' characterization of statutes under this constitutional guarantee." BERNAS, *supra* note 15 at 387.

[18] G.R. No. 152259, 29 July 2004, 435 SCRA 371.

[19] *Id*. at 381-382.

constitutional tenets, that *dicta* disenchants the rights of free people, diminishing as it does, the basic right to due process.

III.

A deeper analysis of the vagueness doctrine is in order.

Employing the terminology preferred by Collings, the vagueness doctrine is a specie of "unconstitutional uncertainty," which may involve "procedural due process uncertainty cases" and "substantive due process uncertainty cases."[20] "Procedural due process uncertainty" involves cases where the statutory language was so obscure that it failed to give adequate warning to those subject to its prohibitions as well as to provide proper standards for adjudication.[21] Such a definition encompasses the vagueness doctrine.[22] This perspective rightly integrates the vagueness doctrine with the due process clause, a necessary interrelation since there is no constitutional provision that explicitly bars statutes that are "void-for-vagueness."

Void-for-vagueness derives from the basic tenet of criminal law that conduct may not be treated as criminal unless it has been so defined by an authority having the institutional competence to do so before it has taken place. It requires that a legislative crime definition be meaningfully precise.[23]

The inquiry into whether a criminal statute is "meaningfully precise" requires the affirmative satisfaction of two criteria. First, does the statute fairly give notice to those it seeks to bind of its strictures? Second, is the statute precise enough

[20] R. A. COLLINGS, JR., *UNCONSTITUTIONAL UNCERTAINTY – AN APPRAISAL*. 40 Cornell L. Q. 195, 196 (1954-1955).

[21] *Id*. at 196.

[22] On the other hand, "substantive due process uncertainty cases" pertain to cases where "statutory language [was] so broad and sweeping that it prohibited conduct protected by the Constitution, usually by the principles of the First Amendment," a definition which encompasses the "overbreadth" doctrine. *Id*. at 197.

[23] JEFFRIES, JR., JOHN CALVIN, *LEGALITY, VAGUENESS AND THE CONSTRUCTION OF PENAL STATUTES*, 71 Va. L.Rev. 189, 196 (1985).

that it does not invite arbitrary and discriminatory enforcement by law enforcement authorities? Unless both criteria are satisfied, the statute is void for vagueness.

There are three concerns animating the vagueness doctrine. First, courts are rightly concerned that citizens be fairly warned of what behavior is being outlawed; second, courts are concerned because vague laws provide opportunities for arbitrary enforcement and put the enforcement decisions in the hands of police officers and prosecutors instead of legislatures; finally, where vague statutes regulate behavior that is even close to constitutionally protected, courts fear a chilling effect will impinge on constitutional rights.[24] These three interests have been deemed by the U.S. Supreme Court as important enough to justify total invalidation of a statute,[25] such invalidation warranted unless there is some intervening act that has eliminated the threat to those interests.[26]

In its essence, the vagueness doctrine is a critical implement to the fundamental role of the courts to rule justly and fairly.[27] Uncertainty in statutes enables persons to be penalized for acts which are not precisely defined in law as criminal, or for acts which are constitutionally protected but cast within an overbroad definition of a crime.

Our special focus now lies with the "void-for-vagueness" or "procedural due process uncertainty" rule. Two coordinate functions

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[24] S. BUCK & M. RIENZI, *FEDERAL COURTS, OVERBREADTH, AND VAGUENESS: GUIDING PRINCIPLES FOR CONSTITUTIONAL CHALLENGES TO UNINTERPRETED STATE STATUTES*, UTAH LAW REVIEW (2002), p. 466; citing *Grayned v. City of Rockford,* 408 U.S. 104, 108-109 (1972).

[25] *Id*.

[26] *Id*. at 467.

[27] "In part, the vagueness doctrine is about fairness; it is unjust to punish a person without providing clear notice as to what conduct was prohibited. Vague laws also risk selective prosecution; under vague statutes and ordinances the government can choose to prosecute based on their views or politics." Chemerinsky, *supra* note 10 at 911.

are served by the doctrine: guidance to the individual in planning his future conduct, and guidance to those adjudicating his rights and duties.[28] It is clear that some substantial degree of definiteness should be required of penal statutes, for if a person is to be charged with knowledge of all his rights and duties under a statute regardless of whether he has read or understood it, fundamental fairness requires that he be given at least the opportunity to discover its existence, its applicability, and its meaning. While the due process requirements of publication are designed to fill the first of those needs, the due process requirements of definiteness are designed to fill the latter two.[29]

The requirement of certainty arose from a fundamental common-law concept, a matter of fairness, and an element of due process of law.[30] No one will deny that a criminal statute should be definite enough to give notice of required conduct to those who would avoid its penalties, and to guide the judge in its application and the attorney defending those charged with its violation.[31] The rules must be definite enough to enable the judge to make rulings of law which are so closely referable to the statute as to assure consistency of application.[32] In addition, the statute must serve the individual as a guide to his future conduct, and it is said to be too indefinite if "men of common intelligence must necessarily guess at its meaning and differ as to its application."[33] If the statute does not provide adequate standards for adjudication, by which guilt or innocence may be determined, it will be struck down.[34]

The danger of a statute that suffers from the vagueness defect cannot be underestimated. Taken to the extreme, the absence

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[28] COLLINGS, JR., *supra* note 20 at 196.

[29] Note, DUE PROCESS REQUIREMENTS OF DEFINITENESS IN STATUTES, 62 Harv. L. Rev. 77, 79 (1948).

[30] 21 AM JUR 2d, at 129.

[31] COLLINGS, *supra* note 20 at 196.

[32] See Note, *supra* note 29 at 77.

[33] See *id*. at 78, 79.

[34] 21 AM JUR 2d, at 130.

of any clear and definite standards for conviction would leave the matter of freedom of the accused solely upon the discretion of the judge, to whom the language of the statute would offer no guide to adjudication. At worse, it could represent "the coercive force of society run loose at the whim of the [prosecutor] without adequate restraint at the level of the trial court (for want of standards by which to restrain), enforced against indigent and unrepresented defendants."[35] Indeed, the chances for acquittal as against a vague statute are significantly bettered depending on the skill of the defense counsel, and the poorer an accused is, the slimmer the chances that a skilled counsel would be within means. Void-for-vagueness statutes strike special impunity at the impoverished. They smack of unmitigated heedlessness of the lot of the likely victims of their built-in uncertainty, especially the underprivileged.

Romualdez,[36] cited by the *ponencia*, is unfortunately insensate to these constitutional concerns. That decision referenced *Estrada v. Desierto*[37] as basis for its response to the vagueness challenge. The *ponencia* in *Estrada* did adopt and incorporate the views stated by Justice Mendoza in his Separate Opinion, particularly, that "[t]he overbreadth and vagueness doctrines then have special application only to free speech cases…[t]hey are inapt for testing the validity of penal statutes... the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing 'on their faces' statutes in free speech cases or, as they are called in American law, First Amendment cases. [t]hey cannot be made to do service when what is involved is a criminal statute."[38]

However, in his Separate Opinion to the Resolution (on the Motion for Reconsideration) dated 29 January 2002, Justice Mendoza acknowledged:

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[35] See Footnote No. 120, Note, *The Void-for-Vagueness Doctrine in the Supreme Court* , 109 U. Pa. L. Rev. 67 (1960).

[36] *Supra* note 18.

[37] 421 Phil. 290 (2001).

[38] *Id*. at 354.

[L]et it be clearly stated that, when we said that 'the doctrines of strict scrutiny, overbreadth and vagueness are analytical tools for testing 'on their faces' statutes in free speech cases or, as they are called in American law, First Amendment cases [and therefore] cannot be made to do service when what is involved is a criminal statute,' **we did not mean to suggest that the doctrines do not apply to criminal statutes at all. They do although they do not justify a facial challenge, but only an as-applied challenge, to those statutes… Neither did we mean to suggest that the doctrines justify facial challenges only in free speech or First Amendment cases. To be sure, they also justify facial challenges in cases under the Due Process and Equal Protection Clauses of the Constitution with respect to so-called 'fundamental rights'...**"[39]

In light of Justice Mendoza's subsequent clarification, it is a disputable matter whether *Estrada* established a doctrine that "void-for-vagueness or overbreadth challenges do not apply to penal statutes," the reference thereto in *Romualdez* notwithstanding. However, there is no doubt that *Romualdez* itself, which did not admit to a similar qualification or clarification, set forth a "doctrine" that "the overbreadth and the vagueness doctrines have special application only to free-speech cases [and] are not appropriate for testing the validity of penal statutes." As a result, the Office of the Solicitor General invokes *Romualdez* in its present Memorandum before the Court, and the petitioners in at least one other case now pending before this Court urges the reexamination of that doctrine.

The *ponente* has also cited in tandem with the *Romualdez* precedent this Separate Opinion of Justice Mendoza for the purpose of denominating the key issue as whether the vagueness doctrine can be utilized as an analytical tool to challenge the statute "on-its-face" or "as applied." Unfortunately, we can only engage that question if we acknowledge in the first place that the doctrine of vagueness can be applied to criminal statutes,

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[39] See Resolution, G.R. No. 148560, 29 January 2002, which may be found / at / http://www.supremecourt.gov.ph/resolutions/toc2002 ..%5Cenbanc%5C2002%5CEjan%5C148560.htm (Last visited, 15 August 2007). Emphasis supplied.

because if not (as pronounced in *Romualdez*), there is no point in distinguishing between on-its-face and as-applied challenges. Moreover, this subsequent Separate Opinion, especially as it may distinguish from Justice Mendoza's earlier and more sweeping Separate Opinion, cannot be asserted as reflective of a doctrine announced by this Court. What works towards such effect is *Romualdez*, which again does not offer such clarificatory distinction, and which certainly does not concede, as Justice Mendoza eventually did, that "we did not mean to suggest that the doctrines [of void-for-vagueness] do not apply to criminal statutes at all" and that "neither did we mean that that doctrines do not justify facial challenges "in cases under the Due Process and Equal Protection Clauses of the Constitution with respect to the so-called 'fundamental rights.'"

What we have thus seen is the queer instance of *obiter* in a latter case, *Romualdez v. Sandiganbayan*, making a doctrine of an *obiter* in an earlier case, *Estrada v. Desierto.*

Moreover, the controversial statement in *Romualdez*, as adopted from *Estrada* with respect to the vagueness challenge being applicable only to free speech cases, is simply not reflective of the American jurisprudential rule which birthed the vagueness doctrine in the first place.

The leading American case laying down the rules for the vagueness challenge is *Connally v. General Construction Co.,*[40] decided by the U.S. Supreme Court in 1926. It concerned a statute creating an eight (8)-hour workday in Oklahoma, through a provision which read:

> 'That not less than the current rate of per diem wages in the locality where the work is performed shall be paid to laborers, workmen, mechanics, prison guards, janitors in public institutions, or other persons so employed by or on behalf of the state, ... and laborers, workmen, mechanics, or other persons employed by contractors or subcontractors in the execution of any contract or contracts with the state, ... shall be deemed to be employed by or on behalf of the state. ...' (388)[41]

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[40] 269 U.S. 385, 393 (1926).

[41] *Id*. at 388.

The statute further penalized violations thereof with a fine. A constitutional challenge to this statute was raised that the statutory provisions, "if enforced, will deprive plaintiff, its officers, agents and representatives, of their liberty and property without due process of law, in violation of the Fourteenth Amendment to the Federal Constitution; that they contain no ascertainable standard of guilt; that it cannot be determined with any degree of certainty what sum constitutes a current wage in any locality; and that the term 'locality' itself is fatally vague and uncertain." The U.S. Supreme Court agreed, holding:

That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well- recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. xxx[42]

The dividing line between what is lawful and unlawful cannot be left to conjecture. The citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions. A criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue. Penal statutes prohibiting the doing of certain things, and providing a punishment for their violation, should not admit of such a double meaning that the citizen may act upon the one conception of its requirements and the courts upon another.'

We are of opinion that this provision presents a double uncertainty, fatal to its validity as a criminal statute. In the first place, the words 'current rate of wages' do not denote a specific or definite sum, but minimum, maximum, and intermediate amounts, indeterminately, varying from time to time and dependent upon the class and kind of work done, the efficiency of the workmen, *etc*., as the bill alleges is the case in respect of the territory surrounding the bridges under

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[42] *Id*. at 391.

construction. The statutory phrase reasonably cannot be confined to any of these amounts, since it imports each and all of them. The current rate of wages' is not simple, but progressive-from so much (the minimum) to so much (the maximum), including all between; and to direct the payment of an amount which shall not be less than one of several different amounts, without saying which, is to leave the question of what is meant incapable of any definite answer. See People ex rel. *Rodgers v. Coler*, 166 N. Y. 1, 24-25, 59 N. E. 716, 52 L. R. A. 814, 82 Am. St. Rep. 605.

Nor can the question be solved by resort to the established canons of construction that enable a court to look through awkward or clumsy expression, or language wanting in precision, to the intent of the Legislature. For the vice of the statute here lies in the impossibility of ascertaining, by any reasonable test, that the Legislature meant one thing rather than another, and in the futility of an attempt to apply a requirement, which assumes the existence of a rate of wages single in amount, to a rate in fact composed of a multitude of gradations. To construe the phrase 'current rate of wages' as meaning either the lowest rate or the highest rate, or any intermediate rate, or, if it were possible to determine the various factors to be considered, an average of all rates, would be as likely to defeat the purpose of the Legislature as to promote it. See *State v. Partlow*, 91 N. C. 550, 553, 49 Am. Rep. 652; *Commonwealth v. Bank of Pennsylvania*, 3 Watts & S. (Pa.) 173, 177.

In the second place, additional obscurity is imparted to the statute by the use of the qualifying word 'locality.' Who can say, with any degree of accuracy, what areas constitute the locality where a given piece of work is being done? Two men, moving in any direction from the place of operations, would not be at all likely to agree upon the point where they had passed the boundary which separated the locality of that work from the next locality. It is said that this question is settled for us by the decision of the state Supreme Court on rehearing in *State v. Tibbetts*, 205 P. 776, 779. But all the court did there was to define the word 'locality' as meaning 'place,' 'near the place,' 'vicinity,' or 'neighborhood.' Accepting this as correct, as of course we do, the result is not to remove the obscurity, but rather to offer a choice of uncertainties. The word 'neighborhood' is quite as susceptible of variation as the word 'locality.' Both terms are elastic and, dependent upon circumstances, may be equally satisfied by areas measured by rods or by miles. See *Schmidt v. Kansas City Distilling Co.*, 90 Mo. 284, 296, 1 S. W. 865, 2 S. W. 417, 59 Am. Rep. 16;

Woods v. Cochrane and Smith, 38 Iowa, 484, 485; State *ex* rel. *Christie v. Meek*, 26 Wash. 405, 407-408, 67 P. 76; *Millville Imp. Co. v. Pitman, etc*., Gas Co., 75 N. J. Law, 410, 412, 67 A. 1005; *Thomas v. Marshfield*, 10 Pick. (Mass.) 364, 367. The case last cited held that a grant of common to the inhabitants of a certain neighborhood was void because the term 'neighborhood' was not sufficiently certain to identify the grantees. In other connections or under other conditions the term 'locality' might be definite enough, but not so in a statute such as that under review imposing criminal penalties. Certainly, the expression 'near the place' leaves much to be desired in the way of a delimitation of boundaries; for it at once provokes the inquiry, 'How near?' And this element of uncertainty cannot here be put aside as of no consequence, for, as the rate of wages may vary-as in the present case it is alleged it does vary-among different employers and according to the relative efficiency of the workmen, so it may vary in different sections. The result is that the application of the law depends, not upon a word of fixed meaning in itself, or one made definite by statutory or judicial definition, or by the context or other legitimate aid to its construction, but upon the probably varying impressions of juries as to whether given areas are or are not to be included within particular localities. The constitutional guaranty of due process cannot be allowed to rest upon a support so equivocal.[43]

The statute in question did not involve a proscription on free speech, but a standard of wages with a corresponding financial penalty for violation thereof. Without any consideration to the notion that the "void-for-vagueness" challenge should be limited to free speech cases, the U.S. High Court accepted the notion that a vague statute could be invalidated and then proceeded to analyze whether the statute was indeed vague. **The fact that the statute was invalidated makes it clear then that the "void-for-vagueness" challenge could be employed against a penal statute.**

Within the next 73 years, the U.S. Supreme Court repeatedly invalidated penal statutes on the ground of "void-for-vagueness,"[44] in the cases of *Cline v. Frink Dairy Co.*,[45]

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[43] *Id.* at 393-395.

[44] A fairly comprehensive overview of these cases may be seen at *Romualdez v. Sandiganbayan*, *supra* note 18, at 398-401; *J.* Tinga, Separate Opinion.

[45] 274 U.S. 445 (1927)

Lanzetta v. State of New Jersey, [46] *Papachristou v. City of Jacksonville*,[47] *Grayned v. City of Rockford,*[48] *Smith v. Goguen*[49] and *Kolender v. Lawson.*[50] **More recently, in 1999, the U.S. Supreme Court reiterated the rule in *City of Chicago v. Morales*** [51] as it invalidated an anti-loitering ordinance. The decision explained the ordinance as follows:

The ordinance creates a criminal offense punishable by a fine of up to $500, imprisonment for not more than six months, and a requirement to perform up to 120 hours of community service. Commission of the offense involves four predicates. First, the police officer must reasonably believe that at least one of the two or more persons present in a "public place" is a "criminal street gang membe[r]." Second, the persons must be "loitering," which the ordinance defines as "remain[ing] in any one place with no apparent purpose." Third, the officer must then order "all" of the persons to disperse and remove themselves "from the area." Fourth, a person must disobey the officer's order. If any person, whether a gang member or not, disobeys the officer's order, that person is guilty of violating the ordinance.[52]

In explaining why the ordinance suffered from the "void-for-vagueness" defect, the U.S. Supreme Court, through Senior Associate Justice John Paul Stevens, first attacked the statutory definition of "loitering":

xxx The Illinois Supreme Court recognized that the term "loiter" may have a common and accepted meaning, 177 Ill. 2d, at 451, 687 N. E. 2d, at 61, but the definition of that term in this ordinance—"to remain in any one place with no apparent purpose"—does not. It is difficult to imagine how any citizen of the city of Chicago standing in a public place with a group of people would know if he or she had

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[46] 306 U.S. 451 (1939).

[47] 405 U.S. 156 (1972).

[48] 408 U.S. 104 (1972).

[49] 415 U.S. 566 (1974).

[50] 461 U.S. 352 (1983).

[51] 527 U.S. 41 (1999).

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

an "apparent purpose." If she were talking to another person, would she have an apparent purpose? If she were frequently checking her watch and looking expectantly down the street, would she have an apparent purpose?

Since the city cannot conceivably have meant to criminalize each instance a citizen stands in public with a gang member, the vagueness that dooms this ordinance is not the product of uncertainty about the normal meaning of "loitering," but rather about what loitering is covered by the ordinance and what is not. The Illinois Supreme Court emphasized the law's failure to distinguish between innocent conduct and conduct threatening harm. Its decision followed the precedent set by a number of state courts that have upheld ordinances that criminalize loitering combined with some other overt act or evidence of criminal intent. However, state courts have uniformly invalidated laws that do not join the term "loitering" with a second specific element of the crime.[53]

Next, the U.S. Supreme Court explained the principle of "fair notice" that necessitated the "void-for-vagueness" rule:

First, the purpose of the fair notice requirement is to enable the ordinary citizen to conform his or her conduct to the law. "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes." *Lanzetta v. New Jersey,* 306 U.S. 451, 453 (1939). Although it is true that a loiterer is not subject to criminal sanctions unless he or she disobeys a dispersal order, the loitering is the conduct that the ordinance is designed to prohibit. If the loitering is in fact harmless and innocent, the dispersal order itself is an unjustified impairment of liberty. If the police are able to decide arbitrarily which members of the public they will order to disperse, then the Chicago ordinance becomes indistinguishable from the law we held invalid in *Shuttlesworth v. Birmingham,* an officer may issue an order only after prohibited conduct has already occurred, it cannot provide the kind of advance notice that will protect the putative loiterer from being ordered to disperse. Such an order cannot retroactively give adequate warning of the boundary between the permissible and the impermissible applications of the law.

xxx Lack of clarity in the description of the loiterer's duty to obey a dispersal order might not render the ordinance unconstitutionally

[53] *Id.* at 56-58.

vague if the definition of the forbidden conduct were clear, but it does buttress our conclusion that the entire ordinance fails to give the ordinary citizen adequate notice of what is forbidden and what is permitted. The Constitution does not permit a legislature to "set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large." *United States v. Reese*, 92 U. S. 214, 221 (1876). This ordinance is therefore vague "not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all." *Coates v. Cincinnati*, 402 U. S. 611, 614 (1971).[54]

In her concurring opinion, Justice Sandra Day O'Connor offered this succinct restatement of the void-for-vagueness rule:

A penal law is void-for-vagueness if it fails to "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited" or fails to establish guidelines to prevent "arbitrary and discriminatory enforcement" of the law. *Kolender v . Lawson* , 461 U. S. 352, 357 (1983). Of these, "the more important aspect of vagueness doctrine 'is ... the requirement that a legislature establish minimal guidelines to govern law enforcement.' " Id., at 358 (quoting *Smith v. Goguen*, 415 U. S. 566, 574-575 (1974)). I agree that some degree of police discretion is necessary to allow the police "to perform their peacekeeping responsibilities satisfactorily." See post, at 12 (dissenting opinion). A criminal law, however, must not permit policemen, prosecutors, and juries to conduct "a standardless sweep ... to pursue their personal predilections." *Kolender v. Lawson*, *supra*, at 358 (quoting *Smith v. Goguen*, *supra*, at 575).[55]

Consider the lucid explanation of Gunther and Sullivan, which integrates the principles established by American jurisprudence on that point:

The concept of vagueness under the [freedom of expression clause in the] First Amendment [of the U.S. Constitution] draws on the procedural due process requirement of adequate notice, under which a law must

[54] *Id*. at 58-59.

[55] *Id*. at 64-65.

convey 'sufficient definite warning as to the proscribed conduct when measured by common understanding and practices." *Jordan v. DeGeorge*, 341 U.S. 223 (1951) A law will be void on its face for vagueness if persons "of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. General Construction Co*., 269 U.S. 385 (1926). One of the purposes of this requirement is to ensure fair notice to the defendant. But the ban on vagueness protect not only liberty, but also equality and the separation of executive from legislative power through the prevention of selective enforcement. See *Smith v. Goguen* (415 U.S. 566): "We have recognized that the more important aspect of the vagueness doctrine is not actual notice, but the other principal element of the doctrine — the requirement that legislatures set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory enforcement." xxx[56]

Prior to *Romualdez*, Philippine jurisprudence had recognized the susceptibility of penal statutes to the vagueness challenge, even if they did not pertain to the free exercise of speech. *Nazario*, earlier cited, was one such case. Another instance, was *People v. Dela Piedra*,[57] decided in 2001, where the Court announced:

Due process requires that the terms of a penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its. penalties. A criminal statute that "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute," or is so indefinite that "it encourages arbitrary and erratic arrests and convictions," is void for vagueness. The constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him on trial for an offense, the nature of which he is given no fair warning.[58]

Dela Piedra is inconsistent with the subsequent *Romualdez* doctrine, yet it embodies the correct basic proposition which is sensitive to the fundamentals of the due process clause. There was, and still is, no good or logical reason for Philippine

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[56] K. SULLIVAN AND G. GUNTHER, *CONSTITUTIONAL LAW* (14th ed.) at 1289.

[57] 403 Phil. 31 (2001).

[58] *Id*. at 47-48.

jurisprudence to adopt an opposing rule from that in American jurisprudence in relation to the void-for-vagueness doctrine. Is the doctrine that "void-for-vagueness" cannot invalidate penal statutes somehow more appropriate to the Filipino mindset than to the American way? I really could not see any reason to foster the contrary rule unless it is the intent to effectively moot in the Philippines the right of a Filipino accused to be informed of the nature of the accusation against him/her through a penal law that defines the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited or establishes guidelines to prevent "arbitrary and discriminatory enforcement" of the law.

IV.

It is clear that a criminal statute may be nullified on the ground of void-for-vagueness. What are the requisites that must obtain before a suit predicated on such ground may be brought before the courts? Assuming that the suit successfully demonstrates the vagueness of the statute or provision of law, what remedy can the courts apply?

There are orthodox precepts in Philippine law that may find application in the resolution of void-for-vagueness cases. Long established in our jurisprudence are the four requisites for judicial inquiry: an actual case or controversy; the question of constitutionality must be raised by the proper party; the constitutional question must be raised at the earliest possible opportunity; and the constitutional question must be necessary to the determination of the case itself. [59] These requisites would accommodate instances such as those in the present case, where the constitutional challenge to the penal law is raised by the very persons who are charged under the questioned statute or provision.

On the premise that the statute in question contravenes the due process clause because it is vague, our jurisprudence likewise supplies the options for remedial measures which the Court can undertake. In essence, under Philippine jurisprudence,

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[59] See CRUZ, *supra* note 16, at 23; citing *Dumlao v. COMELEC*, 95 SCRA 392.

the courts possess a wide berth of discretion when confronted with a penal statute that is impermissibly vague. The general rule is that an unconstitutional act is not law; it confers no rights, imposes no duties, affords no protection, creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.[60] At the same time, there are doctrines in statutory construction that authorize the courts to allow the survival of the challenged statute or provision of law. It is a well-settled rule that a statute should be construed whenever possible in a manner that will avoid conflict with the Constitution.[61] Where a statute is reasonably susceptible of two constructions, one constitutional and the other unconstitutional, that construction in favor of its constitutionality shall be adopted while the construction that renders it invalid rejected.

Yet in the United States, even as the U.S. Supreme Court has long recognized vague penal laws as contrary to the due process clause,[62] it has also recognized special considerations when the assailed statute also infringes on the First Amendment. The U.S. Supreme Court, in *Grayned v. City of Rockford*,[63] expresses thus:

> It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. **First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.** Vague laws may trap the innocent by not providing fair warning. **Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them**. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. **Third, but related, where a vague statute "abut[s] upon sensitive areas of basic First Amendment freedoms," it "operates to inhibit the exercise of [those] freedoms**." Uncertain meanings inevitably lead

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[60] *Manila Motor Co., Inc. v. Flores*, 99 Phil. 738, 739 (1956).

[61] See *e.g.*, *Teehankee v. Rovira*, 75 Phil. 634, 643 (1945).

[62] See *e.g.*, *Connally v. General Constructions*, *supra* note 40 at 391.

[63] 408 U.S. 104 (1972).

citizens to 'steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked."[64]

One year after *Grayned* was decided in 1972, a divided U.S. Supreme Court handed down its decision in *Broadrick v. Oklahoma*,[65] a ruling that would have significant impact in the analysis of First Amendment cases. Significantly, *Broadrick* was the main case cited by Justice Mendoza in his Separate Opinion in *Estrada v. Sandiganbayan* in support of his assertion that "[t]he overbreadth and vagueness doctrines then have special application only to free speech cases."[66]

To understand *Broadrick*, it should be noted that under U.S. jurisprudence, the general rule is that "an individual has no standing to litigate the rights of third persons."[67] Another traditional rule is the "as applied" mode of judicial review which "tests the constitutionality of legislation as it is applied to particular facts on a case-by-case basis."[68] Both these traditional rules found an exception in the overbreadth doctrine, which is animated by the principle that "a government purpose to control or prevent activities constitutionally subject to regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."[69] Particularly in regard to First Amendment cases, overbreadth carved exceptions to the traditional rules of constitutional litigation. "First, it results in the invalidation of a law 'on its face' rather than 'as applied' to a particular speaker."[70] "Second, overbreadth is an exception to the usual rules on standing xxx challengers are in effect permitted to raise the rights of third parties."[71]

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[64] *Id*. at 108-109. Emphasis supplied.

[65] 413 U.S. 601 (1973)

[66] *Supra* note 38, at 430-431.

[67] See *U.S. v. Raines*, 362 U.S. 17 (1960); *Barrows v. Jackson*, 346 U.S. 249 (1953).

[68] G. STONE, L. SEIDMAN, C. SUNSTEIN, AND M. TUSHNET. *CONSTITUTIONAL LAW* (4th ed., 2001), at 1095.

[69] *NAACP v. Alabama*, 357 U.S. 449 (1958)

[70] GUNTHER AND SULLIVAN, *supra* note 56, at 1288.

[71] *Id*. at 1289.

In *Broadrick*, the U.S. Supreme Court found the opportunity to limit the application of the overbreadth doctrine. But the constitutional challenge made therein was not limited to overbreadth for question of vagueness was also raised against a state law restricting the partisan political activities of Oklahoma state employees. In dealing with the vagueness aspect, the majority opinion concluded that the challenged provisions were not impermissibly vague, applying the standard test set forth in cases such as *Grayned*.

Whatever other problems there are with 818, it is all but frivolous to suggest that the section fails to give adequate warning of what activities it proscribes or fails to set out "explicit standards" for those who must apply it. *Grayned v. City of Rockford*, *supra*, at 108. In the plainest language, it prohibits any state classified employee from being "an officer or member" of a "partisan political club" or a candidate for "any paid public office." It forbids solicitation of contributions "for any political organization, candidacy or other political purpose" and taking part "in the management or affairs of any political party or in any political campaign." Words inevitably contain germs of uncertainty and, as with the Hatch Act, there may be disputes over the meaning of such terms in 818 as "partisan," or "take part in," or "affairs of" political parties. But what was said in Letter Carriers, ante, at 578-579, is applicable here: "there are limitations in the English language with respect to being both specific and manageably brief, and it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest."[72]

However, in ruling on the claim of overbreadth, *Broadrick* did not utilize any previously established test or standard, but instead pronounced a new standard of "substantial overbreadth," otherwise known as "strong medicine."[73] It is clear that the Court in *Broadrick* still recognized the distinction between vagueness and overbreadth, and resolved those two questions separately. Nonetheless, as is manifest in Justice Mendoza's Separate Opinion in *Estrada*, the impression is that the same

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[72] *Broadrick v. Oklahoma*, *supra* note 65, at 607-609.

[73] See STONE, SEIDMAN, SUNSTEIN, AND TUSHNET, *supra* note 68, at 1097.

doctrines apply to both vagueness and overbreadth, notwithstanding *Broadrick*. Why is that so?

As earlier explained, a vague penal statute is constitutionally offensive because it fails to give fair notice to those subjected to the regulation as to what conduct is precisely proscribed. On the other hand, a statute that suffers from overbreadth is one drawn so broadly, as it penalizes protected speech or behavior as well as such acts within the right of the State to prohibit. Thus, a statute that prohibits "the commission of illegal acts within state universities" is arguably vague, as it does not sufficiently define what exactly constitutes "illegal acts." On the other hand, a statute that proscribes "the commission of acts within state universities that help promote rebellion" is arguably overbroad. Such a statute may encompass not only those acts of rebellion within the ambit of the State to penalize, but also legitimate political expressions or criticisms of the State which are fundamentally guaranteed under the free expression clause.

Another material distinction. In the case of overbroad statutes, it is necessary to inquire into the potential applications of the legislation in order to determine whether it can be unconstitutionally applied.[74] In contrast, the constitutional flaws attached to a vague statute are evident on its face, as the textual language in itself is insufficient in defining the proscribed conduct.

Broadrick had alluded to the problems concerning legal standing with respect to overbreadth cases. Because the area involved was the First Amendment, litigants had traditionally been "permitted to challenge a statute not because their own right of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression."[75] Yet such expansive standing was problematic for the majority in *Broadrick*.

[74] "The first amendment overbreadth doctrine, on the other hand, tests the constitutionality of legislation in terms of its potential applications." G. STONE, L. SEIDMAN, C. SUNSTEIN, AND M. TUSHNET. *CONSTITUTIONAL LAW* (4th ed., 2001), at 1095.

[75] *Broadrick v. Oklahoma*, *supra* note 65 at 612.

The consequence of our departure from traditional rules of standing in the First Amendment area is that any enforcement of a statute thus placed at issue is totally forbidden until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression. Application of the overbreadth doctrine in this manner is, manifestly, strong medicine.[76]

Thus, as a means of regulating standing in overbreadth cases, the U.S. Supreme Court announced in *Broadrick*:

[F]acial overbreadth adjudication is an exception to our traditional rules of practice and that its function, a limited one at the outset, attenuates as the otherwise unprotected behavior that it forbids the State to sanction moves from "pure speech" toward conduct and that conduct - even if expressive - falls within the scope of otherwise valid criminal laws that reflect legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct. Although such laws, if too broadly worded, may deter protected speech to some unknown extent, there comes a point where that effect - at best a prediction - cannot, with confidence, justify invalidating a statute on its face and so prohibiting a State from enforcing the statute against conduct that is admittedly within its power to proscribe. xxx To put the matter another way, particularly where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep. It is our view that 818 is not substantially overbroad and that whatever overbreadth may exist should be cured through case-by-case analysis of the fact situations to which its sanctions, assertedly, may not be applied.

Broadrick jointly addressed the two concerns with respect to overbreadth cases – standing and the facial invalidation of statutes. It conceded that a successful overbreadth challenge necessitated the facial invalidation of the statute, a remedy characterized as "strong medicine." In order to limit the application of such "strong medicine," the U.S. Supreme Court declared that "the overbreadth of a statute must not only be real, but

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[76] *Id.* at 613.

substantial as well, judged in relation to the statute's plainly legitimate sweep."[77]

Do the same concerns on the overbreadth doctrine that informed *Broadrick* extend as well to vagueness? It must be recognized that the problem of overbreadth has no integral relation to procedural due process, which is the fundamental constitutional problem brought forth by vagueness. Moreover, the overbreadth doctrine developed amidst concerns over restrictions on First Amendment rights and can be said was formulated to bolster the guarantee of free expression. It is not as clear that the same degree of concern over the right of free expression was key to the development of the vagueness doctrine, which after all, primarily offended a different constitutional value.

Since First Amendment values were at stake, the U.S. Supreme Court, prior to *Broadrick*, had found it necessary to relax the rules on standing with respect to overbreadth cases, a development which the subsequent *Broadrick* Court found disconcerting enough as to reverse direction. Yet contrary to the insinuation in Justice Mendoza's *Estrada* opinion, *Broadrick* should not bar challenges to vague penal statutes brought forth by those sought to be penalized under the assailed law. The restrictions on standing brought forth in *Broadrick* have no material relation to the legitimate concerns of a defendant who is being prosecuted under a law that defies the fair notice requirement under the due process clause.

A brief note, at this juncture. Justice Carpio offers his own analysis of "facial challenge" and "as-applied" challenge. His submission discusses both concepts from the perspective of

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[77] *Id*. at 615. In a subsequent case, *City Council v. Taxpayers for Vincent,* 466 U.S. 789 (1984), the U.S. Supreme Court further clarified, "The concept of 'substantial overbreadth' is not readily reduced to an exact definition. It is clear, however, that the mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge. On the contrary, [there] must be a realistic danger that the statute itself will significantly compromise First Amendment protections of parties not before the Court for it to be facially challenged on overbreadth grounds." *Id*., at 801.

standing, contending that the present suit cannot be considered as a "facial challenge," or a challenge against the constitutionality of a statute that is filed where the petitioner claims no actual violation of his own rights under the assailed statute, but relies instead on the potential violation of his or other persons' rights. Instead, according to Justice Carpio, the present suit may be considered as an "as-applied" challenge, the traditional approach where the petitioner raises the violation of his constitutional rights irrespective of the constitutional grounds cited.

I have no dispute with the characterization of the present suit as an "as-applied" challenge, as well as the statement that third-party standing to assail the constitutionality of statutes is impermissible as a general rule. Said positions can be accommodated following our traditional rules of standing in constitutional cases, even if these rules hardly employ the terms "facial challenge" or "as-applied challenge." The difficulty with the submission's preferred terms is that in United States jurisprudence, a "facial challenge" pertains not only to third-party standing in constitutional cases, but also the "facial invalidation" of statutes. This matter is problematic if we are to consider the holding of the U.S. Supreme Court in *U.S. v. Salerno*,[78] penned by the conservative Chief Justice Rehnquist.

In 1987, a divided U.S. Supreme Court ruled that the **"facial challenge" is "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid."**[79] **This characterization differs greatly from Justice Carpio's analysis that "facial challenge" only pertains to standing.** *Salerno* has given rise to another implication to the "facial challenge" under American jurisprudence — that the nullification of a statute will be justified only if it is established that under no set of circumstances would the law remain valid. Interestingly, the Separate Opinion of Justice Mendoza in *Estrada* also favorably cites *Salerno* and the above-quoted declaration therein, a citation that adds to the confusion. Yet by simply distinguishing "facial

[78] 481 U.S. 739 (1987).

[79] *Id*. at 745.

challenge" (standing) from "facial invalidation" (adjudication on the merits), we can easily divorce this holding in *Salerno* from the aspect of standing, since there is no material relationship between the question of standing and the quoted-pronouncement in *Salerno*.

Evidently, if we are to accept the *Salerno* proposition, and declare that the "facial invalidation" is warranted only upon demonstration that under no set of circumstances will the challenged provision be constitutional, such a doctrine would stand as the Everest of judicial review. It would, among others, consequence in the affirmation of Section 45(j).

But should we accept the *Salerno* proposition? Tellingly, the declaration has not been met with unanimity in the American legal community. In a subsequent case, *Washington v. Glucksberg,*[80] Justice John Paul Stevens noted in his concurring opinion that:

> **Upholding the validity of the federal Bail Reform Act of 1984, the Court stated in *United States v. Salerno*, 481 U.S. 739 (1987), that a "facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *Id.*, at 745. I do not believe the Court has ever actually applied such a strict standard, even in Salerno itself, and the Court does not appear to apply Salerno here.** Nevertheless, the Court does conceive of respondents' claim as a facial challenge—addressing not the application of the statute to a particular set of plaintiffs before it, but the constitutionality of the statute's categorical prohibition against "aid[ing] another person to attempt suicide."[81]

Further, in *City of Chicago v. Morales,*[82] the U.S. Supreme Court refused to work within the parameters ostensibly set forth in *Salerno*. Held the U.S. Supreme Court through Justice Stevens: "There is no need, however, to decide whether the impact of

[80] 521 U.S. 702 (1997)

[81] *Id*., at 739-740, *J*. Stevens, concurring.

[82] *Supra* note 51.

the Chicago ordinance on constitutionally protected liberty alone would suffice to support a facial challenge under the overbreadth doctrine. For it is clear that the vagueness of this enactment makes a facial challenge appropriate. This is not an ordinance that "simply regulates business behavior and contains a scienter requirement." It is a criminal law that contains no *mens rea* requirement, and infringes on constitutionally protected rights. When vagueness permeates the text of such a law, it is subject to facial attack."[83]

Moreover, the *Salerno* proposition is simply alien to the Philippine experience. Our jurisprudence has traditionally deigned to nullify or facially invalidate statutes or provisions thereof without need of considering whether "no set of circumstances exists under which the [law or provision] would be valid." Among recent examples of laws or legal provisions nullified as unconstitutional by this Court are B.P. Blg. 885,[84] the Marcos-issued Executive Order No. 626-A,[85] Section 46 of Rep. Act No. 4670,[86] Rep. Act No. 7056,[87] provisions of the 2000 General Appropriations Act passed by Congress, [88] and most recently, Section 47 of P.D. 198.[89] Indeed, in a similar vein to the observations of Justice Stevens as to the American experience, the impossibly high standard set forth in *Salerno* has never been applied squarely in this jurisdiction.

If the auto-limiting philosophy set forth *Salerno* should have influence in this jurisdiction, it should only be to the effect that the remedy of constitutional nullification should be resorted to

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[83] *Id*. at 55.

[84] See *Tan v. COMELEC*, 226 Phil. 624 (1986).

[85] See *Ynot v. IAC*, G.R. No. 74457, 20 March 1987, 148 SCRA 659.

[86] See *People v. Dacuycoy*, G.R. No. L-45127, 5 May 1989, 173 SCRA 90.

[87] See *Osmeña v. COMELEC*, G.R. No. 100318, 30 July 1991, 199 SCRA 750.

[88] See *ACORD v. Zamora*, G.R. No. 144256, 8 June 2005, 459 SCRA 578.

[89] See *MCWD v. Adala*, G.R. No.168914, 4 July 2007, 526 SCRA 465.

by the courts if there is no other means by which the unconstitutional defect of the law or legal provision can be treated. Then again, such a principle is already laid down by our accepted rules of statutory construction, such as that "a statute should be construed whenever possible in a manner that will avoid conflict with the Constitution," or that "where a statute is reasonably susceptible of two constructions, one constitutional and the other unconstitutional, that construction in favor of its constitutionality shall be adopted, and the construction that will render it invalid rejected."

Our own jurisprudence must expressly reject *Salerno*, if only because that case has fostered the impression that a "facial challenge," or a "facial invalidation" necessitates a demonstration that the law involved is unconstitutional in whatever application. Even though such impression is not universally accepted, our acceptance of the viability of either the "facial challenge" or "facial invalidation" in this jurisdiction without accompanying comment on *Salerno* might imply that the extremely high bar for judicial review set therein prevails in the Philippines.

In order to avoid any further confusion, especially that which may be brought about by *Salerno*, I had proposed during deliberations the following definitions for usage in Philippine jurisprudence:

As to standing

The ability of a petitioner to bring forth a suit challenging the constitutionality of an enactment or provisions thereof, even if the petitioner has yet not been directly injured by the application of the law in question, is referred to as a **"facial challenge."**

The ability of a petitioner to judicially challenge a law or provision of law that has been specifically applied against the petitioner is referred to as an **"as-applied challenge."**

As to adjudication on the merits

The nullification on constitutional grounds by the courts of a provision of law, or even of the entire statute altogether, is referred to as **"facial invalidation."**

The invalidation of the application of a provision of law or a statute only insofar as it applies to the petitioner and others similarly situated, without need to nullify the law or provision thereof, is referred to as **"as-applied invalidation."**

I submit that these terms provide a greater degree of clarity than simply using "facial challenge" and "as-applied challenge." My subsequent discussion shall hence utilize such terms as well.

V.

The Court, this time and through this case, should reassert that the vagueness challenge is viable against penal statutes. The vagueness challenge is a critical defense to all persons against criminal laws that are arbitrarily drawn, formulated without thoughtful deliberation, or designed to yield to the law enforcer the determination whether an offense has been committed. Section 45(j) of Rep. Act 8189 is indeed a textbook example of a vague penal clause. The *ponencia* submits that Section 45(j) does not suffer from the infirmity as it ostensibly establishes that violation of any provision of Rep. Act No. 8189 is an election offense. I cannot accept the proposition that the violation of just any provision of Rep. Act No. 8189, as Section 45(j) declares with minimal fanfare, constitutes an election offense punishable with up to six (6) years of imprisonment.

Section 45(j) categorizes the violation of any provision of Rep. Act 8189 as an election offense, thus effectively criminalizing such violations. Following Section 46 of the same law, any person found guilty of an election offense "shall be punished with imprisonment of not less than one (1) year but not more than six (6) years."

Virtually all of the 52 provisions of Rep. Act 8189 define an act, establishes a policy, or imposes a duty or obligation on a voter, election officer or a subdivision of government. Virtually all of these provisions are susceptible to violation, the only qualifier being that they incorporate a verb.

For example, Section 4 states that the "precinct-level list of voters shall be accompanied by an addition/deletion list for the purpose of updating the list." If the precinct-level list of voters

is not accompanied by an addition/deletion list, an election offense is committed, according to Section 45(j). But if that is so, who commits the election offense? The COMELEC? What about if the attachment addition/deletion list was somehow alleged as not being geared towards updating the list? Would that constitute an election offense?

Under Section 37, a voter who was excluded from the certified list of voters due to inadvertence or registered with an erroneous or misspelled name may file a petition for an order directing that his name be entered or corrected. Such voter is also required to attach to a "certified copy of the registration record or identification car or the entry of his name in the certified list of voters used in the preceding election, together with the proof that his application was denied or not acted upon by the Election Registration Board." If the voter fails to attach any of these requirements, no matter the reason, an election offense as defined under Section 45(j) has been committed, and the voter may be sentenced to prison. As to what precisely are the elements of this particular crime, I am at a loss to define.

Even the most innocuous of oversights can be deemed as an election offense under Rep. Act 8189. For example, Section 10 requires that the applicant-voter submit four (4) identification-size copies of his/her latest photograph. If such voter submits only three (3) photos instead of four (4), then he/she is theoretically violating a provision of Rep. Act No. 8189, and is thus committing an election offense under Section 45(j) punishable by no less than one (1) year of imprisonment without the possibility of probation. Another example, Section 14 requires that the application for registration of a physically disabled person must be prepared by a relative within the fourth degree of consanguinity, the Election Officer, or a member of an accredited citizen's arm. If an elderly disabled widow has her trusted maid prepare the application for her, then an election offense is committed as such act violates a provision of Rep. Act No. 8189. The maid, or perhaps even the widow herself, may now face a prison term of no less than one (1) year.

In his Separate Opinion, Justice Carpio provides even more telling illustrative samples[90] of crimes under Rep. Act 8189 if the draft *ponencia* were upheld. Indeed, one can make a parlor game out of discerning all the possible acts that constitute a crime because of Section 45(j). Yet any entertainment that can be derived out of such exercise will be muted because the consequence involves prison terms.

The very absurdity of such implausible, yet legally possible prosecutions, lend doubt as to whether the legislature had truly intended such penal consequences. Because Section 45(j) is impermissibly vague, such doubts could be entertained, to consequences that are deleterious to our freedoms. If Section 45(j) were left by the Court as is, it would be a validation that our legislators so intended to penalize so trifling an offense.

Moreover, not only does the vagueness of Section 45(j) deprive the voters, election officials, or indeed any live person (since the provisions of Rep. Act 8189 are susceptible to violation by just about anybody) of fair notice as to what conduct is exactly proscribed and criminalized. It also leaves prosecutors and judges at a loss as to how exactly to prosecute or adjudge an election offense under Section 45(j).

We can reasonably presume that save for the specific election offenses under Section 45 (a) to (j) and the specific penal clause under Section 10 of Rep. Act 8189, all the other provisions of the law were not crafted with the intent to devise a penal provision. Outside of the bare text of the provision, it would be impossible to discern the precise elements of the crime, and since these provisions were not designed as penal provisions in the first place, there was no deliberate intent to design every subject-verb agreement as an element to a crime.

For example, Section 14 provides that with respect to illiterate or disabled applicants, "[t]he fact of illiteracy or disability shall be so indicated in the application [for registration]." Shorn of any criminal context, as it most assuredly was in the minds of the legislators, the clause merely required that the fact of illiteracy

[90] See *J.* Carpio, Separate Opinion, *infra.*

or disability should be indicated in the application. Seen benignly, the only concern of the provision is that such fact be manifested in the application. Since the provision does not even mandate that it be the applicant himself or herself who should make such indication, there would be no impediment for the election officer to make the indication in behalf of the applicant.

But if indeed that clause of Section 14 does actually embody an election offense, it would be virtually impossible for the prosecutor or the judge to ascertain the elements of such crime. Facially, there would appear only to be one element of the crime, the absence of any indication in the application of the fact of illiteracy or disability. But there is no indication on the face of the provision as to who exactly commits the crime. Neither is there clarity as to how exactly such crime is precisely committed.

It bears remembering that it is the second concern of the vagueness doctrine, that the statute is precise enough that it does not invite arbitrary and discriminatory enforcement by law enforcement authorities, that is perhaps the more important aspect of the doctrine. Section 45(j) is militantly offensive to that consideration.

Our Philippine criminal laws are predicated on crimes that have precisely defined elements, and the task of the judge is to determine whether these elements have been proven beyond reasonable doubt. For the most part, each crime currently defined in our penal laws consist of only a handful of elements, providing the judge a clearly defined standard for conviction or acquittal.

That is not the case for a penal provision predicated on "any violation of this Act." A legislative enactment can consist of 100 provisions. Each provision may describe just one act, right, duty or prohibition, or there could be several contained in just one provision. The catch-all penal provision ostensibly criminalizes the violation of any one right, duty, or prohibition, of which there could be hundreds in just one statute. Just any one of these possibly hundreds of acts mentioned in the law is an element of the consummated crime under the catch-all provision such as Section 45(j), thus greatly increasing the risk for conviction under such a provision. There could be literally hundreds of

ways that a catch-all provision in just one law could become the source of imprisonment.

Obviously, broader standards lead to broader discretion on the part of judges. Some judges may tend towards a narrow application of a provision such as Section 45(j), while others might be inclined towards its broad application. What is certain is that no consistent trend will emerge in criminal prosecutions for violations of provisions such as Section 45(j), a development that will not bode well for the fair and consistent administration of justice. Provisions such as Section 45(j) do nothing for the efficient administration of justice. Since such a provision is laced with unconstitutional infirmity, I submit it is the task of the Court to say so, in order that the courts will need not be confronted with this hydra of statutory indeterminacy.

The COMELEC did point out that an election offense under Section 45(j) is *malum prohibitum*, which is a correct restatement of prevailing doctrine, yet a prospect that makes the provision even more disturbing. Returning to Section 14, the illiterate or disabled voter precisely requires special assistance because of his/her personal condition which impairs the ability to properly fill up the application form. As such, the likelihood of inadvertently failing to indicate the fact of illiteracy or disability is present. Since any criminal intent is irrelevant, any honest mistake unforgivable, just because Rep. Act 8189 embodies *malum prohibitum* offenses, the illiterate or disabled voter who inadvertently fails to indicate the fact of his/her impairment in the application simply has no defense against imprisonment, except the pity of the judge. And even then, such pity, if wielded, may exceed the discretion of the judge since the application of the *malum prohibitum* law simply calls for the execution of its penal clauses once the offense has been established. *Dura lex sed lex*, indeed.

VI.

I now wish to address certain points raised by the *ponente* in rebuttal of my arguments. The claim that the Court should not touch upon the constitutionality of Section 45(j) because it is not the *lis mota* of the case is, with due respect, absurd. While

the *ponencia* claims that the *lis mota* of this case is the alleged grave abuse of discretion on the part of the COMELEC, it cannot be denied that the valid prosecution of the petitioners integrally depends on the constitutionality of Section 45(j). It appears that the real reason the majority refuses to acknowledge that the constitutionality of Section 45(j) is the *lis mota* is simply because they do not find that provision unconstitutional, as roundabout a path to reason as there ever has been.

The other contentions of the *ponente* submitted in rebuttal to my position warrant more extensive dissection.

A.

The *ponente* invokes *People v. Gatchalian*[91] in an attempt to convince that a "catch-all" penal provision is not inherently unconstitutional, since the Court in 1958, ruling 6-3, had sustained a criminal prosecution based on such a provision found in the since-repealed Minimum Wage Law.[92] However, with all due respect, the discussion fails to take into account distinguishing nuances and contexts that differentiate *Gatchalian* and its relevant statutes from the present case and Rep. Act No. 8189.

We cannot deny the fact that the void-for-vagueness constitutional challenge, as with some other standards of constitutional adjudication, had not yet found full fruition within our own jurisprudence at the time *Gatchalian* was decided in 1958, a year when the oldest members of the Court were still studying in law school, and the youngest among us still in short pants. Indeed, the jurisprudential appreciation then of our fundamental constitutional rights differed in several critical respects from our presently accepted standards. In 1958, evidence seized from unconstitutional searches and seizures were admissible into evidence, as the court adopted the exclusionary rule only in 1967 with *Stonehill v. Diokno*. In 1958, the suspension of that fundamental right – the privilege of the writ of *habeas corpus* – was still believed to be a political question which

[91] 104 Phil. 664 (1958).

[92] Republic Act No. 602.

could not be the subject of judicial inquiry, the adverse rule emerging only in 1971 with *Lansang v. Garcia.*[93] In 1958, there was yet no express recognition from this Court of a constitutional right to privacy independent from the right to liberty, such recognition came only in 1968 with *Morfe v. Mutuc.*[94] These are but a few of the more prominent examples that can be plumbed from our jurisprudence.

I raise this point for I respectfully submit that *Gatchalian* can conclusively settle the present case in favor of the *ponente*'s position only if we believe in a static and unyielding theory of jurisprudence that blindly ignores the refreshing new insights and wisdoms each new generation gifts to civilization. Our own jurisprudential history indubitably reveals that this Court does not adhere to so rigid an ideology. A vote that Section 45(j) is constitutional only for the simple reason that a like-minded provision was sustained way back in 1958 would be premised on a philosophy utterly alien to the progressive traditions of the Supreme Court.

We need to view the questions now material at bar with a fresh perspective, with an understanding that we may need to break new ground if need be, to arrive at the proper and enlightened resolution of the question. *Gatchalian* cannot serve as crutch to sustain the constitutionality of Section 45(j). It is eminently possible to declare the nullity of Section 45(j) without having to invalidate the core reasoning and ultimate result of *Gatchalian*.

B.

In *Gatchalian,* the accused therein was prosecuted under Section 15(a) of the Minimum Wage Law. Said provision reads:

SEC. 15. Penalties and recovery of wage due under this Act. —

(a) Any person who willfully violates any of the provisions of this Act shall upon conviction thereof be subject to a fine of not

[93] 149 Phil. 547 (1971).

[94] 130 Phil. 415 (1968).

more than two thousand pesos, or, upon second conviction, to imprisonment of not more then one year, or to both fine and imprisonment, in the discretion of the court.

The accused in Gatchalian was alleged to have violated, in particular, Section 3 of the Minimum Wage Law, which prescribed the minimum wage rates an employer "shall pay to each of his employees."

The key mark in Section 15 is its qualification that there must be a "willful violation of any of the provisions" of the Minimum Wage Law before a criminal prosecution can be had. This distinguishes from Section 45(j), which does not offer such a critical qualification of intent. The indispensable presence of "willful violation" as an element to the criminal offense supplies the penal statute with *mens rea*, an element which has been defined as "a guilty mind, a guilty or wrongful purpose or criminal intent." In the 1998 case of *City of Chicago v. Morales*.[95] one of the cases which I have extensively cited, the U.S. Supreme Court had comfortably ruled that the U.S. Supreme Court has comfortably held that "a criminal law that contains no *mens rea* requirement infringes on constitutionally protected rights."

Crucially, the Court majority[96] that decided *Gatchalian* expressly emphasized the fact that Section 15 expressly limited such prosecutions only to "willful violations" when it affirmed the provision.

It is clear from the above-quoted provisions that while Section 3 explicitly requires every owner of an establishment located outside of Manila or its environs to pay each of its employees ₱3.00 a day on the effective date of the Act, and one year thereafter ₱4.00 a day, Section 15 imposes both a criminal penalty for a **willful violation** of any of the above provisions and a civil liability for any underpayment of wages due an employee. The intention of the law is clear: to slap not only a criminal liability upon an erring employer for any willful violation of the acts sought to be enjoined but to attach concurrently a civil liability for any underpayment he may commit as a result

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[95] *Supra* note 51.

[96] Justices Bengzon, Montemayor and Alexander Reyes dissented.

thereof. The law speaks of a **willful violation** of "any of the provisions of this Act," which is all-embracing, and the same must include what is enjoined in Section 3 thereof which embodies the very fundamental purpose for which the law has been adopted.[97]

Had the Court ruled Section 45(j) of the Voter's Registration Act unconstitutional, such pronouncement will not overturn or even be intellectually inconsistent with *Gatchalian*. For one, there are enough textual qualifications in Section 15 as opposed to Section 45(j) that spell the difference between a constitutional penal statute and a void one. Moreover, the same constitutional considerations we have and will fully consider in this petition were not addressed in *Gatchalian*.

The accused in *Gatchalian* had premised his motion to dismiss on two grounds: that Section 3 carried only a civil liability and did not constitute a criminal offense; and assuming that Section 3 did constitute a criminal offense, the same provision did not carry any penalty penalizing it.[98] These were the two distinct issues which were addressed by the majority, and also to which the three dissenters responded to. The difference between those issues as formulated in *Gatchalian* and those presently confronting us is self-evident.

Still, the accused in *Gatchalian* did offer the following argument that may be taken into account as we consider the present case. The argument pertains to the proper interpretation of Section 15(a), which the accused had argued would result in absurdity should it "be interpreted in a manner that would embrace a willful violation of any of the provisions of the law."[99] As recounted in *Gatchalian*:

Counsel for appellee however entertains a different interpretation. He contends that if Section 15(a) should be interpreted in a manner that would embrace a wilful violation of any of the provisions of the law we would have a situation where even the officials entrusted

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[97] *Supra* note 91 at 668.

[98] *Supra* note 91 at 666.

[99] *Supra* note 91, at 673.

with its enforcement may be held criminally liable which is not contemplated in the law. Thus, he contends, the Secretary of Labor may be criminally prosecuted for willfully not using all available devices for investigation [Section 4(c)], for not presenting to the Wage Board all the evidence in his possession relating to the wages in the industries for which the Wage Board is appointed and other information relevant to the establishment of the minimum wage [Section 5(p)], and for not doing all other acts which the law requires him to do under Section 6. This, he emphasizes, is absurd and should not be entertained.[100]

The tenor of this argument is teasingly similar to that adopted by an esteemed colleague and myself in our respective submissions. The *ponente* has more or less responded dismissively towards this arguments, relying on comforting platitudes such as "the wisdom of a law is beyond this Court's function of inquiry."

Perhaps, considering that the *ponente* now relies on *Gatchalian*, it should be expected that the *Gatchalian* Court would have responded to the above-quoted argument in a like-manner. But it clearly did not. Instead, it emphasized:

To begin with, the Minimum Wage Law is a social legislation which has been adopted for the benefit of labor and as such it contains provisions that are enjoined to be observed by the employer. These provisions are substantive in nature and had been adopted for common observance by the persons affected. They cannot be eluded nor subverted lest the erring employer runs into the sanction of the law. On the other hand, the provisions adverted to by counsel are merely administrative in character which had been adopted to set the machinery by which the law is to be enforced. They are provisions established for observance by the officials entrusted with its enforcement. Failure to comply with them would therefore subject them merely to administrative sanction. They do not come under the penal clause embodied in Section 15(a). This is clearly inferred from Section 18(c), of Republic Act No. 602, which provides: "Any official of the Government to whom responsibility in administration and enforcement has been delegated under this Act shall be removable on the sustaining of charges of malfeasance or non-feasance in office." This specific provision should be interpreted as qualifying the penal clause provided for in Section 15(a).[101]

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[100] *Id*.

[101] *Id*.

The Court in *Gatchalian* plainly realized and acknowledged that there are limitations to the plausible application of Section 15(a), even if these were not textually committed in the provision itself. The most sweeping of these limitations is the admonition that those administrative officials charged with correlative rights and duties under the Minimum Wage Law could not be criminally liable under Section 15(a), despite the absence of any such clarificatory language in the law itself. I myself am not too comfortable with the methodology used by the Court in so qualifying, considering the absence of any statutory support that would have indubitably justified this conclusion.[102]

Yet if we were to examine this passage in the present context, where considerations on the question of void-for-vagueness have fully blossomed, the Court in *Gatchalian* expressly acknowledged that Section 15(a) would have been untenable in some applications, such as if an administrative officer were criminally charged under that provision. **In effect, the Court tacitly acknowledged in *Gatchalian* that Section 15(a) was indeed void-for-vagueness, and that line of attack would have been viable to any administrative officer actually charged under that provision.** It would have been one thing for the Court in *Gatchalian* to have approached that argument by responding that the wisdom of Section 15(a) was beyond judicial inquiry. That approach would have aligned with that of the *ponente*. Instead, *Gatchalian* rejected that approach and instead expressed an opinion that current-day commentators would appreciate as an embryonic formulation of the "void-as-applied" principle.

VII.

Since it has been established that Section 45(j) infringes on procedural due process, the final inquiry should be whether the nullification of Section 45(j) is warranted.

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[102] The Court did draw on Section 18(c) of Republic Act No. 602, which prescribed administrative penalties on administrative officers on charges of malfeasance or non-feasance in office, and concluded that "this specific provision should be interpreted as qualifying the penal clause provided for in Section 15(a) [of the Minimum Wage Law]."

Given the problem of vagueness that attends to Section 45(j), is facial invalidation of the statute warranted?

The practical value of facial invalidation in this case cannot be discounted. Unless Section 45(j) is nullified, it may still be utilized as a means of criminal prosecution. Because there are dozens, if not hundreds, of different contexts under which a criminal offense may carved out of Section 45(j), limiting the challenges to the provision to "as-applied" and its case-by-case method will prove woefully inadequate in addressing the elemental lack of fair notice that plagues the provision.

The very vagueness of Section 45(j) makes it an ideal vehicle for political harassment. The election season will undoubtedly see a rise in the partisan political temperature, where competing candidates and their camps will employ every possible legal tactic to gain an advantage over the opponents. Among these possible tactics would be the disenfranchisement of voters who may be perceived as supporters of the other side; or the disqualification of election officers perceived as either biased or impartial enough to hamper a candidate with ill-motives.

The disenfranchisement of voters or the disqualification of election officers could be accomplished through prosecutions for election offenses. Even if these prosecutions do not see fruition, the mere filing of such charges could be enough to dampen enthusiasm in voting, or strike fear in conducting honest and orderly elections.

Unfortunately, Section 45(j) is an all too easy tool for mischief of this sort. One can invent any sort of prosecution using any provision of Rep. Act No. 8189 that would fall within the ambit of the offending Section 45(j). It would not even matter if the charge is meritorious or not, just the systematic filing of complaints based on Section 45(j) is sufficient to alter the political climate in any locality.

I find it odd, suspicious even, that the COMELEC is insisting on prosecution the petitioners on Section 45(j), and not the Omnibus Election Code. The acts for which they are charged are classified as an election offense under Section 261(y) of the Omnibus Election Code which specifically charges as election

offenses "any person who knowingly makes any false or untruthful statement relative to any of the data or information required in the application for registration;" and "any voter who, being a registered voter, registers anew without filing an application for cancellation of his previous registration." I have no idea whether the COMELEC sees this case as a test case for prosecutions under Section 45(j). What I do know is that if the Court debunks the present challenge to Section 45(j), the COMELEC will be emboldened to pursue more prosecutions under Section 45(j), a prospect that would hearten the most partisan of political operatives. The result would not only be more frivolous complaints for violation of Section 45(j), but also an undue and utterly unnecessary temperature rise in the political climate.

It might be argued that a ruling that simply imposes an "as-applied invalidation" on Section 45(j) would sufficiently disquiet such concern. I disagree. Any room left for discretion or interpretation of Section 45(j) would be sufficient for one with intent to harass voters or election officials with the threat of prosecution under that provision. After all, just the mere filing of the complaint is enough to effect harassment. Besides, I submit that the acts already expressly criminalized as election offenses, whether under the Omnibus Election Code, or under Rep. Act No. 8189, already encompass the whole range of election offenses that could possibly be committed. The petitioners could have been charged instead with violating Section 261(y) of the Omnibus Election Code.

In recent years, Congress has chosen to employ phraseology similar to Section 45(j) in a number of laws, such as the Cooperative Code,[103] the Indigenous Peoples Rights Act,[104] and

[103] See Sec. 124(4), Rep. Act No. 6938, which reads: "Any violation of any provision of this Code for which no penalty is imposed shall be punished by imprisonment of not less than six (6) months nor more than one (1) year and a fine of not less than One Thousand Pesos (₱1,000.00) or both at the discretion of the Court."

[104] See Sec. 72, Rep. Act No. 8371, which reads in part: Any person who commits violation of any of the provisions of this Act, such as, but not limited to…"

the Retail Trade Liberalization Act.[105] I know from my own experience that this is the product of a legislative predilection to utilize a standard template in the crafting of bills.

I have come to believe that this standard phraseology constitutes a dangerous trend, and a clear stand from this Court that Section 45(j) is unconstitutional for being void-for-vagueness would make the legislature think twice before employing such terminology in the laws that it passes. The problem is less obvious if the law in question contains only a few provisions, where any person can be reasonably expected to ascertain with ease what particular acts are made criminal. However, in more extensive laws such as Rep. Act No. 8189 or the especially long codes, such expectation could not be reasonably met. I am aware that compliance with the requisites for the publication of laws is considered legally sufficient for the purposes of notice to the public, but I submit that a measure of reason should be appreciated in evaluating that requirement. If a law runs 400 pages long, with each sentence detailing an act that is made criminal in nature, the doctrine "ignorance of the law excuses no one" should not be made a ready and convenient excuse, especially if, as in Rep. Act 8189, the act is made criminal only by implication of a provision such as Section 45(j).

We should think of the public good that would prevail if the Court makes the stand that Congress cannot criminalize a whole range of behavior by simply adding a multi-purpose, catch-all provision such as Section 45(j). Congress will be forced to deliberate which precise activities should be made criminal. Such deliberate thought leads to definitive laws that do not suffer the vice of void-for-vagueness. These definite laws will undoubtedly inform the people which acts are criminalized, a prospect wholly consonant with constitutional guarantees of fair notice and due process.

No doubt, Section 45(j) and its ilk in law are dangerous provisions. It would be best if the Court send a message that

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[105] See Sec. 12, Rep. Act No. 8762, which reads: "Any person who would be found guilty of violation of any provision of this Act shall be punished by imprisonment of not less than six (6) years and one (1) day but not more than eight (8) years, and a fine of at least One Million (₱1,000,000.00) but not more than Twenty Million (₱20,000,000.00)."

this intended prosecution of the petitioners could be accomplished only through the Omnibus Election Code, which after all specifically penalizes the acts for which they are alleged to have committed.

In the case at bar, an ideal resolution would be to grant the petition and void Section 45(j) and the COMELEC resolutions authorizing prosecution under it, but without prejudice to the authorization of prosecution of the petitioners under the Omnibus Election Code, assuming of course such a tack is still legally feasible.

This solution would satisfy whatever motivation there is to sanction the petitioners, yet at the same time make it clear to the COMELEC that prosecutions under Section 45(j) of Rep. Act No. 8189 cannot avail before this Court. At the same time, the Court would be able to reiterate comforting precepts – that prosecutions under criminal laws that specifically define and particularly criminalize the acts constituting the offense are preferred over those laws that broadly define criminal offenses; that the Court will not provide sanctuary to any abusive resort to Section 45(j) of Rep. Act No. 8189; and that would-be voters who neglect to pay great care to the process of voter registration will face the sanction of the law.

Sad to say, the majority's ruling today is beyond comprehension. No good will come out of it. For one, it opens a Pandora's box of all sorts of malicious wholesale prosecutions of innocent voters at the instance of political partisans desirous to abuse the law for electoral gain. It emboldens Congress to continue incorporating exactly the same provision in the laws it enacts, no matter how many hundreds of acts or provisions are contained in the particular statute. For that matter, it signals that vague penal laws are acceptable in this jurisdiction. Left unabated, the doctrine will be reflexively parroted by judges, lawyers and law students memorizing for their bar exams until it is accepted as the entrenched rule, even though it simply makes no sense. Bad folk wisdom handed down through the generations is soon regarded as gospel truth. I sincerely hope the same mistake is not made with the lamentable doctrine affirmed by the majority today.

I respectfully dissent.

SECOND DIVISION

[G.R. No. 167280. April 30, 2008]

METROPOLITAN BANK AND TRUST COMPANY, *petitioner, vs.* **SPS. ELMOR V. BANCE and ROSARIO J. BANCE,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; WRIT OF POSSESSION; EXPLAINED. —** A petition for the issuance of the writ, under Section 7 of Act No. 3135, as amended, is not an ordinary action filed in court, by which one party "sues another for the enforcement or protection of a right, or prevention or redress of a wrong." It is in the nature of an *ex parte* motion which the court hears only one side. It is taken or granted at the instance and for the benefit of one party, and without notice to or consent by any party adversely affected. Accordingly, upon the filing of a proper motion by the purchaser in a foreclosure sale, and the approval of the corresponding bond, the writ of possession issues as a matter of course and the trial court has no discretion on this matter.

2. **ID.; ID.; ID.; ID.; WHEN POSTING OF BOND NEEDED. —** The posting of a bond as a condition for the issuance of the writ of possession becomes necessary only if it is applied for within one year from the registration of the sale with the register of deeds, *i.e.*, during the redemption period inasmuch as ownership has not yet vested on the creditor-mortgagee. After the one-year period, and no redemption was made, the mortgagor loses all interest over it. In this case, respondents were already stripped of their rights over the properties when they failed to redeem the same within one year from May 3, 1999, the date of registration of the sale. Hence, when petitioner applied for the writ after the expiration of the redemption period there was even more reason to issue the writ.

3. **ID.; ID.; ID.; ID.; ISSUANCE THEREOF, MINISTERIAL; EFFECT. —** Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the

issuance of the writ. If only to stress the writ's ministerial character, we have, in several cases, disallowed injunctions prohibiting its issuance, just as we have held that the issuance of the writ may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.

4. **ID.; ID.; ID.; ID.; PROPER PROCEDURE TO QUESTION THE REGULARITY OF ISSUANCE OF THE WRIT, NOT FOLLOWED IN CASE AT BAR. —** Under Section 8 of Act No. 3135, as amended, in case it is disputed that the writ of possession was irregularly issued, the mortgagor may file with the trial court that issued the writ a petition to set aside the sale and to cancel the writ of possession within 30 days *after* the purchaser-mortgagee was given possession. Based on the records, the subject properties were turned over to petitioner on March 19, 2001, sometime in 2002 and July 2003. Respondents should have assailed the writ within 30 days therefrom, but they failed to do so.

5. **ID.; ID.; CIVIL ACTIONS; FORUM SHOPPING, DEFINED; WHEN CERTIFICATION OF NON-FORUM SHOPPING IS NOT REQUIRED; CASE AT BAR. —** The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining favorable judgment. It exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. Since the issuance of a writ of possession is a ministerial function and summary in nature, it cannot be said to be a judgment on the merits but simply an incident in the transfer of title. Hence, regardless of whether or not there is a pending suit for annulment of the mortgage or the foreclosure itself, petitioner is entitled to the writ, subject however to the final outcome of the case. Moreover, a certificate of non-forum shopping, as provided in Section 5, Rule 7 of the 1997 Rules of Civil Procedure, is required only in complaints or other initiatory pleadings, and a petition or motion for the issuance of the writ under Section 7 of Act No. 3135, as amended, is not a complaint or an initiatory pleading. Indeed, any insignificant lapse in the certification of non-forum shopping filed by petitioner does not render the writ irregular for no verification and certification on non-forum shopping need be attached to the motion at all.

APPEARANCES OF COUNSEL

Corpuz Ejercito Macasaet & Rivera Law Offices for petitioner.
Vicente Roy L. Kabayan, Jr. for respondents.

D E C I S I O N

QUISUMBING, *J.*:

Challenged in this petition for review are the Decision[1] and Resolution[2] dated October 29, 2004 and March 3, 2005, respectively, of the Court of Appeals in CA-G.R. SP No. 78162, which had annulled the Order[3] dated September 11, 2000 of the Regional Trial Court (RTC) of Manila, Branch 4, in LRC Cad. Record No. 278.

The antecedent facts, as culled from the records, are as follows:

Respondents Elmor and Rosario Bance obtained several loans in the amount of ₱24,150,954.84 from petitioner Metropolitan Bank and Trust Company, Tutuban Branch.[4] As security for the loans, respondents mortgaged their properties in Binondo and Tondo, Manila, covered by Condominium Certificate of Title No. 20040 and Transfer Certificates of Title Nos. 179657 and 179711.[5] Respondents failed to pay their obligations, prompting petitioner to institute extrajudicial foreclosure proceedings over the mortgage.

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[1] *Rollo,* pp. 31-42. Penned by Associate Justice Eloy R. Bello, Jr., with Associate Justices Regalado E. Maambong and Lucenito N. Tagle concurring.

[2] *Id*. at 43-44. Penned by Associate Justice Regalado E. Maambong, with Associate Justices Elvi John S. Asuncion and Lucenito N. Tagle concurring.

[3] *Id*. at 46-47. Penned by Presiding Judge Socorro B. Inting.

[4] Records, pp. 24-27.

[5] *Id*. at 22-23 and 28-31.

During the public auction held on October 2, 1998, petitioner emerged as the highest and winning bidder. It was issued a Certificate of Sale[6] which was registered in the Registry of Deeds of Manila on May 3, 1999.[7] On April 5, 2000, petitioner demanded from respondents the surrender and possession of the properties,[8] but the latter failed and refused to do so.

In the meantime, respondents, on May 2, 2000, instituted Civil Case No. 00-97252 in the RTC of Manila, Branch 32, and sought the declaration of nullity of promissory notes, real estate mortgages, agreements, continuing surety agreement, extrajudicial foreclosure proceedings, notices, publications, certificates of sales and the corresponding entries on titles to the subject properties with prayer for temporary restraining order (TRO) and issuance of writs of preliminary injunction and damages.[9] RTC Branch 32 immediately issued a TRO[10] dated May 15, 2000 enjoining petitioner from consolidating the titles of the subject properties; from committing acts giving effect to the subject certificates of sales and all documents thereto; and from committing acts of dispossession of the subject properties against respondents.

On June 23, 2000, petitioner filed with Branch 4 of the RTC of Manila a petition[11] for the issuance of a writ of possession, docketed as LRC Cad. Record No. 278. RTC Branch 4, on September 11, 2000, granted the petition and ordered the issuance of the writ.[12] The writ was implemented in March 2001, 2002, and July 2003.[13]

[6] *Id*. at 38-40.

[7] *Rollo*, p. 71.

[8] Records, pp. 67-69.

[9] *Id*. at 1-21.

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

[11] *Rollo*, pp. 68-73.

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

[13] *Id*. at 152-155. As to the property with Condominium Certificate of Title No. 20040, the Notice to Vacate was served on February 21, 2001 and possession was turned over to petitioner on March 19, 2001. On the other

Meanwhile, RTC Branch 32, on October 20, 2000, issued a preliminary prohibitory and mandatory injunctive order[14] against petitioner. But for failure of respondents to post a bond, RTC Branch 32 recalled and set aside the order,[15] and accordingly dismissed the case.[16] Upon reconsideration, however, RTC Branch 32 ordered the issuance of the writ.[17] Petitioner sought reconsideration, but it was denied.

On July 22, 2003, respondents filed a petition[18] with the Court of Appeals seeking to annul the September 11, 2000 Order of RTC Branch 4 on the ground of extrinsic fraud. On October 29, 2004, the Court of Appeals ruled that petitioner employed extrinsic fraud when it deliberately withheld the true nature of its claims against respondents in foreclosing the mortgage and securing the writ. It also added that petitioner failed to state in the certification of non-forum shopping attached to the petition for the issuance of the writ, the pendency of Civil Case No. 00-97252 in RTC Branch 32. In conclusion, it declared the foreclosure of mortgage null and void and annulled the September 11, 2000 Order of RTC Branch 4.[19] The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, the petition is hereby GRANTED. The Order of respondent court dated September 11, 2000 is hereby ANNULLED.

SO ORDERED.[20]

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hand, the Notice to Vacate the property with TCT Nos. 179657 and 179711 was served upon the occupants on March 22, 2001. The property with TCT No. 179711 was voluntarily turned over to petitioner in 2002, but as to TCT No. 179657, possession was turned over to petitioner sometime in July 2003, after the latter has secured a "break-open" order from the said court which issued the writ.

[14] Records, pp. 161-163.

[15] *Id*. at 164.

[16] *Id*. at 170.

[17] *Id*. at 270-271.

[18] CA *rollo*, pp. 2-15.

[19] *Rollo,* pp. 39-42.

[20] *Id*. at 42.

Petitioner sought reconsideration, but it was denied. Hence, this petition, ascribing the following errors to the Court of Appeals:

I.

…THE COURT OF APPEALS ERRED IN GIVING DUE COURSE TO RESPONDENTS SPOUSES BANCE'S PETITION FOR ANNULMENT OF THE SEPTEMBER 11, 2000 ORDER OF THE REGIONAL TRIAL COURT OF MANILA BRANCH IV (04) INSTITUTED UNDER RULE 47 OF THE 1997 REVISED RULES OF CIVIL PROCEDURE CONSIDERING THAT A WRIT OF POSSESSION CASE FILED UNDER ACT NO. 3135, AS AMENDED, IS NOT AN ORDINARY ACTION.

II.

…THE COURT OF APPEALS ERRED IN ANNULLING THE SEPTEMBER 11, 2000 ORDER OF THE REGIONAL TRIAL COURT OF MANILA BRANCH IV (04) GRANTING THE WRIT OF POSSESSION TO PETITIONER METROBANK ON THE GROUND THAT PETITIONER METROBANK COMMITTED EXTRINSIC OR COLLATERAL FRAUD UNDER SECTION 2, RULE 47 OF THE 1997 REVISED RULES OF CIVIL PROCEDURE.

III.

…THE COURT OF APPEALS ERRED IN NOT DISMISSING RESPONDENTS SPOUSES BANCE'S PETITION FOR ANNULMENT OF THE ORDER DATED SEPTEMBER 11, 2000 OF THE REGIONAL TRIAL COURT OF MANILA BRANCH IV (04) GRANTING THE WRIT OF POSSESSION (LRC CAD. RECORD NO. 278) CONSIDERING THAT IT IS AN *EX PARTE* PROCEEDING AND ITS ISSUANCE IS MINISTERIAL UNDER ACT NO. 3135, AS AMENDED, AND THERE IS A PENDING CIVIL CASE NO. 00-97252 FILED BY RESPONDENTS SPOUSES BANCE AGAINST PETITIONER METROBANK BEFORE THE REGIONAL TRIAL COURT OF MANILA BRANCH XXXII (32) FOR "DECLARATION OF NULLITY OF PROMISSORY NOTES, REAL ESTATE MORTGAGES, AGREEMENTS, CONTINUING SURETY AGREEMENT, EXTRAJUDICIAL FORECLOSURE PROCEEDINGS, *ETC*."[21]

IV.

…THE COURT OF APPEALS ERRED IN FINDING PETITIONER BANK GUILTY OF FORUM SHOPPING WHEN IT FILED A PETITION

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[21] *Id*. at 158-159.

FOR ISSUANCE OF A WRIT OF POSSESSION BEFORE [THE] REGIONAL TRIAL COURT OF MANILA BRANCH IV WHEN THERE WAS A PENDING ACTION ON THE SAME SUBJECT MATTER BEFORE REGIONAL TRIAL COURT OF MANILA, BRANCH XXXII.[22]

Simply, the issues are: (1) Did the Court of Appeals err in annulling the writ of possession issued by RTC Branch 4? (2) Is petitioner guilty of forum shopping?

The petition has merit.

Anent the first issue, petitioner contends that the Court of Appeals erred in annulling the writ of possession on the ground of extrinsic fraud. It avers that a petition for the issuance of the writ is *ex parte* in nature; hence, respondents need not be notified of the proceedings therein. It further argues that since there is already a pending civil case for declaration of nullity of mortgage, *etc*., the Court of Appeals should not have ruled on the validity of the loan documents and foreclosure proceedings. It adds that respondents, in instituting the annulment of judgment case, failed to pursue the proper remedy provided under Section 8[23] of Act No. 3135,[24] as amended.

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[22] *Id*. at 180.

[23] SEC. 8. **The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled**, specifying the damages suffered by him, **because the mortgage was not violated or the sale was not made in accordance with the provisions hereof**, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered four hundred and ninety-six and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal. (Emphasis supplied.)

[24] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES, approved on March 6, 1924 (as amended by Act No. 4118, approved on December 7, 1933).

Respondents counter that petitioner employed extrinsic fraud when it secured the writ because it deliberately withheld from them the foreclosure of the mortgage and institution of the petition for the issuance of the writ. They add that a petition for the issuance of the writ is an ordinary action, hence, they must be notified of the true nature of petitioner's claims against them. They also contend that the writ was irregularly issued because petitioner was not required to post the bond mandated in Section 7[25] of Act No. 3135, as amended.

First, no extrinsic fraud was employed by petitioner in not informing respondents of the institution of the writ of possession case. A petition for the issuance of the writ, under Section 7 of Act No. 3135, as amended, is not an ordinary action filed in court, by which one party "sues another for the enforcement or protection of a right, or prevention or redress of a wrong."[26] It is in the nature of an *ex parte* motion which the court hears only one side. It is taken or granted at the instance and for the benefit of one party, and without notice to or consent by any

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[25] SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ***ex parte*** **motion** in 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 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. (Emphasis supplied.)

[26] *De Vera v. Agloro,* G.R. No. 155673, January 14, 2005, 448 SCRA 203, 215.

party adversely affected.[27] Accordingly, upon the filing of a proper motion by the purchaser in a foreclosure sale, and the approval of the corresponding bond, the writ of possession issues as a matter of course and the trial court has no discretion on this matter.[28]

Second, the writ of possession was not irregular despite the fact that petitioner did not post a bond. The posting of a bond as a condition for the issuance of the writ of possession becomes necessary only if it is applied for within one year from the registration of the sale with the register of deeds, *i.e.*, during the redemption period inasmuch as ownership has not yet vested on the creditor-mortgagee. After the one-year period, and no redemption was made, the mortgagor loses all interest over it.[29] In this case, respondents were already stripped of their rights over the properties when they failed to redeem the same within one year from May 3, 1999, the date of registration of the sale.[30] Hence, when petitioner applied for the writ after the expiration of the redemption period there was even more reason to issue the writ.

Third, the Court of Appeals, in CA-G.R. SP No. 78162, need not delve on any alleged defect or irregularity in the foreclosure, inasmuch as the only issue therein was the propriety of the issuance of the writ.[31] Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of the writ.[32] If only to stress the writ's

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[27] *Arquiza v. Court of Appeals,* G.R. No. 160479, June 8, 2005, 459 SCRA 753, 766.

[28] *Yulienco v. Court of Appeals,* G.R. No. 141365, November 27, 2002, 393 SCRA 143, 153.

[29] *Espiridion v. Court of Appeals,* G.R. No. 146933, June 8, 2006, 490 SCRA 273, 278.

[30] See *Yulienco v. Court of Appeals, supra* at 152.

[31] See *Vda. de Zaballero v. Court of Appeals,* G.R. No. 106958, February 9, 1994, 229 SCRA 810, 814.

[32] *De Vera v. Agloro, supra*.

ministerial character, we have, in several cases,[33] disallowed injunctions prohibiting its issuance, just as we have held that the issuance of the writ may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.

Fourth, respondents failed to pursue the proper remedy. Under Section 8 of Act No. 3135, as amended, in case it is disputed that the writ of possession was irregularly issued, the mortgagor may file with the trial court that issued the writ a petition to set aside the sale and to cancel the writ of possession within 30 days *after* the purchaser-mortgagee was given possession.[34] Based on the records, the subject properties were turned over to petitioner on March 19, 2001, sometime in 2002 and July 2003. Respondents should have assailed the writ within 30 days therefrom, but they failed to do so.

On the issue of forum shopping, respondents contend that petitioner's filing of the petition for the issuance of a writ of possession constitutes forum shopping because there is already a pending case in RTC Branch 32 involving the subject properties. Petitioner, on the other hand, avers that it was not duty bound to disclose to respondents the pendency of the writ of possession case and a certificate of non-forum shopping is not required in a petition for the issuance of the writ under Section 7 of Act No. 3135, as amended because it is not a complaint or initiatory pleading.

Petitioner is correct. Insofar as LRC Cad. Record No. 278 and Civil Case No. 00-97252 are concerned, there is no forum shopping. The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining favorable judgment. It exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount

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[33] *Chailease Finance Corporation v. Ma,* G.R. No. 151941, August 15, 2003, 409 SCRA 250, 253; *Yulienco v. Court of Appeals, supra* at 154.

[34] *Ong v. Court of Appeals*, G.R. No. 121494, June 8, 2000, 333 SCRA 189, 196.

to *res judicata* in another. Since the issuance of a writ of possession is a ministerial function and summary in nature, it cannot be said to be a judgment on the merits but simply an incident in the transfer of title.[35] Hence, regardless of whether or not there is a pending suit for annulment of the mortgage or the foreclosure itself, petitioner is entitled to the writ, subject however to the final outcome of the case.[36]

Moreover, a certificate of non-forum shopping, as provided in Section 5,[37] Rule 7 of the 1997 Rules of Civil Procedure, is required only in complaints or other initiatory pleadings, and a petition or motion for the issuance of the writ under Section 7 of Act No. 3135, as amended, is not a complaint or an initiatory pleading.[38] Indeed, any insignificant lapse in the certification of non-forum shopping filed by petitioner does not render the

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[35] *Id*. at 199.

[36] *Id*. at 198.

[37] **SEC. 5.** *Certification against forum shopping*. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[38] *Ancheta v. Metropolitan Bank & Trust Company, Inc.,* G.R. No. 163410, September 16, 2005, 470 SCRA 157, 164.

writ irregular for no verification and certification on non-forum shopping need be attached to the motion at all.[39]

WHEREFORE, the instant petition is *GRANTED*. The challenged Decision and Resolution dated October 29, 2004 and March 3, 2005, respectively, of the Court of Appeals in CA-G.R. SP No. 78162 are hereby *REVERSED AND SET ASIDE*. Costs against the respondents.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

THIRD DIVISION

[G.R. No. 168862. April 30, 2008]

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), *petitioner, vs.* **EMMANUEL P. CUNTAPAY,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; EMPLOYEES' COMPENSATION LAW; REQUISITES FOR SICKNESS TO BE COMPENSABLE UNDER THE RULES. —** For a sickness to be compensable, the claimant must prove either (1) that the sickness is the result of an occupational disease listed under the Rules on Employees' Compensation and the conditions set therein are satisfied; or (2) that the risk of contracting the disease was increased by the claimant's working condition.

2. **ID.; ID.; CARDIO VASCULAR OR HEART DESEASES; WHEN COMPENSABLE. –** ECC Resolution No. 432 dated July 20, 1977

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[39] See *Arquiza v. Court of Appeals, supra* note 27, at 762-763.

includes cardio-vascular or heart diseases in the list of occupational diseases and enumerates the conditions under which they are considered work-related and, thus, compensable, *viz:* (a) If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his/her work. (b) The strain of work that brings about an acute attack must be of sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac [injury] to constitute causal relationship. (c) If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his/[her] work and such symptoms and signs persisted, it is reasonable to claim a causal relationship. In a number of cases, the Court already declared that myocardial infarction is included in this category. Myocardial infarction is the clinical term for a heart attack. It is cause by occlusion (blockage) of the coronary artery (atherosclerosis) or a blood clot (coronary thrombosis), resulting in the partial or total blockage of one of the coronary arteries. When this occurs, the heart muscle (myocardium) does not receive enough oxygen.

3. **ID.; ID.; ID.; THE LAW REQUIRES A REASONABLE WORK CONNECTION AND NOT A DIRECT CAUSAL RELATION; EXPLAINED. —** In *Government Service Insurance System vs. Cuanang,* while the Court recognized stress as one of the predisposing factors of myocardial infarction, it also noted that "stress appears to be associated with elevated blood pressure." The ECC, for its part, does not seem to treat stress as a separate risk factor for myocardial infarction. In fact, in its decision, it stated that hypertension is the sole risk factor in the development of a coronary artery disease that is considered work-related. Some references, however, include stress as a risk factor, distinct from hypertension. The claimant must show, at least by substantial evidence that the development of the disease was brought about largely by the conditions present in the nature of the job. What the law requires is a reasonable work connection and not a direct causal relation. It is enough that the hypothesis on which the workmen's claim is based is probable. Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings.

And probability mus be reasonable, hence, it should, at least, be anchored on credible information. Moreover, a mere possibility will not suffice; a claim will fail if there is only a possibility that the employment caused the disease.

4. **ID.; ID.; COMPASSION SHOULD YIELD TO THE PRECEPT THAT ABSENT A SHOWING OF GRAVE ABUSE OF DISCRETION, COURTS ARE LOATH TO INTERFERE WITH THE FINDINGS OF QUASI JUDICIAL AGENCIES IN FIELDS WHERE THEY ARE DEEMED TO BE EXPERTS.—** With prudence and judicial restraint, a tribunal's zeal in bestowing compassion should yield to the precept in administrative law that absent a showing of grave abuse of discretion, courts are loath to interfere with and should respect the findings of quasi-judicial agencies in fields where they are deemed and held to be experts due to their special technical knowledge and training. Compassion for the victims of diseases not covered by the law ignores the need to show a greater concern for the trust fund to which the tens and millions of workers and their families look for compensation whenever covered accidents, diseases and deaths occur.

APPEARANCES OF COUNSEL

Chief Legal Counsel (GSIS) for petitioner.
Sergio R. Rigodon for respondent.

D E C I S I O N

NACHURA, *J.:*

This petition for review stems from the Court of Appeals' Decision[1] dated May 17, 2005, and Resolution dated July 8, 2005, which granted the respondent's claim for compensation under Presidential Decree (P.D.) No. 626, as amended, or the Employees' Compensation Law.

Respondent Emmanuel P. Cuntapay entered the government service on November 17, 1975 as an Architectural Draftsman

[1] Penned by Associate Justice Renato C. Dacudao, with Associate Justices Noel G. Tijam and Jose C. Reyes, Jr. concurring; *rollo*, pp. 33-42.

of the Department of Public Works and Highways (DPWH). He rose from the ranks and was promoted on October 22, 1999 as Architect V (Chief, Architectural Division, Bureau of Design of the DPWH). An Architect V generally performs the following duties:

(1) Supervises, coordinates, and provides direction and work assignments in the Division;

(2) Does final review and checking of projects/papers from the Division prior to [submission] to higher authorities;

(3) Provides direction in the formulation of architectural design guidelines and standards, architectural/sanitary design specifications, terms of reference and other pertinent documents for architectural and related engineering design services;

(4) Confers/meets with representative of using agencies regarding the project requirements for the architectural and engineering design services;

(5) Prepares and recommends action on cases referred to the Division regarding the implementation of the National Building Code (NBC);

(6) Participates in the deliberation in the formulation and information dissemination of the implementing rules and regulations of the NBC; and,

(7) Performs such other duties and functions that may be assigned from time to time.[2]

Aside from being the Chief of the Architectural Division of the Bureau of Design, the respondent was also designated Overall Head of the Technical Staff of the National Building Code Development Office (NBCDO) in a concurrent capacity. In addition, he was designated Representative to the National Steering Committee for the National Urban Development and Housing Framework 1999-2004, and Alternate Representative

[2] *Rollo*, p. 126.

to the National Council for the Welfare of Disabled Persons Board.[3]

On April 8, 2003, while attending a meeting of the National Building Code Board of Consultants at the DPWH Architectural Division, the respondent suddenly experienced difficulty in breathing. Upon the advice of Dr. Shirley Reyes, the DPWH resident physician, the respondent underwent electrocardiogram (ECG) test at the DPWH clinic. The ECG test disclosed that there was an irregularity in the respondent's heartbeat. For this reason, Dr. Reyes advised the respondent to seek hospital services. Heeding the advice, the respondent immediately proceeded to the Philippine Heart Center where he was admitted at about two o'clock in the afternoon of the same day.[4]

Dr. Jose G. Abad-Santos, the respondent's attending physician, diagnosed his illness as acute myocardial infarction. The respondent then underwent "aortocoronary bypass" operation. He was discharged from the hospital on April 18, 2003.[5] Afterwards, he underwent cardiac rehabilitation on an out-patient basis. All in all, the respondent spent ₱411,127.00 for his hospital bills and other medical expenses.

Consequently, the respondent filed with the petitioner Government Service Insurance System (GSIS) a claim for compensation benefits under Presidential Decree (P.D.) No. 626, as amended. However, in a letter dated February 16, 2004, the GSIS denied the claim on the ground that there was no substantial proof that the nature of his job increased the development of the claimed illness.[6]

Upon denial of his request for reconsideration by the GSIS, the respondent interposed an appeal with the Employees' Compensation Commission (ECC).

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[3] *Id*. at 125.

[4] *Id*.

[5] *Id*. at 96.

[6] *Id*. at 194.

In its November 12, 2004 Decision, the ECC affirmed the findings of the GSIS and subsequently dismissed the respondent's appeal. The ECC held that

A circumspect review of the records however failed to show any causal link between his present occupation and his ailment. As explained medically, the development of IHD or otherwise termed as CAD is caused by atherosclerosis, the hardening of the inner lining of arteries. Smoking, hypertension, diet and diabetes are factors that cause atherosclerosis.

Based on the etiology established by medical science, hypertension is the sole risk factor in the development of CAD to be considered as work-related. Under Annex A of the Implementing Rules on Employees' Compensation, hypertension is compensable provided it causes end-organ damage to the heart, eyes, brain or kidneys and is substantiated by diagnostic and laboratory test results. As regard (sic) appellant's case, however, nowhere in the records is there a showing that he has a history of hypertension that could predispose him to contract his cardiovascular disease.[7]

On appeal, the CA reversed the decision of the ECC, thus:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the petition for review is GRANTED. The November 12, 2004 Decision of the Employees' Compensation Commission in ECC Case No. GM-16487-0803-04 is REVERSED and SET ASIDE. The respondent Government Service Insurance System is ORDERED to pay petitioner Emmanuel P. Cuntapay's full claim for compensation benefits under PD No. 626, as amended. Without costs in this instance.

SO ORDERED.[8]

In so ruling, the appellate court stressed that the law only requires a reasonable work connection and not direct causal connection, and that it is enough that the hypothesis on which the claim is based is probable. It then held that the probability existed that the respondent's illness was due to work-related stress considering his assigned duties at that time.[9]

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[7] *Id*. at 47.

[8] *Id*. at 41-42.

[9] *Id*. at 39-41.

On July 8, 2005, the CA denied the petitioner's motion for reconsideration for lack of merit.[10]

Thus, this petition raising the following issues:

I. WHETHER OR NOT PETITIONER'S AILMENT — CORONARY ARTERY DISEASE (CAD), S/P, MYOCARDIAL INFARCTION —MAY BE CONSIDERED WORK-CONNECTED.

II. WHETHER OR NOT RESPONDENT HAS PRESENTED POSITIVE PROOF, THROUGH A REAL AND SUBSTANTIAL EVIDENCE, THAT THE NATURE OF HIS WORK AND HIS WORKING CONDITIONS AS ARCHITECT V HAS (sic) INCREASED THE RISK OF CONTRACTING HIS CLAIMED AILMENT.[11]

The petition is meritorious.

For a sickness to be compensable, the claimant must prove either (1) that the sickness is the result of an occupational disease listed under the Rules on Employees' Compensation and the conditions set therein are satisfied; or (2) that the risk of contracting the disease was increased by the claimant's working condition.[12]

ECC Resolution No. 432 dated July 20, 1977 includes cardio-vascular or heart diseases in the list of occupational diseases and enumerates the conditions under which they are considered work-related and, thus, compensable, *viz.*:

(a) If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his/her work.

(b) The strain of work that brings about an acute attack must be of sufficient severity and must be followed within 24 hours

[10] *Id.* at 218.

[11] *Id.* at 19.

[12] *Limbo v. Employees' Compensation Commission*, 434 Phil. 703, 706 (2002).

by the clinical signs of a cardiac [injury] to constitute causal relationship.

(c) If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his/[her] work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.

In a number of cases,[13] the Court already declared that myocardial infarction is included in this category. Myocardial infarction is the clinical term for a heart attack. It is caused by occlusion (blockage) of the coronary artery (atherosclerosis) or a blood clot (coronary thrombosis), resulting in the partial or total blockage of one of the coronary arteries. When this occurs, the heart muscle (myocardium) does not receive enough oxygen.[14]

The petitioner argues, on one hand, that the respondent's case does not fall under any of the three instances enumerated in ECC Resolution No. 432 because there was no showing that he was suffering from a heart disease, or that the strain of work prior to the 24-hour period of time when he suffered the heart attack was of sufficient severity, or that he was asymptomatic to the subject ailment.[15] On the other hand, the respondent avers that the circumstances of his illness satisfy the conditions under paragraphs (b) and (c) of ECC Resolution No. 432.[16] He points out that the allegation that he has no history of hypertension is belied by the clinical abstract which shows that prior to his confinement he experienced three episodes of chest pain.[17]

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[13] *Government Service Insurance System v. Villareal*, G.R. No. 170743, April 12, 2007, 520 SCRA 741; *Rañises v. Employees' Compensation Commission*, G.R. No. 141709, August 16, 2005, 467 SCRA 71; *Government Service Insurance System v. Cuanang,* G.R. No. 158846, June 3, 2004, 430 SCRA 639; *Obra v. Social Security System*, 449 Phil. 200 (2003).

[14] <http://www.faqs.org/nutrition/Hea-Irr/Heart-Disease.html>

[15] *Rollo,* pp. 262-263.

[16] *Id.* at 231.

[17] *Id.* at 235.

We agree with the petitioner, considering that there was, indeed, no proof that any of said conditions has been satisfied. In particular, there was no evidence to show that respondent was previously diagnosed with a heart ailment or that he was under a severe strain of work sufficient to have caused the heart attack since a board meeting could hardly inflict such a severe strain. Moreover, from the evidence at hand, we cannot safely conclude that the respondent's case falls under paragraph (c). While it is true that the clinical abstract showed that on the day prior to the incident respondent experienced three episodes of chest pains, this alone would not satisfy the requirements of paragraph (c), more specifically the condition that the claimant must have shown signs and symptoms of cardiac injury *during the performance of his work* and such symptoms and signs persisted.

To successfully recover compensation for his heart ailment, the respondent must therefore prove, through substantial evidence, that the risk of contracting the disease was increased by the nature of his work and working conditions. Thus, the respondent posits that the underlying cause of his illness is stress caused by the performance of his numerous duties as Chief of the Architectural Division of the Bureau of Design and as representative to different committees. To show how stressful his work was, he submitted in evidence minutes of the meetings that he attended since January 2000. The petitioner disputes this allegation on the ground that, based on respondent's diagnostic test result which showed that he had a high cholesterol level, the cause of the heart attack was hypercholesterolemia — the main cause of atherosclerosis resulting in coronary artery disease and myocardial infarction.[18]

Six primary risk factors have been identified with the development of atherosclerotic coronary artery disease and myocardial infarction: hyperlipidemia or high blood cholesterol, diabetes mellitus, hypertension or high blood pressure, smoking,

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[18] *Rollo*, pp. 261-266.

male gender, and family history of atherosclerotic arterial disease.[19] In *Government Service Insurance System v. Cuanang*,[20] while the Court recognized stress as one of the predisposing factors of myocardial infarction, it also noted that "stress appears to be associated with elevated blood pressure." The ECC, for its part, does not seem to treat stress as a separate risk factor for myocardial infarction. In fact, in its decision, it stated that hypertension is the sole risk factor in the development of a coronary artery disease that is considered work-related.[21] Some references,[22] however, include stress as a risk factor, distinct from hypertension.[23]

Noticeably, the record is devoid of any medical information on the cause of respondent's acute myocardial infarction which could help the Court determine whether there was a causal link between the respondent's allegedly stressful work and his ailment. A physician's report would have been the best evidence of work-connection of workmen's ailments.[24] Medical evidence

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[19] Christopher T. Bajzer, M.D., Acute Myocardial Infarction, May 30, 2002. <http://www.clevelandclinicmeded.com/medicalpubs/diseasemanagement/cardiology/acutemi/acutemi.htm> (visited April 16, 2008)

[20] *Supra* note 13.

[21] *Rollo,* p. 47.

[22] See Heart Attack (Myocardial Infarction) <http://www.nyp.org/health/heart-attack.html> (visited April 17, 2008)**;** Nutrition and Well-Being A-Z <http://www.faqs.org/nutrition/Hea-Irr/Heart-Disease.html> (visited April 17, 2008).

[23] "Medical researchers are n[o]t sure exactly how stress increases the risk of heart disease. Stress itself might be a risk factor, or it could be that high levels of stress make other risk factors (such as high cholesterol or high blood pressure) worse. For example, if you are under stress, your blood pressure goes up, you may overeat, you may exercise less and you may be more likely to smoke.

"If stress itself is a risk factor for heart disease, it could be because chronic stress exposes your body to unhealthy, persistently elevated levels of stress hormones like adrenaline and cortisol. Studies also link stress to changes in the way blood clots, which increases the risk of heart attack." (Hypertension: Easing Stress <http://www.webmd.com/hypertension-high-blood-pressure/guide/hypertension-easing-stress>)

[24] *Limbo v. Employees' Compensation Commission*, G.R. No. 146891, July 30, 2002, 385 SCRA 466, 469.

is particularly vital where the causal connection is not clearly apparent to an ordinary person[25] or readily observable or discoverable without medical examination[26] for it is not our task to determine where the connection lies.

The claimant must show, at least, by substantial evidence that the development of the disease was brought about largely by the conditions present in the nature of the job. What the law requires is a reasonable work connection and not a direct causal relation. It is enough that the hypothesis on which the workmen's claim is based is probable.[27] Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings.[28] And probability must be reasonable;[29] hence, it should, at least, be anchored on credible information. Moreover, a mere possibility will not suffice; a claim will fail if there is only a possibility that the employment caused the disease.[30]

The absence of any medical information stating that the respondent's illness could have been caused by stress and not by any other factor reduces the respondent's claim of work connection to a mere possibility. Such deficiency restrains the Court from concluding that the respondent's illness is compensable. Contrarily, in *Cuanang,* the expert opinion of a physician was presented in evidence and it was specifically stated therein that the employee's acute myocardial infarction could be the consequence of her chronic hypertension *vis-à-vis* her rheumatic heart disease. This expert opinion, together with the information that stress appears to be associated with

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[25] *Tucson Unified School District v. Industrial Commission of Arizona*, 138 Ariz. 1, 672 P.2d 953 (1983).

[26] *Scotty's Inc. v. Jones*, 393 So.2d 657, 659 (1981).

[27] *Salmone v. Employees' Compensation Commission*, 395 Phil. 341, 347 (2000).

[28] *Government Service Insurance System v. Baul*, G. R. No. 166556, July 31, 2006, 497 SCRA 397, 404.

[29] *Dowell v. Ochsner Clinic of Baton Rouge,* 874 So. 2d 852, 858 (2004).

[30] *Id*.

elevated blood pressure, provided the Court with the link that tied the employee's sickness to her work as a teacher.

Finally, we reiterate here that, with prudence and judicial restraint, a tribunal's zeal in bestowing compassion should yield to the precept in administrative law that absent a showing of grave abuse of discretion, courts are loathe to interfere with and should respect the findings of quasi-judicial agencies in fields where they are deemed and held to be experts due to their special technical knowledge and training.[31] Compassion for the victims of diseases not covered by the law ignores the need to show a greater concern for the trust fund to which the tens and millions of workers and their families look for compensation whenever covered accidents, diseases and deaths occur.[32]

WHEREFORE, premises considered**,** the petition is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. SP No. 88038 dated May 17, 2005, and Resolution dated July 8, 2005 are *REVERSED* and *SET ASIDE*. The Decision of the Employees' Compensation Commission dated November 12, 2004 is *AFFIRMED*.

SO ORDERED.

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

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[31] *Government Service Insurance System v. Fontanares*, G.R. No. 149571, February 21, 2007, 516 SCRA 330, 341.

[32] *Government Service Insurance System v. Court of Appeals,* 357 Phil. 511, 529 (1998).

EN BANC

[G.R. No. 168999. April 30, 2008]

RAUL A. DAZA, in his capacity as Governor of Northern Samar, *petitioner, vs.* **RONAN P. LUGO,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; A PROBATIONARY EMPLOYEE MAY ONLY BE TERMINATED FOR A JUST CAUSE, THAT IS, UNSATISFACTORY CONDUCT OR WANT OF CAPACITY.— The Constitution provides that "[N]o officer or employee of the civil service shall be removed or suspended except for cause provided by law." Sec. 26, par. 1, Chapter 5, Book V, Title I-A of the Revised Administrative Code of 1987 states: All such persons (appointees who meet all the requirements of the position) must serve a probationary period of six months following their original appointment and shall undergo a thorough character investigation in order to acquire permanent civil service status. **A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration** of the probationary period; *Provided*, That such action is appealable to the Commission. Thus, the services of respondent as a probationary employee may only be terminated for a just cause, that is, unsatisfactory conduct or want of capacity.

APPEARANCES OF COUNSEL

Eduardo N. Potot for petitioner.
*Jose C. Llan*es for respondent.

D E C I S I O N

AZCUNA, *J.*:

This is a petition for review on *certiorari*[1] of the Decision of the Court of Appeals promulgated on December 20, 2004,

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

reversing and setting aside Resolution No. 030006 of the Civil Service Commission (CSC) dated January 7, 2003 and reinstating the Order[2] dated January 8, 2002 of the CSC Regional Officer.

The facts are as follows:

Records show that former Governor Madeleine P. Mendoza-Ong of Northern Samar issued an appointment dated March 7, 2001 in favor of respondent Ronan P. Lugo as Sanitation Inspector I under permanent status. The appointment was approved on March 20, 2001 by the CSC Provincial Field Office of Catarman, Northern Samar.

On August 10, 2001, petitioner Raul A. Daza, the newly elected Governor of Northern Samar, issued Memorandum No. 352-01 directing the Department Heads to evaluate the performance of probationary employees (including respondent) under their respective supervisions to determine whether they were qualified to acquire permanent status. The Memorandum reads:

PGO MEMORANDUM NO. 352-01

TO : All Concerned Office/Department Heads/OICs

SUBJECT : Evaluation of concerned staff under probationary status

Please be reminded that there are a number of employees under your immediate supervision who are under probationary status.

The probationary status of these employees will end on different dates in September/October 2001, per attached list.

CSC rule provides that **"all such persons must serve a probationary period of six (6) months following their original appointment and shall undergo a thorough character investigation in order to acquire permanent civil service status. A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration of the probationary period.**

In this connection, as immediate supervisor, you are directed to evaluate those concerned employees using our performance evaluation rating system and to submit a report **to the undersigned**

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[2] Order No. 010130.

on or before the end of August 2001. Attached with the report is/are the Performance Evaluation Report/s, stating among others, whether or not these employees are qualified to acquire permanent status.[3]

On September 5, 2001, petitioner issued a Memorandum informing respondent that his probationary service was terminated due to his unsatisfactory conduct. The Memorandum reads:

> Pursuant to my authority under Rule VII, Section 2, CSC Omnibus Rules Implementing Book V of Executive Order No. 292 (the Administrative Code of 1987), I hereby terminate your probationary service for unsatisfactory conduct effective at the close of office hours on September 6, 2001.[4]

Respondent appealed petitioner's termination order to the CSC, Regional Office VIII (CSCRO VIII).

In an Order dated January 8, 2002, the CSC Regional Officer found that the termination of respondent was not in order and pronounced, thus:

> WHEREFORE, foregoing premises considered, the Termination Order (Memorandum dated September 5, 2001) issued by Governor Raul Daza to Ronan Lugo is hereby declared NOT IN ORDER, for being in violation of CSC Memorandum Circular No. 2, series of 1987 and CSC Memorandum Circular No. 42, series of 1989. Accordingly, Ronan Lugo is hereby ordered to be reinstated immediately to his previous post as Sanitary Inspector I of Gamay Rural Health Unit, Gamay, Northern Samar, with payment of back salaries and other monetary benefits.[5]

Petitioner's motion for reconsideration was denied for lack of merit. Thereafter, petitioner appealed to the CSC.

In Resolution No. 030006 dated January 7, 2003, the CSC ruled in favor of petitioner, thus:

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[3] *Rollo*, p. 69.

[4] CA decision, *rollo*, p. 25.

[5] *Id*. at 26.

WHEREFORE, the appeal of Governor Raul A. Daza is hereby granted. Accordingly, CSCRO VIII Order Nos. 010136 dated January 8, 2002 and 010160 dated March 4, 2002, respectively, are hereby reversed. Thus, the termination of services of Ronan P. Lugo for unsatisfactory conduct is found to be in order.[6]

Respondent filed a petition for review before the Court of Appeals (CA).

In the Decision promulgated on December 20, 2004, the CA reinstated the Order of the CSC Regional Officer. The dispositive portion of the Decision reads:

WHEREFORE, the assailed Resolution No. 030006, dated January 7, 2003, issued by the public respondent Civil Service Commission (CSC) is hereby **REVERSED AND SET ASIDE** and the Order No. 010130, dated January 8, 2002, issued by the CSC Regional Officer is hereby **REINSTATED**.[7]

The CA found that respondent was removed without just cause as his termination for unsatisfactory conduct was without basis. The CA stated that respondent was terminated due to his failure to submit a Performance Evaluation Report to his immediate head or to the personnel department in compliance with petitioner's Memorandum No. 352-01. It pointed out that the Memorandum was not addressed personally to respondent, but to all concerned "Office/Department Heads/OICs," and, therefore, it was respondent's immediate supervisor who failed to evaluate and submit respondent's Personal Evaluation Report. The CA held:

. . . [I]t is therefore evident that the finding of unsatisfactory conduct against petitioner (Lugo) is without basis. Aside from the fact there was no PER submitted by petitioner's immediate head to private respondent that would support such finding, there were also no other documents that would show that petitioner's performance as Sanitary Inspector I was inefficient or unsatisfactory. Thus it necessarily follows that the notice of termination, dated September 5, 2002, served upon petitioner deprived him of due process.

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[6] *Id.* at 26.

[7] *Id.* at 31.

Petitioner was never apprised of any poor or unsatisfactory performance but was instantaneously dismissed, and worse, without any basis.

Petitioner's motion for reconsideration was denied by the CA in its Resolution promulgated on July 18, 2005.

Hence, this petition.

The main issue in this case is whether or not respondent's services were terminated without just cause.

Petitioner alleges that the CA erred in ruling that respondent was denied due process in the termination of his services and in applying *Miranda v. Carreon*[8] to this case.

Petitioner contends that the CA erred in stating that it was respondent's immediate supervisor who failed to evaluate and submit respondent's Performance Evaluation Report. Petitioner asserts that based on former Governor Madeleine P. Mendoza-Ong's office order on the Revised Performance Evaluation System of the provincial government, it is required that each employee prepare the prescribed Performance Evaluation Form (PEF-1) and set his/her performance standards together with his/her targets, and that at the end of the evaluation, the supervisor and the employee meet to discuss the latter's accomplishments and they both give their ratings in the prescribed form and settle/discuss differences, if there are any.

Petitioner argues that the prescribed form (PEF-1) shows that the employee, apart from his supervisor, also rates himself; hence, respondent should have known that he was required to submit his Performance Evaluation Report through his immediate supervisor, which he failed to do. Petitioner added that his memorandum to respondent's supervisor was a reminder that he did not even have to, and respondent frustrated the performance rating process by not submitting his Performance Evaluation Report, which was vital to the determination of the latter's worthiness to continue in the service.

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[8] G.R. No. 143540, April 11, 2003, 301 SCRA 303.

The Court is not persuaded by petitioner's arguments.

The Constitution provides that "[N]o officer or employee of the civil service shall be removed or suspended except for cause provided by law."[9] Sec. 26, par. 1, Chapter 5, Book V, Title I-A of the Revised Administrative Code of 1987 states:

All such persons (appointees who meet all the requirements of the position) must serve a probationary period of six months following their original appointment and shall undergo a thorough character investigation in order to acquire permanent civil service status. **A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration** of the probationary period; *Provided*, That such action is appealable to the Commission.

Thus, the services of respondent as a probationary employee may only be terminated for a just cause, that is, unsatisfactory conduct or want of capacity.

In this case, petitioner's Memorandum No. 352-01 directed to "[a]ll Concerned Office/Department Heads/OICs" on the subject of "evaluation of concerned staff under probationary status" clearly states: ". . . **[A]s immediate supervisor, you are directed to evaluate those concerned [probationary] employees using our performance evaluation rating system and to submit a report to the undersigned on or before the end of August 2001**."

Hence, the CA correctly stated:

[It is] crystal clear that the above-quoted memorandum [No. 352-01] did not in any manner direct all employees under probationary status, including petitioner, to submit their own Performance Evaluation Report. It would also be absurd for these employees to evaluate their own selves. Thus, if these employees, including petitioner, failed to submit a Performance Evaluation Report to their immediate supervisors, the same cannot be taken against them. Evidently, it was [Lugo's] immediate supervisor who failed to evaluate and submit [Lugo's] Performance Evaluation Report as required by the subject memorandum. On this point is the CSC Regional

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[9] Constitution, Art. IX-B, Sec. 2, paragraph 3.

Officer's findings and conclusion, which We take leave to quote with approval, to wit —

> "If indeed the manifestations of xxx Gov. Daza that the immediate supervisor of xxx Lugo failed to submit the required Performance Evaluation Report, is true, the statement therefore, that Lugo had committed 'unsatisfactory conduct' is without basis. For how can one claim unsatisfactory conduct when there was no submitted report detailing the same, which would serve as basis for such finding."[10]

Even if respondent is allowed to rate himself in the Performance Evaluation Form, it is the supervisor's rating that is controlling because, indeed, it would be absurd for a probationary employee to rate himself. The duty to evaluate the performance of such employee belongs to the concerned department head who has supervision over him. Thus, petitioner issued Memorandum No. 352-01 for department heads to evaluate their respective probationary employees "using our performance evaluation rating system and to submit a report to the undersigned on or before the end of August 2001." Petitioner, therefore, erred in insisting that it was respondent's duty to submit respondent's Performance Evaluation Report and that respondent frustrated the performance rating process by not submitting the said Report, because it was only proper that the Performance Evaluation Report be submitted by respondent's supervisor to petitioner as required by petitioner's Memorandum.

Further, the CA found that there were no other documents presented to show that respondent's termination based on unsatisfactory conduct was justified. It stated thus:

. . . Civil Service Rules on probationary period for permanent appointment require "a notice of termination of service within ten (10) days immediately <u>after it was proven that they have demonstrated unsatisfactory conduct or want of capacity during the probationary period</u>. Such notice shall state, among others, the reasons for such termination and shall be supported by at least two of the following:

a) Performance Evaluation Report

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[10] *Rollo*, p. 28.

b) Report of immediate supervisor (rater) on work related critical and unusual incidents on unsatisfactory conduct, or

c) Other valid documents to support the notice.

The notice of termination sent by private respondent governor, however, is bereft of even a substantial compliance of the aforecited Civil Service Rules. Thus Annex "B" (Notice of Termination) issued was not supported by any document and obviously lack the proof of unsatisfactory conduct before the Board or Committee (Performance Evaluation and Review Committee) created for the purpose.[11]

It is evident, therefore, that there was no basis for the termination of respondent's services on the ground of unsatisfactory conduct since the Performance Evaluation Report on respondent was not submitted by respondent's supervisor to petitioner, and there were no other documents presented to show that respondent was guilty of unsatisfactory conduct.

Petitioner also contends that the CA erred in applying *Miranda v. Carreon*.

Miranda v. Carreon involves the termination of services of probationary employees, respondents therein, after a probationary period of only three months of service instead of six months. The CSC ordered the reinstatement of the said employees to their former positions with payment of backwages since it was improbable that the office head could finally determine their performance after a probationary period of only three months. The decision of the CSC was affirmed by the CA, and upheld by this Court.

Although *Miranda v. Carreon* is not on all fours with the present case, it does not affect the finding that respondent's services were terminated without just cause. The reinstatement of respondent to his former position with payment of backwages and other monetary benefits is thus warranted.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 76028 is *AFFIRMED*.

No costs.

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[11] *Id.* at 38.

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.

Ynares-Santiago, J., on official leave.

SECOND DIVISION

[G.R. Nos. 169408 & 170144. April 30, 2008]

HANJIN HEAVY INDUSTRIES AND CONSTRUCTION CO., LTD., *petitioner, vs.* **DYNAMIC PLANNERS AND CONSTRUCTION CORP.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; PETITION SHALL RAISE ONLY QUESTIONS OF LAW.—** Dynamic maintains that the issues Hanjin raised in its petitions are factual in nature and are, therefore, not proper subject of review under Section 1 of Rule 45, prescribing that a petition under the said rule, like the one at bench, "shall raise only questions of law which must be distinctly set forth." Dynamic's contention is valid to point as, indeed, the matters raised by Hanjin are factual, revolving as they do on the entitlement of Dynamic to the awards granted and computed by the CIAC and the CA. Generally, this would be a question of fact that this Court would not delve upon.

2. **ID.; ID.; ID.; ID.; ID.; EXCEPTIONS.—** The rule, however, precluding the Court from delving on the factual determinations of the CA, admits of several exceptions. In *Fuentes v. Court of Appeals*, we held that the findings of facts of the CA, which

are generally deemed conclusive, may admit review by the Court in any of the following instances, among others: (1) when the factual findings of the [CA] and the trial court are contradictory; (2) when the findings are grounded entirely on speculation, surmises, or conjectures; (3) when the inference made by the [CA] from its findings of fact is manifestly mistaken, absurd, or impossible; (4) when there is grave abuse of discretion in the appreciation of facts; (5) when the [CA], in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee; (6) when the judgment of the [CA] is premised on a misapprehension of facts; (7) when the [CA] fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; (8) when the findings of fact are themselves conflicting; (9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and (10) when the findings of fact of the [CA] are premised on the absence of evidence but such findings are contradicted by the evidence on record.

3. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTERPRETATION OF CONTRACTS; IN CONSTRUING A CONTRACT, THE PROVISIONS THEREOF SHOULD NOT BE READ IN ISOLATION, BUT IN RELATION TO EACH OTHER AND IN THEIR ENTIRETY.—** In construing a contract, the provisions thereof should not be read in isolation, but in relation to each other and in their entirety so as to render them effective, having in mind the intention of the parties and the purpose to be achieved. Thus, Article 1374 of the Civil Code provides that "the various stipulations of a contract shall be interpreted together attributing to the doubtful ones that sense which result from all of them taken jointly."

4. **ID.; ESTOPPEL; PRESENT IN CASE AT BAR.—** Given the above perspective, the condition imposed for Dynamic's entitlement to a share in Hanjin's foreign currency receipts is, for the nonce, deemed fulfilled. Accordingly, there is no legal obstacle to the award of a foreign currency adjustment to Dynamic. Furthermore, Hanjin's admission before the CIAC that Dynamic is entitled to a foreign currency portion of the subcontract price veritably placed Hanjin in estoppel from

claiming otherwise. Under the doctrine of estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

5. **REMEDIAL LAW; APPEALS; FINDINGS OF THE COURT OF APPEALS NEED NOT BE DISTURBED IF SUPPORTED BY THE EVIDENCE ON RECORD.—** We see no reason to disturb the CA's findings which appear to be supported by the evidence on record. The computation of awards is, to stress, purely factual which the Court, not being a trier of facts, need not evaluate and analyze all over again.

6. **CIVIL LAW; DAMAGES; ACTUAL DAMAGES; TO BE RECOVERABLE, ACTUAL DAMAGES MUST BE PLEADED AND ADEQUATELY PROVEN IN COURT.—** We agree and thus affirm the CA's holding that when expenses or offered deductions are **not** properly documented, such deductions should not be allowed, such deductions being in the nature of actual damages. To be recoverable, actual damages must be pleaded and adequately proven in court. An award thereof cannot be predicated on flimsy, remote, speculative, and insubstantial proof. Again, we see no reason to deviate from the CA's findings on the matter of how much Hanjin expended to complete the Project.

7. **ID.; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT OR PERFORMANCE; WAIVER OF STRICT COMPLIANCE BY AN OBLIGOR WITH AN OBLIGATION; ELEMENTS.—** In net effect, Hanjin accepted the benefits arising from the subcontract agreement without as much as asking Dynamic to finish its part of the bargain. Under Art. 1235 of the Civil Code, the obligation is deemed fully complied with when an obligee accepts the performance thereof knowing its incompleteness or irregularity, and without expressing any protest or objection. An obligee is deemed to have waived strict compliance by an obligor with an obligation when the following elements are present: (1) an intentional acceptance of the defective or incomplete performance; (2) with actual knowledge of the incompleteness or defect; and (3) under circumstances that would indicate an intention to consider the performance as complete and renounce any claim arising from the defect.

8. ID.; DAMAGES; ATTORNEY'S FEES; CANNOT BE RECOVERED IN THE ABSENCE OF STIPULATION; EXCEPTIONS.— The Subcontract Agreement, as supplemented, is silent as to payment of attorney's fees. The applicable law, Art. 2208 of the Civil Code, must thus govern any award thereof. It reads: ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered except: x x x 2) When the defendant's acts or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect its interest; x x x 5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim; x x x 11) In any case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. An award of attorney's fees being the exception, some compelling legal reason must obtain to bring the case within the exception and justify such award. In the case at bench, there is a categorical finding by the CIAC and CA that Hanjin's refusal to satisfy Dynamic's just claims amounted to gross and evident bad faith. This to us presents the justifying ingredient for the award of attorney's fees. Accordingly, we affirm the award of attorney's fees in CA-G.R. SP No. 86641 to Dynamic in the amount of PhP 500,000.

9. ID.; ID.; RULES ON INTEREST AWARD.— In the landmark case of *Eastern Shipping Lines v. Court of Appeals*, the Court summarized the rules on interest award, as follows: II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows: 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code. 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum*. No interest, however, shall

be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged. 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

APPEARANCES OF COUNSEL

M.A. Aguinaldo and Associates and *Villaraza & Angcangco Law Offices* for petitioner.
Cesar G. David for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Central to the dispute between petitioner Hanjin Heavy Industries and Construction Co., Ltd. (Hanjin), as contractor, and respondent Dynamic Planners and Construction Corporation (Dynamic), as subcontractor, is the Davao International Airport Project (Project). Hanjin seeks a reversal of the decision rendered by the Construction Industry Arbitration Commission (CIAC), as affirmed with modifications by the Court of Appeals (CA).

It is Hanjin's basic posture that Dynamic was in delay in the prosecution of, and eventually abandoned, the Project, prompting Hanjin to complete the same. Hanjin thus claims that Dynamic should not be entitled to the retention money and should instead be held liable for damages.

Dynamic denies having abandoned the Project, then nearing completion, some time in December 2002, but admits suspending work thereon on account of Hanjin's act of withholding the release of the down payment and the payment of its progress billing. Dynamic claims being entitled to the release of its retention money, to partial payment in foreign currency, and to payment for escalation costs.

The parties question certain items covered by the award, the corresponding amount due for each item, and the computations adopted first by the CIAC and then by the CA in arriving at a final award.

The Case

The instant Petitions for Review on *Certiorari*, both filed under Rule 45, arose from CIAC Case No. 07-2004 entitled *Dynamic Planners & Construction Corporation v. Hanjin Heavy Industries & Construction Co., Ltd.*, a request for arbitration initiated by Dynamic before the CIAC. On September 7, 2004, the CIAC rendered a decision denominated as Final Award,[1] allowing and ordering payment of most of Dynamic's claims, albeit on lowered amounts. Therefrom, both parties appealed to the CA, Dynamic's appeal docketed as CA-G.R. SP No. 86641, while that of Hanjin's as CA-G.R. SP No. 86633. The separate appeals were eventually raffled to and resolved by different divisions of the CA.

On July 6, 2005, in CA-G.R. SP No. 86641, the CA rendered a Decision,[2] modifying the CIAC's decision, the modification favoring Dynamic. Hanjin's motion for reconsideration was denied by the CA per its Resolution dated August 31, 2005.[3] Hanjin thus filed the instant Petition for Review on *Certiorari* dated October 20, 2005 docketed as G.R. No. 169408, assailing the above CA decision and resolution.

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[1] *Rollo* (G.R. No. 169408), pp. 217-264.

[2] *Id*. at 130-152. Penned by Presiding Justice Romeo A. Brawner (Chairperson) and concurred in by Associate Justices Edgardo P. Cruz and Jose C. Mendoza.

[3] *Id*. at 153-166.

Earlier, in CA-G.R. SP No. 86633, the CA issued a Decision dated January 28, 2005,[4] also modifying the CIAC Decision. Hanjin then sought reconsideration but the CA similarly denied the motion via a Resolution of October 14, 2005.[5] Hanjin then interposed a petition for review docketed as G.R. No. 170144, questioning the decision and resolution of the CA.

The Facts

The facts, as found by the CIAC and the CA, are as follows:

On August 23, 1999, the Department of Transportation and Communications (DOTC) awarded to Hanjin the contract for the construction of the Project for the aggregate sum of PhP 1,701,353,495.92, 65% of which is payable in Philippine peso and the remaining 35% in US dollars at the stipulated exchange rate of PhP 34.10 to USD 1.[6] Thereafter, steps were taken and negotiations undertaken towards a sub-contracting arrangement between Hanjin and Dynamic.

On February 28, 2000, Hanjin and Dynamic executed a Subcontract Agreement over a 76.5% portion of the main contract for the price of **PhP 924,670,819**.[7] Among others, the subcontract contained provisions on down or advance payment and progress billing, the first item payable within 20 days from contract signing.[8] To note, progress billings represent claims for payment for works accomplished and materials delivered as construction progresses.

As drawn, the subcontract was a unit price, as distinguished from a lump sum, agreement. As such, the quantities specified therein and upon which the subcontract price was determined

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[4] *Rollo* (G.R. No. 170144), pp. 95-120. Penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Portia Aliño-Hormachuelos (Chairperson) and Aurora Santiago-Lagman.

[5] *Id*. at 122-126.

[6] *Rollo* (G.R. No. 169408), pp. 131, 229.

[7] *Id*. at 131, 223.

[8] *Id*. at 320-409.

were provisional. Accordingly, after re-measuring and after determining actual quantities required for the works on the basis of changes in the specifications, the estimated quantities were substantially reduced. The reduction resulted in an adjustment of the subcontract price to **PhP 714,868,129**.[9]

As of January 2000, Dynamic already mobilized its equipment and manpower, albeit it has yet to receive a Notice to Proceed from Hanjin. This advance accommodating arrangement was made so that the mobilization would coincide with the Notice to Proceed that the DOTC issued to Hanjin. By March 2000, when it received a Notice to Proceed from Hanjin, Dynamic had already spent a tidy sum for mobilization purposes.

In a clear breach of the subcontract agreement which obligated Hanjin to give Dynamic an advance/down payment within 20 days from contract execution,[10] Hanjin paid Dynamic the stipulated down payment in 10 installments spread over a six-month period. Payments for Dynamic's progress billings likewise came late and also effected in installments, when the subcontract called for progress billing payment within seven working days from the payment by the client (DOTC) to the contractor (Hanjin).[11]

It may be stated at this stage that shortly after the subcontract signing, Dynamic secured a US dollar denominated loan from GRB Capital, Inc. (GRB) of California. As security for the loan, Dynamic agreed to assign its receivables from the Project to GRB, but Hanjin opposed the security arrangement on the ground that the assignment might interfere with Dynamic's performance.

Prior to the start of the construction works, Dynamic engaged the services of Gregorio E. Origenes, a structural engineer with 38-years experience behind him, to check on the designs of the Project. After examining the plans and specifications for the Project, Origenes found that "[t]he depth of the girder was

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[9] *Id*. at 223.

[10] *Id*. at 235.

[11] *Id*. at 239-240.

undersigned [sic] considering the length of the beam and considering further that no post tensioning cables were provided; and [t]he framing system of the beams and girders was poorly designed."[12]

Dynamic called Hanjin's attention to such design deficiency. But upon the prodding of Hanjin which relied on a contrary assessment of the Davao Airport Consultants (DAC), Dynamic nonetheless proceeded with the construction as designed. The flawed design would later, however, manifest themselves by cracks appearing in the beams to the second floor slab in the Passenger Terminal Building. Initially, Hanjin considered such defects as construction in nature attributable to Dynamic, not design defects. However, the Association of Structural Engineers of the Philippines, Task Force Davao International Airport, upon investigation, discovered no evidence of deviation from the design plans and specifications, and stated the opinion that there is a failure of structural design for some of the beams and girders of Passenger Terminal Buildings 1 and 2.[13]

To address the adverted design defect, Dynamic recommended post-tensioning. However, Hanjin balked at this recommendation. Eventually, Hanjin and the DAC approved the use of carbon fiber as post-tensioning material of the structures to be used by a new subcontractor, the Composite Technology Corporation.[14]

On December 31, 2000, the parties executed a modificatory Supplementary Agreement[15] in a bid to ensure the timely completion of the Project, with Hanjin assisting Dynamic in the scheduled works. Under this supplementary contract, Hanjin would, among other things, take over the responsibility for canvassing of quotations, procurement, and delivery of materials and installation works. Dynamic would still provide for temporary facilities, such as scaffoldings, formwork materials, and the like.[16]

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[12] *Id*. at 243-244.

[13] *Id*. at 244-246.

[14] *Id*. at 247.

[15] *Id*. at 410-418.

[16] *Id*. at 223.

As of April 2002, **89%** of the Project had been finished. Hanjin would, however, inform Dynamic that no progress billing payment would be forthcoming after April 2002. As of that time, a total of 20 progress billings were submitted to Hanjin in the total amount of **PhP 582,103,359.35**, 10% of which, or over PhP 58.2 million, was retained by Hanjin.[17] By December 2002, when project works had reached a 94% completion level, Hanjin took over the Project for the reason of alleged abandonment.[18] Dynamic was thus impelled to demand payment from Hanjin for work done on the Project, which then went unheeded.

Such was the state of things when Dynamic submitted its claim against Hanjin for arbitration to the CIAC. In its Answer, Hanjin made counterclaims, such as costs of takeover, contractual negative balance, and damages.

At the CIAC, the parties entered into a Terms of Reference whereby the issues they raised were embodied, *viz*:

1. Is Claimant [Dynamic] entitled to the release of its retention amounting to ₱58,210,336.00 when DOTC released to the Respondent [Hanjin] the retained amount of ₱89,492,594.56?

2. Is Claimant entitled to its claim for payment of escalation cost and/or price adjustment amounting to ₱60,000,000.00?

3. Is Claimant entitled to its claim for payment of a foreign currency adjustment in the amount of ₱160,688,069.00?

4. Is Claimant entitled to its claim for payment of its work accomplishments valued at ₱27,790,675.00?

5. Whether or not Claimant is entitled to claim payment at 40% mark-up of the following variation orders: (1) Variation Order amounting to ₱219,171,878.00 x 40% = ₱87,668,722.00; (2) Variation Order amounting to ₱60,923,533.00 x 40% = ₱24,369,413.20?

6. Is Claimant entitled to its claim for payment for the installation of three systems of arrival carousel in the amount of ₱34,297,691.91?

7. x x x x x x x x x

[17] *Id*. at 133.

[18] *Id*. at 132.

8. Is Claimant entitled to its claim for payment for interest computed at the rate of 12% per annum in the amount of ₱51,288,786.36?

9. Was respondent guilty of bad faith and deceit in its dealings with the Claimant when (a) it released the down payment in installments; x x x (c) it delayed payment of progress billings; (d) it refused to release to the Claimant 35% of the foreign currency portion of its contract with DOTC; x x x (f) it overpriced the materials it purchased for the Claimant under the Supplementary Agreement between the parties, and claimed reimbursement for materials for which it failed to produce supporting receipts and also claimed reimbursement for transporting materials from abroad using unreasonable and unacceptable method of transporting materials?

10. Were there deductions from the work accomplishments of Claimant, which were unauthorized and undue? Did the Claimant abandon the works? If it did, is the Claimant liable to Respondent for additional expenses it incurred in completing the work in the aggregate amount of ₱107,459,925.51?

11. Is Claimant liable for the claim x x x, for the cost of the supplies, materials and equipment, inclusive of taxes and customs duties, supplied by the Respondent x x x for the performance of the Subcontracted Works? If so, how much of this claim is Respondent entitled to x x x ?

12. Was the Claimant (i) mismanaged, (ii) lacking in capacity to perform the Subcontracted Works, (iii) lacking in technical Know-how x x x (iv) lacking in expert engineers and qualified manpower x x x (v) financially incapable of accomplishing the Subcontracted Works x x x ?

13. Did Claimant discover the deficiency in the structural design of the buildings to be constructed by it, namely: (i) the Passenger Terminal Building, (ii) the ATC-Administration Building, and (iii) the Central Plant Building? If so, did it call the attention of the Respondent to this deficiency? Did the Respondent instruct the Claimant to proceed with the construction of the shop drawings and the construction of the buildings? Did cracks occur in the concrete beams of the buildings causing the DOTC through its consultant to provide procedures for correction of the defects and determine their cause? x x x Who between Claimant and Respondent is liable for the cost of retrofitting the cracked slabs and beams?

14. Is the Claimant liable for the claims of Respondent, described generally as "Contractual Negative Balance" x x x ?

15. Is Claimant liable to Respondent for delay x x x ?

16. Is the Claimant liable to the Respondent for x x x moral damages x x x and attorney's fees x x x ?

17. Is Claimant entitled to its claim for payment of attorney's fees in the amount of ₱25,554,857.55?[19]

The following is a summary of the parties' claims and counterclaims submitted before the CIAC:

[DYNAMIC'S CLAIMS:]

Retention Money	₱	58,210,336.00
Escalation Cost/Price Adjustment		60,000,000.00
Foreign Currency Adjustment		160,688,069.00
Work Accomplishments		27,790,675.00
Variation Orders		153,119,284.73
Interest for Late Payments		51,288,786.36
Attorney's Fees		25,554,857.55
	₱	536,652,008.64

[HANJIN'S COUNTERCLAIMS:]

Contractual Negative Balance	₱	121,273,314.00
Increase Manpower		81,486,997.00
Equipment		635,500.00
Electrical Consumption		419,939.16
Miscellaneous Materials		481,734.81
Liquidated Damages		12,600,000.00
Expenses for Preparation of Final Drawing		11,705,354.12
Miscellaneous Expenses of Claimant's Subcontractors		
Moral Damages		130,500.00
Exemplary Damages		1,000,000.00
Attorney's Fees		1,000,000.00
	₱	2,000,000.00[20]
	₱	232,733,339.51

[19] *Id*. at 218-219.

[20] *Id*. at 219-220.

Thereafter, the CIAC issued a Final Award awarding the following amounts for the items as indicated:

The total credits to Dynamic are:

Adjusted Subcontract Price	₱	1,028,932,282.36
Share in Profit in VOs		9,295,667.94
Materials Over-purchased		54,847,739.30
TOTAL	₱	1,093,075,739.30

The total deductions are:

Payment, Progress Billings Nos. 1-20	₱	582,103,359.35
Net Cost to Complete		368,578,828.92
Repayment Un-recouped		
Advance Payment		16,398,419.74
TOTAL	₱	967,080,608.01

x x x

BALANCE	₱	125,995,131.29 [21]

Following the denial of Dynamic's Motion to Correct Award per the CIAC's Order of September 24, 2004,[22] both parties appealed to the CA.

The Rulings of the Court of Appeals

In CA-G.R. SP No. 86633, the CA rendered the first appealed Decision dated January 28, 2005, veritably affirming the factual findings of the CIAC, but nonetheless modified the latter's ruling insofar only as the award of attorney's fees, rate of interest imposable, and liability for arbitration fees were concerned. The *fallo* of the January 28, 2005 CA Decision reads:

WHEREFORE, the assailed CIAC Final Award dated September 7, 2004 is **MODIFIED** and/or **RECTIFIED** as follows: (a) to order the parties to equally share the costs of arbitration conformably with

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[21] *Supra* note 1, at 262.

[22] *Rollo* (G.R. No. 169408), pp. 273-274.

Article 24 of their ***Subcontract Agreement***; (b) to delete the award of attorney's fees in favor of respondent [Dynamic]; and, (c) to reduce the rate of interest imposable after the finality of the award from 15% to 12% per annum. The rest is **AFFIRMED *in toto***.[23]

The CA would subsequently deny Hanjin's motion for reconsideration in its Resolution of October 14, 2005.

On the other hand, the appellate court's Decision dated July 6, 2005 in CA-G.R. SP No. 86641 dispositively reads:

Foregoing premises considered we vote to **GRANT** the instant petition. The Final Award dated September 7, 2004 in CIAC Case No. 07-2004 is hereby **MODIFIED**; the net award shall be computed as follows:

Original Subcontract Price		PhP 714,868,129.00
Foreign Currency Adjustment		131,338,674.80
Price Escalation		48,171,585.32
Variation Orders		156,786,932.62
Adjusted Subcontract Price		PhP1,051,165,321.74
x x x	x x x	x x x
Share in Profit in VOs		61,400,096.07
Materials Over-Purchased		54,847,789.94
Total		PhP1,167,413,207.75
Less: Total Deductions		
Progress Billings Nos. 1-20		
net of retention money	523,893,023.35	
Net Cost to Complete	368,578,828.92	
Repayment, Unrecouped		
Advance Payment	16,398,419.74	908,870,252.01
Net Award		PhP 258,542,935.74

The net award in favor of petitioner Dynamic x x x shall be [PhP 258,542,935.74] plus attorney's fees of [PhP 500,000]. Respondent Hanjin x x x is hereby ordered to pay petitioner corporation the amount of [PhP 259,042,935.74]; plus interest at 12% per annum from the

[23] *Supra* note 4, at 119.

promulgation of the assailed Final Award on September 7, 2004, until paid. The cost of arbitration, however, should be equally borne by the parties in accordance with Article 24 of the Subcontract Agreement.

SO ORDERED.[24]

Upon motion for reconsideration filed by both parties, the CA recomputed and came up with a higher net award as set forth in its Resolution of August 31, 2005 in CA-G.R. SP No. 86641, disposing as follows:

Due to the complexity of the computations involved, We deem it wise to RESTATE Our Decision. The net award shall be recomputed as follows:

Original Subcontract Price		PhP 714,868,129.00
Foreign Currency Adjustment		131,338,674.80
Price Escalation		53,744,697.39
Variation Orders (VOs)		141,535,238.92
Adjusted Subcontract Price		PhP 1,041,486,740.11
Share in Profit in VOs		9,295,667.94
Materials Over-Purchased		54,847,789.94
Total		PhP 1,105,630,197.99
Less, Total Deductions		
Progress Billings Nos. 1-20		
net of retention money	523,893,023.35	
Unadjusted Net Cost to		
Complete	470,183,498.41	
Plus: Mech. Works (EFQ)	7,776,735.77	
Less: Amount to be reimbursed		
to [Dynamic]	(3,338,736.57)	
Disallowed items	(93,983,040.38)	
Additional disallowed	(8,381,856.00)	

[24] *Supra* note 2, at 150-151.

Overcharging of Materials for VOs	(104,208,856.26)	
Amended Cost to Complete	271,386,481.54	
Repayment, Un-recouped Advance Payment	16,398,419.74	811,677,924.63
Net Award		PhP 293,952,273.36

The net award in favor of petitioner [Dynamic] shall be [PhP 293,952,273.36] plus attorney's fees of [PhP 500,000]. Respondent [Hanjin] is hereby ordered to pay petitioner x x x the amount of [PhP 293,952,273.36] plus interest at 12% per annum from the promulgation of the assailed Final Award on September 7, 2004, until paid. Hanjin is likewise ordered to release to [Dynamic] the retention money in the amount of PhP 58,210,336.00, plus interest at 12% per annum from the time the Request for Arbitration was filed with the CIAC on February 20, 2004, until fully paid. The cost of arbitration, however, should be equally borne by the parties in accordance with Article 24 of the Subcontract Agreement.

SO ORDERED.[25]

From the CA Decision in CA-G.R. SP No. 86633, Hanjin has come to this Court on a Petition for Review on *Certiorari*, the same docketed as G.R. No. 170144. And from the more adverse CA Resolution in CA-G.R. SP No. 86641, Hanjin also filed a similar petition, docketed as G.R. No. 169408.

In a Resolution dated February 28, 2007,[26] this Court consolidated the above cases.

The Issues

Hanjin raises identical issues in both of its petitions, to wit:

I

WHETHER A REVIEW OF THE INSTANT CASE BY WAY OF THE INSTANT PETITION FOR REVIEW IS WARRANTED

[25] *Supra* note 3, at 165-166.

[26] *Rollo* (G.R. No. 170144), p. 1166.

II

WHETHER THE [CA] ERRONEOUSLY READ INTO THE SUBCONTRACT AGREEMENT EXTRANEOUS AND CONTRACTUALLY INEXISTENT TERMS AND CONDITIONS TO LAMELY JUSTIFY ITS AWARD TO RESPONDENT DYNAMIC OF PAYMENT IN FOREIGN CURRENCY

III

WHETHER THE [CA'S] AWARD OF PRICE ESCALATION IN FAVOR OF RESPONDENT DYNAMIC IS WITH LEGAL BASIS

IV

WHETHER THE [CA'S] IMPOSITION OF CERTAIN ITEMS, PERCENTAGES AND AMOUNTS IN RESPONDENT DYNAMIC'S CLAIM TO VARIATION ORDERS IS WITH LEGAL BASIS

V

WHETHER THE [CA] WAS LEGALLY JUSTIFIED IN ITS COMPUTATION WITH REGARD TO THE ITEMS ON COSTS TO COMPLETE IN FAVOR OF PETITIONER HANJIN

VI

WHETHER THE [CA] COMMITTED REVERSIBLE ERROR WHEN IT DISREGARDED THE EVIDENCE ESTABLISHED ON RECORD BY REWARDING RESPONDENT DYNAMIC PAYMENT OF RETENTION MONEY DESPITE ITS ABANDONMENT OF THE SUBCONTRACTED WORKS

VII

WHETHER PETITIONER HANJIN IS LEGALLY ENTITLED TO REIMBURSEMENT OF THE COST OF ATTORNEY'S FEES, MORAL AND EXEMPLARY DAMAGES

VIII

WHETHER THERE WAS LEGAL BASIS FOR THE [CA'S] RULING THAT RESPONDENT DYNAMIC IS ENTITLED TO INTEREST PAYMENT[27]

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[27] *Rollo* (G.R. No. 169408), pp. 1446-1447.

The Ruling of the Court

The Propriety of the Petitions for Review

Dynamic maintains that the issues Hanjin raised in its petitions are factual in nature and are, therefore, not proper subject of review under Section 1 of Rule 45, prescribing that a petition under the said rule, like the one at bench, "shall raise only questions of law which must be distinctly set forth."

Dynamic's contention is valid to point as, indeed, the matters raised by Hanjin are factual, revolving as they do on the entitlement of Dynamic to the awards granted and computed by the CIAC and the CA. Generally, this would be a question of fact that this Court would not delve upon. *Imperial v. Jaucian* suggests as much. There, the Court ruled that the computation of outstanding obligation is a question of fact:

> Arguing that she had already fully paid the loan x x x, petitioner alleges that the two lower courts misappreciated the facts when they ruled that she still had an outstanding balance of ₱208,430.
>
> **This issue involves a question of fact**. Such question exists when a doubt or difference arises as to the truth or the falsehood of alleged facts; and when there is need for a calibration of the evidence, considering mainly the credibility of witnesses and the existence and the relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation.[28] (Emphasis supplied.)

The rule, however, precluding the Court from delving on the factual determinations of the CA, admits of several exceptions. In *Fuentes v. Court of Appeals*, we held that the findings of facts of the CA, which are generally deemed conclusive, may admit review by the Court in any of the following instances, among others:

> (1) when the factual findings of the [CA] and the trial court are contradictory;
>
> (2) when the findings are grounded entirely on speculation, surmises, or conjectures;

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[28] G.R. No. 149004, April 14, 2004, 427 SCRA 517, 523-524.

(3) when the inference made by the [CA] from its findings of fact is manifestly mistaken, absurd, or impossible;

(4) when there is grave abuse of discretion in the appreciation of facts;

(5) when the [CA], in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;

(6) when the judgment of the [CA] is premised on a misapprehension of facts;

(7) when the [CA] fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;

(8) when the findings of fact are themselves conflicting;

(9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and

(10) when the findings of fact of the [CA] are premised on the absence of evidence but such findings are contradicted by the evidence on record.[29]

Significantly, jurisprudence teaches that mathematical computations as well as the propriety of the arbitral awards are factual determinations.[30] And just as significant is that the factual findings of the CIAC and CA — in each separate appealed decisions — practically dovetail with each other. The perceptible essential difference, at least insofar as the CIAC's Final Award and the CA Decision in CA-G.R. SP No. 86641 are concerned, rests merely on mathematical computations or adjustments of baseline amounts which the CIAC may have inadvertently utilized.

At any rate, the challenge hurled by Hanjin against the merits of the CA's findings, particularly those embodied in its Decision in CA-G.R. SP No. 86641, must fail, such findings being fully supported by, or deducible from, the evidence on record.

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[29] G.R. No. 109849, February 26, 1997, 268 SCRA 703, 709.

[30] *Megaworld Globus Asia, Inc. v. DSM Construction and Development Corporation*, G.R. No. 153310, March 2, 2004, 424 SCRA 179.

Issue of Payment in Foreign Currency

Hanjin argues that there is no provision in the subcontract agreement, as supplemented, for the partial payment of the contract price in foreign currency.

Hanjin is wrong, a peso-dollar payment mix being effectively contemplated in the subcontract. In construing a contract, the provisions thereof should not be read in isolation, but in relation to each other and in their entirety so as to render them effective, having in mind the intention of the parties and the purpose to be achieved.[31] Thus, Article 1374 of the Civil Code provides that "the various stipulations of a contract shall be interpreted together attributing to the doubtful ones that sense which result from all of them taken jointly."

In other words, the stipulations in a contract and other contract documents should be interpreted together with the end in view of giving effect to all.[32] The CA, as did the CIAC, found the Hanjin-Dynamic Subcontract Agreement as including and incorporating the provisions of other agreements entered into by and between the parties respecting the Project. They appropriately cited Art. 1 of the Subcontract Agreement, stating:

ARTICLE 1. SUBCONTRACT DOCUMENTS

1.1) The following documents shall be deemed **to form and be read and be construed as an integral part of the Subcontract Agreement** in the same order of precedence as below:

a) Subcontract Agreement No. DAV-2-Sub-A-OO 1
b) Special Conditions as the Annex 1
c) General Conditions of the Main Contract
d) Technical Specifications of the Main Contract
e) Tender Drawings

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[31] *Bangko Sentral ng Pilipinas v. Santamaria*, G.R. No. 139885, January 13, 2003, 395 SCRA 84.

[32] *Layug v. Intermediate Appellate Court*, No. 75364, November 23, 1988, 167 SCRA 627.

f) Priced Bill of Quantities as the Annex 2.

1.2) The Subcontractor is deemed to have examined and fully understood the aforesaid Subcontract Agreement Documents.[33] (Emphasis supplied.)

It is abundantly clear from the emphasized portions of the aforequoted provision that the DOTC-Hanjin Main Contract forms as "an integral part of the Subcontract Agreement." It is settled that if the terms of a contract leave no doubt as to the parties' intention, the literal meaning of its stipulations should control.[34] The categorical finding of the CA, affirmatory of that of the CIAC, was that "the Subcontract is a back-to-back contract with Hanjin's contract with DOTC." Under the Main Contract, DOTC undertook to pay Hanjin 35% of the contract price in US dollars. Be that as it may, and on the postulate that the Main Contract is an integral part of the Subcontract Agreement, it behooves Hanjin to extend to Dynamic the same benefits otherwise accruing to Hanjin under the Main Contract. Apart from dollar payment, other benefits contemplated include the payment of price adjustment or escalation. An application of the "back-to-back" arrangement between Hanjin and Dynamic to the contrary would be tantamount to a construction against the terms of the Subcontract Agreement.

Before the CIAC, Hanjin argued that Dynamic's entitlement to a share in the foreign currency portion of the contract price is conditioned on the completion of the Project by April 2002.[35] The CIAC, however, correctly made short shrift of this argument, tagging the condition to be an impossible one and noting that Hanjin's very act of releasing advance payments to Dynamic in trickles, rather than in one full payment, as agreed upon, and delaying payments for approved progress billings ensured that Dynamic would not meet the April 2002 deadline. The CA, it bears to stress, echoed these CIAC findings, and stated the

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[33] *Rollo* (G.R. No. 169408), p. 321.

[34] CIVIL CODE, Art. 1370; See *Baylon v. Court of Appeals*, G.R. No. 109941, August 17, 1999, 312 SCRA 502.

[35] *Rollo* (G.R. No. 169408), p. 228.

observation that Hanjin's actions not only delayed the Project, but also rendered its completion on the date imposed by Hanjin impossible. Hanjin, therefore, cannot plausibly fault and penalize Dynamic for not meeting the imposed deadline, the latter having in its favor Art. 1186 of the Civil Code, which says that "[t]he condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment."

Given the above perspective, the condition imposed for Dynamic's entitlement to a share in Hanjin's foreign currency receipts is, for the nonce, deemed fulfilled. Accordingly, there is no legal obstacle to the award of a foreign currency adjustment to Dynamic. Furthermore, Hanjin's admission before the CIAC that Dynamic is entitled to a foreign currency portion of the subcontract price veritably placed Hanjin in estoppel from claiming otherwise. Under the doctrine of estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.[36]

Issue of Computation of Foreign Currency Adjustment

As to the amount of foreign currency adjustment due Dynamic, the CIAC arrived at the figure PhP 131,338,674.80. The CA agreed with the CIAC's computation and the ratiocination therefor. We reproduce with approval what the CIAC wrote:

> Dynamic's Subcontract Price of ₱714,868,129.00 is 76% of what Hanjin will derive from DOTC for the Subcontract Works. 35% of this amount represents the foreign currency portion of the Subcontract Price. This amounts to ₱250,203,845.00. At the exchange rate of Hanjin which is ₱34.10: US$1, this amount of ₱250,203,845.00 is equivalent to US$7,337,356.15. Converted again into its value in pesos at the time when the Subcontract was performed which ranged from ₱50.00 to ₱54.00 to US$1, or an average rate of ₱52.00: US$1, its peso equivalent is ₱381,542,519.80. This is the rate used by Hanjin in charging Dynamic for the peso value of the importation of foreign materials. The difference between ₱381,542,519.80 and ₱250,203,845.00 is ₱131,338,674.80. We award to Dynamic as its

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[36] *Cortez v. Court of Appeals*, G.R. No. 121772, January 13, 2003, 395 SCRA 33.

share of the foreign currency portion of the Subcontract Price the amount of ₱131,338,674.80 which shall be added to the Subcontract Price.[37]

Issue of Applicable Exchange Rate

Hanjin questions the PhP 52: USD 1 exchange rate adopted by the CA and by the CIAC earlier, asserting that what is applicable is the PhP 34.10: USD 1 exchange rate, the same being stipulated in the DOTC-Hanjin Main Contract.

Hanjin's assertion may be accorded some cogency but for the fact that, as the CA and the CIAC found, Hanjin charged Dynamic for all the costs related to the importation of raw materials to be used in the Project at the average exchange rate of PhP 52.00: USD 1. And as the CA aptly observed, the "Subcontract called for the importation of a substantial amount of equipment and materials for the project." We need not belabor the iniquitousness of the lopsided formula foisted by Hanjin and the undue enrichment resulting therefrom.

Issue of Computation of Total Escalation

Hanjin assails the CA for failing to use the 52 formulas and price indexes from the National Statistics Office and the National Statistical Coordination Board in computing the escalation cost or price adjustment. Alternatively, it argues that if Dynamic is indeed entitled to any price escalation, then the applicable figure is 35% of price index only. Notably, Hanjin admitted before the CIAC that Dynamic is entitled to price escalation of PhP 25,938,545.94 for the local portion,[38] which amount the CIAC awarded to Dynamic. In view of such admission, Hanjin's arguments contesting the award for price escalation are puerile.

As against, however, the CIAC's computation of escalation cost which the CIAC predicated on works accomplished as of April 2002 and covered by the 20 progress billings, the Court is inclined to sustain the CA's computation of the price escalation as summarized in its Resolution of August 31, 2005 in CA-

[37] *Supra* note 1, at 229.

[38] *Rollo* (G.R. No. 169408), p. 229.

G.R. SP No. 86641, for the CA rightfully took into account Dynamic's accomplishment after April 2000 but before Hanjin took over the Project, thus:

> x x x. In Our assailed Decision [of July 6, 2005], We granted [Dynamic] additional escalation as to the "local portion" *i.e.*, on 65% of [Dynamic] billings based on the formula: [Dynamic] Billing multiplied by 65% of the said billing, *multiplied* by the percentage of the escalation. However, We computed escalation of the total amount of PhP 545,162,305.61 because the CIAC computed escalation up to this extent only. It appears that a total of twenty (20) progress billings have been submitted by [Dynamic] to Hanjin because it was advised that no payments were forthcoming for subsequent progress billings.
>
> x x x x x x x x x
>
> This being the case, We have no recourse but to limit the award of escalation only up to the period covered by Progress Billing No. 20 or up to April 2002 as the value of all subsequent accomplishments remained undetermined. It appears however, that the total amount billed up to the time was PhP 582,103,359.35. We have computed escalation only up to the PhP 545,162,035.61 or short as to PhP 36,941,052.74. Applying the formula mentioned above, an *additional* [PhP 5,573,112.07] is due [Dynamic] as escalation computed: PhP 36,941,053.74 x 65% x 0.2321, over and above PhP 22,233,039.38, so that a total of [PhP 27,806,151.45] is due [Dynamic] as additional escalation over and above that computed by the CIAC.[39]

As it were, the records do not show that Hanjin presented any of the supposed 52 formulas and price indexes, the utilization of which would have resulted, so it claims, in a more exact price escalation figure. Hanjin did not adduce any evidence to provide legal support to its assertion that the price escalation portion to which Dynamic is entitled to is 35% of the price index only. The Court agrees with the CA that, in computing price escalation, the allowable escalation is to be pegged on the local portion, that is, on 65% of the Dynamic billing multiplied by 100% price index, because Dynamic is entitled to both price adjustment and price escalation under the Subcontract Agreement.

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[39] *Supra* note 3, at 157-158.

As may be noted, the CA initially followed the baseline amount used by the CIAC in computing the amount of price escalation at PhP 545,162,305.61. However, after another look at the case, the CA found the CIAC to have erred in starting at the figure of PhP 582,103,359.35 as the baseline amount which, as earlier indicated, represented the total billing as of April 2002. Accordingly, the CA granted a total award of PhP 27,806,151.45 by adding the amount of PhP 5,573,112.07 to its previous award of PhP 22,233,039.38 to Dynamic based on the corrected computation. At bottom then, the CA merely corrected its own computation error, a process which it can undoubtedly do as long as jurisdiction over the matter has not been lost, as here.[40]

Issue of Computation of Variation Order

Hanjin also challenges the CA's computation of Dynamic's share in the profit in the Variation Orders (VOs). The CA, in its July 6, 2005 Decision in CA-G.R. SP No. 86641, found the amount of Dynamic's share in the VOs to be PhP 61,400,096.07, up from the PhP 9,295,667.94 awarded by the CIAC. On reconsideration, the CA returned to the original CIAC figure. Instead, in its August 31, 2005 Resolution, the appellate court deducted the whole amount of PhP 104,208,856.26 from Hanjin's Net Cost to Complete Claim. This amount represented the cost of materials with the overcharge component passed by Hanjin to Dynamic. The CA arrived at the figure of PhP 104,208,856.26 after a painstaking, itemized comparison of the items and amounts common in the Tables of Variance submitted by the parties in the two tables.

We see no reason to disturb the CA's findings which appear to be supported by the evidence on record. The computation of awards is, to stress, purely factual which the Court, not being a trier of facts, need not evaluate and analyze all over again.

On another point, Hanjin argues that the original contract price on the items subject to VOs should be added to the DOTC-

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[40] *Balayon, Jr. v. Ocampo*, A.M. No. MTJ-91-619, January 29, 1993, 218 SCRA 13.

approved amount for the same items. And from this sum total should be deducted the amount representing what the CA considered as overcharging Hanjin passed onto Dynamic. According to Hanjin, the amount it was charging Dynamic represents the actual cost of work done on the items subject to VOs. Hanjin's posture would necessarily diminish the amount allegedly overcharged by Hanjin to Dynamic.

The Court is not convinced. At the outset, we find Hanjin's presentation of a **partial list** [41] in its Memorandum of the items each party is charging the other quite disturbing. As the petitioner in this case, Hanjin is charged with the burden of establishing the grave error allegedly committed by the CA in its computation of the overcharged amount. Its failure to provide a complete and clear computation of what it considers as the correct one militates against the supposed merit of its argument.

Hanjin's own annexes to its Petition indicate the **deleted items** from the original subcontract price of PhP 924,670,819, as follows:

Original Subcontract Price		PhP 924,670,819.00
Deleted after re-measurement	PhP 118,338,206.31	
Deleted due change of specifications subject to VOs	91,464,481.64	
		209,802,687.95
		PhP 714,868,129.05[42]

Also pertinent is a list of VOs[43] approved by the DOTC with an aggregate amount of PhP 37,326,381.54,[44] corresponding to the same items previously deleted, as shown above, amounting to PhP 91,464,481.64.

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[41] *Rollo* (G.R. No. 169408), p. 1528.

[42] *Id*. at 479-484.

[43] *Id*. at 471-472.

[44] *Id*. at 145.

Hanjin presently asks the Court to **add** the original subcontract price of the items subject to VOs, that is, PhP 91,464,481.64, to the DOTC- approved amount for the corresponding VOs in the amount of PhP 37,326,381.54, the sum of which to be deducted from the amount of PhP 141,535,238.92[45] which Hanjin is charging Dynamic to arrive at the amount of the overcharge.

Hanjin knows fully well that the amount of PhP 91,464,481.64 covers items deleted from the contract price by reason of the VOs. Such deleted items lowered the original aggregate subcontract price from PhP 924,670,819 to PhP 714,868,129. The amount of PhP 91,464,481.64, representing items already deleted by reason of VOs, has been superseded by the succeeding changes in specifications which the DOTC approved in the amount of PhP 37,326,381.54. Hence, **only the amount approved by the DOTC for the items actually installed should be the subject of computation**. The amounts representing items already deleted should necessarily be excluded from the computation.

From the foregoing consideration, it is unreasonable for Hanjin to charge Dynamic the amount of PhP 141,535,238.92 for the items subject to VOs when DOTC actually approved only PhP 37,326,381.54 for the same items. And lest it be overlooked, Dynamic was credited only the amount approved by DOTC at PhP 37,326,381.54 of the subject VOs. To charge Dynamic more than the approved amount for the VOs would result in an overcharging on the part of Hanjin.

Issue on Computation of Hanjin's Net Cost to Complete

As regards the issue of disallowed deductions from Hanjin's Net Cost to Complete, the CA, in its underlying decision in CA-G.R. SP No. 86641, included the amount of PhP 8,558,652.78 and PhP 1,257,417.30, being not properly receipted, as additional disallowed deductions to the CIAC's figure of PhP 84,166,970.47[46] or a total disallowable deduction of

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[45] *Id*.

[46] *Id*. at 260.

PhP 93,983,040.38.[47] We agree and thus affirm the CA's holding that when expenses or offered deductions are **not** properly documented, such deductions should not be allowed, such deductions being in the nature of actual damages. To be recoverable, actual damages must be pleaded and adequately proven in court. An award thereof cannot be predicated on flimsy, remote, speculative, and insubstantial proof.[48] Again, we see no reason to deviate from the CA's findings on the matter of how much Hanjin expended to complete the Project.

To be sure, the Court cannot close its eyes to the consistent findings of the appellate court, affirmatory of that of the CIAC, that Hanjin padded expenses chargeable against Dynamic. Consider the following apt observations of the CIAC on the computation of deductions Hanjin charged Dynamic under "Net Cost to Complete":

> The Dynamic Summary is divided into two parts: The first part covered all purchases, payments to subcontractors and all expenses deducted from Dynamic's progress billings nos. 1 to 20. We reviewed the Dynamic Summary to ascertain the expenses that are questioned. We assume that those not questioned are admitted to be proper expenses and are deductible from the [adjusted subcontract price]. We agree with Dynamic that we should disallow certain items for the following reasons:
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> 1. The expense is outside the scope of work of Dynamic;
> 2. The expense relates to an item that is subject to a prior deduction; in other words, in the cases of double deduction.
> 3. The expense is undocumented.
>
> We came across a substantial number of imported items where there was a material variance between the value of an imported item as reflected in a Customs declaration and the value reflected in private documents. The value reflected in the Bureau of Customs declaration is less, in some cases, substantially less than that reflected in other

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[47] *Id*. at 142.

[48] *Spouses Renato S. Ong and Francia N. Ong v. Court of Appeals, Inland Trailways, Inc. and Pantranco Service Enterprises, Inc.*, G.R. No. 117103, January 21, 1999, 301 SCRA 387.

documents. We chose to rely on the value in the Bureau of Customs declaration. First, because it is a public document. Second, because if the case is one in which Hanjin undervalued the imported goods, which is a criminal act, we will not allow it to profit from its own wrong.[49]

Issue of Dynamic's Abandonment of Work

Hanjin claims as being entitled to other costs which it incurred when Dynamic later abandoned the subcontracted works in December 2002. Both the issues of "other costs" and "abandonment" are factual matters settled in the proceedings below. The CIAC findings argue against the notion of abandonment on the part of Dynamic. Wrote the CIAC:

Even if it were true, as argued by Hanjin, that there were other aspects of the work that could have been aggressively pursued by Dynamic, it could have given the guarantee requested by Dynamic that it will be paid even if DOTC does not in turn pay Hanjin for the same work. Moreover, the admission by Hanjin that after the April 2002 progress billings, it did not pay Dynamic for work it had accomplished, in our view, provides sufficient legal justification for not continuing with the work. Article 1169 [of the] Civil Code, invoked by Dynamic provides:

ART. 1169. In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills the obligation, delay by the other begins.

Under the Subcontract, Dynamic agreed to perform the Subcontract Works in consideration for which Hanjin agreed to pay Dynamic the stipulated Subcontract Price in accordance with the terms and conditions of the Subcontract. The payment for performing the Subcontract Works consisted of an advance payment exclusively to cover the costs of mobilization and monthly progress payments within seven (7) days after DOTC pays Hanjin. [Hanjin has not argued] that DOTC was remiss in the payment of Hanjin's progress billings. Clearly, therefore, there was failure on the part of Hanjin to comply with its obligation to pay Dynamic. **Thus, we hold that x x x Dynamic did not abandon the Works.** As will be shown later, Dynamic was squeezed out of the Subcontract and was rendered by Hanjin incapable

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[49] *Supra* note 1, at 257-258.

of performing its obligations therein. Under Article 1186 of the Civil Code, *"The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment."* [50] (Emphasis supplied.)

In its Resolution dated August 31, 2005, the CA sustained the CIAC's finding on non-abandonment, as follows:

> [T]he CIAC found that [Dynamic] did not abandon the subcontract works, but that it was squeezed out of the Subcontract and was rendered by Hanjin incapable of performing the obligations therein. It found certain circumstances to justify the suspension of work by [Dynamic], to wit: that [Dynamic] was forced to de-mobilize because it was not being paid for work undertaken; that the issue of retrofitting had not been resolved; and that the manner of retrofitting still had to be decided upon. Despite the same, [Dynamic] continued with the work not affecting the retrofitting work, but Hanjin terminated the Subcontract. The CIAC thus held that Hanjin, the obligor, in voluntarily preventing the fulfillment by [Dynamic], the obligee, of its obligation, the condition was deemed fulfilled.[51]

It cannot be overemphasized that conclusions arrived at on factual issues by the CIAC, when affirmed by the CA, are accorded great respect and even finality, if supported by substantial evidence.[52] In the instant case, both the CIAC and the CA found more than ample evidence to support Dynamic's disclaimer of having abandoned the Project.

The Court concurs with the parallel findings of the CIAC and the CA on the issue of abandonment. Indeed, Hanjin, by its unjustifiable and unfair actions, veritably forced Dynamic out of the Project at a time when the subcontract works were already 94% complete. In net effect, Hanjin accepted the benefits arising from the subcontract agreement without as much as asking Dynamic to finish its part of the bargain. Under Art. 1235 of the Civil Code, the obligation is deemed fully complied with when an obligee accepts the performance thereof knowing

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[50] *Rollo* (G.R. No. 169408), p. 253.

[51] *Supra* note 3, at 156.

[52] *Philrock, Inc. v. Construction Industry Arbitration Commission*, G.R. Nos. 132848-49, June 25, 2001, 359 SCRA 632.

its incompleteness or irregularity, and without expressing any protest or objection. An obligee is deemed to have waived strict compliance by an obligor with an obligation when the following elements are present: (1) an intentional acceptance of the defective or incomplete performance; (2) with actual knowledge of the incompleteness or defect; and (3) under circumstances that would indicate an intention to consider the performance as complete and renounce any claim arising from the defect.[53]

These elements obtain in the instant case. At the time it "booted out" Dynamic from the Project, Hanjin knew that the subcontract works were not yet complete. In fact, there were unresolved matters involving structural design deficiencies and the methods to be used in the retrofitting of the cracked slabs and beams in the Passenger Terminal Building. Hanjin served notice that it will not pay the progress billings for works done after April 2000. In December 2002, it refused entry to Dynamic's workers at the project site. Hanjin took all these actions without demanding that Dynamic finish its contractual undertaking. By operation of law, Hanjin is thus deemed to have waived its right to claim any payment for expenses it incurred in completing the unfinished six percent of the work. No reversible error can thus be attributed to the CA in refusing to allow additional completion costs to Hanjin.

Issue of Dynamic's Entitlement to Retention Money

Hanjin, as stated at the outset, refused to release Dynamic's retention money on the ground of abandonment and non-completion of the Project. Arts. 6.2, 7, and 8.3 of the Subcontract Agreement, relating to the matter on retention money, respectively read, as follows:

> 6.2) Monthly progress billing calculated on the basis of actual works measured and sixty percent (60%) of the material costs of the delivered goods according to the Bill of quantities, x x x shall be paid with deductions of advance payment stipulated in Article 6.1 and ten percent (10%) of billing

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[53] 4 Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES* 278 (1991).

amount as the retention money stipulated in Article 7.1 for the period covered. Monthly progress billing[s] shall be paid by the Contractor and to the Subcontractor within seven (7) working days after the Client pays the Contractor.

x x x x x x x x x

ARTICLE 7. RETENTION

7.1) The retention money, ten percent (10%) of every progress billing with cumulative amount not exceeding ten percent (10%) of the Subcontract Price shall be deducted therefrom in order to secure the remedy of defects.

7.2) Fifty percent (50%) of the retention money shall be released to the Subcontractor immediately after the Contractor issues the "Taking Over Certificate" to the Subcontractor and against presentation of Warranty Bond x x x valid for the duration of the Defects Liability Period specified in Article 8.

The other fifty percent (50%) retention shall be released pro rata, if no defects have been found, after the Client releases retention money to the Contractor, after the Subcontractor issues a Clearance Certificate to the Contractor attesting that the Contractor is free from all liens and encumbrances in relation to the Subcontract Works and after the Subcontractor submits an acceptable Warranty Bond to the Contractor which is valid until the defects liability period of the Main Contract plus 2 months.

x x x x x x x x x

8.3) Defects Liability Period shall be three hundred sixty-five (365) days from the date of issuance of the Taking Over Certificate. Within this period, the Subcontractor shall repair and make good all defects in the Subcontract Works at his own cost x x x. The Subcontractor shall assume full and sole responsibility for the removal, repair and replacement of any defective or non-conforming works.[54] x x x

The retention money, as described above, is intended to ensure defect and deficiency-free work as evidenced by the contractor's issuance of a Take Over Certificate. Hanjin, as contractor, never issued this key document to Dynamic. Instead, it discharged

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[54] *Rollo* (G.R. No. 169408), pp. 325-327.

Dynamic from the 94%-done Project rendering the issuance of such certificate a virtual impossibility. On June 1, 2003, the DOTC issued a Take Over Certificate to Hanjin and released the latter's retention money under the Main Contract. But even earlier, the DOTC released Hanjin's retention money covering the period February 2000 to December 2001, a development which would have obligated Hanjin to release the corresponding Dynamic's retention money for the same period. But instead of paying, Hanjin held onto Dynamic's retention money. Worse still, Hanjin willfully and in apparent bad faith took over the unfinished work of Dynamic. To us, and to CIAC and the CA earlier, Hanjin in effect waived any and all of its rights to hold Dynamic liable for any defects, deficiencies, or unfinished work. Consequently, there is no legal basis for Hanjin to further withhold payment of Dynamic's retention money.

Issue of Entitlement to Moral and Exemplary Damages

Hanjin's ascription of bad faith and gross negligence on the part of Dynamic, as basis for its claim of attorney's fees against the latter, has nothing to commend itself for concurrence. In fact, both the CIAC and CA are one in saying that it was Hanjin which acted in bad faith in its contractual relation with Dynamic. The CIAC, in awarding attorney's fees to Dynamic, categorically stated:

> On the basis of the evidence before us, we do not find any basis to hold Dynamic liable to Hanjin for x x x damages and attorney's fees. On the other hand, on the basis of our finding that Hanjin acted in bad faith and had persistently acted in a manner that we interpret as attempts to squeeze out Dynamic from the Subcontract, and for attempting to pass on to Dynamic a part of the cost of retrofitting when, it is clear from the evidence, it was free from fault, and all the difficulties encountered by Dynamic in trying to enforce its rights under the Subcontract, we should find Hanjin liable to pay Dynamic exemplary damages but we cannot award exemplary damages as they are not part of the claim of Dynamic. x x x We, however, award attorney's fees of ₱500,000.00.[55]

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[55] *Supra* note 1, at 263.

Issue of Entitlement to Attorney's Fees

The Subcontract Agreement, as supplemented, is silent as to payment of attorney's fees. The applicable law, Art. 2208 of the Civil Code, must thus govern any award thereof. It reads:

ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered except:

x x x x x x x x x

2) When the defendant's acts or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect its interest;

x x x x x x x x x

5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim;

x x x x

11) In any case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

An award of attorney's fees being the exception,[56] some compelling legal reason must obtain to bring the case within the exception and justify such award. In the case at bench, there is a categorical finding by the CIAC and CA that Hanjin's refusal to satisfy Dynamic's just claims amounted to gross and evident bad faith. This to us presents the justifying ingredient for the award of attorney's fees. Accordingly, we affirm the award of attorney's fees in CA-G.R. SP No. 86641 to Dynamic in the amount of PhP 500,000.

Issue of Computation of Interest

The Court of Appeals Erred in Its Award of Interest Payment

In its appealed Resolution of August 31, 2005, the CA decreed that:

[Hanjin] x x x is hereby ordered to pay [Dynamic] the amount of [PhP 293,952,273.36]; plus interest at 12% per annum from the

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[56] *Padilla v. Court of Appeals*, G.R. No. 119707, November 29, 2001, 371 SCRA 27.

promulgation of the assailed Final Award on September 7, 2004, until paid. Hanjin is likewise ordered to release to [Dynamic] the retention money in the amount of PhP 58,210,336.00, plus interest at 12% per annum from the time the Request for Arbitration was filed with the CIAC on February 20, 2004, until fully paid.[57] x x x

In the landmark case of *Eastern Shipping Lines v. Court of Appeals*, the Court summarized the rules on interest award, as follows:

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% *per annum*

[57] *Supra* note 3, at 166.

from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[58]

The contract under consideration does not partake of a loan or forbearance of money; it is a construction contract. Thus, the matter of interest award proceeding from the dispute would fall under the second paragraph of the above-quoted decision.

The reckoning point in the determination of the period of application of the six percent interest is from the time extrajudicial demand is made. In the instant case, the Terms of Reference submitted before the CIAC shows that, in a letter dated November 20, 2003, Dynamic served notice that should Hanjin fail to pay the former's claims, the case shall be submitted for arbitration. Thus, the six percent interest due shall start to run from November 20, 2003 until the award becomes final and executory. Only then will the 12% interest referred to in the aforequoted third paragraph of *Eastern Shipping Lines* start to run until the same is paid.

WHEREFORE, the CA Decision dated July 6, 2005, as modified by the Resolution dated August 31, 2005, both rendered in CA-G.R. SP No. 86641, are hereby *AFFIRMED* with the *MODIFICATION* that the interest to be imposed on the sum total of the net award (PhP 293,952,273.36) and retention money (PhP 58,210,336) awarded to Dynamic shall be six percent (6%) interest per annum, reckoned from November 20, 2003 until the total award becomes final and executory. A yearly interest of twelve percent (12%) on the total amount adjudged by the CIAC, as modified in the CA Resolution and further modified by this Decision, as due to Dynamic, shall be assessed against Hanjin, computed from the finality of the CIAC Final Award, as thus modified, until the final satisfaction thereof.

Insofar as they are inconsistent with this Decision, the CA Decision dated January 28, 2005 and Resolution dated October 14, 2005 in CA-G.R. SP No. 86633 are *MODIFIED* accordingly.

The petitions of Hanjin are *PARTIALLY GRANTED* in a sense as above discussed.

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[58] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

Costs against Hanjin.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 169790. April 30, 2008]

CONGREGATION OF THE RELIGIOUS OF THE VIRGIN MARY and/or THE SUPERIOR GENERAL OF THE RELIGIOUS OF THE VIRGIN MARY, represented by The REVEREND MOTHER MA. CLARITA BALLEQUE, *petitioner, vs.* **EMILIO Q. OROLA, JOSEPHINE FATIMA LASERNA OROLA, MYRNA ANGELINE LASERNA OROLA, MANUEL LASERNA OROLA, MARJORIE MELBA LASERNA OROLA & ANTONIO LASERNA OROLA,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; A CONTRACT OF SALE CARRIES THE CORRELATIVE DUTY OF THE SELLER TO DELIVER THE PROPERTY AND THE OBLIGATION OF THE BUYER TO PAY THE AGREED PRICE.— As uniformly found by the lower courts, we likewise find that there was a perfected contract of sale between the parties. A contract of sale carries the correlative duty of the seller to deliver the property and the obligation of the buyer to pay the agreed price. As there was already a binding contract of sale between the parties, RVM had the corresponding obligation to pay the remaining balance of the purchase price upon the issuance of the title in the name of respondents. The

supposed 2-year period within which to pay the balance did not affect the nature of the agreement as a perfected contract of sale. x x x

2. **ID.; DAMAGES; SHALL BE AWARDED REGARDLESS OF WHICHEVER RELIEF, RESCISSION OR SPECIFIC PERFORMANCE, WILL BE GRANTED BY THE LOWER COURTS.—** x x x Thus, when RVM refused to pay the balance and thereby breached the contract, respondents rightfully availed of the alternative remedies provided in Article 1191. Accordingly, respondents are entitled to damages regardless of whichever relief, rescission or specific performance, would be granted by the lower courts.

APPEARANCES OF COUNSEL

Padilla Law Office for petitioner.
Arrojado Serrano & Calizo for respondents.

D E C I S I O N

NACHURA, *J.*:

Challenged in this petition for review on *certiorari* is the Court of Appeals (CA) Decision[1] in CA-G.R. CV. No. 71406 which modified the Regional Trial Court (RTC) Decision[2] in Civil Case No. V-7382 ordering the rescission of the contract of sale between the parties in an action for Specific Performance or Rescission with Damages filed by respondents Emilio, Josephine Fatima Laserna, Myrna Angeline Laserna, Manuel Laserna, Marjorie Melba Laserna, & Antonio Laserna, all surnamed Orola, (respondents) against petitioner Congregation of the Religious of the Virgin Mary (RVM).[3]

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[1] *Rollo*, pp. 23-29.

[2] CA *rollo*, pp. 89-112.

[3] RVM is a corporation solely organized and existing under Philippine Laws.

The undisputed facts, as found by the CA and adopted by RVM in its petition, follow.

Sometime in April 1999, [petitioner] Religious of the Virgin Mary (RVM for brevity), acting through its local unit and specifically through Sr. Fe Enhenco, local Superior of the St. Mary's Academy of Capiz and [respondents] met to discuss the sale of the latter's property adjacent to St. Mary's Academy. Said property is denominated as Lot 159-B-2 and was still registered in the name of [respondents'] predecessor-in-interest, Manuel Laserna.

In May of 1999, [respondent] Josephine Orola went to Manila to see the Mother Superior General of the RVM, in the person of Very Reverend Mother Ma. Clarita Balleque [VRM Balleque] regarding the sale of the property subject of this instant case.

A contract to sell dated June 2, 1999 made out in the names of herein [petitioner] and [respondents] as parties to the agreement was presented in evidence pegging the total consideration of the property at ₱5,555,000.00 with 10% of the total consideration payable upon the execution of the contract, and which was already signed by all the [respondents] and Sr. Ma. Fe Enhenco, R.V.M. [Sr. Enhenco] as witness.

On June 7, 1999, [respondents] Josephine Orola and Antonio Orola acknowledged receipt of RCBC Check No. 0005188 dated June 7, 1999 bearing the amount of ₱555,500.00 as 10% down payment for Lot 159-B-2 from the RVM Congregation (St. Mary's Academy of Cadiz [SMAC]) with the "conforme" signed by Sister Fe Enginco (sic), Mother Superior, SMAC.

[Respondents] executed an extrajudicial settlement of the estate of Trinidad Andrada Laserna dated June 21, 1999 adjudicating unto themselves, in *pro indiviso* shares, Lot 159-B-2, and which paved the transfer of said lot into their names under Transfer Certificate of Title No. T-39194 with an entry date of August 13, 1999.[4]

Thereafter, respondents, armed with an undated Deed of Absolute Sale which they had signed, forthwith scheduled a meeting with VRM Balleque at the RVM Headquarters in Quezon City to finalize the sale, specifically, to obtain payment of the remaining balance of the purchase price in the amount of

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[4] *Rollo*, pp. 26-27.

₱4,999,500.00. However, VRM Balleque did not meet with respondents. Succeeding attempts by respondents to schedule an appointment with VRM Balleque in order to conclude the sale were likewise rebuffed.

In an exchange of correspondence between the parties' respective counsels, RVM denied respondents' demand for payment because: (1) the purported Contract to Sell was merely signed by Sr. Enhenco as witness, and not by VRM Balleque, head of the corporation sole; and (2) as discussed by counsels in their phone conversations, RVM will only be in a financial position to pay the balance of the purchase price in two years time. Thus, respondents filed with the RTC a complaint with alternative causes of action of specific performance or rescission.

After trial, the RTC ruled that there was indeed a perfected contract of sale between the parties, and granted respondents' prayer for rescission thereof. It disposed of the case, to wit:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the [respondents] and against the [petitioner].

1. Dismissing the counterclaim;
2. Ordering the rescission of the Contract to Sell, Exh. "E".
3. Ordering the forfeiture of the downpayment of ₱555,500 in favor of the [respondents];
4. Ordering [petitioner] corporation sole, the Superior General of the Religious of the Virgin Mary, to pay [respondents]:
    a. ₱50,000.00 as exemplary damages;
    b. ₱50,000.00 as attorney's fees.
5. Costs against the [petitioner].

Dissatisfied, both parties filed their respective Notices of Appeal. The CA dismissed the respondents' appeal because of their failure to file an Appeal Brief. However, RVM's appeal, where respondents accordingly filed an Appellee's Brief, continued. Subsequently, the CA rendered judgment setting aside the RTC Decision, to wit:

WHEREFORE, with all the foregoing, the decision of the Regional Trial Court, Branch 15, Roxas City dated March 1, 2001 in [C]ivil [C]ase [N]o. V-7382 for Specific Performance or Rescission with Damages is hereby **SET ASIDE** and a new one entered **GRANTING** [respondents'] action for specific performance. [Petitioner RVM] [is] hereby ordered to pay [respondents] immediately the balance of the total consideration for the subject property in the amount of ₱4,999,500.00 with interest of 6% per annum computed from June 7, 2000 or one year from the downpayment of the 10% of the total consideration until such time when the whole obligation has been fully satisfied. In the same way, [respondents] herein are ordered to immediately deliver the title of the property and to execute the necessary documents required for the sale as soon as all requirements aforecited have been complied by [RVM]. Parties are further ordered to abide by their reciprocal obligations in good faith.

All other claims and counterclaims are hereby dismissed for lack of factual and legal basis.

No pronouncement as to cost.

In modifying the RTC Decision, the CA, albeit sustaining the trial court's finding on the existence of a perfected contract of sale between the parties, noted that the records and evidence adduced did not preponderate for either party on the manner of effecting payment for the subject property. In short, the CA was unable to determine from the records if the balance of the purchase price was due in two (2) years, as claimed by RVM, or, upon transfer of title to the property in the names of respondents, as they averred. Thus, the CA applied Articles 1383[5] and 1384[6] of the Civil Code which pronounce rescission as a subsidiary remedy covering only the damages caused.

The appellate court then resolved the matter in favor of the greatest reciprocity of interest pursuant to Article 1378[7] of the

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[5] Art. 1383. The action for rescission is subsidiary; it cannot be instituted except when the party suffering damages has no other legal means to obtain reparation for the same.

[6] Art. 1384. Rescission shall be only to the extent necessary to cover the damages caused.

[7] Art. 1378. When it is absolutely impossible to settle doubts by the rules established in the preceding articles, and the doubts refer to incidental

Civil Code. It found that the 2-year period to purchase the property, which RVM insisted on, had been mooted considering the time elapsed from the commencement of this case. Thus, the CA ordered payment of the balance of the purchase price with 6% interest per annum computed from June 7, 2000 until complete satisfaction thereof.

Hence, this recourse.

RVM postulates that the order to pay interest is inconsistent with the professed adherence by the CA to the greatest reciprocity of interest between the parties. Since mutual restitution cannot be had when the CA set aside the rescission of the contract of sale and granted the prayer for specific performance, RVM argues that the respondents should pay rentals for the years they continued to occupy, possess, and failed to turn over to RVM the subject property.

Effectively, the only issue for our resolution is whether RVM is liable for interest on the balance of the purchase price.

At the outset, we must distinguish between an action for rescission as mapped out in Article 1191 of the Civil Code and that provided by Article 1381 of the same Code. The articles read:

Art. 1191. The power to rescind obligations is impled 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.

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circumstances of a gratuitous contract, the least transmission of rights and interests shall prevail. If the contract is onerous, the doubt shall be settled in favor of the greatest reciprocity of interest.

If the doubts are cast upon the principal object of the contract in such a way that it cannot be known what may have been the intention or will of the parties, the contract shall be null and void.

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.

Art. 1381. The following contracts are rescissible:

(1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one fourth of the value of the things which are the object thereof;

(2) Those agreed upon in representation of absentees, if the latter suffer the lesion state in the preceding number;

(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;

(4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;

(5) All other contracts specially declared by law to be subject to rescission.

Article 1191, as presently worded, speaks of the remedy of rescission in reciprocal obligations within the context of Article 1124 of the Old Civil Code which uses the term "resolution." The remedy of resolution applies only to reciprocal obligations[8] such that a party's breach thereof partakes of a tacit resolutory condition which entitles the injured party to rescission. The present article, as in the Old Civil Code, contemplates alternative remedies for the injured party who is granted the option to pursue, as principal actions, either a rescission or specific performance of the obligation, with payment of damages in each case. On the other hand, rescission under Article 1381 of the Civil Code, taken from Article 1291 of the Old Civil Code, is a subsidiary action, and is not based on a party's breach of obligation.

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[8] Refers to reciprocity between the parties (obligee/s and obligor/s) relating to the constituted obligation arising from the same cause. Article 1191 of the Civil Code has no application to every case where the parties (obligee/s and obligor/s) are mutually debtor/s and creditor/s of each other.

The esteemed Mr. Justice J.B.L. Reyes, ingeniously cuts through the distinction in his concurring opinion in *Universal Food Corporation v. CA*:[9]

I concur with the opinion penned by Mr. Justice Fred Ruiz Castro, but I would like to add that the argument of petitioner, that the rescission demanded by the respondent-appellee, Magdalo Francisco, should be denied because under Article 1383 of the Civil Code of the Philippines[,] rescission can not be demanded except when the party suffering damage has no other legal means to obtain reparation, is predicated on a failure to distinguish between a rescission for breach of contract under Article 1191 of the Civil Code and a rescission by reason of *lesión* or economic prejudice, under Article 1381, *et seq*. The rescission on account of breach of stipulations is not predicated on injury to economic interests of the party plaintiff but on the breach of faith by the defendant, that violates the reciprocity between the parties. It is not a subsidiary action, and Article 1191 may be scanned without disclosing anywhere that the action for rescission thereunder is subordinated to anything other than the culpable breach of his obligations by the defendant. This rescission is a principal action retaliatory in character, it being unjust that a party be held bound to fulfill his promises when the other violates his. As expressed in the old Latin aphorism: *"Non servanti fidem, non est fides servanda."* Hence, the reparation of damages for the breach is purely secondary.

On the contrary, in the rescission by reason of *lesión* or economic prejudice, the cause of action is subordinated to the existence of that prejudice, because it is the *raison d' etre* as well as the measure of the right to rescind. Hence, where the defendant makes good the damages caused, the action cannot be maintained or continued, as expressly provided in Articles 1383 and 1384. But the operation of these two articles is limited to the cases of rescission for *lesión* enumerated in Article 1381 of the Civil Code of the Philippines, and does not apply to cases under Article 1191.

It is probable that the petitioner's confusion arose from the defective technique of the new Code that terms both instances as "rescission" without distinctions between them; unlike the previous Spanish Civil Code of 1889, that differentiated "resolution" for breach of stipulations from "rescission" by reason of *lesión or damage*. But the terminological vagueness does not justify confusing one

[9] G.R. No. L-29155, May 13, 1970, 33 SCRA 1, 23.

case with the other, considering the patent difference in causes and results of either action.

In the case at bench, although the CA upheld the RTC's finding of a perfected contract of sale between the parties, the former disagreed with the latter that fraud and bad faith were attendant in the sale transaction. The appellate court, after failing to ascertain the parties' actual intention on the terms of payment for the sale, proceeded to apply Articles 1383 and 1384 of the Civil Code declaring rescission as a subsidiary remedy that may be availed of only when the injured party has no other legal means to obtain reparation for the damage caused. In addition, considering the absence of fraud and bad faith, the CA felt compelled to arrive at a resolution most equitable for the parties. The CA's most equitable resolution granted respondents' prayer for specific performance of the sale and ordered RVM to pay the remaining balance of the purchase price, plus interest. It set aside and deleted the RTC's order forfeiting the downpayment of ₱555,500.00 in favor of, and payment of exemplary damages, attorney's fees and costs of suit to, respondents.

Nonetheless, RVM is displeased. It strenuously objects to the CA's imposition of interest. RVM latches on to the CA's characterization of its resolution as most equitable which, allegedly, is not embodied in the dispositive portion of the decision ordering the payment of interest. RVM is of the view that since the CA decreed specific performance of the contract without a finding of bad faith by either party, and respondents retained possession of the subject property for the duration of the litigation, the imposition of interest is not keeping with equity without simultaneously requiring respondents to pay rentals for their continued and uninterrupted stay thereon. In all, RVM phrases the issue in metaphysical terms, *i.e.*, the most equitable solution.

We completely disagree. The law, as applied to this factual milieu, leaves no room for equivocation. Thus, we are not wont to apply equity in this instance.

As uniformly found by the lower courts, we likewise find that there was a perfected contract of sale between the parties.

A contract of sale carries the correlative duty of the seller to deliver the property and the obligation of the buyer to pay the agreed price.[10] As there was already a binding contract of sale between the parties, RVM had the corresponding obligation to pay the remaining balance of the purchase price upon the issuance of the title in the name of respondents. The supposed 2-year period within which to pay the balance did not affect the nature of the agreement as a perfected contract of sale.[11] In fact, we note that this 2-year period is neither reflected in any of the drafts to the contract,[12] nor in the acknowledgment receipt of the downpayment executed by respondents Josephine and Antonio with the conformity of Sr. Enhenco.[13] In any event, we agree with the CA's observation that the 2-year period to effect payment has been mooted by the lapse of time.

However, the CA mistakenly applied Articles 1383 and 1384 of the Civil Code to this case because respondents' cause of action against RVM is predicated on Article 1191 of the same code for breach of the reciprocal obligation. It is evident from the allegations in respondents' Complaint[14] that the instant case does not fall within the enumerated instances in Article 1381 of the Civil Code. Certainly, the Complaint did not pray for rescission of the contract based on economic prejudice.

Moreover, contrary to the CA's finding that the evidence did not preponderate for either party, the records reveal, as embodied in the trial court's exhaustive disquisition, that RVM committed a breach of the obligation when it suddenly refused to execute and sign the agreement and pay the balance of the purchase price.[15] Thus, when RVM refused to pay the balance and thereby breached the contract, respondents rightfully availed

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[10] *Asturias Sugar Central v. Pure Cane Molasses Co.,* 60 Phil. 255 (1934); *Borromeo v. Franco*, 5 Phil. 49 (1905).

[11] See Article 1193 of the Civil Code.

[12] Records, pp. 10-12, 15-17.

[13] *Id*. at 13.

[14] *Id*. at 1-20.

[15] CA *Rollo*, pp. 15-20.

of the alternative remedies provided in Article 1191. Accordingly, respondents are entitled to damages regardless of whichever relief, rescission or specific performance, would be granted by the lower courts.[16]

Yet, RVM stubbornly argues that given the CA's factual finding on the absence of fraud or bad faith by either party, its order to pay interest is inequitable.

The argument is untenable. The absence of fraud and bad faith by RVM notwithstanding, it is liable to respondents for interest. In ruling out fraud and bad faith, the CA correspondingly ordered the fulfillment of the obligation and deleted the RTC's order of forfeiture of the downpayment along with payment of exemplary damages, attorney's fees and costs of suit. But RVM's contention disregards the common finding by the lower courts of a perfected contract of sale. As previously adverted to, RVM breached this contract of sale by refusing to pay the balance of the purchase price despite the transfer to respondents' names of the title to the property. The 2-year period RVM relies on had long passed and expired, yet, it still failed to pay. It did not even attempt to pay respondents the balance of the purchase price after the case was filed, to amicably end this litigation. In fine, despite a clear cut equitable decision by the CA, RVM refused to lay the matter to rest by complying with its obligation and paying the balance of the agreed price for the property.

Lastly, to obviate confusion, the clear language of Article 1191 mandates that damages shall be awarded in either case of fulfillment or rescission of the obligation.[17] In this regard, Article 2210 of the Civil Code is explicit that "interest may, in the discretion of the court, be allowed upon damages awarded for breach of contract." The ineluctable conclusion is that the CA correctly imposed interest on the remaining balance of the purchase price to cover the damages caused the respondents by RVM's breach.

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[16] See Article 1191, par. 2 of the Civil Code.

[17] See *Laperal v. Solid Homes, Inc.*, G.R. No. 130913, June 12, 2005, 460 SCRA 375, 388.

WHEREFORE, premises considered, the petition is *DENIED*. The order granting specific performance and payment of the balance of the purchase price plus six percent (6%) interest per *annum* from June 7, 2000 until complete satisfaction is hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 170112. April 30, 2008]

DEL PILAR ACADEMY, EDUARDO ESPEJO and ELISEO OCAMPO, JR., *petitioners, vs.* **DEL PILAR ACADEMY EMPLOYEES UNION,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; CHECK OFF; NO REQUIREMENT OF WRITTEN AUTHORIZATION FROM THE NON-UNION EMPLOYEES IS NECESSARY TO EFFECT A VALID CHECK OFF IF THE NON-UNION EMPLOYEES ACCEPT THE BENEFITS RESULTING FROM THE COLLECTIVE BARGAINING AGREEMENT.— When so stipulated in a collective bargaining agreement or authorized in writing by the employees concerned, the Labor Code and its Implementing Rules recognize it to be the duty of the employer to deduct the sum equivalent to the amount of union dues, as agency fees, from the employees' wages for direct remittance to the union. The system is referred to as check off. No requirement of written authorization from the non-union employees is necessary if the non-union employees accept the benefits resulting from the CBA.

APPEARANCES OF COUNSEL

Feria Feria Lao Tantoco Law Offices for petitioners.
Romeo D. Saladero, Jr. for respondent.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a petition for review on *certiorari* assailing the July 19, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP. No. 86868, and its September 28, 2005 Resolution[2] denying the motion for reconsideration.

Following are the factual antecedents.

Respondent Del Pilar Academy Employees Union (the UNION) is the certified collective bargaining representative of teaching and non-teaching personnel of petitioner Del Pilar Academy (DEL PILAR), an educational institution operating in Imus, Cavite.

On September 15, 1994, the UNION and DEL PILAR entered into a Collective Bargaining Agreement (CBA)[3] granting salary increase and other benefits to the teaching and non-teaching staff. Among the salient provisions of the CBA are:

ARTICLE V

SALARY INCREASE

SECTION 1. Basic Pay – the ACADEMY and the UNION agreed to maintain the wage increase in absolute amount as programmed in the computation prepared by the ACADEMY and dated 30 June 1994 initialed by the members of the bargaining panel of both parties, taking into account increases in tuition fees, if any.

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[1] Penned by Associate Justice Eliezer R. De Los Santos (deceased), with Associate Justices Eugenio S. Labitoria (retired) and Arturo D. Brion (now a member of this Court), concurring; *rollo*, pp. 33-38.

[2] *Id.* at 39.

[3] CA *rollo*, pp. 196-197.

SECTION 2. The teaching load of teachers shall only be Twenty-Three (23) hours per week effective this school year and any excess thereon shall be considered as overload with pay.

SECTION 3. Overloadpay (*sic*) will be based on the Teachers' Basic Monthly Rate.

SECTION 4. The ACADEMY agrees to grant longevity pay as follows: ₱100.00 for every 5 years of continuous service. The longevity shall be integrated in the basic salary within three (3) years from the effectivity of this agreement.

ARTICLE VI

VACATION LEAVE WITH PAY

SECTION 1. Every faculty member who has rendered at least six (6) consecutive academic semester of service shall be entitled to the 11th month and 12th month pay as summer vacation leave with pay. They may, however, be required to report [and] undergo briefings or seminars in connection with their teaching assignments for the ensuing school year.

SECTION 2. Non-teaching employees who shall have rendered at least one (1) year of service shall be entitled to fifteen days leave with pay.

The UNION then assessed agency fees from non-union employees, and requested DEL PILAR to deduct said assessment from the employees' salaries and wages. DEL PILAR, however, refused to effect deductions claiming that the non-union employees were not amenable to it.

In September 1997, the UNION negotiated for the renewal of the CBA. DEL PILAR, however, refused to renew the same unless the provision regarding entitlement to two (2) months summer vacation leave with pay will be amended by limiting the same to teachers, who have rendered at least three (3) consecutive academic years of satisfactory service. The UNION objected to the proposal claiming diminution of benefits. DEL PILAR refused to sign the CBA, resulting in a deadlock. The UNION requested DEL PILAR to submit the case for voluntary arbitration, but the latter allegedly refused, prompting the UNION to file a case for unfair labor practice with the Labor Arbiter

against DEL PILAR; Eduardo Espejo, its president; and Eliseo Ocampo, Jr., chairman of the Board of Trustees.

Traversing the complaint, DEL PILAR denied committing unfair labor practices against the UNION. It justified the non-deduction of the agency fees by the absence of individual check off authorization from the non-union employees. As regards the proposal to amend the provision on summer vacation leave with pay, DEL PILAR alleged that the proposal cannot be considered unfair for it was done to make the provision of the CBA conformable to the DECS' Manual of Regulations for Private Schools.[4]

On October 2, 1998, Labor Arbiter Nieves V. De Castro rendered a Decision, *viz*.:

> Reviewing the records of this case and the law relative to the issues at hand, we came to the conclusion that it was an error on [the] part of [DEL PILAR] not to have collected agency fee due other workers who are non-union members but are included in the bargaining unit being represented by [the UNION]. True enough as was correctly quoted by [the UNION] Art. 248, to wit:
>
>> Employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agency may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agreement: Provided, that the individual authorization required under Article [241], paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent.
>
> As it is, [DEL PILAR's] unwarranted fear re-individual dues [without] authorization for non-union members has no basis in fact or in law. For receipt of CBA benefits brought about by the CBA negotiated with [petitioners], they are duty bound to pay agency fees which may lawfully be deducted sans individual check-off authorization. Being [recipients] of said benefits, they should share and be made to pay the same considerations imposed upon the union members. [DEL PILAR], therefore, was in error in refusing to deduct corresponding agency fees which lawfully belongs to the union.

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[4] *Id.* at 128-131.

Anent the proposal to decrease the coverage of the 11th and 12th month vacation with pay, we do not believe that such was done in bad faith but rather in an honest attempt to make perfect procession following the DECS' Manuals. Moreso, it is of judicial notice that in the course of negotiation, almost all provisions are up for grabs, amendments or change. This is something normal in the course of a negotiation and does not necessarily connote bad faith as each every one (sic) has the right to negotiate reward or totally amend the provisions of the contract/agreement.

All told while there was error on [the] part of [DEL PILAR] for the first issue, [it] came through in the second. But as it is, we do not believe that a finding of unfair labor practice can be had considering the lack of evidence on record that said acts were done to undermine the union or stifle the member's right to self organization or that the [petitioners] were in bad faith. If at all, it's (sic) error may have been the result of a mistaken notion that individual check-off authorization is needed for it to be able to validly and legally deduct assessment especially after individual[s] concerned registered their objection. On the other hand, it is not error to negotiate for a better term in the CBA. So long as [the] parties will agree. It must be noted that a CBA is a contract between labor and management and is not simply a litany of benefits for labor. Moreso, for unfair labor practice to prosper, there must be a clear showing of acts aimed at stifling the worker's right to self-organization. Mere allegations and mistake notions would not suffice.

ACCORDINGLY, premises considered, the charge of unfair labor practice is hereby Dismissed for want of basis.

SO ORDERED.[5]

On appeal, the National Labor Relations Commission (NLRC) affirmed the Arbiter's ruling. In gist, it upheld the UNION's right to agency fee, but did not consider DEL PILAR's failure to deduct the same an unfair labor practice.[6]

The UNION's motion for reconsideration having been denied,[7] it then went to the CA via *certiorari*. On July 19, 2005, the

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[5] *Id.* at 144-146.

[6] *Id.* at 16-19.

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

CA rendered the assailed decision, affirming with modification the resolutions of the NLRC. Like the Arbiter and the NLRC, the CA upheld the UNION's right to collect agency fees from non-union employees, but did not adjudge DEL PILAR liable for unfair labor practice. However, it ordered DEL PILAR to deduct agency fees from the salaries of non-union employees.

The dispositive portion of the CA Decision reads:

> WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The assailed resolution of the NLRC dated April 30, 2004 is hereby **MODIFIED**. Private respondent Del Pilar Academy is ordered to deduct the agency fees from non-union members who are recipients of the collective bargaining agreement benefits. The agency fees shall be equivalent to the dues and other fees paid by the union members.
>
> SO ORDERED.[8]

DEL PILAR filed a motion for reconsideration of the decision, but the CA denied the same on September 28, 2005.[9]

Before us, DEL PILAR impugns the CA Decision on the following grounds:

> I. IN PROMULGATING THE CHALLENGED DECISION AND RESOLUTION, THE HON. COURT OF APPEALS DISREGARDED THE FACT THAT THE ANNUAL INCREASE IN THE SALARIES OF THE EMPLOYEES WAS NOT A BENEFIT ARISING FROM A COLLECTIVE BARGAINING AGREEMENT, BUT WAS MANDATED BY THE DIRECTIVE OF A GOVERNMENTAL DEPARTMENT; and
>
> II. CONSIDERING THE ANNUAL SALARY INCREASE OF NON-UNION MEMBERS WAS NOT A BENEFIT ARISING FROM THE CBA, THEIR INDIVIDUAL WRITTEN AUTHORIZATIONS ARE STILL REQUIRED TO ALLOW PETITIONER ACADEMY TO LEGALLY DEDUCT THE SAME FROM THEIR RESPECTIVE SALARY.[10]

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[8] *Rollo*, pp. 37-38.

[9] *Id.* at 39.

[10] *Id.* at 132.

The issue here boils down to whether or not the UNION is entitled to collect agency fees from non-union members, and if so, whether an individual written authorization is necessary for a valid check off.

The collection of agency fees in an amount equivalent to union dues and fees, from employees who are not union members, is recognized by Article 248(e) of the Labor Code, thus:

> Employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent may be assessed reasonable fees equivalent to the dues and other fees paid by the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement. Provided, That the individual authorization required under Article 241, paragraph (o) of this Code shall not apply to the non-members of recognized collective bargaining agent.

When so stipulated in a collective bargaining agreement or authorized in writing by the employees concerned, the Labor Code and its Implementing Rules recognize it to be the duty of the employer to deduct the sum equivalent to the amount of union dues, as agency fees, from the employees' wages for direct remittance to the union. The system is referred to as check off.[11] No requirement of written authorization from the non-union employees is necessary if the non-union employees accept the benefits resulting from the CBA.[12]

DEL PILAR admitted its failure to deduct the agency fees from the salaries of non-union employees, but justifies the non-deduction by the absence of individual written authorization. It posits that Article 248(e) is inapplicable considering that its employees derived no benefits from the CBA. The annual salary increase of its employee is a benefit mandated by law, and not derived from the CBA. According to DEL PILAR, the Department of Education, Culture and Sports (DECS) required all educational institutions to allocate at least 70% of tuition

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[11] See *Gabriel v. Secretary of Labor and Employment*, 384 Phil. 797, 804 (2000).

[12] See *Holy Cross of Davao College, Inc. v. Joaquin*, 331 Phil. 680, 692 (1996).

fee increases for the salaries and other benefits of teaching and non-teaching personnel; that even prior to the execution of the CBA in September 1994, DEL PILAR was already granting annual salary increases to its employees. Besides, the non-union employees objected to the deduction; hence, a written authorization is indispensable to effect a valid check off. DEL PILAR urges this Court to reverse the CA ruling insofar as it ordered the deduction of agency fees from the salaries of non-union employees, arguing that such conclusion proceeds from a misplaced premise that the salary increase arose from the CBA.

The argument cannot be sustained.

Contrary to what DEL PILAR wants to portray, the grant of annual salary increase is not the only provision in the CBA that benefited the non-union employees. The UNION negotiated for other benefits, namely, limitations on teaching assignments to 23 hours per week, additional compensation for overload units or teaching assignments in excess of the 23 hour per week limit, and payment of longevity pay. It also negotiated for entitlement to summer vacation leave with pay for two (2) months for teaching staff who have rendered six (6) consecutive semesters of service. For the non-teaching personnel, the UNION worked for their entitlement to fifteen (15) days leave with pay.[13] These provisions in the CBA surely benefited the non-union employees, justifying the collection of, and the UNION's entitlement to, agency fees.

Accordingly, no requirement of written authorization from the non-union employees is needed to effect a valid check off. Article 248(e) makes it explicit that Article 241, paragraph (o),[14] requiring written authorization is inapplicable to non-union

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[13] CA *rollo*, pp. 196-197.

[14] Art. 241. *RIGHTS AND CONDITIONS OF MEMBERSHIP IN A LABOR ORGANIZATION.*

The following are the rights and conditions of membership in a labor organization:

x x x x x x x x x

(o) Other than for mandatory activities under the Code, no special assessments, attorney's fees, negotiation fees or any other extraordinary

members, especially in this case where the non-union employees receive several benefits under the CBA.

As explained by this Court in *Holy Cross of Davao College, Inc. v. Hon. Joaquin*[15] *viz.*:

> The employee's acceptance of benefits resulting from a collective bargaining agreement justifies the deduction of agency fees from his pay and the union's entitlement thereto. In this aspect, the legal basis of the union's right to agency fees is neither contractual nor statutory, but quasi-contractual, deriving from the established principle that non-union employees may not unjustly enrich themselves by benefiting from employment conditions negotiated by the bargaining union.

By this jurisprudential yardstick, this Court finds that the CA did not err in upholding the UNION's right to collect agency fees.

WHEREFORE, the petition is *DENIED*. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 86868, are *AFFIRMED*.

SO ORDERED.

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

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fees may be checked off from any amount due to employee without an individual written authorization duly signed by the employee. The authorization should specifically state the amount, purpose and beneficiary of the deduction; x x x.

[15] *Supra* note 12, at 692.

SECOND DIVISION

[G.R. No. 171500. April 30, 2008]

FERNANDO C. PARMA, JR., *petitioner, vs.* **THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON and MAYOR LOURDES SEÑAR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA;* DEFINED; CASE AT BAR.— OMB-L-C-05-0165-B, for violation of the *Anti-Graft and Corrupt Practices Act* and dismissed by the Ombudsman on August 26, 2005 or nine days after the issuance of the assailed resolution, has no direct bearing on the instant case as the two cases have distinct causes of action. While both cases stemmed from the same factual milieu, *i.e.*, from the trips taken in June 2004, the causes of action or the inculpatory acts complained of are different. In OMB-L-C-05-0165-B, it is the alleged use of public funds for a private purpose, while the instant case is for alleged falsification of a certificate of appearance. In net effect, the dismissal of OMB-L-C-05-0165-B does not have the effect of *res judicata* on OMB-L-C-05-0296-C. As a rule of preclusion, *res judicata* "refers to the rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies and, as to them, constitutes an absolute bar to a subsequent action involving the same demand or cause of action."

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* GRAVE ABUSE OF DISCRETION; EXPLAINED.— *Go v. Looyuko* explains the concept of grave abuse of discretion in the following wise: Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. It is well-settled that an act of a court or tribunal may only be considered to have been done in grave abuse of discretion when the act was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual

refusal to perform a duty enjoined or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. An error of judgment committed in the exercise of its legitimate jurisdiction is not the same as "grave abuse of discretion." An abuse of discretion is not sufficient by itself to justify the issuance of a writ of *certiorari*.

3. **ID.; SPECIAL CIVIL ACTIONS; CERTIORARI; THE SUPREME COURT CANNOT PASS UPON THE SUFFICIENCY OR INSUFFICIENCY OF EVIDENCE TO DETERMINE THE LACK OR EXISTENCE OF PROBABLE CAUSE, A PROPERLY EXECUTIVE FUNCTION.—** x x x The unyielding rule has been that this Court cannot weigh evidence to determine probable cause, a properly executive function—exercised by the Ombudsman in the instant case—as we are confined to the issue of whether the executive determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. In *Longos Rural Waterworks and Sanitation Association, Inc. v. Hon. Desierto*, the Court has occasion to rule that it cannot pass upon the sufficiency or insufficiency of evidence to determine the lack or existence of probable cause.

APPEARANCES OF COUNSEL

Amador L. Simando for petitioner.
Manuel P. Teoxon for private respondent.

D E C I S I O N

VELASCO, JR., *J.*:

In this Petition for *Certiorari*[1] under Rule 65, petitioner Fernando C. Parma, Jr. assails and seeks to nullify the Resolution[2] dated August 17, 2005 of the Office of the Deputy Ombudsman for Luzon (Ombudsman) in OMB-L-C-05-0296-C finding

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[1] *Rollo*, pp. 3-23, dated February 28, 2006.

[2] *Id*. at 24-31. Per Graft Investigation & Prosecution Officer Robert C. Renido, as recommended by Director Emilio A. Gonzalez III, and approved by Deputy Ombudsman for Luzon Victor C. Fernandez.

probable cause to charge him with falsification of official document under paragraph 1 of Article 171, Revised Penal Code. Also assailed is the Ombudsman's Joint Order[3] of November 30, 2005, denying petitioner's motion for reconsideration.

At times material to this case, Parma was a councilor of the municipality of Magarao, Camarines Sur, while private respondent Lourdes A. Señar was the incumbent municipal mayor. They then belonged to different political parties.

From June 14 to June 19, 2004, Parma, together with Magarao Vice Mayor Nelson B. Julia, followed up, on official time, the release by the Philippine Charity Sweepstakes Office (PCSO), with station in Quezon City, of a PhP 50,000 donation solicited by the Philippine Guardians Brotherhood, Inc. (PGBI), Magarao Chapter. The solicited amount was intended to defray the cost of PGBI's August 5, 2004 medical mission.

From June 21 to June 26, 2004, Julia and Parma again made another official trip for the same purpose. The PCSO eventually released the needed amount enabling PGBI to conduct its medical mission, as scheduled.

Before each trip, Parma and Julia drew the usual cash advances based on the requisite Travel Order and Itinerary of Travel. Upon their return, the advances were liquidated. The liquidation process required, among other things, the submission of the statement of actual itinerary and the certificate of appearance or attendance.

The subject matter of this petition relates to the authenticity of the certificate of appearance[4] allegedly submitted by Parma in the liquidation of his travel cash advances.

Señar alleged that both Parma and Julia submitted, as

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[3] *Id*. at 32-39. Per Graft Investigation & Prosecution Officer Teresita P. Butardo-Tacata, as recommended by Director Wilbert L. Candelaria, and approved by Deputy Ombudsman for Luzon Victor C. Fernandez.

[4] *Id*. at 56.

attachments to their liquidation reports, spurious certificates of attendance, as evidenced by a November 10, 2004 letter[5] from the PCSO which disowned said certificates of attendance.

On November 18, 2004, Señar, on the basis of what she alleged to be spurious certificates submitted by Parma and Julia, filed with the Ombudsman the **first** Complaint-Affidavit,[6] charging the latter two with falsification of official documents, docketed as OMB-L-C-04-1054-K, and, administratively, for dishonest*y,* docketed as OMB-L-A-04-0750-K. On January 3, 2005, in OMB-L-A-04-0750-K, the Ombudsman issued an Order,[7] preventively suspending Parma and Julia for two months.

In their defense,[8] Parma and Julia alleged that the spurious certificates of attendance were the handiwork of Señar, acting through Mrs. Ruena Tino, an employee of the municipal assessor's office. Parma and Julia also alleged that Señar detailed Tino at the Office of the *Sangguniang Bayan* of Magarao as evidenced by the Affidavit[9] of Irene M. Durante (Durante), another municipal employee. Durante stated that Tino made her photocopy old certificates of attendance with the names and dates covered, with instructions to later fill-out the blank photocopied but signed certificates.

On February 4, 2005, Señar filed a **second** Complaint-Affidavit[10] against Parma and Julia for alleged violation of Sections 4 (a) and 3 (e) of the *Anti-Graft and Corrupt Practices Act* (R.A. No. 3019, as amended), docketed as OMB-L-C-05-0165-B, while the accompanying administrative case for dishonesty

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[5] *Id*. at 46. Written by Romualdo V. Quiñones, PCSO Manager for Special Projects Department.

[6] *Id*. at 83-86, dated November 16, 2004.

[7] *Id*. at 113-115. Per Ombudsman Director Joaquin F. Salazar as approved by Deputy Ombudsman for Luzon Victor C. Fernandez.

[8] *Id*. at 116-119. Counter-Affidavit of Vice-Mayor Nelson B. Julia, dated January 21, 2005; *id*. at 120-122, Counter-Affidavit of Fernando C. Parma, Jr., dated January 21, 2005.

[9] *Id*. at 123-125, dated January 21, 2005.

[10] *Id*. at 104-108.

was docketed as OMB-L-A-05-0120-B. The complaint-affidavit alleged that Parma and Julia used public funds for a private purpose, noting that PGBI, on whose behalf the duo made the trip to follow up the donation in question, is a private organization.

On March 3, 2005, Señar filed a **third** complaint-affidavit,[11] this time solely against Parma, charging him with falsification of official document, docketed as OMB-L-C-05-0244-C. The administrative aspect of the complaint for dishonesty was docketed as OMB-L-A-05-0175-C. Stated as basis of this complaint is a spurious certificate of attendance[12] allegedly submitted by Parma in his liquidation report for a February 2 to 7, 2004 trip to the office of Senator Ramon Magsaysay, Jr., which, however, later denied issuing the certificate of attendance thus submitted by Parma.[13]

On March 15, 2005, Señar filed a **fourth** complaint-affidavit[14] against Parma for the same crime and offense charged in the first and second affidavit-complaints, albeit the basis for the fourth complaint is, as couched, different. This time around, the inculpatory act has reference to the alleged submission by Parma of spurious certificates of attendance,[15] one dated June 24, 2004 for his June 14 to 19, 2004 trip to Manila, while the other spurious certificate of attendance[16] was dated June 18, 2004. The criminal charge was docketed as **OMB-L-C-05-0296-C**, while the administrative case for dishonesty was docketed as OMB-L-A-05-0211-C.

The foregoing four criminal complaints with the corresponding administrative cases were not consolidated and none of the parties moved for their consolidation.

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[11] *Id*. at 138-140, dated March 2, 2005.

[12] *Id*. at 146.

[13] *Id*. at 148, letter dated February 24, 2005.

[14] *Id*. at 47-50, dated March 12, 2005.

[15] *Id*. at 56.

[16] *Id*. at 59.

On March 31, 2005 in OMB-L-C-05-0296-C, the Ombudsman ordered Parma to file his counter-affidavit. Despite his receipt of the order, Parma did not file his counter-affidavit. This failing or refusal apparently forced the hand of the Ombudsman to issue, on August 17, 2005, the assailed Resolution in OMB-L-C-05-0296-C, finding probable cause to charge Parma for the crime of falsification of official document, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, it is respectfully recommended that respondent FERNANDO C. PARMA, JR. be INDICTED for the crime of Falsification of Official Document defined and penalized under Article 171, paragraph 1, of the Revised Penal Code.
>
> SO RESOLVED.

On August 22, 2005, the Ombudsman rendered a Decision in OMB-L-A-05-0211-C, finding Parma guilty of dishonesty and recommending a penalty of one year suspension from office.

On October 2, 2005, Parma, with respect to both the Ombudsman's August 17, 2005 resolution and August 22, 2005 decision, filed a Motion for Reconsideration and/or Reinvestigation and to Admit Counter-Affidavit, Affidavit of Witnesses and Other Evidences.[17] Parma explained that he was indisposed for several months, suffering from a renal ailment which prevented him from filing his counter-affidavit. He added that the documentary evidence he intends to present together with his counter-affidavit[18] and the affidavit[19] of his witness, Durante, will likely exculpate him from any liability. To this motion, Señar interposed an opposition in which she informed the Ombudsman about the pendency of criminal complaints for perjury filed by Tino against Durante, docketed as I.S. Nos. 2005-093 and 2005-097.

As earnestly prayed in the motion, the Ombudsman admitted Parma's counter-affidavit and other documentary evidence presented.

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[17] *Id*. at 40-43, dated September 28, 2005.

[18] *Id*. at 64-66, dated September 27, 2005.

[19] *Id*. at 78-80, dated September 27, 2005.

On November 30, 2005, the Ombudsman issued the assailed Joint Order,[20] denying Parma's motion for reconsideration aforementioned. The *fallo* of the Ombudsman's joint order reads:

> WHEREFORE, PREMISES CONSIDERED, it is most respectfully recommended that the instant Motion for Reconsideration and/or Reinvestigation dated 27 September 2005 filed by respondent Fernando C. Parma, Jr. be DENIED.
>
> The recommendations in the contested Resolution and Decision are hereby affirmed.
>
> SO ORDERED.

Consequent to the foregoing denial order, an Information against Parma for falsification of official document was filed with the Regional Trial Court (RTC), Branch 21, in Naga City, docketed as Criminal Case No. 2006-0022.

The filing of the above information notwithstanding, Parma filed the instant Petition for *Certiorari* under Rule 65, ascribing grave abuse of discretion in the issuance of the resolution and joint order in the criminal complaint in OMB-L-C-05-0296-C.

For proper perspective, this petition is cast against the following relevant incidents that transpired before and after its filing:

(1) By Joint-Resolution[21] dated August 25, 2005, the Ombudsman dismissed the second complaint docketed as OMB-L-C-05-0165-B and OMB-L-A-05-0120-B for violation of the Anti-Graft Law and dishonesty, respectively, on the finding that Parma's and Julia's official trips redounded to the benefit of the residents of Magarao, Camarines Sur. Señar's motion for reconsideration was rejected by the Ombudsman through an Order (Motion for Reconsideration)[22] dated October 21, 2005.

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[20] *Supra* note 3.

[21] *Rollo*, pp. 128-132. Per Graft Investigation & Prosecution Officer Ma. Theresa B. Tansiongco, as recommended by Ombudsman Director Joaquin F. Salazar, as approved by Deputy Ombudsman for Luzon Victor C. Fernandez.

[22] *Id*. at 134-137. Per Graft Investigation & Prosecution Officer Margie G. Fernandez-Calpatura, as recommended by Ombudsman Director Joaquin

(2) By Joint-Resolution of November 16, 2005,[23] the Ombudsman also dismissed the third complaint for falsification of official document and dishonesty, docketed as OMB-L-C-05-0244-C and OMB-L-A-05-0175-C, respectively. The Ombudsman found no probable cause to charge Parma with falsification and ruled, *vis-à-vis* OMB-L-A-05-0175-C, that a re-elected official is not amenable for an administrative offense committed during a previous term.[24]

(3) The perjury cases filed against Durante, under I.S. Nos. 2005-093 and 2005-097, were dismissed by the City Prosecutor of Naga. The Secretary of Justice would later effectively affirm the dismissal per a Resolution[25] dated January 23, 2006.

Parenthetically, available records do not show how the first complaint, docketed as OMB-L-C-04-1054-K and OMB-L-A-04-0750-K, was resolved.

(4) On April 18, 2006, the RTC issued in Criminal Case No. 2006-0022 an Order,[26] denying Parma's motion to suspend proceedings[27] after which it proceeded to arraign Parma. Following a preliminary conference, a pre-trial conference was held on September 12, 2006.[28]

On May 9, 2007, this Court denied, through a Resolution,[29] Parma's Urgent Motion for Issuance of Writ of Preliminary Injunction and Temporary Restraining Order[30] for lack of merit.

F. Salazar, as approved by Deputy Ombudsman for Luzon Victor C. Fernandez..

[23] *Id*. at 149-155.

[24] *Aguinaldo v. Santos*, G.R. No. 94115, August 2l, 1992, 212 SCRA 768.

[25] *Rollo*, pp. 81-82. Per Chief State Prosecutor Jovencito R. Zuño.

[26] *Id*. at 164-167. Per Judge Pablo C. Formaran III.

[27] *Id*. at 160-161, dated February 16, 2006.

[28] *Id*. at 230-267, TSN of Pre-Trial; *id*. at 198-199, Pre-Trial Order.

[29] *Id*. at 331.

[30] *Id*. at 323-329, dated April 10, 2007.

In this recourse, Parma raises the following issues for our consideration:

I WHETHER OR NOT THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON GRAVELY ABUSED ITS DISCRETION WHEN IT CAPRICIOUSLY AND WHIMSICALLY ISSUED THE ASSAILED RESOLUTION AND JOINT ORDER (ANNEXES A AND B, RESPECTIVELY, PETITION);

II WHETHER OR NOT THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON GRAVELY ABUSED ITS DISCRETION IN NOT CONSIDERING ITS OWN FINDINGS IN OMB-L-C-05-0165-B; WHICH CASE IS DIRECTLY RELATED TO THE CASE AT BAR;

III WHETHER OR NOT THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON GRAVELY ABUSED ITS DISCRETION WHEN IT FAILED TO CONSIDER ITS FINDING IN OMB-L-C-05-0244-C, WHICH FINDING SHOWS THE PROPENSITY OF THE PRIVATE RESPONDENT TO USE FALSIFIED AND FABRICATED CERTIFICATE OF APPEARANCE AGAINST THE PETITIONER.[31]

The core issue for our resolution is whether or not grave abuse of discretion attended the issuance of the assailed August 17, 2005 Resolution and the November 30, 2005 Joint Order. In essence, Parma claims that the Ombudsman gravely abused its discretion when, contrary to its earlier rulings in the companion criminal investigation cases arising from Parma's official travels, it proceeded to order the filing of an information for falsification.

We are not persuaded.

OMB-L-C-05-0165-B, for violation of the *Anti-Graft and Corrupt Practices Act* and dismissed by the Ombudsman on August 26, 2005 or nine days after the issuance of the assailed resolution, has no direct bearing on the instant case as the two cases have distinct causes of action. While both cases stemmed from the same factual milieu, *i.e.*, from the trips taken in

[31] *Id.* at 273-274.

June 2004, the causes of action or the inculpatory acts complained of are different. In OMB-L-C-05-0165-B, it is the alleged use of public funds for a private purpose, while the instant case is for alleged falsification of a certificate of appearance. In net effect, the dismissal of OMB-L-C-05-0165-B does not have the effect of *res judicata* on OMB-L-C-05-0296-C. As a rule of preclusion, *res judicata* "refers to the rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies and, as to them, constitutes an absolute bar to a subsequent action involving the same demand or cause of action."[32]

Similarly, the criminal complaint, OMB-L-C-05-0244-C, for falsification of official document, dismissed by the Ombudsman on November 16, 2005, likewise does not have direct bearing on the instant case, for OMB-L-C-05-0244-C pivots on an alleged spurious certificate of attendance for a February 2 to February 7, 2004 trip to the office of then Sen. Magsaysay, Jr., whereas this case, OMB-L-C-05-0296-C, revolves around the falsification of a certificate of attendance for a June 14 through June 19, 2004 trip. In a very real sense, both cases also have dissimilar causes of action. What is more, unlike in OMB-L-C-05-0244-C, Parma in OMB-L-C-05-0296-C presented only a photocopy of what purportedly is the authentic certificate of appearance for the official trip in question.

Go v. Looyuko[33] explains the concept of grave abuse of discretion in the following wise:

> Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. It is well-settled that an act of a court or tribunal may only be considered to have been done in grave abuse of discretion when the act was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined or to act at all in

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[32] BLACK'S *LAW DICTIONARY* 1305 (6th *ed.*); cited in *Gutierrez v. Court of Appeals*, G.R. No. 82475, January 29, 1991, 193 SCRA 437.

[33] G.R. Nos. 147923, 147962 & 154035, October 26, 2007.

contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[34] An error of judgment committed in the exercise of its legitimate jurisdiction is not the same as "grave abuse of discretion." An abuse of discretion is not sufficient by itself to justify the issuance of a writ of *certiorari*.

The imputation of grave abuse of discretion on the part of the Ombudsman, which necessarily implies a capricious and whimsical exercise of its discretion, cannot be sustained in the instant case, because Parma veritably latches his case on the lame argument that had the Ombudsman duly considered its findings in OMB-L-C-05-0165-B and OMB-L-C-05-0244-C, it would have found no reason to give due course to OMB-L-C-05-0296-C and eventually to direct the filing of the information for falsification in question. But as earlier explained, OMB-L-C-05-0165-B and OMB-L-C-05-0244-C are rooted on causes of action different from OMB-L-C-05-0296-C and, hence, would require a dissimilar evidentiary proof to sustain a finding of probable cause or rebut any such finding. It cannot be overemphasized that Parma was given the opportunity to ventilate his position, with the Ombudsman even admitting his belatedly submitted counter-affidavit, affidavit of witnesses and other documentary evidence.

In the ultimate analysis, Parma has only himself to blame for the non-submission before the Ombudsman of his June 23, 2004 certificate of appearance.[35] Parma is now asking our indulgence to consider it. However, the submission before us of the original document begs the question on the authenticity thereof and whether it was truly issued on the date it purports to attest. If indeed Parma liquidated his trip advances for June 2004, why was the original of the corresponding certificate of appearance not filed with the liquidation report? It has not

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

[35] *Rollo*, p. 77.

been shown by Parma that he indeed liquidated his advances by filing not only the bus tickets for the trip but also his certificate of appearance. In his counter-affidavit, he only denied submitting the spurious certificates of attendance, but did not state submitting the original certificate of attendance. Thus, how could Parma clear and liquidate his trip advances without complying with the required submission of his certificate of appearance?

The Court cannot presently review, as Parma urges, the sufficiency of the evidence against him and at the same time consider and re-evaluate the affidavit of Durante and other documentary evidence attached to Parma's counter-affidavit to determine the author of the falsified documents. Such a review and reevaluation cannot be secured in a petition for *certiorari* which is not available to correct mistakes, if any there be, in the Ombudsman's findings and conclusions or to cure erroneous conclusions of fact and law. The unyielding rule has been that this Court cannot weigh evidence to determine probable cause, a properly executive function—exercised by the Ombudsman in the instant case—as we are confined to the issue of whether the executive determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. In *Longos Rural Waterworks and Sanitation Association, Inc. v. Hon. Desierto*, the Court has occasion to rule that it cannot pass upon the sufficiency or insufficiency of evidence to determine the lack or existence of probable cause.[36]

WHEREFORE, the petition is *DISMISSED* and, accordingly, the assailed Resolution dated August 17, 2005 and the Joint Order of November 30, 2005 of the Office of the Deputy Ombudsman for Luzon are *AFFIRMED*. Costs against petitioner.

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[36] G.R. No. 135496, July 30, 2002, 385 SCRA 392, 397-398. See also *Roberts v. Court of Appeals*, G.R. No. 113930, March 5, 1996, 254 SCRA 307. This Court refrained from passing over the propriety of finding probable cause against petitioners as such function is proper to the public prosecutor. Moreover, on the question whether the public prosecutor has discharged this executive function correctly, we held that the trial court may not be compelled to pass upon such query as there is no provision of law authorizing an aggrieved party to petition for such determination.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172890. April 30, 2008]

S.L. TEVES, INC./HACIENDA NUESTRA SEÑORA DEL PILAR, AND/OR RICARDO M. TEVES, As President AND VICENTE M. TEVES, as General Manager, *petitioners, vs.* **CASIANO ERAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; REQUISITES.— In order for *res judicata* to apply, however, the following requisites must concur: (a) the former judgment must be final; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and, (d) there must be as between the first and second actions identity of parties, subject matter and causes of action. x x x

2. ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; ONLY QUESTIONS OF LAW MAY BE RAISED AS THE SUPREME COURT IS NOT A TRIER OF FACTS; EXPLAINED.— Under Rule 45 of the Rules of Court which governs appeals by *certiorari*, only questions of law may be raised as the Supreme Court is not a trier of facts. A question of law which the Court may pass upon must not involve an examination of the probative value of the evidence presented by the litigants. There is a question of law in a given case when the doubt or difference

arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts.

APPEARANCES OF COUNSEL

Palma & Pon-Palma and *Yap-Siton Law Office* for respondent.

D E C I S I O N

TINGA, *J*.:

Petitioners filed the present Petition for Review[1] dated May 25, 2006, seeking the reversal of the Decision[2] of the Court of Appeals in CA-G.R. SP No. 00789 dated February 3, 2006, and its Resolution[3] dated May 3, 2006, declaring respondent entitled reinstatement and to his monetary claims.

The facts, as culled from the record in the assailed Decision, follow:

The petitioner started working as laborer since 1978, and was paid ₱53.00 per day, paid every fifteen (15) days, with a daily work schedule of [*sic*] from 6:00 a.m. to 5:00 p.m.[,] from Monday to Saturday. His work consists of preparing/clearing and weeding the sugar plantation fields for planting, "CARGA" and "TAPAS," gathering/harvesting and hauling sugar canes, within the sugar plantation, under the direct control and supervision of the "*cabo*." Sometime in the morning of November 22, 2001, he was informed by the "*cabo*" that his services were terminated by Milagros "Maitos" Teves-Aldeguer, and since that time, he was not given work assignments, even if he was still interested to work. Hence, he filed a complaint for illegal dismissal

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[1] *Rollo*, pp. 3-20.

[2] *Id*. at 22-30; Penned by Associate Justice Enrico A. Lanzanas and concurred in by Executive Justice Arsenio J. Magpale and Associate Justice Pampio A. Abarintos.

[3] *Id*. at 39-40.

and other monetary claims with the NLRC, Sub-Arbitration Branch, Dumaguete City.

On the other hand, the private respondents alleged that the petitioner was employed in Hacienda Cambuilao in Bais City owned by the Montenegros. They further alleged that last March 4, 2002[,] petitioner filed a complaint for illegal dismissal and money claims with the NLRC, Sub-Arbitration Branch, Dumaguete City; and that on March 18, 2002 after paying the amount of One Hundred Seventy Five (₱175.00) Pesos to the petitioner herein, the latter withdrew the complaint against them, which prompted the Labor Arbiter to issue an Order dismissing the case with prejudice.

To sum it all, this case began on September 2, 2002, when the petitioner filed a complaint against the respondent for illegal dismissal, underpayment, separation pay, damages and attorney's fees. The petitioner filed a Position Paper With Affidavit on October 2, 2002, while the respondents filed their Position Paper and Affidavit on October 7, 2002. On October 27, 2002, by refusing to discuss the merits and demerits of the case; by relying on the March 18, 2002 Order issued by him on the case between the same parties; and by applying the principle of *res judicata,* Labor Arbiter Geoffrey P. Villahermosa dismissed the complaint for lack of merit. As a result, on November 19, 2002, the petitioner filed a Notice of Appeal And Memorandum of Appeal. The NLRC rendered a Decision dismissing the said appeal on October 20, 2004. Consequently, on November 22, 2004, the petitioner filed a Motion For Reconsideration, which was in turn denied by the NLRC thru a Resolution dated February 2, 2005, thus petitioner filed this petition. (Citations omitted)[4]

According to the Court of Appeals, the National Labor Relations Commission (NLRC) committed grave abuse of discretion when it agreed with the Labor Arbiter's finding that respondent's voluntary withdrawal of his previous complaint for illegal dismissal resulted in the dismissal of his suit "with prejudice" such that respondent can no longer file another complaint with the same cause of action against petitioners.

Petitioners argue that the Order[5] of the Labor Arbiter dated March 18, 2002, dismissing respondent's first complaint for

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[4] *Id*. at 23-24.

[5] *Id*. at 52.

illegal dismissal had already become final and executory since the latter did not interpose an appeal. This dismissal operates to bar the second complaint, based on the same cause of action, on the ground of *res judicata*. Further, the dismissal of the first complaint was not based on a mere technicality but on an alleged admission made by respondent that he was not an employee of petitioners.

In his Comment[6] dated August 31, 2006, respondent avers that the instant petition asks the court to review a question of fact, *i.e.,* whether respondent admitted to having worked in petitioners' *hacienda* without the knowledge and consent of petitioners, which is not allowed in petitions for review under Rule 45 of the 1997 Rules of Civil Procedure (Rules of Court).

Petitioners filed a Reply[7] dated January 26, 2007, insisting that their petition is anchored on the question of whether *res judicata* bars the second illegal dismissal complaint filed by respondent.

It is at once evident that the parties in this case present two conflicting sides regarding the circumstances surrounding respondent's employment and termination.

Petitioners vigorously insist that respondent had previously admitted having worked at petitioners' *hacienda* without their knowledge and consent. This assertion, however, appears to be unsupported by any evidence on record, except petitioners' own Position Paper[8] submitted before the NLRC.

The Receipt dated March 18, 2002, which petitioners submit as proof that respondent decided to withdraw the first illegal dismissal complaint on the condition that he be paid the amount of ₱175.00 equivalent to four (4) days' work proves just that and nothing more—that respondent received remuneration for his work. It does not indicate, much less prove, that respondent

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[6] *Id*. at 216-220.

[7] *Id*. at 224-227.

[8] *Id*. at 45-48.

admitted having voluntarily worked at petitioners' *hacienda* without petitioners' knowledge and consent or that he voluntarily agreed to withdraw his complaint.[9]

The Order dated March 18, 2002, which petitioners insist had already attained finality and should operate as *res judicata* to any further claims of respondent does not confirm the factual assertion made by petitioners. The Labor Arbiter, relying on this perfunctory Order dismissing the first complaint "with prejudice,"[10] merely narrated the factual submissions of the parties and chose "not to discuss anymore the merits or demerits of this case"[11] in his decision dated October 27, 2002 on the second complaint.

In order for *res judicata* to apply, however, the following requisites must concur: (a) the former judgment must be final; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and, (d) there must be as between the first and second actions identity of parties, subject matter and causes of action.[12] Whether the first complaint for illegal dismissal was dismissed

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[9] *Id*. at 51. The Receipt states in full:

March 18, 2002

RECEIPT

Received the amount of ₱175.00 from HDA. DEL PILAR through ATTY. DIRKIE Y. PALMA as full and complete payment for the 4 days work rendered with the Hacienda.

Signed
CASIANO IRAN
COMPLAINANT

With my consent:
Signed
CONSING IRAN
MOTHER

[10] *Id*. at 42.

[11] *Id*. at 63.

[12] *Aldovino v. NLRC*, 359 Phil. 54, 61 (1998).

on the merits depends, in turn, on the voluntariness of respondent's withdrawal of his first complaint and on the truth or falsity of the allegation that respondent admitted that he was not really an employee of petitioners. These questions require an inquiry into the facts, a function which this Court does not exercise in an appeal by *certiorari*.

Under Rule 45 of the Rules of Court which governs appeals by *certiorari*, only questions of law may be raised as the Supreme Court is not a trier of facts. A question of law which the Court may pass upon must not involve an examination of the probative value of the evidence presented by the litigants. There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts.[13]

All of these notwithstanding, the Court of Appeals had ruled that respondent is a regular employee of petitioners; that he was illegally dismissed; and is, thus, entitled to reinstatement and to his monetary claims. We find these factual findings and conclusions in accord with the evidence on record.

WHEREFORE, the instant petition is *DENIED*. The Decision of the Court of Appeals dated February 3, 2006, and its Resolution dated May 3, 2006, in CA-G.R. SP No. 00789 are *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

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

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[13] *Naguiat v. Court of Appeals*, 459 Phil. 237, 241-242 (2003).

SECOND DIVISION

[G.R. No. 172953. April 30, 2008]

JUNIE MALLILLIN *Y* LOPEZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; TRIAL COURT'S FINDINGS OF FACT ARE ENTITLED TO GREAT WEIGHT AND WILL NOT BE DISTURBED ON APPEAL; EXCEPTION.—** Prefatorily, although the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, this rule does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal. In the case at bar, several circumstances obtain which, if properly appreciated, would warrant a conclusion different from that arrived at by the trial court and the Court of Appeals.

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION FOR ILLEGAL POSSESSION OF PROHIBITED DRUGS NECESSITATES THAT THE ELEMENTAL ACT OF POSSESSION OF A PROHIBITED SUBSTANCE BE ESTABLISHED WITH MORAL CERTAINTY, TOGETHER WITH THE FACT THAT THE SAME IS NOT AUTHORIZED BY LAW.—** Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt.

3. ID.; EVIDENCE; AUTHENTICATION OF EVIDENCE; CHAIN OF CUSTODY RULE; EXPLAINED.— As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

4. ID.; ID.; ID.; ID.; THE LIKELIHOOD OF TAMPERING, LOSS OR MISTAKE WITH RESPECT TO AN EXHIBIT IS GREATEST WHEN THE EXHIBIT IS SMALL AND IS ONE THAT HAS PHYSICAL CHARACTERISTICS FUNGIBLE IN NATURE AND SIMILAR IN FORM TO SUBSTANCES FAMILIAR TO PEOPLE IN THEIR DAILY LIVES.— Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. *Graham vs. State* positively acknowledged this danger. xxx xxx xxx It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

5. ID.; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; APPROVAL BY THE COURT WHICH ISSUED THE SEARCH WARRANT IS NECESSARY BEFORE POLICE OFFICERS CAN RETAIN THE PROPERTY SEIZED.— Likewise, Esternon's failure to deliver the seized items to the court demonstrates a departure from the directive in the search warrant that the items seized be immediately delivered to the trial court with a true

and verified inventory of the same, as required by Rule 126, Section 12 of the Rules of Court. *People v. Go* characterized this requirement as mandatory in order to preclude the substitution of or tampering with said items by interested parties. Thus, as a reasonable safeguard, *People vs. Del Castillo* declared that the approval by the court which issued the search warrant is necessary before police officers can retain the property seized and without it, they would have no authority to retain possession thereof and more so to deliver the same to another agency. Mere tolerance by the trial court of a contrary practice does not make the practice right because it is violative of the mandatory requirements of the law and it thereby defeats the very purpose for the enactment.

6. ID.; EVIDENCE; PRESUMPTIONS; THE PRESUMPTION OF REGULARITY IN THE CONDUCT OF POLICE DUTY IS A MERE PRESUMPTION DISPUTABLE BY CONTRARY PROOF AND WHICH WHEN CHALLENGED BY THE EVIDENCE CANNOT BE REGARDED AS BINDING TRUTH.— Given the foregoing deviations of police officer Esternon from the standard and normal procedure in the implementation of the warrant and in taking post-seizure custody of the evidence, the blind reliance by the trial court and the Court of Appeals on the presumption of regularity in the conduct of police duty is manifestly misplaced. The presumption of regularity is merely just that— a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth. Suffice it to say that this presumption cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt.

7. ID.; ID.; BURDEN OF PROOF; THE BURDEN OF PROVING THE GUILT OF AN ACCUSED LIES ON THE PROSECUTION WHICH MUST RELY ON THE STRENGTH OF ITS OWN EVIDENCE AND NOT ON THE WEAKNESS OF THE DEFENSE.— In our constitutional system, basic and elementary is the presupposition that the burden of proving the guilt of an accused lies on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense. The rule is invariable whatever may be the reputation of the accused, for the law presumes his innocence unless and until the contrary is shown. *In dubio pro reo.* When moral

certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.

APPEARANCES OF COUNSEL

Lynette J. Tan for petitioner.
The Solicitor General for respondent.

D E C I S I O N

TINGA, *J.*:

The presumption of regularity in the performance of official functions cannot by its lonesome overcome the constitutional presumption of innocence. Evidence of guilt beyond reasonable doubt and nothing else can eclipse the hypothesis of guiltlessness. And this burden is met not by bestowing distrust on the innocence of the accused but by obliterating all doubts as to his culpability.

In this Petition for Review[1] under Rule 45 of the Rules of Court, Junie Malillin *y* Lopez (petitioner) assails the Decision[2] of the Court of Appeals dated 27 January 2006 as well as its Resolution[3] dated 30 May 2006 denying his motion for reconsideration. The challenged decision has affirmed the Decision[4] of the Regional Trial Court (RTC) of Sorsogon City, Branch 52[5] which found petitioner guilty beyond reasonable doubt of illegal possession of methamphetamine hydrochloride, locally known as *shabu,* a prohibited drug.

The antecedent facts follow.

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[1] *Rollo,* pp. 8-22.

[2] In CA-G.R. No. 28915. Penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Lucas P. Bersamin and Celia C. Librea-Leagogo. CA *rollo,* pp. 81-90.

[3] *Id.* at 109.

[4] In Criminal Case No. 2003-5844. Records, pp. 114-119.

[5] Presided by Judge Honesto A. Villamor.

On the strength of a warrant[6] of search and seizure issued by the RTC of Sorsogon City, Branch 52, a team of five police officers raided the residence of petitioner in Barangay Tugos, Sorsogon City on 4 February 2003. The team was headed by P/Insp. Catalino Bolanos (Bolanos), with PO3 Roberto Esternon (Esternon), SPO1 Pedro Docot, SPO1 Danilo Lasala and SPO2 Romeo Gallinera (Gallinera) as members. The search — conducted in the presence of barangay kagawad Delfin Licup as well as petitioner himself, his wife Sheila and his mother, Norma — allegedly yielded two (2) plastic sachets of *shabu* and five (5) empty plastic sachets containing residual morsels of the said substance.

Accordingly, petitioner was charged with violation of Section 11,[7] Article II of Republic Act No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002, in a criminal information whose inculpatory portion reads:

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[6] Records, pp. 11-12.

[7] Sec. 11. *Possession of Dangerous Drugs*.—The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof;

(1) 10 grams or more of opium;

(2) 10 grams or more of morphine;

(3) 10 grams or more of heroin;

(4) 10 grams or more of cocaine or cocaine hydrochloriede;

(5) 50 grams or more of methamphetamine hydrochloride or "shabu";

(6) 10 grams or more of marijuana resin or marijuana resin oil;

(7) 500 grams or more of marijuana; and

(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy," paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamide (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

That on or about the 4th day of February 2003, at about 8:45 in the morning in Barangay Tugos, Sorsogon City, Philippines, the said accused did then and there willfully, unlawfully and feloniously have in his possession, custody and control two (2) plastic sachets of methamphetamine hydrochloride [or] "*shabu*" with an aggregate weight of 0.0743 gram, and four empty sachets containing "*shabu*" residue, without having been previously authorized by law to possess the same.

CONTRARY TO LAW.[8]

Petitioner entered a negative plea.[9] At the ensuing trial, the prosecution presented Bolanos, Arroyo and Esternon as witnesses.

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(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams or marijuana; and

(3) Imprisonment of twelve (12 years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu,*" or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[8] Records, p. 2.

[9] *Id*. at 41, 43.

Taking the witness stand, Bolanos, the leader of the raiding team, testified on the circumstances surrounding the search as follows: that he and his men were allowed entry into the house by petitioner after the latter was shown the search warrant; that upon entering the premises, he ordered Esternon and barangay kagawad Licup, whose assistance had previously been requested in executing the warrant, to conduct the search; that the rest of the police team positioned themselves outside the house to make sure that nobody flees; that he was observing the conduct of the search from about a meter away; that the search conducted inside the bedroom of petitioner yielded five empty plastic sachets with suspected *shabu* residue contained in a denim bag and kept in one of the cabinets, and two plastic sachets containing *shabu* which fell off from one of the pillows searched by Esternon—a discovery that was made in the presence of petitioner.[10] On cross examination, Bolanos admitted that during the search, he was explaining its progress to petitioner's mother, Norma, but that at the same time his eyes were fixed on the search being conducted by Esternon.[11]

Esternon testified that the denim bag containing the empty plastic sachets was found "behind" the door of the bedroom and not inside the cabinet; that he then found the two filled sachets under a pillow on the bed and forthwith called on Gallinera to have the items recorded and marked.[12] On cross, he admitted that it was he alone who conducted the search because Bolanos was standing behind him in the living room portion of the house and that petitioner handed to him the things to be searched, which included the pillow in which the two sachets of *shabu* were kept;[13] that he brought the seized items to the Balogo Police Station for a "true inventory," then to the trial court[14] and thereafter to the laboratory.[15]

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[10] TSN, 22 April 2003, pp. 6-9.

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

[12] TSN, 23 July 2003, pp. 6-7, 10.

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

[14] TSN, 23 July 2003, pp. 13-15.

[15] *Id*. at 9.

Supt. Lorlie Arroyo (Arroyo), the forensic chemist who administered the examination on the seized items, was presented as an expert witness to identify the items submitted to the laboratory. She revealed that the two filled sachets were positive of *shabu* and that of the five empty sachets, four were positive of containing residue of the same substance.[16] She further admitted that all seven sachets were delivered to the laboratory by Esternon in the afternoon of the same day that the warrant was executed except that it was not she but rather a certain Mrs. Ofelia Garcia who received the items from Esternon at the laboratory.[17]

The evidence for the defense focused on the irregularity of the search and seizure conducted by the police operatives. Petitioner testified that Esternon began the search of the bedroom with Licup and petitioner himself inside. However, it was momentarily interrupted when one of the police officers declared to Bolanos that petitioner's wife, Sheila, was tucking something inside her underwear. Forthwith, a lady officer arrived to conduct the search of Sheila's body inside the same bedroom. At that point, everyone except Esternon was asked to step out of the room. So, it was in his presence that Sheila was searched by the lady officer. Petitioner was then asked by a police officer to buy cigarettes at a nearby store and when he returned from the errand, he was told that nothing was found on Sheila's body.[18] Sheila was ordered to transfer to the other bedroom together with her children.[19]

Petitioner asserted that on his return from the errand, he was summoned by Esternon to the bedroom and once inside, the officer closed the door and asked him to lift the mattress on the bed. And as he was doing as told, Esternon stopped him and ordered him to lift the portion of the headboard. In that instant, Esternon showed him "sachet of shabu" which according

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[16] TSN, 28 May 2003, p. 14. The results of the chemical analysis are embodied in Chemistry Report No. D-037-03. See records, p. 18.

[17] *Id*. at 3.

[18] TSN, 2 December 2003, pp. 6-10.

[19] *Id*. at 13.

to him came from a pillow on the bed.[20] Petitioner's account in its entirety was corroborated in its material respects by Norma, barangay kagawad Licup and Sheila in their testimonies. Norma and Sheila positively declared that petitioner was not in the house for the entire duration of the search because at one point he was sent by Esternon to the store to buy cigarettes while Sheila was being searched by the lady officer.[21] Licup for his part testified on the circumstances surrounding the discovery of the plastic sachets. He recounted that after the five empty sachets were found, he went out of the bedroom and into the living room and after about three minutes, Esternon, who was left inside the bedroom, exclaimed that he had just found two filled sachets.[22]

On 20 June 2004 the trial court rendered its Decision declaring petitioner guilty beyond reasonable doubt of the offense charged. Petitioner was condemned to prison for twelve years (12) and one (1) day to twenty (20) years and to pay a fine of ₱300,000.00.[23] The trial court reasoned that the fact that *shabu* was found in the house of petitioner was *prima facie* evidence of petitioner's *animus possidendi* sufficient to convict him of the charge inasmuch as things which a person possesses or over which he exercises acts of ownership are presumptively owned by him. It also noted petitioner's failure to ascribe ill motives to the police officers to fabricate charges against him.[24]

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

[21] TSN, 11 November 2003, p. 3; TSN, 23 March 2004, p. 4.

[22] TSN, 4 February 2004, pp. 4-5, 9.

[23] Records, p. 119. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Court finds accused Junie Malillin *y* Lopez guilty beyond reasonable doubt of the crime of Violation of Sec. 11, Article II of R.A. No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and he is hereby sentence[d] to suffer the penalty of Twelve (12) years and one (1) day to Twenty (20) years and fine of ₱300,000.00.

The *shabu* recovered is hereby ordered forfeited in favor of the government and the same shall be turned over to the Board for proper disposal without delay.

SO ORDERED.

[24] *Id*. at 117-118.

Aggrieved, petitioner filed a Notice of Appeal.[25] In his Appeal Brief[26] filed with the Court of Appeals, petitioner called the attention of the court to certain irregularities in the manner by which the search of his house was conducted. For its part, the Office of the Solicitor General (OSG) advanced that on the contrary, the prosecution evidence sufficed for petitioner's conviction and that the defense never advanced any proof to show that the members of the raiding team was improperly motivated to hurl false charges against him and hence the presumption that they had regularly performed their duties should prevail.[27]

On 27 January 2006, the Court of Appeals rendered the assailed decision affirming the judgment of the trial court but modifying the prison sentence to an indeterminate term of twelve (12) years as minimum to seventeen (17) years as maximum.[28] Petitioner moved for reconsideration but the same was denied by the appellate court.[29] Hence, the instant petition which raises substantially the same issues.

In its Comment,[30] the OSG bids to establish that the raiding team had regularly performed its duties in the conduct of the search.[31] It points to petitioner's incredulous claim that he was

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[25] *Id*. at 121.

[26] CA *rollo,* pp. 35-47.

[27] *Id*. at 65-73.

[28] *Id*. at 89. The Court of Appeals disposed of the appeal as follows:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appeal is DISMISSED for lack of merit, and the judgment appealed from is hereby AFFIRMED with MODIFICATION in the sense that the accused-appellant is hereby sentenced to suffer an indeterminate prison term ranging from twelve (12) years, as minimum, to seventeen (17) years as maximum. In all other respects, the judgment appealed from is hereby MAINTAINED. Costs against accused-appellant.

SO ORDERED.

[29] *Id*. at 109.

[30] *Rollo*, pp. 102-112.

[31] *Id*. at 107.

framed up by Esternon on the ground that the discovery of the two filled sachets was made in his and Licup's presence. It likewise notes that petitioner's bare denial cannot defeat the positive assertions of the prosecution and that the same does not suffice to overcome the *prima facie* existence of *animus possidendi*.

This argument, however, hardly holds up to what is revealed by the records.

Prefatorily, although the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, this rule does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal.[32] In the case at bar, several circumstances obtain which, if properly appreciated, would warrant a conclusion different from that arrived at by the trial court and the Court of Appeals.

Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.[33] Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt.[34] Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession,

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[32] *People v. Pedronan*, G.R. No. 148668, 17 June 2003, 404 SCRA 183, 188; *People v. Casimiro*, G.R. No. 146277, 20 June 2002, 383 SCRA 390, 398; *People v. Laxa*, G.R. No. 138501, 20 July 2001, 361 SCRA 622, 627.

[33] *People v. Simbahon*, G.R. No. 132371, 9 April 2003, 401 SCRA 94, 100; *People v. Laxa,* G.R. No. 138501, 20 July 2001, 361 SCRA 622, 634; *People v. Dismuke; People v. Mapa;*

[34] *People v. Simbahon*, G.R. No. 132371, 9 April 2003, 401 SCRA 94, 100; *People v. Kimura*, G.R. No. 130805, 27 April 2004, 428 SCRA 51, 70.

the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[35]

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.[36] It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[37]

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness.[38] The same standard likewise obtains in case the

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[35] *An Analytical Approcah to Evidence,* Ronad J. Allen, Richard B. Kuhns, by Little Brown & Co., USA, 1989, p. 174.

[36] *United States v. Howard-Arias*, 679 F.2d 363, 366; *United States v. Ricco*, 52 F.3d 58.

[37] *EVIDENCE LAW*, ROGER C. PARK, DAVID P. LEONARD, STEVEN H. GOLDBERG, 1998, 610 OPPERMAN DRIVE, ST. PAUL MINNESOTA, p. 507.

[38] *EVIDENCE LAW,* ROGER C. PARK, DAVID P. LEONARD, STEVEN H. GOLDBERG, 1998, 610 OPPERMAN DRIVE, ST. PAUL MINNESOTA, p. 507; 29A AM. JUR. 2D EVIDENCE § 946.

evidence is susceptible to alteration, tampering, contamination[39] and even substitution and exchange.[40] In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering — without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain of custody rule.

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.[41] *Graham vs. State*[42] positively acknowledged this danger. In that case where a substance later analyzed as heroin — was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession — was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.[43]

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which

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[39] 29A AM. JUR. 2d Evidence § 946.

[40] See *Graham v. State*, 255 N.E.2d 652, 655.

[41] *Graham v. State*, 255 N.E2d 652, 655.

[42] *Graham v. State*, 255 N.E2d 652.

[43] *Graham v. State*, 255 N.E2d 652, 655.

similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.

A mere fleeting glance at the records readily raises significant doubts as to the identity of the sachets of *shabu* allegedly seized from petitioner. Of the people who came into direct contact with the seized objects, only Esternon and Arroyo testified for the specific purpose of establishing the identity of the evidence. Gallinera, to whom Esternon supposedly handed over the confiscated sachets for recording and marking, as well as Garcia, the person to whom Esternon directly handed over the seized items for chemical analysis at the crime laboratory, were not presented in court to establish the circumstances under which they handled the subject items. Any reasonable mind might then ask the question: Are the sachets of *shabu* allegedly seized from petitioner the very same objects laboratory tested and offered in court as evidence?

The prosecution's evidence is incomplete to provide an affirmative answer. Considering that it was Gallinera who recorded and marked the seized items, his testimony in court is crucial to affirm whether the exhibits were the same items handed over to him by Esternon at the place of seizure and acknowledge the initials marked thereon as his own. The same is true of Garcia who could have, but nevertheless failed, to testify on the circumstances under which she received the items from Esternon, what she did with them during the time they were in her possession until before she delivered the same to Arroyo for analysis.

The prosecution was thus unsuccessful in discharging its burden of establishing the identity of the seized items because it failed to offer not only the testimony of Gallinera and Garcia but also any sufficient explanation for such failure. In effect, there is no reasonable guaranty as to the integrity of the exhibits

inasmuch as it failed to rule out the possibility of substitution of the exhibits, which cannot but inure to its own detriment. This holds true not only with respect to the two filled sachets but also to the five sachets allegedly containing morsels of *shabu.*

Also, contrary to what has been consistently claimed by the prosecution that the search and seizure was conducted in a regular manner and must be presumed to be so, the records disclose a series of irregularities committed by the police officers from the commencement of the search of petitioner's house until the submission of the seized items to the laboratory for analysis. The Court takes note of the unrebutted testimony of petitioner, corroborated by that of his wife, that prior to the discovery of the two filled sachets petitioner was sent out of his house to buy cigarettes at a nearby store. Equally telling is the testimony of Bolanos that he posted some of the members of the raiding team at the door of petitioner's house in order to forestall the likelihood of petitioner fleeing the scene. By no stretch of logic can it be conclusively explained why petitioner was sent out of his house on an errand when in the first place the police officers were in fact apprehensive that he would flee to evade arrest. This fact assumes prime importance because the two filled sachets were allegedly discovered by Esternon immediately after petitioner returned to his house from the errand, such that he was not able to witness the conduct of the search during the brief but crucial interlude that he was away.

It is also strange that, as claimed by Esternon, it was petitioner himself who handed to him the items to be searched including the pillow from which the two filled sachets allegedly fell. Indeed, it is contrary to ordinary human behavior that petitioner would hand over the said pillow to Esternon knowing fully well that illegal drugs are concealed therein. In the same breath, the manner by which the search of Sheila's body was brought up by a member of the raiding team also raises serious doubts as to the necessity thereof. The declaration of one of the police officers that he saw Sheila tuck something in her underwear certainly diverted the attention of the members of petitioner's household away from the search being conducted by Esternon

prior to the discovery of the two filled sachets. Lest it be omitted, the Court likewise takes note of Esternon's suspicious presence in the bedroom while Sheila was being searched by a lady officer. The confluence of these circumstances by any objective standard of behavior contradicts the prosecution's claim of regularity in the exercise of duty.

Moreover, Section 21[44] of the Implementing Rules and Regulations of R.A. No. 9165 clearly outlines the post-seizure procedure in taking custody of seized drugs. In a language too plain to require a different construction, it mandates that the officer acquiring initial custody of drugs under a search warrant must conduct the photographing and the physical inventory of the item at the place where the warrant has been served. Esternon deviated from this procedure. It was elicited from him that at the close of the search of petitioner's house, he brought the seized items immediately to the police station for the alleged purpose of making a "true inventory" thereof, but there appears to be no reason why a true inventory could not be made in petitioner's house when in fact the apprehending team was able to record and mark the seized items and there

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[44] Section 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.— x x x

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: ***Provided*** **that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures;** *Provided, further,* that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over the said items; x x x (emphasis ours).

and then prepare a seizure receipt therefor. Lest it be forgotten, the raiding team has had enough opportunity to cause the issuance of the warrant which means that it has had as much time to prepare for its implementation. While the final proviso in Section 21 of the rules would appear to excuse non-compliance therewith, the same cannot benefit the prosecution as it failed to offer any acceptable justification for Esternon's course of action.

Likewise, Esternon's failure to deliver the seized items to the court demonstrates a departure from the directive in the search warrant that the items seized be immediately delivered to the trial court with a true and verified inventory of the same,[45] as required by Rule 126, Section 12[46] of the Rules of Court. *People v. Go*[47] characterized this requirement as mandatory in order to preclude the substitution of or tampering with said items by interested parties.[48] Thus, as a reasonable safeguard, *People vs. Del Castillo*[49] declared that the approval by the court which issued the search warrant is necessary before police officers can retain the property seized and without it, they would have no authority to retain possession thereof and more so to deliver the same to another agency.[50] Mere tolerance by the trial court of a contrary practice does not make the practice right because it is violative of the mandatory requirements of the law and it thereby defeats the very purpose for the enactment.[51]

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[45] Records, p. 12.

[46] SEC. 12. *Delivery of property and inventory thereof to court.*— The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath.

[47] G.R. No. 144639, 12 September 2003, 411 SCRA 81.

[48] *Id.* at 101.

[49] G.R. No. 153254, 20 September 2004, 439 SCRA 601, citing *People v. Gesmundo*, 219 SCRA 743 (1993).

[50] *Id.* at 619.

[51] *People v. Gesmundo*, G.R. No. 89373, 9 March 1993, 219 SCRA 743, 753.

Given the foregoing deviations of police officer Esternon from the standard and normal procedure in the implementation of the warrant and in taking post-seizure custody of the evidence, the blind reliance by the trial court and the Court of Appeals on the presumption of regularity in the conduct of police duty is manifestly misplaced. The presumption of regularity is merely just that — a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth.[52] Suffice it to say that this presumption cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt.[53] In the present case the lack of conclusive identification of the illegal drugs allegedly seized from petitioner, coupled with the irregularity in the manner by which the same were placed under police custody before offered in court, strongly militates a finding of guilt.

In our constitutional system, basic and elementary is the presupposition that the burden of proving the guilt of an accused lies on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense. The rule is invariable whatever may be the reputation of the accused, for the law presumes his innocence unless and until the contrary is shown.[54] *In dubio pro reo.* When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.

WHEREFORE, the assailed Decision of the Court of Appeals dated 27 January 2006 affirming with modification the judgment of conviction of the Regional Trial Court of Sorsogon City, Branch 52, and its Resolution dated 30 May 2006 denying reconsideration thereof, are *REVERSED* and *SET ASIDE*. Petitioner Junie Malillin *y* Lopez is *ACQUITTED* on reasonable

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[52] *People v. Ambrosio*, G.R. No. 135378, 14 April 2004, 427 SCRA 312, 318 citing *People v. Tan*, 382 SCRA 419 (2002).

[53] *People v. Ambrosio*, G.R. No. 135378, 14 April 2004, 427 SCRA 312, 318 citing *People v. Tan*, 382 SCRA 419 (2002).

[54] *People v. Laxa*, *id*. at 627; *People v. Diopita*, 4 December 2000; *People v. Malbog*, 12 October 2000; *People v. Ferras*, 289 SCRA 94.

doubt and is accordingly ordered immediately released from custody unless he is being lawfully held for another offense.

The Director of the Bureau of Corrections is directed to implement this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

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

EN BANC

[G.R. No. 174935. April 30, 2008]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **TRISTAN C. COLANGGO,*** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE RULES OF PROCEDURE ARE CONSTRUED LIBERALLY TO PROMOTE THEIR OBJECTIVE AND TO ASSIST PARTIES IN OBTAINING JUST, SPEEDY AND INEXPENSIVE DETERMINATION OF THEIR RESPECTIVE CLAIMS AND DEFENSES.— Administrative rules of procedure are construed liberally to promote their objective and to assist parties in obtaining just, speedy and inexpensive determination of their respective claims and defenses. Section 39 of the Uniform Rules provides: x x x **The investigation shall be conducted for the purpose of ascertaining the truth without necessarily adhering to technical rules applicable in judicial proceedings.** It shall be conducted by the disciplining authority concerned or his authorized representatives. The provision above clearly states

* "Tristan C. Colangco" in some parts of the records.

that the CSC, in investigating complaints against civil servants, is not bound by technical rules of procedure and evidence applicable in judicial proceedings.

2. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; A FINDING OF GUILT IN ADMINISTRATIVE CASES, IF SUPPORTED BY SUBSTANTIAL EVIDENCE, WILL BE SUSTAINED BY THE SUPREME COURT.—** As a general rule, a finding of guilt in administrative cases, if supported by substantial evidence (or "that amount of evidence which a reasonable mind might accept as adequate to justify a conclusion"), will be sustained by this Court.

APPEARANCES OF COUNSEL

Office of Legal Affairs (CSC) for petitioner.
Reserva & Filoteo Law Office for respondent.

D E C I S I O N

CORONA, *J.*:

This petition for review on *certiorari*[1] seeks to set aside the February 22, 2006 decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 79047 and its resolution denying reconsideration.[3]

On October 25, 1992, respondent Tristan C. Colanggo took the Professional Board Examination for Teachers (PBET) and obtained a passing rate of 75.98%. On October 1, 1993, he was appointed Teacher I and was assigned to Don Ruben E. Ecleo, Sr. Memorial National High School in San Jose, Surigao del Norte.

Subsequently, a complaint questioning the eligibility of teachers in Surigao del Norte was filed in the Civil Service Commission (CSC) CARAGA Regional Office No. XIII (CSC-CARAGA) in Butuan City. The CSC-CARAGA immediately investigated the matter.

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

[2] Penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Teresita Dy-Liacco Flores and Ramon R. Garcia of the Twenty-first Division of the Court of Appeals. *Rollo,* pp. 30-44.

[3] Dated August 17, 2006. *Id*., pp. 46-47.

In the course of its investigation, the CSC-CARAGA discovered significant irregularities in respondent's documents. The photographs of "Tristan C. Colanggo" attached respectively to the PBET application form and to the October 25, 1992 picture seat plan did not resemble respondent. Furthermore, the signature found in the PBET application form was markedly different from that affixed on respondent's personal data sheet (PDS). It appeared that someone other than respondent filed his PBET application and still another person took the exam on his behalf. Thus, the CSC-CARAGA filed a formal charge for dishonesty and conduct prejudicial to the best interest of service against respondent on January 13, 1999.[4]

On September 27, 2000, respondent filed an answer denying the charges against him and moved for a formal hearing and investigation. The CSC granted the motion and scheduled a hearing on October 31, 2000. Respondent failed to appear on the said date but subsequently filed an omnibus motion for the production of original documents relative to the charges against him and the presentation of persons who supervised the October 25, 1992 PBET. His motion was granted and the concerned proctor and examiners were subpoenaed.

After evaluating the evidence, the CSC found:

> On the basis of the photographs attached [to] the PBET application form and the picture seat plan, it is evident that the person who filed the application form for the PBET is not the same person who actually took the said examination on October 25, 1992. This disparity of physical features of the former and latter are evident. The person who filed the PBET has fuller cheekbones and slanted eyes, thinner lips and has a different hairstyle from that of the John Doe who took the said examination. On the other hand, the latter has thinner cheekbones, elongated chin, full lips with a moustache and round eyes. Also, the signatures appearing of the PBET applicant and that of the PBET examinee are also in different strokes, curves and slants.
>
> Comparing the signatures on the [PBET application form] and [picture seat plan] *vis-à-vis* those affixed on the PDS of respondent more evidently reveals that the three are different persons. The photographs and signatures appearing on the [PBET application form] and [picture

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[4] *Id.*, p. 70.

seat plan] are far and different from the facial features and signatures from both John Does. Respondent looks older, has full cheekbones, flatter nose and thin lips. **In other words, the picture and signatures affixed on the PBET application form, picture seat plan and PDS undoubtedly belong to three different persons which clearly serve a ground to establish a just cause for CSC-CARAGA to issue a formal charge on January 13, 1999 against respondent.**[5] (emphasis supplied)

The CSC concluded that respondent did not apply for and take the PBET exam. Thus, in Resolution No. 021412, the CSC found respondent guilty of dishonesty and conduct prejudicial to the best interest of service and ordered his dismissal.[6]

Respondent moved for reconsideration but his motion was denied.[7]

Aggrieved, respondent filed a petition for *certiorari* in the CA alleging that the CSC committed grave abuse of discretion in issuing Resolution No. 021412.[8] He pointed out that the pieces of evidence against him were inadmissible as they were unauthenticated photocopies of the PBET application form, picture seat plan and PDS.

On February 22, 2006, the CA granted the petition.[9] It ruled that the photocopies of the PBET application form, picture seat plan and PDS should have been authenticated.[10] Only documents or public records duly acknowledged or certified as such in accordance with law could be presented in evidence without further proof.[11] Consequently, the CA annulled and set aside

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[5] *Id*., p. 73.

[6] Resolution No. 021412 dated October 22, 2002. Signed by Chairman Karina Constantino-David and Commissioners Jose F. Erestain, Jr. and J. Waldemar V. Valmores of the Civil Service Commission. *Id*., pp. 70-75.

[7] *Id*., p. 38.

[8] *Id*., pp. 12-27.

[9] *Supra* note 2.

[10] *Id*., pp. 39-40.

[11] *Id*.

Resolution No. 021412 and ordered the dismissal of charges against respondent.[12]

The CSC moved for reconsideration[13] but was denied.[14] Hence, this petition.

The CSC essentially avers that the CA erred in finding that it committed grave abuse of discretion in rendering Resolution No. 021412.[15] The Uniform Rules on Administrative Cases in the Civil Service[16] (Uniform Rules) does not require strict adherence to technical rules of evidence. Thus, it validly considered the photocopies of the PBET application form, picture seat plan and PDS in resolving the formal charge against respondent in spite of the fact that they were not duly authenticated.

The petition is meritorious.

Administrative rules of procedure are construed liberally to promote their objective and to assist parties in obtaining just, speedy and inexpensive determination of their respective claims and defenses.[17] Section 39 of the Uniform Rules provides:

> Section 39. The direct evidence for the complainant and the respondent consist of the sworn statement and documents submitted in support of the complaint or answer as the case may be, without prejudice to the presentation of additional evidence deemed necessary but was unavailable at the time of the filing of the complaint and the answer upon which the cross-examination, by the respondent and the complainant respectively, shall be based. Following the cross-examination, there may be re-direct or re-cross examination.
>
> Either party may avail himself of the services of counsel and may require the attendance of witnesses and the production of documentary

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[12] *Id.*, p. 44.

[13] *Id.*, pp. 76-82.

[14] *Supra* note 3.

[15] *Id.*, pp. 12-27.

[16] CSC Resolution No. 99-1936 dated August 31, 1999.

[17] *Police Commission v. Lood,* 212 Phil. 697, 702-703 (1984) citing *Ang Tibay v. CIR,* 69 Phil. 635, 642 (1940).

evidence in his favor through the compulsory process of *subpoena* or *subpoena duces tecum.*

The investigation shall be conducted for the purpose of ascertaining the truth without necessarily adhering to technical rules applicable in judicial proceedings. It shall be conducted by the disciplining authority concerned or his authorized representatives. (emphasis supplied)

The provision above clearly states that the CSC, in investigating complaints against civil servants, is not bound by technical rules of procedure and evidence applicable in judicial proceedings.

The CSC correctly appreciated the photocopies of PBET application form, picture seat plan and PDS (though not duly authenticated) in determining whether there was sufficient evidence to substantiate the charges against the respondent. Worth noting was that respondent never objected to the veracity of their contents. He merely disputed their admissibility on the ground that they were not authenticated.

As a general rule, a finding of guilt in administrative cases, if supported by substantial evidence (or "that amount of evidence which a reasonable mind might accept as adequate to justify a conclusion"),[18] will be sustained by this Court.[19]

The CSC graciously granted respondent's motions to ensure that he was accorded procedural due process. Moreover, it exhaustively discussed the differences in appearances of respondent and the persons whose photographs were attached to the PBET application form and the picture seat plan. It likewise compared the various signatures on the said documents.

Resolution No. 021412 reveals that the CSC carefully evaluated the allegations against respondent and thoroughly examined and weighed the evidence submitted for its consideration. The penalty (of dismissal) imposed on respondent was therefore fully in accord with law[20]

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[18] RULES OF COURT, Rule 134, Sec. 5.

[19] *Pefianco v. Moral,* 379 Phil. 468 (2000).

[20] *See* Uniform Rules, Rule XIV, Sec. 23 which provides:

and jurisprudence.[21] We find no grave abuse of discretion on the part of the CSC.

ACCORDINGLY, the petition is hereby *GRANTED*. The February 22, 2006 decision and August 17, 2006 resolution of the Court of Appeals in CA-S.P. No. 79047 are *REVERSED* and *SET ASIDE*.

Resolution No. 021412 dated October 22, 2002 and the May 19, 2003 resolution of the Civil Service Commission finding respondent Tristan C. Colanggo *GUILTY* of dishonesty and conduct prejudicial to the best interest of service and dismissing him from the service with forfeiture of leave credits and retirement benefits and disqualifying him from reemployment in the government service are *REINSTATED*.

SO ORDERED.

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

Carpio, J., on leave.

Section 23. Administrative offenses with its (sic) corresponding penalties are classified in grave, less grave and light depending on the gravity of its (sic) nature and effects of the said acts on government service.

The following are grave offenses with corresponding penalties:

(a) Dishonesty

1st offense - Dismissal

x x x x x x x x x

(t) Conduct grossly prejudicial to the best interest of service

1st offense - Suspension for six (6) months and one (1) day to one (1) year

2nd offenses - Dismissal

x x x x x x x x x

See also Uniform Rules, Rule XIV, Sec. 9 which provides:

Section 9. The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits and retirement benefits and the disqualification for reemployment in the government service. Further it may be imposed without prejudice to criminal liability.

[21] See *Cruz v. CSC,* 422 Phil. 236 (2001) and *CSC v. Sta. Anna,* 450 Phil. 59 (2003).

SECOND DIVISION

[G.R. No. 175005. April 30, 2008]

THE ESTATE OF POSEDIO ORTEGA, Represented by his wife, MARIA C. ORTEGA, *petitioner, vs.* **THE COURT OF APPEALS, ST. VINCENT SHIPPING, INC., AND/OR ENGR. EDWIN M. CRISTOBAL,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; THE PRINCIPLE OF LIBERALITY IN FAVOR OF THE SEAFARER IN CONSTRUING THE STANDARD CONTRACT CANNOT BE APPLIED IF INJUSTICE WILL BE CAUSED TO THE EMPLOYER.—** While the Court adheres to the principle of liberality in favor of the seafarer in construing the Standard Contract, we cannot allow claims for compensation based on surmises. When the evidence presented negates compensability, we have no choice but to deny the claim, lest we cause injustice to the employer.

2. **CIVIL LAW; ESTOPPEL; ABSENT IN CASE AT BAR.—** We note that even Ortega's Pre-Employment Medical Examination report has a notation stating that it does not cover diseases requiring special procedure and examination for their detection and those which are asymptomatic at the time of examination. Indeed, it was only after Ortega was subjected to several medical tests in Antwerp and subsequently in the Philippines after his repatriation that a definitive finding of lung cancer was made. Petitioner's reliance on the PEME as the source of respondent's being in "estoppel" has no basis.

APPEARANCES OF COUNSEL

Lerio Law Office for petitioner.
Soo Gutierrez Leogardo & Lee for private respondent.

D E C I S I O N

TINGA, *J.*:

In the present petition for review, petitioner seeks the reversal of the decision and resolution of the Court of Appeals (19th Division) in C.A.–G.R. SP No.01127 dated 15 March 2006[1] and 18 September 2006, respectively. Both issuances dismissed petitioner Estate's claim for contractual death benefits, damages, and attorney's fees.

The facts of the case follow.

Posedio Ortega (Ortega) was engaged by St. Vincent Shipping, Inc. as Second Engineer for the vessel M/V Washington Trader. He entered into a 12-month contract with basic monthly salary of $1,000,[2] and boarded the vessel on 4 March 2003.

It had not gone two weeks since he boarded that Ortega got sick, complaining of occasional fever and cough with blood-streaked sputum. By 18 April 2003, he was admitted at St. Vincentius Hospital, Antwerp, Belgium where he was diagnosed with small cell lung cancer.[3] On 10 May 2003, Ortega was repatriated to the Philippines for further evaluation, treatment and management. He was admitted at the Marine Medical Services of the Metropolitan Hospital, Manila, referred to a pulmonologist therein and received chemotherapy and medication. On 14 May 2003, he was declared stable and cleared to go home to Iloilo where he can receive further treatment. On 30 July 2003, Ortega succumbed to lung cancer.[4]

The Estate of Poseido Ortega (respondent), represented by Ortega's wife, Maria C. Ortega, filed a claim for contractual death benefits, damages and attorney's fees against Saint Vincent

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[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr. concurring.

[2] Contract of Employment, *rollo*, p. 60.

[3] CA *rollo*, p. 112.

[4] *Rollo*, p. 75.

and its manager, Mr. Edwin Cristobal (respondents) before the NLRC Sub-Arbitration Branch No. VI in Iloilo City.[5] In a decision dated 18 November 2004, the labor arbiter ruled that Ortega's illness was work-related and ordered respondents to jointly and solidarily pay the petitioner death benefits, burial allowance, sickness allowance and attorney's fees, all amounting to US$60,500.00.[6] Respondents appealed the decision to the National Labor Relations Commission (NLRC), but their appeal, as well as their subsequent motion for reconsideration were denied on 14 May 2005 and 28 June 2005, respectively.[7]

Respondents elevated the case to the Court of Appeals. In its 15 March 2006 Decision, the Court of Appeals set aside the decision and resolution of the NLRC. It observed that lung cancer, the cause of Ortega's illness is not an occupational disease, nor was it aggravated by his working conditions while on board M/V Washington Trader. According to the Court of Appeals, based on Ortega's medical history, medical records and physician's reports, his lung cancer was not work-related. In fact, he himself admitted that he just recently quit smoking after almost twenty-five years of heavy smoking.[8] Moreover, the appellate court ruled that the certification that Ortega was "fit for sea service" does not preclude a finding that a disease was not pre-existing. The pre-employment medical examination underwent by Ortega before he went on board was merely routinary and not so exploratory as to completely determine any illness that Ortega might have been carrying.[9] Petitioner sought reconsideration of the decision but its motion was denied by the Court of Appeals.[10]

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[5] Docketed as NLRC SRAB OFW Case No. (M) 03-12-0062.

[6] Decision of Labor Arbiter Rene G. Eñano, *rollo*, pp. 87-100.

[7] Decision, *id*. at 102-111, Resolution denying the motion for reconsideration, Records, pp. 45-46.

[8] *Rollo*, p. 36.

[9] *Rollo*, p. 37

[10] Resolution dated 18 September 2006, *id*. at 27-28.

Before us, petitioner posits that the Court of Appeals's finding that Ortega's lung cancer was not work-related and thus non-compensable is contrary to the POEA Rules, and POEA Standard Contract as well as jurisprudence. It adds that the POEA Standard Contract must be construed and applied fairly, reasonably and liberally in favor of the seamen and their dependents.

We resolve to deny the petition.

Petitioner claims that Ortega died during the term of his employment, considering that his employment contract which commenced on 4 March 2003 would have expired on 4 March 2004 had he not been repatriated on 10 May 2003. We disagree.

A party claiming benefits for the death of a seafarer due to a work-related illness must be able to show that: (1) the death occurred during the term of his employment, and (2) the illness is work-related.[11] Hence:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR DEATH

1. In the case of <u>work-related death of the seafarer during the term of his contract</u> the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

x x x x x x x x x

Ortega did not die while he was under the employ of respondents. His contract of employment ceased when he was medically repatriated on 10 May 2003, whereas he died on 30 June 2003. Section 18 of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels (Standard Contract) states:

A. The employment of the seafarer shall cease when the seafarer completes his period of contractual service aboard

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[11] Section 20 of the Standard Contract.

the vessel, signs off from the vessel and arrives at the point of hire.

B. The employment of the seafarer is also terminated when the seafarer arrives at the point of hire for any of the following reasons:

1. when the seafarer signs off and is disembarked for medical reasons pursuant to Section 20(B) [5] of this Contract.

2. xxx.

Thus, as we declared in *Gau Sheng Phils., Inc. v. Joaquin, Hermogenes v. Osco Shipping Services, Inc.*,[12] *Prudential Shipping and Management Corporation v. Sta. Rita*, *Prudential Shipping and Management Corporation v. Sta. Rita*,[13] and *Klaveness Maritime Agency, Inc. v. Beneficiaries of Allas,*[14] in order to avail of death benefits, the death of the employee should occur during the effectivity of the employment contract. On this basis alone, the petition should be dismissed.

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[12] G.R. No. 141505, 18 August 2005, 467 SCRA 301. In this case, the Court, citing *NFD International Manning Agents v. National Labor Relations Commission,* 284 SCRA 239, 247 (1998), had the occasion to rule that:

x x x it is clear from the provisions of the Standard Employment Contract that the only condition for compensability of a seafarer's death is that such death must occur during the effectivity of the seafarer's contract of employment.

[13] G.R. No. 166580, 8 February 2007. In this case, we ruled:

The death of a seaman during the term of employment makes the employer liable to his heirs for death compensation benefits. Once it is established that the seaman died during the effectivity of his employment contract, the employer is liable However, if the seaman dies after the termination of his contract of employment, his beneficiaries are not entitled to the death benefits enumerated above. The death of a seaman during the term of employment makes the employer liable to his heirs for death compensation benefits. Once it is established that the seaman died during the effectivity of his employment contract, the employer is liable However, if the seaman dies after the termination of his contract of employment, his beneficiaries are not entitled to the death benefits enumerated above

[14] G.R. No. 168560.

Not even a resort to the liberal interpretation of the terms of the Standard Contract, following the pronouncement that the Standard Contract is designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels can save the case for petitioner. The ineluctability of the conclusion that Ortega's lung cancer and subsequent death are not work-related remains despite the flavor of liberality that permeates the contract.

Under the Definition of Terms found in the Standard Contract, a work-related illness is defined as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." An illness not otherwise listed in Section 32-A is disputably presumed work-related.[15] This presumption works in favor of petitioner, because it then becomes incumbent upon respondents to dispute or overturn this presumption.

Lung cancer is not one of the occupational diseases listed in the Standard Contract.[16] In fact, the only types of cancer on the list are "cancer of the epithelial lining of the bladder (papilloma of the bladder), and "cancer, epithellomatous or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin, or compound product."[17] At most, there is only a disputable presumption that lung cancer is work-related. In determining whether an illness is indeed work-related, we will still use the requisites laid down by Section 32-A of the Standard Contract, to wit:

1. The seafarer's work must involve the risks described herein;

2. The disease was contracted as a result of the seafarer's exposure to the described risks;

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[15] Section 20-B (4) Those illnesses not listed in Section 32 of this Contract are disputably presumed work-related.

[16] Sec 32-A, Standard Contract.

[17] *Id*.

3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;

4. There was no notorious negligence on the part of the seafarer.[18]

A review of the records of the case shows that Ortega did not die of a work-related illness.

Lung cancer is a disease in which malignant (cancer) cells form in the tissues of the lung. Its main cause is tobacco use, including smoking cigarettes, cigars, or pipes, now or in the past. While there are indeed other risk factors for lung cancer, their effect on lung cancer, even if said factors are taken together, is very small compared to the effect of tobacco smoking.[19]

Evidence presented by respondents indicates that Ortega's lung cancer could not have been caused by his work at M/V Washington Trader. The medical report from St. Vincentius Hospital, Antwerp, Belgium shows that as of May 2003, Ortega admitted that he had only recently quit smoking.[20] His attending physician had already opined that his lung cancer was related to his smoking habits. Thus he states:

REGARDING MR. POSEDIO ORTEGA, HE WAS DIAGNOSED TO HAVE BRONCHOGENIC CANCER (SMALL CELL) ABROAD BY MEANS OF CT SCAN AND BRONCHOSCOPY. THIS IS RELATED TO HIS SMOKING HABITS. WE CONFIRM THAT THIS IS NOT WORK-RELATED. CONSIDERING THE AGGRESSIVE NATURE OF THIS DISEASE, HE WILL BE TOTALLY DISABLED. 6 CYCLES OF CHEMOTHERAPY IS THE MINIMUM TREATMENT OF CHOICE. IF NOT GIVEN, THE DISEASE CAN EASILY DISSEMINATE AND METASTASIZE TO OTHER ORGANS. EVEN IF HE UNDERGOES CHEMOTHERAPY, HIS DISABILITY WILL REMAIN THE SAME BECAUSE EVEN IF HE SHOWED GOOD RESPONSE, HE WILL BE ONLY ON REMISSION AND RELAPSE WILL OCCUR LATER.

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[18] *Id*.

[19] http://www.cancer.gov/cancertopics/pdq/screening/lung/patient/allpages/print. date last visited, 10 April 2008.

[20] *Rollo*, p. 149. The medical report was attached as Annex "3" of respondent's Position Paper.

THE HISTORY OF PULMONARY TUBERCULOSIS HAVE NOTHING TO DO WITH HIS LUNG CANCER.[21]

For its part, petitioner merely claims that Ortega's exposure to smoke and fumes emitted by the vessel caused the development of pneumonia, which in turn aggravated or modified his lung cancer.[22] In addition, petitioner invokes the cases of *Wallem Maritime Services, Inc. v. NLRC*[23] and *Seagull Shipmanagement v. NLRC*,[24] to support its claim of compensability.

In *Wallem,* the Court, after observing that the deceased had served nine months of his twelve (12) month contract as a utility man, ruled that the nature of his work contributed to the aggravation of his illness, finding a reasonable connection between his job and his lung infection. Meanwhile in *Seagull,* the Court awarded death benefits for the death of a radio officer who, after ten (10) months of working on board, needed an open heart surgery after suffering from bouts of coughing and shortness of breathing. The Court therein noted that the illness occurred during the employment contract and that the employer had admitted that the work of the seafarer exposed him to different climates and unpredictable weather which could trigger a heart attack or heart failure.

In both cases, the Court found a reasonable connection between the work actually performed by the deceased seafarers and their illnesses. We note however that in both cases, the seafarers had served their contracts for a significantly longer amount of time than what Ortega had spent on board M/V Washington Trader. Likewise, in both cases, the Court held that that the employment had contributed, even in a small degree to the development of the disease and in bringing about the seafarers' death. These cases do not find application in the instant case.

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[21] *Id*. at 154. The certification issued by Dr. Edgardo O. Tanquieng was attached as Annex "5" of respondent's Position Paper.

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

[23] G.R. No. 130772, 19 November 1999, 318 SCRA 623.

[24] G.R. No. 123619, 8 June 2000, 333 SCRA 236.

There is no showing that the cancer was brought about by his short stint on board respondent's vessel. As records show, he got sick barely two weeks after he boarded M/V Washington Trader, complaining of occasional fever and cough with blood-streaked sputum. He was diagnosed to have lung cancer barely a month after he boarded the vessel, thus it is unlikely that he acquired the illness because of the exposure to fumes and smoke emitted by the vessel, as claimed by petitioner. We are also not convinced that such exposure caused the pneumonia which aggravated his cancer. Pneumonia does not *per se* aggravate cancer; it is in fact a common symptom of lung cancer, along with a new cough, a change in an existing cough or a bloody cough, which Ortega suffered from two weeks into the employment contract.[25] Interestingly also, it appears that Ortega himself did not contest the finding that his lung cancer was not work-related. Neither is there a contrary finding from his physician in Iloilo.

While the Court adheres to the principle of liberality in favor of the seafarer in construing the Standard Contract, we cannot allow claims for compensation based on surmises. When the evidence presented negates compensability, we have no choice but to deny the claim, lest we cause injustice to the employer.

On to another matter.

Petitioner argues that respondents are estopped from denying their claims for compensation because the latter declared Ortega fit to work after a complete medical examination and evaluation.[26] The argument fails.

Petitioner is actually referring to the Pre-Employment Medical Examination (PEME), a requirement before one is hired and deployed as a seafarer. We have already ruled that the PEME is not exploratory in nature. It was not intended to be a totally

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[25] http://www.csmc.edu/5270.html, last visited 11 April 2008. The following are the other common symptoms of lung cancer: rib or shoulder pain, bone pain, hoarseness, loss of appetite and weight loss, facial swelling and headaches.

[26] *Rollo*, p. 19.

in-depth and thorough examination of an applicant's medical condition. The PEME merely determines whether one is "fit to work" at sea or "fit for sea service," it does not state the real state of health of an applicant. Thus, as we held in *NYK-FIL Ship Management, Inc. v. NLRC and Lauro A. Hernandez,*[27]

> While a PEME may reveal enough for the petitioner (vessel) to decide whether a seafarer is fit for overseas employment, it may not be relied upon to inform petitioners of a seafarer's true state of health. The PEME could not have divulged respondent's illness considering that the examinations were not exploratory.[28]

We note that even Ortega's PEME report[29] has a notation stating that it does not cover diseases requiring special procedure and examination for their detection and those which are asymptomatic at the time of examination. Indeed, it was only after Ortega was subjected to several medical tests in Antwerp and subsequently in the Philippines after his repatriation that a definitive finding of lung cancer was made. Petitioner's reliance on the PEME as the source of respondent's being in "estoppel" has no basis.

In view of the foregoing, there is no basis for petitioner's claim of death benefits, damages and attorney's fees against respondent.

WHEREFORE, the petition is *DENIED* and the decision and resolution of the Court of Appeals dated 15 March 2006 and 18 September 2006, respectively are *AFFIRMED*.

SO ORDERED.

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

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[27] G.R. No. 161104, September 27, 2006, 503 SCRA 595.

[28] G.R. No. 161104, September 27, 2006, 503 SCRA 595, 609.

[29] *Rollo*, p. 72. The notation reads:

NOTE:

This certificate does not cover diseases that would require special procedure and examination for their detection such as bronchiectasis, which needs ronchography peptic ulcer/gall bladder diseases which need chole GI series, certain kidney problems which need IVP, and also those which are asymptomatic at the time of examination including pregnancy test.

THIRD DIVISION

[G.R. No. 175371. April 30, 2008]

BENITO J. BRIZUELA, *petitioner, vs.* **ABRAHAM DINGLE and NICANDRO LEGASPI,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION OR TEMPORARY RESTRAINING ORDER; WHEN MAY BE GRANTED.—** A writ of preliminary injunction and a TRO are injunctive reliefs and preservative remedies for the protection of substantive rights and interests. An application for the issuance of a writ of preliminary injunction and/or TRO may be granted upon the filing of a verified application showing facts entitling the applicant to the relief demanded. Essential for granting the injunctive relief is the existence of an urgent necessity for the writ in order to prevent serious damage. A TRO issues only if the matter is of such extreme urgency that grave injustice and irreparable injury will arise unless it is issued immediately. Under Section 5, Rule 58 of the Rule of Court, a TRO may be issued only if it appears from the facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the writ of preliminary injunction could be heard. The burden is thus on petitioner to show in his application that there is meritorious ground for the issuance of a TRO in his favor.

2. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; FOR THE EXTRAORDINARY WRIT OF *CERTIORARI* TO LIE, THERE MUST BE CAPRICIOUS, ARBITRARY AND WHIMSICAL EXERCISE OF POWER; ABSENT IN THE CASE AT BAR.—** Given the foregoing, the Court of Appeals correctly denied petitioner's application since there is a marked absence of any urgent necessity for the issuance of a TRO or writ of preliminary injunction. Hence, the Court of Appeals could not have committed grave abuse of discretion, amounting to lack or excess of jurisdiction in issuing its Resolution dated 3 May 2006. It is a rule well-settled that for the extraordinary

writ of *certiorari* to lie, there must be capricious, arbitrary and whimsical exercise of power. There is none in this case.

APPEARANCES OF COUNSEL

Zamora Poblador Vasquez & Bretaña Law Offices for petitioner.

Eduardo Q. Cabreros, Jr. & Associates Law Offices for private respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed in this Petition for *Certiorari* under Rule 65 of the Rules of Court is the Resolution[1] dated 3 May 2006 of the Court of Appeals in CA-G.R. SP No. 94005 denying the prayer for the issuance of a Temporary Restraining Order (TRO) of petitioner Benito J. Brizuela; and the Resolution[2] dated 20 September 2006 of the same court denying petitioner's Motion for Reconsideration.

Petitioner is the president and registered owner of 49% of the authorized capital stock of Philippine Media Post, Inc. (PMPI),[3] the publisher of the newspaper Philippine Post. Respondent Abraham Dingle was hired by PMPI as Associate Editor under probation on 20 July 1999; and was eventually confirmed as a regular Associate Editor on 23 September 1999, with a salary of ₱22,000.00 per month. On the other hand, respondent Nicandro Legaspi started working at PMPI as City Editor on 9 November 1999, with a monthly salary of ₱22,000.00; and was eventually promoted as News Editor on 7 January 2000, with a monthly salary of ₱25,000.00.

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[1] CA *rollo*, p. 438.

[2] Penned by Associate Justice Regalado E. Maambong with Associate Justices Rodrigo V. Cosico and Lucenito N. Tagle concurring; CA *rollo*, p. 470.

[3] CA *rollo*, p. 40.

On 19 May 2003,[4] respondents filed a Complaint with the Labor Arbiter against PMPI and petitioner for nonpayment and/or underpayment of salaries, editorial fees, legal and holiday pay, premium pay for holiday pay, service incentive leave pay, 13th month pay, vacation and sick leave pay, separation pay, moral, exemplary, and actual damages, and attorney's fees. According to the Complaint:

4. As Associate Editor of the Post, [herein respondent] Dingle was tasked, among other things, to decide main news stories, edit some of the reporter's copies and supervise the making up of the front and jump pages of the newspaper until they are ready for the printing press. On his part, [herein respondent] Legaspi, as News Editor, was tasked, among other things, to distribute reporters' copies to sub-editors, suggests to top editors possible front page stories, check all news pages, help edit approved stories and puts them in the proper pages. Eventually, both [respondents], as editors, were also tasked to write editorials when this writing chore was transferred from non-staff writers to the editors;

5. Due to the demands of their work, [respondents] Dingle and Legaspi had a six (6) day week schedule and at times had to work even on Sundays and holidays (legal and special) but they were not paid for said overtime work at all;

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14. On 16 November 2000, Post employees (including [respondents] Dingle and Legaspi), did not put out an issue of the Post anymore since they refused to work any further as [PMPI and herein petitioner Brizuela] refused to pay them their salaries and other benefits contrary to what they have repeatedly promised earlier;

15. Sometime in December 2000, [respondents] Dingle and Legaspi visited [petitioner] Brizuela to find out what was happening to their unpaid salaries, editorial fees and other employment benefits but were informed by [petitioner] Brizuela that he owed them nothing as he had settled everything with Executive Editor Mariano. [Respondents] insisted that [petitioner] Brizuela still owed them a lot in terms of salaries, editorial fees and other benefits but the latter told them to prove their claims. When [respondents] asked to see the Post records, [petitioner] Brizuela lamely said he did not know where they were.[5]

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[4] *Rollo*, p. 24.

[5] *Rollo,* pp. 170-173.

On the other hand, petitioner brought to the attention of the Labor Arbiter that PMPI had already stopped publishing Philippine Post and altogether ceased operations in the year 2000 because of grave financial losses. He averred that PMPI was in "deep financial trouble" and its publication turned out to be a losing venture.[6]

Settlement efforts among the parties failed, for which reason, they were directed by the Labor Arbiter to file their respective position papers.

PMPI never appeared before nor filed any pleading with the Labor Arbiter.[7] Respondents thus moved that PMPI be considered to have waived its right to present evidence in its defense.

The Labor Arbiter concluded that while closure of an establishment due to serious business losses is one of the authorized causes for termination of employment, under the Labor Code,[8] nonetheless, she found that there is no conclusive factual and legal basis for PMPI to close its operations on the ground of serious business losses.[9]

In a Decision dated 30 April 2004, Labor Arbiter Virginia T. Luyas-Azarraga held:

WHEREFORE, premises considered, [PMPI and herein petitioner] Benito Brizuela are hereby jointly and severally ordered to pay [herein respondents], as follows:

1. Abraham Dingle – ₱187,000.00
2. Nicandro Legaspi – ₱212,000.00

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[6] Reply Position Paper of Benito Brizuela; CA *rollo*, p. 95.

[7] *Rollo*, p. 314.

[8] Article 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 x x x.

[9] CA *rollo,* p. 190.

representing separation pay, unpaid salaries and 13th month pay plus 10% of the total award as Attorney's fees.

All other claims are dismissed.[10]

Respondents and petitioner appealed the foregoing Decision of the Labor Arbiter to the National Labor Relations Commission (NLRC). Respondents appealed in view of the denial of the Labor Arbiter of their claim for editorial fees, overtime pay, premium pay for holiday and rest day, damages, legal and holiday pay, service incentive leave pay and vacation and sick leave pay. On the other hand, petitioner appealed the finding by the Labor Arbiter that he is personally liable, that PMPI failed to prove serious business losses, and that the respondents are entitled to separation pay.[11]

In their Comment[12] to petitioner's Notice of Appeal with Memorandum, respondents prayed for the dismissal of petitioner's appeal emphasizing that petitioner did not post the required *supersedeas* bond in the amount equivalent to the monetary award for the perfection of the appeal. Petitioner countered by filing a Motion for Additional Time to Post Appeal Bond, which respondents again opposed.[13] Petitioner filed a Motion to Reduce Bond and posted a cash bond in the amount of ₱5,000.00.[14] On 31 August 2004, the NLRC issued an Order directing petitioner to post additional bond[15] in the amount of ₱394,000.00.[16] Petitioner asked for an additional period of 15 days to comply with said NLRC Order in view of the short notice given to him.[17] Petitioner then filed a Motion for Leave to Admit

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[10] *Id*. at 180-181.

[11] *Rollo*, p. 227.

[12] CA *rollo*, p. 401.

[13] *Rollo*, p. 336.

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

[15] The records do not reflect the original amount of the bond required to be posted by Benito Brizuela

[16] *Rollo*, p. 342.

[17] *Id*. at 339.

Additional Appeal Bond praying that "this Honorable Commission admit the herein attached supersedeas bond issued by the Premier Insurance & Surety Corporation dated 6 October 2004 in the amount of ₱394,000.00, along with supporting documents and, thereafter, give due course to petitioner's appeal."

Respondents objected to the additional appeal bond being posted by petitioner stating that it was grossly defective because said bond in the amount of ₱394,000.00 was issued by Premier Insurance & Surety Corporation on behalf of the assured, PMPI, which had no legal standing in the appeal.

In its Decision dated 28 October 2005, the NLRC ruled as follows:

> [Herein petitioner] Brizuela contends that [PMPI] is not liable to pay [herein respondents] their separation pay because [PMPI] closed its business due to serious financial losses. We do not agree. [Petitioner] presented the audited financial statements of [PMPI] for the years 2000 and 2001. A perusal of said audited financial statements reveals that [PMPI] had a net loss for the year 1999 and 2000 of ₱40,062,972.96 and ₱18,233,157.44 respectively while in the year 2001 [PMPI] suffered net loss in the amount of ₱2,925,003.45. Contrary to [petitioner's] allegations, the losses of income of [PMPI] is actually diminishing or abating indicating that the business is picking up and retrenchment being a drastic move should no longer be resorted to. (*PSBA v. NLRC*, 223 SCRA 305.)
>
> Moreover, records do not show that [petitioner] complied with the requirements for valid closure because it failed to serve a written notice to the employees as well as to the Department of Labor and Employment at least one (1) month before the intended date of closure as required under Article 283 of the Labor Code. The notice to DOLE is necessary to enable the proper authorities to determine if such closure is being done in good faith or resorted to as a means to evade compliance with the obligations of the employer to the employees affected. If indeed, closure of [PMPI] was done in good faith, the [petitioner] should have complied with the requirement of due notice to effect a valid closure.
>
> However, we find [petitioner] Benito Brizuela not jointly and severally liable to [respondents] at this time. It is settled that corporations have a separate personality from its stockholders and officers. Said [petitioner] Brizuela is held liable in his official capacity.

[Respondents], on appeal, aver that the Labor Arbiter committed grave abuse of discretion and serious errors in law and findings of facts when she denied [respondents'] claims for editorial fees, overtime pay, holiday pay, premium pay for holidays and rest days as well as damages. We do not agree. The said claims, even if not specifically refuted by [petitioner] must nevertheless be proven by [respondents] to be entitled to the same. As correctly held by the Labor Arbiter, mere allegation is not enough. In this connection, the Supreme Court, in *Masagana Concrete Products v. NLRC,* G.R. No. 106916, promulgated 3 September 1999 citing *PNB v. CA* (266 SCRA 136) and *Martinez v. NLRC* (272 SCRA 793), has held that mere allegation is neither equivalent to proof not evidence.

However, we find [respondents] entitled to their vacation and sick leave pay as shown by Annex "E" (pp. 36 to 39, Records) of their position paper which was duly prepared and signed by [PMPI's] Personnel Supervisor and Administrative Manager.

Lastly, the award of 10% attorney's fees shall be based on unpaid salaries, 13th month pay and vacation/sick leaves, follows Art. 111 of the Labor Code.

WHEREFORE, the decision dated 30 April 2004 is hereby MODIFIED. [PMPI] is held liable to pay [respondents] Abraham Dingle and Nicandro Legaspi additional amount of ₱8,407.64 and ₱6,568.48, respectively, representing their vacation and sick leave pay in addition to awards decreed in the Decision. The award of 10% attorney's fees shall be based on awards representing unpaid salaries, 13th month pay, vacation/sick leaves. [Petitioner] Benito Brizuela is liable in his official capacity.[18]

Respondents and petitioner filed their respective Motions for Partial Reconsideration of the 28 October 2005 Decision of the NLRC. The motions of the parties were, however, denied by the NLRC in a Resolution dated 31 January 2006.[19] Petitioner then filed a Petition for *Certiorari* under Rule 65 with the Court of Appeals, docketed as CA-G.R. SP No. 94005, assailing the Decision dated 28 October 2005 of the NLRC.[20]

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[18] *Id*. at 234-236.

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

[20] *Id*. at 2.

On 11 April 2006, respondents filed with the Labor Arbiter a Motion for the issuance of a Writ of Execution to implement the 28 October 2005 Decision of the NLRC.[21]

Alarmed, petitioner filed an application for TRO and Writ of Preliminary Injunction with the Court of Appeals,[22] in which he averred that:

> 1. On 11 April 2006, private respondents filed, with the Labor Arbiter *a quo*, a Motion for Issuance of Writ of Execution dated 3 April 2006 praying for the issuance of a writ of execution to implement public respondent NLRC's Decision dated 28 October 2005 which decision is subject of the instant petition.
>
> 2. Private Respondents' endeavor to execute public respondent's Decision dated 28 October 2006 is an attempt to pre-empt and to render moot whatever decision this Honorable Court may make in the instant case.
>
> 3. Execution of public respondent NLRC's Decision dated 28 October 2005 will work injustice, and cause grave and irreparable injury, to petitioner. Considering that private respondents are attempting to do exactly this, the matter of issuance of a temporary restraining order becomes one of utmost and absolute importance. Thus, it is prayed that a writ of preliminary injunction enjoining public respondent National Labor Relations Commission and the Labor Arbiter *a quo* from implementing the questioned resolution be issued by this Honorable Court.
>
> 4. Petitioner is ready and able to post a bond in such amount as this Honorable Court may fix, conditioned to answer for all damages that private respondents may directly suffer by the issuance by this Honorable Court of a restraining order or a preliminary injunction, should it be finally adjudged that petitioner was not entitled thereto.
>
> PRAYER
>
> WHEREFORE, petitioner respectfully prays that this Honorable Court:
>
> 1. Issue a temporary restraining order immediately upon the filing of this petition directing the public respondent NLRC and the

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[21] The Labor Arbiter issued a writ of execution dated 9 October 2006 but the same has not been implemented; *rollo*, p. 399.

[22] CA r*ollo*, pp. 432-433.

Labor Arbiter *a quo* to cease and desist from implementing the Decision dated 28 October 2005 in NLRC CA No. 040868-04 (NLRC-NCR Case No. 00-05-05876-03);

2 Thereafter, issue a writ of preliminary injunction directing the public respondent NLRC and the Labor Arbiter *a quo* to cease and desist from implementing the Decision dated 28 October 2005 in NLRC CA No. 040868-04 (NLRC-NCR Case No. 00-05-05876-03).

The Court of Appeals denied petitioner's application for the issuance of a TRO in a Resolution [23] dated 3 May 2006, ruling thus:

Petitioner's prayer for the issuance of a Temporary Restraining Order is hereby DENIED.

Petitioner filed a Motion for Reconsideration[24] of the aforementioned Resolution, which the Court of Appeals again denied in another Resolution dated 20 September 2006,[25] finding that:

The motion has no merit. The grounds relied upon by petitioner are mere reiteration of the issues and matters already considered, weighed and passed upon during the deliberation of the assailed resolution.

Petitioner also seeks to clarify this Court's purported "perfunctory one-sentence denial of petitioner's application for preliminary injunctive relief" as one tantamount to a denial of due process.

In *Gaoiran v. Alcala* (419 SCRA 354), the Supreme Court held that what is repugnant to due process is the denial of the opportunity to be heard. But for so long as a party is given the opportunity to advocate his/her cause or defend his/her interest in due course, it cannot be said that there was denial of due process.

WHEREFORE, the Motion for Reconsideration and/or Clarification is hereby DENIED.

Since the respondents had already filed their Comment to petitioner's Petition for *Certiorari* in CA-G.R. SP No. 94005,

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[23] *Id*. at 438.

[24] *Id*. at 439.

[25] *Id*. at 470.

and petitioner had submitted his Reply thereto, the Court of Appeals issued a Resolution[26] dated 14 November 2006, submitting the petition for decision.[27]

In the meantime, petitioner filed the instant Petition under Rule 65 of the Rules of Court assailing alone the denial by the Court of Appeals of his application for the issuance of a TRO. Petitioner asserts:

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT PERFUNCTORILY DENIED PETITIONER'S APPLICATION FOR TEMPORARY RESTRAINING ORDER DESPITE THE CLEAR SHOWING THAT PETITIONER IS ENTITLED THERETO.[28]

In consideration of the present Petition, the Court of Appeals held in abeyance the proceedings in CA-G.R. SP No. 94005 in a Resolution dated 9 March 2007.[29] Records of the case were forwarded to this Court.

The Court finds no merit in the instant Petition, and accordingly dismisses the same.

At the outset, it bears stressing that the subject of the instant Petition is only the denial of petitioner's application for TRO by the Court of Appeals. This Court may not touch on the merits of the 28 October 2005 Decision of the NLRC considering that said decision is already the subject of petitioner's Petition for *Certiorari* in CA-G.R. SP No. 94005, still pending resolution before the Court of Appeals.

There is no question that the Court of Appeals, before which CA-G.R. SP No. 94005 is still pending, may issue a TRO to

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[26] CA *rollo,* p. 479.

[27] Upon Inquiry with the Court of Appeals as to the status of CA-G.R. SP No. 94005 as of the time of this decision, the petition is still pending decision before the said court.

[28] *Rollo*, p. 421.

[29] CA *rollo*, p. 775.

enjoin the proceedings before the NLRC and/or the Labor Arbiter. According to Rule 65, Section 7 of the Rules of Court:

> SECTION 7. *Expediting proceedings; injunctive relief*. – The court in which the petition [for *Certiorari*, Prohibition and *Mandamus*] is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case.

The question, however, is whether petitioner is entitled to the grant of a TRO and, subsequently, a writ of preliminary injunction.

A writ of preliminary injunction and a TRO are injunctive reliefs and preservative remedies for the protection of substantive rights and interests.[30] An application for the issuance of a writ of preliminary injunction and/or TRO may be granted upon the filing of a verified application showing facts entitling the applicant to the relief demanded.[31]

Essential for granting the injunctive relief is the existence of an urgent necessity for the writ in order to prevent serious damage. A TRO issues only if the matter is of such extreme urgency that grave injustice and irreparable injury will arise unless it is issued immediately.[32] Under Section 5, Rule 58 of the Rule of Court,[33] a TRO may be issued only if it appears from the facts shown by

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[30] *Philippine National Bank v. Court of Appeals*, 353 Phil. 473, 479 (1998).

[31] Section 4(a), Rule 58 of the Rules of Court states:

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

(a) The application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded; x x x.

[32] *Abundo v. Manio, Jr.*, 370 Phil. 850, 869 (1999).

[33] Sec. 5. *Preliminary injunction not granted without notice; exception*. – No preliminary injunction shall be granted without hearing and prior notice

affidavits or by the verified application that great or irreparable injury would result to the applicant before the writ of preliminary injunction could be heard.

The burden is thus on petitioner to show in his application that there is meritorious ground for the issuance of a TRO in his favor.

However, petitioner failed to discharge this burden. The only ground on which he bases his application for a TRO is the danger that execution by the Labor Arbiter of the 28 October 2005 Decision of the NLRC may render moot and academic his Petition in CA-G.R. SP No. 94005 which is yet to be decided by the Court of Appeals. Then he makes an encompassing claim that the issuance of a writ of execution by the Labor Arbiter would cause him injustice and grave and irreparable injury.

This Court is unconvinced for the following reasons:

First, this Court must point out that no writ of execution has yet been issued by the Labor Arbiter. Respondents have only filed a motion for the issuance thereof. The Labor Arbiter has not ruled on the motion. Just as there exists the possibility that the Labor Arbiter shall grant respondents' motion, there also exists the possibility that the Labor Arbiter shall deny the same. Evidently, petitioner's application for a TRO and writ of preliminary injunction is, as of yet, based on purely speculative grounds, jumping the gun, so to speak, on the Labor Arbiter, and already assuming that she would grant respondents' motion and issue a writ of execution. Of the same nature as an injunction, a TRO is not designed to protect contingent or future rights; the possibility of irreparable damage without proof of actual existing right is not a ground for the issuance thereof.[34]

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to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. x x x.

[34] See *Heirs of Asuncion v. Gervacio, Jr.,* 363 Phil. 666, 674 (1999).

Second, this Court already pronounced in *Carlos v. Court of Appeals*,[35] that prescinding from Section 10, Rule XI of the NLRC Rules of Procedure, which reads –

SECTION 10. Effect of Petition for *Certiorari* on Execution. – A petition for *certiorari* with the Court of Appeals or the Supreme Court ***shall not stay the execution of the assailed decision unless a restraining order is issued by said courts.*** [Emphasis supplied.]

a party may already move for the execution of the monetary award of the NLRC even during the pendency of the petition for *certiorari* of the NLRC decision awarding the same with the Court of Appeals or this Court. This rule is in harmony with the social justice principle that poor employees who have been deprived of their only source of livelihood should be provided the means to support their families.

Third, respondents may seek issuance of a writ of execution of the 28 October 2005 Decision of the NLRC on the basis that PMPI did not move for the reconsideration thereof nor filed its own petition for *certiorari* to assail the same. Consequently, the said Decision should already be considered final and executory as to PMPI.[36] Once a judgment has become final, the prevailing party, the respondents, in this case, can have the judgment executed as a matter of right.[37]

Fourth, the Court cannot see how petitioner shall suffer grave and irreparable injury if the monetary awards in favor of respondents in the 28 October 2005 Decision of the NLRC are executed. The monetary awards may be collected from PMPI and any of its remaining assets. It must be emphasized that the NLRC, in its decision, explicitly states that petitioner is not solidarily liable with PMPI but is liable only in his official capacity. In the event that the monetary awards are actually

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[35] G.R. No. 168096, 28 August 2007, 531 SCRA 461, 476.

[36] Under Rule VII, Section 2 of the NLRC Omnibus Rules of Procedure, the decision of the NLRC becomes final and executory after ten (10) calendar days from receipt of the same.

[37] *Honrado v. Court of Appeals*, G.R. No. 166333, 25 November 2005, 476 SCRA 280, 291.

executed on petitioner's properties, and his Petition for *Certiorari* in CA-G.R. SP No. 94005 is eventually granted, the damage against petitioner shall not be irreparable for respondents can simply be ordered to return to petitioner the amounts they received, with interests, if appropriate.

Given the foregoing, the Court of Appeals correctly denied petitioner's application since there is a marked absence of any urgent necessity for the issuance of a TRO or writ of preliminary injunction.[38] Hence, the Court of Appeals could not have committed grave abuse of discretion, amounting to lack or excess of jurisdiction in issuing its Resolution dated 3 May 2006. It is a rule well-settled that for the extraordinary writ of *certiorari* to lie, there must be capricious, arbitrary and whimsical exercise of power.[39] There is none in this case.

WHEREFORE, premises considered, the Petition for *Certiorari* is *DISMISSED*. The records of this case are *ORDERED* returned to the Court of Appeals for the continuation of the proceedings in CA-G.R. SP No. 94005 until its termination.

Cost against petitioner Benito J. Brizuela.

SO ORDERED.

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

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[38] *Republic v. Sandiganbayan,* G.R. No. 166859, 26 June 2006, 492 SCRA 747, 750-751.

[39] *Urbanes, Jr. v. Court of Appeals*, 407 Phil. 856, 870 (2001).

SECOND DIVISION

[G.R. No. 175952. April 30, 2008]

SOCIAL SECURITY SYSTEM, *petitioner, vs.* **ATLANTIC GULF AND PACIFIC COMPANY OF MANILA, INC. and SEMIRARA COAL CORPORATION,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT.—** At the outset, it is well to restate the rule that what determines the nature of the action as well as the tribunal or body which has jurisdiction over the case are the allegations in the complaint.

2. **LABOR AND SOCIAL LEGISLATION; SOCIAL SECURITY ACT OF 1997; VESTS UPON THE SOCIAL SECURITY COMMISSION JURISDICTION OVER DISPUTES ARISING UNDER THE SOCIAL SECURITY ACT WITH RESPECT TO COVERAGE, BENEFITS, CONTRIBUTIONS AND PENALTIES THEREON OR ANY MATTER RELATED THERETO.—** The pertinent provision of law detailing the jurisdiction of the Commission is Section 5(a) of R.A. No. 1161, as amended by R.A. No. 8282, otherwise known as the Social Security Act of 1997, to wit: SEC. 5. *Settlement of Disputes.*– (a) Any dispute arising under this Act with respect to coverage, benefits, contributions and penalties thereon or any other matter related thereto, shall be cognizable by the Commission, and any case filed with respect thereto shall be heard by the Commission, or any of its members, or by hearing officers duly authorized by the Commission and decided within the mandatory period of twenty (20) days after the submission of the evidence. The filing, determination and settlement of disputes shall be governed by the rules and regulations promulgated by the Commission. The law clearly vests upon the Commission jurisdiction over "disputes arising under this Act with respect to coverage, benefits, contributions and

penalties thereon or any matter related thereto...” Dispute is defined as “a conflict or controversy.”

3. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; *DACION EN PAGO*; EXPLAINED.—** In *Vda. de Jayme v. Court of Appeals*, the Court ruled significantly as follows: *Dacion en pago* is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation. It is a special mode of payment where the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding debt. The undertaking really partakes in one sense of the nature 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. In its modern concept, what actually takes place in *dacion en pago* is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered as the purchase price. In any case, common consent is an essential prerequisite, be it sale or novation, to have the effect of totally extinguishing the debt or obligation.

4. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; REGIONAL TRIAL COURT; HAS JURISDICTION OVER SUITS FOR SPECIFIC PERFORMANCE AND ONE INCAPABLE OF PECUNIARY ESTIMATION.—** The controversy, instead, lies in the non-implementation of the approved and agreed *dacion en pago* on the part of the SSS. As such, respondents filed a suit to obtain its enforcement which is, doubtless, a suit for specific performance and one incapable of pecuniary estimation beyond the competence of the Commission. Pertinently, the Court ruled in *Singson v. Isabela Sawmill*, as follows: In determining whether an action is one the subject matter of which is not capable of pecuniary estimation this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction in the municipal courts or in the courts of first

instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance (now Regional Trial Courts).

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Inoturan & Associates for respondents.

D E C I S I O N

TINGA, *J.*:

In this Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure, petitioner Republic of the Philippines represented by the Social Security System (SSS) assails the Decision[2] dated 31 August 2006 of the Eleventh Division of the Court of Appeals and its Resolution[3] dated 19 December 2006 denying petitioner's Motion for Reconsideration.

Following are the antecedents culled from the decision of the Court of Appeals:

On 13 February 2004, Atlantic Gulf and Pacific Company of Manila, Inc. (AG & P) and Semirara Coal Corporation (SEMIRARA) (collectively referred to as private respondents) filed a complaint for specific performance and damages against SSS before the Regional Trial Court of Batangas City, Branch 3, docketed as Civil Case No. 7441. The complaint alleged that:

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[1] *Rollo*, pp. 20-49; Dated 12 February 2007.

[2] *Id*. at 55- 60; Penned by Associate Justice Elvi John S. Asuncion with the concurrence of Associate Justices Jose Catral Mendoza and Sesinando E. Villon.

[3] *Id*. at 79.

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3. Sometime in 2000, plaintiff informed the SSS in writing of its premiums and loan amortization delinquencies covering the period from January 2000 to May 2000 amounting to ₱7.3 Million. AG&P proposed to pay its said arrears by end of 2000, but requested for the condonation of all penalties;

4. In turn, the defendant suggested two (2) options to AG&P, either to pay by installment or through ***"dacion en pago"***;

5. AG&P chose to settle its obligation with the SSS under the second option, that is through ***dacion en pago*** of its 5,999 sq. m. property situated in Baguio City covered by TCT No. 3941 with an appraised value of about ₱80.0 Million. SSS proposes to carve-out from the said property an area sufficient to cover plaintiffs' delinquencies. AG&P, however, is not amenable to subdivide its Baguio property;

6. AG&P then made another proposal to SSS. This time, offering as payment a portion of its 58,153 square meter-lot, situated in F.S. Sebastian, Sto. Niño, San Pascual, Batangas. In addition, SSS informed AG&P of its decision to include other companies within the umbrella of DMCI group with arrearages with the SSS. In the process of elimination of the companies belonging to the DMCI group with possible outstanding obligation with the SSS, it was only SEMIRARA which was left with outstanding delinquencies with the SSS. Thus, SEMIRARA's inclusion in the proposed settlement through ***dacion en pago***;

7. AG&P was, thereafter, directed by the defendant to submit certain documents, such as Transfer Certificate of Title, Tax Declaration covering the subject lot, and the proposed subdivision plan, which requirements AG&P immediately complied;

8. On April 4, 2001, SSS, in its Resolution No. 270, finally approved AG&P's proposal to settle its and SEMIRARA's delinquencies through *dacion en pago*, which as of March 31, 2001 amounted to ₱29,261,902.45. Approval of AG&P's proposal was communicated to it by Ms. Aurora E.L. Ortega, Vice-President, NCR-Group of the SSS in a letter dated April 23, 2001. … ;

9. As a result of the approval of the ***dacion en pago***, posting of contributions and loan amortization to individual member accounts, both for AG&P and SEMIRARA employees, was effected immediately

thereafter. Thus, the benefits of the member-employees of both companies were restored;

10. From the time of the approval of AG&P's proposal up to the present, AG&P is (sic) religiously remitting the premium contributions and loan amortization of its member-employees to the defendant;

11. To effect the property transfer, a Deed of Assignment has to be executed between the plaintiffs and the defendant. Because of SSS failure to come up with the required Deed of Assignment to effect said transfer, AG&P prepared the draft and submitted it to the Office of the Vice-President – NCR thru SSS Baclaran Branch in July 2001. Unfortunately, the defendant failed to take any action on said Deed of Assignment causing AG&P to re-submit it to the same office of the Vice-President – NCR in December 2001. From its original submission of the Deed of Assignment in July 2001 to its re-submission in December 2001, and SSS returning of the revised draft in February 28, 2003 AG&P was consistent in its regular follow ups with SSS as to the status of its submitted Deed of Assignment;

12. On February 28, 2003, or more than a year after the approval of AG&P's proposal, defendant sent the revised copy of the Deed of Assignment to AG&P. However, the amount of the plaintiffs' obligation appearing in the approved Deed of Assignment has ballooned **from ₱29,261,902.45 to ₱40,846,610.64** allegedly because of the additional interests and penalty charges assessed on plaintiffs' outstanding obligation from April 2001, the date of approval of the proposal, up to January 2003;

13. AG&P demanded for the waiver and deletion of the additional interests on the ground that delay in the approval of the deed and the subsequent delay in conveyance of the property in defendant's name was solely attributable to the defendant; hence, to charge plaintiffs with additional interests and penalties amounting to more than ₱10,000,000.00, would be unreasonable….;

14. AG&P and SEMIRARA maintain their willingness to settle their alleged obligation of ₱29,261,902.45 to SSS. Defendant, however, refused to accept the payment through *dacion en pago*, unless plaintiffs also pay the additional interests and penalties being charged;

x x x x x x x x x

Instead of filing an answer, SSS moved for the dismissal of the complaint for lack of jurisdiction and non-exhaustion of administrative remedies. In an order dated 28 July 2004, the trial court granted SSS's motion and dismissed private respondents' complaint. The pertinent portions of the assailed order are as follows:

> Clearly, the motion is triggered on the issue of the court's jurisdiction over the subject matter and the nature of the instant complaint. The length and breadth of the complaint as perused, boils down to the questions of premium and loan amortization delinquencies of the plaintiff, the option taken for the payment of the same in favor of the defendant and the disagreement between the parties as to the amount of the unpaid contributions and salary loan repayments. In other words, said questions are directly related to the collection of contributions due the defendant. Republic Act No. 1161 as amended by R.A. No. 8282, specifically provides that any dispute arising under the said Act shall be cognizable by the Commission and any case filed with respect thereto shall be heard by the Commission. Hence, a procedural process mandated by a special law.
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> Observingly, the running dispute between plaintiffs and defendant originated from the disagreement as to the amount of unpaid contributions and the amount of the penalties imposed appurtenant thereto. The alleged *dacion en pago* is crystal clear manifestation of offering a special form of payment which to the mind of the court will produce effect only upon acceptance by the offeree and the observance and compliance of the required formalities by the parties. No matter in what form it may be, still the court believes that the subject matter is the payment of contributions and the corresponding penalties which are within the ambit of Sec. 5 (a) of R.A. No. 1161, as amended by R.A. No. 8282.
>
> WHEREFORE, the Court having no jurisdiction over the subject matter of the instant complaint, the motion is granted and this case is hereby ordered DISMISSED.
>
> SO ORDERED.[4]

Private respondents moved for the reconsideration of the order but the same was denied in an Order dated 15 September 2004.

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[4] *Id.* at 108-109.

Consequently, private respondents filed an appeal before the Court of Appeals alleging that the trial court erred in its pronouncement that it had no jurisdiction over the subject matter of the complaint and in granting the motion to dismiss.

The Court of Appeals reversed and set aside the trial court's challenged order, granted private respondents' appeal and ordered the trial court to proceed with the civil case with dispatch. From the averments in their complaint, the appellate court observed that private respondents are seeking to implement the Deed of Assignment which they had drafted and submitted to SSS sometime in July 2001, pursuant to SSS's letter addressed to AG& P dated 23 April 2001 approving AG&P and SEMIRARA'S delinquencies through *dacion en pago*, which as of 31 March 2001, amounted to ₱29,261,902.45. The appellate court thus held that the subject of the complaint is no longer the payment of the premium and loan amortization delinquencies, as well as the penalties appurtenant thereto, but the enforcement of the *dacion en pago* pursuant to SSS Resolution No. 270. The action then is one for specific performance which case law holds is an action incapable of pecuniary estimation falling under the jurisdiction of the Regional Trial Court.[5]

SSS filed a motion for reconsideration of the appellate court's decision but the same was denied in a Resolution dated 19 December 2006.

Now before the Court, SSS insists on the Social Security Commission's (the Commission) jurisdiction over the complaint pursuant to Section 5 (a) of Republic Act (R.A.) No. 8282. SSS maintains the Commission's jurisdiction over all disputes arising from the provisions of R.A. No. 1161, amended by R.A. No. 8282 to the exclusion of trial courts.[6]

The main issue in this case pertains to which body has jurisdiction to entertain a controversy arising from the non-implementation of a *dacion en pago* agreed upon by the parties as a means of settlement of private respondents' liabilities.

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[5] *Id*. at 59-60.

[6] *Id*. at 33, 41.

At the outset, it is well to restate the rule that what determines the nature of the action as well as the tribunal or body which has jurisdiction over the case are the allegations in the complaint.[7]

The pertinent provision of law detailing the jurisdiction of the Commission is Section 5(a) of R.A. No. 1161, as amended by R.A. No. 8282, otherwise known as the Social Security Act of 1997, to wit:

> SEC. 5. *Settlement of Disputes.*– (a) Any dispute arising under this Act with respect to coverage, benefits, contributions and penalties thereon or any other matter related thereto, shall be cognizable by the Commission, and any case filed with respect thereto shall be heard by the Commission, or any of its members, or by hearing officers duly authorized by the Commission and decided within the mandatory period of twenty (20) days after the submission of the evidence. The filing, determination and settlement of disputes shall be governed by the rules and regulations promulgated by the Commission.

The law clearly vests upon the Commission jurisdiction over "disputes arising under this Act with respect to coverage, benefits, contributions and penalties thereon or any matter related thereto..." Dispute is defined as "a conflict or controversy."[8]

From the allegations of respondents' complaint, it readily appears that there is no longer any dispute with respect to respondents' accountability to the SSS. Respondents had, in fact, admitted their delinquency and offered to settle them by way of *dacion en pago* subsequently approved by the SSS in Resolution No. 270-s. 2001. SSS stated in said resolution that *"the dacion en pago proposal of AG&P Co. of Manila and Semirara Coals Corporation to pay their liabilities in the total amount of ₱30,652,710.71 as of 31 March 2001 by offering their 5.8 ha. property located in San Pascual, Batangas, be, as it is hereby, approved.."*[9] This statement

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[7] *Domalsin v. Valenciano*, G.R. No. 158687, 25 January 2006, 480 SCRA 114, 133.

[8] BLACK'S *LAW DICTIONARY* (6th ed., 1990) at 472.

[9] *Rollo*, p. 80.

unequivocally evinces its consent to the *dacion en pago*. In *Vda. de Jayme v. Court of Appeals*,[10] the Court ruled significantly as follows:

> *Dacion en pago* is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of the obligation. It is a special mode of payment where the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding debt. The undertaking really partakes in one sense of the nature 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. In its modern concept, what actually takes place in *dacion en pago* is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered as the purchase price. In any case, common consent is an essential prerequisite, be it sale or novation, to have the effect of totally extinguishing the debt or obligation.[11]

The controversy, instead, lies in the non-implementation of the approved and agreed *dacion en pago* on the part of the SSS. As such, respondents filed a suit to obtain its enforcement which is, doubtless, a suit for specific performance and one incapable of pecuniary estimation beyond the competence of the Commission.[12] Pertinently, the Court ruled in *Singson v. Isabela Sawmill*,[13] as follows:

> In determining whether an action is one the subject matter of which is not capable of pecuniary estimation this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim

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[10] G.R. No. 128669, 4 October 2002, 390 SCRA 380.

[11] *Vda. de Jayme v. Court of Appeals*, G.R. No. 128669, 4 October 2002, 390 SCRA 380, 392-393.

[12] See *Russell v. Vestil*, G.R. No. 119347, 17 March 1999, 304 SCRA 738, 744-745.

[13] No. L-27343, 28 February 1979, 88 SCRA 623.

is considered capable of pecuniary estimation, and whether jurisdiction in the municipal courts or in the courts of first instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance (now Regional Trial Courts).[14]

In fine, the Court finds the decision of the Court of Appeals in accord with law and jurisprudence.

WHEREFORE, the petition is *DENIED*. The Decision dated 31 August 2006 of the Court of Appeals Eleventh Division in CA-G.R. CV No. 83775 *AFFIRMED*.

Let the case be remanded to the trial court for further proceedings.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 176084. April 30, 2008]

CARMENCITA G. CARIÑO, *petitioner, vs.* **MERLIN DE CASTRO,** *respondent.*

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[14] *Id.* at 637-638.

* As replacement of Justice Arturo D. Brion who inhibited himself per Administrative Circular No. 84-2007.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; OFFICE OF THE SOLICITOR GENERAL; POWERS AND FUNCTIONS; REPRESENTS THE PEOPLE OF THE PHILIPPINES IN CRIMINAL PROCEEDINGS ON APPEAL IN THE COURT OF APPEALS OR IN THE SUPREME COURT.— In criminal proceedings on appeal in the Court of Appeals or in the Supreme Court, the authority to represent the People is vested solely in the Solicitor General. Under Presidential Decree No. 478, among the specific powers and functions of the OSG was to "represent the government in the Supreme Court and the Court of Appeals in all criminal proceedings." This provision has been carried over to the Revised Administrative Code particularly in Book IV, Title III, Chapter 12 thereof. Without doubt, the OSG is the appellate counsel of the People of the Philippines in all criminal cases.

APPEARANCES OF COUNSEL

R.A. Din, Jr. & Associates Law Offices for petitioner.
Sylvia M. Marfil for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari* seeks to annul and set aside the August 18, 2006 Decision[1] of the Court of Appeals in CA-G.R. CR No. 29523 dismissing the petition as well as the December 29, 2006 Resolution[2] denying the Motion for Reconsideration.

Petitioner Carmencita G. Cariño filed a complaint-affidavit for violation of *Batas Pambansa Blg.* 22 (BP 22) against respondent Merlin de Castro before the Office of the City

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[1] *Rollo*, pp. 27-37; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Rebecca de Guia-Salvador.

[2] *Id.* at 51.

Prosecutor of Manila. After conducting preliminary investigation, Assistant City Prosecutor Manuel B. Sta. Cruz, Jr., issued a Resolution finding *prima facie* evidence and recommending respondent's indictment. Accordingly, respondent was charged with five (5) counts of violation of BP 22 before the Metropolitan Trial Court of Manila, Branch 13.

During arraignment, respondent manifested her intention to file a Motion for Preliminary Determination of Existence of Probable Cause which was granted. Accordingly, respondent's arraignment was deferred. Petitioner was required to file comment on the Motion for Preliminary Determination of Existence of Probable Cause. However, instead of a comment, petitioner filed a motion for extension which was denied for being a prohibited pleading under the Rule on Summary Procedure.

In an Order[3] dated August 30, 2004, the Metropolitan Trial Court of Manila, Branch 13 found that the checks were issued by respondent without valuable consideration; that petitioner was not authorized to collect rental payments from respondent; and that consequently, respondent can legally refuse payment on the ground that said checks were issued without valuable and legal consideration. The dispositive portion of the Order reads:

> WHEREFORE, finding no probable cause against the accused for violation of Batas Pambansa Bilang 22, the instant cases are DISMISSED.
>
> IT IS SO ORDERED.[4]

Petitioner appealed to the Regional Trial Court. In a Decision[5] dated February 28, 2005, the Regional Trial Court of Manila, Branch 40, affirmed the Decision of the court *a quo* and dismissed the appeal for lack of merit. It held that petitioner failed to controvert the Joint-Affidavit executed by the owners of the property that they did not authorize petitioner to lease their

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[3] CA *rollo*, pp. 35-37; penned by Judge Manuel R. Recto.

[4] *Id*. at 36.

[5] *Id*. at 16-23; penned by Judge Placido C. Marquez.

property and to collect rentals thereon. Hence, the checks were issued for a non-existing account or without legal and valuable consideration.

Petitioner filed a motion for reconsideration but it was denied by the Regional Trial Court in an Order[6] dated August 15, 2005.

Thereafter, petitioner, through counsel and with the conformity of Asst. City Prosecutor, Sawadjaan Issan, filed a petition for review before the Court of Appeals. However, in the assailed Decision dated August 18, 2006, the Court of Appeals dismissed the petition because it was filed only by the private prosecutor and not by the Office of the Solicitor General as mandated by law. The appellate court ruled thus:

> We note that the instant petition for review suffers from a basic infirmity of having been filed merely by the private prosecutor or counsel of the private complainant, though with the conformity of the Assistant City Prosecutor, and not by the authorized representative of the People of the Philippines – the Solicitor General. Hence, it is dismissible on said ground alone.
>
> We emphasize that the authority to represent the State in appeals of criminal cases before the Court of Appeals and the Supreme Court is solely vested in the Office of the Solicitor General. Section 35(1), Chapter 12, Title III of Book IV of the 1987 Administrative Code explicitly provides, *viz*.:
>
> > "SEC. 35. *Powers and Functions*. – The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. x x x It shall have the following specific powers and functions:
> >
> > (1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court and Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party."

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[6] *Id.* at 32-33.

Jurisprudence has been consistent on this point so much so that in the *City Fiscal of Tacloban vs. Espina*, it was held:

> "Under Section 5, Rule 110 of the Rules of Court all criminal actions commenced by complaint or information shall be prosecuted under the direction and control of the fiscal. The fiscal represents the People of the Philippines in the prosecution of offenses before the trial courts at the metropolitan trial courts, municipal trial courts, municipal circuit trial courts and the regional trial courts. However, when such criminal actions are brought to the Court of Appeals or (to) this Court, it is the Solicitor General who must represent the People of the Philippines not the fiscal.
>
> As succinctly observed by the Solicitor General, petitioner has no authority to file the petition in this Court. It is only the Solicitor General who can bring or defend such actions on behalf of the Republic of the Philippines or the People of the Philippines. And such actions not initiated by the Solicitor General should be summarily dismissed."[7]

Petitioner filed a Motion for Reconsideration. On October 3, 2006, the Court of Appeals required the Office of the Solicitor General (OSG) to file comment.[8]

In its Comment,[9] the OSG noted thus:

1. A thorough examination of petitioner's Motion for Reconsideration and an assiduous re-evaluation of the records and the applicable laws and jurisprudence reveal that there is no basis, in fact or in law, there being no new and substantial matter not already considered and ruled upon by this Honorable Court is pleaded that would warrant a re-examination, much less, the modification or reversal of the Decision dated August 18, 2006 of this Honorable Court which dismissed petitioner's petition for review dated August 31, 2005. Said petition was filed merely by the private prosecutor, and not by the authorized representative of the People of the Philippines – the Office of the Solicitor General which is solely vested with the authority to

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[7] *Rollo* , pp. 33-34.

[8] *Id.* at 47.

[9] *Id.* at 48-50.

represent the People in appeals of criminal cases before the Court of Appeals and the Supreme Court, pursuant to Section 35(1), Chapter 12, Title III of Book IV of the 1987 Administrative Code.

2. Petitioner's Motion for Reconsideration is just a reiteration and rehash of the errors assigned and discussed in the petition for review dated August 31, 2005, which were already resolved in the Decision sought to be reconsidered. It would be a useless ritual of this Honorable Court to reiterate itself.

3. Considering that this Honorable Court had carefully scrutinized and studied the records as well as weighed and assessed the arguments of both parties before rendering the assailed Decision, petitioner's motion has no leg to stand on. Hence, this Honorable Court is correct in dismissing the petition.[10]

On December 29, 2006, the Court of Appeals denied the Motion for Reconsideration; hence, the instant petition raising the following issues:

I.

THE COURT OF APPEALS ERRED IN ISSUING THE DECISION PROMULGATED ON AUGUST 18, 2006 AND THE RESOLUTION PROMULGATED ON DECEMBER 29, 2006 IN NOT RECTIFYING THE ERROR OF LAW COMMITTED BY THE BRANCH 40 REGIONAL TRIAL OF MANILA AND BRANCH 13 OF THE METROPOLITAN TRIAL COURT OF MANILA.

II.

THE ABOVE-MENTIONED DECISION AND RESOLUTION OF THE COURT OF APPEALS ARE NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE OF THIS MOST HONORABLE COURT.[11]

The petition lacks merit.

In criminal proceedings on appeal in the Court of Appeals or in the Supreme Court, the authority to represent the People is vested solely in the Solicitor General. Under Presidential Decree

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

[11] *Id.* at 14.

No. 478, among the specific powers and functions of the OSG was to "represent the government in the Supreme Court and the Court of Appeals in all criminal proceedings." This provision has been carried over to the Revised Administrative Code particularly in Book IV, Title III, Chapter 12 thereof.[12] Without doubt, the OSG is the appellate counsel of the People of the Philippines in all criminal cases.[13]

Although the petition for review before the Court of Appeals was filed with the conformity of the Assistant City Prosecutor, such conformity is insufficient, as the rules and jurisprudence mandate that the same should be filed by the Solicitor General.

While a private prosecutor may be allowed to intervene in criminal proceedings on appeal in the Court of Appeals or the Supreme Court, his participation is subordinate to the interest of the People, hence, he cannot be permitted to adopt a position contrary to that of the Solicitor General. To do so would be tantamount to giving the private prosecutor the direction and control of the criminal proceeding, contrary to the provisions of law.[14]

In the instant case, the Solicitor General opined that petitioner had no legal standing to file the petition for review and that the Court of Appeals correctly dismissed the petition. As such, the Assistant City Prosecutor or the private prosecutor cannot take a contrary view.

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[12] Sec. 35 of which specifically provides:

SEC. 35. *Powers and Functions*. – The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyer. x x x It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; x x x.

[13] *Macasaet v. People*, G.R. No. 156747, February 23, 2005, 452 SCRA 255.

[14] *Tan, Jr. v. Gallardo*, G.R. No. L-41213, October 5, 1976, 73 SCRA 306.

We are cognizant of our ruling in the cases of *Perez v. Hagonoy*,[15] *Mobilia Products, Inc. v. Umezawa*,[16] *People v. Santiago*,[17] and *Narciso v. Sta. Romana-Cruz*,[18] where we held that only the OSG can bring or defend actions on behalf of the Republic or represent the People or state in criminal proceedings pending in the Supreme Court and the Court of Appeals. At the same time, we acknowledged in those cases that a private offended party, in the interest of substantial justice, and where there appears to be a grave error committed by the judge, or where there is lack of due process, may allow and give due course to the petition filed. However, the special circumstances prevailing in the abovementioned cases are not present in the instant case. In those cases, the petitioners availed of petition for *certiorari* under Rule 65. In the instant case, the petition was filed under Rule 45. Moreover, both the Metropolitan Trial Court and the Regional Trial Court found that petitioner was not duly authorized by the owner of the subject property to collect and receive rentals thereon. Thus, not only were the checks without valuable consideration; they were also issued for a non-existing account. With these undisputed findings, we cannot reconcile petitioner's allegation that she is the aggrieved party. Finally, petitioner cannot validly claim that she was denied due process considering that she availed of every opportunity to present her case. Thus, we find no grave abuse of discretion on the part of the lower courts in dismissing the complaints.

WHEREFORE, the petition for review is *DENIED*. The Decision of the Court of Appeals dated August 18, 2006 dismissing the petition as well as the Resolution dated December 29, 2006 denying the motion for reconsideration, are *AFFIRMED*.

SO ORDERED.

*Austria-Martinez, Chico-Nazario, Velasco, Jr.,** and *Reyes, JJ.,* concur.

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[15] G.R. No. 126210, March 9, 2000, 327 SCRA 588.

[16] G.R. No. 149357, March 4, 2005, 452 SCRA 736.

[17] G.R. No. 80778, June 20, 1989, 174 SCRA 143.

[18] G.R. No. 134504, March 17, 2000, 328 SCRA 505.

* In lieu of Associate Justice Antonio Eduardo B. Nachura.

SECOND DIVISION

[G.R. No. 176265. April 30, 2008]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOSE MAGBANUA *y* MORIÑO,** *appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; THE TASK OF ASSIGNING VALUES TO THE TESTIMONIES OF WITNESSES IN THE STAND AND WEIGHING THEIR CREDIBILITY IS BEST LEFT TO THE TRIAL COURT.—** The issues raised by the appellant involve weighing of evidence already passed upon by the trial court and the appellate court. The age-old rule is that the task of assigning values to the testimonies of witnesses in the stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it. It is also axiomatic that positive testimony prevails over negative testimony.

2. **CRIMINAL LAW; RAPE; BEING SWEETHEARTS DOES NOT PROVE CONSENT TO THE SEXUAL ACT.—** Appellant never denied having sexual intercourse with AAA. Instead, he claimed that he and AAA were sweethearts since 1 October 1998. However, all that he adduced to bolster the claim is his naked self-serving assertion and the equally unconvincing observation of his sister. The defense had to be proven. Up to the end it remained unsubstantiated, as appellant failed to present any token of the alleged relationship like love notes, mementos or pictures. In any event, the claim is inconsequential since it is well-settled that being sweethearts does not negate the commission of rape because such fact does not give appellant license to have sexual intercourse against her will, and will not exonerate him from the criminal charge of rape. Being sweethearts does not prove consent to the sexual act.

3. **ID.; ID.; ACTUAL RESISTANCE ON THE PART OF THE VICTIM IS NOT AN ESSENTIAL ELEMENT OF RAPE; WHAT THE VICTIM SHOULD ADEQUATELY PROVE IS THE USE OF FORCE OR INTIMIDATION BY THE ALLEGED RAPIST.—**

Appellant also claims that AAA failed to show that she exerted sufficient resistance to his sexual advances. Suffice it to say, in rape cases it is not necessary that the victim should have resisted unto death. Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for life and personal safety. Actual resistance on the part of the victim is not an essential element of rape. What the victim should adequately prove is the use of force or intimidation by the alleged rapist.

4. **ID.; ID.; IN A PROSECUTION FOR RAPE, THE COMPLAINANT'S CANDOR IS THE SINGLE MOST IMPORTANT ISSUE; IF A COMPLAINANT'S TESTIMONY MEETS THE TEST OF CREDIBILITY, THE ACCUSED MAY BE CONVICTED SOLELY ON THAT BASIS.—** In a prosecution for rape, the complainant's candor is the single most important issue. If a complainant's testimony meets the test of credibility, the accused may be convicted solely on that basis. We have thoroughly examined AAA's testimony and find nothing that would cast doubt as to her credibility. All said, there is no evidence to show any improper motive on the part of AAA to falsely charge appellant with rape and to testify against him; hence, the logical conclusion is that her testimony is worthy of full faith and credence. The prosecution has established beyond reasonable doubt that appellant had carnal knowledge of AAA against her will, through force and intimidation, and with the use of a fan knife.

5. **ID.; THE ANTI-RAPE LAW OF 1997; THE INSERTION OF ONE'S FINGER INTO THE GENITAL OF ANOTHER ALREADY CONSTITUTES RAPE THROUGH SEXUAL ASSAULT.—** The Court of Appeals correctly observed that since the second sexual assault occurred on 13 January 1999, Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, otherwise known as "The Anti-Rape Law of 1997" which took effect on 22 October 1997, should have been applied. Under that law, the insertion of one's finger into the genital of another already constitutes rape through sexual assault. Appellant would have been convicted of consummated rape for inserting his finger into the vagina of AAA were it not for the fact that the information charged him with attempted rape only. This being

so, he cannot be convicted of the graver offense of rape by sexual assault. Nevertheless, appellant can be convicted of acts of lasciviousness because said crime is included in attempted rape.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TINGA, *J.*:

Two informations were filed against appellant charging him with the crimes of rape[1] and attempted rape.[2] Appellant pleaded not guilty.

The prosecution presented the victim AAA[3] and the NBI medico-legal officer, Dr. Armie Soreta-Umil. The evidence for the prosecution establishes the following facts:

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[1] That on or about the 1st day of October 1998, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the grandfather of [AAA], a minor 18 years of age, while armed with bladed weapon poking at her with lewd design and exercising ascendancy over said [AAA] and by means of force, violence and intimidation, willfully, unlawfully and feloniously, did then and there have sexual intercourse with [AAA] against her will and without her consent.

CONTRARY TO LAW. (Records, p.1)

[2] That on or about the 13th day of January, 1999, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being the grandfather of [AAA], a minor of 18 years of age, with lewd design, did then and there, willfully, unlawfully and feloniously tried to have carnal knowledge with one [AAA], while asleep, thus accused commences (sic) the commission of the crime of rape directly by overt acts, but nevertheless did not perform it by reason of cause other than his own spontaneous desistance that is, when she fought back and shouted for help.

CONTRARY TO LAW. (CA *Rollo*, p.5).

[3] The real name of the victim is withheld to protect her privacy. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 425-426.

AAA was residing in the City of Malabon[4] with appellant and her two uncles when appellant sexually assaulted her on two occasions. The four of them shared one room together.

The first incident occurred on 1 October 1998 at around 1 o'clock in the afternoon. AAA was lying on the floor of their room when appellant suddenly pinned her down, covered her mouth, and pointed a knife at her. He told AAA that he was going to marry her no matter what happened; then he threatened to kill her should she reveal the incident to anyone. Thereupon, appellant removed her shorts and raped her. He succeeded in inserting his penis inside her vagina. She did not inform anyone about the incident for fear of appellant. During the rape, her uncles were at work in a construction project.[5]

The second incident occurred on 13 January 1999. AAA was sleeping on the floor of their room when she felt appellant insert his finger into her vagina. This time, she shouted. One of her uncles was awakened and appellant quickly left the house. She told her uncle what appellant did to her.[6]

AAA reported both incidents to the NBI. She underwent a medico-legal examination with Dr. Armie Soreta-Umil conducting the procedure. The doctor made a report.[7]

For his part, appellant did not deny having sexual intercourse with AAA on 1 October 1998. Instead, he interposed the "sweetheart defense," claiming that he and AAA had been lovers since that date. As regards the 13 January 1999 incident, appellant simply dismissed it, noting that there were other persons inside the room with them.[8] Evelyn Magbanua, appellant's sister, tried to corroborate appellant's sweetheart defense by testifying

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[4] The exact address of the victim is withheld to protect her privacy. See *People v. Cabalquinto, supra*.

[5] TSN, 16 August 1999, pp. 5-7.

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

[7] Records, p.40.

[8] TSN, 16 December 1999, pp. 2-3.

that appellant and AAA were sweethearts as she observed them to be happy and helping each other do household chores.[9]

The trial court[10] found appellant guilty of simple rape[11] and act of lasciviousness[12] in a decision[13] dated

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[9] TSN, 4 May 2000, pp. 6-7.

[10] Regional Trial Court (RTC), City of Malabon, Branch 170, presided by Judge Benjamin Antonio.

[11] 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;

x x x   x x x   x x x

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.

Art. 266-B. *Penalties*.- Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

x x x   x x x   x x x

Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*.

[12] Art. 336. *Acts of lasciviousness*.–Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

[13] WHEREFORE, premises considered, judgment is hereby rendered as follows:

In Criminal Case No. 20495-MN, the Court finds accused Jose Magbanua *y* Moriño guilty beyond reasonable doubt of the crime of rape and hereby sentences him to suffer the penalty of *reclusion perpetua*, to pay the victim [AAA] the sum of ₱50,000.00 by way of civil indemnity and cost of the suit; and

In Criminal Case No. 20496-MN, the Court finds accused Jose Magbanua *y* Moriño guilty beyond reasonable doubt of the crime of act of lasciviousness, and hereby sentences him to suffer an indeterminate penalty of four (4) months of *arresto mayor*, as minimum, to four (4) years of *prision correccional*, as maximum, and to pay the cost of the suit.

18 July 2001. Undaunted, appellant interposed an appeal.[14]

The Court of Appeals affirmed the trial court's judgment with modification by awarding moral damages in the amount of ₱50,000.00 in a decision[15] dated 10 April 2006. Undaunted, appellant filed a notice of appeal.[16]

Before this Court, appellant claims that the trial court erred in finding him guilty of the crimes of rape and acts of lasciviousness absent evidence beyond reasonable doubt. The appeal is bereft of merit.

The issues raised by the appellant involve weighing of evidence already passed upon by the trial court and the appellate court. The age-old rule is that the task of assigning values to the testimonies of witnesses in the stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it. It is also axiomatic that positive testimony prevails over negative testimony.[17]

Appellant never denied having sexual intercourse with AAA. Instead, he claimed that he and AAA were sweethearts since 1 October 1998. However, all that he adduced to bolster the claim is his naked self-serving assertion and the equally unconvincing observation of his sister. The defense had to be proven. Up to the end it remained unsubstantiated, as appellant failed to present any token of the alleged relationship like love notes, mementos or pictures.[18] In any event, the claim is inconsequential since it is well-settled that being sweethearts

SO ORDERED. (CA *rollo*, p. 18).

[14] *Id.* at 19.

[15] *Id.* at 105; Penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Ruben Reyes (now Associate Justice of the Supreme Court) and Aurora Santiago-Lagman.

[16] CA *rollo*, p. 107.

[17] *People v. Sarabia*, 21 January 1997, G.R. No. 124076, 266 SCRA 471, 485.

[18] *People v. Malabago y Maquinto*, G.R. No. 108613, 18 April 1997, 271 SCRA 464, 476.

does not negate the commission of rape because such fact does not give appellant license to have sexual intercourse against her will, and will not exonerate him from the criminal charge of rape.[19] Being sweethearts does not prove consent to the sexual act.[20]

The use of a fan knife and the threat of death by appellant against AAA constituted sufficient force and intimidation to cow her into obedience.[21] Moreover, appellant, who is known to AAA as her grandfather, undoubtedly exerted a strong moral influence over her. His moral ascendancy and influence over AAA may even substitute for actual physical violence and intimidation.[22]

Appellant also claims that AAA failed to show that she exerted sufficient resistance to his sexual advances. Suffice it to say, in rape cases it is not necessary that the victim should have resisted unto death. Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for life and personal safety. Actual resistance on the part of the victim is not an essential element of rape. What the victim should adequately prove is the use of force or intimidation by the alleged rapist.[23] In any case, from AAA's testimony, it is clear that she tried to stop appellant's advances during the two incidents but her efforts proved futile as her strength was no match to his. Appellant pinned down AAA while the latter was lying on the floor, covered her mouth, and threatened her with a fan knife. AAA could not push appellant off her body.[24]

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[19] *People v. Travero*, G.R. No. 110823, 28 July 1997, 276 SCRA 301, 312.

[20] *People v. Corea*, G.R. No. 114383, 3 March 1997, 269 SCRA 76, 93.

[21] TSN, 16 August 1999, pp. 5-7.

[22] See *People v. Casil y Villas*, G.R. No. 110836, 13 February 1995, 241 SCRA 285, 292; and *People v. Burce*, G.R. Nos. 108604-10, 7 March 1997, 269 SCRA 293, 314.

[23] *People v. Monfero y Solte*, G.R. No. 126367, 17 June 1999, 308 SCRA 396, 409.

[24] TSN, 16 August 1999, pp. 5-7.

In a prosecution for rape, the complainant's candor is the single most important issue. If a complainant's testimony meets the test of credibility, the accused may be convicted solely on that basis.[25] We have thoroughly examined AAA's testimony and find nothing that would cast doubt as to her credibility. All said, there is no evidence to show any improper motive on the part of AAA to falsely charge appellant with rape and to testify against him; hence, the logical conclusion is that her testimony is worthy of full faith and credence. The prosecution has established beyond reasonable doubt that appellant had carnal knowledge of AAA against her will, through force and intimidation, and with the use of a fan knife.

Appellant attempted to downplay the 13 January 1999 episode by claiming that there were other persons inside the room with them. It was precisely the presence of other persons that foiled appellant's plan. AAA's uncle heard her scream and appellant scampered away. It was then that AAA revealed that she was raped by appellant. Neither the crampness of the room, nor the presence of other people inside it, nor the high risk of being found out has been held sufficient and effective obstacles to deter the commission of rape. As this Court observed in *People v. Umali*:[26]

> [I]t has become a matter of judicial notice that rape can be committed in many different kinds of places which many would consider as unlikely or inappropriate and that the scene of the rape is not always or necessarily isolated or secluded for lust is no respecter of time or place. Thus, the crime can, and has been, committed in places where people congregate, *e.g.*, inside a place where there are occupants, a five-meter room with five people inside, and even the same room which the victim was sharing with the accused's sisters. Therefore, we find it not so incredible that accused somehow had the temerity to sexually assault private complainant even with his wife and two small children just nearby. To repeat what has been

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[25] *People v. De Guzman y Pascual*, G.R. No. 124368, 8 June 2000, 333 SCRA 269, 280, citing *People v. Abad*, 268 SCRA 246(1997).

[26] G.R. No. 76530, 1 March 1995, 242 SCRA 17, 23-24. See also *People v. Hinto y Bueno*, G.R. Nos. 138146-91, 28 February 2001, 353 SCRA 215, 223.

said before, animal lust is an aberration which this Court will not explain for the benefit of the accused.

Appellant's threats had intimidated AAA and kept her from immediately reporting the sordid rape incident to her uncles. As this Court held, it is not uncommon for young girls to conceal for some time the violation of their honor because of the threats on their lives.[27]

The trial court correctly imposed the penalty of *reclusion perpetua* for the 1 October 1998 rape. The use by appellant of a knife to consummate the crime is a special aggravating circumstance which warrants the imposition of the penalty of *reclusion perpetua* to death. Since the prosecution failed to prove any other aggravating circumstance in the commission of the crime, the imposable penalty is *reclusion perpetua* conformably with Article 63[28] of the Revised Penal Code.

The trial court also correctly sentenced appellant to an indeterminate penalty of four (4) months of *arrresto mayor* as minimum to four (4) years of *prision correccional* as maximum for the act of lasciviousness, which carries the penalty of *prision correccional*. In the absence of modifying circumstances,[29]

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[27] *People v. Manzana*, G.R. No. 94363, 17 November 1995, 250 SCRA 152, 162.

[28] Art. 63. Rules for the application of indivisible penalties.- x x x In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof: x x x

2. Where there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied. x x x

[29] Art. 64. Rules for the application of penalties which contain three periods.— In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provision of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period. x x x

the maximum shall be taken from the medium period of *prision correccional*, which is two (2) years four (4) months and one (1) day to four (4) years and two (2) months, while the minimum shall be taken from the penalty next lower in degree, which is *arresto mayor* in its medium period, which ranges from two (2) months and one (1) day to four (4) months.[30]

As to damages, the appellate court correctly awarded ₱50,000.00 as moral damages, an award that rests on the jural foundation that the crime of rape necessarily brings with it shame, mental anguish, besmirched reputation, moral shock and social humiliation.[31] In addition, exemplary damages in the amount of ₱25,000.00 should be granted pursuant to the ruling in *People v. Catubig* [32] that the award of exemplary damages is justified pursuant to Article 2230 of the Civil Code.[33] Since the special aggravating circumstance of the use of a deadly weapon attended the commission of the rape, the offended party is entitled to exemplary damages.

The Court further awards moral damages for the act of lasciviousness committed against AAA in the amount of

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[30] See Act No. 4103, Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

[31] *People v. Manallo*, G.R. No. 143704, 28 March 2003, 400 SCRA 129, 145.

[32] G.R. No. 137842, 23 August 2001, 363 SCRA 621, 631.

[33] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

₱20,000.00 pursuant to Article 2219[34] of the Civil Code,[35] and civil indemnity in the amount of ₱20,000.00.[36]

The Court observes that the prosecutor wrongly designated AAA as a minor in the information,[37] when in the same breath he alleged that she was already 18 years of age. While the prosecutor also alleged that appellant is the grandfather of AAA to qualify the crime of rape, yet he failed to prove the relationship beyond reasonable doubt. AAA even testified that she was merely told by her father that appellant is her grandfather but in reality he is only a distant relative since AAA's grandmother and appellant's father are cousins.[38] Even if the prosecutor had succeeded in proving qualified rape,[39] the penalty would still be *reclusion perpetua* and not death because Republic Act No. 9346[40] prohibits the imposition of death penalty and

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[34] Art. 2219. Moral damages may be recovered in the following and analogous cases: x x x

3) Seduction, abduction, rape or other lascivious acts.

[35] *Amployo y Ebalada v. People*, G.R. No. 157718, 26 April 2005, 457 SCRA 282, 297-298.

[36] *People v. Palma y Romera*, G.R. No. 148869-74, 11 December 2003, 418 SCRA 365,378.

[37] See note 1.

[38] TSN, 16 August 1999, p. 4.

[39] Art. 266-B. *Penalties*.— x x x The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/ qualifying circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim. x x x

[40] 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

(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.

instead ordains the meting out of *reclusion perpetua* without the possibility of parole.

The Court of Appeals correctly observed that since the second sexual assault occurred on 13 January 1999, Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, otherwise known as "The Anti-Rape Law of 1997" which took effect on 22 October 1997, should have been applied. Under that law, the insertion of one's finger into the genital of another already constitutes rape through sexual assault.[41] Appellant would have been convicted of consummated rape for inserting his finger into the vagina of AAA were it not for the fact that the information charged him with attempted rape only. This being so, he cannot be convicted of the graver offense of rape by sexual assault. Nevertheless, appellant can be convicted of acts of lasciviousness because said crime is included in attempted rape.[42]

WHEREFORE, the Decision of respondent Court of Appeals in CA-G.R. CR-H.C. No. 01658 is *AFFIRMED with FURTHER MODIFICATION* that appellant is ordered to further pay AAA ₱25,000.00 as exemplary damages for the rape, and ₱20,000.00 as civil indemnity and ₱20,000.00 as moral damages for the act of lasciviousness.

SO ORDERED.

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

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[41] See *People v. Senieres*, G.R. No. 172226, 23 March 2007, 519 SCRA 13.

[42] CA *rollo*, pp. 103-104.

EN BANC

[G.R. No. 177666. April 30, 2008]

EUGENIO R. AVENIDO, *petitioner, vs.* **CIVIL SERVICE COMMISSION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE DESIGNATION OF THE OFFENSE IN AN ADMINISTRATIVE CASE IS NOT CONTROLLING AND ONE MAY BE FOUND GUILTY OF ANOTHER OFFENSE.— This Court has already ruled in *Dadubo v. Civil Service Commission*, that the designation of the offense or offenses with which a person is charged in an administrative case is not controlling and one may be found guilty of another offense, where the substance of the allegations and evidence presented sufficiently proves one's guilt: It is true that the petitioner was formally charged with conduct prejudicial to the best interest of the bank and not specifically with embezzlement. Nevertheless, the allegations and the evidence presented sufficiently proved her guilt of embezzlement of bank funds, which is unquestionably prejudicial to the best interest of the bank. The charge against the respondent in an administrative case need not be drafted with the precision of an information in a criminal prosecution. It is sufficient that he is apprised of the substance of the charge against him; what is controlling is the allegation of the acts complained of, not the designation of the offense.

2. ID.; ID.; DUE PROCESS; IN ADMINISTRATIVE PROCEEDINGS, DUE PROCESS MEANS THE OPPORTUNITY TO EXPLAIN ONE'S SIDE OR THE OPPORTUNITY TO SEEK A RECONSIDERATION OF THE ACTION OR RULING COMPLAINED OF.— Due process mandates that a party be afforded reasonable opportunity to be heard and to submit any evidence he may have in support of his defense. In administrative proceedings such as the one at bench, due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. In the instant case, petitioner was furnished a

copy of the charges against him and he was able to file an answer and present evidence in his defense. Consequently, a decision was rendered by the NTC finding him guilty of an offense which was not specifically designated in the Show Cause Order, but was still based on acts that were alleged therein, specifically, making an assessment for the Order of Payment for an applicant who had not even complied with the requirements; and personally delivering the Order of Payment to the Cashier, instead of turning over the documents to the authorized officer, who should deliver the same to the Cashier. Clearly, therefore, due process was observed in this case.

3. **ID.; ID.; ACTS MAY CONSTITUTE CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE AS LONG AS THEY TARNISH THE IMAGE AND INTEGRITY OF HIS/HER PUBLIC OFFICE.—** Acts may constitute Conduct Prejudicial to the Best Interest of the Service as long as they tarnish the image and integrity of his/her public office. The Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713) enunciates, *inter alia*, the State policy of promoting a high standard of ethics and utmost responsibility in the public service. Section 4(c) of the Code commands that "[public officials and employees] shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest." By showing undue interest in securing for Animus International a Permit to Import, even if it had not complied with the requirements, petitioner compromised the image and integrity of his public office. Dishonesty and Conduct Prejudicial to the Best Interest of the Service are intrinsically connected since acts of dishonesty would indubitably tarnish the integrity of a public official.

4. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; FINDINGS OF FACT OF ADMINISTRATIVE AGENCIES MUST BE RESPECTED AS LONG AS THEY ARE SUPPORTED BY SUBSTANTIAL EVIDENCE, EVEN IF SUCH EVIDENCE IS NOT OVERWHELMING OR PREPONDERANT.—** Well-settled in our jurisdiction is the doctrine that findings of fact of administrative agencies must be respected as long as they are supported by substantial evidence, even if such evidence is

not overwhelming or preponderant. The quantum of proof necessary for a finding of guilt in administrative cases is only substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. 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.

APPEARANCES OF COUNSEL

Romeo N. Bartolome for petitioner.
Office of Legal Affairs (CSC) for respondent.

D E C I S I O N

***PER CURIAM*:**

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision dated 18 January 2007, rendered by the Court of Appeals in C.A. G.R. SP No. 93210,[1] affirming the Resolution [2] dated 6 August 2004, issued by the Civil Service Commission (CSC), finding petitioner Eugenio Avenido guilty of Dishonesty and Conduct Prejudicial to the Best Interest of the Service, which warranted his dismissal.

While petitioner was employed as an Administrative Officer at the National Telecommunications Commission (NTC), he was approached by a town mate, Pablo Daz (Daz), who was a representative of Animus International Inc. (Animus International), a corporation engaged in the business of importing mobile telephone units and Subscriber Identity Module (SIM)

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[1] Penned by Associate Justice Jose Catral Mendoza with Associate Justices Remedios A. Salazar-Fernando and Ramon M. Bato, Jr., concurring. *Rollo*, pp. 103-115.

[2] *Id.* at 64-73.

cards. During this visit from Daz, petitioner personally prepared an Order of Payment for a Permit to Import Cellular Phones in favor of Animus International. Thereafter, petitioner accompanied Daz to the office of Marcelo M. Bunag, Jr. (Bunag), the acting assessor and processor of the Amateur, Dealer and Manufacturer Service of the NTC licensing unit. Since petitioner formerly served as an assessor, and is now Bunag's superior, Bunag relied on petitioner's judgment and approved the Order of Payment prepared by the petitioner, which by itself, appeared regular. Petitioner then personally delivered the Order of Payment, together with the payment for the assessed fees of Two Hundred Forty Pesos (₱240.00), to the Cashier. Ivy Daban (Daban), Clerk I and acting cashier, received the payment and issued an Official Receipt for the Permit to Import Cellular Phones.[3]

In a facsimile letter dated 21 February 2001, Fernandino A. Tuazon, the Officer-in-Charge of the Customs Intelligence and Investigation Service of the Bureau of Customs, sought verification from Onofre de Galindo (Galindo), the Chief of Equipment Standards Division, NTC-NCR, whether Animus International was authorized to import Motorola cellular phones in commercial qualities. Attached to the said letter was a copy of the Permit to Import, which appears to have been signed by petitioner with the title ECE, Attorney III. After examining the records of the NTC-NCR, Galindo discovered that Animus International was not an accredited distributor's supplier of Motorola Philippines.[4]

Further investigation conducted by Arnold P. Barcelona (Barcelona), Engineer V and Chief of the Enforcement & Monitoring Section of the NTC, showed that Animus International did not even file any application for a Permit to Import, an important requisite before the preparation of an Order of Payment and the issuance of a Permit to Import. Animus International, however, was able to import approximately ₱40,000,000.00 worth of cellular phone SIM cards. Bunag and Barcelona confronted the petitioner regarding the irregularity of the issuance of the

[3] *Id*. at 67.

[4] *Id*.

Permit to Import in favor of Animus International. Thereafter, Bunag filed an administrative complaint against petitioner.[5]

On 6 April 2001, the NTC issued a Show Cause Order,[6] wherein the above-mentioned incidents were recounted in detail, and petitioner was formally charged with Dishonesty, Usurpation of Official Function and Falsification of Public Document.

During the formal investigation conducted by the NTC, petitioner was given an opportunity to present his defense. He submitted a certification by the National Bureau of Investigation (NBI) stating that the signature appearing in the Permit to Import was not his. Petitioner averred that the signature was forged by his town mate, Daz. He only admitted to preparing the Order of Payment for the Permit to Import and personally delivered the payment therefor to the Cashier; and he did so *"merely to accommodate one of his townsmate(s), an act of hospitality, which is very much characteristic of the Filipino culture.*"[7]

In its Decision dated 23 May 2003, the NTC found petitioner liable for Conduct Grossly Prejudicial to the Best Interest of the Service. The NTC gave credence to the testimonies of Bunag and Daban. Bunag testified that petitioner prepared the Order of Payment in the name of Animus International by making the assessment of the required fees. Daban testified that, as cashier, she received from petitioner the assessment fee of ₱240.00. The NTC underscored the following irregularities in petitioner's acts: (1) the preparation of an Order of Payment without having been presented with an application for Permit to Import and other requirements, and (2) personally delivering the Order of Payment to the Cashier, instead of turning over the documents to Bunag, who should deliver the same to the Cashier. By acting in such manner, petitioner evinced a special interest in the issuance of a Permit to Import in favor of Animus International and a lack of concern for the proper procedure imposed by the government in the issuance of permits and licenses.

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[5] *Id*. at 67-68.

[6] *Id*. at 27-28.

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

The NTC also took note of the unusual fact that petitioner did not take any legal action against Daz who had falsified his signature, and caused grave damage to his reputation. The NTC suspended petitioner from service for ten (10) months.[8] The dispositive part of the Decision stated that:

> WHEREFORE, in light of all the foregoing, the Commission finds respondent EUGENIO R. AVENIDO guilty of the lighter offense of "conduct prejudicial to the best interest of service" and hereby imposes upon him the penalty, for the 1st Offense, of Suspension for Ten (10) months, effective upon notice, during which period respondent shall not be entitled to all money benefits including leave credits, with a warning that a repetition of the same or similar offense shall be dealt with more severely.[9]

On appeal, the CSC affirmed the findings of the NTC in its Decision dated 23 May 2003, with modification. In its Resolution dated 6 August 2004, the CSC found petitioner guilty of Dishonesty, in addition to Conduct Grossly Prejudicial to the Best Interest of the Service, which merits the penalty of dismissal. The CSC declared that Dishonesty involves the distortion of truth. By preparing the Order of Payment and delivering the same to the Cashier, petitioner made it appear that Animus International complied with an application for Permit to Import and other requirements; thus, petitioner acted with Dishonesty. Moreover, petitioner's gross disregard for the established procedures in the issuance of a Permit to Import is unquestionably Conduct Prejudicial to the Best Interest of the Service. Lastly, the CSC pronounced that the NTC observed due process for although the Show Cause Order failed to designate any of the offenses as Conduct Prejudicial to the Best Interest of the Service, the acts described therein constituted the said offense.[10] The dispositive part of the CSC Resolution reads:[11]

> WHEREFORE, the appeal of Eugenio R. Avenido is hereby **DISMISSED**. However, the Decision of the National

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[8] *Id*. at 43-48.

[9] *Id*. at 48.

[10] *Id*. at 69-73.

[11] *Id*. at 73.

Telecommunications Company dated May 23, 2003 is hereby modified to the effect that Avenido is additionally found liable for Dishonesty. Thus, Eugenio R. Avenido is hereby meted out the penalty of dismissal from the service with the accessory penalties of cancellation of his Civil Service Eligibility, forfeiture of retirement benefits and perpetual disqualification from reemployment in the government service.

In the Decision dated 18 January 2007 in CA G.R. SP No. 93210, the Court of Appeals affirmed the 6 August 2004 Resolution of the CSC. It sustained the findings of the CSC that the Show Cause Order sufficiently described the irregularities committed by the petitioner, even if one of the offenses for which petitioner was found guilty, Conduct Prejudicial to the Best Interest of the Service, was not specified therein. Furthermore, the appellate court decreed that substantial evidence supports the finding that petitioner is guilty of both Dishonesty and Conduct Prejudicial to the Best Interest of the Service.[12]

Petitioner filed a Motion for Reconsideration of the aforementioned Decision of the Court of Appeals, which was denied in a Resolution dated 24 April 2007.[13]

Hence, in the present Petition, the following issues are being raised:[14]

I

WHETHER OR NOT THE PETITIONER WAS AFFORDED AMPLE DUE PROCESS OF LAW;

II

WHETHER OR NOT SUBSTANTIAL EVIDENCE OBTAINS TO SUPPORT CHARGES AGAINST THE PETITIONER.

The petition is bereft of merit.

Petitioner claims that he was deprived of due process of law when the NTC, thru a Show Cause Order, charged him with

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[12] *Id*. at 110-115.

[13] *Id*. at 125.

[14] *Id*. at 14.

Dishonesty, Falsification of Public Documents and Usurpation of Authority, and then found him guilty of Conduct Prejudicial to the Best Interest of the Service, an offense which he avers is so different from the offenses with which he was earlier charged.[15]

This Court has already ruled in *Dadubo v. Civil Service Commission*, that the designation of the offense or offenses with which a person is charged in an administrative case is not controlling and one may be found guilty of another offense, where the substance of the allegations and evidence presented sufficiently proves one's guilt:

> It is true that the petitioner was formally charged with conduct prejudicial to the best interest of the bank and not specifically with embezzlement. Nevertheless, the allegations and the evidence presented sufficiently proved her guilt of embezzlement of bank funds, which is unquestionably prejudicial to the best interest of the bank.
>
> The charge against the respondent in an administrative case need not be drafted with the precision of an information in a criminal prosecution. It is sufficient that he is apprised of the substance of the charge against him; what is controlling is the allegation of the acts complained of, not the designation of the offense.[16]

Due process mandates that a party be afforded reasonable opportunity to be heard and to submit any evidence he may have in support of his defense. In administrative proceedings such as the one at bench, due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of.[17] In the instant case, petitioner was furnished a copy of the charges against him and he was able to file an answer and present evidence in his defense. Consequently, a decision was rendered by the NTC finding him guilty of an offense which was not specifically designated in the Show Cause Order, but was still based on acts that were

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[15] *Id*. at 199-202.

[16] G.R. No. 106498, 28 June 1993, 223 SCRA 747, 754.

[17] *National Police Commission v. Inspector Bernabe*, 387 Phil. 819, 827 (2000).

alleged therein, specifically, making an assessment for the Order of Payment for an applicant who had not even complied with the requirements; and personally delivering the Order of Payment to the Cashier, instead of turning over the documents to the authorized officer, who should deliver the same to the Cashier. Clearly, therefore, due process was observed in this case.

Acts may constitute Conduct Prejudicial to the Best Interest of the Service as long as they tarnish the image and integrity of his/her public office. The Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713) enunciates, *inter alia*, the State policy of promoting a high standard of ethics and utmost responsibility in the public service. Section 4(c) of the Code commands that "[public officials and employees] shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest."[18] By showing undue interest in securing for Animus International a Permit to Import, even if it had not complied with the requirements, petitioner compromised the image and integrity of his public office. Dishonesty and Conduct Prejudicial to the Best Interest of the Service are intrinsically connected since acts of dishonesty would indubitably tarnish the integrity of a public official.

Petitioner asserts that the finding of guilt against him is not supported by substantial evidence. While he insists that his act of making the assessment in the Order of Payment is a commendable act of an accommodating civil servant, it was not his duty to evaluate whether Animus International was a qualified applicant for a Permit to Import.[19] Such assertion is absurd. Common sense dictates that any officer who takes it upon himself to make an assessment of the fees for the issuance of a permit or license should also take it upon himself to ensure that the applicant is qualified. To permit a government official to prepare assessments for the issuance of permits or licenses

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[18] *Largo v. Court of Appeals*, G.R. No. 177244, 20 November 2007, 537 SCRA 721, 733.

[19] *Rollo*, pp. 204-208.

and not place upon him or her the concurrent duty of examining the requirements would not only be inefficient, but would also open the floodgates of corruption. Petitioner's act of making the assessment implies that he had already examined the required documents and had found them sufficient. Bunag, the acting assessor of the licensing unit concerned, had in fact been misled by this same presumption when petitioner personally delivered to him the Order of Payment. As it turned out, Animus International had not even applied for a Permit to Import and was not an accredited dealer for Motorola, but was nevertheless able to illegally import ₱40,000,000.00 worth of SIM cards and Motorola cellular phones. By willfully turning a blind eye to Animus International's failure to comply with legal requisites and misleading his NTC colleagues, petitioner had not acted as a diligent civil servant as he claimed, but rather a dishonest and dishonorable public official.

Petitioner also makes much of the findings made by the NBI that his signature in the Permit to Import was forged. Such fact, however, does not negate a finding of guilt on the part of petitioner, who himself admitted that he prepared and made the assessment in the Order of Payment without examining the documents required of Animus International. It was by his own act that left room for Animus International to perpetuate the use of a false permit.

Public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity for no less than the Constitution mandates the principle that "a public office is a public trust and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency."[20] The Courts cannot overemphasize the need for honesty and accountability in the acts of government officials.

In all, the consistent findings of the NTC, the CSC and the Court of Appeals on the petitioner's guilt deserve utmost respect,

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[20] *Re: (1) Lost Checks Issued to the Late Roderick Roy P. Melliza, Former Clerk II, MCTC, Zaragga, Iloilo and (2) Dropping from the Rolls of Ms. Esther T. Andres*, A.M. No. 2005-26-SC, 22 November 2006, 507 SCRA 478, 498.

where their conclusions are supported by the admissions made by petitioner, as well as the testimonies of Bunag and Daban.

Well-settled in our jurisdiction is the doctrine that findings of fact of administrative agencies must be respected as long as they are supported by substantial evidence, even if such evidence is not overwhelming or preponderant. The quantum of proof necessary for a finding of guilt in administrative cases is only substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[21]

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.[22]

IN VIEW OF THE FOREGOING, the instant Petition is *DENIED* and the assailed Decision of the Court of Appeals in C.A.-G.R. SP No. 93210, promulgated on 18 January 2007, is *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

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

Corona, J., on leave.

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[21] *Lumiqued v. Exevea*, G.R. No. 117565, 18 November 1997, 282 SCRA 125, 148.

[22] *Dadubo v. Civil Service Commission, supra* note 16 at 752-753.

THIRD DIVISION

[G.R. No. 178546. April 30, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MUKIM ELING *y* MAÑALAC,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT THEREON ARE ENTITLED TO THE HIGHEST DEGREE OF RESPECT AND WILL NOT BE DISTURBED ON APPEAL.—** The unbending jurisprudence is that its findings on the matter of credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal. It is well to remind appellant that when the trial court's findings have been affirmed by the Court of Appeals, as in the case at bar, these are generally binding and conclusive upon this Court. The jurisprudential doctrine that great weight is accorded to the factual findings of the trial court particularly on the ascertainment of the credibility of witnesses can only be discarded or disturbed when it appears in the record that the trial court overlooked, ignored or disregarded some fact or circumstance of weight or significance which if considered would have altered the result. There are no cogent reasons to depart from the findings of the trial court and the Court of Appeals.

2. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; REQUISITES; PRESENT IN THE CASE AT BAR.—** A qualifying circumstance like treachery changes the nature of the crime and increases the imposable penalties for the offense. Hence, like the delict itself, it must be proven beyond reasonable doubt. Treachery can be appreciated when the following requisites are present: (1) the employment of means, method or manner of execution which would ensure the safety of the malefactor from defensive or retaliatory acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) the means, method, or manner of execution were deliberately or consciously adopted by the offender. Appellant was shown to have shot the deceased Tuttoh from behind, hitting him in the nape, and with the bullet exiting the victim's right cheek. During the commission of the crime, the deceased Tuttoh was

sitting on a bench or a platform outside the nipa hut. He was conversing with Sakandal. He was unaware of any attack that appellant had planned against him. What existed here was such a sudden and unexpected attack by the appellant and without warning on an unsuspecting victim, depriving Tuttoh of any real chance to defend himself, and thereby ensuring, without risk, its commission.

3. ID.; AGGRAVATING CIRCUMSTANCES; ILLEGAL POSSESSION OF FIREARMS; REQUISITES.—When Republic Act No. 8294 took effect on 6 July 1997, the use of an unlicensed firearm was considered merely an aggravating circumstance, if murder or homicide or any other crime was committed with it. Two requisites are necessary to establish illegal possession of firearms: first, the existence of the subject firearm; and second, the fact that the accused who owned or possessed the gun did not have the corresponding license or permit to carry it outside his residence. In the case at bar, the existence of the subject firearm was duly established. Secondly, it was ascertained that the appellant who used the subject firearm to commit the crime did not have the corresponding license or permit to carry the gun outside of his residence. Even then, Section 5 of Republic Act No. 8294 enumerates, "unauthorized use of licensed firearm in the commission of the crime" as covered by the term "unlicensed firearm." It was not shown that appellant had the authority to use the firearm.

4. CIVIL LAW; DAMAGES; CIVIL INDEMNITY; AWARDED ONLY IF THE CRIME IS QUALIFIED BY CIRCUMSTANCES WHICH WARRANT THE IMPOSITION OF THE DEATH PENALTY.— We are in accord with the grant by the Court of Appeals of civil indemnity; however, in accordance with prevailing jurisprudence, we increase the same to ₱75,000.00. The amount of ₱75,000.00 as civil indemnity is awarded only if the crime is qualified by circumstances which warrant the imposition of the death penalty. Though the penalty imposed on appellant was reduced to *reclusion perpetua* pursuant to Republic Act No. 9346, civil indemnity to be awarded remains at ₱75,000.00. We also agree with the award of moral damages in the amount of ₱50,000.00. We award the same as the circumstances surrounding the untimely and violent death, in accordance with human nature and experience, could have brought nothing but emotional pain and anguish to the victim's family.

5. ID.; ID.; EXEMPLARY DAMAGES; AWARDED AS PART OF CIVIL LIABILITY WHEN THE CRIME WAS COMMITTED WITH ONE OR MORE AGGRAVATING CIRCUMSTANCES.— We retain the award of exemplary damages but reduced the amount to ₱25,000.00 following current jurisprudence. Exemplary damages in the amount of ₱25,000.00 must be awarded, given the presence of treachery which qualified the killing to murder. Article 2230 of the Civil Code allows the award of exemplary damages as part of the civil liability when the crime was committed with one or more aggravating circumstances. The term aggravating circumstance as used therein should be construed in its generic sense since it did not specify otherwise.

6. ID.; ID.; TEMPERATE DAMAGES; AWARDED IN HOMICIDE OR MURDER CASES WHEN NO EVIDENCE OF BURIAL AND FUNERAL EXPENSES IS PRESENTED IN THE TRIAL COURT.— Notwithstanding the absence of receipts to prove actual damages, we affirm the grant of the Court of Appeals of temperate damages in the amount of ₱25,000.00, in lieu of actual damages. The award of ₱25,000.00 in temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court. Under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved.

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.*:**

Appellant Mukim Eling *y* Mañalac assails the Decision[1] of the Court of Appeals dated 13 July 2006 in CA-G.R. CR-HC

[1] Penned by Associate Justice Ramon R. Garcia with Associate Justices Romulo V. Borja and Antonio L. Villamor, concurring. *Rollo*, pp. 5-22.

No. 00191-MIN, affirming with modification the Decision[2] dated 1 October 2001 of the Regional Trial Court (RTC) of the Ninth Judicial Region, Branch 16, Zamboanga City, in Criminal Case No. 16315. The RTC found appellant guilty beyond reasonable doubt of the crime of Murder.

On 7 September 1999, an Information[3] was filed before the RTC charging appellant of Murder, the accusatory portion thereof, reads:

> That on or about September 2, 1999, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a .45 Caliber pistol bearing Serial No. 652479, by means of treachery and with intent to kill, did then and there willfully, unlawfully and feloniously, suddenly and without any warning, assault, attack and shoot with the use of said weapon that he was then armed with, at the person of MOHAMMAD NUH TUTTOH *y* HAMIDUL, thereby inflicting upon the latter's person mortal gunshot wound on the fatal part of his body which directly caused his death, to the damage and prejudice of the heirs of said victim; furthermore, there being present an aggravating circumstance in that the crime charged herein was committed with the use of an unlicensed firearm.

On 22 October 1999, appellant was arraigned with the assistance of his counsel *de oficio.* He pleaded "Not Guilty." Thereafter, pre-trial was held, and trial ensued accordingly.

Evidence for the prosecution showed that at about 5:45 in the afternoon of 2 September 1999, the brother of the appellant, Alangan Sakandal (Sakandal) and the deceased Mohammad Nuh Tuttoh (Tuttoh) were seated beside each other on a platform or bench at the side of a small nipa hut owned by Tuttoh. The hut was located along the shoreline of Tictabon Island in Zamboanga City. It was situated roughly 10 meters away from Tuttoh's house. The hut has a wide door and walls made of bamboo slats with gaps in between. The walls did not reach up to the ceiling. The floor of the nipa hut was about one meter

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[2] Penned by Regional Trial Court Judge Jesus C. Carbon, Jr.; CA *rollo*, pp. 11-18.

[3] Records, p. 1.

and 20 centimeters from the ground, while the platform or bench on which Tuttoh and Sakandal were seated was about one meter high from the ground. At that time, the appellant was inside the nipa hut. Crispin Kaluh was standing about four meters away from Tuttoh and Sakandal. While Tuttoh and Sakandal were conversing, Sakandal heard a shot. He saw a pistol poised just above his shoulders. He grabbed the pistol, and it fell. He saw that the man holding the pistol with both hands was his brother, the appellant, who was inside the nipa hut. The appellant shot Tuttoh from behind. Tuttoh was hit on the nape and the bullet exited on his right cheek. After the pistol fell to the ground, the appellant ran away to the seashore. Sakandal took the pistol while Crispin Kaluh chased the appellant, held him, and tied his hands. Tuttoh was already dead when he was brought to the *nipa hut*, 10 meters away from his house. The cause of his death was discovered to be hemorrhage secondary to gunshot wound.

Sakandal testified that in the evening of 2 September 1999, he turned over the gun to Birri Ahagin (Ahagin), the right hand man of Tuttoh. It was a colt .45 cal. pistol with Serial No. 652479. Ahagin confirmed the testimony of Sakandal. According to Ahagin, after receipt of the gun from Sakandal, he filed a report with the Police Detachment and turned the gun over to SPO1 Amadol Nasihul at seven o'clock in the evening of the same day.

The prosecution also presented its eyewitness Crispin Kaluh (Kaluh) who testified that he is a seaweed farmer working at the seaweed farm owned by Tuttoh in Tictabon Island.[4] Kaluh further testified that at the time of the incident, he was five (5) arms' length away from Tuttoh.[5] He saw Tuttoh seated and conversing with Sakandal on the bench near the nipa hut. He suddenly heard a gunshot and saw Tuttoh fall down and die.[6] He testified that he saw the appellant shoot Tuttoh from inside

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[4] TSN, 15 May 2000, p. 13.

[5] *Id*. at 15.

[6] *Id*. at 16.

the nipa hut.[7] Kaluh added that he saw Sakandal grab the pistol from the appellant which caused the latter to run away.[8] Kaluh chased the appellant. When he caught up with the appellant, he tied his hands.[9]

Forensic Chemist P/Sr. Inspector Mercedes Delfin Diestro testified that both hands of the appellant were found positive of gunpowder nitrates.[10]

Dr. Efren Apolinario, medico-legal doctor of the Zamboanga City Health Office, was presented by the prosecution as an expert witness.[11] He testified on the cause of death of Tuttoh, as well as on the postmortem examination he conducted on the cadaver of Tuttoh on the morning of 3 September 1999. He noted that Tuttoh's body sustained a gunshot wound measuring .8 to 1.2 cm. at the back occiput directed also on the right portion between the right upper and the right lower mandibular bone measuring 1.5 inches everted.[12] From the size of the wound, he approximated that the firearm used was a .45 caliber.[13] He issued a death certificate reflecting therein "hemorrhage secondary to gun shot wound neck, back" as the cause of death of the victim.[14]

SP02 Jesus Guray Ortega was presented by the prosecution to prove that the appellant had not applied for a license to possess the firearm, nor did he have a license to carry firearm or authorized to carry firearm outside his residence.[15]

Finally, the prosecution presented as witness, Tuttoh's mother, Jaihan Abu. She testified that Tuttoh was his only son. At the

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[7] *Id*. at 17.

[8] *Id*. at 19.

[9] *Id*. at 20.

[10] TSN, 17 May 2000, p. 9.

[11] TSN, 15 May 2000, pp. 1-2.

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

[13] *Id*. at 7.

[14] *Id*. at 8.

[15] TSN, 18 May 2000, p. 2.

time of Tuttoh's death, he and his wife had five (5) children, and the wife was pregnant with child. The wife had given birth after the demise of Tuttoh. Jaiham Abu further testified that she incurred expenses in connection with the death of her son in the total amount of ₱54,075.00. She said that in connection with Tuttoh's funeral, they spent 10 sacks of rice in the total amount of ₱8,500.00. They also slaughtered a cow, and bought cigarettes and fish.[16]

The appellant was presented as the sole witness for the defense. According to him, at about 5:45 in the afternoon of 2 September 1999, he was sleeping inside the nipa hut.[17] He woke up when he found himself being mauled by Tuttoh. According to the appellant, he was mauled by Tuttoh for the purported reason that he was having an affair with the latter's relative.[18] Tuttoh hit him on the nape.[19] They grappled for the pistol that was being held by Tuttoh.[20] While they were in that position, the pistol accidentally fired and Tuttoh was hit.[21] Afterwards, he surrendered to a person by the name of Bario.[22]

After trial, the RTC convicted the appellant of the crime of Murder. The RTC reasoned that Murder was committed by means of treachery because the victim, who was shot at the back with a .45 caliber pistol, was totally unaware.[23] The RTC also ruled that the attack was sudden and unexpected and Tuttoh had no chance whatsoever to defend himself or to escape.[24] It appreciated the presence of the aggravating circumstance

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

[17] TSN, 19 May 2000, p. 2.

[18] *Id*. at 3.

[19] *Id*. at 4.

[20] *Id*.

[21] *Id*.

[22] *Id*. at 5.

[23] Records, p. 51.

[24] *Id*.

of use of unlicensed firearm which was not offset by any mitigating circumstance.[25]

On 1 October 2001, the RTC decreed:

> WHEREFORE, the Court finds accused MUKIM ELING *y* MAÑALAC GUILTY BEYOND REASONABLE DOUBT of the crime of Murder, as principal, for the unjustified killing of Mohammad Nuh Tuttoh with the qualifying circumstance of treachery and aggravating circumstance of use of unlicensed firearm and SENTENCES said accused to suffer the penalty of DEATH and its accessory penalties; to pay the heirs of the victim ₱50,000.00 as indemnity for his death; ₱54,075.00 as actual damages; ₱50,000.00 as moral damages; ₱30,000.00 as exemplary damages; and to pay the costs.
>
> Pursuant to the provision of Section 22 of R.A. No. 7659, amending Art. 47 of the Revised Penal Code, let the complete records of this case be forwarded to the Supreme Court for automatic review.[26]

With the imposition of the death penalty on appellant, the case was elevated to the Supreme Court on automatic review. Pursuant to the Court's ruling in *People v. Mateo,*[27] the case was transferred to the Court of Appeals.[28]

On 13 July 2006, the Court of Appeals affirmed with modification the appellant's conviction by the RTC. The Court of Appeals ratiocinated in this wise:

> Culled from the records of this case, the prosecution substantially established that appellant was in fact the assailant and not the assailed.

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[25] *Id.* at 52.

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

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

[28] In a Resolution dated 14 September 2004, this Court resolved to transfer the Appeal from the Supreme Court to the Court of Appeals conformably with the Decision of the Supreme Court promulgated on 1 July 2004 in G.R. Nos. 147678-87 entitled, *People of the Philippines v. Efren Mateo y Garcia,* modifying the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 and any other rule insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment.

Its eyewitnesses gave an interlocking account of the facts, leading to no other conclusion than that appellant committed a treacherous assault on the person of the victim. Their testimonies, with intricate attention to details, were narrated in straightforward, categorical and candid manner, thus, worthy of belief and credit.

Appellant was positively identified by no less than his older full-blood brother, Alangan Sakandal, as the one who shot the victim to death. The latter was seated beside the victim when appellant shot the victim from behind hitting the victim's nape. After the victim was shot, he tried to grab the gun from appellant. In the course of their struggle for its possession, the gun fell down. Appellant then fled towards the seashore.[29]

The Court of Appeals similarly appreciated the finding of the RTC that the killing was qualified by treachery. It ruled that the appellant positioned himself without risk to himself from any defense which the victim might have made. However, it disagreed with the penalty of death imposed by the RTC. It argued that on 30 June 2006, Republic Act No. 9346, otherwise known as An Act Prohibiting the Imposition of Death Penalty in the Philippines, took effect. Citing Section 2[30] thereof, it downgraded the penalty from death to *reclusion perpetua* and awarded temperate damages in lieu of actual damages. It deleted the award of actual damages for the reason that no receipts were shown to support the claim of expenses incurred for the wake and the burial of the victim. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the instant appeal is DISMISSED for lack of merit and the Decision dated 1 October 2001 of the Regional Trial Court is hereby AFFIRMED WITH MODIFICATION that appellant Mukim Eling *y* Mañalac is found guilty beyond reasonable doubt of the crime of Murder and is hereby sentenced to suffer the penalty of *reclusion perpetua* in lieu of the

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[29] *Id.* at 113-114.

[30] 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.

death penalty pursuant to Section 2 (a) of R.A. No. 9346 and appellant is directed to pay the heirs of the victim the amount of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; ₱30,000.00 as exemplary damages; and ₱25,000.00 as temperate damages in lieu of actual damages.[31]

In his brief, the appellant raises the following assignment of errors, to wit:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER WHEN TRECHERY WAS NOT SUFFICIENTLY PROVEN BY THE PROSECUTION.

III

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH WHEN THE AGGRAVATING CIRCUMSTANCE OF ILLEGAL POSSESSION OF FIREARMS WAS NOT DULY PROVEN.[32]

For our resolution are the following issues: (1) whether appellant's guilt was proven beyond reasonable doubt; (2) whether treachery was sufficiently proven; and (3) whether the aggravating circumstance of illegal possession of firearms was duly shown.

We are unable to depart from the factual findings of the Court of Appeals.

Appellant assails the full faith and credit given to the testimony of the witnesses for the prosecution, especially on the testimony of Sakandal. Appellant avers that Sakandal's testimony is marred by inconsistencies considering that he initially stated in categorical

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[31] CA *rollo,* p. 120.

[32] *Id*. at 34.

terms that he was sitting beside the victim when the latter was shot from behind. Sakandal later testified that he was passing behind the nipa hut where the appellant was sleeping when he saw the latter shoot the victim. We have consistently ruled that on matters involving the credibility of witnesses, 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.[33] The trial court has the best opportunity to observe the demeanor of witnesses while on the stand, it can discern whether or not they are telling the truth.[34] The unbending jurisprudence is that its findings on the matter of credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal.[35] It is well to remind appellant that when the trial court's findings have been affirmed by the Court of Appeals, as in the case at bar, these are generally binding and conclusive upon this Court.[36] The jurisprudential doctrine that great weight is accorded to the factual findings of the trial court particularly on the ascertainment of the credibility of witnesses can only be discarded or disturbed when it appears in the record that the trial court overlooked, ignored or disregarded some fact or circumstance of weight or significance which if considered would have altered the result.[37] There are no cogent reasons to depart from the findings of the trial court and the Court of Appeals. The alleged inconsistency in the testimony of Sakandal does not negate his eyewitness account that he saw appellant shoot the victim. Even then, witnesses cannot be expected to give a flawless

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[33] *Bricenio v. People,* G.R. No. 157804, 20 June 2006, 491 SCRA 489, 496.

[34] *Pilipinas Bank v. Glee Chemical Laboratories, Inc.*, G.R. No. 148320, 15 June 2006, 490 SCRA 663, 670, citing *People v. Mendoza,* 421 Phil. 149, 161-162 (2001).

[35] *Id*.

[36] *Duran v. Court of Appeals,* G.R. No. 125256, 2 May 2006, 488 SCRA 438, 447.

[37] *Ferrer v. People,* G.R. No. 143487, 22 February 2006, 483 SCRA 31, 50.

testimony all the time.[38] Although there may be inconsistencies in minor details, the same do not impair the credibility of the witnesses, where, as in this case, there is no inconsistency in relating the principal occurrence and the positive identification of the assailant.[39] Moreover, minor inconsistencies serve to strengthen rather than diminish the prosecution's case as they tend to erase suspicion that the testimonies have been rehearsed, thereby negating any misgivings that the same were perjured.[40] Similarly, we note that the eyewitness Sakandal, who is appellant's brother, was shown to have no ill motive to falsely testify against the appellant. In fact, from the mouth of the appellant himself, it was confirmed that prior to the incident, he was in good relationship with his brother, Sakandal. Moreover, appellant also testified that they were very close to each other, and that they did not have any misunderstanding.[41] The same was also true with eyewitness Kaluh who testified against him. Kaluh was five arms' length away from the scene of the crime. Indeed, the testimonies of Sakandal and Kaluh are a positive identification of appellant as the assailant. These constitute direct evidence.[42] Sakandal and Kaluh are eyewitnesses to the very act of the commission of the crime and positively identified the appellant as the offender.

On the question of treachery, the RTC supports its findings on the following ratiocination:

> It is difficult to imagine how the gun could have fired while [appellant] and the victim were grappling for it and hit the victim at the back of the neck and the bullet exited at the victim's right cheek. Moreover, there were no powder burn at the entry wound at the back of the

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[38] *People v. Pateo,* G.R. No. 156786, 3 June 2004, 430 SCRA 609, 615.

[39] *Id*.

[40] *Salvador v. People,* G.R. No. 146706, 15 July 2005, 463 SCRA 489, 502.

[41] TSN, 19 May 2000, p. 11.

[42] *Baleros, Jr. v. People,* G.R. No. 138033, 22 February 2006, 483 SCRA 10, 24.

victim's neck indicating that the victim was shot at a distance of more than twenty four (24) inches or two (2) feet, such that the victim could not have been shot while he was grappling for the gun with the accused.[43]

The Court of Appeals affirmed such findings and found that treachery attended the commission of the crime.

A qualifying circumstance like treachery changes the nature of the crime and increases the imposable penalties for the offense.[44] Hence, like the delict itself, it must be proven beyond reasonable doubt.[45] Treachery can be appreciated when the following requisites are present: (1) the employment of means, method or manner of execution which would ensure the safety of the malefactor from defensive or retaliatory acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) the means, method, or manner of execution were deliberately or consciously adopted by the offender.[46] Appellant was shown to have shot the deceased Tuttoh from behind, hitting him in the nape, and with the bullet exiting the victim's right cheek. During the commission of the crime, the deceased Tuttoh was sitting on a bench or a platform outside the nipa hut. He was conversing with Sakandal. He was unaware of any attack that appellant had planned against him. What existed here was such a sudden and unexpected attack by the appellant and without warning on an unsuspecting victim, depriving Tuttoh of any real chance to defend himself, and thereby ensuring, without risk, its commission.

Anent the issue of the aggravating circumstance of the use of unlicensed firearm, appellant questions the same on the claim that no evidence was shown that he had prior physical possession and/or ownership of the .45 caliber gun before the same was used against the deceased. We are not impressed. When Republic Act No. 8294 took effect on 6 July 1997, the use of an unlicensed

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[43] Records, p. 51.

[44] *People v. Guillermo,* 465 Phil. 248, 270 (2004).

[45] *Id*.

[46] *People v. Vallador,* 327 Phil. 303, 315 (1996).

firearm was considered merely an aggravating circumstance, if murder or homicide or any other crime was committed with it.[47] Two requisites are necessary to establish illegal possession of firearms: first, the existence of the subject firearm; and second, the fact that the accused who owned or possessed the gun did not have the corresponding license or permit to carry it outside his residence. In the case at bar, the existence of the subject firearm was duly established. Secondly, it was ascertained that the appellant who used the subject firearm to commit the crime did not have the corresponding license or permit to carry the gun outside of his residence. Even then, Section 5[48] of Republic Act No. 8294 enumerates, "unauthorized use of licensed firearm in the commission of the crime" as covered by the term "unlicensed firearm." It was not shown that appellant had the authority to use the firearm.

We are in accord with the grant by the Court of Appeals of civil indemnity; however, in accordance with prevailing jurisprudence, we increase the same to ₱75,000.00. The amount of ₱75,000.00 as civil indemnity is awarded only if the crime is qualified by circumstances which warrant the imposition of the death penalty.[49] Though the penalty imposed on appellant was reduced to *reclusion perpetua* pursuant to Republic Act No. 9346, civil indemnity to be awarded remains at ₱75,000.00. We also agree with the award of moral damages in the amount of ₱50,000.00. We award the same as the circumstances

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[47] *People v. Presiding Judge of the Regional Trial Court of Muntinlupa City (Br. 276),* G.R. No. 151005, 8 June 2004, 431 SCRA 319, 328-329. Here, the Court said: "Hence, the use of an unlicensed firearm in killing a person 'may no longer be the source of a separate conviction for the crime of illegal possession of a deadly weapon.' Only one felony may be charged — murder in this instance."

[48] Section 5. Coverage of the Term Unlicensed Firearm.—The term unlicensed firearm shall include:

(1) firearms with expired licenses; or

(2) unauthorized use of licensed firearm in the commission of the crime.

[49] *People v. Lara,* G.R. No. 171449, 23 October 2006, 505 SCRA 137, 157-158.

surrounding the untimely and violent death, in accordance with human nature and experience, could have brought nothing but emotional pain and anguish to the victim's family.[50]

We retain the award of exemplary damages but reduced the amount to ₱25,000.00 following current jurisprudence.[51] Exemplary damages in the amount of ₱25,000.00 must be awarded, given the presence of treachery which qualified the killing to murder. Article 2230 of the Civil Code allows the award of exemplary damages as part of the civil liability when the crime was committed with one or more aggravating circumstances. The term aggravating circumstance as used therein should be construed in its generic sense since it did not specify otherwise.

Notwithstanding the absence of receipts to prove actual damages, we affirm the grant of the Court of Appeals of temperate damages in the amount of ₱25,000.00, in lieu of actual damages. The award of ₱25,000.00 in temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.[52] Under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved.[53]

WHEREFORE, the instant appeal is *DENIED*. The Decision of the Court of Appeals dated 13 July 2006 in CA-G.R. CR-HC No. 00191-MIN is *AFFIRMED* with *MODIFICATION*. Appellant Mukim Eling *y* Mañalac is found *GUILTY* of the crime of *MURDER*. The proper imposable penalty would have been death. However, pursuant to Section 2(a) of Republic Act No. 9346, appellant is sentenced to suffer the penalty of

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[50] *People v. de Guzman,* 461 Phil. 865, 882 (2003).

[51] *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 741.

[52] *People v. Dacillo*, G.R. No. 149368, 14 April 2004, 427 SCRA 528, 539.

[53] *People v. Surongon*, G.R. No. 173478, 12 July 2007, 527 SCRA 577, 588.

reclusion perpetua without possibility of parole. Appellant is directed to pay the heirs of Mohammad Nuh Tuttoh the amounts of ₱75,000.00 as civil indemnity; ₱50,000.00 as moral damages; ₱25,000.00 as exemplary damages; and ₱25,000.00 as temperate damages. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 179337. April 30, 2008]

JOSEPH SALUDAGA, *petitioner, vs.* **FAR EASTERN UNIVERSITY and EDILBERTO C. DE JESUS in his capacity as President of FEU,** *respondents.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; IN *CULPA CONTRACTUAL*, THE MERE PROOF OF THE EXISTENCE OF THE CONTRACT AND THE FAILURE OF ITS COMPLIANCE JUSTIFY, *PRIMA FACIE,* A CORRESPONDING RIGHT OF RELIEF.—** It is settled that in *culpa* contractual, the mere proof of the existence of the contract and the failure of its compliance justify, *prima facie*, a corresponding right of relief. In the instant case, we find that, when petitioner was shot inside the campus by no less the security guard who was hired to maintain peace and secure the premises, there is a *prima facie* showing that respondents failed to comply with its obligation to provide a safe and secure environment to its students.

2. **ID.; ID.; IN ORDER FOR *FORCE MAJEURE* TO BE CONSIDERED, RESPONDENTS MUST SHOW THAT NO NEGLIGENCE OR MISCONDUCT WAS COMMITTED THAT MAY HAVE OCCASIONED THE LOSS.—** Consequently, respondents' defense of *force majeure* must fail. In order for *force majeure* to be considered, respondents must show that no negligence or misconduct was committed that may have occasioned the loss. An act of God cannot be invoked to protect a person who has failed to take steps to forestall the possible adverse consequences of such a loss. One's negligence may have concurred with an act of God in producing damage and injury to another; nonetheless, showing that the immediate or proximate cause of the damage or injury was a fortuitous event would not exempt one from liability. When the effect is found to be partly the result of a person's participation – whether by active intervention, neglect or failure to act – the whole occurrence is humanized and removed from the rules applicable to acts of God.

3. **ID.; DAMAGES; IT IS ESSENTIAL IN THE AWARD OF DAMAGES THAT THE CLAIMANT MUST HAVE SATISFACTORILY PROVEN DURING THE TRIAL THE EXISTENCE OF THE FACTUAL BASIS OF THE DAMAGES AND ITS CAUSAL CONNECTION TO THE DEFENDANT'S ACTS.—** Article 1170 of the Civil Code provides that those who are negligent in the performance of their obligations are liable for damages. Accordingly, for breach of contract due to negligence in providing a safe learning environment, respondent FEU is liable to petitioner for damages. It is essential in the award of damages that the claimant must have satisfactorily proven during the trial the existence of the factual basis of the damages and its causal connection to defendant's acts.

4. **ID.; ID.; TEMPERATE DAMAGES; MAY BE RECOVERED WHERE IT HAS BEEN SHOWN THAT THE CLAIMANT SUFFERED SOME PECUNIARY LOSS BUT THE AMOUNT THEREOF CANNOT BE PROVED WITH CERTAINTY.—** The other expenses being claimed by petitioner, such as transportation expenses and those incurred in hiring a personal assistant while recuperating were however not duly supported by receipts. In the absence thereof, no actual damages may be awarded. Nonetheless, temperate damages under Art. 2224 of

the Civil Code may be recovered where it has been shown that the claimant suffered some pecuniary loss but the amount thereof cannot be proved with certainty. Hence, the amount of ₱20,000.00 as temperate damages is awarded to petitioner.

5. **ID.; ID.; MORAL DAMAGES; AWARD THEREOF, EXPLAINED.—** As regards the award of moral damages, there is no hard and fast rule in the determination of what would be a fair amount of moral damages since each case must be governed by its own peculiar circumstances. The testimony of petitioner about his physical suffering, mental anguish, fright, serious anxiety, and moral shock resulting from the shooting incident justify the award of moral damages. However, moral damages are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer. The award is not meant to enrich the complainant at the expense of the defendant, but to enable the injured party to obtain means, diversion, or amusements that will serve to obviate the moral suffering he has undergone. It is aimed at the restoration, within the limits of the possible, of the spiritual status *quo ante*, and should be proportionate to the suffering inflicted. Trial courts must then guard against the award of exorbitant damages; they should exercise balanced restrained and measured objectivity to avoid suspicion that it was due to passion, prejudice, or corruption on the part of the trial court.

6. **MERCANTILE LAW; CORPORATIONS; CORPORATE OFFICERS WHO ENTERED INTO CONTRACTS IN BEHALF OF THE CORPORATION CANNOT BE HELD PERSONALLY LIABLE FOR THE LIABILITIES OF THE CORPORATION; EXCEPTIONS; NOT ESTABLISHED IN THE CASE AT BAR.—** We note that the trial court held respondent De Jesus solidarily liable with respondent FEU. In *Powton Conglomerate, Inc. v. Agcolicol*, we held that: [A] corporation is invested by law with a personality separate and distinct from those of the persons composing it, such that, save for certain exceptions, corporate officers who entered into contracts in behalf of the corporation cannot be held personally liable for the liabilities of the latter. Personal liability of a corporate director, trustee or officer along (although not necessarily) with the corporation may so validly attach, as a rule, only when – (1) he assents to a patently

unlawful act of the corporation, or when he is guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders or other persons; (2) he consents to the issuance of watered down stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto; (3) he agrees to hold himself personally and solidarily liable with the corporation; or (4) he is made by a specific provision of law personally answerable for his corporate action. None of the foregoing exceptions was established in the instant case; hence, respondent De Jesus should not be held solidarily liable with respondent FEU.

7. CIVIL LAW; QUASI-DELICT; NO LIABILITY FOR DAMAGES UNDER ART. 2180 OF THE CIVIL CODE ABSENT EMPLOYER-EMPLOYEE RELATIONSHIP.— We agree with the findings of the Court of Appeals that respondents cannot be held liable for damages under Art. 2180 of the Civil Code because respondents are not the employers of Rosete. The latter was employed by Galaxy. The instructions issued by respondents' Security Consultant to Galaxy and its security guards are ordinarily no more than requests commonly envisaged in the contract for services entered into by a principal and a security agency. They cannot be construed as the element of control as to treat respondents as the employers of Rosete.

8. REMEDIAL LAW; CIVIL PROCEDURE; KINDS OF PLEADINGS; THIRD-PARTY COMPLAINT; ELUCIDATED.— The third-party complaint is, therefore, a procedural device whereby a 'third party' who is neither a party nor privy to the act or deed complained of by the plaintiff, may be brought into the case with leave of court, by the defendant, who acts as third-party plaintiff to enforce against such third-party defendant a right for contribution, indemnity, subrogation or any other relief, in respect of the plaintiff's claim. The third-party complaint is actually independent of and separate and distinct from the plaintiff's complaint. Were it not for this provision of the Rules of Court, it would have to be filed independently and separately from the original complaint by the defendant against the third-party. But the Rules permit defendant to bring in a third-party defendant or so to speak, to litigate his separate cause of action in respect of plaintiff's claim against a third-party in the original

and principal case with the object of avoiding circuitry of action and unnecessary proliferation of law suits and of disposing expeditiously in one litigation the entire subject matter arising from one particular set of facts.

APPEARANCES OF COUNSEL

Cacho & Chua Law Offices for petitioner.
Antonio H. Abad & Associates for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the June 29, 2007 Decision[2] of the Court of Appeals in CA-G.R. CV No. 87050, nullifying and setting aside the November 10, 2004 Decision[3] of the Regional Trial Court of Manila, Branch 2, in Civil Case No. 98-89483 and dismissing the complaint filed by petitioner; as well as its August 23, 2007 Resolution[4] denying the Motion for Reconsideration.[5]

The antecedent facts are as follows:

Petitioner Joseph Saludaga was a sophomore law student of respondent Far Eastern University (FEU) when he was shot by Alejandro Rosete (Rosete), one of the security guards on duty at the school premises on August 18, 1996. Petitioner was rushed to FEU-Dr. Nicanor Reyes Medical Foundation (FEU-NRMF) due to the wound he sustained.[6] Meanwhile, Rosete was brought

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[1] *Rollo*, pp. 3-33.

[2] *Id*. at 38-62; penned by Associate Justice Mariano C. Del Castillo and concurred in by Associate Justices Arcangelita Romilla Lontok and Romeo F. Barza.

[3] *Id*. at 67-75; penned by Judge Alejandro G. Bijasa.

[4] *Id*. at 64-65.

[5] *Id*. at 160-177.

[6] *Id*. at 188.

to the police station where he explained that the shooting was accidental. He was eventually released considering that no formal complaint was filed against him.

Petitioner thereafter filed a complaint for damages against respondents on the ground that they breached their obligation to provide students with a safe and secure environment and an atmosphere conducive to learning. Respondents, in turn, filed a Third-Party Complaint[7] against Galaxy Development and Management Corporation (Galaxy), the agency contracted by respondent FEU to provide security services within its premises and Mariano D. Imperial (Imperial), Galaxy's President, to indemnify them for whatever would be adjudged in favor of petitioner, if any; and to pay attorney's fees and cost of the suit. On the other hand, Galaxy and Imperial filed a Fourth-Party Complaint against AFP General Insurance.[8]

On November 10, 2004, the trial court rendered a decision in favor of petitioner, the dispositive portion of which reads:

> WHEREFORE, from the foregoing, judgment is hereby rendered ordering:
>
> 1. FEU and Edilberto de Jesus, in his capacity as president of FEU to pay jointly and severally Joseph Saludaga the amount of ₱35,298.25 for actual damages with 12% interest per annum from the filing of the complaint until fully paid; moral damages of ₱300,000.00, exemplary damages of ₱500,000.00, attorney's fees of ₱100,000.00 and cost of the suit;
> 2. Galaxy Management and Development Corp. and its president, Col. Mariano Imperial to indemnify jointly and severally 3rd party plaintiffs (FEU and Edilberto de Jesus in his capacity as President of FEU) for the above-mentioned amounts;
> 3. And the 4th party complaint is dismissed for lack of cause of action. No pronouncement as to costs.
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> SO ORDERED.[9]

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[7] Records, Vol. I, pp. 136-139.

[8] *Id*. at 287-290.

[9] *Rollo*, pp. 74-75.

Respondents appealed to the Court of Appeals which rendered the assailed Decision, the decretal portion of which provides, *viz*:

WHEREFORE, the appeal is hereby GRANTED. The Decision dated November 10, 2004 is hereby REVERSED and SET ASIDE. The complaint filed by Joseph Saludaga against appellant Far Eastern University and its President in Civil Case No. 98-89483 is DISMISSED.

SO ORDERED.[10]

Petitioner filed a Motion for Reconsideration which was denied; hence, the instant petition based on the following grounds:

THE COURT OF APPEALS SERIOUSLY ERRED IN MANNER CONTRARY TO LAW AND JURISPRUDENCE IN RULING THAT:

5.1. THE SHOOTING INCIDENT IS A FORTUITOUS EVENT;

5.2. RESPONDENTS ARE NOT LIABLE FOR DAMAGES FOR THE INJURY RESULTING FROM A GUNSHOT WOUND SUFFERED BY THE PETITIONER FROM THE HANDS OF NO LESS THAN THEIR OWN SECURITY GUARD IN VIOLATION OF THEIR BUILT-IN CONTRACTUAL OBLIGATION TO PETITIONER, BEING THEIR LAW STUDENT AT THAT TIME, TO PROVIDE HIM WITH A SAFE AND SECURE EDUCATIONAL ENVIRONMENT;

5.3. SECURITY GAURD, (sic) ALEJANDRO ROSETE, WHO SHOT PETITIONER WHILE HE WAS WALKING ON HIS WAY TO THE LAW LIBRARY OF RESPONDENT FEU IS NOT THEIR EMPLOYEE BY VIRTUE OF THE CONTRACT FOR SECURITY SERVICES BETWEEN GALAXY AND FEU NOTWITHSTANDING THE FACT THAT PETITIONER, NOT BEING A PARTY TO IT, IS NOT BOUND BY THE SAME UNDER THE PRINCIPLE OF RELATIVITY OF CONTRACTS; and

5.4. RESPONDENT EXERCISED DUE DILIGENCE IN SELECTING GALAXY AS THE AGENCY WHICH WOULD PROVIDE SECURITY SERVICES WITHIN THE PREMISES OF RESPONDENT FEU.[11]

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[10] *Id*. at 61.

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

Petitioner is suing respondents for damages based on the alleged breach of student-school contract for a safe learning environment. The pertinent portions of petitioner's Complaint read:

6.0. At the time of plaintiff's confinement, the defendants or any of their representative did not bother to visit and inquire about his condition. This abject indifference on the part of the defendants continued even after plaintiff was discharged from the hospital when not even a word of consolation was heard from them. Plaintiff waited for more than one (1) year for the defendants to perform their moral obligation but the wait was fruitless. This indifference and total lack of concern of defendants served to exacerbate plaintiff's miserable condition.

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11.0. Defendants are responsible for ensuring the safety of its students while the latter are within the University premises. And that should anything untoward happens to any of its students while they are within the University's premises shall be the responsibility of the defendants. In this case, defendants, despite being legally and morally bound, miserably failed to protect plaintiff from injury and thereafter, to mitigate and compensate plaintiff for said injury;

12.0. When plaintiff enrolled with defendant FEU, a contract was entered into between them. Under this contract, defendants are supposed to ensure that adequate steps are taken to provide an atmosphere conducive to study and ensure the safety of the plaintiff while inside defendant FEU's premises. In the instant case, the latter breached this contract when defendant allowed harm to befall upon the plaintiff when he was shot at by, of all people, their security guard who was tasked to maintain peace inside the campus.[12]

In *Philippine School of Business Administration v. Court of Appeals*,[13] we held that:

When an academic institution accepts students for enrollment, there is established a contract between them, resulting in bilateral obligations which both parties are bound to comply with. For its part, the school undertakes to provide the student with an education

[12] Records, Vol. I, pp. 1-6.

[13] G.R. No. 84698, February 4, 1992, 205 SCRA 729.

that would presumably suffice to equip him with the necessary tools and skills to pursue higher education or a profession. On the other hand, the student covenants to abide by the school's academic requirements and observe its rules and regulations.

Institutions of learning must also meet the implicit or "built-in" obligation of providing their students with an atmosphere that promotes or assists in attaining its primary undertaking of imparting knowledge. Certainly, no student can absorb the intricacies of physics or higher mathematics or explore the realm of the arts and other sciences when bullets are flying or grenades exploding in the air or where there looms around the school premises a constant threat to life and limb. Necessarily, the school must ensure that adequate steps are taken to maintain peace and order within the campus premises and to prevent the breakdown thereof.[14]

It is undisputed that petitioner was enrolled as a sophomore law student in respondent FEU. As such, there was created a contractual obligation between the two parties. On petitioner's part, he was obliged to comply with the rules and regulations of the school. On the other hand, respondent FEU, as a learning institution is mandated to impart knowledge and equip its students with the necessary skills to pursue higher education or a profession. At the same time, it is obliged to ensure and take adequate steps to maintain peace and order within the campus.

It is settled that in culpa contractual, the mere proof of the existence of the contract and the failure of its compliance justify, prima facie, a corresponding right of relief.[15] In the instant case, we find that, when petitioner was shot inside the campus by no less the security guard who was hired to maintain peace and secure the premises, there is a prima facie showing that respondents failed to comply with its obligation to provide a safe and secure environment to its students.

In order to avoid liability, however, respondents aver that the shooting incident was a fortuitous event because they could not have reasonably foreseen nor avoided the accident caused

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[14] *Id.* at 733-734.

[15] *FGU Insurance Corporation v. G.P. Sarmiento Trucking Corporation*, 435 Phil. 333, 341 (2002).

by Rosete as he was not their employee;[16] and that they complied with their obligation to ensure a safe learning environment for their students by having exercised due diligence in selecting the security services of Galaxy.

After a thorough review of the records, we find that respondents failed to discharge the burden of proving that they exercised due diligence in providing a safe learning environment for their students. They failed to prove that they ensured that the guards assigned in the campus met the requirements stipulated in the Security Service Agreement. Indeed, certain documents about Galaxy were presented during trial; however, no evidence as to the qualifications of Rosete as a security guard for the university was offered.

Respondents also failed to show that they undertook steps to ascertain and confirm that the security guards assigned to them actually possess the qualifications required in the Security Service Agreement. It was not proven that they examined the clearances, psychiatric test results, 201 files, and other vital documents enumerated in its contract with Galaxy. Total reliance on the security agency about these matters or failure to check the papers stating the qualifications of the guards is negligence on the part of respondents. A learning institution should not be allowed to completely relinquish or abdicate security matters in its premises to the security agency it hired. To do so would result to contracting away its inherent obligation to ensure a safe learning environment for its students.

Consequently, respondents' defense of *force majeure* must fail. In order for *force majeure* to be considered, respondents must show that no negligence or misconduct was committed that may have occasioned the loss. An act of God cannot be invoked to protect a person who has failed to take steps to forestall the possible adverse consequences of such a loss. One's negligence may have concurred with an act of God in producing damage and injury to another; nonetheless, showing that the immediate or proximate cause of the damage or injury was a fortuitous event would not exempt one from liability.

[16] Records, Vol. 1, pp. 76-86.

When the effect is found to be partly the result of a person's participation – whether by active intervention, neglect or failure to act – the whole occurrence is humanized and removed from the rules applicable to acts of God.[17]

Article 1170 of the Civil Code provides that those who are negligent in the performance of their obligations are liable for damages. Accordingly, for breach of contract due to negligence in providing a safe learning environment, respondent FEU is liable to petitioner for damages. It is essential in the award of damages that the claimant must have satisfactorily proven during the trial the existence of the factual basis of the damages and its causal connection to defendant's acts.[18]

In the instant case, it was established that petitioner spent ₱35,298.25 for his hospitalization and other medical expenses.[19] While the trial court correctly imposed interest on said amount, however, the case at bar involves an obligation arising from a contract and not a loan or forbearance of money. As such, the proper rate of legal interest is six percent (6%) per annum of the amount demanded. Such interest shall continue to run from the filing of the complaint until the finality of this Decision.[20] After this Decision becomes final and executory, the applicable rate shall be twelve percent (12%) per annum until its satisfaction.

The other expenses being claimed by petitioner, such as transportation expenses and those incurred in hiring a personal assistant while recuperating were however not duly supported by receipts.[21] In the absence thereof, no actual damages may be awarded. Nonetheless, temperate damages under Art. 2224 of the Civil Code may be recovered where it has been shown

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[17] *Mindex Resources Development v. Morillo*, 428 Phil. 934, 944 (2002).

[18] *Roque, Jr. v. Torres*, G.R. No. 157632, December 6, 2006, 510 SCRA 336, 348.

[19] TSN, September 20, 1999, pp. 20-21; Records, Vol. I, pp. 316-322; Records, Vol. II, p. 597.

[20] *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

[21] TSN, September 27, 1999, pp. 5, 9.

that the claimant suffered some pecuniary loss but the amount thereof cannot be proved with certainty. Hence, the amount of ₱20,000.00 as temperate damages is awarded to petitioner.

As regards the award of moral damages, there is no hard and fast rule in the determination of what would be a fair amount of moral damages since each case must be governed by its own peculiar circumstances.[22] The testimony of petitioner about his physical suffering, mental anguish, fright, serious anxiety, and moral shock resulting from the shooting incident[23] justify the award of moral damages. However, moral damages are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer. The award is not meant to enrich the complainant at the expense of the defendant, but to enable the injured party to obtain means, diversion, or amusements that will serve to obviate the moral suffering he has undergone. It is aimed at the restoration, within the limits of the possible, of the spiritual status quo ante, and should be proportionate to the suffering inflicted. Trial courts must then guard against the award of exorbitant damages; they should exercise balanced restrained and measured objectivity to avoid suspicion that it was due to passion, prejudice, or corruption on the part of the trial court.[24] We deem it just and reasonable under the circumstances to award petitioner moral damages in the amount of ₱100,000.00.

Likewise, attorney's fees and litigation expenses in the amount of ₱50,000.00 as part of damages is reasonable in view of Article 2208 of the Civil Code.[25] However, the award of exemplary

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[22] *Roque v. Torres*, *supra* note 18 at 349.

[23] TSN, September 20, 1999, pp. 10, 12-13; September 27, 1999, pp. 3, 5-9.

[24] *ABS-CBN Broadcasting Corporation v. Court of Appeals*, 361 Phil. 499, 529-530 (1999).

[25] CIVIL CODE, Art. 2208:

In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(2) when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

damages is deleted considering the absence of proof that respondents acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

We note that the trial court held respondent De Jesus solidarily liable with respondent FEU. In *Powton Conglomerate, Inc. v. Agcolicol*,[26] we held that:

[A] corporation is invested by law with a personality separate and distinct from those of the persons composing it, such that, save for certain exceptions, corporate officers who entered into contracts in behalf of the corporation cannot be held personally liable for the liabilities of the latter. Personal liability of a corporate director, trustee or officer along (although not necessarily) with the corporation may so validly attach, as a rule, only when – (1) he assents to a patently unlawful act of the corporation, or when he is guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders or other persons; (2) he consents to the issuance of watered down stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto; (3) he agrees to hold himself personally and solidarily liable with the corporation; or (4) he is made by a specific provision of law personally answerable for his corporate action.[27]

None of the foregoing exceptions was established in the instant case; hence, respondent De Jesus should not be held solidarily liable with respondent FEU.

Incidentally, although the main cause of action in the instant case is the breach of the school-student contract, petitioner, in the alternative, also holds respondents vicariously liable under Article 2180 of the Civil Code, which provides:

Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

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[26] 448 Phil. 643 (2003).

[27] *Id.* at 656.

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.

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The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

We agree with the findings of the Court of Appeals that respondents cannot be held liable for damages under Art. 2180 of the Civil Code because respondents are not the employers of Rosete. The latter was employed by Galaxy. The instructions issued by respondents' Security Consultant to Galaxy and its security guards are ordinarily no more than requests commonly envisaged in the contract for services entered into by a principal and a security agency. They cannot be construed as the element of control as to treat respondents as the employers of Rosete.[28]

As held in *Mercury Drug Corporation v. Libunao*:[29]

In *Soliman, Jr. v. Tuazon*, [30] we held that where the security agency recruits, hires and assigns the works of its watchmen or security guards to a client, the employer of such guards or watchmen is such agency, and not the client, since the latter has no hand in selecting the security guards. Thus, the duty to observe the diligence of a good father of a family cannot be demanded from the said client:

> … [I]t is settled in our jurisdiction that where the security agency, as here, recruits, hires and assigns the work of its watchmen or security guards, the agency is the employer of such guards or watchmen. Liability for illegal or harmful acts committed by the security guards attaches to the employer agency, and not to the clients or customers of such agency. As a general rule, a client or customer of a security agency has no hand in selecting who among the pool of security guards or watchmen employed by the agency shall be assigned to it;

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[28] Records, Vol. I, pp. 43-55 (FEU) and pp. 56-68 (Galaxy).

[29] G.R. No. 144458, July 14, 2004, 434 SCRA 404.

[30] G.R. No. 66207, May 18, 1992, 209 SCRA 47.

the duty to observe the diligence of a good father of a family in the selection of the guards cannot, in the ordinary course of events, be demanded from the client whose premises or property are protected by the security guards.

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The fact that a client company may give instructions or directions to the security guards assigned to it, does not, by itself, render the client responsible as an employer of the security guards concerned and liable for their wrongful acts or omissions.[31]

We now come to respondents' Third Party Claim against Galaxy. In *Firestone Tire and Rubber Company of the Philippines v. Tempengko*,[32] we held that:

The third-party complaint is, therefore, a procedural device whereby a 'third party' who is neither a party nor privy to the act or deed complained of by the plaintiff, may be brought into the case with leave of court, by the defendant, who acts as third-party plaintiff to enforce against such third-party defendant a right for contribution, indemnity, subrogation or any other relief, in respect of the plaintiff's claim. The third-party complaint is actually independent of and separate and distinct from the plaintiff's complaint. Were it not for this provision of the Rules of Court, it would have to be filed independently and separately from the original complaint by the defendant against the third-party. But the Rules permit defendant to bring in a third-party defendant or so to speak, to litigate his separate cause of action in respect of plaintiff's claim against a third-party in the original and principal case with the object of avoiding circuitry of action and unnecessary proliferation of law suits and of disposing expeditiously in one litigation the entire subject matter arising from one particular set of facts.[33]

Respondents and Galaxy were able to litigate their respective claims and defenses in the course of the trial of petitioner's complaint. Evidence duly supports the findings of the trial court that Galaxy is negligent not only in the selection of its employees but also in their supervision. Indeed, no administrative sanction

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[31] *Mercury Drug Corporation v. Libunao*, *supra* at 414-418.

[32] 137 Phil. 239 (1969).

[33] *Id*. at 243-244.

was imposed against Rosete despite the shooting incident; moreover, he was even allowed to go on leave of absence which led eventually to his disappearance.[34] Galaxy also failed to monitor petitioner's condition or extend the necessary assistance, other than the ₱5,000.00 initially given to petitioner. Galaxy and Imperial failed to make good their pledge to reimburse petitioner's medical expenses.

For these acts of negligence and for having supplied respondent FEU with an unqualified security guard, which resulted to the latter's breach of obligation to petitioner, it is proper to hold Galaxy liable to respondent FEU for such damages equivalent to the above-mentioned amounts awarded to petitioner.

Unlike respondent De Jesus, we deem Imperial to be solidarily liable with Galaxy for being grossly negligent in directing the affairs of the security agency. It was Imperial who assured petitioner that his medical expenses will be shouldered by Galaxy but said representations were not fulfilled because they presumed that petitioner and his family were no longer interested in filing a formal complaint against them.[35]

WHEREFORE, the petition is *GRANTED*. The June 29, 2007 Decision of the Court of Appeals in CA-G.R. CV No. 87050 nullifying the Decision of the trial court and dismissing the complaint as well as the August 23, 2007 Resolution denying the Motion for Reconsideration are *REVERSED and SET ASIDE*. The Decision of the Regional Trial Court of Manila, Branch 2, in Civil Case No. 98-89483 finding respondent FEU liable for damages for breach of its obligation to provide students with a safe and secure learning atmosphere, is *AFFIRMED* with the following *MODIFICATIONS*:

a. respondent Far Eastern University (FEU) is *ORDERED* to pay petitioner actual damages in the amount of ₱35,298.25, plus 6% interest per annum from the filing of the complaint until the finality of this Decision. After this decision becomes

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[34] *Rollo*, p. 74.

[35] Records, Vol. I, p. 330.

final and executory, the applicable rate shall be twelve percent (12%) per annum until its satisfaction;

b. respondent FEU is also *ORDERED* to pay petitioner temperate damages in the amount of ₱20,000.00; moral damages in the amount of ₱100,000.00; and attorney's fees and litigation expenses in the amount of ₱50,000.00;

c. the award of exemplary damages is *DELETED*.

The Complaint against respondent Edilberto C. De Jesus is *DISMISSED*. The counterclaims of respondents are likewise *DISMISSED*.

Galaxy Development and Management Corporation (Galaxy) and its president, Mariano D. Imperial are *ORDERED* to jointly and severally pay respondent FEU damages equivalent to the above-mentioned amounts awarded to petitioner.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 179499. April 30, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **TORIBIO JABINIAO, JR. and JOHN DOE,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; INHERENTLY VERY WEAK IN THE FACE OF A POSITIVE

IDENTIFICATION BY A CREDIBLE WITNESS.—Maria Divina's testimony was clear, direct, and was without inconsistencies. Appellant Jabiniao, however, countered this positive identification with denial and alibi. As it is, denial and alibi are already inherently very weak in the face of a positive identification by a credible witness. Inconsistency in the defense's evidence and credible contrary evidence presented by the prosecution sealed appellant Jabiniao's fate.

2. **CRIMINAL LAW; SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE; EXPLAINED.—** Homicide is said to have been committed by reason or on the occasion of robbery if, for instance, it is committed to (a) facilitate the robbery or the escape of the culprit; (b) to preserve the possession by the culprit of the loot; (c) to prevent discovery of the commission of the robbery; or (d) to eliminate witnesses to the commission of the crime. In Robbery with Homicide, so long as the intention of the felon is to rob, the killing may occur before, during or after the robbery. It is immaterial that death would supervene by mere accident, or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed. Once a homicide is committed by reason or on the occasion of the robbery, the felony committed is the special complex crime of Robbery with Homicide.

3. **CRIMINAL LAW; CIVIL LIABILITY; AWARD FOR CIVIL INDEMNITY IS MANDATORY AND IS GRANTED TO THE HEIRS OF THE VICTIM WITHOUT NEED OF PROOF OTHER THAN THE COMMISSION OF THE CRIME.—** The amount of ₱75,000.00 for civil indemnity awarded by the trial court as affirmed by the Court of Appeals, is sustained. The award for civil indemnity is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime. The amount of ₱75,000.00 as civil indemnity is awarded only if the crime is qualified by circumstances which warrant the imposition of the death penalty. Though the penalty imposed on appellant was reduced to *reclusion perpetua*, the civil indemnity to be awarded remains at ₱75,000.00.

4. **CIVIL LAW; DAMAGES; MORAL DAMAGES; AWARDED IN CASES OF VIOLENT DEATHS EVEN IN THE ABSENCE OF PROOF OF MENTAL AND EMOTIONAL SUFFERING**

OF THE VICTIM'S HEIRS.— The Court of Appeals however modified the awards for moral damages and exemplary damages. The Court of Appeals reduced the trial court's award of moral damages from ₱75,000.00 to ₱50,000.00. We agree with this change, pursuant to current jurisprudence. As held by the Court of Appeals, moral damages are awarded in cases of violent deaths even in the absence of proof of mental and emotional suffering of the victim's heirs, because the violent and sudden death of a loved one invariably and necessarily brings about emotional pain and anguish on the part of the victim's family.

5. **ID.; ID.; EXEMPLARY DAMAGES; MAY BE IMPOSED WHEN THE CRIME IS COMMITTED WITH ONE OR MORE AGGRAVATING CIRCUMSTANCES.—**We also agree with the award of exemplary damages in the amount of ₱25,000.00. Exemplary damages may be imposed when the crime is committed with one or more aggravating circumstances. As held above, appellant Jabiniao's crime was aggravated by (1) the use of an unlicensed firearm; (2) commission of the crime in the dwelling of the victims; and (3) treachery.

6. **ID.; ID.; ACTUAL OR COMPENSATORY DAMAGES; AWARD FOR LOSS OF EARNING CAPACITY IS PROPER.—**The Court of Appeals, however, should have added an award for loss of earning capacity. Maria Divina testified that Ruben was earning ₱200.00 a day prior to his death. While Maria Divina failed to substantiate this amount, we held in the similar case of *People v. Laut* that: As to the award of damages for loss of earning capacity, Erlinda testified that her husband Tomas was earning ₱600.00 a week prior to his death. She however failed to produce evidence to substantiate her claim. Nonetheless, Art. 2206 of the Civil Code provides, "the defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter x x x unless the deceased on account of permanent disability not caused by the defendant had no earning capacity at the time of his death."

APPEARANCES OF COUNSEL

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

DECISION

CHICO-NAZARIO, *J*.:

This is an appeal from the Decision[1] dated 19 July 2006 of the Court of Appeals in CA-G.R. CR-HC No. 00334-MIN affirming with modification the Decision of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 25, finding appellant Toribio Jabiniao, Jr., guilty of the crime of Robbery with Homicide.

On 10 March 1999, an Amended Information was filed against appellant Jabiniao before the RTC of Cagayan de Oro City, charging him with the crime of Robbery with Homicide, penalized under Article 294 in relation to Article 14 of the Revised Penal Code, as amended by Republic Act No. 7659, allegedly committed as follows:

That on August 27, 1998 at about 1:00 o'clock dawn at Cugman, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with one another being both armed with handguns and with intent to gain and after entering without permission into the dwelling of the offended party Maria Divina Pasilang where she was sleeping together with her husband Ruben Pasilang and their minor children and by means of force, threat, intimidation and violence with the use of their handguns by pointing the same to the offended party and her husband who were awakened after they were kicked by co-accused Toribio Jabiniao, Jr., the accused demanded for their money and after finding it the accused did then and there willfully, unlawfully and feloniously, with intent to gain, take, rob and carry away the money of the offended party and her husband amounting to more or less ₱2,000.00 to their damage and prejudice which the couple intended to use for the hospitalization of their son who was then sick with dengue fever and thereafter before fleeing with the money, the herein accused, in pursuance of their conspiracy did then and there willfully, unlawfully and feloniously, with evident premeditation, taking advantage of their superior number and strength and with intent to kill, by reason and on the occasion of the robbery, treacherously attack the victim Ruben Pasilang by shooting him with

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[1] Penned by Associate Justice Ramon R. Garcia with Associate Justices Romulo V. Borja and Antonio L. Villamor, concurring. *Rollo*, pp. 4-26.

the use of their guns thereby inflicting a mortal gunshot wound on the victim which cause[d] his untimely death, to the great damage and prejudice of the offended party, the victim and his heirs.

That the commission of the crime was also attended by the aggravating circumstance of nighttime purposely sought by the accused and by committing it inside the dwelling of the victim.

The killing of Ruben Pasilang is committed with the use of an unlicensed firearm.

Contrary to Article 294 in conjunction with Article 14 of the Revised Penal Code as amended by R.A. No. 7659.[2]

Appellant Jabiniao was arraigned on 12 March 1999, wherein he pleaded "Not Guilty" to the charge. The other accused remains unidentified. Trial on the merits ensued.

The prosecution presented as its witnesses Maria Divina Pasilang, Ireneo Haclad, SPO1 Bladimer Fabre Agbalog, SPO4 Hilario Balensola, PO1 Fernando Edoria, Dr. Efren Celeste, Dawn Florendo, Atty. Eleuteria Algodon and Rolando Jabiniao.

Private complainant Maria Divina Pasilang testified that at around 1:00 a.m. of 27 August 1998, she and her husband, the deceased Ruben Pasilang, were sleeping in their house in Cugman, Cagayan de Oro City. They were awakened when Maria Divina felt someone kick her thighs. When she opened her eyes, she saw appellant Jabiniao, who was short and muscular, wearing a pair of short pants but without any shirt on, with a holster on his shoulder and a bonnet or ski mask on his face. He had a masked companion who stayed at the door outside their house, acting as a lookout. Appellant Jabiniao pointed his gun at Maria Divina and Ruben and demanded money from them. They were not able to say a word as they were both trembling in fear. Appellant Jabiniao ransacked the drawer for money and other belongings and took ₱2,000.00 and Maria Divina's shoulder bag. Appellant Jabiniao removed his mask, revealing his face.

Appellant Jabiniao approached Maria Divina, raised her *duster* and stroked her thighs. She mercifully begged not to be touched

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[2] Records, pp. 51-52.

in exchange for all their belongings. Ruben likewise pleaded and told appellant Jabiniao that he could take all their things. Appellant Jabiniao, however, continued stroking Maria Divina's thigh. He then stood up and cut the wire of an electric fan which he used to tie Ruben's feet. Appellant Jabiniao then proceeded to tie Ruben's hands with the strap of Maria Divina's bag, but Ruben resisted and was able to free his hands from appellant Jabiniao's hold. Appellant Jabiniao ran towards the door. Ruben crawled and knelt towards the door and closed it. A few seconds later, gunshots were fired from the outside which pierced through the door, hitting the chest of Ruben. Maria Divina heard appellant Jabiniao and his masked companion pass through the gate and flee the area. Maria Divina went to Ruben and embraced him. Ruben said: "Mards, I am going to die because of the wound." She replied, "Do not succumb to the pain because you still have children who need your care." Maria Divina shouted for help. Her nearest neighbor, Nang Emie, answered: "We are afraid, Day, to help because of the gunfire." Ruben died in Maria Divina's arms.[3]

Appellant Jabiniao was arrested on 14 September 1998. The following day, on 15 September 1998, policemen asked Maria Divina to identify her assailant. Maria Divina immediately identified appellant Jabiniao.

Maria Divina also testified that she misses her husband and was worried about the future of her children. Ruben was earning ₱200.00 a day as a foreman of a building contractor. She spent ₱500.00 every night for ten days as wake expenses, ₱6,000.00 for the 9th day rites, and ₱1,000.00 for the 40th day rites. She also paid ₱1,800.00 for the coffin and ₱3,000.00 for the tomb.[4]

Barangay Tanod Ireneo Haclad testified that on 14 September 1998, he accompanied the police officers who served the warrant of arrest on appellant. At around 3 p.m. of the same day, upon seeing the policemen, appellant tried to pull his gun but was deterred when one of the policemen fired two warning shots

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[3] CA *rollo,* p. 23.

[4] Id. at 24.

and ordered him to stop and drop his gun. A policeman then tackled and handcuffed him. The policemen retrieved from appellant a black bonnet or ski mask, a holster and a "*paltik*" .38 caliber gun with five bullets and one empty shell. SPO1 Bladimer Fabre Agbalog corroborated this account.

SPO4 Hilario Balensola Rosilla, Jr., senior police officer of the Firearms and Explosives Unit of the Philippine National Police, testified to his 9 March 1999 Certification that appellant was not among those included in the list of registered firearm holders, nor was he issued a permit to carry a firearm outside of residence.

PO1 Fernando Edoria, who was assigned to the Warrant and Subpoena Section and the Central Record Section of the PNP, Cagayan de Oro City, testified that his office issued a Certification dated 20 May 1999 stating that appellant Jabiniao has three criminal records, as follows: (1) Robbery with Homicide [CC Nr 98-953]; (2) Murder [CC Nr 96-374]; and (3) Illegal Possession of Firearms [CC Nr 96-10-40-96].

Dr. Efren Celeste, Medical Officer IV of the City Health Department of Cagayan de Oro City, issued a Death Certificate dated 1 September 1998 stating that Ruben's causes of death are the following:

CAUSES OF DEATH

Immediate Cause:	a. Cardio Respiratory Arrest
Antecedent Cause:	b. Hypovolemic Shock
Underlying Cause:	c. Gunshot wound (L) chest[5]

Social Security System employee Dawn Florendo testified that Maria Divina filed a funeral claim in said agency. Public Attorney's Office Officer-in-Charge Atty. Eleuteria Algodon testified that she subscribed to appellant Jabiniao's Counter-Affidavit wherein the latter declared that he owned the bonnet taken by the police officers, but used the same during harvest time to avoid scabies and for the cold weather at night.

[5] Records, p. 23.

Appellant Jabiniao's brother, Rolando Jabiniao, testified that appellant Jabiniao was not in his house on 26 August 1998 or within the vicinity of Mintugsok, Cugman. He did not know where appellant Jabiniao was when the crime was committed.

The defense, on the other hand, presented as its witnesses appellant Jabiniao himself, Leonardo Gacang and Felix Ramos.

Appellant Jabiniao, a hollow block maker and a resident of Dao, Gusa, Cagayan de Oro City, denied any involvement or participation in the crime. He claimed that on 26 August 1998, he was in the house of his mother at Mintugsok, Cugman, which is only five meters away from the house of his brother, Rolando Jabiniao. He was sick at that time and was attended to by his mother. The next day, on 27 August 1998, he and a certain Eusebio Riyas removed corn from the kernel at around 1:00 a.m. On 14 September 1998, while he was again removing corn from the kernel, he heard three warning gunshots and was surprised to be arrested by the police in the presence of his brother, Rolando Jabiniao. Appellant Jabiniao claims that complainant Maria Divina was just coached by the police officers when the latter pointed to him as the assailant. This time around, he denied possession of a bonnet and a firearm.

Leonardo Gacang, a *tuba* gatherer, farmer and *hilot*, claims that on 26 August 1998, Toribio Jabiniao, Sr., the father of appellant Jabiniao, fetched and brought him to Mintugsok, Cugman, to heal appellant Jabiniao, who was having stomachache. He observed that appellant Jabiniao could not stand because of his illness. Gacang administered *hilot* on appellant Jabiniao and gave the latter a concoction extracted from boiled young leaves of guava, *santol* and *kaimito* for him to drink. He left the house at around 4:00 p.m.

Felix Ramos, former neighbor of appellant Jabiniao, testified that on 26 August 1998, at around 9:00 a.m., he went to his farm in Mintugsok, Cugman. That afternoon, he went to the nearby house of Rolando Jabiniao to ask for water. When he was inside, he saw appellant lying flat on the floor, pressing a pillow to his stomach. A few minutes later, Toribio Jabiniao,

Sr. arrived. Felix left the house when Gacang started to administer *hilot* to appellant Jabiniao.

On 19 April 2000, the trial court found appellant Jabiniao guilty beyond reasonable doubt of the crime of Robbery with Homicide and imposed upon him the death penalty:

> IN LIGHT OF THE FOREGOING consideration[s], judgment is hereby rendered finding the accused Toribio Jabiniao, Jr. guilty beyond reasonable doubt as charged of the crime of Robbery with Homicide as principal by direct participation and in conspiracy with John Doe with the following aggravating circumstances of evident premeditation and taking advantage of superior strength with the following aggravating circumstances:
>
> a.) use of unlicensed firearm;
>
> b.) the crime be committed in the dwelling of the victims;
>
> c.) night time purposely sought;
>
> d.) the crime be committed with treachery;
>
> and sentences the accused Toribio Jabiniao, Jr. to death by lethal injection and to indemnify the offended party the sum of Seventy-Five Thousand Pesos (₱75,000.00) and to pay moral damages to the offended party, the sum of Seventy-Five Thousand Pesos (₱75,000.00) and to pay actual damages of Two Thousand Pesos (₱2,000.00) and Twelve Thousand Pesos for funeral expenses and temperate damages for wake and 9 days prayer in the sum of Six Thousand Pesos (₱6,000.00) and to pay the cost.
>
> The accused is however entitled to be credited in the service of his sentence consisting of deprivation of his liberty with the full time during which he has undergone preventive imprisonment.[6]

The trial court found the testimonies of the prosecution witnesses credible, particularly the clear and positive identification of appellant Jabiniao by Maria Divina. In so doing, the trial court considered the account of Maria Divina of the open electric light, the removal of the bonnet, and the "mashing" of her thighs by appellant Jabiniao to be credible and trustworthy. The trial court likewise rejected Jabiniao's alibi that he was ill and was

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[6] *Id*. at 493.

in his brother Rolando's house. Said defense was belied by Rolando himself who testified otherwise.

Appellant Jabiniao appealed the Decision of the trial court to the Court of Appeals. On 19 July 2006, the Court of Appeals affirmed with modification the findings of the trial court, to wit:

> WHEREFORE, premises considered, the assailed Decision dated April 19, 2000 of the Regional Trial Court, Branch 25, Cagayan de Oro City is hereby AFFIRMED with MODIFICATION to the effect that appellant is found guilty beyond reasonable doubt of the crime of Robbery with Homicide and is sentenced to suffer the imprisonment of *reclusion perpetua* in lieu of the death penalty pursuant to Section 2(a) of R.A. 9346. Appellant is hereby directed to pay the heirs of the victim ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱14,000.00 as actual damages, ₱25,000.00 as exemplary damages and ₱6,000.00 as temperate damages.[7]

Appellant Jabiniao filed the present appeal, submitting the same Brief and Assignment of Errors it had presented before the Court of Appeals. His Assignment of Errors reads:

I

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

II

GRANTING THAT THE ACCUSED-APPELLANT IS GUILTY, THE COURT *A QUO* GRAVELY ERRED IN CONVICTING HIM FOR THE COMPLEX CRIME OF ROBBERY WITH HOMICIDE SINCE THE CRIMES COMMITTED ARE TWO SEPARATE CRIMES OF SIMPLE ROBBERY AND HOMICIDE WHICH WILL ENTITLE HIM TO THE IMPOSITION OF TWO DIVISIBLE PENALTIES FOR EACH OF THE TWO FELONIES CORRESPONDINGLY.[8]

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[7] CA *rollo*, p. 147.

[8] Id. at 77.

Whether the guilt of appellant Jabiniao was proved beyond reasonable doubt

In asserting that his guilt has not been proven beyond reasonable doubt, appellant Jabiniao claims the contention of Maria Divina that the perpetrator removed his mask when he was searching the cabinet of the victim was tainted with falsehood, arguing that a robber who intended to hide his face would not conveniently remove his mask to reveal his identity. Appellant Jabiniao likewise points to the portion in Maria Divina's testimony wherein the robber panicked and ran away when Ruben was able to untie his hands. Appellant Jabiniao argues that this is incredible, as Ruben's feet had still been tied with a cord at that time, while the assailant was armed with a gun. Appellant Jabiniao thus offers his theory that he was pinned down by police officers for already facing several other criminal charges.

We are not convinced.

Unable to find inconsistencies in the prosecution's account of the alleged crime, appellant Jabiniao desperately seeks the indulgence of this Court by invoking what it claims to be natural reactions to a given situation. He claims that it is incredible for an assailant who had purposely concealed his identity with a bonnet or ski mask to remove the same while still in the presence of the victims. He claims that it is incredible for an assailant with a gun to panic when his nemesis was tied at the feet.

To a certain extent, a logical and methodical assailant having nerves of steel would probably not do what the alleged assailant in the case at bar did. But while we can agree that an assailant who had purposely concealed his identity with a ski mask would probably not remove the same while still in the presence of the victims, and that an assailant with a gun would probably not panic while his nemesis was tied at the feet, we cannot say that an account claiming the contrary is incredible.

There is no reason why the oft-quoted axiom – that there is no standard form of behavior when one is confronted with a

shocking incident[9] – should not apply to everyone present in such incident. Furthermore, a reading of Maria Divina's account shows that she and Ruben appeared to be compliant to all the wishes of the assailant at the start. At the time the assailant allegedly removed his ski mask, said assailant appeared to be in complete control and had absolutely no reason to panic. Ruben even told the assailant to take everything he can.[10] The assailant could have been lured to a false sense of security which allowed him to remove an uncomfortable piece of clothing. On the other hand, Ruben's attempt to untie himself from Maria Divina's bag's strap was the very first resistance offered by the victims. Ruben's actually being able to untie himself would certainly be a reason for the assailant to panic after he had thought he was in complete control. As stated by the Court of Appeals, Maria Divina's testimony was clear and straightforward, and survived a grueling cross-examination. Thus, on cross, Maria Divina testified:

CROSS EXAMINATION:

ATTY. GIOVANNI NAVARRO:

Q: You did not really see the face of the person who ransacked your plastic cabinet, Ms. Witness?

A: I was able to see the face of the person who ransacked my plastic cabinet because he lowered down the bonnet he was wearing.

Q: So you were not afraid to look at him at that time?

A: I was not afraid to look at his face because I wanted to identify his face.

x x x x x x x x x

Q: When you arrived at the OKK for the second time, you saw Toribio Jabiniao already being investigated by the police?

A: When I arrived at the OKK, Toribio Jabiniao was not yet investigated by the policemen. He was still inside the mini cell.

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[9] *People v. Segundo,* 228 SCRA 691; *People v. Lo-ar*, G.R. No. 118935, 6 October 1997; *People v. Sagun,* G.R. No. 110554, 19 February 1999; *People v. de Guzman,* G.R. No. 132071, 16 October 2000.

[10] Records, p. 343.

Q: Was he alone inside the mini cell?
A: Toribio Jabiniao was talking with a small boy at the cell.

Q: What did you do when you saw him?
A: I looked at him directly in order to find out whether his face and his built was the very person whom I saw on August 27, 1998.

x x x x x x x x x

Q: When you went to the OKK and saw Toribio Jabiniao, Jr. inside the mini-cell, you were with your parents-in-law, is that correct?
A: When I went to the OKK, I was with my parents-in-law, but I was the first one who entered the cell.

Q: But, when you were in the OKK, your parents-in-law told you that Toribio Jabiniao, Jr. was the one who robbed your neighbor in Cugman?
A: At that time, my parents-in-law did not tell me about that.

Q: But, you noticed that your parents-in-law also saw Toribio Jabiniao, Jr. inside the mini cell?
A: My parents-in-law saw Toribio Jabiniao only after I shouted, "he is really the one who killed my husband and he is really the one who entered my house" because my parents-in-law entered and get me from the mini cell.[11]

Maria Divina's testimony was clear, direct, and was without inconsistencies. Appellant Jabiniao, however, countered this positive identification with denial and alibi. As it is, denial and alibi are already inherently very weak in the face of a positive identification by a credible witness. Inconsistency in the defense's evidence and credible contrary evidence presented by the prosecution sealed appellant Jabiniao's fate. We quote with approval the following reasoning of the Court of Appeals:

Herein appellant declared that he was staying at the house of his mother, located at the same *barangay* with that of private complainant's house, removing corn from its kernel when the crime was committed. It was not, therefore, physically impossible for him to be at the scene of the crime considering the accessibility of his place to that of the victims. It also bears stressing that his testimony was inconsistent with that of his own witness, Felix Ramos, who

[11] TSN, 21 May 1999, pp. 382-390.

testified that appellant was allegedly not in his mother's house but in the house of his brother. Appellant's brother, however, categorically declared that appellant was not in his house at that time nor within the vicinity of Mintugsok, Cugman. Furthermore, appellant, at another instance, posited that he was sick at that time. This Court wonders how a sick person could be physically fit enough to stay awake at up to 1:00 o'clock in the morning and remove corn from its kernel. It is rather contrary to human behavior and experience since the natural tendency of a sick person is to rest. Indeed, the same is but a flimsy excuse which deserves no merit. For evidence to be believed, it must not only proceed from the mouth of a credible witness, it must be credible in itself.

We find no compelling reason to overturn the factual findings of the court a quo. Findings of the trial court are accorded not only the highest respect, but also finality, unless some weighty circumstances have been ignored or misunderstood which could alter the result and affect the judgment to be rendered. The same is not present in the case before Us.[12]

Whether the crime was that of a complex crime of Robbery with Homicide or two separate crimes of (1) Simple Robbery and (2) Homicide.

According to appellant Jabiniao, assuming *arguendo* that he was the real perpetrator, his conviction for the special complex crime of Robbery with Homicide is erroneous. He claims that since he had already run away from the house of the victim when he fired the gun and accidentally hit the victim, the robbery had already been accomplished when the killing occurred.

We disagree.

The crime of Robbery with Homicide is punished under Article 294 of the Revised Penal Code, which provides, in part:

Art. 294. Robbery with violence against or intimidation of persons – Penalties. – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death when by reason or on occasion of the robbery, the crime of homicide shall have been

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[12] *Rollo,* pp. 140-141.

committed or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

Homicide is said to have been committed by reason or on the occasion of robbery if, for instance, it is committed to (a) facilitate the robbery or the escape of the culprit; (b) to preserve the possession by the culprit of the loot; (c) to prevent discovery of the commission of the robbery; or (d) to eliminate witnesses to the commission of the crime.[13] In Robbery with Homicide, so long as the intention of the felon is to rob, the killing may occur before, during or after the robbery. It is immaterial that death would supervene by mere accident, or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed. Once a homicide is committed by reason or on the occasion of the robbery, the felony committed is the special complex crime of Robbery with Homicide.[14]

In the case at bar, appellant Jabiniao demanded money from Maria Divina and Ruben from the very start, plainly manifesting his and his companion's original intent to commit robbery. It was only after Ruben freed his hands when appellant Jabiniao panicked, ran outside the door and fired gunshots from the outside. Clearly, appellant Jabiniao fired the shots in order to facilitate his escape and eliminate his victims who could become witnesses against him and his companion.

We agree with both lower courts that the aggravating circumstances of (a) use of unlicensed firearm; (b) dwelling; and (c) treachery, which were alleged in the information, were established. With the presence of these aggravating circumstances, the penalty imposed should be the maximum, which is death.

However, in view of the enactment of Republic Act No. 9346 or the Act Prohibiting the Imposition of Death Penalty

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[13] *People v. Hernandez*, G.R. No. 139697, 15 June 2004, 432 SCRA 104, 121-122; *People v. de Jesus*, G.R. No. 134815, 27 May 2004, 429 SCRA 384, 403.

[14] *People v. Cabbab, Jr.*, G.R. No. 173479, 12 July 2007, 527 SCRA 589, 604.

on 24 June 2006, the penalty thereat that should be meted must be reduced from death to *reclusion perpetua* without eligibility for parole.

Whether courts *a quo* correctly ruled on the civil liabilities of appellant Jabiniao.

It is settled that in a criminal case, an appeal throws the whole case open for review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment appealed from, whether they are made the subject of the assignment of errors or not.[15]

As to damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest in proper cases.[16]

The amount of ₱75,000.00 for civil indemnity awarded by the trial court as affirmed by the Court of Appeals, is sustained. The award for civil indemnity is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime.[17] The amount of ₱75,000.00 as civil indemnity is awarded only if the crime is qualified by circumstances which warrant the imposition of the death penalty.[18] Though the penalty imposed on appellant was reduced to *reclusion perpetua*, the civil indemnity to be awarded remains at ₱75,000.00.

The Court of Appeals however modified the awards for moral damages and exemplary damages. The Court of Appeals reduced

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[15] *People v. Flores, Jr.*, 442 Phil. 561, 569 (2002).

[16] *People v. Buban,* G.R. No. 170471, 11 May 2007, 523 SCRA 118, 134.

[17] *Mendoza v. People,* G.R. No. 173551, 4 October 2007, 534 SCRA 668, 702.

[18] *People v. Lara,* G.R. No. 171449, 23 October 2006, 505 SCRA 137, 157-158.

the trial court's award of moral damages from ₱75,000.00 to ₱50,000.00. We agree with this change, pursuant to current jurisprudence.[19] As held by the Court of Appeals, moral damages are awarded in cases of violent deaths even in the absence of proof of mental and emotional suffering of the victim's heirs, because the violent and sudden death of a loved one invariably and necessarily brings about emotional pain and anguish on the part of the victim's family.[20]

We also agree with the award of exemplary damages in the amount of ₱25,000.00. Exemplary damages may be imposed when the crime is committed with one or more aggravating circumstances.[21] As held above, appellant Jabiniao's crime was aggravated by (1) the use of an unlicensed firearm; (2) commission of the crime in the dwelling of the victims; and (3) treachery.

The Court of Appeals, however, should have added an award for loss of earning capacity. Maria Divina testified that Ruben was earning ₱200.00 a day prior to his death.[22] While Maria Divina failed to substantiate this amount, we held in the similar case of *People v. Laut*[23] that:

> As to the award of damages for loss of earning capacity, Erlinda testified that her husband Tomas was earning ₱600.00 a week prior to his death. She however failed to produce evidence to substantiate her claim. Nonetheless, Art. 2206 of the Civil Code provides, "the defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter x x x unless the deceased on account of permanent disability not caused by the defendant had no earning capacity at the time of his death." In the present case, as there is no indication that the deceased

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[19] *People v. Dulay*, G.R. No. 174775, 11 October 2007, 535 SCRA 656, 664.

[20] *People v. Orilla*, G.R. Nos. 148939-40, 13 February 2004, 422 SCRA 620, 645-646.

[21] *Llave v. People,* G.R. No. 166040, 26 April 2006, 488 SCRA 376, 404.

[22] Records, p. 329.

[23] 403 Phil. 819, 828-829 (2001).

had no earning capacity at the time of his death due to a permanent physical disability, we are inclined to give credit to Erlinda's testimony. Based on her computation, Tomas was earning an annual income of ₱28,800.00 counted at the rate of ₱600.00 a week for forty-eight (48) weeks. To this amount would be deducted his necessary and incidental expenses estimated at fifty percent (50%), leaving a balance of ₱14,400.00. His net annual income would then be multiplied by his life expectancy using the following formula: 2/3 x 80 – 40 (age of the victim at time of death). Tomas can therefore be said to have a life expectancy of twenty-six (26) years. All taken, an award of ₱374,400.00 for loss of earning capacity is just and proper.

The daily income of ₱200.00 is equivalent to a gross annual income ₱48,000.00[24] The formula[25] for unearned income is as follows:

Life expectancy x [Gross Annual Income (G.A.I.) less Living expenses (50% G.A.I.)]

where life expectancy = 2/3 x (80 - age of the deceased)

Thus, the unearned income of Ruben, who was 29 years old[26] at the time of his death, is computed as follows:

Unearned income = 2/3 (80-29)(₱48,000.00-₱24,000.00)
= 2/3 (51)(₱24,000.00)
= ₱816,000.00

As to the ₱2,000.00 taken by appellant, the latter is ordered to return the same by way of restitution. As regards the funeral and burial expenses, the trial court found that the prosecution was able to substantiate only the amount of ₱12,000.00. In *People v. Garin,* we had this to say:

In support of the claim for actual damages, the victim's mother testified that she spent a total [amount of] ₱31,800.00 for the funeral service and other expenses during the wake. To justify an award of

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[24] *People v. Villarba*, 398 Phil. 382, 399 (2000).

[25] *Id*.

[26] Records, p. 23.

actual damages, it is necessary to prove with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party, the actual amount of loss. Of the expenses allegedly incurred, the only receipt presented by the prosecution was for the payment made to St. Matthew Funeral Homes in the amount of ₱12,500.

However, in the case of *People v. Dela Cruz,* it was held that when actual damages proven by receipts during the trial amount[s] to less than ₱25,000, as in the present case, the award of temperate damages for ₱25,000 is justified in lieu of actual damages for a lesser amount. This Court ratiocinated that it was anomalous and unfair that the heirs of the victim who tried but succeeded in proving actual damages amounting to less than ₱25,000 would be in a worse situation than those who might have presented no receipts at all but would be entitled to ₱25,000 temperate damages.[27]

In light of our ruling in *Garin*, in lieu of actual damages for funeral and burial expenses, we award the amount of ₱25,000 as temperate damages.

WHEREFORE, the instant appeal is *DENIED*. The Decision of the Court of Appeals dated 19 July 2006 in CA-G.R. CR-HC No. 00334-MIN is *AFFIRMED* with *MODIFICATION*. Appellant Toribio Jabiniao, Jr., is found *GUILTY* of the crime of Robbery with Homicide as defined in Article 294 of the Revised Penal Code, as amended. The proper imposable penalty would have been death. However, pursuant to Republic Act No. 9346, appellant is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. Appellant is ordered to pay the heirs of Ruben Pasilang the amounts of ₱75,000.00 as civil indemnity; ₱50,000.00 as moral damages; ₱25,000.00 as exemplary damages; ₱25,000.00 as temperate damages; ₱816,000.00 as indemnity for loss of earning capacity; and ₱2,000.00 as restitution for the amount taken from the victim. No costs.

SO ORDERED.

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

[27] G.R. No. 139069, 17 June 2004, 432 SCRA 394, 413.

EN BANC

[A.M. No. P-08-2454. May 7, 2008]
(Formerly OCA IPI No. 07-2561-P)

VIRGILIO A. MUSNGI, *complainant, vs.* **ARIEL D. PASCASIO, Sheriff III, Municipal Trial Court in Cities (MTCC), Branch 5, Olongapo City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; MUST NECESSARILY BE CIRCUMSPECT AND PROPER IN THEIR BEHAVIOR. —** The authority of a sheriff is broad, but it is not boundless. In the enforcement of judgments and judicial orders, a sheriff as an officer of the court upon whom the execution of a final judgment depends, must necessarily be circumspect and proper in his behavior. He must know what is inherently right and wrong and must discharge his duties with prudence and caution. Moreover, he must, at all times, show a high degree of professionalism in the performance of his duties. x x x Sheriffs and their deputies are the front-line representatives of the justice system, and if, through their lack of care and diligence in the implementation of judicial writs, they lose the trust reposed on them, they inevitably diminish likewise the faith of the people in the judiciary. x x x Sheriffs, by the very nature of their functions, are under obligation to perform their duties honestly, faithfully and to the best of their ability; they must conduct themselves with propriety and decorum, and above all else, be above suspicion.

2. **ID.; ID.; ID.; MISCONDUCT, DEFINED; GRAVE MISCONDUCT, HOW PROVED.—**It is settled in jurisprudence that "misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." In grave misconduct, there must be substantial evidence showing that the acts complained of are corrupt or inspired by an intention to violate the law, or constitute flagrant disregard of well-known legal rules.

3. **ID.; ID.; ID.; ACTS PREJUDICIAL TO THE BEST INTEREST OF SERVICE; COMMITTED IN CASE AT BAR. —** In this case, the actions of the respondent in contracting with the complainant for the hauling service in the execution of the writ without complying with the standard procedure of estimation of expenses; his non-payment of the contract price after the vans were impounded; and his being adamant to help the complainant recover his vans being held by the Bureau of Customs are acts prejudicial to the best interest of service. These are acts which could erode the faith of the people in the administration of justice. We have held that the administration of justice is a sacred task, and by the very nature of their duties and responsibilities, all those involved therein must faithfully adhere to, hold inviolate, and invigorate the principle solemnly enshrined in the 1987 Constitution that public office is a public trust. Any act or omission on their part which violates the norms of public accountability or even merely tends to diminish the faith of the people in the Judiciary must be condemned and never countenanced.

4. **ID.; ID.; ID.; COURT PERSONNEL; SHERIFFS; FUNCTIONS. —** The functions of sheriffs are enumerated under the 2002 Revised Manual for Clerks of Court, as follows: "*2.2.4.1 serves and/or executes writs and processes addressed and/or assigned to him by the Court and prepares and submits returns of his proceedings; 2.2.4.2 keeps custody of attached properties or goods; 2.2.4.3 maintains his own record books on writs of execution, writs of attachment, writs of replevin, writs of injunction, and all other processes executed by him; and 2.2.4.4 performs such other duties as may be assigned by the Executive Judge, Presiding Judge and/or Branch Clerk of Court.*"

5. **ID.; ID.; ID.; GRAVE MISCONDUCT OR DISHONESTY; NEED NOT BE COMMITTED IN THE COURSE OF PERFORMANCE OF DUTY BY THE PERSON CHARGED TO WARRANT DISMISSAL; RATIONALE. —** In ***Remolona v. Civil Service Commission,*** the Court *En Banc* ruled that, to warrant dismissal, grave misconduct or dishonesty need not be committed in the course of performance of duty by the person charged. The Court explained the rationale for this rule, as follows: "*The rationale for the rule is that if a government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not*

connected with his office, they affect his right to continue in office. The Government cannot tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations. The private life of an employee cannot be segregated from his public life. Dishonesty inevitably reflects on the fitness of the officer or employee to continue in office and the discipline and morale of the service." Public confidence in our courts is vital to the effective functioning of the judiciary. We reiterate that court personnel who commit misconduct or dishonesty diminish the faith of the people in the judiciary's ability to dispense justice. The heavily laden responsibility of court employees in maintaining the integrity of the judiciary extends not only to the performance of their duties but to the conduct of their personal affairs as well.

D E C I S I O N

***PER CURIAM*:**

Sheriffs are ranking officers of the court. They play an important part in the administration of justice — execution being the fruit and end of the suit, and the life of the law. In view of their exalted position as keepers of the public faith, their conduct should be geared towards maintaining the prestige and integrity of the court.[1] The respondent failed to live up to this creed in the case at bar.

Facts of the Case

This administrative case stemmed from a Complaint[2] dated October 31, 2006 of Mr. Virgilio A. Musngi (Mr. Musngi) charging

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[1] *Sabino L. Aranda, Jr. v. Teodoro S. Alvarez*, A.M. No. P-04-1889, November 23, 2007.

[2] Complaint of Mr. Virgilio A. Musngi; *rollo,* pp. 3-4.

Mr. Ariel D. Pascasio (Mr. Pascasio), Sheriff III of MTCC, Branch 5, Olongapo City with Grave Misconduct. Complainant alleges that he is the owner of V.A. Musngi Forwarders, an SBMA-accredited service contractor. On August 8, 2006, his two (2) closed vans were hired by respondent to transport used clothing from California Waste and Rags Corp. to the Supreme Court for Seven Thousand Pesos (₱7,000.00) per delivery trip.

Complainant further alleges that respondent assured him that the taxes imposed on the goods to be transported were already paid. However, after the Custom's Police had inspected the goods, they found out that said goods were smuggled and his two vans were impounded. Complainant begged for respondent's assistance but the latter ignored his plea. Complainant laments that he was in desperate condition to get support for his family since those vans were his only source of income.

In his Comment dated May 29, 2007, respondent denies all the allegations in the complaint contending that he never entered into any contractual relation with complainant, or hired his vehicle. He points out that the complaint is unsubstantiated, as complainant has no contract to prove his claim.

The Office of the Court Administrator (OCA), in its Memorandum dated August 22, 2007, recommended that the instant administrative complaint be referred to Hon. Norman V. Pamintuan, Executive Judge of MTCC, Olongapo City for further investigation, report and recommendation. The Court, in its Resolution of September 19, 2007, adopted the recommendation of the OCA.

On January 17, 2008, the OCA received the investigation report and recommendation of Judge Pamintuan.

Investigation Report and Recommendation

During the investigation, the following persons were summoned to testify before Hon. Pamintuan: Virgilio A. Musngi, complainant; Aloither Vergel Musngi, son of the complainant; Alexander Rimando, the Clerk of Court of MTCC, Olongapo City; Diane Fernandez, Branch Clerk of Court of MTCC Branch 5, Olongapo City; and Ariel Pascasio, the respondent.

The findings of the Investigating Judge based on the facts alleged in the complaint and proved in the investigation are as follows:

First, it is undisputed that respondent Ariel Pascasio hired on August 8, 2006 the two (2) closed vans of the complainant for ₱7,000.00 per delivery trip of each truck purportedly to transport used clothings from the warehouse of California Waste and Rags Inc. in Subic Bay Freeport Zone to a warehouse somewhere in Manila by virtue of a Writ of Execution dated October 18, 2005, as per decision issued by Hon. Reynaldo M. Laigo on August 1, 2005, with the corresponding Notice of Levy/Attachment upon Realty/Personalty which was prepared and signed by respondent Pascasio, dated November 3, 2005.[3]

The complainant testified that on August 8, 2007 it was his son Aloither Vergel Musngi who personally attended the transaction between V.A. Musngi Forwarders and Sheriff Pascasio. This was corroborated by Aloither Musngi, who met with the respondent at the Subic Bay Freeport Zone and discussed the rate of the service and the destination of the goods to be transported. The respondent gave Aloither a copy of Request for Inspection of Cargoes No. 1071[4] approved by the Seaport Department of SBMA and two (2) gatepasses stating that the subject goods were examined by a customs examiner. Notably, the company and consignee stated in both documents is the Supreme Court of the Philippines, with Sheriff Pascasio as its authorized representative.

Aloither immediately noticed that the goods to be transported out of the Freeport area were illegal but he was persuaded to continue with the transaction because he was shown a copy of the writ of execution[5] and the decision[6] of the MCTC

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[3] Investigation Report of Hon. Pamintuan, p. 16.

[4] *Rollo*, p.14.

[5] *Id*. at 30-31.

[6] *Id*. at 33-35.

Branch 5, Olongapo City in Civil Case No. 6610. Respondent, likewise, assured that the goods would be donated to the Department of Social Welfare and Development (DSWD).

However, the goods were apprehended at the Tipo Gate of SBMA, it being a prohibited importation under Republic Act (R.A.) No. 4653.[7] The goods, with an estimated value of Four Million Pesos (₱4,000,000.00), were seized, including the carriers, the two (2) closed vans of V.A. Musngi Forwarders and three (3) closed vans owned by a certain Marlon M. Aguirre. The vans were impounded by the Bureau of Customs. During the hearing of the seizure case, Aloither sought the assistance of Sheriff Pascasio for the release of the vans but the latter never answered his call and did not show up.

The complainant then appeared alone in the seizure case for the recovery of his vans until the termination of the proceedings on December 28, 2006 when an Order[8] for the release of the vans was granted by the Bureau of Customs.

The complainant alleged that he suffered damages in the amount of ₱14,000.00 for the unpaid charter of the vans, and approximately ₱900,000.00 as lost income since complainant was not able to use the vans for approximately seven (7) months during the pendency of the seizure proceedings.

Second, the respondent's defense that he only mediated in the transaction between the complainant herein and the judgment creditor in the civil case, Anglo-Asia Corp., was not proven.

The respondent denied that there was a contract between him and the complainant for the hiring of the latter's vans. He alleged that he was merely complying with a writ of execution issued by the court, and that his only participation was to assist in the loading of the used clothings on the vans of the complainant.

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[7] Republic Act No. 4653 "An Act to Safeguard the Health of the People and Maintain the Dignity of the Nation By Declaring it a National Policy to Prohibit the Commercial Importation of Textile Articles Commonly Known as Used Clothings and Rags."

[8] Annex 8 of the Investigation Report of Hon. Pamintuan.

However, it is obvious from the documentary exhibits presented by the complainant that Sheriff Pascasio actively took part in the hiring of the vans until the goods were apprehended at the Tipo Gate. In fact, in the Request for Inspection and gatepasses, he positively acknowledged that his signature appeared thereon.[9]

Third, respondent Sheriff Pascasio blatantly disregarded the procedure for execution of judgments.

Section 10, Rule 141 of the Rules of Court explicitly provides that:

With regard to the Sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the Sheriff, subject to the approval of the court.

Upon approval of said estimated expenses, the interested party shall deposit such amount with the Clerk of Court and ex-officio Sheriff, who shall distribute the same to the Deputy Sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. THE LIQUIDATION SHALL BE APPROVED BY THE COURT. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the Deputy Sheriff assigned with his return, and the Sheriff's expenses shall be taxed as costs against the judgment debtor.

The above procedure is mandatory. The failure of Sheriff Pascasio to pay complainant Musngi the rental for the hauling service is a clear disregard of the Rules. There is no showing that he complied with the rules on estimation of expenses and liquidation of the same.

The Sheriff of Branch 5, Mr. Rimando, a superior of the respondent, testified in court that he was not furnished a copy of the writ of execution, which is usually done as a matter of procedure.[10] He came to know about the incident only in the newspapers the day after the goods and the vans were confiscated

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[9] TSN, December 18, 2007, p. 3.

[10] *Id*. at 2.

by the Bureau of Customs. The Branch Clerk of Court of Branch 5, Ms. Dianne Fernandez, also testified and her testimony corroborated the allegation that the vans were hired at the instance of Sheriff Pascasio.[11] It must be noted though that said witness failed to submit an affidavit to this effect when asked by the court to submit one.[12] Moreover, the records of the case disclosed that after the goods and the vans were seized, the respondent filed the Sheriff's Report only after the lapse of fourteen (14) days.

The Investigating Judge recommended that the respondent be punished with dismissal from service with forfeiture of all benefits and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations.

This Court's Ruling

The issue in this case is whether or not Sheriff Pascasio is guilty of grave misconduct for acts prejudicial to the best interest of service.

The authority of a sheriff is broad, but it is not boundless. In the enforcement of judgments and judicial orders, a sheriff as an officer of the court upon whom the execution of a final judgment depends, must necessarily be circumspect and proper in his behavior. He must know what is inherently right and wrong and must discharge his duties with prudence and caution. Moreover, he must, at all times, show a high degree of professionalism in the performance of his duties.[13]

The respondent in this case faces the charge of Grave Misconduct, an offense that carries a severe penalty, which is dismissal from service,[14] with forfeiture of all benefits and with

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[11] TSN, December 20, 2007, p. 7.

[12] Investigation Report of Hon. Pamintuan, p. 18.

[13] *Philippine Bank of Communication v. Sheriff Efren V. Cachero*, A.M. No. P-00-1399, February 19, 2001.

[14] Section 52, Rule V, on Penalties of Civil Service Commission Memorandum Circular No. 19-99 dated 14 September 1999 provides as

prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations.[15] It is, therefore, imperative that the guilt of the respondent be proven by substantial evidence.

It is settled in jurisprudence that "misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." [16] In grave misconduct, there must be substantial evidence showing that the acts complained of are corrupt or inspired by an intention to violate the law, or constitute flagrant disregard of well-known legal rules.[17]

In the case at bar, the investigation conducted by Hon. Pamintuan, Executive Judge of MTCC in Olongapo City, fairly afforded the respondent due process, the right to be heard and to defend himself against the accusation. It was also adequately shown that respondent not only used his position to benefit himself by entering in a contract with complainant Musngi but he did so in blatant violation of the law, the Rules of Court and the

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follows: "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
4. Being Notoriously Undesirable."

See also Supreme Court Memorandum Circular No. 30 dated 30 July 1989; Civil Service Commission Resolution No. 89-506 dated 20 July 1989.

[15] *Ibay v. Virginia G. Lim*, A.M. No. 99-1309, September 11, 2000, 340 SCRA 107.

[16] *CSC v. Juliana Ledesma*, G.R. No. 154521, September 30, 2005, 471 SCRA 589.

[17] *Amosco v. Magro*, A.M. No. 439-MJ, September 30, 1976, 73 SCRA 107.

Code of Conduct of Judicial Employees. Respondent Sheriff Pascasio argues that he is unaware that the law prohibits the importation of used clothings. But he also knows that his ignorance cannot excuse him from compliance. As a Sheriff, respondent ought to know that he cannot attach goods which are banned and illegal. He should have been more prudent in the execution of the said writ especially because the value of the goods is estimated at around Four Million Pesos (₱4,000,000.00).

Further, his disregard of the procedure prescribed by the Rules of Court in Section 10 of Rule 141 is unpardonable. As an officer of the court, respondent should set the example by faithfully observing the Rules of Court, and not brazenly disregard the Rules.[18]

In this case, the actions of the respondent in contracting with the complainant for the hauling service in the execution of the writ without complying with the standard procedure of estimation of expenses; his non-payment of the contract price after the vans were impounded; and his being adamant to help the complainant recover his vans being held by the Bureau of Customs are acts prejudicial to the best interest of service. These are acts which could erode the faith of the people in the administration of justice. We have held that the administration of justice is a sacred task, and by the very nature of their duties and responsibilities, all those involved therein must faithfully adhere to, hold inviolate, and invigorate the principle solemnly enshrined in the 1987 Constitution that public office is a public trust.[19] Any act or omission on their part which violates the norms of public accountability or even merely tends to diminish the faith of the people in the Judiciary must be condemned and never countenanced.[20]

The functions of sheriffs are enumerated under the 2002 Revised Manual for Clerks of Court, as follows:

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[18] *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 49188, January 30, 1990, 181 SCRA 557.

[19] *Eddie Babor v. Vito P. Garchitorena,* A.M. No. P-94-1070, April 8, 1997, 271 SCRA 23, 24.

[20] *Sy v. Academia,* A.M. No. P-87-72, July 3, 1991, 198 SCRA 705, 717.

2.2.4.1 serves and/or executes writs and processes addressed and/or assigned to him by the Court and prepares and submits returns of his proceedings;

2.2.4.2 keeps custody of attached properties or goods;

2.2.4.3 maintains his own record books on writs of execution, writs of attachment, writs of replevin, writs of injunction, and all other processes executed by him; and

2.2.4.4 performs such other duties as may be assigned by the Executive Judge, Presiding Judge and/or Branch Clerk of Court.

The records of the case disclose that the respondent's shameless disregard of the procedure mandated by Section 10 of Rule 141 of the Rules of Court equally made him guilty of violating the duties reposed upon him as a Sheriff of the Court. The testimony of Ms. Fernandez and Mr. Rimando, both superiors of the respondent, that there was an irregularity in the execution of the writ as it did not go through the standard procedure observed in Branch 5 of MTCC, Olongapo City, satisfactorily proved that the respondent proceeded with this execution under his own rules and on his own discretion.

In addition, the respondent misrepresented himself as an authorized representative of this Honorable Court as the consignee of the prohibited goods. He used the same misrepresentation from the beginning of the transaction until the prohibited goods were seized at the Tipo Gate, SBMA. Sheriff Pascasio, purporting to be the authorized representative, even used the name of the Supreme Court to perpetrate this nefarious deed, hoping to effect the release of the prohibited goods. We will not tolerate such deceit.

Sheriffs and their deputies are the front-line representatives of the justice system, and if, through their lack of care and diligence in the implementation of judicial writs, they lose the trust reposed on them, they inevitably diminish likewise the faith of the people in the judiciary.[21]

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[21] *Gonzales v. Cabigao*, A.M. No. P-06-2194, August 31, 2006, 500 SCRA 366, 370.

Sheriff Pascasio failed to comply with the rigorous standards required of all public officers and employees, for which he will have to pay dearly. The Court, in many instances, has ruled that erring court employees do not deserve to stay a minute in the service for it will erode the dignity of the prime institution which dispenses justice.

In ***Remolona v. Civil Service Commission*,**[22] the Court *En Banc* ruled that, to warrant dismissal, grave misconduct or dishonesty need not be committed in the course of performance of duty by the person charged. The Court explained the rationale for this rule, as follows:

The rationale for the rule is that if a government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The Government cannot tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations. The private life of an employee cannot be segregated from his public life. Dishonesty inevitably reflects on the fitness of the officer or employee to continue in office and the discipline and morale of the service.

Public confidence in our courts is vital to the effective functioning of the judiciary. We reiterate that court personnel who commit misconduct or dishonesty diminish the faith of the people in the judiciary's ability to dispense justice.[23]

The heavily laden responsibility of court employees in maintaining the integrity of the judiciary extends not only to the performance of their duties but to the conduct of their personal

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[22] G.R. No. 137473, August 2, 2001, 362 SCRA 304; *Nera v. Garcia*, 106 Phil. 1031 (1960).

[23] *Padua v. Paz*, A.M. No. P-00-1445, April 30, 2003, 402 SCRA 21, 31.

affairs as well. The records of the case show that the contract between V.A. Musngi Forwarders and the respondent for a hauling service was ostensibly entered into in connection with his performance of functions as an officer of the court. But even if he acted in his private capacity, he will not be absolved from liability. His offer to settle the unpaid amount of Fourteen Thousand Pesos (₱14,000.00) if his means would permit, after his suspension is lifted, will not even justify the application of compassionate justice in his favor.

Sheriffs, by the very nature of their functions, are under obligation to perform their duties honestly, faithfully and to the best of their ability; they must conduct themselves with propriety and decorum, and above all else, be above suspicion.[24]

The Court, likewise, observes that this is not the first time that a complaint for misconduct has been filed against herein respondent. In A.M. No. P-07-2327 (formerly OCA IPI No. 04-7934-P) entitled *Nena Gimena Solway,* complainant *v. Ariel P. Pascasio, Sheriff III*, MTCC Branch 5, Olongapo City, *et al.*,[25] respondent was found guilty of misconduct and was suspended for a period of three (3) months without pay with a stern warning that a repetition of the same or similar act will be dealt with more severely. Conspicuously, the previous administrative case of the respondent likewise involves a misfeasance in the performance of his function as Sheriff and based on his ignorance of the Rules of Court. It was also a case of misrepresentation in the execution process intended to instill fear in the litigants and make them yield to an execution contrary to the standards set forth by law.

Obviously, the respondent has shown a propensity to commit the same acts if given the opportunity. Respondent has not learned his lesson; neither has he demonstrated repentance for the damage he has wrought upon the complainant herein. He no longer deserves to stay in the service a minute more

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[24] Letter of Atty. Socorro M. Villamer-Basilla, Clerk of Court V, RTC, Branch 4, Legaspi City, 482 SCRA 163.

[25] A.M. No. P-07-2327, July 12, 2007.

and even his long years of stay in the government service will not tilt the balance in his favor.

WHEREFORE, respondent Ariel P. Pascasio, Sheriff III, MTCC Branch 5, Olongapo City, is found *GUILTY* of Grave Misconduct for which he is *DISMISSED FROM SERVICE* with forfeiture of all retirement benefits with prejudice to re-employment in any branch of the government including government owned or controlled corporation. He is further directed to pay complainant actual damages in the amount of Fourteen Thousand Pesos (₱14,000.00).

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

Austria-Martinez and *Corona, JJ.,* on leave.

EN BANC

[A.M. No. RTJ-08-2111. May 7, 2008]
(Formerly A.M. No. 05-2207-RTJ)

CITY OF CEBU, *complainant, vs.* **JUDGE IRENEO LEE GAKO, JR., Presiding Judge, Regional Trial Court, Branch 5, Cebu City,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL AND/OR PETITION FOR *CERTIORARI*; WHERE THE REMEDIES OF APPEAL AND/OR *CERTIORARI* ARE AVAILABLE, RECOURSE TO AN ADMINISTRATIVE COMPLAINT FOR

THE CORRECTION OF ACTIONS OF A JUDGE PERCEIVED TO HAVE GONE BEYOND THE NORMS OF PROPRIETY IS IMPROPER. — Fundamental is the rule that where the remedies of appeal and/or *certiorari* are available, recourse to an administrative complaint for the correction of actions of a judge perceived to have gone beyond the norms of propriety is improper.

2. **JUDICIAL ETHICS; JUDGES; IGNORANCE OF THE LAW; EXPLAINED. —** [F]or liability to attach for ignorance of the law, the assailed order of the judge must not only be erroneous, but most importantly, its issuance is motivated by bad faith, dishonesty, hatred or some other similar motives; because mere error of judgment is not a ground for disciplinary proceedings. To follow a different rule will mean a deluge of complaints, legitimate or otherwise, and our magistrates will be immersed in answering charges against them rather than performing their judicial functions. As we said earlier, appropriate judicial remedies are available to the complainant—an appeal or a petition for *certiorari* to assail the allegedly erroneous orders; hence, recourse to an administrative action against the judge is improper.

3. **REMEDIAL LAW; CHARGES AGAINST JUDGES; UNDUE DELAY IN RENDERING A DECISION OR ORDER, OR IN TRANSMITTING THE RECORDS OF A CASE; PENALTY. —** Section 9(1), Rule 140 of the Rules of Court classifies "undue delay in rendering a decision or order, or in transmitting the records of a case" as a less serious charge, which warrants any of the sanctions in Section 11(B) of the same rule— "1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or 2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00."

APPEARANCES OF COUNSEL

Cebu City Legal Office for complainant.

D E C I S I O N

NACHURA, *J.*:

Before the Court is an administrative complaint filed by the City of Cebu against now retired Judge Ireneo Lee Gako, Jr.[1] of the Regional Trial Court (RTC), Branch 5, Cebu City, for serious misconduct, gross ignorance of the law, willful violation of rules and laws, judicial interference, tolerating forum-shopping, and violation of the Code of Judicial Ethics.

Following established procedure, the Court initially referred the complaint to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.[2] The OCA later found the respondent judge administratively liable for undue delay in deciding Civil Case No. CEB-29570, and for gross ignorance of the law, which is tantamount to grave abuse of judicial authority, when he violated the doctrine of non-interference in Civil Case No. 30684. The OCA, therefore, recommended that the case be re-docketed as a regular administrative matter; the respondent judge be fined ₱11,000.00 and be suspended without pay for 6 months; and the motion to direct the respondent to compulsorily inhibit himself from all cases pending in his court in which complainant is a party-litigant be denied for being judicial in character.[3]

Subsequently, the Court designated Court of Appeals Associate Justice Enrico A. Lanzanas to further investigate and evaluate the charges leveled against the respondent. As summarized by the said Investigating Justice, the factual backdrop of the charges is as follows:

1) <u>Serious Misconduct and Gross Ignorance of the Law on Two Counts</u>

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[1] The respondent judge retired from the judiciary on September 20, 2006, per verification with the RTC Personnel Division, Office of Administrative Services of the OCA.

[2] *Rollo*, p. 219.

[3] *Id.* at 380.

1.a) In Civil Case. No. CEB-26607: Spouses Roque and Fatima Ting vs. City of Cebu, complainant charged respondent judge for having arrogated unto himself the duty which pertains to that of a counsel, when respondent judge called to the witness stand a certain Mr. Darza as witness of the court, when neither parties' lawyers in the said civil case were interested to present said person as their witness. During the appointed hearing, respondent judge, by himself, conducted the lengthy examination, without even making an offer of the purpose for which the witness' testimony is presented, while the counsels refused to propound any question to the witness.

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1.b) The 2nd count under this charge of misconduct, *etc*., arose from the proceedings in *Civil Case No. CEB-29570: Cebu Ports Authority (CPA) vs. City of Cebu.* Plaintiff in this case sought a temporary and permanent declaration from the court of respondent judge to enjoin Cebu City from further proceeding with the auction sale of the port and plaintiff's other properties owing to the notice and warrant of levy issued against CPA after the latter refused to pay the real property taxes assessed by the city against it. CPA claimed being exempted from its coverage.

Complainant City of Cebu accused respondent judge of procrastinating and virtually sitting on the main case of injunction, which he voluntarily promised to resolve before the end of the month (December 2003). The Order dated 12 December 2003 of respondent judge shows that he suggested not to issue a Temporary Restraining Order, but, nevertheless and quite confusingly, enjoined the parties to observe the status quo, since the decision of the court on the main case of injunction is forthcoming at the end of the month. However, the decision came only on 6 December 2004 after complainant filed an Omnibus Manifestation on 10 October 2004, reminding the judge to make good his former and own commitment. This delay cost the city of Cebu to sustain substantial damages as it miserably failed to collect real property taxes.

Complainant additionally accused respondent judge of having "calculatingly failed" to take judicial notice of a decided case [*Philippine Ports Authority (PPA) vs. City of Ilo-Ilo, G.R. No. 109791, July 14, 2003*] which the city invoked as case law for the dismissal of the complaint and, at the same time, relied upon by plaintiff CPA to champion in the latter's main cause of action. Had the respondent judge considered the case with utmost circumspection, he would have resolved the main issue at the earliest possible time in the

city's favor, the main issue in the case of *CPA v. Cebu City* having been squarely ruled upon already in the cited *PPA case*.

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2) Willful Violation of Rules and Laws, on Four (4) Counts including Two (2) Counts of Judicial Interference.

This involves four distinct actions perpetrated in separate incidents involving four cases, namely:

2.a) Civil Case No. CEB-26066: Roy Feliciano, et al. vs. City of Cebu, et al. This case is one for "Injunction, with Prayer for Issuance of Temporary Restraining Order (TRO) and Preliminary Mandatory Injunction" by reason of the defendant-city of Cebu's issuance and implementation of a Demolition Order against the houses/ structures of Feliciano, *et al*., the plaintiffs, the latter having physically and publicly occupied a road lot and sidewalk at the North Reclamation Area in Cebu City.

During the hearing for the application of TRO, Feliciano, one of the plaintiffs, who took the witness stand, admitted in open court their occupancy of the sidewalk. Article 694 of the Civil Code defines nuisance as any act, omission, establishment, business, condition of property, or anything else which, among others, obstructs or interferes with the free passage of any public highway or street. The law allows the summary demolition or removal of the structures considered as public nuisance. Thus, on the basis of plaintiff's judicial admission, that they are occupying a sidewalk, the city of Cebu filed a motion to dismiss the complaint. Instead of dismissing the complaint, respondent judge proceeded with the trial. It is for this act that complainant Cebu City in this administrative case accuses respondent judge of willful violation of the foregoing laws and rules.

It is further complained that respondent judge in this *Feliciano case* granted plaintiffs' demand to be relocated absent any law to support therefor or lacking proof in plaintiffs' pleadings that they were qualified and not disqualified beneficiaries for the relocation and settlement, as required under Sections 16 and 17 of Republic Act. No. 7279; that the afore-cited laws were completely disregarded by the respondent judge, as if they never exist. It is advanced that the act of respondent judge of tolerating plaintiffs' violation of certain requirement of the law amounts to his own violation thereof.

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2.b) Civil Case No. CEB-29550: Colon Transport Terminal, represented by its Operator, Engr. Renato C. Asegurado, and Inter

Urban PUV Terminal, represented by its Operator, Jessie S. Lasaleta, vs. Cebu City Police Traffic Group, et al. (For: Preliminary Injunction and Permanent Mandatory Injunction), referred to hereinafter as, ***first case.***

Civil Case No. CEB-29730: Mr. Jessie S. Lasaleta, doing business under the trade name and style Inter Urban PUV Terminal, vs. City of Cebu, et al. (For: Declaration of Nullity of City Ordinance No. 1958, as amended with Prayer for Permanent Injunction), ***second case*** for brevity.

2.c) Civil Case No. CEB-30411: Simplicio Giltendez, doing business under the name and style Central PUV and V-hire Terminal vs. Cebu City, et al. (For Declaration of Unconstitutionality of City Ordinance No. 1958) ***third case***, hereinafter.

Believing that Mr. Lasaleta, the plaintiff in the second case, is guilty of forum-shopping, which position is bolstered by his admission in the "Verification and Certification" attached to his complaint in the second case, a portion of which states that he reserves to withdraw his name in the first case after the filing of the second, Cebu City posits that the first and second case, or at least one of them should have been dismissed outright by respondent judge, failing which, judge Gako is guilty of willfully violating the rules proscribing forum shopping and for tolerating an act which amounts to direct contempt of court. The city asserts that this issue was raised in its Motion for Summary Judgment in the foregoing consolidated terminal cases.

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Referring to the third terminal case, additional charge is posed by complainant against the judge in granting plaintiff's application for TRO, being unfounded and without legal basis. Cebu City, as defendant therein, contended that plaintiff in said case was operating without a business permit, did not comply with the requirements of the local ordinance regulating the operation of the terminal, did not have a Memorandum of Agreement with the city to operate as such, and did not possess the necessary building permit for the structures that were being used in the operation of his business. Judge Gako's act of issuing TRO, therefore, constitutes another violation of the provisions concerning the requirement of granting injunctive relief under the Rules of Court.

Likewise, the above Order of respondent judge, granting the application for a TRO, also makes him guilty of interference and total

disrespect of what the Court of Appeals (CA) has decided in *CA-G.R. SP No. 74053.* The CA in this cited case upheld the validity of Ordinance No. 1837. In that CA decision, it was acknowledged that the city of Cebu is authorized to sort out a re-routing of the traffic flow in the spirit of the orderly implementation of the subject ordinance. Said city ordinance was the very basis of the city's re-routing scheme.

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2.d) *Civil Case No. CEB-30684: Cebu 3rd District V-Hire Operators & Drivers Multi-Purpose Cooperative, represented by Gina Virgilia A. Sanchez, vs. City of Cebu, et al.* (For Declaration of Unconstitutionality of City Ordinance No. 1958, *Mandamus* with Injunction, and Prayer for Temporary Restraining Order).

This is the fourth count, of Cebu City's charge against judge Gako, for willful violation of laws and rules, at the same time, a second count of violation for judicial interference.

Relevant to this case is *Civil Case No. CEB-27643: Cebu 3rd District V-Hire Operators & Drivers Multi-Purpose Cooperative, represented by Msgr. Jose Diapen, vs. City Counsel of Cebu City, et al.* (For Injunction with Prayer for the Issuance of TRO and Writ of Preliminary Injunction), which was raffled to Branch 58, Regional Trial Court of Cebu City, where plaintiff's applications for TRO and Writ of Preliminary Injunction were denied by the presiding judge therein, in the Orders dated 3 July 2002 and 21 October 2002. The main case being one for Injunction, the mentioned orders of denial had the effect of disposing the same, and plaintiff neither having appealed therefrom nor questioned said orders, the same already became final and executory.

Here, it is contended by Cebu City that despite its effort to bring this fact to the attention of respondent judge, the latter, in open display of judicial arrogance, interfered with these orders of a coordinate and co-equal court by giving due course to *Civil Case No. CEB-30684*, a case filed in 2004 subsequent to *CEB-27643*. Respondent's act herein likewise constitutes disrespect of a final ruling of the Court of Appeals (*CA-G.R. SP No. 74053).* Worse, said complainant, Judge Gako granted plaintiff's application of a Writ of Preliminary Injunction.

(3) Other Violations.

Complainant is referring to the alleged practice of respondent judge of resorting to "injunction-for-sale" with the active meddling of a family member; allowing parties to write decisions for him; and failure to rule on Cebu City's motions for Consolidation and Summary Judgment in the transport cases above-mentioned while allowing the other party to present evidence to prove damages, in effect, proceeding to trial proper without pre-trial.

x x x x x x x x x

(4) Violation of the Code of Judicial Ethics.

Complainant claims that the foregoing acts of respondent also infringe various canons in the Code of Judicial Conduct, *viz*.:

In the ***Ting case*** above, *Civil Case No. CEB-26607*, in addition to being constitutive of willful misconduct and gross ignorance of the law, the act of respondent judge in acting as litigant's lawyer, by obtaining the testimony of a person despite the fact that both counsels were not interested in introducing said person as their witness; and the judge's act of conducting, by himself, the direct examination thereof, violate Canon 2, Rule 2.01. of the Code of Judicial Conduct: *"A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary."*; and Canon 3 of the Canons of Judicial Ethics: *"A judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach."*

Likewise, in the ***CPA case***, *Civil Case No. CEB-29570*, respondent judge's actuation of reneging to his declaration to resolve the case within a specified period infringes Canon 1, Rule 1.02 of the same Code: *"A judge should administer justice impartially and without delay."*

Finally, to complainant, all of the foregoing charges relative to the comportment of respondent judge during the proceedings in the cited cases, which earn him the charges of Serious Misconduct and Gross Ignorance of the Law, Willful Violation of Rules and Laws, Judicial Interference on several counts, demonstrate grave incompetence; running afoul to Rule 1.01, Canon 1 of the cited Code: *"A judge should be the embodiment of competence, integrity and independence."*

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

After weighing the arguments and the evidence of the parties, the Investigating Justice found the respondent judge liable only for undue delay in deciding Civil Case No. CEB-29570, and recommended the following:

WHEREFORE, the above-discussed circumstances considered, the undersigned respectfully recommends that Judge Ireneo Lee Gako, Regional Trial Court of Cebu City, Branch 5, be SUSPENDED from office without salary and other benefits for two (2) months, for "undue delay in rendering a decision" in *Civil Case No. CEB-29570: Cebu Ports Authority vs. Cebu City*.

As regards the motion for respondent's inhibition, Judge Ireneo Lee Gako is advised to voluntarily inhibit from hearing or taking cognizance of the cases pending before him, where complainant is a party-litigant; only with respect to those cases involved in this administrative case.

x x x x x x x x x[5]

The Court upholds the findings and conclusions of the Investigating Justice, but modifies the recommended penalty.

On the charge that the respondent judge unduly arrogated unto himself the duty of a counsel, in Civil Case No. CEB-26607, by calling a witness to the stand and conducting the latter's direct testimony even if the respective counsels were not interested or did not intend to present said person as their witness, the Court finds nothing irregular in the same. Revealed in the hearings of the said case is that the respondent judge intended to obtain enlightenment from the said witness, the project director of one of the signatories to the contract being litigated.[6] In not a few cases, this Court has declared that the trial judge, if he is not satisfied after hearing all the evidence adduced by the parties, may, in the exercise of sound discretion, on his

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[4] Report and Recommendation (In Re: Administrative Matter OCA IPI No. 05-2207-RTJ), pp. 2-11.

[5] *Id*. at 19-20.

[6] *Id*. at 58 and 78.

own motion and in furtherance of justice, call additional witnesses or recall some or the same witnesses for the purpose of questioning them himself to enlighten him on particular facts or issues involved in the case.[7]

As to the four charges of willful violation of laws and rules, the Court finds them without merit. The complainant failed to clearly prove error or ill will on the part of the respondent judge in denying the motion to dismiss Civil Case No. CEB-26066. Granting that respondent erred in denying the motion, the complainant should have appealed or petitioned for the issuance of a writ of *certiorari*. Fundamental is the rule that where the remedies of appeal and/or *certiorari* are available, recourse to an administrative complaint for the correction of actions of a judge perceived to have gone beyond the norms of propriety is improper.[8]

We extend the same treatment to the other charges leveled against the respondent particularly those involving his acts in Civil Case Nos. CEB-29550, CEB-29730, CEB-30411 and CEB-30684. The Court finds neither malicious nor corrupt motive in respondent's non-dismissal of Civil Case Nos. CEB-29550 and CEB-29730 on account of forum shopping. No viciousness can further be presumed from respondent judge's issuance of a temporary restraining order in Civil Case No. CEB-30411, considering that the grant of the injunctive relief in that case was preceded by a thorough consideration of the positions of the parties after the conduct of a hearing.[9] On the charges of judicial interference and disrespect towards a decision of the appellate court, specifically those involving Civil Case Nos. CEB-30411 and CEB-30684, we find the same unavailing. The city ordinance being assailed in these civil cases, as shown by

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[7] *People v. Velasco*, 367 Phil. 191, 208 (1999); *Arce v. Arce*, 106 Phil. 630, 634-635 (1959); *U.S. v. Base*, 9 Phil. 48, 51 (1907); and *U.S. v. Cinco*, 8 Phil. 388, 390 (1907).

[8] *Officers and Members of the Integrated Bar of the Philippines, Baguio-Benguet Chapter v. Pamintuan*, A.M. No. RTJ-02-1691, November 19, 2004, 443 SCRA 87, 98-99.

[9] *Rollo*, pp. 94-96; Annex "I" of the Complaint.

the parties' pleadings, is different from those in the earlier 2002 case (Civil Case No. CEB-27643) and in the CA decision alleged to have been interfered with.[10] With regard to the respondent judge's failure to rule on complainant's motion for consolidation and summary judgment, the facts and circumstances are inadequate to conclude that there was irregularity or misconduct in the said act.

We note at this point that, for liability to attach for ignorance of the law, the assailed order of the judge must not only be erroneous, but most importantly, its issuance is motivated by bad faith, dishonesty, hatred or some other similar motives; because mere error of judgment is not a ground for disciplinary proceedings.[11] To follow a different rule will mean a deluge of complaints, legitimate or otherwise, and our magistrates will be immersed in answering charges against them rather than performing their judicial functions. As we said earlier, appropriate judicial remedies are available to the complainant—an appeal or a petition for *certiorari* to assail the allegedly erroneous orders; hence, recourse to an administrative action against the judge is improper.

As to the "other violations"—the purported "injunction-for-sale" and the writing of decisions by the parties themselves, we dismiss the accusations for being hearsay. Other than the bare allegations of the complainant, no evidence has been introduced to support the charges. The presumption of regularity in the respondent's performance of his official duties remains.

The Court, nonetheless, finds respondent to have transgressed Canon 3[12] of the Code of Judicial Conduct when he did not resolve Civil Case No. CEB-29570 within the constitutionally mandated time frame. His insistence that his decision was not

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[10] See *rollo*, pp. 26, 154 and 179, in which the parties disclosed in their pleadings the various subjects of the ordinances being questioned.

[11] *Villanueva-Fabella v. Lee*, A.M. No. MTJ-04-1518, January 15, 2004, 419 SCRA 440, 449.

[12] Specifically, Rule 3.05, which states: "A judge shall dispose of the court's business promptly and decide cases within the required periods."

delayed because a settlement between the parties was imminent, thus, he need not render a decision, does not persuade the Court. The records show that on December 12, 2003 the respondent judge declared that he would resolve the case within the month as the issue involved was purely legal. He then ordered the parties to observe the *status quo* despite his further declaration that he would not rule on the application for injunction.[13] By this order, the parties were made to understand that the case was already for final resolution or decision.

The records, nevertheless, are devoid of any order from the respondent judge, from December 12, 2003 to September 26, 2004, that suspended the proceedings on account of the possibility of a compromise by the parties. We note that the discussion on a settlement came about only on September 27, 2004 when a party-plaintiff offered ₱25M to the defendant to buy peace.[14] Taking into consideration the 90-day period to decide the case,[15] we conclude that the respondent judge should have resolved it within December 12, 2003 to March 12, 2004. Respondent, however, rendered his decision only on December 6, 2004, or after a delay of almost 9 months. The Court finds no valid justification for the said delay, thus, respondent judge is adjudged guilty of undue delay in rendering a decision in the said civil case.

Section 9(1), Rule 140[16] of the Rules of Court classifies "undue delay in rendering a decision or order, or in transmitting the records of a case" as a less serious charge, which warrants any of the sanctions in Section 11(B) of the same rule—

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

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[13] *Rollo*, pp. 87, 140.

[14] *Id*. at 142.

[15] CONSTITUTION, Art. VIII, Sec. 15(1).

[16] As amended by A.M. No. 01-8-10-SC, September 11, 2001.

As aforesaid, the Investigating Justice, in this case, recommended the penalty of suspension for 2 months without salary and other benefits. The Court cannot, however, adopt the said recommended penalty considering that the respondent already retired from the judiciary on September 20, 2006. The Court emphasizes at this point that respondent's retirement from office does not render the present administrative case moot and academic; neither does it free him from liability. Since complainant filed the case when respondent was still in the service, the Court retains the authority to investigate and resolve the administrative complaint against him.[17]

Were it not for his retirement, we would have been inclined to adopt the heavier penalty of suspension in view of our previous warnings to him not to commit further infraction.[18] In lieu thereof, the Court imposes a fine of ₱40,000.00 on the respondent. The fine that we impose shall then be deducted from his retirement benefits.

Incidentally, during the pendency of this case, complainant by motion[19] sought an order from this Court directing respondent judge to inhibit himself from handling all the pending cases in his branch in which the complainant is a party-litigant. In view, however, of the respondent's retirement, this issue has already become moot and academic.

As a final note, we reiterate our incessant reminder that all members of the bench should comport themselves blamelessly in order to advance public confidence in the integrity and impartiality of the judiciary.

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[17] See *Cabarloc v. Cabusora*, 401 Phil. 376, 385 (2000).

[18] In *Rallos v. Judge Lee Gako, Jr.*, 385 Phil. 4 (2000), respondent was held guilty of grave abuse of authority and partiality aggravated by dishonesty for which he is ordered to pay a fine of ₱10,000.00. In *Zamora v. Judge Gako, Jr.*, 398 Phil. 60 (2000), he was found guilty of gross ignorance of the law and hence suspended for 3 months without pay. And in *Lagcao v. Gako, Jr.*, A.M. NO. RTJ-04-1840, August 2, 2007, 529 SCRA 55, he was found guilty of grave abuse of authority for defying a decision of a higher court and was ordered to pay a fine of ₱20,000.00 to be deducted from his retirement benefits.

[19] *Rollo,* pp. 222-233.

WHEREFORE, retired Judge Ireneo Lee Gako of the Regional Trial Court of Cebu City, Branch 5, is hereby found *GUILTY* of "undue delay in rendering a decision" in Civil Case No. CEB-29570. Respondent is *ORDERED* to pay the *FINE* of Forty Thousand Pesos (₱40,000.00) to be deducted from his retirement benefits.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Leonardo-de Castro, and *Brion, JJ.,* concur.

Reyes, J., C.J. certify that *J.* Reyes voted in favor of the decision.

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

Austria-Martinez and *Corona, JJ.,* on leave.

FIRST DIVISION

[G.R. No. 135466. May 7, 2008]

REPUBLIC OF THE PHILIPPINES, represented by the PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, and DOMESTIC SATELLITE PHILIPPINES, INC., *petitioners, vs.* **INVESTA CORPORATION, IGNACIO D. DEBUQUE, JR., RODRIGO A. SILVERIO, CENON CERVANTES, JR., LUZ L. YAP, POMPEYO C. NOLASCO, NILO B. PEÑA, LEONARDO GODINEZ, ROSOL INTERNATIONAL, INC., and MLI REALTY & DEVELOPMENT, INC.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; TRANSITORY PROVISIONS; PRESIDENTIAL COMMISSION ON GOOD

GOVERNMENT; JURISDICTION, DEFINED.— *Presidential Commission on Good Government v. Peña* defined the Sandiganbayan's jurisdiction over the PCGG in the exercise of the PCGG's powers under the applicable Executive Orders and the Constitution, thus: Under Section 2 of the President's Executive Order No. 14 issued on May 7, 1986, all cases of the Commission regarding the "Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents or Nominees" whether civil or criminal, are lodged within the "exclusive and original jurisdiction of the Sandiganbayan" and **all incidents arising from, incidental to, or related to, such cases necessarily fall likewise under the Sandiganbayan's exclusive and original jurisdiction,** subject to review on *certiorari* exclusively by the Supreme Court.

2. **ID.; ID.; ID.; ID.; ID.; DUTY TO ENSURE SEQUESTERED PROPERTIES ARE NOT DISSIPATED UNDER ITS WATCH.—** The power to sequester ill-gotten wealth is one of the powers granted to PCGG. A conservator of sequestered shares has the duty to ensure that the sequestered properties are not dissipated under its watch. In *Bataan Shipyard & Engineering Co., Inc. v. PCGG,* we stated that: By the clear terms of the law, the power of the PCGG to *sequester property* claimed to be "ill-gotten" means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and any records pertaining thereto may be found, including "business enterprises and entities," —for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving, the same—until it can be determined through appropriate judicial proceedings, whether the property was in truth "ill-gotten," *i.e.,* acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks, or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State.

3. **ID.; ID.; ID.; ID.; ID.; ID.; PCGG MAY EXERCISE SOME MEASURE OF CONTROL IN THE OPERATION, RUNNING OR**

MANAGEMENT OF THE BUSINESS ITSELF.— In PCGG's exercise of its role as conservator of a going concern such as Domsat, the PCGG "may in this case exercise some measure of control in the operation, running or management of the business itself." There should be no hasty, indiscriminate, unreasoned replacement or substitution of management officials or change of policies, particularly in respect of viable establishments. In fact, such a replacement or substitution should be avoided if at all possible, and undertaken only when justified by demonstrably tenable grounds and in line with the stated objectives of the PCGG. And it goes without saying that where replacement of management officers may be called for, the greatest prudence, circumspection, care and attention should accompany that undertaking to the end that truly competent, experienced and honest managers may be recruited.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Bacorro & Soriano for R.A. Silverio.
Quasha Ancheta Peña & Nolasco for N. Peña & P.C. Nolasco.
Ignacio D. Debuque, Jr. for other respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Order[2] promulgated on 17 March 1998 and the Resolution [3] promulgated on 28 August 1998 of the Sandiganbayan in Civil Case No. 0182, *Republic*

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 37-40. Penned by Associate Justice Harriet O. Demetriou with Associate Justices German G. Lee, Jr. and Godofredo L. Legaspi, concurring.

[3] *Id*. at 41-42. Penned by Associate Justice Edilberto G. Sandoval with Associate Justices Anacleto D. Badoy, Jr. and Godofredo L. Legaspi, concurring.

of the Philippines v. Investa Corporation, et al. The Sandiganbayan dismissed the case filed by the Presidential Commission on Good Government (PCGG) on behalf of the Republic of the Philippines (Republic) and Domestic Satellite Philippines, Inc., (Domsat) (collectively, petitioners) for lack of jurisdiction. The Sandiganbayan ruled that the acts of the Board of Directors of Domsat, which the Republic claims amount to fraud, are proper subjects of an intracorporate dispute which lies with the jurisdiction of the Securities and Exchange Commission (SEC) and not with the Sandiganbayan.

The Facts

The PCGG, by authority of Executive Order Nos. 1 and 2, issued two orders for the sequestration and immediate takeover of Domsat in 1986. On 14 March 1986,[4] the PCGG requested Mr. Carlos M. Farrales (Farrales) to "sequester and immediately take-over" Domsat, as well as all assets, funds, and records thereof, and to be the Officer-in-Charge of Domsat. The PCGG also requested Farrales to "immediately freeze all the withdrawals, transfers, and/or remittances from the funds of [Domsat] under any type of deposit accounts, trust accounts or placements, with the exception of those which are necessary for maintaining the ordinary course of business." On 11 April 1986,[5] the PCGG named Roberto S. Benedicto (Benedicto), Jose L. Africa (J. Africa), Victor A. Africa, and Alfredo L. Africa as the owners and controllers of the shares in Domsat which should be under sequestration. The PCGG further ordered that "[t]here shall be no removal, transfer, concealment, hypothecation or any form of disposition of the above-referred shares and emoluments or benefits therefrom until further orders of this Commission."

Domsat was incorporated in 1975 with an authorized capital stock of ₱20 million divided into 200,000 shares with a par value of ₱100 per share. The incorporators divided the shares among themselves as follows:

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[4] *Id.* at 108.

[5] *Id.* at 109.

Incorporator	Subscribed Shares	Amount of Subscription	Amount Paid Up
Ramon Cojuangco	4,000	₱400,000	₱100,000
Paterno M. Kintanar	4,000	₱400,000	₱100,000
Enrique D. Perez	4,000	₱400,000	₱100,000
Manuel H. Nieto, Jr.	4,000	₱400,000	₱100,000
Roberto S. Benedicto	4,000	₱400,000	₱100,000
Jose L. Africa	4,000	₱400,000	₱100,000
Alejandro L. Lukban	4,000	₱400,000	₱100,000
Francisca de Leon	4,000	₱400,000	₱100,000
Salvador Tan	4,000	₱400,000	₱100,000
Caridad Cruz	2,000	₱200,000	₱50,000
Vicente Esguerra	2,000	₱200,000	₱50,000
Total	40,000	₱4,000,000	₱1,000,000[6]

At the time of the issuance of the sequestration orders, the shares in Domsat were distributed as follows:

Stockholder	Shares	Equity Percentage
Jose L. Africa	4,000	10%
Roberto S. Benedicto	4,000	10%
Oscar Africa	1	
Antonio Cojuangco	1	
Exequiel Garcia	4,000	10%
Antonio Gomez	4,000	10%
Manuel H. Nieto, Jr.	8,800	22%
Enriquez Perez	1	
PLDT	7,197	18%
Francisca Benedicto	8,000	20%
Total	40,000	100%[7]

[6] See *id*. at 55.

[7] See *id*. at 56.

The PCGG sequestered the Domsat shares in the names of Exequiel Garcia, Antonio Gomez, Francisco Benedicto, Oscar Africa, and Enriquez Perez as nominees of Benedicto. The PCGG also sequestered the shares of Manuel H. Nieto, Jr. (Nieto).

In 1987, the Republic, represented by the PCGG, filed Civil Case No. 9 before the Sandiganbayan, which is a complaint for reconveyance, reversion, restitution, accounting and damages against Benedicto, J. Africa, and Nieto as well as against Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Juan Ponce Enrile, and Potenciano Ilusorio. The Republic alleged that all assets and properties sequestered by the PCGG are ill-gotten or fruits of ill-gotten wealth of Ferdinand E. Marcos and Imelda R. Marcos and are being held by their co-defendants in trust for and for the benefit of the Marcos spouses, thus all these assets and properties must be reverted and reconveyed to the Republic. The assets and properties in Civil Case No. 9 included the shares of stock in Domsat.

In 1989, three years after the issuance of the sequestration orders, Domsat elected a new Board of Directors whom the Republic alleged are nominees of Benedicto, J. Africa, and Nieto. On 27 September 1989, the new Domsat Board of Directors entered into a Memorandum of Agreement on Engagement of Management Consultancy and Investment Advisory Services (management contract) with Investa Corporation (Investa) to be made effective as of 25 July 1989. The management contract stated that Investa will be paid, out of Domsat's unsubscribed and unissued shares, with full value Domsat shares computed at par at the rate of one million pesos, or ten thousand shares, per semester effective 25 July 1989. As of 29 August 1989, Domsat reserved 49,200 shares for Investa. Investa eventually subscribed to these shares.

Investa's percentage share in the ownership of Domsat grew as the years passed. As of 30 June 1993, Investa owned 39.5% of the Domsat shares, valued at ₱7.9 million. The Republic, on the other hand, held only 17% of the shares, 9.6% of which were ceded by Benedicto and his nominees while the remaining

6.4% were sequestered from the Africas and Nieto. At the time PCGG filed the present case before the Sandiganbayan on 3 March 1998, the Republic allegedly held only 15.998% of Domsat's shares compared to Investa's 75%.

The Sandiganbayan's Second Division issued an order on 17 March 1998. The Sandiganbayan summarized the allegations of the parties as follows:

> A careful and thorough analysis of the facts of the case reveals that the causes of action of the [Republic and Domsat] are anchored on their belief that the [management contract) which was entered into by and between [Domsat] thru a set of directors, a majority of whom were allegedly nominees of Roberto S. Benedicto, Jose L. Africa and Manuel H. Nieto, ***and*** Investa Corporation (Investa); [Investa's] eventual control over [Domsat's] Board of Directors and management and its subsequent acts of holding the annual stockholder's meeting on March 6, 1991 without notice to the [PCGG]; the Board's issuance and disposal of all the unsubscribed and unissued 100,000 shares of capital stocks valued at ₱10 million; and lately, the Board's proposed amendments to the Domsat's Articles of Incorporation, *viz*, Second Article expanding the Statement of Purposes; Sixth Article increasing the number of directors from nine (9) to fifteen (15) and Seventh Article increasing the authorized capital stock of the corporation from ₱20 million to ₱2 billion are all fraudulent schemes to carry out a plot against the sequestration of and to weaken the hold of the Republic (thru the PCGG) on the sequestered shares of Domsat. In fact, the questioned acts have allegedly diluted the Republic's shareholdings from 32.79% in equity to 15.998%. In effect, the [Republic and Domsat] accordingly suffered losses or damages – both compensatory and nominal.[8]

<u>The Ruling of the Sandiganbayan</u>

The Sandiganbayan dismissed the petition *motu proprio* on the sole ground of lack of jurisdiction. We quote its ruling below.

> In fine, the dispute in the case at bar concerns acts of the board of directors which the [Republic and Domsat] claim amount to fraud and consequently, detrimental to the interest of Domsat stockholders, more particularly the Republic as regards the sequestered shares.

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[8] *Id*. at 37-38.

This is also an intracorporate dispute well within the jurisdiction of the [SEC] pursuant to Section 5, paragraphs (a) and (b) of PD 902-A, as amended, which states:

> *SECTION 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, x x x registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:*
>
> *(a) Devises or schemes employed by or any acts of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or the stockholders, partners, members of associations or organizations registered with the Commission.*
>
> *(b) Controversies arising out of the intracorporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members, or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity.*
>
> *x x x x x x x x x*

This does not pertain or relate to funds, moneys, assets and properties illegally acquired or misappropriated by former President Ferdinand Marcos, his family, cronies or dummies. Neither does it involve an incident arising from, incidental to, or related to any case involving such property over which the Sandiganbayan has no [sic] concern.

WHEREFORE, premises considered, the [Republic and Domsat's] petition for issuance of a temporary restraining order is denied for lack of merit and the instant case is dismissed motu proprio for lack of jurisdiction.

SO ORDERED.[9]

The Sandiganbayan denied[10] the Republic and Domsat's motion for reconsideration for lack of merit.

[9] *Id*. at 38-40. Citations omitted.

[10] *Id*. at 41-42.

The Issue

The petition presented only one ground for our consideration: Does the Sandiganbayan have jurisdiction over Civil Case No. 0182?

Respondents Rodrigo A. Silverio and Robert W. Medel (Medel) and respondents Nilo B. Peña and Pompeyo C. Nolasco, in their separate comments, merely repeated the relevant portion of the Sandiganbayan's order and insisted that the Sandiganbayan knows the extent of its jurisdiction. However, respondent Investa's memorandum, filed through Ignacio D. Debuque, Jr., ignored the issue of the Sandiganbayan's jurisdiction. Investa instead asked whether PCGG had knowledge of the progressive increase of Domsat's subscribed and paid-in capital stock and whether PCGG had knowledge that Investa, as the new stockholder, was responsible for the said increase.

The Ruling of the Court

The petition has merit.

The Extent of the Sandiganbayan's Jurisdiction over the PCGG

Presidential Commission on Good Government v. Peña[11] defined the Sandiganbayan's jurisdiction over the PCGG in the exercise of the PCGG's powers under the applicable Executive Orders and the Constitution, thus:

> Under Section 2 of the President's Executive Order No. 14 issued on May 7, 1986, all cases of the Commission regarding the "Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents or Nominees" whether civil or criminal, are lodged within the "exclusive and original jurisdiction of the Sandiganbayan" and **all incidents arising from, incidental to, or related to, such cases necessarily fall likewise under the Sandiganbayan's exclusive and**

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[11] No. 77663, 12 April 1988, 159 SCRA 556. See also *Soriano III v. Yuzon*, No. 79520, 10 August 1988, 164 SCRA 227.

original jurisdiction, subject to review on *certiorari* exclusively by the Supreme Court.[12] (Emphasis added)

The present case involves the question of the propriety of dilution of the Republic's shares in Domsat. The Sandiganbayan cited *San Miguel Corporation v. Kahn*[13] (*San Miguel*) in its footnotes to support its ruling. However, contrary to the Sandiganbayan's ruling, we find that *San Miguel* does not stand on all fours with the present case.

In *San Miguel*, Eduardo De los Angeles (De los Angeles) was one of the PCGG representatives in the Board of Directors of San Miguel Corporation (SMC). De los Angeles owned 20 shares in his name and was elected to the SMC Board by the 33,133,266 SMC shares sequestered by PCGG. De los Angeles questioned the SMC Board's resolution to assume the loans of Neptunia Co., Ltd. (Neptunia), SMC's indirectly wholly owned subsidiary. When De los Angeles' efforts to obtain relief from SMC and PCGG proved futile, he filed a derivative suit with the SEC. Ernest Kahn moved to dismiss De los Angeles' derivative suit on two grounds, one of which stated that the SEC had no jurisdiction over the controversy because the matters involved are strictly within the business judgment of SMC's Board of Directors.

The SEC ruled in favor of De los Angeles and stated, among others, that the SEC always has competence to inquire into situations where business judgment transgresses the law. However, the Court of Appeals overturned the SEC's ruling. The Court of Appeals ruled that De los Angeles had no legal capacity to institute the derivative suit because (1) De los Angeles' ownership in his name of 20 shares out of 121,645,680 outstanding shares of SMC does not adequately represent the interest of the minority stockholders; (2) De los Angeles' position as PCGG-nominated director is inconsistent with his desire to represent minority stockholders; (3) the PCGG can only exercise powers of administration over sequestered property; and (4) De los Angeles' suit is not brought for the benefit of SMC.

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[12] *Id*. at 561-562. Citations omitted.

[13] G.R. No. 85339, 11 August 1989, 176 SCRA 447.

We ruled in favor of De los Angeles in his appeal before this Court. We found that De los Angeles' ownership of SMC shares in his name was sufficient to authorize him to bring suit. De los Angeles' act was also not contrary to PCGG's position. Moreover, De los Angeles' complaint was confined to the validity of SMC's assumption of the indebtedness of Neptunia and did not even inquire about the ownership of the SMC shares sequestered by PCGG. We then stated that the acts of the board of directors which are claimed to amount to fraud and to be detrimental to the interest of the sequestered corporation constitute an intracorporate dispute within the jurisdiction of the SEC even though a PCGG representative filed the case.

In the present case, the PCGG, as conservator of the sequestered Domsat shares, questions the dilution of the said shares brought about by the management contract between Domsat and Investa. The management contract allegedly diluted the Republic's shareholdings in Domsat from 32.79% to 15.998%.

The power to sequester ill-gotten wealth is one of the powers granted to PCGG.[14] A conservator of sequestered shares has the duty to ensure that the sequestered properties are not dissipated under its watch. In *Bataan Shipyard & Engineering Co., Inc. v. PCGG,*[15] we stated that:

By the clear terms of the law, the power of the PCGG to *sequester property* claimed to be "ill-gotten" means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and any records pertaining thereto may be found, including "business enterprises and entities,"—for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving, the same—until it can be determined through appropriate judicial proceedings, whether the property was in truth "ill-gotten," *i.e.*, acquired through or as a result of improper or illegal use of or the conversion of funds belonging

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[14] See Executive Order No. 1 (1986); Executive Order No. 2 (1986); Executive Order No. 14 (1986); Executive Order No. 14-A (1986); Rules and Regulations Implementing Executive Order Nos. 1 and 2 (1986).

[15] G.R. No. 75885, 27 May 1987, 150 SCRA 181.

to the Government or any of its branches, instrumentalities, enterprises, banks, or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State.[16]

In PCGG's exercise of its role as conservator of a going concern such as Domsat, the PCGG "may in this case exercise some measure of control in the operation, running or management of the business itself."[17]

There should be no hasty, indiscriminate, unreasoned replacement or substitution of management officials or change of policies, particularly in respect of viable establishments. In fact, such a replacement or substitution should be avoided if at all possible, and undertaken only when justified by demonstrably tenable grounds and in line with the stated objectives of the PCGG. And it goes without saying that where replacement of management officers may be called for, the greatest prudence, circumspection, care and attention should accompany that undertaking to the end that truly competent, experienced and honest managers may be recruited.[18]

In light of the above, we hold that the PCGG's act of questioning the resulting dilution of the sequestered Domsat shares brought about by the management contract between Domsat and Investa properly lies within the jurisdiction of the Sandiganbayan. The present case clearly pertains to the percentage share of the Republic in Domsat as represented by the sequestered Domsat shares. The Domsat shares are properties which the Republic claims to be illegally acquired or misappropriated by former President Ferdinand E. Marcos, his family, cronies, or dummies. The Sandiganbayan should now rule upon the propriety of the management contract, and consider the issues raised by Investa in their memorandum before this Court.

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[16] *Id*. at 208-209.

[17] *Id*. at 237.

[18] *Id*. at 237-238.

WHEREFORE, the petition is *GRANTED*. The Order promulgated on 17 March 1998 and the Resolution promulgated on 28 August 1998 of the Sandiganbayan in Civil Case No. 0182 are *SET ASIDE*. The Sandiganbayan is *DIRECTED* to take cognizance of Civil Case No. 0182.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 151970. May 7, 2008]

WINSTON MENDOZA and FE MICLAT, *petitioners, vs.* **FERNANDO ALARMA and FAUSTA ALARMA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROCEDURE TO BE FOLLOWED BEFORE A BAIL BOND MAY BE FORFEITED AND A JUDGMENT ON THE BOND RENDERED AGAINST THE SURETY.—** The provision clearly provides for the procedure to be followed before a bail bond may be forfeited and a judgment on the bond rendered against the surety. In *Reliance Surety & Insurance Co., Inc. v. Amante, Jr.*, we outlined the two occasions upon which the trial court judge may rule adversely against the bondsmen in cases when the accused fails to appear in court. First, the non-appearance by the accused is cause for the judge to summarily declare the bond as forfeited. Second, the bondsmen, after the summary

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* As replacement of Justice Renato C. Corona who is on leave per Administrative Circular No. 84-2007.

forfeiture of the bond, are given 30 days within which to produce the principal and to show cause why a judgment should not be rendered against them for the amount of the bond. It is only after this 30-day period, during which the bondsmen are afforded the opportunity to be heard by the trial court, that the trial court may render a judgment on the bond against the bondsmen. Judgment against the bondsmen cannot be entered unless such judgment is preceded by the order of forfeiture and an opportunity given to the bondsmen to produce the accused or to adduce satisfactory reason for their inability to do so.

2. **ID.; ID.; ID.; IN CASE AT BAR, EXECUTION WAS ISSUED SIMPLY AND SOLELY ON THE DECLARATION OF FOREFEITURE.—** In the present case, it is undisputed that the accused failed to appear in person before the court and that the trial court declared his bail forfeited. The trial court gave the bondsmen, respondents in this case, a 30-day period to produce the accused or a reasonable explanation for their non-production. However, two years had passed from the time the court ordered the forfeiture and still no judgment had been rendered against the bondsmen for the amount of the bail. Instead, an order of execution was issued and the property was put up for sale and awarded to petitioners, the highest bidders. These turn of events distinctly show that there was a failure of due process of law. The execution was issued, not on a judgment, because there was none, but simply and solely on the declaration of forfeiture.

3. **ID.; ID.; ID.; ID.; CONFISCATION OF BOND DIFFERENTIATED FROM JUDGMENT ON THE BOND.—** An order of forfeiture of the bail bond is conditional and interlocutory, there being something more to be done such as the production of the accused within 30 days. This process is also called confiscation of bond. In *People v. Dizon*, we held that an order of forfeiture is interlocutory and merely requires appellant "to show cause why judgment should not be rendered against it for the amount of the bond." Such order is different from a judgment on the bond which is issued if the accused was not produced within the 30-day period. The judgment on the bond is the one that ultimately determines the liability of the surety, and when it becomes final, execution may issue at once. However, in this case, no such judgment was ever issued and neither has an

amount been fixed for which the bondsmen may be held liable. The law was not strictly observed and this violated respondents' right to procedural due process.

4. **ID.; CIVIL PROCEDURE; EXECUTION; THE COURT HAD RULED UPON THE INVALIDITY OF THE EXECUTION AND SALE OF THE LAND IN A PREVIOUS CASE; RECONVEYANCE ONLY PROPER UNDER THE CIRCUMSTANCES.—** In addition, we find that the issue of good faith in buying the property at the auction sale is no longer material. This Court in a previous case had already ruled upon the invalidity of the execution and sale of the land. As a result, the basis for which title to the land had been issued has no more leg to stand on. The appellate court, therefore, was correct in ordering the annulment of the title to the land as a matter of course. There being no valid title nor any right to possess the land, reconveyance to the respondents is only proper under the circumstances.

APPEARANCES OF COUNSEL

Trieste & Mendoza Law Office for petitioners.
Cesar E. Balonzo for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated 9 July 2001 and Resolution[3] dated 30 January 2002 of the Court of Appeals in CA-G.R. CV No. 58139.

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[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 38-42. Penned by Justice Presbitero J. Velasco, Jr. (now a member of this Court) with Justices Bienvenido L. Reyes and Juan Q. Enriquez, Jr., concurring.

[3] *Id.* at 44-45. Penned by Justice Bienvenido L. Reyes with Justices Alicia L. Santos and Juan Q. Enriquez, Jr., concurring.

The Facts

Spouses Fernando and Fausta Alarma (respondents) are the owners of an 11.7 hectare parcel of land (land) located in Iba, Zambales. The land, identified as Cadastral Lot No. 2087 of Iba Cadastre, was posted as a property bond for the provisional liberty of a certain Joselito Mayo, charged with illegal possession of firearms in Criminal Case No. 1417-I, entitled "*People of the Philippines v. Gregorio Cayan, et al*."

When the accused failed to appear in court as directed on 19 March 1984, the trial court ordered his arrest and the confiscation of his bail bond in favor of the government. It also directed the bondsmen to produce within a period of 30 days the person of the accused and to show cause why judgment should not be entered against the bail bond. However, without a judgment being rendered against the bondsmen, the trial court issued a writ of execution against the land in an Order dated 14 April 1986.[4] The land was eventually sold at public auction and petitioners Winston Mendoza and Fe Miclat emerged as the highest bidders. Thus, the land was awarded to petitioners and they immediately took possession of the same.

Sometime thereafter, respondents filed a complaint for recovery of property against petitioners with the Regional Trial Court of Iba, Zambales, Branch 70,[5] grounded on the nullity of the entire proceedings relating to the property bond. During the pre-trial conducted on 3 May 1988, the parties agreed that the property would be placed in the possession of respondents. On 2 August 1989, the court rendered its decision dismissing the complaint and declaring that the Order dated 14 April 1986 was a judgment on the bond.

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[4] Records, p. 54. The dispositive portion reads:

Finding merit in the motion for execution on the bailbond dated 30 January 1986, filed by Trial Fiscal Benjamin A. Fadera, the same is hereby granted.

WHEREFORE, as prayed for, let a writ of execution against the properties posted as bailbond of Joselito Mayo be issued and let said properties be confiscated in favor of the government.

[5] Docketed as Civil Case No. RTC-482-I.

On appeal, the appellate court reversed the decision of the trial court and nullified the proceedings on the execution, sale, and issuance of the writ of possession.[6] Thereafter, petitioners filed a petition for review on *certiorari* with this Court, docketed as G.R. No. 101103 and entitled "*Winston Mendoza, et al. v. Court of Appeals, et al*." In a Resolution dated 18 March 1992, this Court denied the petition and ruled with finality that the assailed 14 April 1986 Order was not a judgment on the bond.[7]

Meanwhile, petitioners applied for the registration of the land with the Regional Trial Court of Iba, Zambales, Branch 70.[8] On 9 September 1987, the trial court granted the registration and issued Original Certificate of Title (OCT) No. O-7249 in the name of petitioners.

The Trial Court's Ruling

Respondents then filed an action for the annulment of title and reconveyance of ownership of the land covered by OCT No. O-7249 with the Regional Trial Court of Iba, Zambales, Branch 71.[9] On 24 September 1997, the trial court dismissed the action contending that it had no jurisdiction to annul the judgment rendered by the Regional Trial Court of Iba, Zambales, Branch 70, a co-equal court.[10] The trial court declared further that since the issue of the case was the validity of OCT No. O-7249, the case should have been filed with the Court of Appeals which has exclusive original jurisdiction over annulment of judgments of a Regional Trial Court.

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[6] Records, pp. 5-11. Docketed as CA-G.R. CV No. 26547. Penned by Justice Jose A.R. Melo (retired) with Justices Emeterio C. Cui (retired) and Regina G. Ordoñez-Benitez, concurring.

[7] *Id*. at 12-16.

[8] Docketed as Cadastral Case No. 21, LRC Cad. Rec. No. 642.

[9] Docketed as Civil Case No. RTC-1299-I.

[10] CA *rollo*, pp. 16-20.

The Ruling of the Court of Appeals

Respondents filed an appeal with the Court of Appeals which reversed the findings of the trial court and annulled OCT No. O-7249.[11] The appellate court also ordered that a new title over the property be issued in the name of respondents. Petitioners filed a Motion for Reconsideration which the appellate court denied in a Resolution dated 30 January 2002.

Hence, this petition.

The Issue

The sole issue for our resolution is whether the Court of Appeals erred in finding a defect in the proceedings and in ordering the annulment of OCT No. O-7249.

Petitioners contend that even if the execution proceedings were nullified, they were not privy to the irregularities of the auction sale. Thus, as buyers in good faith, they must be protected by the law.

Respondents, on the other hand, maintain that the basis for the acquisition of the land and the issuance of title over it had already been declared void by this Court in G.R. No. 101103. Thus, petitioners cannot now claim good faith. With no valid title to the land, petitioners must reconvey the land to respondents.

The Court's Ruling

The petition lacks merit.

Section 21, Rule 114 of the Revised Rules on Criminal Procedure states:

> SEC. 21. — *Forfeiture of bail*. When the presence of the accused is required by the court or these Rules, his bondsmen shall be notified to produce him before the court on a given date and time. If the accused fails to appear in person as required, his bail shall be declared forfeited and the bondsmen given thirty (30) days within which to produce their principal and to show cause why no judgment should be rendered against them for the amount of their bail. Within the said period, the bondsmen must:

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[11] *Rollo*, pp. 38-42.

(a) produce the body of their principal or give the reason for his non-production; and

(b) explain why the accused did not appear before the court when first required to do so.

Failing in these two requisites, a judgment shall be rendered against the bondsmen, jointly and severally, for the amount of the bail. The court shall not reduce or otherwise mitigate the liability of the bondsmen, unless the accused has been surrendered or is acquitted.

The provision clearly provides for the procedure to be followed before a bail bond may be forfeited and a judgment on the bond rendered against the surety. In *Reliance Surety & Insurance Co., Inc. v. Amante, Jr.*,[12] we outlined the two occasions upon which the trial court judge may rule adversely against the bondsmen in cases when the accused fails to appear in court. First, the non-appearance by the accused is cause for the judge to summarily declare the bond as forfeited. Second, the bondsmen, after the summary forfeiture of the bond, are given 30 days within which to produce the principal and to show cause why a judgment should not be rendered against them for the amount of the bond. It is only after this 30-day period, during which the bondsmen are afforded the opportunity to be heard by the trial court, that the trial court may render a judgment on the bond against the bondsmen. Judgment against the bondsmen cannot be entered unless such judgment is preceded by the order of forfeiture and an opportunity given to the bondsmen to produce the accused or to adduce satisfactory reason for their inability to do so.[13]

In the present case, it is undisputed that the accused failed to appear in person before the court and that the trial court declared his bail forfeited. The trial court gave the bondsmen, respondents in this case, a 30-day period to produce the accused or a reasonable explanation for their non-production. However, two years had passed from the time the court ordered the forfeiture and still no judgment had been rendered against the bondsmen for the amount of the bail. Instead, an order of execution was

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[12] G.R. No. 150994, 30 June 2005, 462 SCRA 399.

[13] *Id.*, citing *United States v. Bonoan*, 22 Phil. 1 (1912).

issued and the property was put up for sale and awarded to petitioners, the highest bidders.

These turn of events distinctly show that there was a failure of due process of law. The execution was issued, not on a judgment, because there was none, but simply and solely on the declaration of forfeiture.

An order of forfeiture of the bail bond is conditional and interlocutory, there being something more to be done such as the production of the accused within 30 days. This process is also called confiscation of bond. In *People v. Dizon*,[14] we held that an order of forfeiture is interlocutory and merely requires appellant "to show cause why judgment should not be rendered against it for the amount of the bond." Such order is different from a judgment on the bond which is issued if the accused was not produced within the 30-day period. The judgment on the bond is the one that ultimately determines the liability of the surety, and when it becomes final, execution may issue at once.[15] However, in this case, no such judgment was ever issued and neither has an amount been fixed for which the bondsmen may be held liable. The law was not strictly observed and this violated respondents' right to procedural due process.

In addition, we find that the issue of good faith in buying the property at the auction sale is no longer material. This Court in a previous case had already ruled upon the invalidity of the execution and sale of the land. As a result, the basis for which title to the land had been issued has no more leg to stand on. The appellate court, therefore, was correct in ordering the annulment of the title to the land as a matter of course. There being no valid title nor any right to possess the land, reconveyance to the respondents is only proper under the circumstances.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 9 July 2001 Decision and 30 January 2002 Resolution of the Court of Appeals in CA-G.R. CV No. 58139.

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[14] 120 Phil. 953 (1964).

[15] PAMARAN, MANUEL R., *THE 1985 RULES ON CRIMINAL PROCEDURE ANNOTATED*, 1998 edition, p. 262.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 155178. May 7, 2008]

SAN MIGUEL CORPORATION, *petitioner, vs.* **ANGEL C. PONTILLAS,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; APPEARANCE OF A SECOND ATTORNEY DOES NOT RAISE THE PRESUMPTION THAT AUTHORITY OF THE FIRST ATTORNEY HAS BEEN WITHDRAWN; APPLICATION IN CASE AT BAR.—** A party may have two or more lawyers working in collaboration in a given litigation. Substitution of counsel should not be presumed from the mere filing of a notice of appearance of a new lawyer. The fact that a second attorney enters his appearance for the same party does not necessarily raise the presumption that the authority of the first attorney has been withdrawn. The entry of appearearance of Atty. Santiago should not give rise to the presumption that Atty. Cipriano withdrew his appearance as counsel in the absence of a formal withdrawal of appearance. Atty. Santiago should only be treated as collaborating counsel despite his appearance as "the new counsel of record." Petitioner even observed that the NLRC's Decision was not sent to Atty. Santiago but to Atty. Cipriano. Even in its petition before the Court, petitioner sent copies of the petition not only to Atty. Santiago but also to Atty. Cipriano, thus acknowledging that Atty. Cipriano remains as respondent's counsel. Since a lawyer is presumed to be properly

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* As replacement of Justice Renato C. Corona who is on leave per Administrative Circular No. 84-2007.

authorized to represent any cause in which he appears, Atty. Santiago is presumed to be acting within his authority as collaborating counsel when he filed the appeal from the Labor Arbiter's Decision. For as long as Atty. Santiago filed the notice of appeal within the reglementary period, reckoned from the time Atty. Cipriano received the Labor Arbiter's Decision, the NLRC did not abuse its discretion in entertaining the appeal.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; SERIOUS MISCONDUCT OR WILFUL DISOBEDIENCE AS A GROUND; ELEMENTS.—** An employer may terminate an employment for serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work. Willful disobedience requires the concurrence of two elements: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.

3. **ID.; ID.; TERMINATION OF EMPLOYMENT; EMPLOYER'S PREROGATIVE TO TRANSFER EMPLOYEE'S WORK STATION, WHEN VALID; PRESENT IN CASE AT BAR. —** The employer exercises the prerogative to transfer an employee for valid reasons and according to the requirements of its business, provided the transfer does not result in demotion in rank or diminution of the employee's salary, benefits, and other privileges. In this case, we found that the order of transfer was reasonable and lawful considering the integration of Oro Verde Warehouse with VisMin Logistics Operations. Respondent was properly informed of the transfer but he refused to receive the notices on the pretext that he was wary because of his pending case against petitioner. Respondent failed to prove that petitioner was acting in bad faith in effecting the transfer. There was no demotion involved, or even a diminution of his salary, benefits, and other privileges. Respondent's persistent refusal to obey petitioner's lawful order amounts to willful disobedience under Article 282 of the Labor Code.

APPEARANCES OF COUNSEL

Estenzo Jamora & Solon for petitioner.
Vigilius M. Santiago for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review assailing the 26 March 2002 Decision[1] and the 20 August 2002 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 50680.

The Antecedent Facts

On 24 October 1980, San Miguel Corporation (petitioner) employed Angel C. Pontillas (respondent) as a daily wage company guard. In 1984,[3] respondent became a monthly-paid employee which entitled him to yearly increases in salary. Respondent alleged that his yearly salary increases were only a percentage of what the other security guards received.

On 19 October 1993, respondent filed an action for recovery of damages due to discrimination under Article 100[4] of the Labor Code of the Philippines (Labor Code), as amended, as well as for recovery of salary differential and backwages, against petitioner, Capt. Segundino D. Fortich (Capt. Fortich), Company Security Commander and head of the Mandaue Security Department, and Director Francisco Manzon, Vice President and Brewery Director. During the mandatory conference on 23 November 1993, respondent questioned the rate of salary increase given him by petitioner.

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[1] *Rollo*, pp. 65-77. Penned by Associate Justice Eriberto U. Rosario, Jr. with Associate Justices Oswaldo D. Agcaoili and Mariano C. Del Castillo, concurring.

[2] *Id*. at 79. Penned by Associate Justice Mariano C. Del Castillo with Associate Justices Oswaldo D. Agcaoili and Danilo B. Pine, concurring.

[3] Erroneously stated as 1994 in the Labor Arbiter's Decision. CA *rollo*, p. 247.

[4] Article 100 prohibits elimination or diminution of employee benefits.

On 6 December 1993, Ricardo F. Elizagaque (Elizagaque), petitioner's Vice President and VisMin Operations Center Manager, issued a Memorandum ordering, among others, the transfer of responsibility of the Oro Verde Warehouse to the newly-organized VisMin Logistics Operations effective 1 January 1994. In compliance with Elizagaque's Memorandum, Capt. Fortich issued a Memorandum dated 7 February 1994 addressed to Comdr. Danilo C. Flores (Comdr. Flores), VisMin Logistics Operations Manager, effecting the formal transfer of responsibility of the security personnel and equipment in the Oro Verde Warehouse to Major Teodulo F. Enriquez (Major Enriquez), Security Officer of the VisMin Logistics Operations, effective 14 February 1994. Simultaneously, Capt. Fortich gave the same information to his Supervising Security Guards for them to relay the information to the company security guards.

Respondent continued to report at Oro Verde Warehouse. He alleged that he was not properly notified of the transfer and that he did not receive any written order from Capt. Fortich, his immediate superior. Respondent also alleged that he was wary of the transfer because of his pending case against petitioner. He further claimed that two other security guards continue to report at Oro Verde Warehouse despite the order to transfer.

Petitioner alleged that respondent was properly notified of the transfer but he refused to receive 14 memoranda issued by Major Enriquez from 14-27 February 1994. Petitioner also alleged that respondent was given notices of Guard Detail dated 9 February 1994 and 15 February 1994 but he still refused to report for duty at the VisMin Logistics Operations.

In a letter dated 28 February 1994, petitioner informed respondent that an administrative investigation would be conducted on 4 March 1994 relative to his alleged offenses of Insubordination or Willful Disobedience in Carrying Out Reasonable Instructions of his superior. During the investigation, respondent was given an opportunity to present his evidence and be assisted by counsel. In a letter dated 7 April 1994, petitioner informed respondent of its decision to terminate him for violating

company rules and regulations, particularly for Insubordination or Willful Disobedience in Carrying Out Reasonable Instructions of his superior.

On 15 June 1994, respondent filed an amended complaint against petitioner for illegal dismissal and payment of backwages, termination pay, moral and exemplary damages, and attorney's fees.

The Ruling of the Labor Arbiter

In a Decision dated 25 October 1996,[5] the Labor Arbiter dismissed respondent's complaint for lack of merit. The Labor Arbiter recognized the management prerogative to transfer its employees from one station to another. The Labor Arbiter found nothing prejudicial, unjust, or unreasonable to petitioner's decision to merge the functions of the Materials Management of the Mandaue Brewery and the Physical Distribution Group which resulted to the forming of the VisMin Logistics Operations. The Labor Arbiter ruled that as a consequence of the merger, the instructions and orders to all security personnel should necessarily come from the security officer of the new organization. Hence, respondent's allegation that his transfer order should come from Capt. Fortich and not from Major Enriquez was misleading. The Labor Arbiter ruled that respondent was informed of the impending merger, verbally and in writing, as early as 6 December 1993.

The Labor Arbiter further ruled that petitioner did not violate Article 100 of the Labor Code. The Labor Arbiter ruled that respondent's claim that giving him a day-off twice a month resulted to diminution of his monthly take-home pay was an erroneous interpretation of the Labor Code, which even required employers to give their employees a rest day per week. The Labor Arbiter also ruled that there was no basis for the allegation that respondent was discriminated against in the annual salary increases.

The Labor Arbiter ruled that respondent was accorded due process before his termination from the service. He was

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[5] CA *rollo*, pp. 247-260. Penned by Labor Arbiter Oscar S. Uy.

investigated with the assistance of counsel, and he was able to confront petitioner's witnesses and present evidence in his favor.

Respondent appealed from the Labor Arbiter's Decision.

The Ruling of the NLRC

In its 23 May 1997 Decision,[6] the National Labor Relations Commission (NLRC) set aside the Labor Arbiter's Decision. The NLRC ruled that respondent was not informed of his transfer from Oro Verde Warehouse to VisMin Logistics Operations. The notices allegedly sent to respondent did not indicate any receipt from respondent. The NLRC also ruled that the notations in the notices stating "Refused to sign" appeared to be written by the same person on just one occasion. The NLRC found that respondent was waiting for a formal notice from Capt. Fortich, who only instructed his Supervising Security Guard, Rodrigo T. Yocte, to remind respondent of his transfer and new assignment. The NLRC declared that the notices sent by Major Enriquez had no binding effect because he was not respondent's superior. The NLRC held that it was premature to charge respondent with insubordination for his failure to comply with the order of someone who was not his department head. The NLRC stated that respondent had good reason to continue reporting at Oro Verde Warehouse.

The NLRC further ruled that respondent was a victim of discrimination. The NLRC declared that petitioner failed to justify why respondent was not entitled to the full rate of salary increases enjoyed by other security guards.

The dispositive portion of the NLRC's Decision reads:

WHEREFORE, the decision of the Executive Labor Arbiter is hereby VACATED and SET ASIDE and judgment is hereby rendered:

1. Declaring the dismissal of complainant to be without any just cause and, therefore, illegal;

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[6] *Id*. at 47-57. Penned by Presiding Commissioner Irenea E. Ceniza with Commissioner Amorito V. Cañete, concurring and Commissioner Bernabe S. Batuhan, dissenting.

2. Ordering respondent San Miguel Corporation to reinstate the complainant to his former position without loss of seniority rights and other privileges and with full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from April 8, 1994 up to his actual reinstatement. However, should reinstatement be no longer feasible, respondent San Miguel Corporation shall pay to complainant, in addition to his full backwages, separation pay of one (1) month pay for every year of service, a period of six (6) months to be considered as one (1) whole year;

3. Ordering respondent San Miguel Corporation to pay to complainant moral damages of ₱50,000.00 and exemplary damages of ₱20,000.00; and

4. Ordering respondent San Miguel Corporation to pay to complainant the sum equivalent to ten percent (10%) of the total monetary award, for and as attorney's fees.

SO ORDERED.[7]

Petitioner filed a motion for reconsideration. In its 27 February 1998 Resolution,[8] the NLRC partially granted the motion by deleting the award of moral and exemplary damages. The NLRC ruled that there was no showing on record that the discrimination against respondent was tainted with bad faith. Thus:

WHEREFORE, in view of all the foregoing, the instant motion for reconsideration is hereby PARTIALLY GRANTED only with respect to the award of moral and exemplary damages which are hereby deleted.

SO ORDERED.[9]

Petitioner filed a petition for *certiorari* before the Court of Appeals.

The Ruling of the Court of Appeals

In its 26 March 2002 Decision, the Court of Appeals affirmed with modification the NLRC's Decision.

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[7] *Id*. at 56-57.

[8] *Id*. at 58-65, with Commissioner Batuhan maintaining his dissent.

[9] *Id*. at 65.

The Court of Appeals ruled that under Article 282(a) of the Labor Code, as amended, an employer may terminate an employment for serious misconduct or willful disobedience by the employee of the lawful orders of his employer or his representative in connection with his work. However, disobedience requires the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful or intentional, and the willfulness must be characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.

The Court of Appeals ruled that there was no sufficient evidence that would show that respondent's failure to report to his new superior was willful and characterized by a perverse and wrongful attitude. The Court of Appeals ruled that respondent was waiting for his former superior to formally inform him of his new assignment. The Court of Appeals further ruled that respondent was suspicious of petitioner's intention to transfer him in view of the pendency of the case he filed against petitioner. The Court of Appeals ruled that there was a clear indication that respondent was a victim of retaliatory measures from petitioner.

The dispositive portion of the Court of Appeals' Decision reads:

> IN VIEW OF THE FOREGOING, the assailed decision and resolution of public respondent NLRC are hereby AFFIRMED with the modification that, in lieu of reinstatement, private respondent should be paid separation pay, equivalent to one (1) month salary for every year of service. No pronouncement as to costs.
>
> SO ORDERED.[10]

Petitioner filed a motion for reconsideration. In its 20 August 2002 Resolution, the Court of Appeals denied the motion.

Hence, the petition before this Court.

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[10] *Rollo*, p. 76.

The Issue

The issue in this case is the legality of respondent's dismissal from employment.

The Ruling of this Court

The petition has merit.

Validity of Notice of Appeal

We first discuss a side issue which petitioner raises before the Court. Petitioner alleges that there was no valid substitution of respondent's counsel. Petitioner alleges that Atty. Vigilius M. Santiago (Atty. Santiago) filed a notice of entry of appearance as respondent's counsel of record and filed an appeal from the Labor Arbiter's Decision without complying with Section 26, Rule 138 of the Rules of Court. Since there was no valid substitution of counsel, the appeal filed by Atty. Santiago was ineffective. Petitioner alleges that since Atty. Ricardo Cipriano (Atty. Cipriano), the counsel of record, did not appeal from the Labor Arbiter's Decision, the Decision became final and executory.

The contention has no merit.

A party may have two or more lawyers working in collaboration in a given litigation.[11] Substitution of counsel should not be presumed from the mere filing of a notice of appearance of a new lawyer.[12] The fact that a second attorney enters his appearance for the same party does not necessarily raise the presumption that the authority of the first attorney has been withdrawn.[13] The entry of appearearance of Atty. Santiago should not give rise to the presumption that Atty. Cipriano withdrew his appearance as counsel in the absence of a formal withdrawal of appearance. Atty. Santiago should only be treated as collaborating counsel despite his appearance as "the new counsel

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[11] *Tan v. CA*, 341 Phil. 570 (1997).

[12] *Elbiña v. Ceniza*, G.R. No. 154019, 10 August 2006, 498 SCRA 438.

[13] *Id*.

of record." Petitioner even observed that the NLRC's Decision was not sent to Atty. Santiago but to Atty. Cipriano. Even in its petition before the Court, petitioner sent copies of the petition not only to Atty. Santiago but also to Atty. Cipriano, thus acknowledging that Atty. Cipriano remains as respondent's counsel.

Since a lawyer is presumed to be properly authorized to represent any cause in which he appears,[14] Atty. Santiago is presumed to be acting within his authority as collaborating counsel when he filed the appeal from the Labor Arbiter's Decision. For as long as Atty. Santiago filed the notice of appeal within the reglementary period, reckoned from the time Atty. Cipriano received the Labor Arbiter's Decision, the NLRC did not abuse its discretion in entertaining the appeal.

Validity of Dismissal from Employment

Respondent was dismissed for a just cause.

An employer may terminate an employment for serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work.[15] Willful disobedience requires the concurrence of two elements: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.[16]

The records show that respondent was not singled out for the transfer. Respondent's transfer was the effect of the integration of the functions of the Mandaue Brewery – Materials Management and the Physical Distribution group into a unified

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[14] Section 21, Rule 138, Rules of Court. *Fernandez v. Aniñon*, G.R. No. 138967, 24 April 2007, 522 SCRA 1.

[15] Article 282 of the Labor Code.

[16] *Sadagnot v. Reinier Pacific International Shipping, Inc.*, G.R. No. 152636, 8 August 2007, 529 SCRA 413.

logistics organization, the VisMin Logistics Operations. The 6 December 1993 Memorandum of Elizagaque showed the transfer to the VisMin Logistics Operations of the following functions:

> 1. Bottle Yard Operations (including direct loading of route/overland truck and Remuco forklift operations); and
>
> 2. Transporation Management (car/service pick-ups, dump trucks, flatbed and firetruck)[17]

The Memorandum also showed that the following assets were also transferred to the new VisMin Logistics Operations:

1. Oro Verde Warehouse
2. Raw Sugar Warehouse
3. ARMS Bldg. & Training Center
4. Malt Bagging Plant
5. Weigh Bridge
6. Planters' Warehouse, Wharf & Offices
7. Cars/Service Pick-ups
8. Dump Trucks
9. Flat Bed
10. Fire Truck
11. Gas Station
12. B. Yeast Tanker[18]

In other words, the entire Oro Verde Warehouse, to which unit respondent belonged, was affected by the integration.

We do not agree that respondent was not formally notified of the transfer. The Memorandum dated 7 February 1994 of Capt. Fortich to Comdr. Flores states:

> 2. This is to formalize the transfer of security operations and control of all security personnel and equipment at subject warehouses, effective 14 Feb 94.

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[17] CA *rollo*, p. 84.

[18] *Id*.

3. Security personnel involved will be verbally informed of the transfer for smooth transition and proper coordination will be made to the Secutiy Officer of VISMIN Logistics Operations.[19]

As early as 9 February 1994, Major Enriquez, the head of the VisMin Logistics Operations and thus, respondent's new superior, issued a guard detail for 14-20 February 1994.[20] All agency guards signed the detail, except respondent who refused to sign.[21] On 15 February 1994, Major Enriquez again issued a guard detail for 21-27 February 1994.[22] Again, all security guards concerned signed the detail except respondent who refused to sign. Major Enriquez issued successive memoranda[23] to respondent officially informing him of his transfer to the VisMin Logistics Operations but respondent refused to sign all the notices.

The employer exercises the prerogative to transfer an employee for valid reasons and according to the requirements of its business, provided the transfer does not result in demotion in rank or diminution of the employee's salary, benefits, and other privileges.[24] In this case, we found that the order of transfer was reasonable and lawful considering the integration of Oro Verde Warehouse with VisMin Logistics Operations. Respondent was properly informed of the transfer but he refused to receive the notices on the pretext that he was wary because of his pending case against petitioner. Respondent failed to prove

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[19] *Id*. at 85.

[20] *Id*. at 89.

[21] *Id*.

[22] *Id*. at 103.

[23] *Id*. at 95-110. Dated 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27 February 1994.

[24] *Genuino Ice Company, Inc. v. Magpantay*, G.R. No. 147790, 27 June 2006, 493 SCRA 195.

that petitioner was acting in bad faith in effecting the transfer. There was no demotion involved, or even a diminution of his salary, benefits, and other privileges. Respondent's persistent refusal to obey petitioner's lawful order amounts to willful disobedience under Article 282 of the Labor Code.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 26 March 2002 Decision and the 20 August 2002 Resolution of the Court of Appeals in CA-G.R. SP No. 50680. We *REINSTATE* the 25 October 1996 Decision of the Labor Arbiter.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 155640. May 7, 2008]

EUGENIA CASTELLANO and ERLAINE CASTELLANO, *petitioners, vs.* **SPS. FLORENTINO FRANCISCO** and **ESTELITA MATA FRANCISCO,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM LAW; (P.D. NO. 27); DAR ADMINISTRATIVE ORDER NO. 2; ABANDONMENT, DEFINED. —** The Court of Appeals stated that abandonment requires (1) a clear and absolute intention to renounce a right or a claim or to abandon a right or property; and (2) an external act by which that intention is

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* As replacement of Justice Renato C. Corona who is on leave per Administrative Circular No. 84-2007.

expressed or carried into effect. The intention to abandon implies a departure, with the avowed intent of never returning, resuming or claiming the right and the interest that have been abandoned.

2. **ID.; ID.; SALE OR TRANSFER OF RIGHTS OVER PROPERTY COVERED BY CERTIFICATE OF LAND TRANSFER IS VOID; EXCEPTION; PRESENT IN CASE AT BAR. –** Indeed, the sale or transfer of rights over a property covered by a certificate of land transfer is void except when the alienation is made in favor of the government or through hereditary succession. In this case, however, the Court of Appeals failed to consider that the basis for the issuance of Erlaine's emancipation patent was Florentino's voluntary surrender of the land to the Samahang Nayon, which qualifies as surrender or transfer to the government. x x x In this case, Florentino's intention to surrender the land to the Samahang Nayon was clear. On 3 July 1989, Florentino executed a waiver of rights and voluntarily surrendered ownership over the land to the Samahang Nayon. On 4 September 1990, the Samahang Nayon issued Resolution No. 6 acknowledging Florentino's surrender of the land and recommending three farmers, including Erlaine, to the DAR as agrarian reform beneficiaries. On 4 October 1990, Florentino executed another *salaysay* stating that he had no objection to the transfer of the land in Erlaine's name because he already returned the land to the government. The records also show that the proper transfer action was undertaken. Therefore, Erlaine's emancipation patent is valid since it was issued pursuant to Florentino's voluntary surrender of the land to the Samahang Nayon, not pursuant to spouses Francisco's alienation of their possessory right to Eugenia.

APPEARANCES OF COUNSEL

Felipe R. De Belen for petitioners.
Luciano D. Valencia for respondents.

DECISION

CARPIO, *J.*:

The Case

This is a petition for review[1] seeking to reverse the 11 June 2002 Decision[2] of the Court of Appeals in CA-G.R. SP No. 63703 as well as the 15 October 2002 Resolution[3] denying the motion for reconsideration. The Court of Appeals in its assailed decision set aside the 12 January 2001 Decision[4] of the Department of Agrarian Reform Adjudication Board (DARAB) which affirmed the 30 August 1999 Decision[5] of the Regional Adjudicator. The Court of Appeals declared petitioner Erlaine Castellano's (Erlaine) emancipation patent void and ordered the return of possession of the subject land to respondent spouses Florentino and Estelita Francisco (spouses Francisco) upon payment of the loan.

The Facts

Since 1955, spouses Francisco had been in possession of about 23,032 square meters of land at Barangay Malayantoc, Sto. Domingo, Nueva Ecija. In 1976, pursuant to Presidential Decree No. 27[6] (PD No. 27), respondent Florentino Francisco (Florentino) was issued Certificate of Land Transfer No. 03019169.

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[1] Under Rule 45 of the 1997 Rules on Civil Procedure.

[2] *Rollo*, pp. 68-75. Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Eugenio S. Labitoria and Teodoro P. Regino, concurring.

[3] *Id*. at 91.

[4] *Id*. at 114-119. Penned by Assistant Secretary Lorenzo R. Reyes with Undersecretary Federico A. Poblete, Assistant Secretary Augusto P. Quijano, Assistant Secretary Edwin C. Sales and Assistant Secretary Wilfredo M. Peñaflor concurring. DAR Secretary Horacio R. Morales and Undersecretary Conrado S. Navarro did not take part.

[5] *Id*. at 100-109. Penned by Regional Adjudicator Fe Arche Manalang.

[6] "Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor." Dated 21 October 1972.

Spouses Francisco alleged that in 1989, due to extreme poverty, they borrowed ₱50,000 from petitioner Eugenia Castellano (Eugenia) and, in return, Eugenia would cultivate and possess the property until full payment of the loan. Spouses Francisco promised to pay within three years or until 1992. Their agreement was not reduced into writing.

According to spouses Francisco, in the latter part of 1992, they offered to pay the loan but Eugenia refused to accept payment. Spouses Francisco later learned that Eugenia was able to secure Emancipation Patent No. 489877 and Transfer Certificate of Title No. EP-71729 in the name of Erlaine, Eugenia's son.

On 17 December 1997, spouses Francisco filed a petition for cancellation of Erlaine's emancipation patent before the DARAB. Spouses Francisco claimed that ownership of the lot was transferred in Erlaine's name without their knowledge and consent. Spouses Francisco asserted that all the documents necessary for the valid transfer of rights were fabricated and falsified.[7]

In their answer, the Castellanos stated that spouses Francisco later informed them that they would no longer redeem the land. A transfer action was later initiated by the Department of Agrarian Reform (DAR) Team Office and, on 15 October 1992, the Regional Director of the DAR, Region III, issued an order approving the transfer action in favor of Erlaine. The Castellanos denied that there was fraud and maintained that the standard procedure for a transfer action was followed.

<u>The Decision of the Regional Adjudicator</u>

On 30 August 1999, Regional Adjudicator Fe Arche Manalang (Regional Adjudicator) ruled in favor of the Castellanos, the dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered:

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[7] Two informations for Falsification of Public Documents were also filed against Erlaine, Melencio Cornelio, Jr., Senior Agrarian Reform Technologist of the DAR, Sto. Domingo, Nueva Ecija, and Celso Paredes, Municipal Agrarian Officer of Talavera, Nueva Ecija, before the Regional Trial Court.

1. Finding and declaring the Petitioners [spouses Francisco] as having sold and abandoned their tenancy/possessory rights over the subject landholding more particularly described in paragraph 4 of the Petition;
2. Directing the cancellation of CLT No. 0301916 issued in the name of Petitioner Florentino M. Francisco covering the subject property;
3. Directing the forfeiture in favor of the Government of all amortization payments so far made by the said Petitioner with the Land Bank of the Philippines;
4. Permanently disqualifying the same Petitioner as an Agrarian Reform Beneficiary under the Government's Comprehensive Agrarian Reform Program; [and]
5. Dismissing all other claims for want of evidence or lack of basis.

NO COSTS.[8]

The Regional Adjudicator declared that while Florentino was the original tenant-beneficiary and a holder of a certificate of land transfer, spouses Francisco committed a breach of obligation when they sold their tenancy rights to the Castellanos. The Regional Adjudicator ruled that spouses Francisco abandoned the land when they went to work abroad and executed a "waiver of rights." The Regional Adjudicator stated that neglect or abandonment of the land by the beneficiary for two years is a ground for the forfeiture of the awarded land and cancellation of the certificate of land transfer.

The Regional Adjudicator also ruled that there were no irregularities in the transfer proceedings leading to the issuance of Erlaine's emancipation patent. The Regional Adjudicator declared that the waiver of rights executed by Florentino and his heirs, duly acknowledged before a notary public, enjoyed the presumption of regularity and validity. No evidence was presented to contradict the same. The mistake in the status of Florentino describing him as a widower was a mere oversight which Estelita Francisco later on ratified.

Spouses Francisco appealed the decision to the DARAB.

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[8] *Rollo*, pp. 108-109.

The Decision of the DARAB

On 12 January 2001, the DARAB dismissed the appeal for lack of merit and affirmed the Regional Adjudicator's 30 August 1999 Decision.

The DARAB declared that Florentino's certificate of land title did not vest in him absolute ownership over the land because transfer of ownership was subject to certain conditions. The DARAB ruled that spouses Francisco surrendered their possesssory right over the land in exchange for ₱50,000 and physically abandoned the land when they worked abroad. The DARAB held that this was sufficient ground for forfeiture of the awarded land and cancellation of the certificate of land transfer.

On the other hand, the DARAB stated that it is the issuance of the emancipation patent in favor of the tenant beneficiary that vests him with absolute ownership of the land. The DARAB ruled that, with the issuance of Erlaine's emancipation patent, Erlaine had a superior right over spouses Francisco, who were mere holders of a certificate of land transfer. The DARAB also stated that the issuance of Erlaine's emancipation patent enjoyed the presumption of regularity and validity that is not overcome by the filing of an information for falsification of public document.

Spouses Francisco appealed to the Court of Appeals.

The Decision of the Court of Appeals

In its 11 June 2002 Decision, the Court of Appeals reversed the 12 January 2001 DARAB Decision. The Court of Appeals ruled that Erlaine's emancipation patent should be canceled because it was issued in violation of PD No. 27. Under PD No. 27, spouses Francisco could not make any valid form of transfer except to the government or, by hereditary succession, to their heirs. Since the basis for the transfer action and the issuance of Erlaine's emancipation patent was spouses Francisco's alienation of their possessory right in favor of Erlaine, the transaction is void.

The Court of Appeals also ruled that spouses Francisco did not abandon the property. The Court of Appeals said that spouses Francisco only surrendered possession of the property to the Castellanos during the period of the loan, on the condition that upon extinguishment of the obligation, possession shall revert back to spouses Francisco.

The Issues

The Castellanos raise the following issues:

1. Whether spouses Francisco abandoned their rights over the land; and
2. Whether Erlaine's emancipation patent is valid.

The Ruling of the Court

The petition is partly meritorious.

Spouses Francisco did not abandon the land

We agree with the finding of the Court of Appeals that spouses Francisco did not abandon the land. The Court of Appeals stated that abandonment [9] requires (1) a clear and absolute intention to renounce a right or a claim or to abandon a right or property; and (2) an external act by which that intention is expressed or carried into effect. The intention to abandon implies a departure, with the avowed intent of never returning, resuming or claiming the right and the interest that have been abandoned.[10]

In this case, there was no showing that spouses Francisco had a clear, absolute or irrevocable intent to abandon the land. Spouses Francisco's surrender of possession did not amount to abandonment because there was an obligation on the part of Eugenia to return possession of the land to spouses Francisco upon full payment of the loan.[11]

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[9] DAR Administrative Order No. 2 defines neglect or abandonment as the willful failure of the ARB, together with his farm household, to cultivate, till or develop his land to produce any crop, or to use the land for any specific economic purpose continuously for a period of two calendar years.

[10] *Corpuz v. Grospe*, 388 Phil. 1100 (2000).

[11] *Id*.

Erlaine's emancipation patent is valid

The Court of Appeals ruled that Erlaine's emancipation patent was void and should be canceled because spouses Francisco could not validly transfer ownership of the land to Erlaine. The Court of Appeals ruled that spouses Francisco's transfer of the rights or possession to the Castellanos violated PD No. 27 and is therefore void.

Indeed, the sale or transfer of rights over a property covered by a certificate of land transfer is void except when the alienation is made in favor of the government or through hereditary succession.[12] In this case, however, the Court of Appeals failed to consider that the basis for the issuance of Erlaine's emancipation patent was Florentino's voluntary surrender of the land to the Samahang Nayon, which qualifies as surrender or transfer to the government.

In *Corpuz v. Grospe*,[13] the Court said:

> To repeat, the land was surrendered to the government, not transferred to another private person. It was the government, through the DAR, which awarded the landholding to the private respondents who were declared as qualified beneficiaries under the agrarian laws. Voluntary surrender, as a mode of extinguishment of tenancy relations, does not require court approval as long as it is convincingly and sufficiently proved by competent evidence.
>
> **Petitioner's voluntary surrender to the *Samahang Nayon* qualifies as a surrender or transfer to the government because such action forms part of the mechanism for the disposition and the reallocation of farmholdings to tenant-farmers who refuse to become beneficiaries of PD 27.** Under Memorandum Circular No. 8-80 of the then Ministry of Agrarian Reform, the *Samahan* shall, upon notice from the agrarian reform team leader, recommend other tenant-farmers who shall be substituted to all rights and obligations of the abandoning or surrendering tenant-farmer.[14] (Emphasis supplied)

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[12] *Torres v. Ventura,* G.R. No. 86044, 2 July 1990, 187 SCRA 96.

[13] *Supra* note 10.

[14] *Id*. at 1113.

In this case, Florentino's intention to surrender the land to the Samahang Nayon was clear. On 3 July 1989, Florentino executed a waiver of rights and voluntarily surrendered ownership over the land to the Samahang Nayon.[15] On 4 September 1990, the Samahang Nayon issued Resolution No. 6 acknowledging Florentino's surrender of the land and recommending three farmers, including Erlaine, to the DAR as agrarian reform beneficiaries.[16] On 4 October 1990, Florentino executed another *salaysay* stating that he had no objection to the transfer of the

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[15] DARAB Records, p. 602.

SINUMPAANG SALAYSAY
(Waiver of Rights)

SA KINAUUKULAN:

Ako si Florentino M. Francisco *na nasa wastong gulang, Filipino, may-asawa/binata/dalaga/balo, at naninirahan sa* Malayantoc, Sto. Domingo, Nueva Ecija, *Nueva Ecija (sic), na matapos makapanumpa ng naaayon sa batas ay malaya at kusang loob na nagsasalaysay ng gaya ng mga sumusunod:*

1. *Na, ako ang nagsasaka at gumagawa sa lupang sakahin na may luwang o sukat na* 1.9050 *ektarya, humigit kumulang sa lupa na pag-aari ni G./Gng/* G. Vicente de Guzman *na nakalugar at matatagpuan sa barangay* *Malantoc (sic), Sto. Domingo,* *Nueva Ecija, at nakapaloob sa Titulo blg.* NT-56909 *Blg. Lot no.* 030327-002-00834-2;

2. Na, ang lupang aking sinasaka ay ***akin nang pinamimitawan sa dahilang ang lupang sakahin na ito ay hindi ko na kaya pang BUNKALIN, SA DAHILANG WALA NA AKONG MAGAMIT NA PUHUNAN SA PAGGAWA DITO. KAYA IPINAUUBAYA KO NA SA DAR SA PAMAMAGITAN NG SAMAHANG NAYON NG*** **Malayantoc, Sto. Domingo, Nueva Ecija.** (Emphasis supplied)

3. *Na, malaya at kusang loob kong pinawawalang bisa ang aking buong karapatan ng pagmamay-ari at pamomosesyon sa nabangit na lupang sakahin.*

SA KATUNAYAN ng lahat ng ito, malaya at kusang loob akong lumagda ngayong ika 3 *ng* *Hulyo* *1989 dito sa* Malayantoc, Sto. Domingo, *Nueva Ecija.*

Florentino M. Francisco (signed)

[16] *Id*. at 601.

land in Erlaine's name because he already returned the land to the government.[17] The records also show that the proper transfer

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Malayantoc, PMKB Inc.

Malayantoc, Sto. Domingo, Nueva Ecija

Resolution *Blg*. 06

Sa mungkahi ni Direktiba Elvira Ole at pinangalawahan ni Direktiba Narciso Casimiro, pinagtibay ng Hunta Direktiba ng Malayantoc, PMKB Inc. ang mga sumusunod na paksa ng pulong na ginanap noong Setyembre 4 1990 sa Barangay Malayantoc, Sto. Domingo, N.E.

Sapagkat ang bukid na may Lote Blg. (malabo), may sukat na 1.9050 ektarya humigit kumulang na dati ay nakatala sa pangalan ni Vicente R. Guzman na ***isinauli ni Florentino M. Francisco sa Malayantoc, PMKB Inc. ay kailangang malipat sa karapatdapat na magsasaka;***

Sapagkat sang-ayon sa batas ay ***kailangang magrekomenda ang Malayantoc PMKB Inc. ng tatlong (3) magsasaka na kailangang pagpilian kung sino ang dapat manatili sa nasabing lote*****;** (Emphasis supplied)

Dahil dito pinagpasyahan ng Hunta Direktiba na isumite sa Department of Agrarian Reform *ang mga pangalan ng tatlong* (*3*) *magsasaka na dapat pagpilian kung sino sa kanila ang dapat na manatili*.

PANGALAN NG MAGSASAKA	*TIRAHAN*
1. ERLAINE A. CASTELLANO	Malayantoc, Sto. Doming, N.E.
2. Alfredo Pangramuyan	-do-
3. Mario Cordero	-do-

Pinagpasyahan pa rin na ang orihinal na kopya ng Resolution *na ito ay ilakip at gawing bahagi ng* Claim Folder *ng may-ari ng lupa at tuloy hinihiling sa kinauukulan na pagtibayin ang rekomendasyon*.

SA KATUNAYAN NG LAHAT binigyan kapangyarihan ng Hunta Direktiba ng Mlayantoc (sic) PMKB Inc., Malayantoc, Sto. Domingo, Nueva Ecija *ang pangulo at kalihim na lagdaan ang* Resolution *na ito ngayong ika* 4 *ng* Setyembre 1990 *sa* Malayantoc, Sto. Domingo, *Nueva Ecija*.

MAR MAMANG N (signed)	DAMASO B. FULGENCIO SR. (signed)
Kalihim, PMKB	*Pangulo*, PMKB

[17] *Id*. at 480.

SALAYSAY

AKO, FLORENTINO M. FRANCISCO, *nasa wastong gulang* may asawa, *Pilipino at sa kasalukuyang naninirahan sa* Malayantoc, Sto. Domingo, Nueva Ecija *matapos makapanumpa nang naaayon sa batas ay malaya at kusang loob na nagsasalaysay ng mga sumusunod*:

action was undertaken.[18] Therefore, Erlaine's emancipation patent is valid since it was issued pursuant to Florentino's voluntary surrender of the land to the Samahang Nayon, not pursuant to spouses Francisco's alienation of their possessory right to Eugenia.

WHEREFORE, we *GRANT* the petition. We *REVERSE* and *SET ASIDE* the 11 June 2002 Decision and the 15 October 2002 Resolution of the Court of Appeals in CA-G.R. SP No. 63703. We *REINSTATE* the 30 August 1999 Decision of the Regional Adjudicator and the 12 January 2001 Decision of the Department of Agrarian Reform Adjudication Board and declare Erlaine Castellano's Emancipation Patent valid.

SO ORDERED.

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

Na ako ang pinanggalingan ng isang parselang lupang sakahin na natatakpan ng CLT blg. 03 016518 (CLT) *lote blg.* 15 *na may luwang na* 1.9050 *ektarya humigit kumulang na matatagpuan sa* Malayantoc, Sto. Soming, Nueva Ecija, *Nueva Ecija (sic)*.

Na ako sampu ng aking mga tagapagmana ay hindi tutol o walang hangaring maghabol na ang nasalupuang bukirin ay malipat sa pangalan ni ERLAINE A. CASTELLANO ***sapagkat ito ay isinauli ko na sa ating Pamahalaan.*** (Emphasis supplied)

BILANG PATUNAY, inilagda ko ang aking pangalan sa ibaba nito ngayong ika 4 *ng* Oktubre, 1990 *sa harap ng mga saksi dito sa kagawaran ng Repormang Pansakahan*, DAR, Cabanatuan City.

FLORENTINO M. FRANCISCO (signed)
Nagsasalaysay

SAKSI:

PABLO B. FULGENCIO (signed)	DAMASO B. FULGENCIO SR. (*signed*)
Barangay Kapitan	Pangulo ng Samahang Nayon
	PMKB, Malayantoc

[18] *Id*. at 600-604, 613-614.

* As replacement of Justice Renato C. Corona who is on leave per Administrative Circular No. 84-2007.

FIRST DIVISION

[G.R. No. 159395. May 7, 2008]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **COURT OF APPEALS and DR. MERCEDITA J. MACABULOS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE APPEALS; APPEAL TO THE COURT OF APPEALS; PARTIES; WHERE A NECESSARY PARTY IN AN APPEALED CASE IS NOT IMPLEADED, MOTION FOR INTERVENTION MUST BE ALLOWED.—** The Court of Appeals should have granted the motion for intervention filed by the Ombudsman. In its decision, the appellate court not only reversed the order of the Ombudsman but also delved into the investigatory power of the Ombudsman. Since the Ombudsman was not impleaded as a party when the case was appealed to the Court of Appeals in accordance with Section 6, Rule 43 of the Rules of Court, the Ombudsman had no other recourse but to move for intervention and reconsideration of the decision in order to prevent the undue restriction of its constitutionally mandated investigatory power.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; DUTY TO INVESTIGATE ANY UNJUSTIFIED ACT/OMISSION OF ANY PUBLIC SERVANT/ OFFICE; EXCEPTIONS UNDER SEC. 20, THE OMBUDSMAN ACT OF 1989; COMPLAINT FILED ONE YEAR AFTER ACT/OMISSION COMPLAINED OF; DISCRETION OF THE OMBUDSMAN.—** The Court of Appeals held that under Section 20(5) of RA 6770, the Ombudsman is already barred by prescription from investigating the complaint since it was filed more than one year from the occurrence of the complained act. We find this interpretation by the appellate court unduly restrictive of the duty of the Ombudsman as provided under the Constitution to investigate on its own, or on complaint by any person, any act or omission of any public official or employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

Section 20 of RA 6770 reads: Sec. 20. *Exceptions*. – The Office of the Ombudsman **may** not conduct the necessary investigation of any administrative act or omission complained of if it believes that: x x x **(5) The complaint was filed after one (1) year from the occurrence of the act or omission complained of**. The use of the word "may" is ordinarily construed as permissive or directory, indicating that a matter of discretion is involved. Thus, the word "may," when used in a statute, does not generally suggest compulsion. The use of the word "may" in Section 20(5) of RA 6770 indicates that it is within the discretion of the Ombudsman whether to conduct an investigation when a complaint is filed after one year from the occurrence of the complained act or omission. Moreover, Section 20 of RA 6770 has been clarified by Administrative Order No. 17 (AO 17), which amended Administrative Order No. 07 (AO 07), otherwise known as the Rules of Procedure of the Office of the Ombudsman. Section 4, Rule III of the amended Rules of Procedure of the Office of the Ombudsman reads: Section 4. *Evaluation.* – Upon receipt of the **complaint,** the same shall be evaluated to determine whether the same **may be: a) dismissed outright for any grounds stated under Section 20 of Republic Act No. 6770, provided, however, that the dismissal thereof is not mandatory and shall be discretionary on the part of the Ombudsman or the Deputy Ombudsman concerned;** x x x. Thus, in this case, even if the complaint was filed more than one year after the alleged occurrence of the act complained of, it was within the discretion of the Ombudsman whether to pursue the investigation or dismiss the complaint.

3. **ID.; ID.; ID.; ID.; THE OMBUDSMAN ACT OF 1989; FACTUAL FINDINGS OF THE OMBUDSMAN SUPPORTED BY SUBSTANTIAL EVIDENCE ARE CONCLUSIVE. —** There was substantial evidence to hold Dr. Macabulos liable for dishonesty, falsification, grave misconduct, conduct grossly prejudicial to the best interest of the service, and violation of reasonable office rules and regulations defined and penalized under the Civil Service Laws. Under Section 27 of RA 6770, findings of fact by the Ombudsman when supported by substantial evidence are conclusive.

4. **ID.; ADMINISTRATIVE LAW; OMNIBUS CIVIL SERVICE RULES AND REGULATIONS; PENALTY OF DISMISSAL**

AND ITS ACCESSORY PENALTIES; CASE AT BAR. — In Resolution No. 91-1631 dated 27 December 1991, the Civil Service Commission (CSC) promulgated the Omnibus Civil Service Rules and Regulations (Omnibus Rules), pursuant to Section 12(2), Chapter 3, Title I(A), Book V of Executive Order No. 292 (EO 292). Under Section 22, Rule XIV of the Omnibus Rules, dishonesty, falsification of official document, and grave misconduct are grave offenses punishable by dismissal. Conduct grossly prejudicial to the best interest of the service is also a grave offense punishable by suspension for 6 months and 1 day to 1 year for the first offense while violation of reasonable office rules and regulations is only a light offense punishable by reprimand for the first offense. Under Section 17 of Rule XIV of the Omnibus Rules, if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances. Although the CSC, through Resolution No. 99-1936 dated 31 August 1999, adopted the new "Uniform Rules in Administrative Cases in the Civil Service" (Uniform Rules), which took effect on 27 September 1999, the penalties imposed for the offenses charged in this case are the same under the new Uniform Rules. Thus, the Ombudsman correctly imposed upon Dr. Macabulos the penalty of dismissal. Under Section 9, Rule XIV of the Omnibus Rules, the penalty of dismissal from service carries with it the cancellation of eligibility, forfeiture of leave credits and retirement benefits, and the disqualification for reemployment in the government service. **However, under the new Uniform Rules, forfeiture of leave credits was deleted as an accessory penalty.** Thus, under Section 58, Rule IV of the Uniform Rules, the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision. Similarly, Section 10, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by AO 17, provides that **"the penalty of dismissal from the service shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision."** In this case, since Dr. Macabulos has already retired from the government service, her retirement benefits are forfeited but she is still entitled to receive her leave credits. She is also

perpetually disqualified for reemployment in the government service and her civil service eligibility is cancelled.

5. **POLITICAL LAW; CONSTITUTIONAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; RULES OF PROCEDURE; AMENDMENT UNDER A.O. NO. 17; FINALITY AND EXECUTION OF DECISION; PENALTY OF DISMISSAL IN CASE AT BAR, EXECUTORY PENDING APPEAL.—** On 17 August 2000, the Ombudsman issued Administrative Order No. 14-A (AO 14-A), amending Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman. The amendment aims to provide uniformity with other disciplining authorities in the execution or implementation of judgments and penalties in administrative disciplinary cases involving public officials and employees. Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by AO 14-A, reads: Section 7. *Finality and execution of decision.* – Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision may be appealed within ten (10) days from receipt of the written notice of the decision or order denying the motion for reconsideration. **An appeal shall not stop the decision from being executory.** In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. On 15 September 2003, AO 17 was issued, amending Rule III of the Rules of Procedure of the Office of the Ombudsman. Thus, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman was further amended and now reads: Sec. 7. *Finality and execution of decision.* **— x x x An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course.** The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and

properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be ground for disciplinary action against said officer. Hence, in the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*, the Court noted that Section 7 of AO 17 provides for execution of the decisions pending appeal, which provision is similar to Section 47 of the Uniform Rules on Administrative Cases in the Civil Service. More recently, in the 2007 case of *Buencamino v. Court of Appeals*, the primary issue was whether the decision of the Ombudsman suspending petitioner therein from office for six months without pay was immediately executory even pending appeal in the Court of Appeals. The Court held that x x x by the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*, it was clearly held that decisions of the Ombudsman are immediately executory even pending appeal. Based on the foregoing, we hold that the Ombudsman's order imposing the penalty of dismissal on Dr. Macabulos was immediately executory even pending appeal in the Court of Appeals.

APPEARANCES OF COUNSEL

Office of the Legal Affairs (Ombudsman) for petitioner.
Banzon Gloria & Gumban Law Offices for private respondent.

D E C I S I O N

CARPIO, *J.:*

The Case

This is a petition for review[1] of the Decision[2] dated 17 March 2003 and the Resolution dated 30 July 2003 of the Court of Appeals in CA-G.R. SP No. 66411.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Bernardo P. Abesamis with Associate Justices Juan Q. Enriquez, Jr. and Edgardo F. Sundiam, concurring.

The Facts

On 31 March 1998, Dr. Minda L. Virtudes (Dr. Virtudes) executed a complaint-affidavit[3] charging Dr. Mercedita J. Macabulos (Dr. Macabulos) with dishonesty, grave misconduct, oppression, conduct grossly prejudicial to the best interest of the service and acts unbecoming a public official in violation of the Civil Service Laws and the Code of Conduct and Ethical Standards for Public Officials and Employees.

Dr. Macabulos, who held the position of Medical Officer V at the Department of Education, Culture and Sports, National Capital Region (DECS-NCR), was the Chief of the School Health and Nutrition Unit. Dr. Virtudes was then Supervising Dentist III working under the supervision of Dr. Macabulos. Dr. Virtudes asserted in her complaint that in May 1997, Dr. Macabulos required her to submit dental and medical receipts for the liquidation of Dr. Macabulos' cash advance in the year 1995 amounting to ₱45,000 for the purchase of dental medicines and supplies. Dr. Virtudes did not submit receipts and invoices considering that she was not yet assigned at the School Health and Nutrition Unit, DECS-NCR when Dr. Macabulos incurred the cash advance.

Because of Dr. Virtudes' failure to produce receipts and invoices, Dr. Macabulos allegedly subjected Dr. Virtudes to several forms of harassment by: 1) denying her request for the purchase of dental supplies and equipment; 2) requiring her and her co-workers to sign an "Attendance Log Book" every time they arrived at the office and again before leaving the office even if they were already using the employees' bundy clock and signing the Attendance Sheet in the office; 3) threatening Dr. Virtudes and her co-workers with transfer of assignment; 4) sending letters to Dr. Virtudes threatening to charge her with insubordination and disrespect; and 5) threatening to kill her and her husband or do other harm to her and her family.

In her counter-affidavit, Dr. Macabulos denied forcing Dr. Virtudes to make a liquidation as the latter was not yet assigned

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[3] *Rollo*, pp. 135-138.

to her unit at the time the cash advance was made. Dr. Macabulos likewise claimed that while the ₱45,000 cash advance was in her name being the only bonded employee in their unit, it was Dr. Antonia Lopez-Dee (Dr. Dee), who was then the Supervising Dentist, who used the money to purchase medical and dental supplies. Attached to Dr. Macabulos' counter-affidavit was an unnotarized affidavit[4] of Dr. Dee which admitted, among others, that she requested Dr. Macabulos to make the cash advance.

Dr. Macabulos attributed the filing of the complaint against her to professional jealousy. Dr. Virtudes allegedly resented Dr. Macabulos' order, requiring all employees under her supervision to sign an attendance log book. Dr. Macabulos imposed the new requirement as a remedial measure to curb Dr. Virtudes' alleged practice of leaving the office without permission to engage in private practice at the Philippine Lung Center where Dr. Virtudes' husband was also a dentist. Dr. Macabulos denied that she instigated the transfer of Dr. Virtudes and her two friends to other units and alleged that it was Dr. Virtudes and her friends who requested for the transfer of assignment.

In her reply-affidavit, Dr. Virtudes alleged that Dr. Macabulos, in enforcing the use of the attendance log book, singled her out although there were others who failed to sign the log book. Dr. Virtudes denied engaging in private practice. Dr Virtudes pointed out that she confronted Dr. Dee, who disowned the contents of her alleged affidavit which Dr. Macabulos attached to her counter-affidavit. Dr. Virtudes claimed that it was Dr. Macabulos who made the ₱45,000 cash advance, improperly spent the amount, and later tried to liquidate the same with the tampered Sales Invoice No. 3366 issued by Medsordent Center to conform to the amount of the cash advance.

On 29 December 2000, Graft Investigation Officer I Ulysis S. Calumpad (GIO I Calumpad) rendered a decision absolving Dr. Macabulos from the administrative charge. However, Overall Deputy Ombudsman Margarito P. Gervacio, Jr. (Overall Deputy Ombudsman Gervacio) disapproved the decision of GIO I Calumpad.

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[4] *Id*. at 245-246.

Investigating further, the Ombudsman required Dr. Dee to confirm her statements in her unnotarized affidavit dated 14 September 1998. In reply, Dr. Dee disowned the statements in her unnotarized affidavit. In her sworn affidavit[5] dated 9 May 2001, Dr. Dee stated that although she signed the unnotarized affidavit dated 14 September 1998, the contents of the first page were entirely different from the one attached by Dr. Macabulos in her counter-affidavit. Dr. Dee asserted that as Supervising Dentist, her job involved the requisition of the necessary health and dental supplies but not the purchasing of supplies which was done by the purchasing unit of the School Health and Nutrition Unit which was under Dr. Macabulos. Dr. Dee denied encashing the check for ₱45,000 which was in the name of Dr. Macabulos. Dr. Dee likewise denied purchasing the supplies indicated in the Medsordent Center sales invoice which was submitted by Dr. Macabulos to liquidate her ₱45,000 cash advance.

In a Memorandum[6] dated 13 June 2001, Graft Investigation Officer II Julita M. Calderon (GIO II Calderon) reversed the decision of GIO I Calumpad. GIO II Calderon found Dr. Macabulos guilty of dishonesty, falsification, grave misconduct, conduct grossly prejudicial to the best interest of the service and violation of reasonable office rules and regulations defined and penalized under the Civil Service Laws. The Memorandum, approved by Overall Deputy Ombudsman Gervacio and Ombudsman Aniano A. Desierto, imposed upon Dr. Macabulos the penalty of dismissal from government service.

On 11 July 2001, Dr. Macabulos filed a motion for reconsideration, which was denied in an Order dated 26 July 2001.

On 31 August 2001, Dr. Macabulos filed a petition for review with the Court of Appeals. On 17 March 2003, the Court of Appeals rendered a decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the petition is GIVEN DUE COURSE. The assailed memorandum dated June 13, 2001 and the

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[5] *Id*. at 248.

[6] *Id*. at 123-129.

order dated July 26, 2001 of the Office of the Ombudsman in *OMB Case No. 0-98-0438* are hereby REVERSED and SET ASIDE. The earlier decision of the GOI I Ulysis S. Calumpad of the Office of the Ombudsman is REINSTATED and the subject complaint DISMISSED. No pronouncement as to costs.

SO ORDERED.[7]

The Ruling of the Court of Appeals

The Court of Appeals held that under Section 20(5) of Republic Act No. 6770 (RA 6770),[8] the Office of the Ombudsman (Ombudsman) can no longer investigate the complaint since the acts complained of were committed more than one year from the filing of the complaint. The Court of Appeals found irregular the reversal of the earlier decision of GIO I Calumpad, absolving Dr. Macabulos from the administrative charge, mainly on the basis of the recantation of Dr. Dee of her previous statements contained in an affidavit.

The Court of Appeals held that Dr. Macabulos' retirement from government service did not render the administrative case moot and academic.

Lastly, citing Section 27 of RA 6770, the Court of Appeals ruled that the Memorandum Order dated 13 June 2001 of the Ombudsman, imposing upon Dr. Macabulos the penalty of dismissal from government service, is not immediately executory.

The Issues

Petitioner raises the following issues:

1. THE INTERPRETATION OF THE COURT OF APPEALS OF SEC. 20(5), RA 6770 AS A PRESCRIPTIVE PERIOD ON OMBUDSMAN ADMINISTRATIVE DISCIPLINARY CASES IS UNCONSTITUTIONAL, AS THE SAME UNDULY IMPINGES ON THE INVESTIGATORY AUTHORITY OF THE OMBUDSMAN ON ANY ACT OR OMISSION APPEARING TO BE ILLEGAL, UNJUST, IMPROPER OR INEFFICIENT.

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[7] *Id*. at 73.

[8] The Ombudsman Act of 1989.

2. IN HIGHLY MERITORIOUS CASES, AS HERE, THE PETITIONER OFFICE OF THE OMBUDSMAN HAS THE DISCRETIONARY AUTHORITY TO CONDUCT ADMINISTRATIVE INVESTIGATION ON COMPLAINTS FILED MORE THAN ONE (1) YEAR FROM THE OCCURRENCE OF THE ACT OR OMISSION COMPLAINED OF, AND THE RULING OF THE COURT OF APPEALS THAT SUCH INVESTIGATION IS BARRED BY REASON OF PRESCRIPTION IS A GLARING NULLITY.
3. CONTRARY TO THE APPELLATE COURT'S RULING, THERE IS MORE THAN SUBSTANTIAL EVIDENCE PROVING PRIVATE RESPONDENT'S GUILT, AND THE INCULPATORY SWORN STATEMENT OF PRIVATE RESPONDENT'S SUPPOSED OWN WITNESS, BEING ADMISSIBLE IN EVIDENCE AND NOT REBUTTED BY PRIVATE RESPONDENT, WAS CORRECTLY APPRECIATED BY THE OMBUDSMAN IN ADJUDGING PRIVATE RESPONDENT GUILTY OF GROSS MALFEASANCE NECESSITATING HER DISMISSAL FROM SERVICE.
4. THE PENALTY OF DISMISSAL FROM THE SERVICE METED ON PRIVATE RESPONDENT IS IMMEDIATELY EXECUTORY IN ACCORDANCE WITH THE VALID RULE OF EXECUTION PENDING APPEAL UNIFORMLY OBSERVED IN ADMINISTRATIVE DISCIPLINARY CASES, AND THE RULING OF THE COURT OF APPEALS TO THE CONTRARY IS A PATENT NULLITY.
5. CONTRARY TO THE APPELLATE COURT'S RULING, THE PETITIONER OFFICE OF THE OMBUDSMAN TIMELY AND RIGHTFULLY FILED ITS MOTIONS TO INTERVENE AND FOR RECONSIDERATION ON A PATENTLY ERRONEOUS DECISION OF THE COURT OF APPEALS WHICH HAS NOT YET ATTAINED FINALITY.[9]

The Ruling of the Court

We find the petition meritorious. The Court of Appeals should have granted the motion for intervention filed by the Ombudsman. In its decision, the appellate court not only reversed the order of the Ombudsman but also delved into the investigatory power

[9] *Rollo*, pp. 18-19.

of the Ombudsman. Since the Ombudsman was not impleaded as a party when the case was appealed to the Court of Appeals in accordance with Section 6, Rule 43 of the Rules of Court,[10] the Ombudsman had no other recourse but to move for intervention and reconsideration of the decision in order to prevent the undue restriction of its constitutionally mandated investigatory power.[11]

Prescription

The Court of Appeals held that under Section 20(5) of RA 6770, the Ombudsman is already barred by prescription from investigating the complaint since it was filed more than one year from the occurrence of the complained act. We find this interpretation by the appellate court unduly restrictive of the duty of the Ombudsman as provided under the Constitution to investigate on its own, or on complaint by any person, any act or omission of any public official or employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.[12]

Section 20 of RA 6770 reads:

Sec. 20. *Exceptions*. – The Office of the Ombudsman **may** not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

(1) The complainant has an adequate remedy in another judicial or quasi-judicial body;

(2) The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman;

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[10] Section 6, Rule 43 of the Rules of Court provides that the petition for review to the Court of Appeals shall state the full names of the parties to the case, **without impleading the court or agencies either as petitioners or respondents**.

[11] In *Office of the Ombudsman v. Court of Appeals* (G.R. No. 167844, 22 November 2006, 507 SCRA 593), where the Ombudsman sought intervention in the Court of Appeals and moved for reconsideration of the latter's decision, the Court of Appeals granted the motion for intervention even if it denied the motion for reconsideration.

[12] See Section 13, Article XI of the Constitution.

(3) The complaint is trivial, frivolous, vexatious or made in bad faith;

(4) The complainant has no sufficient personal interest in the subject matter of the grievance; or

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

The use of the word "may" is ordinarily construed as permissive or directory, indicating that a matter of discretion is involved.[13] Thus, the word "may," when used in a statute, does not generally suggest compulsion. The use of the word "may" in Section 20(5) of RA 6770 indicates that it is within the discretion of the Ombudsman whether to conduct an investigation when a complaint is filed after one year from the occurrence of the complained act or omission.

In *Filipino v. Macabuhay*,[14] the Court interpreted Section 20(5) of RA 6770 in this wise:

Petitioner argues that based on the abovementioned provision [Section 20(5) of RA 6770)], respondent's complaint is barred by prescription considering that it was filed more than one year after the alleged commission of the acts complained of.

Petitioner's argument is without merit.

The use of the word "may" clearly shows that it is directory in nature and not mandatory as petitioner contends. When used in a statute, it is permissive only and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty which may be enforced. Applying Section 20(5), therefore, it is discretionary upon the Ombudsman whether or not to conduct an investigation on a complaint even if it was filed after one year from the occurrence of the act or omission complained of. In fine, the complaint is not barred by prescription.[15]

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[13] *De Ocampo v. Secretary of Justice*, G.R. No. 147932, 25 January 2006, 480 SCRA 71.

[14] G.R. No. 158960, 24 November 2006, 508 SCRA 50.

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

Moreover, Section 20 of RA 6770 has been clarified by Administrative Order No. 17[16] (AO 17), which amended Administrative Order No. 07 (AO 07), otherwise known as the Rules of Procedure of the Office of the Ombudsman. Section 4, Rule III[17] of the amended Rules of Procedure of the Office of the Ombudsman reads:

Section 4. *Evaluation.* – Upon receipt of the **complaint**, the same shall be evaluated to determine whether the same **may be**:

a) dismissed outright for any grounds stated under Section 20 of Republic Act No. 6770, provided, however, that the dismissal thereof is not mandatory and shall be discretionary on the part of the Ombudsman or the Deputy Ombudsman concerned;

b) treated as a grievance/request for assistance which may be referred to the Public Assistance Bureau, this Office, for appropriate action under Section 2 , Rule IV of this Rules;

c) referred to other disciplinary authorities under paragraph 2, Section 23, R.A. 6770 for the taking of appropriate administrative proceedings;

d) referred to the appropriate office/agency or official for the conduct of further fact-finding investigation; or

e) docketed as an administrative case for the purpose of administrative adjudication by the Office of the Ombudsman. (Emphasis supplied)

Thus, in this case, even if the complaint was filed more than one year after the alleged occurrence of the act complained of, it was within the discretion of the Ombudsman whether to pursue the investigation or dismiss the complaint.

Substantial Evidence Proving Guilt of Dr. Macabulos

Contrary to the appellate court's ruling, there was substantial evidence to hold Dr. Macabulos administratively liable. In the Memorandum dated 13 June 2001, the Ombudsman found that

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[16] Entitled "Amendment of Rule III, Administrative Order No. 07," and signed by Ombudsman Simeon V. Marcelo on 15 September 2003.

[17] Procedure in Administrative Cases.

Dr. Macabulos purchased dental items (dentrate and castone) which were not included in the DECS Dental Program, using the ₱45,000 cash advance intended for the DECS Dental Program. Dr. Macabulos was required to refund the amount for items which were disallowed by the Commission on Audit (COA). Furthermore, the cash advance made on 28 March 1995 which was allegedly used for purchases made on 9 September 1995, was only liquidated in September 1997. The delay in the liquidation of the cash advance was a violation of Section 89 of Presidential Decree No. 1445 (PD 1445).[18] The Ombudsman also found that the dental supplies allegedly purchased were neither inspected nor received by the Supply and Property Unit of DECS-NCR.[19]

Upon further investigation by the Ombudsman, it was also discovered that Dr. Macabulos misled the Ombudsman by submitting a falsified affidavit of Dr. Dee to support Dr. Macabulos' claim that it was Dr. Dee who requested the cash advance, encashed the check, and bought dental supplies. In her subsequent sworn affidavit, Dr. Dee stated that when she was made to sign the other affidavit, the contents of the first page were entirely different from the one submitted by Dr. Macabulos. Dr. Dee denied encashing the check which was under the name of Dr. Macabulos. As then Supervising Dentist, Dr. Dee's job was to request for health and dental supplies but the purchasing of supplies was done by the purchasing unit of the School Health and Nutrition Unit which was under Dr. Macabulos. Contrary to Dr. Macabulos' claim, Dr. Dee emphatically denied that she purchased dental supplies using the ₱45,000 cash advance of Dr. Macabulos.

Indeed, the records reveal that on 13 March 1998, the DECS-NCR Resident COA Auditor issued an Audit Observation

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[18] PD 1445, known as the "Government Auditing Code of the Philippines," provides under Section 89 that a cash advance shall be reported and liquidated as soon as the purpose for which it was given has been served.

[19] *Rollo*, p. 164. Per certification dated 8 September 1997 of the Supply Officer.

Memorandum (Audit Memorandum),[20] stating that Invoice No. 3366 of Medsordent Center purportedly issued on 9 September 1995 in the amount of ₱45,015 was deliberately tampered to conform to the amount of cash advance sought to be liquidated by Dr. Macabulos. The Audit Memorandum also stated that the items dentrate and castone, which are generally used by dental practitioners in making dental impression, were not included in the DECS Dental Program. Dr. Macabulos then reimbursed the ₱2,037.50 representing the price of dentrate and castone which COA disallowed. However, on 3 November 1998, the Resident Auditor, by virtue of Section 52(2) of PD 1445,[21] issued a management letter opening the account of Dr. Macabulos. On 3 February 1999, Dr. Macabulos paid ₱42,962.50 [22] as final settlement of her cash advance.[23]

Thus, it appears from the records that Dr. Macabulos tried to liquidate with a tampered invoice the cash advance she made two years earlier. The tampered invoice also contained certain items which COA disallowed because the items were not included in the Medical and Dental Program of DECS-NCR. It is highly questionable whether the dental supplies purportedly purchased from Medsordent Center were really distributed to the regional office and the division offices since the Supply Officer of the DECS-NCR issued a certification that the items enumerated in the invoice were neither inspected nor received by the Supply

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[20] *Id.* at 141-144.

[21] Section 52(2) of PD 1445 reads:

Section 52. *Opening and revision of settled account*. - x x x

(2) When any settled account appears to be tainted with fraud, collusion, or error calculation, or when new and material evidence is discovered, the Commission may, within three years after the original settlement, open the account, and after a reasonable time for reply or appearance of the party concerned may certify thereon a new balance. An auditor may exercise the same power with respect to settled accounts pertaining to the agencies under his audit jurisdiction.

[22] ₱45,000 (cash advance) – ₱2,037.50 (amount reimbursed) = ₱42,962.50 (remaining balance).

[23] See Affidavit of Auditor Ma. Victoria S. De Pano. Records, pp. 552-554.

and Property Unit. Furthermore, to evade responsibility, Dr. Macabulos submitted a falsified affidavit of Dr. Dee to make it appear that it was Dr. Dee who requested the cash advance to purchase dental supplies. After the COA issued a management letter opening Dr. Macabulos' account, Dr. Macabulos had to reimburse not only the amount of the disallowed items but also the whole amount of the cash advance.

Clearly, there was substantial evidence to hold Dr. Macabulos liable for dishonesty, falsification, grave misconduct, conduct grossly prejudicial to the best interest of the service, and violation of reasonable office rules and regulations defined and penalized under the Civil Service Laws. Under Section 27 of RA 6770, findings of fact by the Ombudsman when supported by substantial evidence are conclusive.

Penalty of Dismissal and its Accessory Penalties

In Resolution No. 91-1631 dated 27 December 1991, the Civil Service Commission (CSC) promulgated the Omnibus Civil Service Rules and Regulations (Omnibus Rules), pursuant to Section 12(2), Chapter 3, Title I(A), Book V of Executive Order No. 292 (EO 292).[24] Under Section 22, Rule XIV of the Omnibus Rules, dishonesty, falsification of official document, and grave misconduct are grave offenses punishable by dismissal. Conduct grossly prejudicial to the best interest of the service is also a grave offense punishable by suspension for 6 months and 1 day to 1 year for the first offense while violation of reasonable office rules and regulations is only a light offense punishable by reprimand for the first offense. Under Section 17 of Rule XIV of the Omnibus Rules, if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances. Although the CSC, through Resolution No. 99-1936 dated 31 August

[24] EO 292 is known as the "Administrative Code of 1987." Under Section 12(2), Chapter 3, Title I(A), Book V of EO 292, the Civil Service Commission has the power and function to prescribe and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws.

1999, adopted the new "Uniform Rules in Administrative Cases in the Civil Service" (Uniform Rules), which took effect on 27 September 1999, the penalties imposed for the offenses charged in this case are the same under the new Uniform Rules.[25] Thus, the Ombudsman correctly imposed upon Dr. Macabulos the penalty of dismissal.

Under Section 9, Rule XIV of the Omnibus Rules, the penalty of dismissal from service carries with it the cancellation of eligibility, forfeiture of leave credits and retirement benefits, and the disqualification for reemployment in the government service.[26] **However, under the new Uniform Rules, forfeiture of leave credits was deleted as an accessory penalty.** Thus, under Section 58, Rule IV of the Uniform Rules, the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.

Similarly, Section 10, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by AO 17, provides that **"the penalty of dismissal from the service shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision."**

In this case, since Dr. Macabulos has already retired from the government service, her retirement benefits are forfeited but she is still entitled to receive her leave credits. She is also perpetually disqualified for reemployment in the government service and her civil service eligibility is cancelled.

Penalty of Dismissal is Executory Pending Appeal

The Court of Appeals held that the order of the Ombudsman imposing the penalty of dismissal is not immediately executory.

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[25] See Section 55, Rule IV of the Uniform Rules.

[26] Section 58, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service.

The Court of Appeals applied the ruling in *Lapid v. Court of Appeals*,[27] that all other decisions of the Ombudsman which impose penalties that are not enumerated in Section 27 of RA 6770 are neither final nor immediately executory.

In *Lapid v. Court of Appeals*, the Court anchored its ruling mainly on Section 27 of RA 6770, as supported by Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman. The pertinent provisions read:

Section 27 of RA 6770:

SEC. *27. Effectivity and Finality of Decisions*. – (1) All provisionary orders at the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

(1) New evidence has been discovered which materially affects the order, directive or decision;

(2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: *Provided*, That only one motion for reconsideration shall be entertained.

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. **Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one month's salary shall be final and unappealable.**

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require. (Emphasis supplied)

[27] G.R. No. 142261, 29 June 2000, 334 SCRA 738.

Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman (AO 07):

> Sec. 7. *Finality of decision*. – Where the respondent is absolved of the charge, and **in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for *certiorari*, shall have been filed by him as prescribed in Section 27 of RA 6770.** (Emphasis supplied)

The Court held in *Lapid v. Court of Appeals* that the Rules of Procedure of the Office of the Ombudsman "mandate that decisions of the Office of the Ombudsman where the penalty imposed is other than public censure or reprimand, suspension of not more than one month salary are still appealable and hence, not final and executory."[28]

Subsequently, on 17 August 2000, the Ombudsman issued Administrative Order No. 14-A (AO 14-A),[29] amending Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman. The amendment aims to provide uniformity with other disciplining authorities in the execution or implementation of judgments and penalties in administrative disciplinary cases involving public officials and employees. Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by AO 14-A, reads:

> Section 7. *Finality and execution of decision*. – Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision may be appealed within ten (10) days from receipt of the written notice of the decision or order denying the motion for reconsideration.
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> **An appeal shall not stop the decision from being executory.** In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension

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[28] *Id.* at 755.

[29] *Rollo*, pp. 377-378.

and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.(Emphasis supplied)

On 15 September 2003, AO 17 was issued, amending Rule III of the Rules of Procedure of the Office of the Ombudsman. Thus, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman was further amended and now reads:

Section 7. *Finality and execution of decision*. – Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from the receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. **In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.**

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be ground for disciplinary action against said officer. (Emphasis supplied)

Hence, in the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*,[30] the Court noted that Section 7 of AO 17 provides for execution of the decisions pending appeal, which provision is similar to Section 47 of the Uniform Rules on Administrative Cases in the Civil Service.[31]

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[30] G.R. No. 150274, 4 August 2006, 497 SCRA 626.

[31] Section 47 of the Uniform Rules on Administrative Cases in the Civil Service reads:

More recently, in the 2007 case of *Buencamino v. Court of Appeals*,[32] the primary issue was whether the decision of the Ombudsman suspending petitioner therein from office for six months without pay was immediately executory even pending appeal in the Court of Appeals. The Court held that the pertinent ruling in *Lapid v. Court of Appeals* has already been superseded by the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*, which clearly held that decisions of the Ombudsman are immediately executory even pending appeal.

Based on the foregoing, we hold that the Ombudsman's order imposing the penalty of dismissal on Dr. Macabulos was immediately executory even pending appeal in the Court of Appeals.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Decision dated 17 March 2003 and the Resolution dated 30 July 2003 of the Court of Appeals in CA-G.R. SP No. 66411. We *REINSTATE* the Memorandum Order dated 13 June 2001 and the Order dated 26 July 2001 of the Office of the Ombudsman, dismissing Dr. Mercedita J. Macabulos from the government service. Since Dr. Mercedita J. Macabulos has already retired from the government service, her retirement benefits are forfeited except her accrued leave credits. She is also perpetually disqualified for reemployment in the government service and her civil service eligibility is cancelled.

SO ORDERED.

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

Section 47. *Effect of Filing*. – **An appeal shall not stop the decision from being executory**, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal, in the event he wins the appeal. (Emphasis supplied)

[32] G.R. No. 175895, 12 April 2007, 520 SCRA 747.

* As replacement of Justice Renato C. Corona who is on leave per Administrative Circular No. 84-2007.

FIRST DIVISION

[G.R. No. 160395. May 7, 2008]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **PLANTERS DEVELOPMENT BANK,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; RULES OF PROCEDURE; APPLICATION OF THE RULES MAY BE RELAXED FOR THE PROMOTION OF JUSTICE.—** Rules of procedure are merely tools designed to facilitate the attainment of justice. If the application of the Rules would tend to frustrate rather than to promote justice, it is always within our power to suspend the rules or except a particular case from its operation. Law and jurisprudence grant to courts the prerogative to relax compliance with the procedural rules, even the most mandatory in character, mindful of the duty to reconcile the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.
2. **ID.; APPEALS; MOTION FOR EXTENSION TO FILE APPELLANT'S BRIEF; FURTHER EXTENSION WARRANTED UNDER THE CIRCUMSTANCES IN CASE AT BAR.—** In this case, petitioner had already been granted a total of 120 days to file its appellant's brief and it was requesting for another ten days from the Court of Appeals. We note from the records that the first and second motions for extension to file the petition, each requesting for additional 45 days, were signed by Atty. Epifanio D. Maranion (Atty. Maranion). The third motion for extension for additional 30 days within which to file brief was filed by Atty. Danilo B. Beramo (Atty. Beramo) who had just been designated Officer-in-Charge (OIC) of the CARP Legal Services Department (CLSD) as Atty. Maranion had retired. Atty. Beramo informed the Court of Appeals that only two other lawyers were assigned at the CLSD. Atty. Beramo also signed the fourth motion for extension for ten days that the Court of Appeals denied. The circumstances in this case warrant the leniency of the Court. Atty. Beramo had just been appointed OIC of CLSD. There was also a shortage of lawyers at the CLSD at that time. In addition, Atty. Beramo was only asking for additional ten days

within which to file the brief. Considering further that the issue involves the judicial determination of just compensation of 29 hectares of land, and that petitioner had already filed the appellant's brief, we deem it proper to relax the Rules in this case.

APPEARANCES OF COUNSEL

Piczon Beramo & Associates for petitioner.
Raymundo Santos Señga & Associates for respondent.

R E S O L U T I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the Resolutions promulgated on 28 March 2003[2] and 13 October 2003[3] of the Court of Appeals in CA-G.R. CV No. 74913.

The Antecedent Facts

Planters Development Bank (respondent) acquired from foreclosure proceedings two parcels of land located in Salaza, Palauig, Zambales. The two parcels of land, with an area of 23.7886 hectares and 32.5234 hectares, respectively, are covered by Transfer Certificate of Title (TCT) No. T-28061 (now TCT No. T-38758) and No. T-28064 (now TCT No. T-38760), respectively.

In 1991, the Department of Agrarian Reform (DAR) placed the land under compulsory coverage of Republic Act No. 6657[4] (RA 6657), covering 11 hectares from the area covered by TCT No. T-28061 and 18 hectares from the area covered by TCT

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, p. 37. Penned by Associate Justice Eloy R. Bello, Jr. with Associate Justices Cancio C. Garcia (a retired member of this Court) and Mario L. Guariña III, concurring.

[3] *Id*. at 38.

[4] Comprehensive Agrarian Reform Law of 1988.

No. T-28064. In accordance with DAR rules and regulations implementing RA 6657, Land Bank of the Philippines (petitioner) offered, as just compensation, the amount of ₱46,280.08[5] for the area covered by TCT No. T-28061 and ₱77,315.60[6] for the area covered by TCT No. T-28064, for the total of ₱123,595.68. Respondent rejected the offer and informed the DAR Regional Director of its preferred valuation of ₱2.50 per square meter for the two parcels of land. The DAR Regional Director endorsed the matter to the Regional Agrarian Reform Adjudicator for administrative determination of the valuation of the land. The DAR Regional Director notified petitioner to open a trust account in the name of respondent to receive the amount representing DAR and petitioner's valuation of the land. The Department of Agrarian Reform Adjudication Board (DARAB) ordered petitioner to conduct a re-computation or re-valuation of the land in accordance with DAR administrative regulations.

Respondent questioned the valuation and filed an action for Judicial Determination of Just Compensation against the DARAB, the DAR Provincial Adjudicator, and petitioner on the ground that the standards under RA 6657 were not followed in the re-computation. The case was docketed as Spl. Agrarian Case No. RTC-49-I. The DARAB, DAR Provincial Adjudicator, and petitioner failed to file their pre-trial briefs and were declared as in default. The trial court allowed respondent to present its evidence *ex-parte*.

The Ruling of the Trial Court

In its 11 December 2001 Decision,[7] the Regional Trial Court of Iba, Zambales, Branch 70 (trial court) ruled that the valuation made by DARAB and petitioner was baseless and prejudicial to the best interest of respondent. The dispositive portion of the trial court's Decision reads:

> WHEREFORE, in view of the undisputed testimonies of the witnesses, which this Court finds justified and reasonable based on

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[5] ₱4,207.28 per hectare or ₱0.4297 per square meter.

[6] ₱4,295.31 per hectare or ₱0.4295 per square meter.

[7] *Rollo*, pp. 74-78. Penned by Judge Clodualdo M. Monta.

certain factors such as the selling price of neighboring properties and the 1994 Assessor's schedule of values of agricultural lands in Palauig, Zambales, judgment is hereby rendered:

a) Setting aside the valuation made by the DAR and the Land Bank of the Philippines of the lands described in TCT No. T-28061 (now T-38758) and T-28064 (now T-38760) which are acquired by the DAR under a compulsory process of acquisition;

b) Setting aside the decisions or resolutions of the Department of Agrarian Reform Adjudication Board (DARAB) which were based on the valuation made by the Land Bank of the Philippines;

c) Fixing the valuation of the expropriated portions at ₱2.50 per square meter based on the current fair market value.

SO ORDERED.[8]

Petitioner filed a motion for reconsideration. In its Order dated 28 February 2002,[9] the trial court denied the motion.

Petitioner filed a notice of appeal.

The Ruling of the Court of Appeals

In its 28 March 2003 Resolution, the Court of Appeals dismissed the appeal for petitioner's failure to file its brief. The Court of Appeals ruled that petitioner had already been granted three extensions for a total of 120 days to file its brief and denied its motion for another extension of ten days.

Petitioner filed a motion for reconsideration alleging that it has clearly meritorious grounds and that the extension sought was due to "severe shortage of lawyers in the CARP Legal Services Department, which cannot be remedied with utmost dispatch on account of procedural and budgetary constraints in governmental institutions."

In its 13 October 2003 Resolution, the Court of Appeals denied the motion for lack of merit.

Hence, the petition before this Court.

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[8] *Id*. at 78.

[9] *Id*. at 87.

The Issue

The sole issue in this case is whether the Court of Appeals committed a reversible error in dismissing petitioner's appeal on a technical ground.

The Ruling of this Court

The petition has merit.

Rules of procedure are merely tools designed to facilitate the attainment of justice.[10] If the application of the Rules would tend to frustrate rather than to promote justice, it is always within our power to suspend the rules or except a particular case from its operation.[11] Law and jurisprudence grant to courts the prerogative to relax compliance with the procedural rules, even the most mandatory in character, mindful of the duty to reconcile the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.[12]

In this case, petitioner had already been granted a total of 120 days to file its appellant's brief and it was requesting for another ten days from the Court of Appeals. We note from the records that the first and second motions for extension to file the petition, each requesting for additional 45 days, were signed by Atty. Epifanio D. Maranion (Atty. Maranion). The third motion for extension for additional 30 days within which to file brief was filed by Atty. Danilo B. Beramo (Atty. Beramo) who had just been designated Officer-in-Charge (OIC) of the CARP Legal Services Department (CLSD) as Atty. Maranion had retired. Atty. Beramo informed the Court of Appeals that only two other lawyers were assigned at the CLSD. Atty. Beramo also signed the fourth motion for extension for ten days that the Court of Appeals denied. The circumstances in this case warrant the leniency of the Court. Atty. Beramo had just been appointed OIC of CLSD. There was also a shortage of lawyers

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[10] *Great Southern Maritime Services Corporation v. Acuña*, G.R. No. 140189, 28 February 2005, 452 SCRA 422.

[11] *Id*.

[12] *Barnes v. Padilla*, G.R. No. 160753, 28 June 2005, 461 SCRA 533.

at the CLSD at that time. In addition, Atty. Beramo was only asking for additional ten days within which to file the brief. Considering further that the issue involves the judicial determination of just compensation of 29 hectares of land, and that petitioner had already filed the appellant's brief, we deem it proper to relax the Rules in this case.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 28 March 2003 and 13 October 2003 Resolutions of the Court of Appeals in CA-G.R. CV No. 74913. We *REMAND* the case to the Court of Appeals for adjudication on the merits.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 161777. May 7, 2008]

DOMINIC GRIFFITH, *petitioner, vs.* **ANGELITO ESTUR, JUAN OFALSA, and ROLANDO EREVE,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; FINALITY OF JUDGMENT; EXPLAINED.—** Labor Arbiter Layawen's decision is already final and executory and can no longer be the subject of an appeal. Thus, petitioner is bound by the decision and can no longer impugn the same. Indeed, well-settled is the rule that a decision that has attained finality

* As replacement of Justice Renato C. Corona who is on leave per Administrative Circular No. 84-2007.

can no longer be modified even if the modification is meant to correct erroneous conclusions of fact or law. The doctrine of finality of judgment is explained in *Gallardo-Corro v. Gallardo*. Nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case. The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice, and that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law; otherwise, there would be no end to litigations, thus setting to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.

2. **ID.; ID.; ID.; ID.; WHILE A DECISION WHICH HAS BECOME FINAL AND EXECUTORY CAN NO LONGER BE CHALLENGED, THE MANNER OF ITS EXECUTION, IF NOT IN ACCORD WITH THE TENOR AND TERMS OF THE JUDGMENT, CAN BE SUBJECT OF A PROPER APPEAL.—** While petitioner can no longer challenge the decision which has become final and executory, he can question the manner of its execution especially if it is not in accord with the tenor and terms of the judgment. As held in *Abbott v. NLRC*: In the instant case, however, what is sought to be reviewed is not the decision itself but the manner of its execution. There is a big difference. While it is true that the decision itself has become final and executory and so can no longer be challenged, there is no question either that it must be enforced in accordance with its terms and conditions. Any deviation therefrom can be the subject of a proper appeal.

3. **ID.; ID.; JUDGMENTS; EXECUTION OF JUDGMENT; INCLUSION OF EXECUTION FEE DOES NOT MAKE WRIT OF EXECUTION DEFECTIVE.—** The inclusion of the execution fee is not a modification of the Labor Arbiter's

decision. Section 6, Rule IX of the Sheriff Manual provides that the execution fee shall be charged against the losing party.

APPEARANCES OF COUNSEL

Ocampo & Manalo Law Firm for petitioner.
Isidro D. Amoroso for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Decision[2] dated 24 September 2003 and the Resolution dated 16 January 2004 of the Court of Appeals in CA-G.R. SP No. 73663.

The Facts

On 25 July 1997, respondents Angelito Estur, Juan Ofalsa, and Rolando Ereve (respondents) filed an amended complaint[3] for illegal dismissal, nonpayment of legal holiday pay, 13th month pay, and service incentive leave pay against Lincoln Gerald, Inc. (Lincoln) and petitioner Dominic Griffith (petitioner).

Lincoln, a corporation owned by the Griffith family, is engaged in the manufacture of furniture. Respondents alleged that petitioner, the Vice President for Southeast Asia Operations, managed the corporation.

On 4 October 1999, Labor Arbiter Vicente R. Layawen (Labor Arbiter Layawen) decided the case in favor of respondents. The dispositive portion of the decision reads as follows:

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Eliezer R. de los Santos with Associate Justices B.A. Adefuin-de la Cruz and Jose C. Mendoza, concurring.

[3] The original complaint for illegal dismissal was filed on 20 May 1997 by Angelito Estur as the lone complainant.

WHEREFORE, judgment is hereby entered with the following rulings:

1. Dismissing the complaint of complainant Angelito Estur for illegal dismissal for lack of merit.

2. Ordering respondent(s) to pay Angelito Estur his 13th month pay for the (sic) 1996 in the amount of PHP7,930.00, but dismissing his other claims for insufficiency of evidence.

3. Declaring the dismissal of complainants Juan Ofalsa and Rolando Ereve [illegal], and ordering respondents to pay them their backwages from the time of their dismissal up to the rendition of this decision. Due to the apparent strained relationship between complainants and respondents, the latter are directed to pay complainants their separation pay in lieu of reinstatement equivalent to one month salary for every year of service.

4. Their money claims are dismissed for lack of merit.

SO ORDERED.[4]

Lincoln filed a notice of appeal on 9 November 1999 but failed to file the required memorandum of appeal. On 6 July 2001, the decision of Labor Arbiter Layawen became final and executory, and the first writ of execution was issued on 2 October 2001.

In February 2002, petitioner received a copy of the first *alias* writ of execution dated 7 January 2002, issued by Labor Arbiter Jaime Reyno (Labor Arbiter Reyno) directed against him and Lincoln. The first *alias* writ of execution orders the sheriff:

NOW, THEREFORE, you are hereby commanded to proceed to the premises of **respondent(s) Lincoln Gerald, Inc. and/or Dominic G. Griffith** located at #7 Sheridan corner Pioneer streets, Mandaluyong City or anywhere respondents may be found in the Philippines and collect the total amount of Php 590,828.00 representing their backwages, separation pay and 13th month pay **plus execution fee in the amount of PhP 5,408.00** and to turn over the said amount to this Office, for further disposition to the the complainants.[5] (Emphasis supplied)

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[4] *Rollo*, pp. 54-55.

[5] *Id*. at 59.

On 19 February 2002, petitioner filed a motion to quash the first *alias* writ of execution.[6] Petitioner alleged in his motion that he was unaware of the labor case filed against him because he was Lincoln's Vice President for Southeast Asia Operations only until 17 September 1997. Petitioner contended that the addition of the execution fee in the writ in effect modified Labor Arbiter Layawen's decision, and thus nullified the writ. Furthermore, petitioner maintained that as an officer of Lincoln, he was not personally liable to pay the judgment debt because he acted in good faith and within the bounds of his authority. Labor Arbiter Reyno denied the motion in an order dated 24 April 2002. Petitioner filed a motion for reconsideration, which the National Labor Relations Commission (NLRC) denied on 16 July 2002.

On 11 September 2002, Labor Arbiter Reyno issued a second *alias* writ of execution against petitioner and Lincoln.

On 4 November 2002, petitioner filed with the Court of Appeals a petition for *certiorari* with application for temporary restraining order or preliminary injunction. The Court of Appeals dismissed the petition in its Decision dated 24 September 2003, and subsequently denied petitioner's motion for reconsideration.

Hence, this petition for review.

The Ruling of the Court of Appeals

The Court of Appeals held that the NLRC did not commit grave abuse of discretion in denying petitioner's motion for reconsideration of the Labor Arbiter's order. The appellate court cited Section 19, Rule V of the New Rules of Procedure of the NLRC (NLRC Rules) which prohibits motions for reconsideration of any order or decision of a Labor Arbiter. However, when a motion for reconsideration is filed, it shall be treated as an appeal provided that it complies with the requirements for perfecting an appeal. The Court of Appeals held that petitioner's motion to recall the first *alias* writ of execution cannot be treated as an appeal.

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[6] *Id.* at 61-64.

Furthermore, the Court of Appeals ruled that the addition of the execution fee did not modify the decision because the NLRC Rules and the NLRC Manual on Execution of Judgment (Sheriff Manual)[7] provide for the inclusion of the execution fee which shall be collected from the losing party.

Lastly, the appellate court found no evidence which would substantiate petitioner's claim that as of 17 September 1997, he was no longer connected with Lincoln. There was no evidence that there was a change in the situation of the parties.

The Issue

The sole issue for resolution is whether the Court of Appeals erred in ruling that the NLRC did not commit grave abuse of discretion in upholding the order of Labor Arbiter Reyno, denying the motion to quash the writ.

The issue revolves on the validity of the first *alias* writ of execution dated 7 January 2002, issued by Labor Arbiter Reyno.

The Ruling of the Court

The petition is without merit.

At the outset, it should be stressed that the 4 October 1999 decision of Labor Arbiter Layawen, finding Lincoln and petitioner solidarily liable to respondents, became final and executory on 6 July 2001. Petitioner, however, persists in challenging Labor Arbiter Layawen's decision by insisting that the judgment debt should have been the sole liability of Lincoln. Petitioner maintains that the writ is defective because it makes him personally liable for the judgment debt even though he was only a corporate officer acting in good faith and within the bounds of his authority. The inclusion of petitioner in the writ as solidarily liable with Lincoln for the backwages, separation pay, and 13th month pay of respondents does not make the writ defective. On the contrary, the writ is in accord with the terms of Labor Arbiter Layawen's decision which the writ seeks to enforce.

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[7] The Sheriff Manual was issued on 24 February 1993. It took effect 15 days after its publication in two newspapers of general circulation on 17 October 1993.

Labor Arbiter Layawen's decision is already final and executory and can no longer be the subject of an appeal. Thus, petitioner is bound by the decision and can no longer impugn the same.[8] Indeed, well-settled is the rule that a decision that has attained finality can no longer be modified even if the modification is meant to correct erroneous conclusions of fact or law.[9] The doctrine of finality of judgment is explained in *Gallardo-Corro v. Gallardo*:[10]

> Nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case. The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice, and that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law; otherwise, there would be no end to litigations, thus setting to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[11]

While petitioner can no longer challenge the decision which has become final and executory, he can question the manner of its execution especially if it is not in accord with the tenor and terms of the judgment.[12] As held in *Abbott v. NLRC*:[13]

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[8] *Siliman University v. Fontelo-Paalan*, G.R. No. 170948, 26 June 2007, 525 SCRA 759.

[9] *Hulst v. PR Builders, Inc.*, G.R. No. 156364, 3 September 2007, 532 SCRA 74; *Philippine Rabbit Bus Lines, Inc. v. Heirs of Eduardo Mangawang*, G.R. No. 160355, 16 May 2005, 458 SCRA 684; *Philippine Veterans Bank v. Judge Estrella*, 453 Phil. 45 (2003).

[10] G.R. No. 136228, 30 January 2001, 350 SCRA 568.

[11] *Id.* at 578.

[12] *Flores v. UBS Marketing Corporation*, G.R. No. 169747, 27 July 2007, 528 SCRA 396.

[13] 229 Phil. 229 (1986).

In *Sawit v. Rodas* and *Daquis v. Bustos*, we held that a judgment becomes final and executory by operation of law, not by judicial declaration. Accordingly, finality of judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected. In such a situation, the prevailing party is entitled as a matter of right to a writ of execution; and issuance thereof is a ministerial duty, compellable by *mandamus*.

In the instant case, however, what is sought to be reviewed is not the decision itself but the manner of its execution. There is a big difference. While it is true that the decision itself has become final and executory and so can no longer be challenged, there is no question either that it must be enforced in accordance with its terms and conditions. Any deviation therefrom can be the subject of a proper appeal.[14]

In his motion to quash the writ, petitioner alleged that the writ was a nullity because it modified the 4 October 1999 decision of Labor Arbiter Layawen by including the amount of the execution fee in the writ.

The inclusion of the execution fee is not a modification of the Labor Arbiter's decision. Section 6, Rule IX of the Sheriff Manual provides that the execution fee shall be charged against the losing party, thus:

SECTION 6. *Sheriffs/Execution Fees*. – Sheriffs and deputy sheriffs shall be provided at the beginning of the month with a cash advance of five hundred pesos only (₱500.00) for transportation expenses which shall be liquidated at the end of the month with a statement of expenses and itinerary of travel duly approved by the Commission or Labor Arbiter issuing the writ.

In the National Labor Relations Commission, the sheriff or duly designated officer shall collect the following execution fees which shall be charged against the losing party:

(1) For awards less than ₱5,000.00 – ₱200.00;

(2) ₱5,000.00 or more but less than ₱20,000.00 – ₱400.00;

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[14] *Id*. at 233.

(3) ₱20,000.00 or more but less than ₱50,000.00 – ₱600.00;

(4) ₱50,000.00 or more but less than ₱100,000.00 – ₱800.00;

(5) ₱100,000.00 or more but not exceeding ₱150,000.00 – ₱1,000.00;

(6) ₱150,000.00 the fee is plus ₱10.00 for every ₱1,000.00 in excess of ₱150,000.00.

The sheriff or duly designated officer shall be administratively liable in case of failure to collect the execution fees without any justifiable reason. (Emphasis supplied)

Clearly, the inclusion of the execution fee does not make the writ of execution defective.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 24 September 2003 and the Resolution dated 16 January 2004 of the Court of Appeals in CA-G.R. SP No. 73663.

SO ORDERED.

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

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* As replacement of Justice Renato C. Corona who is on leave per Administrative Circular No. 84-2007.

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