PHILIPPINE REPORTS

VOL. 578

JUNE 18, 2008 TO JUNE 27, 2008

VOLUME 578

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JUNE 18, 2008 TO JUNE 27, 2008

SUPREME COURT
MANILA
2013

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2013

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

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

FE CRESCENCIA QUIMSON-BABOR
COURT ATTORNEY VI

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY V

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

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY IV

LEUWELYN TECSON-LAT
COURT ATTORNEY IV

DIANA DIAZ-GARRA
COURT ATTORNEY IV

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY III

SUPREME COURT OF THE PHILIPPINES

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

FIRST DIVISION

Chairman

Hon. Reynato S. Puno

Members

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

Division Clerk of Court

Atty. Enriqueta E. Vidal

SECOND DIVISION

Chairman

Hon. Leonardo A. Quisumbing

Members

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

Division Clerk of Court

Atty. Ludichi Y. Nunag

THIRD DIVISION

Chairperson

Hon. Consuelo Ynares-Santiago

Members

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

Division Clerk of Court

Atty. Lucita A. Soriano

PHILIPPINE REPORTS
CONTENTS

I. CASES REPORTED xiii

II. TEXT OF DECISIONS 1

III. SUBJECT INDEX 1035

IV. CITATIONS 1079

PHILIPPINE REPORTS

Page

A.H. Shopper's Mart, Inc. – Ricardo Suarez *vs.* 228
A.L.I. System, Inc. – RN Developmnent Corporation *vs.* 475
Abayata, et al., Lorenzo – David Sia Tio, et al. *vs.* 731
Aboitiz One, Inc., et al. – Oligario Salas *vs.* 915
AFP Retirement and Service Benefit System –
Eufrocino C. Ibañez, et al. *vs.* 61
Alingan, Malik "Bobby" T. – Norlaine Mitmug Limbona *vs.* 364
Aliño, etc., Lucia Carlos *vs.* Heirs of Angelica A.
Lorenzo, etc., et al. 698
Almo, Atty. Jose A. – Charles B. Baylon *vs.* 238
Ambee Food Services, Inc., et al. *vs.*
Court of Appeals, et al. 620
Ambee Food Services, Inc., et al. *vs.* Myrthle B. Marzan 620
Andres, etc., Abe C. – Kenneth Hao *vs.* 7
Aquino, Juanita A. *vs.* Teresita B. Paiste 244
Araneta, Gonzalo A. *vs.* People of the Philippines 876
Armed Forces and Police Mutual Benefit Association,
Inc. *vs.* Ines Bolos Santiago 609
Autocorp Group, et al. *vs.* Intra Strata Assurance
Corporation, et al. 804
Badillo, et al., Oscar *vs.* Court of Appeals, et al. 404
Badillo, et al., Oscar *vs.* Goldkey Development
Corporation, et al. 404
Bank of the Philippine Islands *vs.* Lifetime Marketing
Corporation 354
Barbero, Ester F. *vs.* Judge Cesar M. Dumlao, etc. 185
Baylon, Charles B. *vs.* Atty. Jose A. Almo 238
Belen, etc., Judge Medel Arnaldo B. –
Regidor Gutierrez *vs.* 393
BF Corporation – Cynthia Roxas-Del Castillo *vs.* 588
BF Corporation – Edsa Shangri-la Hotel and
Resort, Inc., et al. *vs.* 588
Buston-Arendain, et al., Cristita *vs.* Antonia Gil, et al. 519
Caballero, etc., et al., Villa M. – Judge Manuel V. Ginete *vs.* 197
Calaliman-Ledesma, et al., Erlinda – Euhilda C. Tabuada *vs.* 847
Capulong , et al., Romeo T. – Victor Jose Tan Uy *vs.* 635
Cham, Wilson *vs.* Atty. Eva Paita-Moya 566
Chua, Lamberto T. – Lilibeth Sunga-Chan, et al. *vs.* 262

Page

City of Makati, et al. *vs.* Municipality (now City)
of Taguig, Metropolitan Manila, et al. 773
Coja *y* Simeon, Remon – People of the Philippines *vs.* 169
Commission on Elections, et al. –
Norlaine Mitmug Limbona *vs.* 364
Concepcion *y* Clemente, et al., Alfredo –
People of the Philippines *vs.* 957
Consuelo Metal Corporation *vs.* Planters Development
Bank, et al. 431
Corinthian Garden Association, Inc. *vs.* Spouses Reynaldo
and Maria Luisa Tanjangco, et al. 712
Corrales, Astrid V. – Government Service
Insurance System *vs.* 784
Court of Appeals, et al. – Ambee Food
Services, Inc., et al. *vs.* 620
– Oscar Badillo, et al. *vs.* 404
– Lilibeth Sunga-Chan, et al. *vs.* 262
Dagudag (Ret.), Lt. Gen. Alfonso P. *vs.* Judge Maximo
G.W. Paderanga, etc. 207
De Guzman, Basilio – Sta. Monica Industrial and
Development Corporation *vs.* 91
De Guzman, Jr., Spouses Paulino and
Ana Dizon-De Guzman – Spouses Manalo P. Hernal, Jr.
and Mildred Villaroma-Hernal *vs.* 562
De la Cruz, et al., Elmer – People of the Philippines *vs.* 314
Dela Cruz, Spouses Renato and Florinda *vs.*
Spouses Gil and Leonila Segovia 420
Dolleton, Sps. Ferdinand and Perseveranda –
Lloyd's Enterprises and Credit Corporation *vs.* 135
Dumlao, etc., Judge Cesar M. – Ester F. Barbero *vs.* 185
Edsa Shangri-la Hotel and Resort , Inc., et al. *vs.*
BF Corporation 588
Escalada, Jr., etc., et al., Hon. Remigio M. –
Emerlinda S. Talento, etc. *vs.* 1021
Estioca *y* Macamay, Valcesar *vs.* People of the Philippines 853
Feliciano, Engr. Ranulfo C. *vs.* Nestor P. Villasin 889
Ferrer, Atty. Andrew V. – Marjorie F. Samaniego *vs.* 1
FGU Insurance Corporation – International Container
Terminal Services, Inc. *vs.* 751

Page

Fil-Estate Properties, Inc., et al. *vs.* Hon. Marietta J. Homena-Valencia, etc., et al. 331
Fil-Estate Properties, Inc., et al. *vs.* Sullian Sy Naval 331
Gil, et al., Antonia – Cristita Buston-Arendain, et al. *vs.* 519
Ginete, Judge Manuel V. *vs.* Villa M. Caballero, etc., et al. 197
Go, Jorge Q. *vs.* Vinez A. Hortaleza, etc. 377
Goldkey Development Corporation, et al. – Oscar Badillo, et al. *vs.* 404
Government Service Insurance System *vs.* Astrid V. Corrales 784
Gutierrez, Regidor *vs.* Judge Medel Arnaldo B. Belen, etc. 393
Hanjin Heavy Industries and Construction Co., Ltd., et al. *vs.* Felicito Ibañez, et al. 497
Hao, Kenneth *vs.* Abe C. Andres, etc. 7
Hernal, Jr., Spouses Manalo P. and Mildred Villaroman-Hernal *vs.* Spouses Paulino De Guzman, Jr. and Ana Dizon-De Guzman 562
Homena-Valencia, etc., et al., Hon. Marietta J. – Fil-Estate Properties, Inc., et al. *vs.* 331
Hortaleza, etc., Vinez A. – Jorge Q. Go *vs.* 377
Ibañez, et al., Eufrocino C. *vs.* AFP Retirement and Service Benefit System 61
Ibañez, et al., Felicito – Hanjin Heavy Industries and Construction Co., Ltd., et al. *vs.* 497
Imperial Credit Corporation – Republic of the Philippines *vs.* 300
In Re: Petition for the Favorable Consideration of the four (4) years of length of service as a Sangguniang Bayan member of the petitioner to complete the twenty-one years of government service for purposes of receiving his monthly lifetime pension after five (5) years , Judge Antonio S. Alano (Ret.) 577
In-House Financial Audit, Conducted in the Books of Accounts of Khalil B. Dipatuan, RTC-Malabang, Lanao del Sur 387
International Container Terminal Services, Inc. *vs.* FGU Insurance Corporation 751

Page

Intra Strata Assurance Corporation, et al. –
Autocorp Group, et al. *vs.* 804
Jimenez, et al., Bernardo – Pag-asa Fishpond
Corporation *vs.* 106
Land Bank of the Philippines *vs.* Spouses Placido Orilla
and Clara Dy Orilla 663
Lao, Rizza @ Nerissa Laping *vs.* People of the Philippines 679
Lifetime Marketing Corporation – Bank of the
Philippine Islands *vs.* 354
Limbona, Norlaine Mitmug *vs.* Malik "Bobby" T. Alingan 364
Limbona, Norlaine Mitmug *vs.* Commission
on Elections, et al. 364
Literato, et al., Spouses Diosdidit and Menendez M. –
Judge Antonio C. Sumaljag *vs.* 48
Lloyd's Enterprises and Credit Corporation *vs.*
Sps. Ferdinand and Perseveranda Dolleton 135
Lopez, Jude Joby *vs.* People of the Philippines 486
Lorenzo, etc., et al., Heirs of Angelica A. –
Lucia Carlos Aliño, etc. *vs.* 698
Maglente *y* Cervantes, Efren – People of the
Philippines *vs.* 980
Marcelo, et al., Ombudsman Simeon V. –
Hilario P. Soriano *vs.* 79
Marzan, Myrthle B. – Ambee Food Services, Inc., et al. *vs.* 620
Metropolitan Bank and Trust Company, et al. *vs.*
Jose B. Tan, et al. 464
Mina, Nilo Jay *vs.* Judge Jesus B. Mupas, etc. 41
Municipality (now City) of Taguig, Metropolitan
Manila, et al. – City of Makati, et al. *vs.* 773
Mupas, etc., Judge Jesus B. – Nilo Jay Mina *vs.* 41
Nasipit Employees Labor Union (NELU)-ALU-TUCP, etc.
– Nasipit Integrated Arrastre and Stevedoring Services,
Inc. (NIASSI), etc. *vs.* 762
Nasipit Integrated Arrastre and Stevedoring Services, Inc.
(NIASSI), etc. *vs.* Nasipit Employees Labor Union
(NELU)-ALU-TUCP, etc. 762
Naval, Sullian Sy – Fil-Estate Properties, Inc., et al. *vs.* 331
Navales, Nilda V. *vs.* Reynaldo Navales 826

Page

Navales, Reynaldo – Nilda V. Navales *vs.* 826
Office of the Ombudsman, et al. – Victor Jose Tan Uy *vs.* 635
Orilla, Spouses Placido and Clara Dy –
Land Bank of the Philippines *vs.* 663
Ortega, Ibarra P. *vs.* Social Security Commission, et al. 338
Paderanga, etc., Judge Maximo G.W. –
Lt. Gen. Alfonso P. Dagudag (Ret.) *vs.* 207
Pag-asa Fishpond Corporation *vs.* Bernardo Jimenez, et al. 106
Paiste, Teresita B. – Juanita A. Aquino *vs.* 244
Paita-Moya, Atty. Eva – Wilson Cham *vs.* 566
Palero-Tan, Edna *vs.* Ciriaco I. Urdaneta, Jr., etc. 25
People of the Philippines – Gonzalo A. Araneta *vs.* 876
– Valcesar Estioca y Macamay *vs.* 853
– Rizza Lao @ Nerissa Laping *vs.* 679
– Jude Joby Lopez *vs.* 486
People of the Philippines *vs.* Remon Coja *y* Simeon 169
Alfredo Concepcion *y* Clemente, et al. 957
Elmer De la Cruz, et al. 314
Efren Maglente *y* Cervantes 980
Resurreccion Ranin, Jr. *y* Jamali 285
Jerry Santos *y* Macol, et al. 535
Rodolfo Sison 150
Alejandro Sorila, Jr. *y* Supida, et al. 931
People of the Philippines, et al. – Ricardo Suarez *vs.* 228
Petron Corporation . – Emerlinda S. Talento, etc. *vs.* 1021
Pimentel, Sr., etc., et al., Hon. Oscar –
Antonio F. Trillanes IV *vs.* 1002
Planters Development Bank, et al. – Consuelo Metal
Corporation *vs.* 431
Ranin, Jr. *y* Jamali, Resurreccion –
People of the Philippines *vs.* 285
Republic of the Philippines *vs.* Imperial Credit Corporation 300
Republic of the Philippines *vs.* T.A.N. Properties, Inc. 441
RN Developmnent Corporation *vs.* A.L.I. System, Inc. 475
Roxas-Del Castillo, Cynthia *vs.* BF Corporation 588
Ruiz, etc., et al., Hon. J. Cedrick, etc., et al. –
Euhilda C. Tabuada *vs.* 847
Salas, Oligario *vs.* Aboitiz One, Inc., et al. 915

Page

Samaniego, Marjorie F. *vs.* Atty. Andrew V. Ferrer 1
Santiago, Ines Bolos – Armed Forces and
Police Mutual Benefit Association, Inc. *vs.* 609
Santos *y* Macol, et al., Jerry – People of the Philippines *vs.* 535
Segovia, Spouses Gil and Leonila – Spouses Renato
and Florinda Dela Cruz *vs.* 420
Sia Tio, et al., David *vs.* Lorenzo Abayata, et al. 731
Sison, Rodolfo – People of the Philippines *vs.* 150
Social Security Commission, et al. – Ibarra P. Ortega *vs.* 338
Soriano, Hilario P. *vs.* Ombudsman Simeon V. Marcelo, et al. ... 79
Sorila, Jr. *y* Supida, et al., Alejandro –
People of the Philippines *vs.* 931
Sta. Monica Industrial and Development Corporation *vs.*
Basilio De Guzman 91
Sta. Monica Industrial and Development Corporation *vs.*
The Department of Agrarian Reform Regional Director
For Region III, et al. 91
Suarez, Ricardo *vs.* A.H. Shopper's Mart, Inc. 228
Suarez, Ricardo *vs.* People of the Philippines, et al. 228
Sumaljag, Judge Antonio C. *vs.* Spouses Diosdidit and
Menendez M. Literato, et al. 48
Sunga-Chan, et al., Lilibeth *vs.* Lamberto T. Chua 262
Sunga-Chan, et al., Lilibeth *vs.* Court of Appeals, et al. 262
T.A.N. Properties, Inc. – Republic of the Philippines *vs.* 441
Tabuada, Euhilda C. *vs.* Erlinda Calaliman-Ledesma, et al. 847
Tabuada, Euhilda C. *vs.* Hon. J. Cedrick O. Ruiz, etc., et al. 847
Talento, etc., Emerlinda S. *vs.* Hon. Remigio M.
Escalada, Jr., etc., et al. 1021
Talento, etc., Emerlinda S. *vs.* Petron Corporation 1021
Tan, et al., Jose B. – Metropolitan Bank and
Trust Company, et al. *vs.* 464
Tanjangco, et al., Spouses Reynaldo and Maria Luisa –
Corinthian Garden Association, Inc. *vs.* 712
The Department of Agrarian Reform Regional Director
For Region III, et al. – Sta. Monica Industrial and
Development Corporation *vs.* 91
Trillanes IV, Antonio F. *vs.* Hon. Oscar
Pimentel, Sr., etc., et al. 1020
Urdaneta, Jr., etc., Ciriaco I. – Edna Palero-Tan *vs.* 25

Page

Uy, Victor Jose Tan *vs.* Romeo T. Capulong, et al. 635
Uy, Victor Jose Tan *vs.* Office of the Ombudsman, et al. 635
Villasin, Nestor P. – Eng. Ranulfo C. Feliciano *vs.* 889

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 7022. June 18, 2008]

MARJORIE F. SAMANIEGO, *complainant, vs.* **ATTY. ANDREW V. FERRER,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; GROSS IMMORALITY; PROPER PENALTY IN CASE AT BAR. — Atty. Ferrer admitted his extra-marital affair; in his words, his indiscretion which ended in 2000. We have considered such illicit relation as a disgraceful and immoral conduct subject to disciplinary action. The penalty for such immoral conduct is disbarment, or indefinite or definite suspension, depending on the circumstances of the case. We find the penalty recommended by the IBP and Office of the Bar Confidant as adequate sanction for the grossly immoral conduct of respondent. Thus, respondent is **SUSPENDED** from the practice of law for six (6) months effective upon notice with **WARNING** that the same or similar act in the future will be dealt with more severely.

2. ID.; CODE OF PROFESSIONAL RESPONSIBILITY; THAT LAWYERS MUST OBSERVE PROPER DECORUM AT ALL TIMES, REITERATED IN CASE AT BAR. — It is opportune to remind Atty. Ferrer and all members of the bar of the following norms under the Code of Professional Responsibility: x x x Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. x x x **Canon 7 — A lawyer shall at all times uphold the integrity and dignity of the legal**

> **profession and support the activities of the integrated bar.** x x x Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession. x x x Needless to state, respondent ought always to keep in mind the responsibilities of a father to all his children. If there be a resultant hardship on them because of this case, let it be impressed on all concerned that the direct cause thereof was his own misconduct.

R E S O L U T I O N

QUISUMBING, *J.*:

For resolution is the Complaint of Marjorie F. Samaniego against respondent Atty. Andrew V. Ferrer for immorality, abandonment and willful refusal to give support to their daughter, filed before the Integrated Bar of the Philippines (IBP) and docketed as CBD Case No. 04-1184.

The facts are as follows:

Early in 1996, Ms. Samaniego was referred to Atty. Ferrer as a potential client. Atty. Ferrer agreed to handle her cases[1] and soon their lawyer-client relationship became intimate. Ms. Samaniego said Atty. Ferrer courted her and she fell in love with him.[2] He said she flirted with him and he succumbed to her temptations.[3] Thereafter, they lived together as "husband and wife" from 1996 to 1997,[4] and on March 12, 1997, their daughter was born.[5] The affair ended in 2000[6] and since then he failed to give support to their daughter.[7]

---

[1] *Rollo*, pp. 1, 34.

[2] *Id*. at 1.

[3] *Id*. at 35.

[4] *Id*. at 78.

[5] *Id*. at 1, 60.

[6] *Id*. at 35.

[7] *Id*. at 2 and 35.

Before the IBP Commission on Bar Discipline, Ms. Samaniego presented their daughter's birth and baptismal certificates, and the photographs taken during the baptism. She testified that she knew that Atty. Ferrer was in a relationship but did not think he was already married. She also testified that she was willing to compromise, but he failed to pay for their daughter's education as agreed upon.[8] Atty. Ferrer refused to appear during the hearing since he did not want to see Ms. Samaniego.[9]

In his position paper,[10] Atty. Ferrer manifested his willingness to support their daughter. He also admitted his indiscretion; however, he prayed that the IBP consider Ms. Samaniego's complicity as she was acquainted with his wife and children. He further reasoned that he found it unconscionable to abandon his wife and 10 children to cohabit with Ms. Samaniego.

In Resolution No. XVII-2005-138[11] dated November 12, 2005, the IBP Board of Governors adopted the report and recommendation of the Investigating Commissioner, and imposed upon Atty. Ferrer the penalty of six (6) months suspension from the practice of law for his refusal to support his daughter with Ms. Samaniego. The IBP also admonished him to be a more responsible member of the bar and to keep in mind his duties as a father.

On February 1, 2006, Atty. Ferrer filed a Motion for Reconsideration[12] with prayer for us to reduce the penalty, to wit:

> Without passing judgment on the correctness or incorrectness of the disposition of the Honorable Commission on Bar Discipline, herein respondent most humbly and respectfully begs the compassion of the Honorable Court and states that the gravity of the penalty imposed and meted out, depriving herein respondent to earn a modest

---

[8] *Id*. at 72-80 (TSN, March 30, 2005).

[9] *Id*. at 54, 81.

[10] *Id*. at 34-36.

[11] *Id*. at 84.

[12] *Id*. at 93-94.

living for a period of six (6) months, will further cause extreme hardship to his family of ten (10) children.[13]

We referred the motion to the Office of the Bar Confidant for evaluation. Upon finding that Atty. Ferrer lacked the degree of morality required of a member of the bar for his illicit affair with Ms. Samaniego, with whom he sired a child while he was lawfully married and with 10 children, the Office of the Bar Confidant recommended that we affirm Resolution No. XVII-2005-138 and deny the prayer for reduced penalty.[14]

We agree with the IBP on Atty. Ferrer's failure to give support to his daughter with Ms. Samaniego. We also agree with the Office of the Bar Confidant that Atty. Ferrer's affair with Ms. Samaniego showed his lack of good moral character as a member of the bar. We dismiss, however, Ms. Samaniego's charge of abandonment since Atty. Ferrer did not abandon them. He returned to his family.

Atty. Ferrer admitted his extra-marital affair; in his words, his indiscretion which ended in 2000. We have considered such illicit relation as a disgraceful and immoral conduct subject to disciplinary action.[15] The penalty for such immoral conduct is disbarment,[16] or indefinite[17] or definite[18] suspension, depending on the circumstances of the case. Recently, in *Ferancullo v. Ferancullo, Jr.,*[19] we ruled that suspension from the practice

---

[13] *Id*. at 93.

[14] *Id*. at 109.

[15] *Ferancullo v. Ferancullo, Jr.*, A.C. No. 7214, November 30, 2006, 509 SCRA 1, 15.

[16] *Bustamante-Alejandro v. Alejandro*, A.C. No. 4256, February 13, 2004, 422 SCRA 527, 532-533; *Guevarra v. Eala*, A.C. No. 7136, August 1, 2007, 529 SCRA 1, 21.

[17] *Zaguirre v. Castillo*, Adm. Case No. 4921, March 6, 2003, 398 SCRA 658, 666.

[18] *Zaguirre v. Castillo*, A.C. No. 4921, August 3, 2005, 465 SCRA 520, 525; *Ferancullo v. Ferancullo, Jr.*, *supra* note 15, at 18.

[19] *Ferancullo v. Ferancullo, Jr.*, *id*.

of law for two years was an adequate penalty imposed on the lawyer who was found guilty of gross immorality. In said case, we considered the absence of aggravating circumstances such as an adulterous relationship coupled with refusal to support his family; or maintaining illicit relationships with at least two women during the subsistence of his marriage; or abandoning his legal wife and cohabiting with other women.[20]

In this case, we find no similar aggravating circumstances. Thus we find the penalty recommended by the IBP and Office of the Bar Confidant as adequate sanction for the grossly immoral conduct of respondent.

On another point, we may agree with respondent's contention that complainant was not entirely blameless. She knew about his wife but blindly believed him to be unmarried. However, that one complicit in the affair complained of immorality against her co-principal does not make this case less serious since it is immaterial whether Ms. Samaniego is *in pari delicto*.[21] We must emphasize that this Court's investigation is not about Ms. Samaniego's acts but Atty. Ferrer's conduct as one of its officers and his fitness to continue as a member of the Bar.[22]

Finally, it is opportune to remind Atty. Ferrer and all members of the bar of the following norms under the Code of Professional Responsibility:

x x x x x x x x x

Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

x x x x x x x x x

Canon 7 — A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the integrated bar.

---

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

[21] *Zaguirre v. Castillo*, *supra* note 17, at 664.

[22] *Cojuangco, Jr. v. Palma*, Adm. Case No. 2474, September 15, 2004, 438 SCRA 306, 317.

x x x x x x x x x

Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

x x x x x x x x x

Needless to state, respondent ought always to keep in mind the responsibilities of a father to all his children. If there be a resultant hardship on them because of this case, let it be impressed on all concerned that the direct cause thereof was his own misconduct.

WHEREFORE, we find respondent Atty. Andrew V. Ferrer *GUILTY* of gross immorality and, as recommended by the Integrated Bar of the Philippines and the Office of the Bar Confidant, *SUSPEND* him from the practice of law for six (6) months effective upon notice hereof, with *WARNING* that the same or similar act in the future will be dealt with more severely.

To enable us to determine the effectivity of the penalty imposed, the respondent is *DIRECTED* to report the date of his receipt of this Decision to this Court.

Let copies of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the courts all over the country. Let a copy of this Decision likewise be attached to the personal records of the respondent.

SO ORDERED.

Tinga, Reyes,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

---

[*] Additional member in place of Associate Justice Presbitero J. Velasco, Jr. who is on official leave.

[**] Additional member in place of Associate Justice Conchita Carpio Morales who is on official leave.

SECOND DIVISION

[A.M. No. P-07-2384. June 18, 2008]

KENNETH HAO, *complainant, vs.* **ABE C. ANDRES, Sheriff IV, Regional Trial Court, Branch 16, Davao City,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; WRIT OF REPLEVIN; IMPLEMENTATION THEREOF; DUTY OF THE SHERIFF AND DISPOSITION OF PROPERTY BY SHERIFF. — Being an officer of the court, Sheriff Andres must be aware that there are well-defined steps provided in the Rules of Court regarding the proper implementation of a writ of replevin and/or an order of seizure. The Rules, likewise, is explicit on the duty of the sheriff in its implementation. To recapitulate what should be common knowledge to sheriffs, the pertinent provisions of Rule 60, of the Rules of Court are quoted hereunder: SEC. 4. *Duty of the sheriff.* — Upon receiving such order, the sheriff must serve a copy thereof on the adverse party, together with a copy of the application, affidavit and bond, and **must forthwith take the property, if it be in the possession of the adverse party, or his agent, and retain it in his custody**. If the property or any part thereof be concealed in a building or enclosure, the sheriff must demand its delivery, and if it be not delivered, he must cause the building or enclosure to be broken open and take the property into his possession. **After the sheriff has taken possession of the property as herein provided, he must keep it in a secure place and shall be responsible for its delivery to the party entitled thereto upon receiving his fees and necessary expenses for taking and keeping the same.** *SEC. 6. Disposition of property by sheriff.* — **If within five (5) days after the taking of the property by the sheriff,** the adverse party does not object to the sufficiency of the bond, or of the surety or sureties thereon; or if the adverse party so objects and the court affirms its approval of the applicant's bond or approves a new bond, or if the adverse party requires the return of the property but his bond is objected to and found insufficient and he does not forthwith file an approved bond, the property shall be delivered

to the applicant. If for any reason the property is not delivered to the applicant, the sheriff must return it to the adverse party.

2. ID.; ID.; ID.; ID.; ID.; THAT PROPERTY SEIZED IS NOT TO BE DELIVERED IMMEDIATELY TO THE PLAINTIFF; VIOLATED IN CASE AT BAR. — The rules provide that property seized under a writ of replevin is not to be delivered immediately to the plaintiff. In accordance with the said rules, Andres should have waited no less than five days in order to give the complainant an opportunity to object to the sufficiency of the bond or of the surety or sureties thereon, or require the return of the seized motor vehicles by filing a counter-bond. This, he failed to do. Records show that Andres took possession of two of the subject motor vehicles on October 17, 2005, four on October 18, 2005, and another three on October 19, 2005. Simultaneously, as evidenced by the depository receipts, on October 18, 2005, Silver received from Andres six of the seized motor vehicles, and three more motor vehicles on October 19, 2005. Consequently, there is no question that Silver was already in possession of the nine seized vehicles immediately after seizure, or no more than three days after the taking of the vehicles. Thus, Andres committed a clear violation of Section 6, Rule 60 of the Rules of Court with regard to the proper disposal of the property. It matters not that Silver was in possession of the seized vehicles merely for safekeeping as stated in the depository receipts. The rule is clear that the property seized should not be immediately delivered to the plaintiff, and the sheriff must retain custody of the seized property for at least five days. Hence, the act of Andres in delivering the seized vehicles immediately after seizure to Silver for whatever purpose, without observing the five-day requirement finds no legal justification. It must also be stressed that from the moment an order of delivery in replevin is executed by taking possession of the property specified therein, such property is in *custodia legis*. As legal custodian, it is Andres' duty to safekeep the seized motor vehicles. Hence, when he passed his duty to safeguard the motor vehicles to Silver, he committed a clear neglect of duty. Third, we are appalled that even after PO3 Despe reported the unauthorized duplication of the vehicles' keys, Andres failed to take extra precautionary measures to ensure the safety of the vehicles. It must be stressed that as court custodian, it was Andres' responsibility to ensure that the motor vehicles were safely kept and that the same were

readily available upon order of the court or demand of the parties concerned.

3. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; SHERIFFS; DUTY IN SERVING AND IMPLEMENTING COURT WRITS; ELUCIDATED. — Specifically, sheriffs, being ranking officers of the court and agents of the law, must discharge their duties with great care and diligence. In serving and implementing court writs, as well as processes and orders of the court, they cannot afford to err without affecting adversely the proper dispensation of justice. Sheriffs play an important role in the administration of justice and as agents of the law, high standards of performance are expected of them. When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. However, the prompt implementation of an order of seizure is called for only in instances where there is no question regarding the right of the plaintiff to the property. True, sheriffs must comply with their mandated ministerial duty to implement writs promptly and expeditiously, but equally true is the principle that sheriffs by the nature of their functions must at all times conduct themselves with propriety and decorum and act above suspicion. There must be no room for anyone to conjecture that sheriffs and deputy sheriffs as officers of the court have conspired with any of the parties to a case to obtain a favorable judgment or immediate execution. The sheriff is at the front line as representative of the judiciary and by his act he may build or destroy the institution.

4. REMEDIAL LAW; LEGAL FEES; PROCEDURE FOR THE EXECUTION OF WRITS AND OTHER PROCESSES; VIOLATED IN CASE AT BAR. — Under Section 9, Rule 141 of the Rules of Court, the procedure for the execution of writs and other processes are: First, the sheriff must make an estimate of the expenses to be incurred by him; Second, he must obtain court approval for such estimated expenses; Third, the approved estimated expenses shall be deposited by the interested party with the Clerk of Court and *ex officio* sheriff; Fourth, the Clerk of Court shall disburse the amount to the executing sheriff; and Fifth, the executing sheriff shall liquidate

his expenses within the same period for rendering a return on the writ.

5. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; GROSS NEGLIGENCE; PRESENT IN CASE AT BAR. — There is no doubt that Andres failed to live up to the standards required of his position. The number of instances that Andres strayed from the regular course observed in the proper implementation of the orders of the court cannot be countenanced. Thus, taking into account the numerous times he was found negligent and careless of his duties coupled with his utter disregard of legal procedures, he cannot be considered guilty merely of simple negligence. His acts constitute gross negligence. As we have previously ruled: . . . **Gross negligence refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property . . . Gross neglect, on the other hand, is such neglect from the gravity of the case, or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare.** The term does not necessarily include willful neglect or intentional official wrongdoing.

6. ID.; ID.; ID.; ID.; GOOD FAITH, NOT MATERIAL. — Good faith on the part of Andres, or lack of it, in proceeding to properly execute his mandate would be of no moment, for he is chargeable with the knowledge that being an officer of the court tasked therefor, it behooves him to make due compliance. He is expected to live up to the exacting standards of his office and his conduct must at all times be characterized by rectitude and forthrightness, and so above suspicion and mistrust as well. Thus, an act of gross neglect resulting in loss of properties in *custodia legis* ruins the confidence lodged by the parties to a suit or the citizenry in our judicial process. Those responsible for such act or omission cannot escape the disciplinary power of this Court.

7. ID.; ID.; ID.; GRAVE ABUSE OF AUTHORITY; PRESENT IN CASE AT BAR. — Anent the allegation of grave abuse of authority (oppression), records show that Andres started

enforcing the writ of replevin/order of seizure on the same day that the order of seizure was issued. He also admitted that he took the vehicles of persons who are not parties to the replevin case. He further admitted that he took one vehicle belonging to a certain Junard Escudero without the latter's knowledge and even caused the duplication of its keys in order that it may be taken by Andres. Certainly, these are indications that Andres enforced the order of seizure with undue haste and without giving the complainant prior notice or reasonable time to deliver the motor vehicles. Hence, Andres is guilty of grave abuse of authority (oppression).

8. ID.; ID.; GROSS NEGLECT OF DUTY AND GRAVE ABUSE OF AUTHORITY; IMPOSABLE PENALTY; PROPER PENALTY IN CASE AT BAR. — The imposable penalty for gross neglect of duty is dismissal. While the penalty imposable for grave abuse of authority (oppression) is suspension for six (6) months one (1) day to one (1) year. Section 55, Rule IV, of the Uniform Rules on Administrative Cases in the Civil Service provides that 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. In the instant case, the penalty for the more serious offense which is dismissal should be imposed on Andres. However, following Sections 53 and 54, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, we have to consider that Andres is a first-time offender; hence, a lighter penalty than dismissal from the service would suffice. Consequently, instead of imposing the penalty of dismissal, the penalty of suspension from office for one (1) year without pay is proper for gross neglect of duty, and another six (6) months should be added for the aggravating circumstance of grave abuse of authority (oppression).

R E S O L U T I O N

QUISUMBING, *J.*:

Before us is an administrative complaint for gross neglect of duty, grave abuse of authority (oppression) and violation of

Republic Act No. 3019[1] filed by complainant Kenneth Hao against respondent Abe C. Andres, Sheriff IV of the Regional Trial Court (RTC) of Davao City, Branch 16.

The antecedent facts are as follows:

Complainant Hao is one of the defendants in a civil case for replevin docketed as Civil Case No. 31, 127-2005[2] entitled "*Zenaida Silver*, *doing trade and business under the name and style ZHS Commercial v. Loreto Hao, Atty. Amado Cantos, Kenneth Hao and John Does,*" pending before the RTC of Davao City, Branch 16.

On October 17, 2005, Judge Renato A. Fuentes[3] issued an Order of Seizure[4] against 22 motor vehicles allegedly owned by the complainant. On the strength of the said order, Andres was able to seize two of the subject motor vehicles on October 17, 2005; four on October 18, 2005, and another three on October 19, 2005, or a total of nine motor vehicles.[5]

In his Affidavit-Complaint[6] against Andres before the Office of the Court Administrator (OCA), Hao alleged that Andres gave undue advantage to Zenaida Silver in the implementation of the order and that Andres seized the nine motor vehicles in an oppressive manner. Hao also averred that Andres was accompanied by unidentified armed personnel on board a military vehicle which was excessive since there were no resistance from them. Hao also discovered that the compound where the seized motor vehicles were placed is actually owned by Silver.[7]

---

[1] ANTI-GRAFT AND CORRUPT PRACTICES ACT, approved on August 17, 1960.

[2] Also known as "Civil Case No. 31, 137-2005" in other parts of the *rollo*.

[3] Then pairing judge of Branch 16, who became the executive judge of RTC-Davao City.

[4] *Rollo,* pp. 157-158.

[5] *Id*. at 159-167.

[6] *Id*. at 95-96.

[7] *Id*. at 124.

On October 21, 2005, in view of the approval of the complainant's counter-replevin bond, Judge Emmanuel C. Carpio[8] ordered Andres to immediately cease and desist from further implementing the order of seizure, and to return the seized motor vehicles including its accessories to their lawful owners.[9]

However, on October 24, 2005, eight of the nine seized motor vehicles were reported missing. In his report,[10] Andres stated that he was shocked to find that the motor vehicles were already missing when he inspected it on October 22, 2005. He narrated that on October 21, 2005, PO3 Rodrigo Despe, one of the policemen guarding the subject motor vehicles, reported to him that a certain "Nonoy" entered the compound and caused the duplication of the vehicles' keys.[11] But Andres claimed the motor vehicles were still intact when he inspected it on October 21, 2005.

Subsequently, Hao reported that three of the carnapped vehicles were recovered by the police.[12] He then accused Andres of conspiring and conniving with Atty. Oswaldo Macadangdang (Silver's counsel) and the policemen in the carnapping of the motor vehicles. Hao also accused Andres of concealing the depository receipts from them and pointed out that the depository receipts show that Silver and Atty. Macadangdang were the ones who chose the policemen who will guard the motor vehicles.

In his Comment[13] dated March 3, 2006, Andres vehemently denied violating Rep. Act No. 3019 and committing gross neglect of duty.

Andres denied implementing the Order of Seizure in an oppressive manner. He said he took the vehicles because they

---

[8] Presiding Judge of Branch 16, RTC-Davao City at the time of the issuance of the Order.

[9] *Rollo*, p. 102; Order erroneously dated October 21, 2004.

[10] *Id*. at 53-56.

[11] *Id*. at 342.

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

[13] *Id*. at 145-156.

were the specific vehicles ordered to be seized after checking their engine and chassis numbers. Andres likewise denied that he was accompanied by military personnel in the implementation of the order. He claimed that he was merely escorted by policemen pursuant to the directive of Police Senior Supt. Catalino S. Cuy, Chief of the Davao City Police Office. Andres also maintained that no form of harassment or oppression was committed during the implementation of the order, claiming that the presence of the policemen was only for the purpose of preserving peace and order, considering there were 22 motor vehicles specified in the Order of Seizure. Andres added that he exercised no discretion in the selection of the policemen who assisted in the implementation of the order, much less of those who will guard the seized motor vehicles.

Andres disputed the allegation that he neglected his duty to safeguard the seized vehicles by pointing out that he placed all the motor vehicles under police watch. He added that the policemen had control of the compound where the seized motor vehicles were kept.

Andres likewise contended that after the unauthorized duplication of the vehicles' keys was reported to him, he immediately advised the policemen on duty to watch the motor vehicles closely.[14] He negated the speculations that he was involved in the disappearance of the seized motor vehicles as he claims to be the one who reported the incident to the court and the police.

As to the allegation of undisclosed depository receipts, Andres maintained that he never denied the existence of the depository receipts. He said the existence of the depository receipts was immediately made known on the same day that the subject motor vehicles were discovered missing. He even used the same in the filing of the carnapping case against Silver and her co-conspirators.

Finally, Andres insisted that the guarding of properties under *custodia legis* by policemen is not prohibited, but is even adopted

[14] *Id*. at 342.

by the court. Hence, he prays that he be held not liable for the loss of the vehicles and that he be relieved of his duty to return the vehicles.[15]

After the OCA recommended that the matter be investigated, we referred the case to Executive Judge Renato A. Fuentes for investigation, report and recommendation.[16]

In his Investigation Report[17] dated September 21, 2006, Judge Fuentes found Andres guilty of serious negligence in the custody of the nine motor vehicles. He recommended that Andres be suspended from office.

Judge Fuentes found numerous irregularities in the implementation of the writ of replevin/order of seizure, to wit: (1) at the time of the implementation of the writ, Andres knew that the vehicles to be seized were not in the names of any of the parties to the case; (2) one vehicle was taken without the knowledge of its owner, a certain Junard Escudero; (3) Andres allowed Atty. Macadangdang to get a keymaster to duplicate the vehicles' keys in order to take one motor vehicle; and (4) Andres admitted that prior to the implementation of the writ of seizure, he consulted Silver and Atty. Macadangdang regarding the implementation of the writ and was accompanied by the latter in the course of the implementation. Judge Fuentes observed that the motor vehicles were speedily seized without strictly observing fairness and regularity in its implementation.[18]

Anent the safekeeping of the seized motor vehicles, Judge Fuentes pointed out several instances where Andres lacked due diligence to wit: (1) the seized motor vehicles were placed in a compound surrounded by an insufficiently locked see-through fence; (2) three motor vehicles were left outside the compound; (3) Andres turned over the key of the gate to the policemen guarding the motor vehicles; (4) Andres does not even know

---

[15] *Id*. at 121-122.

[16] *Id*. at 305-306.

[17] *Id*. at 545-563.

[18] *Id*. at 559.

the full name of the owner of the compound, who was merely known to him as "Gloria"; (5) except for PO3 Despe and SPO4 Nelson Salcedo, the identities of the other policemen tapped to guard the compound were unknown to Andres; (6) Andres also admitted that he only stayed at least one hour each day from October 19-21, 2005 during his visits to the compound; and (7) even after it was reported to him that a certain "Nonoy" entered the compound and duplicated the keys of the motor vehicles, he did not exert his best effort to look for that "Nonoy" and to confiscate the duplicated keys.[19]

Judge Fuentes also observed that Andres appeared to be more or less accommodating to Silver and her counsel but hostile and uncooperative to the complainant. He pointed out that Andres depended solely on Silver in the selection of the policemen who would guard the seized motor vehicles. He added that even the depository receipts were not turned over to the defendants/third-party claimants in the replevin case but were in fact concealed from them. Andres also gave inconsistent testimonies as to whether he has in his possession the depository receipts.[20]

The OCA disagreed with the observations of Judge Fuentes. It recommended that Andres be held liable only for simple neglect of duty and be suspended for one (1) month and one (1) day.[21]

We adopt the recommendation of the investigating judge.

Being an officer of the court, Andres must be aware that there are well-defined steps provided in the Rules of Court regarding the proper implementation of a writ of replevin and/or an order of seizure. The Rules, likewise, is explicit on the duty of the sheriff in its implementation. To recapitulate what should be common knowledge to sheriffs, the pertinent provisions of Rule 60, of the Rules of Court are quoted hereunder:

SEC. 4. *Duty of the sheriff*. — Upon receiving such order, the sheriff must serve a copy thereof on the adverse party, together

---

[19] *Id*. at 559-560.

[20] *Id*. at 560-561.

[21] *Id*. at 603-613.

with a copy of the application, affidavit and bond, and **must forthwith take the property, if it be in the possession of the adverse party, or his agent, and retain it in his custody.** If the property or any part thereof be concealed in a building or enclosure, the sheriff must demand its delivery, and if it be not delivered, he must cause the building or enclosure to be broken open and take the property into his possession. **After the sheriff has taken possession of the property as herein provided, he must keep it in a secure place and shall be responsible for its delivery to the party entitled thereto upon receiving his fees and necessary expenses for taking and keeping the same.** (Emphasis supplied.)

SEC. 6. *Disposition of property by sheriff.* — **If within five (5) days after the taking of the property by the sheriff**, the adverse party does not object to the sufficiency of the bond, or of the surety or sureties thereon; or if the adverse party so objects and the court affirms its approval of the applicant's bond or approves a new bond, or if the adverse party requires the return of the property but his bond is objected to and found insufficient and he does not forthwith file an approved bond, the property shall be delivered to the applicant. If for any reason the property is not delivered to the applicant, the sheriff must return it to the adverse party. (Emphasis supplied.)

First, the rules provide that property seized under a writ of replevin is not to be delivered immediately to the plaintiff.[22] In accordance with the said rules, Andres should have waited no less than five days in order to give the complainant an opportunity to object to the sufficiency of the bond or of the surety or sureties thereon, or require the return of the seized motor vehicles by filing a counter-bond. This, he failed to do.

Records show that Andres took possession of two of the subject motor vehicles on October 17, 2005, four on October 18, 2005, and another three on October 19, 2005. Simultaneously, as evidenced by the depository receipts, on October 18, 2005, Silver received from Andres six of the seized motor vehicles, and three more motor vehicles on October 19, 2005. Consequently, there is no question that Silver was already in

---

[22] *Spouses Normandy and Ruth Bautista v. Ernesto L. Sula, Sheriff IV, Regional Trial Court, Branch 98, Quezon City,* A.M. No. P-04-1920, August 17, 2007, 530 SCRA 406, 422.

possession of the nine seized vehicles immediately after seizure, or no more than three days after the taking of the vehicles. Thus, Andres committed a clear violation of Section 6, Rule 60 of the Rules of Court with regard to the proper disposal of the property.

It matters not that Silver was in possession of the seized vehicles merely for safekeeping as stated in the depository receipts. The rule is clear that the property seized should not be immediately delivered to the plaintiff, and the sheriff must retain custody of the seized property for at least five days.[23] Hence, the act of Andres in delivering the seized vehicles immediately after seizure to Silver for whatever purpose, without observing the five-day requirement finds no legal justification.

In *Pardo v. Velasco,*[24] this Court held that

> . . . Respondent as an officer of the Court is charged with certain ministerial duties which must be performed faithfully to the letter. Every provision in the Revised Rules of Court has a specific reason or objective. **In this case, the purpose of the five (5) days is to give a chance to the defendant to object to the sufficiency of the bond or the surety or sureties thereon or require the return of the property by filing a counterbond**. . . .[25] (Emphasis supplied.)

In *Sebastian v. Valino,*[26] this Court reiterated that

> Under the Revised Rules of Court, **the property seized under a writ of replevin is not to be delivered immediately to the plaintiff**. **The sheriff must retain it in his custody for five days** and he shall return it to the defendant, if the latter, as in the instant case, requires its return and files a counterbond. . . .[27] (Emphasis supplied.)

Likewise, Andres' claim that he had no knowledge that the compound is owned by Silver fails to convince us. Regardless

---

[23] RULES OF COURT, Rule 60, Secs. 4 and 6.

[24] Adm. Matter Nos. P-90-408 & P-90-453, August 7, 1992, 212 SCRA 323.

[25] *Id.* at 328-329.

[26] A.M. No. P-91-549, July 5, 1993, 224 SCRA 256.

[27] *Id.* at 259.

of who actually owns the compound, the fact remains that Andres delivered the vehicles to Silver prematurely. It violates the rule requiring him to safekeep the vehicles in his custody.[28] The alleged lack of facility to store the seized vehicles is unacceptable considering that he should have deposited the same in a bonded warehouse. If this was not feasible, he should have sought prior authorization from the court issuing the writ before delivering the vehicles to Silver.

Second, it must be stressed that from the moment an order of delivery in replevin is executed by taking possession of the property specified therein, such property is in *custodia legis*. As legal custodian, it is Andres' duty to safekeep the seized motor vehicles. Hence, when he passed his duty to safeguard the motor vehicles to Silver, he committed a clear neglect of duty.

Third, we are appalled that even after PO3 Despe reported the unauthorized duplication of the vehicles' keys, Andres failed to take extra precautionary measures to ensure the safety of the vehicles. It is obvious that the vehicles were put at risk by the unauthorized duplication of the keys of the vehicles. Neither did he immediately report the incident to the police or to the court. The loss of the motor vehicles could have been prevented if Andres immediately asked the court for an order to transfer the vehicles to another secured place as soon as he discovered the unauthorized duplication. Under these circumstances, even an ordinary prudent man would have exercised extra diligence. His warning to the policemen to closely watch the vehicles was insufficient. Andres cannot toss back to Silver or to the policemen the responsibility for the loss of the motor vehicles since he remains chiefly responsible for their safekeeping as legal custodian thereof. Indeed, Andres' failure to take the necessary precaution and proper monitoring of the vehicles to ensure its safety constitutes plain negligence.

Fourth, despite the cease and desist order, Andres failed to return the motor vehicles to their lawful owners. Instead of returning the motor vehicles immediately as directed, he opted

---

[28] RULES OF COURT, Rule 60, Sec. 4.

to write Silver and demand that she put up an indemnity bond to secure the third-party claims. Consequently, due to his delay, the eventual loss of the motor vehicles rendered the order to return the seized vehicles ineffectual to the prejudice of the complaining owners.

It must be stressed that as court custodian, it was Andres' responsibility to ensure that the motor vehicles were safely kept and that the same were readily available upon order of the court or demand of the parties concerned. Specifically, sheriffs, being ranking officers of the court and agents of the law, must discharge their duties with great care and diligence. In serving and implementing court writs, as well as processes and orders of the court, they cannot afford to err without affecting adversely the proper dispensation of justice. Sheriffs play an important role in the administration of justice and as agents of the law, high standards of performance are expected of them.[29] Hence, his failure to return the motor vehicles at the time when its return was still feasible constitutes another instance of neglect of duty.

Fifth, as found by the OCA, we agree that Andres also disregarded the provisions of Rule 141[30] of the Rules of Court with regard to payment of expenses.

Under Section 9,[31] Rule 141 of the Rules of Court, the procedure for the execution of writs and other processes are: First, the

---

[29] *Chupungco v. Cabusao, Jr.,* A.M. No. P-03-1758, December 10, 2003, 417 SCRA 365, 369.

[30] As amended by A.M. No. 04-2-04-SC, took effect on August 16, 2004.

[31] SEC. 9. *Sheriffs and other persons serving processes.*—

x x x x x x x x x

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property, levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex officio* sheriff, who shall disburse the same to the deputy sheriff assigned to

sheriff must make an estimate of the expenses to be incurred by him; Second, he must obtain court approval for such estimated expenses; Third, the approved estimated expenses shall be deposited by the interested party with the Clerk of Court and *ex officio* sheriff; Fourth, the Clerk of Court shall disburse the amount to the executing sheriff; and Fifth, the executing sheriff shall liquidate his expenses within the same period for rendering a return on the writ.

In this case, no estimate of sheriff's expenses was submitted to the court by Andres. Without approval of the court, he also allowed Silver to pay directly to the policemen the expenses for the safeguarding of the motor vehicles including their meals.[32] Obviously, this practice departed from the accepted procedure provided in the Rules of Court.

In view of the foregoing, there is no doubt that Andres failed to live up to the standards required of his position. The number of instances that Andres strayed from the regular course observed in the proper implementation of the orders of the court cannot be countenanced. Thus, taking into account the numerous times he was found negligent and careless of his duties coupled with his utter disregard of legal procedures, he cannot be considered guilty merely of simple negligence. His acts constitute gross negligence.

As we have previously ruled:

> . . . *Gross negligence* refers to negligence characterized by the **want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property** . . .[33] (Emphasis supplied.)

---

effect the process, subject to liquidation within the same period for rendering a return on the process. 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.

[32] *Rollo*, pp. 334-335.

[33] *Brucal v. Desierto*, G.R. No. 152188, July 8, 2005, 463 SCRA 151, 166.

. . . **Gross neglect, on the other hand, is such neglect from the gravity of the case, or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare.** The term does not necessarily include willful neglect or intentional official wrongdoing.[34] (Emphasis supplied.)

Good faith on the part of Andres, or lack of it, in proceeding to properly execute his mandate would be of no moment, for he is chargeable with the knowledge that being an officer of the court tasked therefor, it behooves him to make due compliance. He is expected to live up to the exacting standards of his office and his conduct must at all times be characterized by rectitude and forthrightness, and so above suspicion and mistrust as well.[35] Thus, an act of gross neglect resulting in loss of properties in *custodia legis* ruins the confidence lodged by the parties to a suit or the citizenry in our judicial process. Those responsible for such act or omission cannot escape the disciplinary power of this Court.

Anent the allegation of grave abuse of authority (oppression), we likewise agree with the observations of the investigating judge. Records show that Andres started enforcing the writ of replevin/order of seizure on the same day that the order of seizure was issued. He also admitted that he took the vehicles of persons who are not parties to the replevin case.[36] He further admitted that he took one vehicle belonging to a certain Junard Escudero without the latter's knowledge and even caused the duplication of its keys in order that it may be taken by Andres.[37] Certainly, these are indications that Andres enforced the order of seizure with undue haste and without giving the complainant prior notice or reasonable time to deliver the motor vehicles. Hence, Andres is guilty of grave abuse of authority (oppression).

---

[34] *Report on the Alleged Spurious Bailbonds and Release Orders Issued by the RTC, Br. 27, Sta. Cruz, Laguna*, A.M. No. 04-6-332-RTC, April 5, 2006, 486 SCRA 500, 518.

[35] *Chupungco v. Cabusao, Jr., supra* note 29.

[36] *Rollo*, pp. 319-320, 326-327.

[37] *Id.* at 327-328.

When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate. However, the prompt implementation of an order of seizure is called for only in instances where there is no question regarding the right of the plaintiff to the property.[38] Where there is such a question, the prudent recourse for Andres is to desist from executing the order and convey the information to his judge and to the plaintiff.

True, sheriffs must comply with their mandated ministerial duty to implement writs promptly and expeditiously, but equally true is the principle that sheriffs by the nature of their functions must at all times conduct themselves with propriety and decorum and act above suspicion. There must be no room for anyone to conjecture that sheriffs and deputy sheriffs as officers of the court have conspired with any of the parties to a case to obtain a favorable judgment or immediate execution. The sheriff is at the front line as representative of the judiciary and by his act he may build or destroy the institution.[39]

However, as to the charge of graft and corruption, it must be stressed that the same is criminal in nature, thus, the resolution thereof cannot be threshed out in the instant administrative proceeding. We also take note that there is a pending criminal case for carnapping against Andres;[40] hence, with more reason that we cannot rule on the allegation of graft and corruption as it may preempt the court in its resolution of the said case.

We come to the matter of penalties. The imposable penalty for gross neglect of duty is dismissal. While the penalty imposable for grave abuse of authority (oppression) is suspension for six (6) months one (1) day to one (1) year.[41] Section 55, Rule IV

[38] *Mamanteo v. Magumun*, A.M. No. P-98-1264, July 28, 1999, 311 SCRA 259, 265.

[39] *Id*. at 266.

[40] *Rollo,* pp. 648-663.

[41] Civil Service Commission Resolution No. 991936 (1999) also known as the UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule IV, Section 52.

of the Uniform Rules on Administrative Cases in the Civil Service provides that 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.

In the instant case, the penalty for the more serious offense which is dismissal should be imposed on Andres. However, following Sections 53[42] and 54,[43] Rule IV of the Uniform Rules

---

RULE IV – PENALTIES

Section 52. ***Classification of Offenses.*** — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

x x x x x x x x x

2. Gross Neglect of Duty

1st offense — Dismissal

x x x x x x x x x

14. Oppression

1st offense — Suspension (6 mos. 1 day to 1 year)

x x x x x x x x x

[42] **Section 53.** ***Extenuating, Mitigating, Aggravating, or Alternative Circumstances.*** **—** In the determination of the penalties to be imposed, *mitigating, aggravating and alternative circumstances* attendant to the commission of the offense shall be considered.

x x x x x x x x x

[43] **Section 54.** ***Manner of Imposition.*** When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

a. The ***minimum*** of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.

b. The ***medium*** of the penalty shall be imposed where no mitigating and aggravating circumstances are present.

c. The ***maximum*** of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

d. Where aggravating and mitigating circumstances are present, paragraph [a] shall be applied where there are more mitigating circumstances present; **paragraph [b] shall be applied when the circumstances equally offset each other**; and paragraph [c] shall be applied when there are more aggravating circumstances. (Emphasis supplied.)

on Administrative Cases in the Civil Service, we have to consider that Andres is a first-time offender; hence, a lighter penalty than dismissal from the service would suffice. Consequently, instead of imposing the penalty of dismissal, the penalty of suspension from office for one (1) year without pay is proper for gross neglect of duty, and another six (6) months should be added for the aggravating circumstance of grave abuse of authority (oppression).

WHEREFORE, the Court finds Abe C. Andres, Sheriff IV, RTC of Davao City, Branch 16, *GUILTY* of gross neglect of duty and grave abuse of authority (oppression) and is *SUSPENDED* for one (1) year and six (6) months without pay. He is also hereby *WARNED* that a repetition of the same or similar offenses in the future shall be dealt with more severely.

SO ORDERED.

Tinga, Reyes,[*] *Leonardo-de Castro*,[**] and *Brion, JJ.,* concur.

EN BANC

[A.M. No. P-07-2399. June 18, 2008]
(Formerly OCA IPI No. 06-2390-P)

EDNA PALERO-TAN, *complainant, vs.* **CIRIACO I. URDANETA, JR., UTILITY WORKER I, RTC, BRANCH 14, BAYBAY, LEYTE,** *respondent.*

---

[*] Additional member in place of Associate Justice Presbitero J. Velasco, Jr. who is on official leave.

[**] Additional member in place of Associate Justice Conchita Carpio Morales who is on official leave.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DENIAL; DEFENSE NEGATED IN CASE AT BAR. — Given respondent's afore-quoted admission to having found the jewelry and keeping it in his possession without informing his officemates about the same, plus the positive evidence submitted by complainant, respondent's bare denial of any personal interest in the jewelry cannot be given credence. It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by a strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with nil evidentiary value. Like the defense of alibi, a denial crumbles in the light of positive declarations.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; ONLY SUBSTANTIAL EVIDENCE REQUIRED. — Worth stressing is the well-entrenched principle that in administrative proceedings, such as the instant case, the quantum of proof necessary for a finding of guilt is only substantial evidence. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

3. CIVIL LAW; DIFFERENT MODES OF ACQUIRING OWNERSHIP; OCCUPATION; LOST MOVABLE; DUTY OF FINDER THEREOF. — When a person who finds a thing that has been lost or mislaid by the owner takes the thing into his hands, he acquires physical custody only and does not become vested with legal possession. In assuming such custody, the finder is charged with the obligation of restoring the thing to its owner. It is thus respondent's duty to report to his superior or his officemates that he found something. The Civil Code, in Article 719, explicitly requires the finder of a lost property to report it to the proper authorities, thus: Article 719. Whoever finds a movable, which is not treasure, must return it to its previous possessor. If the latter is unknown, the finder shall immediately deposit it with the mayor of the city or municipality where the finding has taken place. The finding shall be publicly announced by the mayor for two consecutive weeks in the way he deems best. If the movables cannot be kept without deterioration, or without the expenses which considerably diminish its value, it shall be sold at public auction eight days after the publication. Six months from the publication having

elapsed without the owner having appeared, the thing found, or its value, shall be awarded to the finder. The finder and the owner shall be obliged, as the case may be, to reimburse the expenses.

4. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; PROPER DECORUM; EMPHASIZED. — Every employee of the judiciary should be an example of integrity, morality and honesty. Like any other public servant, respondent must exhibit the highest sense of trustworthiness and rectitude not only in the performance of his official duties but also in his personal and private dealings with other people, to preserve the court's good name and standing as a true temple of justice. It cannot be overstressed that the image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work there, from the judge to the lowest employee. The Court has emphasized, time and again, that the conduct of every one connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. Every employee of the judiciary should be an example of integrity, uprightness and honesty. Even a court janitor is as duty-bound to serve with the highest degree of responsibility as all other public officers. Those who work in the judiciary must adhere to high ethical standards to preserve the court's good name and standing. They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence since they are officers of the court and agents of the law. Indeed, any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced. The conduct required of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and circumscribed with a heavy burden of responsibility. As forerunners in the administration of justice, they ought to live up to the strictest standards of honesty and integrity, considering that their positions primarily involve service to the public.

5. ID.; ID.; MISCONDUCT AND GROSS MISCONDUCT; DEFINED. — Misconduct is a transgression of some established and definite rule of action, a forbidden act, a

dereliction of duty, an unlawful behavior willful in character, an improper or wrong behavior, while "gross" has been defined as "out of all measure; beyond allowance; flagrant; shameful; such conduct as is not to be excused." Gross misconduct has been defined as the transgression of some established or definite rule of action, more particularly, unlawful behavior or gross negligence.

6. ID.; ID.; GRAVE MISCONDUCT; PROPER PENALTY; CASE AT BAR. — Pursuant to Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292, Grave Misconduct, being in the nature of grave offenses, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification from re-employment in government service. However, it is an undeniable fact that respondent has rendered some years of commendable service in the judiciary. Respondent has been with the judiciary for twenty-three (23) years and this is the only administrative case filed against him. Records also show that respondent had availed himself of optional retirement which became effective on 30 November 2006, and his retirement benefits were withheld pending the outcome of the instant administrative complaint. Considering the foregoing and for humanitarian reasons, the Court finds a fine of thirty thousand pesos (₱30,000.00) to be an appropriate penalty for respondent, to be deducted from his retirement benefits.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

In the instant administrative complaint,[1] Edna Palero-Tan (complainant), Court Stenographer III of the Regional Trial Court (RTC), Branch 14, Baybay, Leyte, charged Ciriaco I. Urdaneta, Jr. (respondent), Utility Worker I of the same court, with Conduct Unbecoming a Court Personnel, for stealing her ring and bracelet.

Complainant claimed that it has been her practice to keep her and her sister's pieces of jewelry in the locked drawer of

[1] *Rollo*, pp. 2-3.

her table at her RTC office because she fears that they might be lost at the boarding house she is renting. However, on 8 July 2005, she discovered that her ring and bracelet worth fifteen thousand pesos (₱15,000.00) were missing. Complainant remembered that on 18 June 2005, a Saturday, her younger sister went to the RTC to ask for her necklace. Complainant took out from her table drawer a transparent plastic sachet which contained her ring and bracelet, and her sister's necklace, and after handing over to her sister the necklace, she returned the plastic sachet, still containing the bracelet and ring, to her table drawer. She maintained that the only person who was present and saw her take out the jewelry from her table drawer was respondent, whose table is adjacent to hers.

According to complainant, when she found out that her ring and bracelet were missing, she informed her officemates about it, but nobody claimed to have seen the missing jewelry. On 28 July 2005, an officemate, Anecito D. Altone (Altone), confided to her that he heard from his landlady, Anastacia R. Nable (Nable), that respondent and his wife, Milagros, had a quarrel because the latter discovered a ring and a bracelet in respondent's coin purse. Milagros suspected that respondent bought the jewelry for his mistress. Complainant approached the RTC presiding judge, Judge Absalon U. Fulache (Judge Fulache), and relayed to him the information she gathered. Judge Fulache advised her to invite Nable and Milagros to his chambers so he could confirm the information.

Milagros admitted to Judge Fulache that she and respondent had a fight because she found a ring and bracelet inside respondent's coin purse which she believed he would give to his mistress. Complainant was certain that the jewels Milagros saw in respondent's purse were hers based on Milagros's description of the said ring and bracelet. In a separate meeting with Judge Fulache, respondent confessed that he found complainant's jewels in the court's premises, but he could no longer return them because he already threw them away.

In his Comment[2] dated 1 April 2006, respondent denied that he stole complainant's jewelry. He claimed, instead, that in the afternoon of 29 June 2005, a Friday, he found a small plastic sachet containing a ring and a bracelet under his table, at the side nearest the adjacent table of the complainant, and thinking that the jewelry belonged to one of the litigants who approached him that morning, he took them for safekeeping with the intention of returning them to whoever was the owner. He thought that the ring and bracelet were "fancy" jewelry as they were merely placed in an ordinary plastic sachet. When nobody claimed the jewelry, he placed them inside his coin purse and took them home. However, his wife, on 30 June 2005, found them and accused him of buying the pieces of jewelry for his mistress, and to stop his wife's nagging, he threw the pieces of jewelry at a grassy lot beside their house. When he was summoned by Judge Fulache and was ordered to return the jewels, he and his son searched for the same but they failed to find them. Respondent begs for leniency from this Court as he insists that he had no intention of appropriating the jewelry for himself, and presents for consideration of this Court that he is already sixty-one (61) years old and has been in the government service for twenty-seven (27) years.

In a Resolution[3] dated 20 September 2006, the Court referred the matter to Judge Francisco C. Gedorio, Jr., then Executive Judge, RTC, Ormoc City, for investigation, report and recommendation, who in turn, directed[4] Atty. Erwin James B. Fabriga (Atty. Fabriaga), Clerk of Court, RTC, Branch 12, Ormoc City, to conduct the investigation.

On 2 March 2007, Judge Apolinario M. Buaya, Acting Executive Judge, RTC, Ormoc City, submitted to the Court Atty. Fabriga's investigation report and recommendation dated 15 November 2006. Atty. Fabriga found respondent liable for Conduct Unbecoming a Court Personnel. According to Atty.

---

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

[3] *Id*. at 27.

[4] *Id*. at 29.

Fabriga, respondent's wife Milagros testified during the investigation that she indeed saw a ring and a bracelet in her husband's purse which caused their quarrel.

Atty. Fabriga found respondent's actions inconsistent with his claim that he had no intention to take the jewelry for his personal gain. For reasons only known to him, respondent never bothered to inform his officemates about the jewelry placed in a plastic sachet that he allegedly found under his table "at the side nearest to the adjacent table of the complainant." It was only on 2 or 3 August 2005, or more than a month after respondent found the jewelry, when he acknowledged before Judge Fulache that he possessed the jewelry. Even when the complainant was announcing to the rest of the office staff the loss of her jewelry, respondent pretended to hear nothing. Were it not for the scandal brought about by his wife's discovery of the missing jewelry, respondent would not have admitted to Judge Fulache that he had found the same. According to Atty. Fabriga, all of respondent's acts indicate that he had no intention to return the pieces of jewelry to complainant.

On 4 June 2007, we noted the Report and Recommendation of Atty. Fabriga and referred the case to the Office of the Court Administrator (OCA), for evaluation, report and recommendation within sixty (60) days from notice.[5]

On 26 September 2007, the OCA submitted its report,[6] with the following recommendation —

PREMISES CONSIDERED, this Office respectfully recommends to the Honorable Court that:

1. This matter be FORMALLY DOCKETED as an administrative complaint against Ciriaco I. Urdaneta, Jr., Utility Worker I, RTC, Branch 14, Baybay, Leyte;

2. Ciriaco I. Urdaneta, Jr., be FINED in the amount of Thirty Thousand Pesos (₱30,000.00) to be deducted from his retirement benefits; and

---

[5] *Id*. at 226.

[6] *Id*. at 228-233.

3. The Financial Management Office, OCA be DIRECTED to release the remaining amount of the retirement benefits to Ciriaco I. Urdaneta, Jr.

On 12 November 2007, the Court required[7] the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed.

On 12 December 2007, respondent submitted his Manifestation[8] stating that he was submitting the case for resolution based on the pleadings filed. Complainant filed a similar Manifestation[9] on 8 January 2008.

Resultantly, the case was submitted for decision based on the pleadings filed.

After a careful study, and with due regard for the facts of the case and the pleadings submitted by the parties, the Court agrees in the conclusion reached by the Investigating Attorney. Despite all the opportunities accorded to respondent to present substantial defense to refute the charges against him, he failed to do so. Respondent even admitted finding the small plastic sachet containing complainant's ring and bracelet on 29 June 2005, and keeping the jewelry in his possession until he purportedly threw them away. Respondent testified thus:

A: x x x My specific duty there in Court as Aide or Utility was to clean the office at 4:00 o'clock. By 4:00 o'clock in the afternoon, nobody was around anymore. So, I emptied the trash cans and while doing so, I noticed something that is placed in a plastic. I thought it was owned by my client who might have dropped it because there are clients in the morning of that day. Before throwing that plastic sachet to the thrash can, I placed that plastic sachet on top of my table and waited for somebody to claim it.

Q: What time did you notice that there was plastic sachet containing…?

---

[7] *Id*. at 236.

[8] *Id*. at 238.

[9] *Id*. at 240.

A: 4:00 o'clock, sir.

Q: What did you do?

A: I placed it on my table, sir.

Q: You placed it [on] your table?

A: Yes, on top of my table and I waited for anybody to claim it.

Q: Who is around?

A: There was only one stenographer who was left in the office, Emma Andres.

x x x x x x x x x

A: Yes, sir, that Friday at 4:00 o'clock in the afternoon. By 5:00 o'clock in the **afternoon I placed it inside my coin purse after I punched out my Time Card.**

Q: After that, you left the office. What did you do?

A: I went home, sir.

Q: **You admit now that you brought along with you that plastic sachet containing that pieces of jewelries?**

A: Yes, sir. Since nobody claimed it, I placed it inside my coin purse.

Q: When did you see that plastic sachet? You said a while a go you saw a plastic sachet on the floor while you were cleaning?

A: Yes, sir.

Q. When did you see that plastic sachet?

A: June 29, 2005.

Q: It was Friday?

A: Yes, sir.

Q: And then you went home?

A: Yes, sir.

Q: And then the following morning, what did you do?

A: I did nothing.

Q: Did you report for work on Monday?

A: Yes, sir.

Q: Did you ever tell you [r] co-employees about what you found those pieces of jewelries?

A: No, sir.

x x x x x x x x x

A: x x x However, I told Judge Fulache in reply that the items are gone because I have thrown them away.

Q: So, you admit before this hearing officer under oath that you had a quarrel with your wife or your wife nagged you about the jewelries?

A: Yes, sir.

Q: Because your wife suspected you of buying those jewelries as a gift to your girlfriend?

A: Yes, sir. That was her suspicion.

Q: So, you admit that you had a quarrel with your wife?

A: Yes, sir.

Q: First, you admit that you had the jewelries in your possession?

A: Yes, sir.

Q: Second, you admit that your wife quarreled with you because of those pieces of jewelries because she suspected you of having another girlfriend?

A: Yes, sir.

Q: With that, you still did not announce to your co-employees about the loss of jewelries?

A: No, sir, because nobody is complaining and besides I have already thrown them away.[10] (Emphasis supplied.)

Given respondent's aforequoted admission to having found the jewelry and keeping it in his possession without informing

[10] TSN, 5 January 2007, pp. 41-52; *rollo,* pp. 140-151.

his officemates about the same, plus the positive evidence submitted by complainant, respondent's bare denial of any personal interest in the jewelry cannot be given credence.

It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by a strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with nil evidentiary value. Like the defense of alibi, a denial crumbles in the light of positive declarations.[11]

Worth stressing is the well-entrenched principle that in administrative proceedings, such as the instant case, the quantum of proof necessary for a finding of guilt is only substantial evidence. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[12]

Although there is no direct evidence that would show that respondent stole complainant's ring and bracelet, nonetheless, respondent is not immaculately innocent as regards the loss of the same. Antone, an officemate of both respondent and complainant, testified that he found out from his landlady that respondent and his wife fought over a ring and a bracelet, which Antone suspected, belonged to complainant. Pertinent portions of Antone's testimony are reproduced below:

MR. ANTONE:

Yes, sir. I am staying with Mrs. Anastacia Nable, while I was having lunch on July 27, 2005, Mrs. Nable was telling me that Mila [respondent's wife] and Junior [respondent] were quarreling because this Mila saw from the wallet of Junior a ring and a bracelet. Mrs. Nable and Mila Urdaneta [respondent's wife] are sisters in a Catholic Community and they used to visit each other in their respective homes.

---

[11] *Jugueta v. Estacio*, A.M. No. CA-04-17-P, 25 November 2004, 444 SCRA 10, 16; *Judge Salvador v. Serrano,* A.M. No. P-06-2104, 31 January 2006, 481 SCRA 55, 67-68.

[12] *Office of the Court Administrator v. Judge Sumilang,* 338 Phil. 28, 38 (1997); *Mendoza v. Buo-Rivera,* A.M. No. P-04-1784, 28 April 2004, 428 SCRA 72, 76.

ATTY. FABRIGA:

Q: You said in your affidavit that you inquired from this Anstacia Nable if Ciriaco Urdaneta, Jr. [respondent] and his wife were still quarreling. Why? Do you know that they are always quarreling?

A: Yes, sir.

Q: Why? Do you know that they are always quarreling?

A: Yes, sir.

Q: Why do you know that they are always quarreling?

A: Because Mrs. Nable told me that the reason for their quarrel is about that ring and bracelet.

Q: But when you asked this Anastacia Nable that question, you already have in your mind or you already suspected Ciriaco Urdaneta, Jr. [respondent] as being the one who took over the jewelries?

A: Yes, sir, because I heard from Edna [complainant] about her lost jewelries last June 2005, so, it occurred to my mind that it is really true that the ring and the bracelet were with Junior.[13]

Respondent and his wife Mila confirmed that they indeed had a quarrel over a ring and a bracelet which respondent found in his RTC office. These declarations constitute substantial evidence required in administrative proceedings. The Court finds its mind at ease that the collective and combined weight of the unbroken chain of hard and solid facts, indubitably established by trustworthy and reliable evidence offered by the complainant, unerringly and inevitably points to but one natural and rational conclusion: that the respondent found complainant's jewels and, dishonestly and in bad faith, kept them for himself.

Respondent claimed that he found the jewelry on 29 June 2005 under his table, at the side nearest complainant's table. On 30 June 2005, respondent and his wife had a quarrel about the said pieces of jewelry.[14] On 8 July 2005, complainant was

---

[13] TSN, 5 January 2007, pp. 27-29; *rollo,* pp. 126-128.

[14] *Id*. at 46; *id*. at 45.

already looking for her ring and bracelet, and was asking everyone at their office if they had found the said jewelry; and yet, respondent did not speak out even though he already found a ring and a bracelet in their office. It was only on 2 August 2005, when RTC Presiding Judge Fulache confronted him with the fact that his wife had already disclosed that she found a ring and a bracelet inside his coin purse that respondent admitted finding the jewelry. His indifferent attitude and failure to inform his officemates and his wife at the soonest time that he found the jewelry is not only improper, but highly suspicious. His allegation that he had no opportunity to inform complainant and their officemates about the jewels since he had already thrown them away after a quarrel with his wife over the same, is lame and hardly persuasive. It is equally suspicious, and not in accord with ordinary human experience, for respondent to outrightly conclude that the jewels were owned by a litigant who had a matter pending before the RTC; and not by one of his officemates, most especially complainant, who was seated next to him.

When a person who finds a thing that has been lost or mislaid by the owner takes the thing into his hands, he acquires physical custody only and does not become vested with legal possession. In assuming such custody, the finder is charged with the obligation of restoring the thing to its owner. It is thus respondent's duty to report to his superior or his officemates that he found something. The Civil Code, in Article 719, explicitly requires the finder of a lost property to report it to the proper authorities, thus:

> Article 719. Whoever finds a movable, which is not treasure, must return it to its previous possessor. If the latter is unknown, the finder shall immediately deposit it with the mayor of the city or municipality where the finding has taken place.
>
> The finding shall be publicly announced by the mayor for two consecutive weeks in the way he deems best.
>
> If the movables cannot be kept without deterioration, or without the expenses which considerably diminish its value, it shall be sold at public auction eight days after the publication.

Six months from the publication having elapsed without the owner having appeared, the thing found, or its value, shall be awarded to the finder. The finder and the owner shall be obliged, as the case may be, to reimburse the expenses.

Contrary to respondent's claim, this Court is convinced that respondent had the intention to appropriate the jewelry to himself had these not been discovered by his wife. His claim that the ring and bracelet were worthless "fancy" jewelry is immaterial because the basis for his liability is his act of taking something which does not belong to him.

By admittedly finding complainant's ring and bracelet without returning them to the rightful owner, respondent blatantly degraded the judiciary and diminished the respect and regard of the people for the court and its personnel. Every employee of the judiciary should be an example of integrity, morality and honesty. Like any other public servant, respondent must exhibit the highest sense of trustworthiness and rectitude not only in the performance of his official duties but also in his personal and private dealings with other people, to preserve the court's good name and standing as a true temple of justice. It cannot be overstressed that the image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work there, from the judge to the lowest employee.

The Court has emphasized, time and again, that the conduct of every one connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. Every employee of the judiciary should be an example of integrity, uprightness and honesty. Even a court janitor is as duty-bound to serve with the highest degree of responsibility as all other public officers. Those who work in the judiciary must adhere to high ethical standards to preserve the court's good name and standing. They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence since they are officers of the court and agents of the law. Indeed, any conduct, act or omission on the part of those who would

violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.[15] The conduct required of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and circumscribed with a heavy burden of responsibility. As forerunners in the administration of justice, they ought to live up to the strictest standards of honesty and integrity, considering that their positions primarily involve service to the public.[16]

Misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, an unlawful behavior willful in character, an improper or wrong behavior,[17] while "gross" has been defined as "out of all measure; beyond allowance; flagrant; shameful; such conduct as is not to be excused."[18] Gross misconduct has been defined as the transgression of some established or definite rule of action, more particularly, unlawful behavior or gross negligence.[19]

Pursuant to Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292, Grave Misconduct, being in the nature of grave offenses, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification from re-employment in government service.[20]

---

[15] *Merilo-Bedural v. Edroso*, 396 Phil. 756, 762-763 (2000).

[16] *Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City*, A.M. No. P-06-2140, 26 June 2006, 492 SCRA 469, 483.

[17] BLACK'S *LAW DICTIONARY* (5th Ed.), p. 901, cited in *Vidallon-Magtolis v. Salud,* A.M. No. CA-05-20-P, 9 September 2005, 469 SCRA 439, 469.

[18] *Id*., citing *State Board of Dental Examiners v. Savelle*, 90 Colo. 177, 8 P. 2d 693, 697.

[19] *Siy Lim v. Judge Fineza,* 450 Phil. 642, 650 (2003).

[20] *Office of the Court Administrator v. Magno*, 419 Phil. 593, 602 (2001); Sec. 22(a), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987), as amended by CSC Memorandum Circular No. 19, s. 1999 (a).

In *Court Administrator v. Sevillo,*[21] the Court held that the act of stealing mail matter committed by respondent, a process server in the 16th MCTC, Jordan-Buenavista-Nueva Valencia, Guimaras, constituted "grave dishonesty and grave misconduct or conduct prejudicial to the best interest of the service." The Court, in said case, ordered the dismissal of Sevillo.

Hence, for failure to live up to the high ethical standards expected of court employees, respondent should likewise be dismissed.

However, it is an undeniable fact that respondent has rendered some years of commendable service in the judiciary. Respondent has been with the judiciary for twenty-three (23) years and this is the only administrative case filed against him. Records also show that respondent had availed himself of optional retirement which became effective on 30 November 2006, and his retirement benefits were withheld pending the outcome of the instant administrative complaint. Considering the foregoing and for humanitarian reasons, the Court finds a fine of thirty thousand pesos (₱30,000.00) to be an appropriate penalty for respondent, to be deducted from his retirement benefits.

WHEREFORE, this Court finds respondent Ciriaco I. Urdaneta, Jr., *GUILTY* of Grave Misconduct, and hereby imposes on said respondent a fine of thirty thousand pesos (₱30,000.00), to be deducted from his retirement benefits. The Financial Management Office of the Office of the Court Administrator is directed to release the remaining amount of the retirement benefits to respondent.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Azcuna, Tinga, Velasco, Jr., Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

Austria-Martinez, J., on official leave.

Carpio Morales and *Nachura, JJ.,* on official leave under the Court's Wellness Program.

---

[21] 336 Phil. 931 (1997).

THIRD DIVISION

[A.M. No. RTJ-07-2067. June 18, 2008]

NILO JAY MINA, *complainant, vs.* **JUDGE JESUS B. MUPAS, Regional Trial Court, Branch 112, Pasay City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; DUTY TO DECIDE CASE WITHIN REQUIRED PERIOD. — The Constitution requires all lower courts to decide or resolve cases or matters within three months from the time said matter is submitted for decision or resolution. The New Code of Judicial Conduct in Canon 6, Section 5, also mandates judges to perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness; while its antecedent, the Code of Judicial Conduct provides in Rule 3.05 thereof that "judge[s] shall dispose of the court's business promptly and decide cases within the required periods." These rules are in recognition of the right of every person to the speedy disposition of their cases. For, as oft stated, justice delayed is justice denied. Indeed, the public's faith and confidence in the judiciary depends, to a large extent, on the judicious and prompt disposition of cases and matters pending before the courts. Any delay in the disposition of cases diminishes the people's faith and confidence in the judiciary. It erodes faith in the judicial system and unnecessarily blemishes its stature. Judges must therefore perform their official duties with utmost competence and diligence, and they should be imbued with a high sense of duty and responsibility in the discharge of their obligation to promptly administer justice. Judges must cultivate a capacity for quick decision, and must not delay the judgment which a party justly deserves. For, truly, inability to decide a case within the required period is inexcusable and constitutes gross inefficiency, which warrants the imposition of administrative sanction against the erring magistrate.

2. ID.; ID.; ID.; ID.; NON-COMPLIANCE NOT EXCUSED BY ADDITIONAL JUDICIAL ASSIGNMENTS AS EXTENSION

OF TIME TO DECIDE CASE MAY BE REQUESTED. — Respondent explains that he is handling two branches, each receiving the same number of cases, one of which is a special commercial court. The Court has held, however, that additional assignments cannot excuse judges from liability. If the caseload of the judge prevents the disposition of cases within the reglementary period, he should ask the Court for a reasonable extension of time to dispose of the cases involved. The Court is mindful of the heavy caseloads judges carry. Thus, the Court has been sympathetic and usually grants requests for reasonable extensions of time within which to decide cases and resolve matters and incidents related thereto. Respondent, however, did not ask for any extension; thus, the Court has no recourse but to hold him administratively liable for the delay.

3. ID.; ID.; ID.; UNDUE DELAY IN RENDERING DECISION; PENALTY; CASE AT BAR. — Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, classifies "undue delay in rendering a decision or order, or in transmitting the records of a case" as a less serious charge which is punishable by any of the following sanctions: (1) suspension from office without salary and other benefits for not less than one month or more than three months; or (2) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. Considering, however, the mitigating circumstances in his favor such as respondent's heavy caseload and additional court assignment, his candid admission of his inadvertence, and the fact that this is his first offense of this nature in his 13 years of service as a judge, the Court finds the penalty of ₱10,000.00 fine to be proper in this case.

R E S O L U T I O N

AUSTRIA-MARTINEZ, *J.*:

Nilo Jay Mina (complainant) charges Judge Jesus B. Mupas (respondent), Presiding Judge of the Regional Trial Court (RTC) Branch 112, Pasay City of dereliction of duties, grave misconduct, manifest partiality, violation of the Constitution and of the Anti-graft and Corrupt Practices Act.[1]

---

[1] *Rollo*, pp. 7-8.

Complainant is the plaintiff in Civil Case No. 05-0187 for Damages against Pasay City Judge Bibiano Colasito, Assistant City Prosecutor Eva Portugal Atienza and Ferdinand Cruz pending before respondent's sala.[2] Complainant claims, in his letter dated January 2, 2007 that: respondent failed to resolve within the reglementary period complainant's Urgent Motion to Declare all Defendants in Default, which motion was received by the court on May 12, 2006; up to the filing of the present complaint, or more than seven months later, respondent still has not resolved the said motion; respondent's failure to meet the 90-day period for resolving motions prescribed by the Constitution constitutes gross inefficiency and manifests respondent's partiality in favor of the defendants in the civil case.[3]

In his Comment dated February 2, 2007, respondent counters: he was surprised to receive on January 26, 2007 an Order from this Court asking him to comment on complainant's letter, since he had already resolved complainant's urgent motion, as well as two motions to dismiss filed by defendants Cruz and Atienza, way back December 18, 2006. Copies of the said Order, however, were inadvertently not served on complainant and Cruz. He (respondent) admits that the motions were resolved beyond the reglementary period. Such inadvertence, however, is excusable and would have been avoided had complainant exercised the least courtesy of calling the attention of the court on the matter. Complainant should have filed a motion to resolve, which in turn would be received with prompt action. The filing of the instant case without verifying first the status of the motions is unwarranted and constitutes harassment. Respondent is handling two branches, Branch 112 and Branch 117, each receiving the same number of cases, with Branch 117 being a special commercial court.[4]

Complainant filed a Reply dated March 5, 2007, stating that respondent's admission that he had resolved the motions beyond

---

[2] *Id*. at 10, 19.

[3] *Supra* note 1.

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

the reglementary period, *i.e.*, eight months for the two motions to dismiss and seven months for the urgent motion to declare defendants in default, demonstrates his dishonesty, inefficiency and incompetence as a judge.[5]

The Office of the Court Administrator (OCA), through Court Administrator Christopher O. Lock, submitted its Report dated June 4, 2007, finding respondent administratively liable for violation of Rule 3.05 of the Code of Judicial Conduct, which requires judges to dispose of court business promptly. It held that the Constitution mandates lower courts to dispose of cases promptly and decide them within three months from the filing of the last pleading; the fact that respondent had additional assignments will not exonerate him from liability, because he was not precluded from asking for extension of time to resolve a pending matter. It then recommended, following Section 9, Rule 140 of the Rules of Court, that respondent be fined ₱11,000.00 with stern warning.[6]

In the Resolution dated August 1, 2007, the Court required the parties to manifest if they were willing to submit the case for decision based on the pleadings filed.[7] Complainant manifested his willingness to have the case thus submitted.[8] Respondent, however, manifested his preference for a formal investigation.[9] The Court on November 12, 2007, thus referred the case to Justice Martin S. Villarama, Jr. of the Court of Appeals for investigation, report and recommendation.[10] Both parties appeared at the hearing on February 15, 2008 and thereafter agreed to submit the case for decision.[11]

---

[5] *Id.* at 22-24.

[6] *Id.* at 3-4

[7] *Id.* at 36.

[8] *Id.* at 41.

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

[10] *Id.* at 43.

[11] February 18, 2008, Report, p. 6.

In his Report dated February 18, 2008, Investigating Justice Villarama found respondent guilty of incurring delay in resolving motions and incidents pending before him, which infraction constitutes gross inefficiency and is not excused by his additional assignment; respondent also failed to timely transmit the order resolving said motions to the parties. As to the charge of partiality, however, Investigating Justice Villarama found no evidence to support the same. The Investigating Justice then recommended that respondent be meted a fine of ₱10,000.00 with warning.[12]

The Court agrees with the findings and recommendation of the Investigating Justice.

The Constitution requires all lower courts to decide or resolve cases or matters within three months from the time said matter is submitted for decision or resolution.[13] The New Code of Judicial Conduct[14] in Canon 6, Section 5, also mandates judges to perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness;[15] while its antecedent, the Code of Judicial Conduct[16] provides in Rule 3.05 thereof that "judge[s] shall dispose of the court's business promptly and decide cases within the required periods."

These rules are in recognition of the right of every person to the speedy disposition of their cases.[17] For, as oft stated, justice delayed is justice denied. Indeed, the public's faith and confidence in the judiciary depends, to a large extent, on the judicious and prompt disposition of cases and matters pending before the

---

[12] *Id*. at 7-10.

[13] 1987 Constitution, Art. VIII, Section 15 (1). See also *Cagas v. Torrecampo*, A.M. No. RTJ-06-1979, March 14, 2007, 518 SCRA 110, 117; *Tan v. Estoconing*, A.M. No. MTJ-04-1554, June 29, 2005, 462 SCRA 10, 17.

[14] Which took effect on June 1, 2004.

[15] See also *Pacquing v. Gobarde*, A.M. No. RTJ-07-2042**,** April 19, 2007, 521 SCRA 464, 467-468.

[16] Which took effect on September 5, 1989.

[17] *Cagas v. Torrecampo, supra* note 13; *Tan v. Estoconing*, *supra* note 13, at 17; *Balajedeong v. Del Rosario*, A.M. No. MTJ-07-1662, June 8, 2007, 524 SCRA 13, 20.

courts.[18] Any delay in the disposition of cases diminishes the people's faith and confidence in the judiciary.[19] It erodes faith in the judicial system and unnecessarily blemishes its stature.[20] Judges must therefore perform their official duties with utmost competence and diligence, and they should be imbued with a high sense of duty and responsibility in the discharge of their obligation to promptly administer justice.[21] Judges must cultivate a capacity for quick decision, and must not delay the judgment which a party justly deserves.[22] For, truly, inability to decide a case within the required period is inexcusable and constitutes gross inefficiency, which warrants the imposition of administrative sanction against the erring magistrate.[23]

Respondent in his Comment admitted that he had incurred delay in resolving complainant's Urgent Motion to Declare All Defendants in Default as well as the motions to dismiss of Cruz and Atienza. Complainant filed the urgent motion on May 12, 2006 which was submitted for resolution on May 19, 2006, while defendants' motions to dismiss, which were filed on March 20, 2006 and April 7, 2006, were submitted for resolution on April 21, 2006. Yet, it was only on December 18, 2006 that respondent issued an order resolving all three motions.[24]

---

[18] *Re: Report on the Judicial Audit and Physical Inventory of Cases in the Regional Trial Court, Branch 54, Bacolod City*, A.M. No. 06-4-219-RTC, November 2, 2006, 506 SCRA 505, 518.

[19] *Cagas v. Torrecampo, supra* note 13, at 118; *Office of the Court Administrator v. Alon*, A.M. No. RTJ-06-2022, June 27, 2007, 525 SCRA 786, 790.

[20] *Cagas v. Torrecampo, supra* note 13, at 118; *Balajedeong v. Del Rosario*, *supra* note 17.

[21] *Cagas v. Torrecampo, supra* note 13, at 120; *Re: Report on the Judicial Audit and Physical Inventory of Cases in the Regional Trial Court, Branch 54, Bacolod City*, *supra* note 18, at 520.

[22] *Umale v. Fadul*, Jr., A.M. No. MTJ-06-1660, November 30, 2006, 509 SCRA 19, 26.

[23] *Cagas v. Torrecampo, supra* note 13, at 119; *Pacquing v. Gobarde*, *supra* note 15, at 468; *Arcenas v. Avelino*, A.M. No. MTJ-06-1642, June 15, 2007, 524 SCRA 618, 622; *Balajedeong v. Del Rosario*, *supra* note 17.

[24] *Rollo*, pp. 16, 19-20.

Respondent explains that he is handling two branches, each receiving the same number of cases, one of which is a special commercial court.[25] The Court has held, however, that additional assignments cannot excuse judges from liability.[26] If the caseload of the judge prevents the disposition of cases within the reglementary period, he should ask the Court for a reasonable extension of time to dispose of the cases involved.[27] The Court is mindful of the heavy caseloads judges carry.[28] Thus, the Court has been sympathetic and usually grants requests for reasonable extensions of time within which to decide cases and resolve matters and incidents related thereto.[29] Respondent, however, did not ask for any extension; thus, the Court has no recourse but to hold him administratively liable for the delay.

Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, classifies "undue delay in rendering a decision or order, or in transmitting the records of a case" as a less serious charge which is punishable by any of the following sanctions: (1) suspension from office without salary and other benefits for not less than one month or more than three months; or (2) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

Considering, however, the mitigating circumstances in his favor such as respondent's heavy caseload and additional court assignment,[30] his candid admission of his inadvertence,[31] and

---

[25] *Id*. at 17.

[26] *Balajedeong v. Del Rosario*, *supra* note 17, at 21.

[27] *Id*.

[28] *Umale v. Fadul supra* note 22, at 26.

[29] *Id*.; *Tan v. Estoconing*, *supra* note 13, at 18; *Office of the Court Administrator v. Alon*, *supra* note 19.

[30] See *Office of the Court Administrator v. Laron*, A.M. No. RTJ-04-1870, July 9, 2007, 527 SCRA 45, 57; *Office of the Court Administrator v. Alumbres*, A.M. No. RTJ-05-1965, January 23, 2006, 479 SCRA 375, 390; *Umale v. Fadul, supra* note 22, at 27; *Teodosio v. Carpio*, A.M. No. MTJ-02-1416, February 27, 2004, 424 SCRA 56, 62.

[31] *Claro v. Efondo*, A.M. No. MTJ-05-1585, March 31, 2005, 454 SCRA 218, 227; *Teodosio v. Carpio, supra* note 30.

the fact that this is his first offense of this nature[32] in his 13 years of service as a judge, the Court finds the penalty of ₱10,000.00 fine to be proper in this case.[33]

WHEREFORE, the Court finds Judge Jesus B. Mupas, of the Regional Trial Court, Branch 112, Pasay City, guilty of undue delay in rendering an order for which he is *FINED* in the amount of ₱10,000.00 with *STERN WARNING* that a repetition of the same or similar act in the future shall be dealt with more severely.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Reyes, and *Brion,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 149787. June 18, 2008]

JUDGE ANTONIO C. SUMALJAG, *petitioner, vs.* **SPOUSES DIOSDIDIT and MENENDEZ M. LITERATO; and MICHAELES MAGLASANG RODRIGO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; DEATH OF A PARTY; HEIRS OF DECEASED AS SUBSTITUTE

---

[32] Respondent was previously reprimanded in MTJ-95-1067, entitled "*Tierry Aro v. Judge Jesus Mupas,*" for Failure to Supervise Staff and Unjust Dismissal, per OCA Report dated June 4, 2007, *rollo*, p. 3.

[33] See *Pacquing v. Gobarde, supra* note 15; *Cagas v. Torrecampo*, *supra* note 13.

[*] In Lieu of Justice Antonio Eduardo B. Nachura, per Special Order No. 507 dated May 28, 2008.

IN CASE, WITHOUT REQUIRING APPOINTMENT OF EXECUTOR/ADMINISTRATOR; RULE AND RATIONALE THEREOF. — The rule on substitution in case of death of a party is governed by Section 16, Rule 3 of the 1997 Rules of Civil Procedure, as amended, which provides: Section 16, *Death of a party; duty of counsel.* — Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action. **The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator** and the court may appoint a guardian *ad litem* for the minor heirs. The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice. If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party within a specified time to procure the appointment of an executor or administrator for the estate of the deceased, and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The purpose behind this rule is the protection of the right to due process of every party to the litigation who may be affected by the intervening death. The deceased litigant is herself or himself protected as he/she continues to be properly represented in the suit through the duly appointed legal representative of his eatate. In *Gochan v. Young:* For the protection of the interests of the decedent, this Court has in previous instances recognized the heirs as proper representatives of the decedent, even when there is already an administrator appointed by the court. When no administrator has been appointed, as in this case, there is all the more reason to recognize the heirs as the proper representatives of the deceased.

2. ID.; ID.; ID.; ID.; ID.; THAT ACTION MUST SURVIVE DEATH, A REQUISITE; CRITERIA THEREOF. — A question preliminary to the application of Sec. 16, Rule 3 of the 1997 Rules of Civil Procedure is whether Civil Case Nos.

B-1239 and B-1281 are actions that survive the death of Josefa. We said in *Gonzalez v. Pagcor:* "The criteria for determining whether an action survives the death of a plaintiff or petitioner was elucidated upon in *Bonilla v. Barcena* as follows: . . . The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the causes of action which survive, the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive, the injury complained of is to the person, the property and rights of property affected being incidental. . . . Since the question involved in these cases relate to property and property rights, then we are dealing with actions that survive so that Section 16, Rule 3 must necessarily apply.

3. **ID.; ID.; ID.; ID.; ID.; DUTY OF COUNSEL; TO INFORM THE COURT OF THE FACT OF DEATH; COMPLIANCE IN CASE AT BAR. —** The duty of counsel under the aforecited provision is to inform the court within thirty (30) days after the death of his client of the fact of death, and to give the name and address of the deceased's **legal representative or representatives**. Incidentally, this is the only representation that counsel can undertake after the death of a client as the fact of death terminated any further lawyer-client relationship. In the present case, it is undisputed that the counsel for Josefa did in fact notify the lower court, although belatedly, of the fact of her death. This notification, although filed late, effectively informed the lower court of the death of litigant Josefa Maglasang so as to free her counsel of any liability for failure to make a report of death under Section 16, Rule 3 of the Rules of Court. In our view, counsel satisfactorily explained to the lower court the circumstances of the late reporting, and the latter in fact granted counsel an extended period. The timeliness of the report is therefore a non-issue.

4. **ID.; ID.; ID.; ID.; ID.; ID.; TO GIVE NAME AND ADDRESS OF DECEASED'S LEGAL REPRESENTATIVE; NOT COMPLIED WITH IN CASE AT BAR. —** Whether counsel properly gave the court the name and address of the legal representative of the deceased that Section 16, Rule 3 specifies, **We rule that he did not**. The "legal representatives" that the provision speaks of, refer to those authorized by law — the

administrator, executor or guardian who, under the rule on settlement of estate of deceased persons, is constituted to take over the estate of the deceased. Section 16, Rule 3 likewise expressly provides that *"the heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator. . ."* Significantly, the person — now the present petitioner — that counsel gave as substitute was not one of those mentioned under Section 16, Rule 3. Rather, he is a counterclaim co-defendant of the deceased whose proferred justification for the requested substitution is the transfer to him of the interests of the deceased in the litigation prior to her death.

APPEARANCES OF COUNSEL

Zeneen A. Puray for petitioner.
Teofilo R. Redubla for respondents.

D E C I S I O N

BRION, *J.*:

Before this Court is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals (*"CA"*) dated June 26, 2001 and its related Resolution[2] dated September 4, 2001 in **CA-G.R. SP No. 59712**. The assailed Decision dismissed the petition for *certiorari* filed by petitioner Judge Antonio C. Sumaljag (the *"petitioner"*) in the interlocutory matter outlined below in **Civil Cases B-1239 and B-1281** before the trial court. The challenged Resolution denied the petitioner's motion for reconsideration.

ANTECEDENT FACTS

On November 16, 1993, Josefa D. Maglasang (*"Josefa"*) filed with the Regional Trial Court (*"RTC"*), Branch 14, Baybay,

[1] Penned by Associate Justice Marina L. Buzon and concurred in by Associate Justice Eubulo G. Verzola (deceased) and Associate Justice Bienvenido L. Reyes; *rollo*, pp. 85-91.

[2] *Id.*, p. 92.

Leyte a complaint[3] (docketed as Civil Case No. B-1239) for the nullity of the deed of sale of real property purportedly executed between her as vendor and the spouses Diosdidit and Menendez Literato (the *"respondent spouses"*) as vendees. The complaint alleged that this deed of sale dated October 15, 1971 of Lot 1220-D is spurious. Josefa was the sister of Menendez Maglasang Literato (*"Menendez"*). They were two (2) of the six (6) heirs who inherited equal parts of a 6.3906-hectare property (Lot 1220) passed on to them by their parents Cristito and Inecita Diano Maglasang.[4] Lot 1220-D was partitioned to Josefa, while Lot 1220-E was given to Menendez.

The respondent spouses' response to the complaint was an amended answer with counterclaim[5] denying that the deed of sale was falsified. They impleaded the petitioner with Josefa as counterclaim defendant on the allegation that the petitioner, at the instance of Josefa, occupied Lot 1220-D and Lot 1220-E without their (the respondent spouses') authority; Lot 1220-E is theirs by inheritance while 1220-D had been sold to them by Josefa. They also alleged that the petitioner acted in bad faith in acquiring the two (2) lots because he prepared and notarized on September 26, 1986 the contract of lease over the whole of Lot 1220 between all the Maglasang heirs (but excluding Josefa) and Vicente Tolo, with the lease running from 1986 to 1991; thus, the petitioner then knew that Josefa no longer owned Lot 1220-D.

Civil Case No. 1281[6] is a complaint that Menendez filed on April 4, 1996 with the RTC for the declaration of the inexistence of lease contract, recovery of possession of land, and damages against the petitioner and Josefa after the RTC dismissed the respondent spouses' counterclaim in Civil Case No. 1239. The complaint alleged that Josefa, who had previously sold Lot 1220-D to Menendez, leased it, together with Lot 1220-E, to the petitioner. Menendez further averred that the petitioner and Josefa were

---

[3] Annex "A", *id.*, pp. 30-34.

[4] In Civil Case B-641 for Partition and Damages.

[5] Annex "B", *rollo*, pp. 36-44.

[6] Annex "D", *id.*, pp. 48-54.

in bad faith in entering their contract of lease as they both knew that Josefa did not own the leased lots. Menendez prayed, among others, that this lease contract between Josefa and the petitioner be declared null and void.

Josefa died on May 3, 1999 during the pendency of Civil Case Nos. B-1239 and B-1281.

On August 13, 1999, Atty. Zenen A. Puray (*"Atty. Puray"*) — the petitioner's and Josefa's common counsel — asked the RTC in Civil Case No. 1239 that he be given an extended period or up to September 10, 1999 within which to file a formal notice of death and substitution of party.

The RTC granted the motion in an order dated August 13, 1999.[7] On August 26, 1999, Atty. Puray filed with the RTC a notice of death and substitution of party,[8] praying that Josefa — in his capacity as plaintiff and third party counterclaim defendant — be substituted by the petitioner. The submission alleged that prior to Josefa's death, she executed a *Quitclaim Deed*[9] over Lot 1220-D in favor of Remismundo D. Maglasang[10] who in turn sold this property to the petitioner.

Menendez, through counsel, objected to the proposed substitution, alleging that Atty. Puray filed the notice of death and substitution of party beyond the thirty-day period provided under Section 16, Rule 3 of the 1997 Rules of Civil Procedure, as amended. She recommended instead that Josefa be substituted by the latter's full-blood sister, Michaeles Maglasang Rodrigo (*"Michaeles"*).

The RTC denied Atty. Puray's motion for substitution and instead ordered the appearance of Michaeles as representative of the deceased Josefa. This Order provides:

WHEREFORE, in view of the foregoing, the motion is hereby DENIED for lack of merit and instead order the appearance of Mrs.

---

[7] Annex "G", *id.*, p. 75.

[8] Annex "H", *id.*, pp. 76-77.

[9] *Id.*, p. 79.

[10] It appears from the records that Remismundo D. Maglasang is the son of Zosima D. Maglasang.

Michaeles Maglasang-Rodrigo of Brgy. Binulho, Albuera, Leyte, as representative of the deceased Josefa Maglasang.

SO ORDERED.[11]

The RTC subsequently denied the petitioner's motion for reconsideration in an order[12] dated May 25, 2000.

The petitioner went to the CA on a petition for *certiorari* (docketed as CA-G.R. SP No. 59712) to question the above interlocutory orders. In a Decision[13] dated June 26, 2001, the CA dismissed the petition for lack of merit. The appellate court similarly denied the petitioner's motion for reconsideration in its Resolution[14] dated September 4, 2001.

The present petition essentially claims that the CA erred in dismissing CA-G.R. No. SP 59712 since: (a) the property under litigation was no longer part of Josefa's estate since she was no longer its owner at the time of her death; (b) the petitioner had effectively been subrogated to the rights of Josefa over the property under litigation at the time she died; (c) without an estate, the heir who was appointed by the lower court no longer had any interest to represent; (d) the notice of death was seasonably submitted by the counsel of Josefa to the RTC within the extended period granted; and (e) the petitioner is a transferee *pendente lite* who the courts should recognize pursuant to Rule 3, Section 20 of the Rules of Court.

THE COURT'S RULING

We resolve to deny the petition for lack of merit.

The Governing Rule.

The rule on substitution in case of death of a party is governed by Section 16, Rule 3 of the 1997 Rules of Civil Procedure, as amended, which provides:

---

[11] Order dated December 16, 1990, Annex "I", *rollo*, pp. 81-82.

[12] Annex "J", *id.*, pp. 83-84.

[13] Annex "K", *id.*, pp. 85-91.

[14] Annex "L", *id.*, pp. 92-93.

Section 16. *Death of a party; duty of counsel.* — Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased, and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. (Emphasis ours)

The purpose behind this rule is the protection of the right to due process of every party to the litigation who may be affected by the intervening death. The deceased litigant is herself or himself protected as he/she continues to be properly represented in the suit through the duly appointed legal representative of his estate.[15]

Application of the Governing Rule.

a. Survival of the pending action

A question preliminary to the application of the above provision is whether Civil Case Nos. B-1239 and B-1281 are actions that survive the death of Josefa. We said in *Gonzalez v. Pagcor*:[16]

---

[15] *Napere v. Barbarona,* G.R. No. 160426, January 31, 2008, citing *Heirs of Bertuldo Hinog v. Melicor*, 455 SCRA 460, 478 (2005).

[16] G.R. No. 144891, May 27, 2004, 429 SCRA 533.

"The criteria for determining whether an action survives the death of a plaintiff or petitioner was elucidated upon in *Bonilla v. Barcena* (71 SCRA 491 (1976) as follows:

> . . . The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the causes of action which survive, the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive, the injury complained of is to the person, the property and rights of property affected being incidental. . . .

Since the question involved in these cases relate to property and property rights, then we are dealing with actions that survive so that Section 16, Rule 3 must necessarily apply.

b. Duty of Counsel under the Rule.

The duty of counsel under the aforecited provision is to inform the court within thirty (30) days after the death of his client of the fact of death, and to give the name and address of the deceased's **legal representative or representatives**. Incidentally, this is the only representation that counsel can undertake after the death of a client as the fact of death terminated any further lawyer-client relationship.[17]

In the present case, it is undisputed that the counsel for Josefa did in fact notify the lower court, although belatedly, of the fact of her death.[18] However, he did as well inform the lower court that —

"2. That before she died she executed a QUITCLAIM DEED in favor of REMISMUNDO D. MAGLASANG over the land in question (Lot No. 1220-D of Benolho, Albuera, Leyte), evidenced by a QUITCLAIM DEED, copy of which is hereto attached as Annex "B" who in turn sold it in favor of JUDGE ANTONIO SUMALJAG,

---

[17] *Lavina v. Court of Appeals*, G.R. No. 78295, April 10, 1989, 171 SCRA 691; *Haberer v. CA,* Nos. L-42699 to L-42707, May 26, 1981, 104 SCRA 540.

[18] Annex "H", *rollo*, p. 76.

evidenced by a DEED OF ABSOLUTE SALE, copy of which is hereto attached as Annex "C".

Further, counsel asked that *"the deceased Josefa Maglasang in her capacity as plaintiff and as Third Party Counterclaim Defendant be substituted in the case at bar by JUDGE ANTONIO SUMALJAG whose address is 38 Osmena Street, Ormoc City"* pursuant to *"Section 16, Rule 3 of the 1997 Rules of Civil Procedure*."

This notification, although filed late, effectively informed the lower court of the death of litigant Josefa Maglasang so as to free her counsel of any liability for failure to make a report of death under Section 16, Rule 3 of the Rules of Court. In our view, counsel satisfactorily explained to the lower court the circumstances of the late reporting, and the latter in fact granted counsel an extended period. The timeliness of the report is therefore a non-issue.

The reporting issue that goes into the core of this case is whether counsel properly gave the court the name and address of the legal representative of the deceased that Section 16, Rule 3 specifies. **We rule that he did not.** The "legal representatives" that the provision speaks of, refer to those authorized by law — the administrator, executor or guardian[19] who, under the rule on settlement of estate of deceased persons,[20] is constituted to take over the estate of the deceased. Section 16, Rule 3 likewise expressly provides that "*the heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator . . .*" Significantly, the person — now the present petitioner — that counsel gave as substitute was not one of those mentioned under Section 16, Rule 3. Rather, he is a counterclaim co-defendant

---

[19] In the commentary of Justice Oscar M. Herrera (ret.) in his book *Remedial Law*, Volume 1, 2007 edition, he stated that the terms "administrator, executor, or guardian" to whom the notice of death should be addressed under the old Rules, were deleted and deemed included in the term "legal representative or representatives."

[20] Rule 73-90 of the Rules of Court.

of the deceased whose proferred justification for the requested substitution is the transfer to him of the interests of the deceased in the litigation prior to her death.

Under the circumstances, both the lower court and the CA were legally correct in not giving effect to counsel's suggested substitute.

First, the petitioner is not one of those allowed by the Rules to be a substitute. Section 16, Rule 3 speaks for itself in this respect.

Second, as already mentioned above, the reason for the Rule is to protect all concerned who may be affected by the intervening death, particularly the deceased and her estate. We note in this respect that the Notice that counsel filed in fact *reflects a claim against the interest of the deceased* through the transfer of her remaining interest in the litigation to another party. Interestingly, the transfer is in favor of the very same person who is suggested to the court as the substitute. To state the obvious, the suggested substitution effectively brings to naught the protection that the Rules intend; plain common sense tells us that the transferee who has his own interest to protect, cannot at the same time represent and fully protect the interest of the deceased transferor.

Third, counsel has every authority to manifest to the court changes in interest that transpire in the course of litigation. Thus, counsel could have validly manifested to the court the transfer of Josefa's interests in the subject matter of litigation pursuant to Section 19, Rule 3.[21] But this can happen only *while the client-transferor was alive* and *while the manifesting counsel was still the effective and authorized counsel for the client-transferor*, not after the death of the client when the lawyer-client relationship has terminated. The fact that the alleged transfer may have actually taken place is immaterial to this conclusion, if only for the reason that it is not for counsel, after the death

[21] Section 19. *Transfer of interest*. — In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

of his client, to make such manifestation because he then has lost the authority to speak for and bind his client. Thus, at most, the petitioner can be said to be a transferee *pendente lite* whose status is pending with the lower court.

Lastly, a close examination of the documents attached to the records disclose that the subject matter of the Quitclaim allegedly executed by Josefa in favor of Remismundo is Lot 1220-E, while the subject matter of the deed of sale executed by Remismundo in the petitioner's favor is Lot 1220-D. This circumstance alone raises the possibility that there is more than meets the eye in the transactions related to this case.

c. The Heirs as Legal Representatives.

The CA correctly harked back to the plain terms of Section 16, Rule 3 in determining who the appropriate legal representative/s should be in the absence of an executor or administrator. The second paragraph of the Section 16, Rule 3 of the 1997 Rules of Court, as amended, is clear — the heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator. Our decisions on this matter have been clear and unequivocal. In *San Juan, Jr. v. Cruz*, this Court held:

> The pronouncement of this Court in *Lawas v. Court of Appeals* x x x that priority is given to the legal representative of the deceased (the executor or administrator) and that it is only in case of unreasonable delay in the appointment of an executor or administrator, or in cases where the heirs resort to an extra-judicial settlement of the estate that the court may adopt the alternative of allowing the heirs of the deceased to be substituted for the deceased, is **no longer true**.[22] (Emphasis ours)

We likewise said in *Gochan v. Young*:[23]

> For the protection of the interests of the decedent, this Court has in previous instances recognized the heirs as proper representatives

---

[22] *San Juan, Jr. v. Cruz*, G.R. No. 167321, July 31, 2006, 497 SCRA 410.

[23] *Gochan v. Young*, G.R. No. 131889, March 12, 2001, 354 SCRA 207.

of the decedent, even when there is already an administrator appointed by the court. When no administrator has been appointed, as in this case, there is all the more reason to recognize the heirs as the proper representatives of the deceased.

Josefa's death certificate[24] shows that she was single at the time of her death. The records do not show that she left a will. Therefore, as correctly held by the CA, in applying Section 16, Rule 3, her heirs are her surviving sisters (Michaelis, Maria, Zosima, and Consolacion) and the children of her deceased sister, Lourdes (Manuel, Cesar, Huros and Regulo) who should be her legal representatives. Menendez, although also a sister, should be excluded for being one of the adverse parties in the cases before the RTC.

WHEREFORE, premises considered, we *DENY* the petition for lack of merit. We *AFFIRM* the Court of Appeals decision that the surviving heirs of the deceased Josefa – namely Michaelis M. Rodrigo; Maria M. Cecilio; Zosima D. Maglasang; Consolacion M. Bag-aw; and the children of Lourdes M. Lumapas, namely Manuel Lumapas, Cesar Lumapas, Huros Lumapas and Regulo Maquilan – should be her substitutes and are hereby so ordered to be substituted for her in Civil Case Nos. B-1239 and B-1281.

Costs against the petitioner.

SO ORDERED.

Quisumbing (Chairperson), Tinga, Reyes,[*] and *Leonardo-de Castro,*[**] *JJ.,* concur.

---

[24] Annex "F", *rollo*, p. 74.

[*] Designated as additional member of the Second Division per Special Order No. 504 dated May 15, 2008.

[**] Designated as additional member of the Second Division per Special Order No. 505 dated May 15, 2008.

SECOND DIVISION

[G.R. No. 152859. June 18, 2008]

EUFROCINO C. IBAÑEZ and FELIPE R. LARANGA, *petitioners, vs.* **AFP RETIREMENT AND SERVICE BENEFIT SYSTEM,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL TENANCY; THE DARAB CANNOT RESOLVE, ON APPEAL, A KEY ADMINISTRATIVE ISSUE OF THE CASE WHEN THE PARAD HAD NOT YET RULED ON SUCH ISSUE ON THE MERITS. — As couched, the assailed CA Decision did not divest petitioners of their right to security of tenure, possession, and cultivation of the land, assuming for the nonce that they possess such right. As it were, the CA did not even attempt to resolve one way or the other the issue of tenurial rights and tillage. For perspective, the CA did no more than to order the DARAB to resolve the first five issues raised by petitioners in their appeal from the orders of PARAD Sorita, who, parenthetically, did not even make a perfunctory reference on the tenurial issue in his orders. Before the office of the PARAD in DARAB Case No. IV-LA-0366-'94, respondent AFP-RSBS raised the issue of DARAB's jurisdiction over the verified petition which depicted the disputed lot as a tenanted agricultural land. Instead of addressing the jurisdictional challenge by either upholding or dismissing the same, then proceeding, in the latter instance, to resolve the case on the merits, PARAD Sorita disposed of DARAB Case No. IV-LA-0366-'94 by dismissing it on technical grounds. Subsequently, in DARAB Case No. 9266, petitioners impugned before the DARAB the dismissal of their petition on the grounds indicated in the orders of PARAD Sorita. Given the foregoing consideration, it was erroneous for the DARAB to resolve, on appeal, a key determinative issue of the case when the PARAD had not yet ruled on such issue on the merits.

2. ID.; ID.; THE ISSUE ON THE JURISDICTION OF THE PARAD ON THE TENURIAL RIGHTS OF PETITIONERS IN CASE AT BAR, STILL TO BE RESOLVED ON THE MERITS.—

The issue on the jurisdiction of the PARAD to rule on the tenurial rights of petitioners has yet to be resolved. Evidence still has to be adduced to prove petitioner Ibanez's father's leasehold right and CLT and the effect, if any, of the reclassification of the disputed lot on the clashing rights of the parties concerned. It may be that the RARAD took cognizance of the underlying verified petition and denied AFP-RSBS' motion to dismiss the petition on jurisdictional ground, a denial which the DARAB affirmed per its Decision of January 18, 2000 in DARAB Case No. DSCA 0028. It should be stressed, however, that the CA, in CA-G.R. SP No. 38392, did not uphold nor deny the jurisdiction of the PARAD to take cognizance of the case. The CA merely adverted to its own lack of competence to resolve the petition for *certiorari* filed before it by AFP-RSBS assailing the RARAD's orders. As the CA explained, it was the DARAB which had exclusive jurisdiction to resolve an action for *certiorari* assailing interlocutory orders of the PARAD/RARAD in accordance with Sec. 3 of Rule VIII of the DARAB Rules of Procedure. x x x. Note that under Sec. 3, Rule X of the 2003 DARAB Rules of Procedure, the remedy of *certiorari* to nullify interlocutory orders has been removed and orders or resolutions of the adjudicator on any issue, question, matter, or incident raised before him shall be valid and effective until the hearing of the case has been terminated and resolved on the merits.

3. ID.; ID.; THE COURT OF APPEALS' ORDER OF DISMISSAL WAS NOT CONTRARY TO PRIOR GRANT OF INJUNCTION *PENDENTE LITE*. — A cursory review of the orders of PARAD Vergel de Dios and RARAD Arche-Manalang separately granting injunctive relief shows that the orders did not rule on petitioners' right to security of tenure, an issue that, to reiterate, still has to be resolved on the merits. The PARAD and RARAD orders in question were issued precisely to maintain the status quo pending the resolution of the instant case on its substantive merits. The purpose of the injunctive writ is "[t]o prevent threatened or continuous irremediable injury to the parties seeking the writ by preserving the *status quo* until the merits of the case can be heard fully." Certainly, during the hearing for the grant of an injunctive writ, preliminary evidence would be received so the court could assess the justifications for the preliminary injunction pending the decision of the case on the merits." Thus, it cannot seriously be asserted

that the assailed CA Decision — directing the DARAB to resolve the issues before it, and not to preempt the PARAD in resolving the case on the merits, if and when the matter of the dismissal on technical grounds is resolved in petitioners' favor — runs counter to the restraining or enjoining orders issued by PARAD Vergel de Dios and RARAD Arche-Manalang. PARAD Sorita's order dismissing the basic verified petition on technical grounds is not necessarily inconsistent with the orders of PARAD Vergel de Dios and RARAD Arche-Manalang relied on by petitioners. Consequently, the assailed CA Decision cannot be contrary to the orders of the PARAD/RARAD as the DARAB was merely required to resolve issues tendered on appeal, eschewing issues not related to the appeal before it.

4. ID.; ID.; THE DECISION OF THE COURT OF APPEALS ON DUE PROCESS, NOT CONTRARY TO LAW. — Petitioners submit that the assailed CA Decision violated Sec. 73(c) of RA 6657 and, in the process, effectively deprived them of their claimed landholding without due process of law. Petitioners are again mistaken. They are putting the cart before the horse. The assailed CA Decision only corrected the lapses the DARAB committed which tended to disregard the imperatives of due process and fair play. The CA merely pointed out that the DARAB prematurely, improperly, and erroneously resolved the merits of petitioners' appeal from the orders of PARAD Sorita. Nowhere in the CA assailed Decision can it be reasonably be deduced that the appellate court dispossessed petitioners of whatever right they may have over the disputed lot under agrarian laws. Clearly, the legal provision cited and relied upon by petitioners was not violated let alone put to naught by the assailed CA Decision.

5. ID.; ID.; DECISION OF THE DARAB ON PETITIONERS' TENURIAL RIGHTS, DECLARED PREMATURE. — Petitioners' lament about the CA gravely abusing its discretion in setting aside the February 7, 2001 DARAB decision is untenable. Equally untenable, for the adverted reasons articulated in the assailed CA Decision, is petitioners' stance regarding the correctness of the DARAB's action reversing PARAD Sorita's decision and effectively recognizing petitioners' tenurial right despite the fact that the PARAD has not yet passed upon the merits of petitioners' claim of security of tenure. Recall that AFP-RSBS, before the PARAD, was not able, through

no fault of its own, to present its evidence to prove the non-agricultural nature of the disputed lot or, with like effect, to prove that the same lot is not subject to petitioners' tenurial right. To obviate misunderstanding, we wish to stress, at this juncture, that this disposition does not purport to pass upon the correctness of, much more affirm, PARAD Sorita's June 9, 1999 order. Neither should this Decision be taken as defining or declaring the rights of the parties *vis-à-vis* the disputed lot. That could come later should any aggrieved party pursue the case after certain factual and evidentiary issues shall have been duly determined by the proper forum. For the moment, we are mainly concerned with what is raised before us: the propriety of the assailed CA Decision. And we find it proper and correct.

APPEARANCES OF COUNSEL

Villanueva Perez & Arcigal Law Office for petitioners.
Rodriguez Casila and Associates for San Lorenzo Dev't. Corp.
De Jesus Manimtim Martinez Bello & Peran for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

At the core of this agrarian case is a 1.5523-hectare property that once formed part of Lot No. 1973 situated at Barangay Dita, Sta. Rosa, Laguna. Lot No. 1973 was formerly registered in the name of Fermina Z. Bailon, married to Tomas M. Gan, under Transfer Certificate of Title No. RT-3939 (13443). Shortly after Fermina's death on April 25, 1973, her heirs, namely, husband Tomas and their four (4) children, executed an Extra Judicial Settlement of Estate under which Lot No. 1973 was ceded to son Eduardo Gan.

On November 26, 1981, the municipality of Santa Rosa, Laguna passed an ordinance classifying Lot No. 1973, among others, as residential. A week later, the Housing and Land Use Regulatory Board approved the ordinance.

It would appear that, shortly after the enactment of the said ordinance, Lot No. 1973 was brought under Operation Land Transfer of Presidential Decree No. (PD) 27 dated September 21, 1972, otherwise known as the *Tenants' Emancipation Decree.* This development paved the way for the subdivision of Lot No. 1973 and the eventual issuance of the corresponding certificate of land transfer (CLT) and emancipation patent to farmer-beneficiaries. Among them was Angel Ibañez, who was issued, on May 3, 1982, CLT No. D-052665 covering 1.5523 hectares of Lot No. 1973. Disputed in this case is the portion awarded to Angel.

Petitioners Eufrocino C. Ibañez and Felipe R. Laranga claim to be the son and cousin, respectively, of Angel. Both assert tenancy rights over the disputed lot on the strength of their allegedly having taken over the tillage thereof since after Angel's demise on August 3, 1992. Angel, so petitioners alleged, had been tilling the lot from 1965 until her death.

Respondent AFP Retirement Service Benefit System (AFP-RSBS) is a pension fund organized by virtue of PD 361, as amended, entitled *Providing for an Armed Forces Retirement and Separation Benefits System*.

On April 29, 1992, then Undersecretary Renato Padilla of the Department of Agrarian Reform (DAR), acting on the request of a certain Engr. Alberto F. de Jesus, issued an "exemption clearance" from the Comprehensive Agrarian Reform Program (CARP) coverage to Lot No. 1973 and 26 other parcels of land situated in Sta. Rosa, Laguna.[1] In his covering action-letter, Padilla categorically stated that the disputed land was beyond the coverage of Republic Act No. (RA) 6657, *The Comprehensive Agrarian Reform Law of 1988* (CARL) and, therefore, actually no longer needed any conversion clearance.[2]

After the death of landowner Eduardo Gan in 1993, his heirs sold the 1.5523-hectare portion of Lot No. 1973 to San Lorenzo

---

[1] *Rollo*, pp. 354-356.

[2] *Id*. at 356.

Development Corporation (SLDC) which, in turn, later sold the same portion to AFP-RSBS.

On May 20, 1994, petitioners filed before the Region IV office of the DAR Adjudication Board (DARAB) a Verified Petition[3] for Enforcement of Presidential Administrative Order No. 20 against AFP-RSBS and SLDC, with a plea to enjoin AFP-RSBS and SLDC from bulldozing their tenanted property and driving them out of the area. The petition, docketed as DARAB Case No. IV-LA-0366-'94, only bore petitioner Laranga's signature.

On May 27, 1994, Laguna Provincial Agrarian Reform Adjudicator (PARAD) **Rosalina M. Vergel de Dios** issued a 20-day temporary restraining order (TRO)[4] to petitioners. Thereafter, on June 21, 1994, PARAD Vergel de Dios granted petitioners' motion for inhibition and transferred the records of the case to the Office of the Regional Agrarian Reform Adjudicator (RARAD) for further disposition.[5]

On June 27, 1994, AFP-RSBS filed with the PARAD a Motion to Dismiss the verified petition on jurisdictional ground, it being alleged that DARAB, or its provincial or regional adjudicator, is bereft of jurisdiction over the disputed lot. As argued, Lot No. 1973 had already been classified as residential before the CARL took effect on June 15, 1988. AFP-RSBS raised too the petition's failure to state any cause of action as to petitioner Laranga who, as pointed out, was not a tenant of the area in question. AFP-RSBS also cited petitioners' non-compliance with the circular on forum shopping as added reason for the desired dismissal.

In due time, petitioners filed their Opposition to the AFP-RSBS Motion to Dismiss.

It would appear that the motion to dismiss was forwarded to the RARAD for Region IV, for, on February 13, 1995, RARAD

---

[3] *Id*. at 216-224.

[4] *Id*. at 225-227.

[5] *Id*. at 228-230.

Fe Arche-Manalang issued an Order,[6] denying AFP-RSBS' motion to dismiss and granting petitioners' plea for preliminary injunction.

Following the denial of its motion for reconsideration per the RARAD's Order of August 8, 1995, AFP-RSBS went to the Court of Appeals (CA) via a petition for *certiorari* docketed as **CA-G.R. SP No. 38392**. On September 29, 1995, the CA dismissed the petition on the ground that the proper recourse under the premises was for AFP-RSBS, as petitioner therein, to challenge the interlocutory dismissal orders of the RARAD by *certiorari* before the DARAB pursuant to its primary jurisdiction.

Properly guided, AFP-RSBS lost no time in filing before the DARAB a petition for *certiorari*, docketed as **DARAB Case No. DSCA 0028**, assailing the adverted RARAD orders dated February 13, 1995 and August 8, 1995.

On January 18, 2000, in DARAB Case No. DSCA 0028, the DARAB issued a Resolution[7] which, while positing its or its adjudicators' jurisdiction over the agrarian dispute at hand, dismissed AFP-RSBS' petition for *certiorari* on the ground of prematurity. As held, the issue of whether or not the subject lot is within the coverage of the CARP is yet to be determined by the PARAD.

PARAD Dismissed the Verified Petition

Meanwhile, on June 9, 1999, the new PARAD for Laguna, **Virgilio Sorita**, issued an Order,[8] dismissing petitioners' basic petition for the reasons that: (1) only petitioner Laranga — a mere helper in the cultivation of the subject lot and, hence, had no standing to maintain the action — signed the initiatory petition; and (2) petitioner Ibañez, not having signed the petition, could not be considered as a party in the instant case.

The PARAD likewise rejected petitioners' motion for reconsideration with finality on August 2, 1999.[9]

---

[6] *Id*. at 250-255.

[7] *Id*. at 272-277.

[8] *Id*. at 279.

[9] *Id*. at 280.

The DARAB Ruled Tenant-Farmers may not be Divested of Their Tenurial Rights Despite Reclassification of Land as Residential

Aggrieved, petitioners appealed to the DARAB, the appeal docketed as DARAB Case No. 9266. In their appeal memorandum, petitioners raised several issues set out in six assignments of errors. There, they faulted PARAD Sorita for, among other things, failing to render judgment on the merits on the verified petition despite their having filed their position paper on June 7, 1994 and their formal offer of documentary evidence on June 9, 1994.

On February 7, 2001, the DARAB rendered a Decision, finding for petitioners Ibañez and Laranga, disposing as follows:

> WHEREFORE, premises considered, the appealed decision dated 09 June 1999 is hereby REVERSED and SET ASIDE. Petitioners-Appellants Eufrocino C. Ibañez and Felipe R. Laranga **are entitled to security of tenure** under the law and should be maintained in peaceful possession and cultivation.
>
> SO ORDERED.[10] (Emphasis added.)

The DARAB predicated its ruling on the interplay of the following premises:

1. DARAB and its provincial adjudicators have jurisdiction over matters involving the security of tenure of an agrarian tenant pursuant to Section 17 of Executive Order No. (EO) 229 and Sec. 50 of RA 6557, as follows:

Sec. 17 of EO 229

> Sec. 17. *Quasi-Judicial Powers of the DAR*. — The DAR is hereby vested with quasi-judicial powers to determine and adjudicate [through the DARAB] agrarian reform matters, and shall have exclusive original jurisdiction over all matters involving implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the DENR and the Department of Agriculture (DA).

---

[10] *Id*. at 290.

Sec. 50 of RA 6557

Sec. 50. *Quasi-judicial Powers of the DAR*.—The DAR is hereby vested within primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

2. Petitioners cannot be divested of their tenancy rights over the disputed lot despite its reclassification as residential land since a leasehold relationship had already been established even before the reclassification was made. DOJ Opinion No. 44, series of 1999, stated: "The reclassification of lands to non-agricultural uses shall not operate to divest tenant-farmers of their rights over lands covered by [PD 27], which have been vested prior to 15 June 1998."

3. The agrarian relationship between petitioners and the landowner is not extinguished by the sale, alienation, or transfer of the legal possession of the landholding as the transferee or vendee is subrogated to the obligations of the agricultural lessor relative to the rights of the agricultural lessee.

The CA Reversed and Set Aside the February 7, 2001 DARAB Decision

Disagreeing with the DARAB's Decision of February 7, 2001, AFP-RSBS repaired to the CA through a petition for review under Rule 43. Docketed as CA-G.R. SP No. 65203, the petition urged the reversal of the DARAB ruling on the ground that the **board resolved only one issue** and ignored the other issues Ibañez and Laranga, as petitioners before the DARAB, raised in their appeal, such as the effect of Ibanez's failure to sign the basic petition filed before the PARAD and Laranga's legal standing to sign the same petition.

The CA, agreeing with the arguments of AFP-RSBS, rendered on November 15, 2001 the assailed Decision,[11] reversing and

[11] *Id*. at 56-67. Penned by Associate Justice Romeo J. Callejo, Sr. (now a retired member of this Court) and concurred in by Associate Justices Remedios Salazar-Fernando and Josefina Guevara-Salonga.

setting aside the February 7, 2001 DARAB Decision, disposing as follows:

> IN THE LIGHT OF ALL THE FOREGOING, the Decision of the Public Respondent [DARAB] x x x is hereby **SET ASIDE** and **REVERSED**. The Public Respondent is hereby ordered to **resolve** the aforequoted **First Five Issues** posed by the Private Respondents [Ibañez and Laranga] in their "**Appeal-Memorandum.**"
>
> SO ORDERED.

The appellate court denied petitioners' motion for reconsideration.

The Issues Before Us

Hence, petitioners' instant recourse on the following grounds that the CA's assailed decision, if not set aside:

> -I-
>
> x x x WOULD DEPRIVE THE HEREIN PETITIONERS EUFROCINO C. IBAÑEZ AND FELIPE R. LARANGA x x x OF THEIR RIGHT TO SECURITY OF TENURE, POSSESSION, TILLAGE AND CULTIVATION OF THE SUBJECT LANDHOLDING HENCE, SAID CA DECISION IS NOT ONLY AGAINST THE EXISTING AGRARIAN LAWS BUT AGAINST THE DOCTRINE CITED HEREUNDER LAID DOWN BY THE HON. SUPREME COURT;
>
> -II-
>
> x x x WOULD GIVE VALIDITY TO THE ORDERS x x x DATED JUNE 09, AND AUGUST 2, 1999 OF PARAD VIRGILIO M. SORITA, WHICH ARE NULL AND VOID FOR WANT OF JURISDICTION AND/OR FOR BEING CONTRARY TO THE PREVIOUS ORDERS x x x RENDERED BY RARAD FE ARCHE-MANALANG VESTED WITH EQUAL JURISDICTION IN SAID DCN IV-LA-0366-'94 UPHOLDING THE DARAB'S JURISDICTION OVER THIS CASE AND OF PETITIONERS' RIGHT TO SECURITY OF TENURE WHICH WAS AFFIRMED BY THE [CA] IN [ITS] DECISION PROMULGATED ON SEPTEMBER 29, 1995 x x x IN CA-GR SP. NO. 38392;
>
> -III-
>
> x x x WOULD UNLAWFULLY AND UNJUSTLY DISREGARD THE TRO xxx DATED MAY 27, 1994 ISSUED BY PARAD

ROSALINA AMONOY VERGEL DE DIOS, AND THE ORDERS x x x DATED FEBRUARY 13, 1995 AND AUGUST 8, 1995 ISSUED BY RARAD FE ARCHE-MANALANG BOTH OF WHICH ARE ALREADY FINAL UPHOLDING THE JURISDICTION OF THE DARAB OVER THIS CASE AND UPHOLDING [PETITIONERS'] x x x RIGHT TO SECURITY OF TENURE OVER THE SUBJECT LANDHOLDING AND DENYING THE CLAIM OF RESPONDENT AFP-RSBS OF FORUM SHOPPING ON THE PART OF SAID PETITIONERS, AND GRANTING THE WRIT OF INJUNCTION *PENDENTE LITE* PRAYED FOR IN PETITIONERS' VERIFIED PETITION;

-IV-

x x x [WOULD BE] CONTRARY TO THE EXPRESS MANDATE [OF] SECTION 3 (c) OF RA NO. 6657 PROVIDING THAT THE RECLASSIFICATION OF LANDS TO NON-AGRICULTURAL PURPOSES SHALL NOT OPERATE TO DIVEST TENANT-FARMERS COVERED BY PRESIDENTIAL DECREE NO. 27, WHICH HAVE BEEN VESTED PRIOR TO 15 JUNE 1988;

-V-

x x x IS PREMATURE AND WITHOUT BASIS IN FACT AND IN LAW, WITHOUT SAID DARAB RESOLVING FIRST THE FOLLOWING ISSUES POSTED BY THE PETITIONERS IN THEIR APPEAL MEMORANDUM DATED OCTOBER 20, 1999 FILED IN DARAB CASE NO. IV-LA-0366-'94 TO WIT:

I

In ruling that because petitioner-appellant Eufrocino C. Ibañez did not sign the Petition he cannot be a party in this instant Petition for Enforcement of Presidential Order No. 20, and for Violation of Sec. 73 (c) of RA 6657 and that his participation in the succeeding proceedings can not make him a party to the instant case and does not operate to cure the lack of his signature in the petition; and in categorizing the same as a fatal defect;

II

In ruling that petitioner-appellant Felipe R. Laranga (sic) being a mere helper in the cultivation of the subject land, had no right under the Agrarian Law to maintain this instant action, and that he is not a real party-in-interest;

III

In dismissing this instant case and in denying petitioners-appellants' motion for the reconsideration of said Order dated June 09, 1999 on the ground that he (Eufrocino C. Ibañez) is not a party in this case and that the Hon. Board had not acquired jurisdiction over his person and this petition, and that said Order dismissing this case is not on technicality but on the authority of the PARAD to decide this case on the merits;

IV

In not making a liberal construction of Sec. 1, Rule IV, of the DARAB's New Rules of Procedure and in not considering petitioner-appellant Eufrocino C. Ibañez as a party in this case, and in not applying the doctrine of laches against the Provincial A.R. Adjudicator Rosalina Vergel de Dios, the Regional A.R. Adjudicator Fe Arche-Manalang, Justices Jaime M. Lantin, Ricardo P. Galvez, and Antonio P. Solano of the Eighth Division, [CA] who took cognizance and jurisdiction over this instant case, over all the parties, cause of action and subject matter involved from May 27, 1994 when the [CA] rendered its Decision of respondent-appellee [SLDC] which failed to question the lack of the signature of petitioner-appellant Eufrocino C. Ibañez, on the Verified Petition, and the capacity of petitioner-appellant Felipe R. Laranga to file this instant case being only a farm helper of the former of the subject irrigated riceland;

V

In arrogating, with grave abuse of discretion amounting to lack of jurisdiction, on the part of the said Provincial A.R. [Adjudicator] Virgilio M. Sorita upon himself the appellate power, discretion and authority to disregard, render worthless, and ineffective or nullify in effect the RARAD Order dated February 13, 1995 and Order dated August 8, 1995 rendered in this case by the RARAD directing the respondents-appellees and all persons acting under their command to cease and desist from undertaking and further bulldozing development of conversion activities on the property in question pending termination of this case and the Decision of the [CA] rendered in CA-G.R. SP No. 38392, affirming the said RARAD Order and utterly disregarding the fact that the DARAB thru the RARAD and the [CA] had taken cognizance of, gave due course to and jurisdiction over this instant case, and of the parties petitioners-appellants and subject matter.[12]

---

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

The petition is bereft of merit.

Tenurial Issue Cannot be Resolved on Appeal

Petitioners argue that the CA committed reversible error in setting aside and reversing the February 7, 2001 DARAB Decision since the CA Decision deprived them of their tenurial rights over the lot in question and other rights flowing therefrom.

Petitioners do not know whereof they speak.

As couched, the assailed CA Decision did not divest petitioners of their right to security of tenure, possession, and cultivation of the land, assuming for the nonce that they possess such right. As it were, the CA did not even attempt to resolve one way or the other the issue of tenurial rights and tillage. For perspective, the CA did no more than to order the DARAB to resolve the first five issues raised by petitioners in their appeal from the orders of PARAD Sorita, who, parenthetically, did not even make a perfunctory reference on the tenurial issue in his orders.

Before the office of the PARAD in DARAB Case No. IV-LA-0366-'94, respondent AFP-RSBS raised the issue of DARAB's jurisdiction over the verified petition which depicted the disputed lot as a tenanted agricultural land. Instead of addressing the jurisdictional challenge by either upholding or dismissing the same, then proceeding, in the latter instance, to resolve the case on the merits, PARAD Sorita disposed of DARAB Case No. IV-LA-0366-'94 by dismissing it on technical grounds. Subsequently, in DARAB Case No. 9266, petitioners impugned before the DARAB the dismissal of their petition on the grounds indicated in the orders of PARAD Sorita.

Given the foregoing consideration, it was erroneous for the DARAB to resolve, on appeal, a key determinative issue of the case when the PARAD had not yet ruled on such issue on the merits. The CA graphically narrated the anteceding factual situations and made the following apt observations:

The PARAD did not, under his Orders [dated June 9, 1999 and August 2, 1999] resolve the **"Petition"** of Private Respondents

[Ibañez and Laranga] on its merits because, at the time, the **"Petition"** was not yet ripe for [his] decision on the merits x x x [since] the Petitioner [AFP-RSBS] had not yet submitted its **"Position Paper"** and **"Formal Offer of Documentary Evidence"** and even if it had, there was still a need for the PARAD, under Rule VIII, Section 5 of the New Rules of Procedure of the DARAB, to determine whether there was a need for a formal hearing or investigation and if he found no more need for said formal hearing or investigation, he was mandated under Section 6 of Rule VIII of said Rules, to issue an Order informing the parties of his resolution:

> SECTION 5. **Submission of Sworn Statements of Affidavits**. During the initial hearing or conference, or immediately thereafter, the adjudicator shall require the parties to submit simultaneously their respective sworn statements or affidavits and the supporting documentary evidence, if any, and the affidavits of their witnesses which shall take the place of their direct testimony. The parties may x x x present evidence to prove facts not alleged or referred to previously, but which are relevant to the determination of the main issue or issues and are included in their claim or defense.
>
> SECTION 6. **Determination of Necessity of Hearing**. Immediately after the submission by the parties of their sworn statements and supporting documentary evidence, the adjudicator shall determine whether or not there is a need for a formal hearing or investigation. At this stage, he may x x x elicit the pertinent facts or information, including documentary evidence if any, from any party or witness to complete, as far as possible, the facts of the case. Facts or information so elicited may serve as the basis for clarification, simplification and limitation of the issues. x x x

However, the PARAD had not issued any such Order. In point of fact, on the day that the Private Respondents filed their **"Formal Offer of Documentary Evidence,"** x x x the PARAD issued ***motu proprio*** his oppugned Order x x x dismissing the **"Petition."** It was, thus, egregious error for the [DARAB] to resolve the **"Petition"** on its merits, on appeal, by [Ibañez and Laranga], from the Orders of the PARAD x x x. Patently, by appealing from the Orders of the PARAD x x x, [Ibañez and Laranga], in the process, sought to short-cut the proceedings before the PARAD by raising, as an issue, in their appeal, to the [DARAB], the issues raised by them in their

"Petition" before the PARAD, **on their merits**, even before the case had been submitted for the Decision of the PARAD. [DARAB] knew no better and x x x took the bait and resolved the **"Petition"** of [Ibañez and Laranga] with the PARAD on its merits. The [DARAB] thereby ran roughshod over the basic principles of fair play.[13] x x x

In net effect, the DARAB's decision, apart from virtually violating AFP-RSBS' right to due process, left so many factual questions and issues unanswered and assumed the existence of certain material facts. Among the facts assumed as established were the status of petitioner Ibañez or Laranga as successor-in-interest of Angel and the susceptibility of the disputed lot to CARP coverage. Lest it be overlooked, the DARAB itself, in its Resolution[14] of January 18, 2000 in DARAB Case No. DSCA No. 0028, stated: "The contention of the Petitioner [AFP-RSBS] that the landholding in dispute is not within the coverage of CARP is yet to be determined by the Board *a quo*."

The Issue on the Jurisdiction of the PARAD to Rule on the Tenurial Rights of Petitioners Has Yet to be Resolved

Petitioners contend that the assailed CA Decision would lend validity to the June 9 and August 2, 1999 Orders of PARAD Sorita which, to the petitioners, violated the previous orders issued by the RARAD upholding the DARAB's jurisdiction over the instant case.

Petitioners are mistaken.

The issue on the jurisdiction of the PARAD to rule on the tenurial rights of petitioners has yet to be resolved. Evidence still has to be adduced to prove petitioner Ibanez's father's leasehold right and CLT and the effect, if any, of the reclassification of the disputed lot on the clashing rights of the parties concerned.

It may be that the RARAD took cognizance of the underlying verified petition and denied AFP-RSBS' motion to dismiss the petition on jurisdictional ground, a denial which the DARAB

---

[13] *Id*. at 64-66.

[14] *Supra* note 7.

affirmed per its Decision of January 18, 2000 in DARAB Case No. DSCA 0028.

It should be stressed, however, that the CA, in CA-G.R. SP No. 38392, did not uphold nor deny the jurisdiction of the PARAD to take cognizance of the case. The CA merely adverted to its own lack of competence to resolve the petition for *certiorari* filed before it by AFP-RSBS assailing the RARAD's orders. As the CA explained, it was the DARAB which had exclusive jurisdiction to resolve an action for *certiorari* assailing interlocutory orders of the PARAD/RARAD in accordance with Sec. 3 of Rule VIII of the DARAB Rules of Procedure, which provides:

> Sec. 3. *Totality of Case Assigned*. — When a case is assigned to a RARAD or PARAD, any or all incidents thereto shall be considered assigned to him, and the same shall be disposed of in the same proceedings to avoid multiplicity of suits or proceedings.
>
> The order or resolution of the Adjudicators on any issue, question, matter or incident raised before them shall be valid and effective until the hearing shall have been terminated and the case is decided on the merits, **unless modified and reversed by the Board upon a verified petition for review on *certiorari***. Such interlocutory orders shall not be the subject of an appeal. (Emphasis ours.)

Note that under Sec. 3, Rule X of the 2003 DARAB Rules of Procedure, the remedy of *certiorari* to nullify interlocutory orders has been removed and orders or resolutions of the adjudicator on any issue, question, matter, or incident raised before him shall be valid and effective until the hearing of the case has been terminated and resolved on the merits.

At any rate, assuming that the DARAB did not resolve the issue of jurisdiction in DARAB Case No. DSCA 0028, PARAD Sorita would still be competent to act on and resolve petitioners' verified petition on other grounds, like issues of technicality, as no law or rule disallows him from doing so in this instance. Upon this consideration, it cannot be said that the ruling of PARAD Sorita was contrary to the previous orders of RARAD Arche-Manalang who, by denying AFP-RSBS' motion to dismiss the verified petition, asserted the jurisdiction of the PARAD and DARAB over the instant case.

Order of Dismissal not Contrary to Prior Grant of Injunction *Pendente Lite*

Petitioners also assert that the assailed CA Decision unlawfully disregarded the TRO and writ of injunction issued *pendente lite*.

We are not persuaded.

A cursory review of the orders of PARAD Vergel de Dios and RARAD Arche-Manalang separately granting injunctive relief shows that the orders did not rule on petitioners' right to security of tenure, an issue that, to reiterate, still has to be resolved on the merits. The PARAD and RARAD orders in question were issued precisely to maintain the *status quo* pending the resolution of the instant case on its substantive merits. The purpose of the injunctive writ is "[t]o prevent threatened or continuous irremediable injury to the parties seeking the writ by preserving the *status quo* until the merits of the case can be heard fully."[15] Certainly, during the hearing for the grant of an injunctive writ, preliminary evidence would be received so the court could assess the justifications for the preliminary injunction pending the decision of the case on the merits."[16]

Thus, it cannot seriously be asserted that the assailed CA Decision — directing the DARAB to resolve the issues before it, and not to preempt the PARAD in resolving the case on the merits, if and when the matter of the dismissal on technical grounds is resolved in petitioners' favor — runs counter to the restraining or enjoining orders issued by PARAD Vergel de Dios and RARAD Arche-Manalang. PARAD Sorita's order dismissing the basic verified petition on technical grounds is not necessarily inconsistent with the orders of PARAD Vergel de Dios and RARAD Arche-Manalang relied on by petitioners.

---

[15] *First Global Realty and Development Corp. v. San Agustin*, G.R. No. 144499, February 19, 2002, 377 SCRA 341, 349; citing *Republic of the Philippines v. Silerio*, G.R. No. 108869, May 6, 1997, 272 SCRA 280, 287. See also *Tayag v. Lacson*, G.R. No. 134971, March 25, 2004, 426 SCRA 282.

[16] *Syndicated Media Access Corp. v. Court of Appeals*, G.R. No. 106982, March 11, 1993, 219 SCRA 794, 798; citing *Olalia v. Hizon*, G.R. No. 87913, May 6, 1991, 196 SCRA 665.

Consequently, the assailed CA Decision cannot be contrary to the orders of the PARAD/RARAD as the DARAB was merely required to resolve issues tendered on appeal, eschewing issues not related to the appeal before it.

Assailed CA Decision on Due Process, Not Contrary to Law

Petitioners submit that the assailed CA Decision violated Sec. 73(c)[17] of RA 6657 and, in the process, effectively deprived them of their claimed landholding without due process of law. Petitioners are again mistaken. They are putting the cart before the horse. The assailed CA Decision only corrected the lapses the DARAB committed which tended to disregard the imperatives of due process and fair play. The CA merely pointed out that the DARAB prematurely, improperly, and erroneously resolved the merits of petitioners' appeal from the orders of PARAD Sorita. Nowhere in the CA assailed Decision can it be reasonably be deduced that the appellate court dispossessed petitioners of whatever right they may have over the disputed lot under agrarian laws.

Clearly, the legal provision cited and relied upon by petitioners was not violated let alone put to naught by the assailed CA Decision.

DARAB Decision on the Merits Premature

Petitioners' lament about the CA gravely abusing its discretion in setting aside the February 7, 2001 DARAB decision is untenable. Equally untenable, for the adverted reasons articulated in the assailed CA Decision, is petitioners' stance regarding the correctness of the DARAB's action reversing PARAD Sorita's decision and effectively recognizing petitioners' tenurial right despite the fact that the PARAD has not yet passed upon the merits of petitioners' claim of security of tenure. Recall that AFP-RSBS, before the PARAD, was not able, through no fault

---

[17] SEC. 73. *Prohibited Acts and Omissions*. — The following are prohibited: x x x (c) The conversion by any landowner of his agricultural land into non-agricultural use with intent to avoid the application of this Act to his landholdings and to dispossess his tenant farmers or the land tilled by them.

of its own, to present its evidence to prove the non-agricultural nature of the disputed lot or, with like effect, to prove that the same lot is not subject to petitioners' tenurial right.

To obviate misunderstanding, we wish to stress, at this juncture, that this disposition does not purport to pass upon the correctness of, much more affirm, PARAD Sorita's June 9, 1999 order. Neither should this Decision be taken as defining or declaring the rights of the parties *vis-à-vis* the disputed lot. That could come later should any aggrieved party pursue the case after certain factual and evidentiary issues shall have been duly determined by the proper forum. For the moment, we are mainly concerned with what is raised before us: the propriety of the assailed CA Decision. And we find it proper and correct.

WHEREFORE, this petition is *DENIED* for lack of merit. The November 15, 2001 Decision and April 3, 2002 Resolution of the CA in CA-G.R. SP No. 65203 are hereby *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

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

Carpio Morales, J., on leave.

THIRD DIVISION

[G.R. No. 163017. June 18, 2008]

HILARIO P. SORIANO, *petitioner, vs.* **OMBUDSMAN SIMEON V. MARCELO, HON. JENNIFER A. AGUSTIN-SE, Graft Investigation Officer I, WILFRED L. PASCASIO, Graft Investigation Officer II, and LEONCIA R. DIMAGIBA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* MEANT TO CORRECT ONLY ERRORS OF JURISDICTION, NOT ERRORS OF JUDGMENT. — At the outset, it must be stressed that *certiorari* is a remedy meant to correct only errors of jurisdiction, not errors of judgment. As ruled in *First Corporation v. Former Sixth Division of the Court of Appeals,* to wit: It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is *extra ordinem* — beyond the ambit of appeal. **In *certiorari* proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*.** An *error of judgment* is one which the court may commit in the exercise of its jurisdiction. An error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. ***Certiorari* will not be issued to cure errors of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court *a quo*.**

2. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; THE SUPREME COURT WILL NOT INTERFERE WITH THE OMBUDSMAN'S EXERCISE OF HIS INVESTIGATORY AND PROSECUTORY POWERS AS LONG AS HIS RULINGS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE. — Likewise worthy of emphasis is the holding of the Court in *Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Desierto*, imparting the value of the Ombudsman's independence. Under Sections 12 and 13, Article XI of the 1987 Constitution and RA 6770 (The Ombudsman Act of 1989), the Ombudsman has the power to investigate and prosecute any act or omission of a public officer

or employee when such act or omission appears to be illegal, unjust, improper or inefficient. **It has been the consistent ruling of the Court not to interfere with the Ombudsman's exercise of his investigatory and prosecutory powers as long as his rulings are supported by substantial evidence.** Envisioned as the champion of the people and preserver of the integrity of public service, **he has wide latitude in exercising his powers and is free from intervention from the three branches of government. This is to ensure that his Office is insulated from any outside pressure and improper influence.** x x x Viewed in the light of the foregoing principles, the present petition is doomed to fail. A thorough examination of the records reveals that there was no capricious and whimsical exercise of judgment committed by respondents. Respondents acted properly in dismissing petitioner's complaint against Dimagiba since there was not enough evidence to establish probable cause.

3. CRIMINAL LAW; R.A. NO. 3019, AS AMENDED; SECTION 3 (E) THEREOF; ELEMENTS. — The elements of the offense of violation of Section 3(e) of R.A. No. 3019, as amended, enumerated in *Collantes v. Marcelo*, are as follows: x x x 1) [T]he accused must be a public officer discharging administrative, judicial or official functions; 2) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and 3) that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. Evidently, mere bad faith or partiality and negligence *per se* are not enough for one to be held liable under the law, since the act constitutive of bad faith or partiality must, in the first place, be evident or manifest, respectively, while the negligent deed should be both gross and inexcusable. It is further required that any or all of these modalities ought to result in undue injury to a specified party.

4. ID.; ID.; ID.; ID.; PUBLIC OFFICER MUST HAVE ACTED WITH MANIFEST PARTIALITY, EVIDENT BAD FAITH OR INEXCUSABLE NEGLIGENCE; MISTAKES COMMITTED BY A PUBLIC OFFICER ARE NOT ACTIONABLE ABSENT MALICE OR GROSS NEGLIGENCE AMOUNTING TO BAD FAITH; CASE AT BAR. — It was further explained in *Collantes* that: For a public

officer to be charged/convicted under Section 3(e) of R.A. No. 3019, he must have *acted with manifest partiality, evident bad faith or inexcusable negligence*. x x x Well-settled is the rule that good faith is always presumed and the Chapter on Human Relations of the Civil Code directs every person, *inter alia*, to observe good faith which springs from the fountain of good conscience. **Specifically, a public officer is presumed to have acted in good faith in the performance of his duties. Mistakes committed by a public officer are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith**. "Bad faith" does not simply connote bad moral judgment or negligence. **There must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent or ill will. It partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes**. The law also requires that the *public officer's action caused* undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. x x x In the case at bar, petitioner utterly failed to rebut the presumption of good faith in favor of a public officer. He was not able to show that Dimagiba, as a 2nd Assistant City Prosecutor, was motivated by self-interest or ill will in reopening the preliminary investigation stage of the case filed by petitioner against one Mely Palad.

5. ID.; ID.; ID.; ID.; DISMISSAL OF THE COMPLAINT AGAINST THE RESPONDENT, PROPER. — In fine, respondents' dismissal of petitioner's complaint against Dimagiba is correct as the latter was able to sufficiently explain her decision to reopen the preliminary investigation, as can be gleaned from the aforequoted Resolution dated October 22, 2002. The records show that Dimagiba acted in good faith, thinking that a denial of the motion to reopen the preliminary investigation due to the accused's failure to submit her counter-affidavit would only lead to more delays as, more often than not, the accused would just file a motion for reinvestigation with the trial court. The Court reiterates its admonition in *Collantes*, to wit: Agencies tasked with the preliminary investigation and prosecution of crimes should never forget that **the purpose of a preliminary**

> **investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect one from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the State from useless and expensive trials**. It is, therefore, imperative upon such agencies to relieve any person from the trauma of going through a trial once it is ascertained that the evidence is insufficient to sustain a *prima facie* case or that no probable cause exists to form a sufficient belief as to the guilt of the accused.

APPEARANCES OF COUNSEL

Gonzalez & Associates Law Office for petitioner.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

This resolves the Petition for *Certiorari* under Rule 65 of the Rules of Court, praying that the Ombudsman Resolution[1] dated October 22, 2002, dismissing the complaint against Leoncia R. Dimagiba (Dimagiba), 2nd Assistant City Prosecutor of the City Prosecutor, Manila City; and the Order[2] dated November 17, 2003, denying petitioner's motion for reconsideration, be reversed and set aside.

The antecedent facts are as follows.

On July 1, 2002, Hilario P. Soriano (petitioner) filed with the Office of the Ombudsman a criminal and administrative complaint against Dimagiba for violation of Section 3(e) of Republic Act (R.A.) No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, alleging that Dimagiba showed manifest partiality thereby giving unwarranted benefits to one Mely Palad against whom petitioner has filed a complaint for falsification of public document before the City Prosecutor's

---

[1] *Rollo*, p. 15.

[2] *Id*. at 23.

Office, by recommending the reopening of the preliminary investigation of said case.

Petitioner alleged in his affidavit-complaint that the Resolution dated August 27, 2001, submitted by Assistant City Prosecutor Celedonio P. Balasbas, for the filing of a case against Palad was duly recommended for approval by Dimagiba; that she had likewise recommended for approval the Information against Palad; that six months after she signed the said Resolution and Information as reviewing officer, she summarily recommended the reopening of the complaint; and that she anchored the same on "the interest of justice" without saying how the interest of justice could be served by reopening a complaint six months after it had been resolved by the investigating fiscal and duly approved by her.[3]

In her Counter-Affidavit dated September 20, 2002, Dimagiba denied petitioner's allegations. Petitioner filed his Reply thereto on October 3, 2002.

Respondent Jennifer A. Agustin-Se (Agustin-Se), Graft Investigation Officer I of the Evaluation and Preliminary Investigation Bureau of the Office of the Ombudsman, submitted the herein assailed Resolution dated October 22, 2002 for approval of the Ombudsman, pertinent portions of which are reproduced hereunder:

> Respondent emphasized that in between the period of January 7 and 22, 2002, a Motion to re-open the case was filed by Palad. She claimed that she could not mention the exact date of the filing of said Motion, since the case folder is already with the Department of Justice after a Motion to inhibit Prosecutor Balasbas was filed by complainant, and the Prosecutor to whom the case was subsequently re-raffled inhibited himself. Prosecutor Balasbas was therefore asked to comment on the Motion to Re-Open since that was the standing policy of the office. Hence, the following events transpired thereafter:
>
> February 26, 2002 — The case folder, together with the comment of Pros. Balasbas on the

[3] Memorandum, *rollo*, pp. 101-102.

		Motion to re-open was forwarded to respondent's office.
March 11, 2002	—	The folder with respondent's recommendation was forwarded to the office of the City Prosecutor it being policy in the office that the final action on the motion should be approved by the City Prosecutor.
March 13, 2002	—	The record was returned to respondent's office with the approval by the City Prosecutor of the recommendation to re-open. The record was in turn remanded to the office of Pros. Balasbas.
March 22, 2002	—	Mr. Soriano filed a motion for inhibition.

x x x x x x x x x

Respondent also explained that his [*sic*] recommendation for the re-opening of Palad's case for preliminary investigation was not done to give undue advantage, benefit or preference to the latter because, she does not have any reason to do so. Neither did she know said person nor did she meet her or anybody acting on her behalf. Moreover, the same was intended to pre-empt the possible filing of Palad of a Motion for Reinvestigation, which was often the practice resorted to by a party who was not able to file a Counter-Affidavit. And in her fifteen (15) years of experience as Prosecutor, she posited that such practice of respondents who failed to submit Counter-Affidavit further delays the disposition of the case. Her recommendation therefore for the re-opening of the case for preliminary investigation is for the purpose of expediting the disposition of the case.

Respondent added that her recommendation to re-open the case was merely a recommendation. It was the approval of the City Prosecutor that made her recommendation operative.

x x x x x x x x x

The question now posed before this Office is whether or not the recommendation of respondent Dimagiba for the re-opening of the case against Palad for preliminary investigation is an act of giving unwarranted benefit to the latter by means of manifest partiality, resulting to violation of Sec. 3(e) of Republic Act 3019, as amended.

In the case of *Marcelo vs. Sandiganbayan*, (185 SCRA 346), manifest partiality is described as a clear, notorious, as plain inclination or predeliction [sic] to favor one side rather than the other.

In the instant case, evidence presented is not enough to show that such condition exists.

x x x x x x x x x

It is noted that respondent's basis in recommending the re-opening of the subject case was due to the absence of any return attached to the record evidencing that Palad properly received the subpoena sent to her during the conduct of the preliminary investigation. Such circumstance was considered by herein respondent a substantial deficiency that affects due process and needs to be corrected, otherwise it may only delay further proceedings, as in fact Palad had since moved to reopen her case. In making therefore the recommendation for the re-opening of the case because of said perception, clearly, it can be seen that the intention of respondent being then a reviewing officer was merely to correct what appears to her to be a stumbling block in the proceedings. Surely, such basis for the re-opening of the subject case is far from being characterized as capricious or arbitrary amounting to manifest partiality.

Neither did respondent act with evident bad faith when she recommended the re-opening of Palad's case for preliminary investigation.

x x x x x x x x x

In the instant case, complainant failed to present sufficient evidence to show that she operates with furtive design, or motive of self interest or ill will or ulterior motives when she made the recommendation for the re-opening of Palad's case.

In this context, the principle of regularity in the performance of official functions has not been adequately rebutted by the evidence adduced by the complainant. Hence, the said principle must be applied in favor of herein respondent.[4]

The Resolution submitted by respondent Agustin-Se was approved on June 4, 2003 by then Ombudsman Simeon V. Marcelo.

On June 30, 2003, petitioner filed a Motion for Reconsideration.

[4] *Rollo*, pp. 18-21.

In an Order dated November 17, 2003, submitted by respondent Wilfred L. Pascasio, Graft Investigation and Prosecution Officer II and approved by the Deputy Ombudsman on February 4, 2004, per Delegation of Authority by the Ombudsman dated January 23, 2004,[5] said motion was denied for lack of merit and for being filed out of time.

Hence, herein petition where the only issue is whether respondents committed grave abuse of discretion amounting to lack of jurisdiction in dismissing petitioner's complaint against Dimagiba and denying his motion for reconsideration.

At the outset, it must be stressed that *certiorari* is a remedy meant to correct only errors of jurisdiction, not errors of judgment. As ruled in *First Corporation v. Former Sixth Division of the Court of Appeals,*[6] to wit:

> It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is *extra ordinem* — beyond the ambit of appeal. **In *certiorari* proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*.** An *error of judgment* is one which the court may commit in the exercise of its jurisdiction. An error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. ***Certiorari* will not be issued to cure errors of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court *a quo*.**[7] (Emphasis supplied)

---

[5] *Rollo*, pp. 23-26.

[6] G.R. No. 171989, July 4, 2007, 526 SCRA 564.

[7] *Id*. at 578.

Likewise worthy of emphasis is the holding of the Court in *Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Desierto*,[8] imparting the value of the Ombudsman's independence.

> Under Sections 12 and 13, Article XI of the 1987 Constitution and RA 6770 (The Ombudsman Act of 1989), the Ombudsman has the power to investigate and prosecute any act or omission of a public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient. **It has been the consistent ruling of the Court not to interfere with the Ombudsman's exercise of his investigatory and prosecutory powers as long as his rulings are supported by substantial evidence.** Envisioned as the champion of the people and preserver of the integrity of public service, **he has wide latitude in exercising his powers and is free from intervention from the three branches of government. This is to ensure that his Office is insulated from any outside pressure and improper influence.**[9] (Emphasis supplied)

Again, in *Presidential Commission on Good Government v. Desierto,*[10] the Court ruled that:

> Case law has it that the determination of probable cause against those in public office during a preliminary investigation is a function that belongs to the Office of the Ombudsman. The Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form or substance, or he may proceed with the investigation if, in his view, the complaint is in due and proper form and substance. **We have consistently refrained from interfering with the constitutionally mandated investigatory and prosecutorial powers of the Ombudsman.** Thus, if the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings, unless the exercise of such discretionary powers is tainted by grave abuse of discretion**.**

---

[8] G.R. No. 138142, September 19, 2007, 533 SCRA 571.

[9] *Id*. at 581-582.

[10] G.R. No. 139296, November 27, 2007.

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. (Emphasis supplied)

Viewed in the light of the foregoing principles, the present petition is doomed to fail.

A thorough examination of the records reveals that there was no capricious and whimsical exercise of judgment committed by respondents. Respondents acted properly in dismissing petitioner's complaint against Dimagiba since there was not enough evidence to establish probable cause.

The elements of the offense of violation of Section 3(e) of R.A. No. 3019, as amended, enumerated in *Collantes v. Marcelo*,[11] are as follows:

> x x x 1) [T]he accused must be a public officer discharging administrative, judicial or official functions; 2) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and 3) that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. Evidently, mere bad faith or partiality and negligence *per se* are not enough for one to be held liable under the law, since the act constitutive of bad faith or partiality must, in the first place, be evident or manifest, respectively, while the negligent deed should be both gross and inexcusable. It is further required that any or all of these modalities ought to result in undue injury to a specified party.[12]

It was further explained in *Collantes* that:

> For a public officer to be charged/convicted under Section 3(e) of R.A. No. 3019, he must have *acted with manifest partiality, evident bad faith or inexcusable negligence*. x x x

---

[11] G.R. Nos. 167006-07, August 14, 2007, 530 SCRA 142.

[12] *Id.* at 152-153.

Well-settled is the rule that good faith is always presumed and the Chapter on Human Relations of the Civil Code directs every person, *inter alia*, to observe good faith which springs from the fountain of good conscience. **Specifically, a public officer is presumed to have acted in good faith in the performance of his duties. Mistakes committed by a public officer are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith.** "Bad faith" does not simply connote bad moral judgment or negligence. **There must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent or ill will. It partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.**

The law also requires that the *public officer's action caused* undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[13] x x x

In the case at bar, petitioner utterly failed to rebut the presumption of good faith in favor of a public officer. He was not able to show that Dimagiba, as a 2nd Assistant City Prosecutor, was motivated by self-interest or ill will in reopening the preliminary investigation stage of the case filed by petitioner against one Mely Palad.

In fine, respondents' dismissal of petitioner's complaint against Dimagiba is correct as the latter was able to sufficiently explain her decision to reopen the preliminary investigation, as can be gleaned from the aforequoted Resolution dated October 22, 2002. The records show that Dimagiba acted in good faith, thinking that a denial of the motion to reopen the preliminary investigation due to the accused's failure to submit her counter-affidavit would only lead to more delays as, more often than not, the accused would just file a motion for reinvestigation with the trial court.

The Court reiterates its admonition in *Collantes*, to wit:

---

[13] *Id*. at 154-155.

Agencies tasked with the preliminary investigation and prosecution of crimes should never forget that **the purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect one from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the State from useless and expensive trials**. It is, therefore, imperative upon such agencies to relieve any person from the trauma of going through a trial once it is ascertained that the evidence is insufficient to sustain a *prima facie* case or that no probable cause exists to form a sufficient belief as to the guilt of the accused.[14] (Emphasis supplied)

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

Costs against petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Reyes, and *Brion,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 164846. June 18, 2008]

STA. MONICA INDUSTRIAL AND DEVELOPMENT CORPORATION, *petitioner, vs.* **THE DEPARTMENT OF AGRARIAN REFORM REGIONAL DIRECTOR FOR REGION III, PROVINCIAL AGRARIAN REFORM OFFICER OF BULACAN, MUNICIPAL AGRARIAN REFORM OFFICER OF CALUMPIT, BULACAN, and BASILIO DE GUZMAN,** *respondents.*

---

[14] *Id*. at 156-157.

[*] In lieu of Justice Antonio Eduardo B. Nachura, per Special Order No. 507 dated May 28, 2008.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM PROGRAM; NOTICE OF COVERAGE MUST BE SENT TO THE LANDOWNER. — The crux of the petition lies in the requirement of notice of coverage under the CARP law. The statute requires a notice of coverage to be furnished and sent to the landowner. Notice is part of the constitutional right to due process of law. It informs the landowner of the State's intention to acquire a private land upon payment of just compensation and gives him the opportunity to present evidence that his landholding is not covered or is otherwise excused from the agrarian law. There is no dispute that a notice of coverage was duly sent to Trinidad. Records show that she participated in the DAR proceedings. As to her, the constitutional requirement of due process was met and satisfied.

2. ID.; ID.; ID.; P.D. NO. 27 FORBIDS THE TRANSFER OR ALIENATION OF COVERED AGRICULTURAL LANDS AFTER OCTOBER 21, 1972 EXCEPT TO THE TENANT-BENEFICIARY. — Records disclose that there was indeed a deed of sale between Trinidad and Sta. Monica over the agricultural land awarded to De Guzman. Sta. Monica was also issued a new transfer certificate of title over the land. If We rely solely on the sale, it is a foregone conclusion that Sta. Monica was denied due process of law. As the owner on record of the agricultural land, it should have been given a notice of coverage. However, there is much to be said of the attendant circumstances that lead Us to conclude that notice of coverage to Trinidad is also sufficient notice to Sta. Monica. Moreover, We find that the sale between Trinidad and Sta. Monica was a mere ruse to frustrate the implementation of the agrarian law. **First**, the sale to Sta. Monica is **prohibited**. P.D. No. 27, as amended, forbids the transfer or alienation of covered agricultural lands after October 21, 1972 except to the tenant-beneficiary. The agricultural land awarded to De Guzman is covered by P.D. No. 27. He was awarded a certificate of land transfer in July 22, 1981. The sale to Sta. Monica in 1986 is void for being contrary to law. Trinidad remained the owner of the agricultural land.

3. LEGAL ETHICS; ATTORNEYS; AS AN OFFICER OF THE COURT, LAWYERS OWE IT THE DUTY OF CANDOR, HONESTY AND FAIRNESS. — It is the duty of Atty. Gutierrez to inform the DAR, at the very first opportunity, of the sale to Sta. Monica. He was utterly remiss of this duty. Instead of informing the DAR, Trinidad and her counsel engaged in wild goose chase and stonewalling, feigning ignorance when they ought to have informed the DAR of the sale to Sta. Monica. Atty. Gutierrez is reminded that, as an officer of the court, he owes it the duty of candor, honesty and fairness.

4. COMMERCIAL LAW; CORPORATION LAW; CORPORATIONS; VEIL OF CORPORATE FICTION WILL BE PIERCED WHEN IT IS USED TO DEFEAT PUBLIC COVENIENCE AND SUBVERT PUBLIC POLICY. — [T]he ultimate factor that betrays Trinidad and Sta. Monica is the continued payment of lease rentals by De Guzman. Records show that De Guzman paid and continued to pay lease rentals to Trinidad even after she sold the land to Sta. Monica. The receipt dated May 30, 2002 discloses that De Guzman paid 40 cavans of *palay* to Clodinaldo dela Cruz, the authorized representative of Trinidad, as lease rentals for the agricultural land. It is incredible that Trinidad would still continue to collect lease rentals from De Guzman if she had long sold the agricultural land to Sta. Monica in 1986. The continued payment of lease rentals indicates that Trinidad never sold the agricultural land to Sta. Monica. Evidently, the sale was a mere ruse to skirt coverage under the comprehensive agrarian reform law. All these circumstances indicate that Trinidad has remained as the real owner of the agricultural land sold to Sta. Monica. The sale to Sta. Monica is not valid because it is prohibited under P.D. No. 27. More importantly, it must be deemed as a mere ploy to evade the applicable provisions of the agrarian law. But it is a fiat that the corporate vehicle cannot be used as a shield to protect fraud or justify wrong. Thus, the veil of corporate fiction will be pierced when it is used to defeat public convenience and subvert public policy.

APPEARANCES OF COUNSEL

Gutierrez Nitura Zulueta Law Offices for petitioner.

D E C I S I O N

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

ANG Malawak na Batas sa Repormang Pangsakahan ay binuo upang makalaya ang mga magsasaka mula sa tali ng kahirapan at paghahari ng may-ari ng lupa.

Kapag ang kathang-isip na korporasyon ay ginamit na tabing sa katulad na pyudal na pang-aalipin, ang matayog na hangarin ng batas pambukid ay nabibigo at ang mismong suliranin na nais lunasan nito ay nananatili.

Ang belo ng kathang-isip na korporasyon ay pupunitin kapag ito ay ginamit sa maling hangarin at di-tapat na layunin.

The Comprehensive Agrarian Reform Law[1] *was designed precisely to liberate peasant-farmers from the clutches of landlordism and poverty*.

When corporate fiction is used as a mere smokescreen to the same form of feudal servitude, the lofty aim of the agrarian law is thwarted and the very problem which the law seeks to solve is perpetrated.

The veil of corporate fiction will be pierced when used for improper purposes and unfair objectives.

Before Us is a petition for review on *certiorari* of the Decision[2] of the Court of Appeals (CA) dismissing the petition of Sta. Monica Industrial and Development Corporation (Sta. Monica) to annul the Order[3] of the Regional Director, Region III, Department of Agrarian Reform (DAR) placing the landholdings

---

[1] Republic Act No. 6657, approved on June 10, 1988, entitled "An Act Instituting A Comprehensive Agrarian Reform Program To Promote Social Justice And Industrialization, Providing The Mechanism For Its Implementation, And For Other Purposes.

[2] *Rollo,* pp. 37-40. Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Godardo A. Jacinto and Elvi John S. Asuncion, concurring.

[3] *Id*. at 42-47.

of Asuncion Trinidad under the Comprehensive Agrarian Reform Program (CARP).[4]

The Facts

Trinidad is the owner of five parcels of land with a total area of 4.69 hectares in Iba Este, Calumpit, Bulacan. Private respondent Basilio De Guzman is the agricultural leasehold tenant of Trinidad.

On April 29, 1976, a leasehold contract denominated as "*Kasunduan ng Buwisan sa Sakahan*" was executed between Trinidad and De Guzman.[5] As an agricultural leasehold tenant, De Guzman was issued Certificates of Land Transfer on July 22, 1981.[6]

Desiring to have an emancipation patent over the land under his tillage, De Guzman filed a petition for the issuance of patent in his name with the Office of the Regional Director of the DAR.[7] The Legal Services Division of the DAR duly sent notices to Trinidad requiring her to comment. Instead of complying, Trinidad filed a motion for bill of particulars.[8]

After due proceedings, the Regional Director issued the Order[9] granting the petition of De Guzman, with the following disposition:

WHEREFORE, in light of the foregoing analysis and the reasons indicated thereon, an ORDER is hereby issued as follows:

1. PLACING under the coverage of Operation Land Transfer (OLT) pursuant to PD 27/Executive Order No. 228 the landholdings of Asuncion Trinidad with an area of 10.6800 hectares, more or less, located at Iba Este, Calumpit, Bulacan, without prejudice to the exercise of her retention rights if qualified under the law.

2. DIRECTING the MARO of Calumpit, Bulacan and the PARO of Baliuag, Bulacan to cause the generation and issuance of

[4] See note 1.

[5] *Rollo,* pp. 42-47.

[6] *Id*.

[7] *Rollo*, p. 38.

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

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

Emancipation Patent in favor of the petitioner and other qualified farmer-beneficiaries over the said landholding in accordance with the actual area of tillages.[10]

Trinidad filed a motion for reconsideration but her motion was denied.[11]

A year later, petitioner Sta. Monica filed a petition for *certiorari* and prohibition with the CA assailing the order of the Regional Director. In its petition, Sta. Monica claimed that while it is true that Asuncion Trinidad was the former registered owner of a parcel of land with an area of 83,689 square meters, the said landholding was sold on January 27, 1986.[12]

Petitioner was able to acquire 39,547 square meters of the Trinidad property. After the sale, petitioner sought the registration of the portion pertaining to it before the Register of Deeds of the Province of Bulacan. Consequently, a corresponding Transfer Certificate of Title, with No. 301408 (now TCT No. RT 70512) was issued in favor of petitioner.[13]

It was asserted that there was a denial of due process of law because it was not furnished a notice of coverage under the CARP law.[14]

In his comment on the petition, De Guzman argued that the alleged sale of the landholding is illegal due to the lack of requisite clearance from the DAR. The said clearance is required under P.D. No. 27,[15] the Tenant Emancipation Decree, which prohibits

---

[10] *Id*. at 38, 43-44.

[11] *Id*. at 135.

[12] *Id*. at 38.

[13] *Id*.

[14] *Id*. at 39.

[15] Presidential Decree No. 27 promulgated on October 21, 1972, entitled "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" and Executive Order No. 228 issued on July 17, 1987, entitled "Declaring Full Land Ownership to Qualified Farmer

transfer of covered lands except to tenant-beneficiaries. According to De Guzman, since no clearance was sought from, and granted by, the DAR, the sale in favor of petitioner by Trinidad is inexistent and void. Hence, Trinidad remained the owner of the disputed property.

CA Disposition

On May 26, 2004, the CA rendered a decision dismissing the petition of Sta. Monica, disposing as follows:

> WHEREFORE, premises considered, the instant petition is hereby DENIED for lack of merit.
>
> SO ORDERED.[16]

The CA held that Sta. Monica is not a real party-in-interest because it cannot be considered as an owner of the land it bought from Trinidad, thus:[17]

> It appears from the records of this case that the sale between Trinidad and the petitioner is enjoined by Department Memorandum Circular No. 2-A, implementing the provisions of Presidential Decree (P.D.) No. 27, which prohibits the transfer of ownership of landholdings covered by P.D. No. 27 after 21 October 1972 without the requisite clearance from the DAR except to the tenant-beneficiary. Thus, the title to the subject landholding remained with the previous owner, Asuncion Trinidad. This effectively deprives the petitioner of interest to question the orders of the Regional Director of the DAR relative to the latter's directive placing the subject landholding under the coverage of Operation Land Transfer and the subsequent issuance of an Emancipation Patent in favor of private respondent De Guzman. One having no right or interest to protect cannot invoke the jurisdiction of the court as a party plaintiff (in this case petitioner) in an action. A real party in interest is the

---

Beneficiaries Covered by Presidential Decree No. 27; Determining the Value of Remaining Unvalued Rice and Corn Lands Subject to P.D. No. 27; and Providing for the Manner of Payment by the Farmer Beneficiary and Mode of Compensation to the Landowner."

[16] *Id*. at 40.

[17] *Id*. at 39.

party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[18] (Citations omitted)

The CA added that even assuming that Sta. Monica is a real party-in-interest, it was not denied due process because it had constructive notice of the proceeding which involved its property:

> Even assuming, without admitting, that petitioner is the real party in interest by reason of the sale of the subject landholding in its favor, it cannot be said that petitioner was denied due process because of lack of notice of the proceedings before the DAR. It is significant to note that Asuncion Trinidad is the treasurer of petitioner, based on the corporation's General Information Sheet. While it cannot be said that there was proper notice to the corporation, being a corporate officer of the petitioner, there was at least constructive notice of the fact that there was a proceeding which involved the property of the corporation of which it may be deprived should an adverse decision be rendered by the DAR.[19]

The CA also ruled that the assailed orders of the Regional Director have already attained finality because it was not appealed to the DAR Secretary.

> Furthermore, the assailed orders have long become final and executory, there being no appeal undertaken to the Secretary of the Department of Agrarian Reform. Citing *Fortich vs. Corona, et al.*, the Supreme Court aptly ruled in this wise:
>
> > "The orderly administration of justice requires that the judgments/resolutions of a court or quasi-judicial body must reach a point of finality set by law, rules and regulations. The noble purpose is to write *finis* to disputes once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who wield the power of adjudication. Any act which violates such principle must immediately be struck down."
>
> The rule on finality of decisions, orders or resolutions of a judicial, quasi-judicial, or administrative body is not a question of technicality

---

[18] *Id*.

[19] *Id*.

but of substance and merit, the underlying consideration therefore being the protection of the substantive rights of the winning party. Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his/her case.[20]

Sta. Monica sought reconsideration but it was denied. Hence, the present recourse.[21]

Issue

Sta. Monica seeks reversal of the CA decision on the lone ground that THE ASSAILED DECISION AND RESOLUTION OF THE COURT OF APPEALS ARE CONTRARY TO EXISTING LAWS, RELEVANT JURISPRUDENCE ON THE MATTER AND THE FACTUAL CIRCUMSTANCES.[22]

Our Ruling

The petition is bereft of merit.

Trinidad is still deemed the owner of the agricultural land sold to Sta. Monica; no need for separate notice of coverage under the CARP law.

The crux of the petition lies in the requirement of notice of coverage under the CARP law. The statute requires a notice of coverage to be furnished and sent to the landowner.[23] Notice is part of the constitutional right to due process of law. It informs the landowner of the State's intention to acquire a private land upon payment of just compensation and gives him the opportunity to present evidence that his landholding is not covered or is otherwise excused from the agrarian law.

There is no dispute that a notice of coverage was duly sent to Trinidad. Records show that she participated in the DAR

---

[20] *Id*. at 39-40.

[21] *Id*. at 116.

[22] *Id*. at 20.

[23] Republic Act No. 6657, Sec. 16, Chapter V.

proceedings. As to her, the constitutional requirement of due process was met and satisfied.

Petitioner Sta. Monica, however, claims that it is the owner of the agricultural land awarded to De Guzman. It acquired the land from Trinidad by sale in 1986 and it was issued a transfer certificate of title. Sta. Monica claims denial of due process of law because it was not furnished the required notice of coverage under the CARP law.

Respondent De Guzman, on the other hand, contends that the sale between Trinidad and Sta. Monica is null and void because it is a prohibited transaction under Presidential Decree No. 27 (P.D. No. 27), as amended.[24] De Guzman also claims that Trinidad is a corporate officer of Sta. Monica. It was her duty to inform Sta. Monica of the pending proceeding with the DAR.[25] He maintains that Sta. Monica was not denied due process because there was constructive notice. Sta. Monica was sufficiently informed of the pending DAR proceedings.[26]

Records disclose that there was indeed a deed of sale between Trinidad and Sta. Monica over the agricultural land awarded to De Guzman. Sta. Monica was also issued a new transfer certificate of title over the land. If We rely solely on the sale, it is a foregone conclusion that Sta. Monica was denied due process of law. As the owner on record of the agricultural land, it should have been given a notice of coverage.

However, there is much to be said of the attendant circumstances that lead Us to conclude that notice of coverage to Trinidad is also sufficient notice to Sta. Monica. Moreover, We find that the sale between Trinidad and Sta. Monica was a mere ruse to frustrate the implementation of the agrarian law.

First, the sale to Sta. Monica is **prohibited**. P.D. No. 27, as amended, forbids the transfer or alienation of covered

---

[24] As implemented by DAR Memorandum Circular No. 2-A Series of 1973, as amended.

[25] *Rollo,* p. 137.

[26] *Id*.

agricultural lands after October 21, 1972 except to the tenant-beneficiary. The agricultural land awarded to De Guzman is covered by P.D. No. 27. He was awarded a certificate of land transfer in July 22, 1981. The sale to Sta. Monica in 1986 is void for being contrary to law.[27] Trinidad remained the owner of the agricultural land.

In *Heirs of Batongbacal v. Court of Appeals*,[28] involving the similar issue of sale of a covered agricultural land under P.D. No. 27, this Court held:

> Clearly, therefore, Philbanking committed breach of obligation as an agricultural lessor. As the records show, private respondent was not informed about the sale between Philbanking and petitioner, and neither was he privy to the transfer of ownership from Juana Luciano to Philbanking. As an agricultural lessee, the law gives him the right to be informed about matters affecting the land he tills, without need for him to inquire about it.
>
> x x x x x x x x x
>
> In other words, transfer of ownership over tenanted rice and/or corn lands after October 21, 1972 is allowed only in favor of the actual tenant-tillers thereon. *Hence, the sale executed by Philbanking on January 11, 1985 in favor of petitioner was in violation of the aforequoted provision of P.D. 27 and its implementing guidelines, and must thus be declared* ***null and void***.[29] (Underscoring supplied)

Second, buyer Sta. Monica is owned and controlled by Trinidad and her family. Records show that Trinidad, her husband and two sons own more than 98%[30] of the outstanding capital stock of Sta. Monica. They are all officers of the corporation.[31] There are only two non-related incorporators who own less than one percent of the outstanding capital stock of Sta. Monica and who are not officers of the corporation.

---

[27] Civil Code, Art. 1409.

[28] G.R. No. 125063, September 24, 2002, 389 SCRA 517.

[29] *Heirs of Batongbacal v. Court of Appeals, id*. at 525.

[30] *Rollo,* p. 147.

[31] *Id*. at 143.

To be sure, Trinidad and her family exercise absolute control of the corporate affairs of Sta. Monica. As owners of 98% of the outstanding capital stock, they are the beneficial owners of all the assets of the company, including the agricultural land sold by Trinidad to Sta. Monica.

Third, Trinidad and her counsel failed to notify the DAR of the prior sale to Sta. Monica during the administrative proceedings. Worse, Trinidad feigned ignorance of the sale by filing a motion for bill of particulars seeking specifics from De Guzman of her alleged landholdings which are subject of his petition with the DAR.

It is highly unusual and unbelievable for her not to know, or at least be aware, of the sale to Sta. Monica. She herself signed the deed of sale as seller. She is also a stockholder and officer of Sta. Monica. More importantly, she cannot feign ignorance of De Guzman's claim because he was her agricultural tenant since the 1970s. She knows, or at least ought to know, that the subject matter of the petition with the DAR was her own landholding, which she sold to Sta. Monica in direct violation of P.D. No. 27.

The apparent lack of candor is heightened by the fact that both Trinidad and Sta. Monica are represented by the same counsel, Atty. Ramon Gutierrez. We cannot stretch Our credulity on how Trinidad filed a motion for bill of particulars with the DAR seeking specifics on the sale to Sta. Monica when she herself signed for the vendor as a party to the transaction.

It is the duty of Atty. Gutierrez to inform the DAR, at the very first opportunity, of the sale to Sta. Monica. He was utterly remiss of this duty. Instead of informing the DAR, Trinidad and her counsel engaged in wild goose chase and stonewalling, feigning ignorance when they ought to have informed the DAR of the sale to Sta. Monica. Atty. Gutierrez is reminded that, as an officer of the court, he owes it the duty of candor, honesty and fairness.[32]

---

[32] Code of Professional Responsibility, Canon 10.

Fourth, it was only after an adverse decision against Trinidad that Sta. Monica suddenly filed a petition for *certiorari* with the CA questioning the lack of notice of coverage under the CARP law. It is highly unlikely that Sta. Monica, an artificial being acting only through its duly authorized representatives, was not sufficiently informed or had no constructive knowledge of the DAR proceedings.

Trinidad and by extension, her family members, were informed or should be sufficiently aware of the DAR proceedings. They are all stockholders and corporate officers of Sta. Monica. They knew, they ought to know, that Sta. Monica would suffer damage should the DAR award, as it awarded, the agricultural land to De Guzman.

As directors and corporate officers, they owe a duty of care to the corporation to inform it of the pending proceedings with the DAR.

Fifth, the ultimate factor that betrays Trinidad and Sta. Monica is the continued payment of lease rentals by De Guzman. Records show that De Guzman paid and continued to pay lease rentals to Trinidad even after she sold the land to Sta. Monica. The receipt[33] dated May 30, 2002 discloses that De Guzman paid 40 cavans of *palay* to Clodinaldo dela Cruz, the authorized representative of Trinidad, as lease rentals for the agricultural land.

It is incredible that Trinidad would still continue to collect lease rentals from De Guzman if she had long sold the agricultural land to Sta. Monica in 1986. The continued payment of lease rentals indicates that Trinidad never sold the agricultural land to Sta. Monica. Evidently, the sale was a mere ruse to skirt coverage under the comprehensive agrarian reform law.

All these circumstances indicate that Trinidad has remained as the real owner of the agricultural land sold to Sta. Monica. The sale to Sta. Monica is not valid because it is prohibited under P.D. No. 27. More importantly, it must be deemed as a mere ploy to evade the applicable provisions of the agrarian law.

---

[33] *Rollo,* p. 148.

But it is a fiat that the corporate vehicle cannot be used as a shield to protect fraud or justify wrong. Thus, the veil of corporate fiction will be pierced when it is used to defeat public convenience and subvert public policy.

Considering that Trinidad remained to be the true and legal owner of the agricultural land, there is no need for another notice of coverage to be sent or furnished to Sta. Monica. At the very least, the notice to her is already notice to Sta. Monica because the corporation acted as a mere conduit of Trinidad. The CA correctly dismissed the petition of Sta. Monica to annul the orders of the Regional Director placing the agricultural land of Trinidad under the agrarian reform law.

Final Note

This case can be viewed as a microcosm of the persistent agrarian reform problem in Our country. For one, it illustrates the arduous legal battle that tenant-farmers have to endure in order to be finally freed from the bondage of the soil. De Guzman battled for almost eight years to acquire the agricultural land from Trinidad. Others are not as equally lucky. For another, it shows the subtle but illegal measures taken by landowners to evade coverage under the CARP law.

Of course, there are also tales of landowners who unduly suffer either the abuse of some farmers or the harsh consequences of the law.

In hindsight, it is quite ironic that We are still faced with the same agrarian reform problem which We have sought to eradicate several years ago when the CARP law was first introduced. Feudal system of land ownership still persists in the countryside and most farmers are still tied to their bondage. It is more ironic when the problem is taken in its historical context, the CARP law being the fifth land reform law passed since President Quezon.

To Our mind, part of the problem lies with the CARP law itself. As crafted, the law has its own loopholes. It provides for a long list of exclusions. Some landowners used these exclusions to go around the law. There is now a growing trend of land conversion in the countryside suspiciously to evade coverage

under the CARP law. Of course, the solution to this problem lies with Congress. It is high time We sounded the call for a more realistic, rational comprehensive agrarian reform law.

The dubious use of seemingly legal means to sidestep the CARP law persists. Corporate law is resorted to by way of circling around the agrarian law. As this case illustrates, agricultural lands are being transferred, simulated or otherwise, to corporations which are fully or at least predominantly controlled by former landowners, now called stockholders. Through this strategy, it is anticipated that the corporation, by virtue of its corporate fiction, will shield the landowners from agricultural claims of tenant-farmers.

The use of corporate fiction as a means to evade legal liability is not new. This scheme or device has long been perceived to be used in other fields of law, notably taxation to minimize payment of tax with varying degrees of success and acceptability. But the continued employment of the scheme in agrarian cases is not only deplorable; it is alarming. It is time to put a lid on the cap.

WHEREFORE, the petition is *DENIED*. The appealed Decision of the Court of Appeals is *AFFIRMED*.

SO ORDERED.

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

---

[*] Vice Associate Justice Antonio Eduardo B. Nachura. Justice Nachura is on official leave per Special Order No. 507 dated May 28, 2008.

THIRD DIVISION

[G.R. No. 164912. June 18, 2008]

PAG-ASA FISHPOND CORPORATION, *petitioner, vs.* **BERNARDO JIMENEZ, ROBERT BELENBOUGH, LEONARD MIJARES, EDUARDO JIMENEZ, JOSE CRUZ, ELIZALDE EDQUIBAL, DOMINADOR ELGINCOLIN and GERONIMO DARILAG,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW; JURISDICTION OF THE PARAD, DARAB AND THE COURT OF APPEALS ON APPEAL, IS LIMITED TO AGRARIAN DISPUTES INVOLVING THE IMPLEMENTATION THEREOF AND OTHER AGRARIAN LAWS.— The jurisdiction of the PARAD, DARAB and the CA on appeal, is limited to agrarian disputes or controversies and other matters or incidents involving the implementation of the CARP under R.A. No. 6657, R.A. No. 3844 and other agrarian laws. An agrarian dispute is defined as any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farm workers associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements.

2. ID.; ID.; ID.; PRIVATE LANDS ACTUALLY, DIRECTLY AND EXCLUSIVELY USED FOR PRAWN FARMS AND FISHPONDS WERE EXEMPTED FROM THE COVERAGE THEREOF.— As early as February 20, 1995, private lands actually, directly and exclusively used for prawn farms and fishponds were exempted from the coverage of the CARL by virtue of R.A. No. 7881. x x x Admittedly, there is no express repeal of R.A. No. 3844 as a whole. Its provisions that are not inconsistent with R.A. No. 6657 may still be given suppletory effect. Nonetheless, there is now irreconcilable inconsistency or repugnancy between the two laws as regards the treatment of fishponds and prawn farms. Such repugnancy leads to the conclusion that the provisions of R.A. No. 6657 supersede

the provisions of R.A. No. 3844 insofar as fishponds and prawn farms are concerned. In any event, Section 76 of R.A. No. 6657, as amended, provides that all other laws, decrees, issuances, or parts thereof inconsistent thereto are repealed or amended accordingly.

3. ID.; ID.; ID.; TENANCY RELATIONS; REQUISITES TO EXIST; NOT PRESENT IN CASE AT BAR. — Verily, the DARAB finding of agricultural leasehold tenancy relations between petitioner's civil law lessee David Jimenez and respondents have no basis in law. The rule is well-entrenched in this jurisdiction that for tenancy relations to exist, the following requisites must concur: (a) the parties are the landholder and the tenant; (b) the subject is agricultural land; (c) there is consent; (d) the purpose is agricultural production; and (e) there is consideration. The absence of one element makes an occupant of a parcel of land, or a cultivator thereof, or a planter thereon outside the scope of the CARL. Nor can such occupant, cultivator or planter be classified as a *de jure* agricultural tenant for purposes of agrarian reform law. And unless a person has established his status as a *de jure* tenant, he is not entitled to security of tenure nor is he covered by the Land Reform Program of the Government under existing agrarian reform laws.In the case under review, the subject fishpond is not an agricultural land subject to compulsory CARP coverage. Neither was there a sharing of the harvests between petitioner and respondents. That respondents shared the harvests of the fishpond only with the civil law lessee David Jimenez is uncontroverted. Evidently, there is no agrarian tenancy relationship between petitioner and respondents.

4. ID.; ID.; ID.; WITHOUT A CERTIFICATE OF LAND OWNERSHIP AWARD, NO VESTED RIGHT TO SECURITY OF TENURE CAN ACCRUE TO PERSONS CLAIMING IT. — It may well be argued that respondents have acquired a vested right to security of tenure arising from the alleged existing tenancy relations. The complaint before the PARAD was filed on April 14, 1994, way before the passage and effectivity of R.A. No. 7881 on February 20, 1995. However, a claim to any vested right has no leg to stand on. Section 2(b) of R.A. No. 7881 now contains a proviso, precisely to protect vested rights of those who have already been issued a Certificate of Land Ownership Award (CLOA). Without such CLOA, no vested

right can accrue to persons claiming it. Here, the record is bereft of any proof that respondents were issued individual certificates to evidence the award of the property in their favor.

5. ID.; ID.; ID.; ID.; TENANCY IS NOT A PURELY FACTUAL RELATIONSHIP, IT IS ALSO A LEGAL RELATIONSHIP; INTENT IS MATERIAL IN TENANCY RELATIONS. — The DARAB and the CA anchored its finding of tenancy relations on the legal possession of David Jimenez, the civil law lessee, over the subject property. According to them, as the legal possessor, Jimenez's installation of respondents as tenants binds petitioner. The rule is well-entrenched in this jurisdiction that tenancy is not a purely factual relationship, it is also a legal relationship. The intent of the parties, the understanding when the tenant is installed, their written agreements, provided they are not contrary to law, are crucial. In *Valencia v. Court of Appeals*, the Court voided the CA finding of tenancy relations between the landowner and the tenants of the civil law lessee for lack of intent. xxx Here, petitioner never intended to install respondents as tenants. As in *Valencia*, the contract of lease petitioner executed with David Jimenez expressly prohibits the lessees to "sublet the property, nor allow any person, firm or corporation to occupy the same in whole or in part, nor shall the lessee assign in whole or in part any of their right under this contract." It is elementary that possession can be limited by express agreement of the parties. In the case before Us, the lessees were expressly prohibited from subleasing or encumbering the land in any manner. Of course, this includes the installation of tenants on the subject property. The Court notes that in *Joya v. Pareja* and again in *Ponce v. Guevarra*, agricultural leasehold tenancy relations were affirmed despite a similar prohibition in the lease agreement. However, in the said cases, the landowners were deemed to have consented to, and ratified the, installation of the tenants. The landowners there extended the terms of the lease and negotiated for better terms with the tenants themselves. They were thus held in estoppel and the tenants considered *de jure* occupants. In the case under review, the record is bereft of any indication that petitioner dealt with respondents in the same manner. As adverted to earlier, petitioners were consistent that they contracted only with their civil law lessees. They were not privy to the transactions entered into by its lessee with respondents.

6. ID.; ID.; ID.; ID.; CONSENT OF THE LANDOWNER IS A CONDITION *SINE QUA NON* FOR THE INSTALLATION OF TENANTS. — A stream cannot rise higher than its source. The civil law lessee, David Jimenez, was not authorized to enter into a tenancy relationship with respondents. The DARAB and the CA ruled that Section 6 of R.A. No. 3844 authorizes a legal possessor, such as David Jimenez, to employ a tenant even without the consent of the landowner. Again, they are mistaken. The Court, in *Valencia*, traced the origin and outlined the rationale of the polemical provision. Said the Court: xxx From the foregoing discussion, it is reasonable to conclude that a civil law lessee *cannot automatically institute* tenants on the property under Sec. 6 of R.A. No. 3844. The correct view that must necessarily be adopted is that the civil law lessee, although a legal possessor, may not install tenants on the property unless expressly authorized by the lessor. And if a prohibition exists or is stipulated in the contract of lease the occupants of the property are merely civil law sublessees whose rights terminate upon the expiration of the civil law lease agreement. Evidently, securing the consent of the landowner is a condition *sine qua non* for the installation of tenants. Here, petitioner's consent was not obtained prior to the engagement of respondents by the civil law lessee, David Jimenez. Worse, the lease agreement expressly prohibited the assignment of the lease to third persons. Verily, respondents can acquire no better right than their predecessor-in-interest, David Jimenez.

APPEARANCES OF COUNSEL

Jose & Duremdes Law Offices for petitioner.
J. Antonio C. Ferrer for respondents.

D E C I S I O N

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

FOCUS of this petition is the long-term effect of hiring by a civil law lessee of fishpond farmworkers with right to share in the fish harvests.

May karapatan bang manatili ang mga nasabing manggagawa kahit tapos na ang kontrata ng kumuha sa kanila sa may-ari ng palaisdaan?

Wala. Ito ang sagot namin sa katanungan sa kasong ito.

For Our review on *certiorari* is the Decision[1] of the Court of Appeals (CA) affirming that[2] of the Department of Agrarian Reform Adjudication Board (DARAB) in an action for maintenance of peaceful possession of a forty-hectare portion of a fishpond situated in Masinloc, Zambales.

The Facts

Petitioner PAG-ASA Fishpond Corporation is the owner of a 95.6123-hectare fishpond and saltbed situated at the Municipality of Masinloc, Province of Zambales. It is covered by Transfer Certificate of Title (TCT) No. T-1747 issued by the Register of Deeds of Zambales. On May 1, 1989, petitioner leased the subject fishpond to David Jimenez and Noel Hilario. The lease agreement, in full, provides:

CONTRACT OF LEASE

KNOW ALL MEN BY THESE PRESENT:

This Contract of Lease made and entered into this 27th day of April, 1989 by and between:

> PAG-ASA FISHPOND CORPORATION, a corporation duly organized and existing in accordance with the laws of the Philippines, with principal office and business address at 465 A. Flores St., Ermita, Manila, herein represented by its President, Mr. SEGUNDO SEANGIO, of legal age, married, Filipino and with postal address at 465 A. Flores St., Ermita, Manila, herein known as the LESSOR;

---

[1] *Rollo,* pp. 35-44. Dated March 30, 2004 in CA-G.R. SP No. 64532, entitled "*PAG-ASA Fishpond Corporation v. Bernardo Jimenez, et al.*" Penned by Associate Justice Lucas P. Bersamin, with Associate Justices Godardo A. Jacinto and Elvi John S. Asuncion, concurring.

[2] Records, pp. 241-248. Dated July 31, 1998 in DARAB Case No. 2906.

- A N D -

DAVID JIMENEZ, of legal age, married to Pascuala Ramos Jimenez, Filipino and residing at 1173 Paco, Obando, Bulacan and Noel Hilario, of legal age, married to Teresita Santiago Hilario, Filipino and residence of Lawa, Obando, Bulacan, herein known as the LESSEES.

W I T N E S S E T H

WHEREAS, the Lessor is the registered and absolute owner of a Real Property, more particularly described as follows, to wit:

CERTIFICATE TITLE NO. T-1747
REGISTER OF DEEDS
PROVINCE OF ZAMBALES

A PARCEL OF LAND CONTAINING AN AREA OF NINETY-FIVE HECTARES, SIXTY-ONE ACRES AND TWENTY-THREE CENTARES (sic) SITUATED IN THE BARRIO OF STO. ROSARIO, MASINLOC, ZAMBALES.

WHEREAS, the Lessor has granted and the Lessees have accepted a lease of the above-described property under the terms and conditions hereinafter provided;

NOW, THEREFORE, for and in consideration of the above premises and in consideration of the terms and conditions hereinafter specified the parties herein do hereby agree and stipulate as follows:

1. The terms of this lease shall be five (5) years effective May 1, 1989 and shall terminate on May 1, 1994 and is not renewable after said term unless renewed in writing by both parties;

2. The Lessees have agreed to lease five (5) lots of fishponds, one nursery pond, all the 331 saltbeds and the "*Paalatan*" located within the described property under Certificate Titles No. T-1747;

3. The lease does not include the *bodega* located within the leased premises which is to be used exclusively by the Lessor unless with written approval of the Lessor, the Lessee may share in the use of the *bodega*;

4. The Leessees (sic) shall make a deposit of ONE HUNDRED THOUSAND PESOS (₱100,000.00) Philippine Currency

upon signing of this Contract of Lease. Said deposit is without interest and shall answer for any unpaid rental of the Lessees at the termination of this lease, penalties or any liabilities which may incur during the effectivity of this Contract. The Lessees cannot apply the aforesaid deposit as rental payment before the cancellation, termination or expiration of this agreement;

5. The Lessees shall pay to the Lessor immediately upon signing of this Contract the amount of THREE HUNDRED FIFTY THOUSAND PESOS (₱350,000.00), Philippine Currency as rental for the year May 1, 1989 to May 1, 1990. This payment is not refundable and will be forfeited in the event the Lessees cancel this Contract of Lease prior to May 1, 1990;

6. The Lessees shall pay to the Lessor the yearly advance rental in Philippine Currency at the office of the Lessor which shall be due and payable on or before the 1st of March of every year for five (5) years without the necessity of express demand, therefore it being understood that in case of default of said Lessees in the payment of the said rental if and when the same becomes due and payable, the amount of rental owing shall bear interest at the rate of twenty-four percent (24%) per annum, to be computed daily from the date of such default until fully paid, payment of such interest to be considered as a penalty by reason of such default, without prejudice to the right of the owner to terminate this Contract and eject the Lessees, as hereinafter set forth;

That the Schedule of Payment of the annual lease cash payment of rentals are as follows:

a) May 1, 1989 or upon signing of this Contract of Lease:

₱350,000.00 rental for
May 1, 1989 to May 1, 1990

b) March 1, 1990 … ₱400,000.00 rental for May 1, 1990 to May 1, 1991;

c) March 1, 1991 … ₱440,000.00 rental of May 1, 1991 to May 1, 1992;

d) March 1, 1992 … ₱484,000.00 rental of May 1, 1992 to May 1, 1993;

e) March 1, 1993 … ₱532,400.00 rental of May 1, 1994;

The Lessees shall in addition to the cash rental referred to the above, pay to the Lessor Seven Thousand (7,000) cavans of salt measured at four (4) tin cans, size of four gallons of 16 liters per can, per cavan yearly, starting the year 1990 up to and including the year 1994. The Lessees shall deliver the aforesaid salt to the Lessor from the time the Lessees commences to harvest salt, provided that the 7,000 cavans should already be delivered to the Lessor by the end of the harvest season in May of a particular year. In the event that the Lessees cannot or fail to deliver the 7,000 cavans of salt in full or in part, the Lessees are obliged to pay whatever difference in cash at the prevailing market value at the end of harvest in May of a particular year;

7. That the personal character and integrity of the Lessees and the nature of the occupancy of the leased property as above restricted are special considerations and inducements for granting this lease by the Lessor; consequently, the Lessees shall not sub-let the property, nor allow any person, firm or corporation to occupy the same in whole or in part, nor shall the Lessees assign in whole or in part any of their right under this Contract and no right or interest thereto or therein shall be conferred on or vested in anyone by the Lessees, either by operation of law or otherwise;

8. Failure on the part of the Lessees to pay within its stipulated due period or failure to observe any of the conditions of this Agreement, shall entitle the Lessor to terminate this Agreement immediately and to forefeit the deposit of One Hundred Thousand Pesos (₱100,000.00) and demand that the Lessees vacate the leased property;

9. In the event that the Lessees shall elect to terminate this Agreement before its expiration, the One Hundred

Thousand Pesos (₱100,000.00) deposit will be forfeited in favor of the Lessorr;

10. The Lessees shall at their own expense, improve and develop the aforesaid fishponds and to keep up and maintain in good repair and condition all fences, dikes, saltbeds and other improvements existing thereon by (a) raising and keeping the elevation of the "*pilapil*" inside the fishpond to 1 ½ meters high and 2 meters height to the "*pilapil*" constituting the boundary of the fishponds and those fronting the river and a width of 2 meters for all the "*pilapil*"; (b) to repair all the 331 saltbeds with "*tisa*" and wooden division saltbeds; (c) to clean and clear the whole area of the leased premises by removing all the bushes, weeds and cogons, provided, moreover, that the Lessees are obliged to maintain throughout the effectivity of this Lease, the said elevation and cleanliness of the leased premises. The Lessees shall make improvements not less than 25% every year and thereafter for the duration of this contract. That all the improvements and development made by the Lessees shall after the expiration of this Lease belong to the Lessor.

    In the event that the Lessees shall fail and/or refuse to make the aforesaid improvements and/or clean the leased premises as herein provided, the Lessor shall have the right to cancel and terminate this Agreement without prejudice to the right of the Lessor or itself make the required improvements, and cleaning and utilizing for said purpose, the deposit of ₱100,000.00 in which event, the Lessor is obliged to notify the Lessees of said use, and the amount so used within fifteen (15) days from said notice, the Lessees shall be obliged to replenish the said amount of deposit of ₱100,000.00. Failure of the Lessees to replenish the said amount shall entitle the Lessor to cancel or terminate this Agreement;

11. Except as heretofore stipulated on, the Lessees are prohibited from using the property or portion thereof for any other purpose except as fishpond or saltbeds and from subleasing the property herein lease, or any other portion thereof, or from assigning their rights under this Contract of Lease, or mortgaging or otherwise encumbering the same, without the express written consent of the Lessor;

12. That the Contract of Lease between the Lessor and the Lessees is entirely a civil lease of a fishpond and not in any manner to be construed or misunderstood to be agrarian in nature and extent. Labor disputes and wages regarding hired workers or laborers of the Lessees in the operation and maintenance of the Lease, shall not be the responsibility of the Lessor, including any claim pertaining to labor problems but the Lessees will be held solely liable for the settlement and/or payment of the wages and claims;

13. The Lessor shall be solely liable for the payment of only the realty taxes on the leased premises while the Lessees shall answer and be liable for the payment of the fees for business licenses and permits and other business taxes be due to the government from the operation of fishponds and saltbeds;

14. The Lessor, through its authorized representative, is entitled to make an inspection of the leased premises at any time during the day time;

15. In the event, the Lessees cancel or terminate this Contract of Lease on their own volition prior to May 1, 1994, they are not entitled to any refund of any rentals already paid by them to the Lessor, as well as to the deposit;

16. Upon the termination, expiration or cancellation of this Contract of Lease, the Lessor shall automatically take possession of the leased premises and the Lessees shall, without need of any demand and without any need of court action, vacate the premises and surrender possession thereof to the Lessor, including the improvements shall appertaining complete ownership to the Lessor, upon the introduction of the said improvements;

17. In the event that the Lessees violated and/or fail to refuse to abide by and comply with the terms and conditions of this Agreement or failure to pay within its stipulated due period, the deposit of the Lessees in the amount of ₱100,000.00 shall be forfeited in favor of the Lessor and the latter shall have the right to cancel and terminate this Contract immediately and to secure from the Court a writ of execution or other order for the enforcement of the terms hereof against the Lessees, all expenses

including sheriff's fees, incurred by the Lessor for securing said writ or/and for enforcing the same as well as liquidated damages shall be borne solely by the Lessees;

18. That in the event the Lessees fail to vacate or leave the leased premises voluntarily after the termination of the leased contract, notwithstanding demands made on them by the Lessor, and insist and ignore the demands, the Lessees shall pay the Lessor jointly and severally unrealized income and profit in point of unpaid rentals for overstaying in the leased premises without any legal right or interest whatsoever, in the amount of the reasonable use and benefit of the leased premises to be computed by the Lessor, based on double the rentals of the last year of Contract of Lease plus legal interest, until the Lessees vacate the leased premises;

19. That if the said property is not surrendered to the Lessor in the manner provided for in this Contract, the Lessees shall be responsible to the Lessor for all damages which the Lessor may suffer by reason thereof and shall indemnify the Lessor against any and all claims made by the succeeding tenants against the Lessor, resulting from delay by the Lessor in delivering possession of the property;

20. In case of the default of the Lessees in their obligations under this Contract of Lease, the Lessees agrees to pay the sum equivalent of 25% of the amount due from them as liquidated damages as attorney's fee aside from court costs, should the Lessor be constrained to resort to court from the enforcement of its rights under the Contract;

21. In case the Philippine Pesos is officially devalued, all payments to be made by the Lessees to the Lessor after such devaluation shall be made in amounts properly readjusted and proportionately increased in accordance with or on the basis of the official value of the peso at the time of the execution of this lease contract;

22. The Lessees hereby agree that any question which may arise between the Lessor and the Lessees by reason of this document and which has to be submitted for decision to the court of justice, may at the option of the Lessor be brought before the court of competent jurisdiction in

the City of Manila, waiving for this purpose other proper venue;

23. The Lessees shall jointly and severally be liable for any liability or liabilities pertaining to the Lessor concerning the relationship and its stipulations entered into in this Contract of Lease;

24. This Contract of Lease cancelled and superseded, the Contract of Lease signed by the Lessor and Mr. David Jimenez on May 20, 1985 and notarized by Francisco Agustin for and in behalf of the City of Manila and appearing in the notarial register as Document No. 431, Page No. 45, Book No. XII, Series of 1985;

25. The parties herein hereby attest and confirm that the terms and conditions of the Contract of Lease and the effect thereof have been explained to them to their satisfaction and that they fully understand the same.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures this 28th day of April, 1989 at the City of Manila, Philippines.

PAG-ASA FISHPOND CORPORATION
Lessor

By:

Sgd.
MR. SEGUNDO SEANGIO-President

Sgd.
NOEL HILARIO – Lessee

Sgd.
DAVID JIMENEZ–Lessee

W I T N E S S E S S

Sgd.

Sgd.

A C K N O W L E D G M E N T

REPUBLIC OF THE PHILIPPINES) S.S.
CITY OF MANILA)

BEFORE ME, a Notary Public for and in the City of Manila, Philippines, personally appeared the following persons with their respective Residence Certificates, to wit:

SEGUNDO SEANGIO	A-4328120	Manila, January 3, 1989
DAVID JIMENEZ	A-03704324	Bulacan, Obando February 17, 1989
NOEL HILARIO	A-11107684	Lawa, Obando, Bulacan May 5, 1989

known to me and to me known to be the same persons who executed the aforegoing instrument and have acknowledged before me that the same is their free and voluntary act and deed.

This document consists of eight (8) pages, signed by the parties and their instrumental witnesses on every page refers to a Contract of Lease that Real Property situated at Sto. Rosario, Masinloc, Zambales.

WITNESS MY HAND AND SEAL THIS 9TH DAY OF MAY, 1989.

ROBERTO M. MENDOZA
Notary Public
Until December 31, 1989
PTR No. 52454710
TAN 4784-113-M

Doc. No. 422
Page No. 86
Book No. XIX
Series of 1989[3]

It is an important sense of the agreement that the fishpond will be managed by the two lessees jointly. Jimenez was charged with the management of a 40-hectare portion of the fishpond, situated at Sitio Simelyahan, Barangay Sto. Rosario, and in Sitios Mapait and Elman, Barangay Bamban, all in the Municipality of Masinloc, Zambales. The remaining portions of petitioner's landholding were to be managed by Hilario.

In the meantime, the Philippine Congress enacted Republic Act (R.A.) No. 6657, the Comprehensive Agrarian Reform Law (CARL).[4] The social legislation was founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share of the fruits thereof. It aimed to undertake the just distribution of all agricultural lands, having taken into account ecological, developmental, and equity considerations, and subject to the payment of just compensation.[5]

[3] *Id*. at 34-41.

[4] Approved June 10, 1988.

[5] Republic Act No. 6657, Sec. 2.

On September 26, 1989, petitioner, through its president Segundo Seangio, applied for exemption from the coverage of the agrarian reform program.[6] The request was reiterated via a letter dated October 17, 1989, addressed to Justice Milagros A. German, Senior Special Consultant and Adviser in Legal Affairs, Department of Agrarian Reform (DAR).[7]

On November 10, 1989, the DAR, speaking through Justice German, acted favorably on petitioner's application for exemption. Consequently, the DAR advised the Municipal Agrarian Reform Officer (MARO) of Masinloc to observe the status *quo* and defer the inclusion of petitioner's fishpond in the compulsory acquisition program.

Sometime in 1990, Jimenez hired respondents, namely: Bernardo Jimenez, Robert Belenbough, Leonard Mijares, Eduardo Jimenez, Jose Cruz, Elizalde Edquibal, Dominador Elgincolin and Geronimo Darilag, to work as farmworkers in the fishpond.[8] As farmworkers, respondents each received a monthly allowance of ₱1,500.00 from David Jimenez, as well as 50% of the fishpond's net proceeds from the total fish harvests, which they divided equally among themselves.[9]

In April 1994, they were required by David Jimenez to vacate the fishpond on or before May 1, 1994. The demand to vacate was made due to the impending expiration of Jimenez's civil law lease over the property with petitioner.[10]

Respondents were not agreeable to the demand to vacate. Accordingly, on April 25, 1994, they filed a complaint directly against petitioner for maintenance of possession before the Provincial Agrarian Reform Adjudication Board (PARAD) in Iba, Zambales.[11] In their complaint, they contended, *inter alia*,

---

[6] *Rollo,* p. 144.

[7] *Id*. at 148.

[8] *Id*. at 35-36.

[9] *Id*. at 36.

[10] *Id*.

[11] Records, pp. 1-7.

that they are entitled to security of tenure; and that the fishpond is covered by the Comprehensive Agrarian Reform Program (CARP) under R.A. No. 6657.

They prayed that the entire fishpond of petitioner be placed under the coverage of the CARP; that they be considered as farmer beneficiaries who are entitled to be awarded the fishpond; and that they be allowed to remain in possession of the fishpond.[12]

In its Answer, petitioner averred that its lessees over the fishpond were only David Jimenez and one Noel Hilario and that its lease agreement with said lessees was not agrarian but civil in nature. It also posited that the fishpond, being a commercial one, is not yet subject to compulsory acquisition under the CARP pursuant to Section 11 of R.A. No. 6657.[13] Petitioner alleged that respondents' entry into and occupation of the fishpond, as well as their enjoyment of the fish produced, was without its knowledge and consent.[14]

On July 18, 1994, the PARAD ruled in favor of petitioner (defendant) and against respondents (plaintiffs), dismissing the complaint for lack of merit. The *fallo* of the PARAD's decision reads:

> WHEREFORE, this Forum is constrained to rule out plaintiffs' allegation as a regular farmworker pursuant to R.A. 6657 and/or tenants of herein defendant and to deny prayer for placing the landholding of the defendant under CARP coverage which is purely administrative and only cognizable by the Department of Agrarian Reform, as there are no concrete evidence. Thus, a judgment is hereby rendered DISMISSING plaintiffs' complaint for lack of merit.
>
> SO DECIDED.[15]

The PARAD ruled that respondents are not agricultural leasehold tenants who may be entitled to security of tenure.

---

[12] *Id*. at 4-6, 122-123.

[13] *Id*.

[14] *Rollo,* p. 36.

[15] Records, p. 117.

According to the PARAD, petitioner, as landowner, did not consent to the hiring of respondents, as farmworkers, by its civil law lessee, David Jimenez. The PARAD declared:

> The original lessees in the Contract of Lease (Annex "A") with the lessor-defendant are David Jimenez and Noel Hilario, who are both residents of Obando, Bulacan. The said contract expired on May 01, 1994. Paragraph 7 of the contract of lease provides that, "consequently, the lessees shall not sublet the property, nor allow any person, firm or corporation to occupy the same in whole or in part nor shall the lessees assign in whole or in part any of their right under this Contract and no right or interest thereto or therein shall be conferred or vested in anyone by the lessees either by operation of law or otherwise." The provision was totally violated by the lessee David Jimenez when the plaintiff(s) were admittedly hired as farmworkers. The plaintiffs consist of David Jimenez' sons Bernardo and Eduardo Jimenez, his son-in-law Leonard Mijares and Robert Belenbough, Jose Cruz, Elizalde Edquibal, Dominador Elgincolin and Geronimo Darilag. Noticeable from the evidence submitted that all the plaintiffs are not residents of Zambales where the subject landholding are situated.
>
> Consequently, because of the violation of the contract, the plaintiffs are not even recognized by the defendant. Plaintiffs' allegation to be (*sic*) tenant necessarily failed and has no leg to stand. (*sic*). Plainly, consent of a landowner which is an essential element of tenancy is not attendant.[16]

On appeal to the DARAB, the PARAD's decision was reversed and set aside. The dispositive part of the DARAB decision reads:

> WHEREFORE, premises considered and finding reversible errors, (*sic*) committed by the Adjudicator *a quo*, the assailed decision is hereby REVERSED and a new judgment is rendered directing the PAG-ASA Fishpond Corporation, Incorporated (*sic*) through its President and Officers, to respect the peaceful possession, cultivation and enjoyment of the subject landholding by the petitioners-appellants who are the tenants thereof.
>
> SO ORDERED.[17]

---

[16] *Id*. at 117-118.

[17] *Id*. at 241.

The DARAB ruled that respondents are agricultural leasehold tenants of the subject property who deserve the protective mantle of the law despite the fact that only the civil law lessee installed them as such. It ratiocinated:

> x x x plaintiffs-appellants are, by operation of law, tenant-farmers of the subject landholding, notwithstanding that it was a civil law lessee, who installed them therein. When all the elements the (*sic*) tenancy relation are present, then the protective mantle of the security of tenure as guaranteed by the 1987 Charter shall be available to them. x x x
>
> x x x x x x x x x
>
> Verily, Sections 6 and 7 of Republic Act (RA) No. 3844 explicit (*sic*) provides, thus:
>
> "Section 6. *Parties to Agricultural Leasehold Relation*. —The agricultural leasehold relation shall be limited to the person who furnished the landholding, either as owner, civil law lessee, usufructuary, or legal possessor and the person who personally cultivates the same."
>
> and
>
> Section 7. *Tenure of Agricultural Leasehold Relation*. — The Agricultural leasehold relation once established shall confer upon the agricultural lessee the right to continue working on the landholding until such leasehold relation is extinguished, the agricultural lessee shall be entitled to security of tenure on his landholding and cannot be ejected therefrom unless authorized by the Court for causes herein provided."[18]

When petitioner's motion for reconsideration was denied[19] by the DARAB on January 17, 2001, they appealed to the CA via petition for review under Rule 43 of the 1997 Rules of Civil Procedure.

Petitioner insisted that respondents were not tenants on the property. It argued anew that it was not a party to any tenancy relationship with anyone *vis-à-vis* the subject property; and

---

[18] *Id*. at 242-244.

[19] *Id*. at 328-331.

that it had not received any share in the fishpond's harvests from respondents.

CA Disposition

In a Decision dated March 30, 2004, the CA affirmed the DARAB decision, disposing as follows:

> Once a tenancy relationship is established, therefore, the tenant is entitled to security of tenure and cannot be ejected unless upon judicial authority for causes provided by law. The reliance of the petitioner on *Sanchez v. Court of Appeals*, *supra*, is, consequently misplaced, since that doctrine was applicable only to the hired laborers of a civil law lessee, not to bona fide share or leasehold tenants like the respondents.
>
> WHEREFORE, the appealed decision is AFFIRMED.
>
> SO ORDERED.[20]

The CA opined that although petitioner was not privy to a tenancy relationship with respondents, its civil law lessee, David Jimenez, made respondents the agricultural leasehold tenants in the property. The CA concluded that David Jimenez, being the legal possessor of the fishpond as defined under Section 42 of R.A. No. 1199, has the authority to hire agricultural leasehold tenants and to bring about agricultural leasehold relations. This relation, according to the appellate court, is binding upon the landowner, petitioner, which effectively became obliged to respect the rights of the tenants. Among said rights is the right to security of tenure.

The CA pointed out:

> Finally, although the petitioner is correct in positing that the lease was one under the civil law, rather than an agricultural lease, the expiration of the lease did not negate the right of the respondents to security of tenure as the bona fide tenants.
>
> According to Sec. 8, Republic Act No. 3844, otherwise known as The Agricultural Land Reform Code, a leasehold relation, once established, can be terminated on the following grounds, to wit:

---

[20] *Rollo,* pp. 43-44.

1. Abandonment of the landholding without the knowledge of the agricultural lessor;
2. Voluntary surrender of the landholding by the agricultural lessee, written notice of which shall be served 3 months in advance; or
3. Absence of an heir to succeed the lessee in the event of his/her death of permanent incapacity.

Aggrieved, petitioners moved for reconsideration. The motion was, however, denied by the appellate court via Resolution[21] dated August 5, 2004. Hence, the present recourse under Rule 45.

Issues

Petitioner now contends that:

I

THE COURT OF APPEALS GRAVELY ERRED IN NOT APPLYING THE HONORABLE COURT'S RULING IN THE RECENT CASE OF *VALENCIA VS. COURT OF APPEALS, ET AL.*, 401 SCRA 666, WHICH APPLIES SQUARELY TO THE FACTS IN THE INSTANT CASE, THAT SECTION 6 OF REPUBLIC ACT NO. 3844, AS AMENDED, DOES NOT AUTOMATICALLY AUTHORIZE A CIVIL LAW LESSEE TO EMPLOY A TENANT WITHOUT THE CONSENT OF THE LANDOWNER. ACCORDINGLY, AFTER THE EXPIRATION OF THE CIVIL LAW LEASE, PETITIONER WAS NOT BOUND BY THE ALLEGED TENANCY RELATIONSHIP BETWEEN RESPONDENTS AND THE CIVIL LAW LESSEE WHICH WAS ENTERED INTO WITHOUT ITS CONSENT.

II

THE COURT OF APPEALS GRAVELY ERRED IN CONCLUDING THAT RESPONDENTS ARE SHARE TENANTS WHO ARE ENTITLED TO SECURITY OF TENURE.

III

THE COURT OF APPEALS GRAVELY ERRED IN NOT APPLYING THE RULING OF THE HONORABLE COURT IN THE CASE OF

---

[21] *Id*. at 45.

SANCHEZ VS. COURT OF APPEALS, 129 SCRA 717 TO THE INSTANT CASE.[22]

Our Ruling

Before We begin to consider the issues hoisted by petitioner, the Court takes cognizance of a pivotal question of jurisdiction. We resolve this issue *motu proprio*, even if it was not raised by the parties nor threshed out in their pleadings.[23]

The jurisdiction of the PARAD, DARAB and the CA on appeal, is limited to agrarian disputes or controversies and other matters or incidents involving the implementation of the CARP under R.A. No. 6657, R.A. No. 3844 and other agrarian laws.[24] An agrarian dispute is defined as any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farm workers associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements.[25]

As early as February 20, 1995, private lands actually, directly and exclusively used for prawn farms and fishponds were exempted from the coverage of the CARL by virtue of R.A. No. 7881.[26] Section 2 of the said law expressly provides:

Sec. 2. Section 10 of Republic Act No. 6657 is hereby amended to read as follows:

---

[22] *Id*. at 19.

[23] *Katon v. Palanca, Jr.,* G.R. No. 151149, September 7, 2004, 437 SCRA 565, 573-574, citing *Gumabon v. Larin,* 422 Phil. 222, 230-231 (2001); *Filoteo, Jr. v. Sandiganbayan,* 331 Phil. 531, 568-569 (1996); *Government v. American Surety Company,* 11 Phil. 203 (1908).

[24] Rules of Procedure Governing Proceedings Before the DAR Adjudication Board and Different Regional and Provincial Adjudicators, Rule II, Sec. 1.

[25] Republic Act No. 6657, Sec. 3(d), as amended.

[26] Entitled "An Act Amending Certain Provisions of Republic Act No. 6657," entitled "An Act Instituting A Comprehensive Agrarian Reform Program To Promote Social Justice and Industrialization, Providing the Mechanism for Its Implementation, and for Other Purposes."

"Sec. 10. Exemptions and Exclusions. —

a) Lands actually, directly and exclusively used for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds and mangroves shall be exempt from the coverage of this Act.

b) Private lands actually, directly and exclusively used for prawn farms and fishponds shall be exempt from the coverage of this Act: Provided, That said prawn farms and fishponds have not been distributed and Certificate of Land Ownership Award (CLOA) issued to agrarian reform beneficiaries under the Comprehensive Agrarian Reform Program.

In cases where the fishponds or prawn farms have been subjected to the Comprehensive Agrarian Reform Law, by voluntary offer to sell, or commercial farms deferment or notices of compulsory acquisition, a simple and absolute majority of the actual regular workers or tenants must consent to the exemption within one (1) year from the effectivity of this Act. When the workers or tenants do not agree to this exemption, the fishponds or prawn farms shall be distributed collectively to the worker-beneficiaries or tenants who shall form a cooperative or association to manage the same.

In cases where the fishponds or prawn farms have not been subjected to the Comprehensive Agrarian Reform Law, the consent of the farm workers shall no longer be necessary, however, the provision of Section 32-A hereof on incentives shall apply.

c) Lands actually, directly and exclusively used and found to be necessary for national defense, school sites and campuses, including experimental farm stations operated by public or private schools for educational purposes, seeds and seedling research and pilot production center, church sites and convents appurtenant thereto, mosque sites and Islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by the inmates, government and private research and quarantine centers and all lands with eighteen percent (18%) slope and over, except those already developed, shall be exempt from the coverage of this Act."

Admittedly, there is no express repeal of R.A. No. 3844 as a whole. Its provisions that are not inconsistent with R.A. No. 6657 may still be given suppletory effect. Nonetheless, there is now irreconcilable inconsistency or repugnancy between the two laws as regards the treatment of fishponds and prawn farms. Such repugnancy leads to the conclusion that the provisions of R.A. No. 6657 supersede the provisions of R.A. No. 3844 insofar as fishponds and prawn farms are concerned. In any event, Section 76 of R.A. No. 6657, as amended, provides that all other laws, decrees, issuances, or parts thereof inconsistent thereto are repealed or amended accordingly.[27]

Verily, the DARAB finding of agricultural leasehold tenancy relations between petitioner's civil law lessee David Jimenez and respondents have no basis in law. The rule is well-entrenched in this jurisdiction that for tenancy relations to exist, the following requisites must concur: (a) the parties are the landholder and the tenant; (b) the subject is agricultural land; (c) there is consent; (d) the purpose is agricultural production; and (e) there is consideration.[28]

The absence of one element makes an occupant of a parcel of land, or a cultivator thereof, or a planter thereon outside the scope of the CARL. Nor can such occupant, cultivator or planter be classified as a *de jure* agricultural tenant for purposes of agrarian reform law. And unless a person has established his status as a *de jure* tenant, he is not entitled to security of tenure nor is he covered by the Land Reform Program of the Government under existing agrarian reform laws.[29]

In the case under review, the subject fishpond is not an agricultural land subject to compulsory CARP coverage. Neither was there a sharing of the harvests between petitioner and

---

[27] *Romero v. Tan,* G.R. No. 147570, February 27, 2004, 424 SCRA 108, 120.

[28] *Mon v. Court of Appeals,* G.R. No. 118292, April 14, 2004, 427 SCRA 165, 175.

[29] *Romero v. Tan, supra* note 27; *Caballes v. Department of Agrarian Reform,* G.R. No. 78214, December 5, 1998, 168 SCRA 247, 254; *Tiongson v. Court of Appeals,* G.R. No. 62626, July 18, 1984, 130 SCRA 482, 488.

respondents. That respondents shared the harvests of the fishpond only with the civil law lessee David Jimenez is uncontroverted. Evidently, there is no agrarian tenancy relationship between petitioner and respondents.

This is not a case of first impression. The Court has had occasion to affirm the exemption of fishponds from the coverage of the CARP in *Atlas Fertilizer Corp. v. Secretary, Department of Agrarian Reform*[30] and in *Romero v. Tan*.[31] In *Romero*, the Court scored the PARAD for taking cognizance of a complaint for maintenance of peaceful possession over a fishpond filed by a tenant-lessee. The Court held then:

> On the jurisdictional issue, we find that it was reversible error for the PARAB to have taken cognizance of petitioners' complaint. The jurisdiction of the PARAB in this case is limited to agrarian disputes or controversies and other matters or incidents involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Rep. Act No. 6657, Rep. Act No. 3844 and other agrarian laws. An agrarian dispute is defined as any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farm workers associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements.
>
> Although Section 166(1) of Rep. Act No. 3844 had included fishponds in its definition of agricultural land within its coverage, this definition must be considered modified in the light of Sec. 2 of Rep. Act No. 7881, which amended Section 10 of Rep. Act No. 6657; otherwise known as the Comprehensive Agrarian Reform Law (CARL). Expressly, the amendment has excluded private lands actually, directly and exclusively used for prawn farms and fishponds from the coverage of the CARL. In fact, under Section 3(c) of R.A. No. 6657, as amended, defines an agricultural land as that which is devoted to agricultural activity and not otherwise classified as mineral, forest, residential, commercial or industrial land. In turn, Section 3(b) thereof defines agricultural activity as the cultivation of the

---

[30] G.R. Nos. 93100 & 97855, June 19, 1997, 274 SCRA 30, 36.

[31] *Supra* note 27.

soil, planting of crops, growing of fruit trees, including the harvesting of such farm products, and other farm activities, and practices performed by a farmer in conjunction with such farming operations done by persons whether natural or juridical. Clearly, by virtue of the amendments to the CARL, the operation of a fishpond is no longer considered an agricultural activity, and a parcel of land devoted to fishpond operation is not agricultural land as therein defined.[32]

It may well be argued that respondents have acquired a vested right to security of tenure arising from the alleged existing tenancy relations. The complaint before the PARAD was filed on April 14, 1994, way before the passage and effectivity of R.A. No. 7881 on February 20, 1995. However, a claim to any vested right has no leg to stand on. Section 2(b) of R.A. No. 7881[33] now contains a proviso, precisely to protect vested rights of those who have already been issued a Certificate of Land Ownership Award (CLOA). Without such CLOA, no vested right can accrue to persons claiming it. Here, the record is bereft of any proof that respondents were issued individual certificates to evidence the award of the property in their favor.

Even assuming, *ex gratia argumenti*, that the PARAD, DARAB and the CA had jurisdiction, the complaint for maintenance of peaceful possession lodged by respondents still fails for triple reasons.

First. Intent is material in tenancy relations.

The DARAB and the CA anchored its finding of tenancy relations on the legal possession of David Jimenez, the civil law lessee, over the subject property. According to them, as the legal possessor, Jimenez's installation of respondents as tenants binds petitioner.

---

[32] *Romero v. Tan, id*. at 119-120.

[33] Republic Act No. 7881, Sec. 2(b) states:

x x x x x x x x x

"b) Private lands actually, directly and exclusively used for prawn farms and fishponds shall be exempt from the coverage of this Act: Provided, That said prawn farms and fishponds have not been distributed and Certificate of Land Ownership Award (CLOA) issued to agrarian reform beneficiaries under the Comprehensive Agrarian Reform Program.

The rule is well-entrenched in this jurisdiction that tenancy is not a purely factual relationship, it is also a legal relationship.[34] The intent of the parties, the understanding when the tenant is installed, their written agreements, provided they are not contrary to law, are crucial.

In *Valencia v. Court of Appeals*,[35] the Court voided the CA finding of tenancy relations between the landowner and the tenants of the civil law lessee for lack of intent. The Court held in Valencia:

> The substantive issue to be resolved may be expressed in this manner: Can a contract of civil law lease prohibit a civil law lessee from employing a tenant on the land subject matter of the lease agreement? Otherwise stated, can petitioner's civil law lessee, Fr. Flores, install tenants on the subject premises without express authority to do so under Art. 1649 of the Civil Code, more so when the lessee is expressly prohibited from doing so, as in the instant case?
>
> Contrary to the impression of private respondents, Sec. 6 of R.A. No. 3844, as amended, does not automatically authorize a civil law lessee to employ a tenant without the consent of the landowner. The lessee must be so specifically authorized. For the right to hire a tenant is basically a *personal right of a landowner*, except as may be provided by law. *But certainly nowhere in Sec. 6 does it say that a civil law lessee of a landholding is automatically authorized to install a tenant thereon*. A different interpretation would create a perverse and absurd situation where a person who wants to be a tenant, and taking advantage of this perceived ambiguity in the law, asks a third person to become a civil law lessee of the landowner. Incredibly, this tenant would technically have a better right over the property than the landowner himself. This tenant would then gain security of tenure, and eventually become owner of the land by operation of law. This is most unfair to the hapless and unsuspecting landowner who entered into a civil law lease agreement in good faith only to realize later on that he can no longer regain possession of his property due to the installation of a tenant by the civil law lessee.

---

[34] *Tuazon v. Tuazon,* G.R. No. 168438, August 28, 2006, 499 SCRA 791; *Cano v. Jumawan,* G.R. No. 153860, February 6, 2006, 481 SCRA 582.

[35] G.R. No. 122363, April 29, 2003, 401 SCRA 666.

On the other hand, under the express provision of Art. 1649 of the Civil Code, the lessee cannot assign the lease without the consent of the lessor, *unless there is a stipulation to the contrary*. In the case before us, not only is there no stipulation to the contrary; the lessee is expressly prohibited from subleasing or encumbering the land, which includes installing a leasehold tenant thereon since the right to do so is an attribute of ownership. Plainly stated therefore, a contract of civil law lease can prohibit a civil law lessee from employing a tenant on the land subject matter of the lease agreement. x x x[36]

Here, petitioner never intended to install respondents as tenants. As in *Valencia*, the contract of lease petitioner executed with David Jimenez expressly prohibits the lessees to "sublet the property, nor allow any person, firm or corporation to occupy the same in whole or in part, nor shall the lessee assign in whole or in part any of their right under this contract."[37] It is elementary that possession can be limited by express agreement of the parties.[38] In the case before Us, the lessees were expressly prohibited from subleasing or encumbering the land in any manner. Of course, this includes the installation of tenants on the subject property.

The Court notes that in *Joya v. Pareja*[39] and again in *Ponce v. Guevarra*,[40] agricultural leasehold tenancy relations were affirmed despite a similar prohibition in the lease agreement. However, in the said cases, the landowners were deemed to have consented to, and ratified the, installation of the tenants. The landowners there extended the terms of the lease and negotiated for better terms with the tenants themselves. They were thus held in estoppel and the tenants considered *de jure* occupants.

---

[36] *Valencia v. Court of Appeals, id*. at 684.

[37] Records, pp. 39-40; Contract of Lease, par. 7.

[38] Civil Code, Art. 1649 states that "the lessee cannot assign the lease without the consent of the lessor, unless there is a stipulation to the contrary."

[39] 106 Phil. 645 (1959).

[40] 119 Phil. 923 (1961).

In the case under review, the record is bereft of any indication that petitioner dealt with respondents in the same manner. As adverted to earlier, petitioners were consistent that they contracted only with their civil law lessees. They were not privy to the transactions entered into by its lessee with respondents.

Second. A stream cannot rise higher than its source. The civil law lessee, David Jimenez, was not authorized to enter into a tenancy relationship with respondents.

The DARAB and the CA ruled that Section 6 of R.A. No. 3844 authorizes a legal possessor, such as David Jimenez, to employ a tenant even without the consent of the landowner.

Again, they are mistaken. The Court, in *Valencia*, traced the origin and outlined the rationale of the polemical provision. Said the Court:

> When Sec. 6 provides that the agricultural leasehold relations shall be limited to the person who furnishes the landholding, either as owner, civil law lessee, usufructuary, or legal possessor, and the person who personally cultivates the same, *it assumes that there is already an existing agricultural leasehold relation, i.e., a tenant or agricultural lessee already works the land*. The epigraph of Sec. 6 merely states who are "*Parties to Agricultural Leasehold Relations*," which assumes that there is already a leasehold tenant on the land; not until then. This is precisely what we are still asked to determine in the instant proceedings.
>
> To better understand Sec.6, let us refer to its precursor, Sec. 8 of R.A. No. 1199, as amended. Again, Sec. 8 of R.A. No. 1199 assumes the existence of a tenancy relation. As its epigraph suggests, it is a "*Limitation of Relation*," and the purpose is merely to limit the tenancy "to the person who furnishes the land, either as owner, lessee, usufructuary, or legal possessor, and to the person who actually works the land himself with the aid of labor available from within his immediate farm household." Once the tenancy relation is established, the parties to that relation are limited to the persons therein stated. Obviously, inherent in the right of landholders to install a tenant is their *authority* to do so; otherwise, *without such authority, civil law lessees as landholders cannot install a tenant on the landholding. Neither Sec. 6 of R.A. No. 3844 nor Sec. 8 of*

R.A. No. 1199 automatically authorizes the persons named therein to employ a tenant on the landholding.

According to Mr. Justice Guillermo S. Santos and CAR Executive Judge Artemio C. Macalino, respected authorities on agrarian reform, the reason for Sec. 6 of R.A. No. 3844 and Sec. 8 of R.A No. 1199 in limiting the relationship to the lessee and the lessor is to "discourage absenteeism on the part of the lessor and the custom of co-tenancy" under which "the tenant (lessee) employs another to do the farm work for him, although it is he with whom the landholder (lessor) deals directly. Thus, under this practice, the one who actually works the land gets the short end of the bargain, for the nominal or 'capitalist' lessee hugs for himself a major portion of the harvest." This breeds exploitation, discontent and confusion x x x. The *kasugpong, kasapi,* or *katulong* also works at the pleasure of the nominal tenant. When the new law, therefore, limited tenancy relation to the landholder and the person who actually works the land himself with the aid of labor available from within his immediate farm household, it eliminated the nominal tenant or middleman from the picture.

Another noted authority on land return, Dean Jeremias U. Montemayor, explains the rationale for Sec. 8 of R.A. No. 1199, the precursor of Sec. 6 of R.A. No. 3844:

> Since the law establishes a special relationship in tenancy with important consequences, it properly pinpoints the persons to whom said relationship shall apply. The spirit of the law is to prevent both landholder absenteeism and tenant absenteeism. Thus, it would seem that the discretionary powers and important duties of the landholder, like the choice of crop or seed, cannot be left to the will or capacity of an agent or overseer, just as the cultivation of the land cannot be entrusted by the tenant to some other people. *Tenancy relationship has been held to be of a personal character.*

Section 6 as already stated simply enumerates who are the parties to an existing contract of agricultural tenancy, which presupposes that a tenancy already exists. It does not state that those who furnish the landholding, *i.e.*, either as owner, civil law lessee, usufructuary, or legal possessor, are automatically authorized to employ a tenant on the landholding. The reason is obvious. The civil lease agreement may be restrictive. Even the owner himself may not be free to install a tenant, as when his ownership or possession is encumbered or is

subject to a lien or condition that he should not employ a tenant thereon. This contemplates a situation where the property may be intended for some other specific purpose allowed by law, such as, its conversion into an industrial estate or a residential subdivision.

x x x x x x x x x

From the foregoing discussion, it is reasonable to conclude that a civil law lessee *cannot automatically institute* tenants on the property under Sec. 6 of R.A. No. 3844. The correct view that must necessarily be adopted is that the civil law lessee, although a legal possessor, may not install tenants on the property unless expressly authorized by the lessor. And if a prohibition exists or is stipulated in the contract of lease the occupants of the property are merely civil law sublessees whose rights terminate upon the expiration of the civil law lease agreement.[41]

Evidently, securing the consent of the landowner is a condition *sine qua non* for the installation of tenants. Here, petitioner's consent was not obtained prior to the engagement of respondents by the civil law lessee, David Jimenez. Worse, the lease agreement expressly prohibited the assignment of the lease to third persons. Verily, respondents can acquire no better right than their predecessor-in-interest, David Jimenez.

Third. The compulsory acquisition of petitioner's landholding pursuant to the agrarian reform program was held in abeyance pending evaluation by its application for exemption.

The records unveil that on September 26, 1989, petitioner applied for exemption from the coverage of the agrarian reform program.[42] On November 10, 1989, the DAR, speaking through Justice Milagros A. German, Senior Special Consultant and Adviser in Legal Affairs,[43] acted favorably on petitioner's application for exemption. Along this line, the MARO of Masinloc, Zambales, was advised to observe the status *quo* and defer the inclusion of petitioner's fishpond in the compulsory acquisition program.

---

[41] *Valencia v. Court of Appeals, supra* note 35, at 685-687, 689.

[42] *Rollo,* p. 144.

[43] *Id*. at 148.

In sum, respondents' claim of security of tenure founded on their installation as tenants of petitioner's civil law lessee is without basis in law. Procedurally, fishponds and prawn farms were expressly exempted from the coverage of the agrarian reform program. Substantially, the civil law lessee was not authorized to enter into leasehold-tenancy relations.

WHEREFORE, the appealed Decision is *REVERSED AND SET ASIDE.* A new one is entered *DISMISSING* the complaint for maintenance of peaceful possession and inclusion for compulsory CARP coverage of petitioner's landholding for lack of jurisdiction and lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 171373. June 18, 2008]

LLOYD'S ENTERPRISES and CREDIT CORPORATION, *petitioners, vs.* **SPS. FERDINAND and PERSEVERANDA DOLLETON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE TRIAL COURT, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE ACCORDED GREAT WEIGHT AND RESPECT. — Whether petitioner is a mortgagee-purchaser

---

* Vice Associate Justice Antonio Eduardo B. Nachura. Justice Nachura is on official leave per Special Order No. 507 dated May 28, 2008.

in good faith and for value is a factual issue. In a petition for review, only questions of law may be raised. Even though there are exceptions, petitioner did not show that this case is one of them. Moreover, the RTC and the Court of Appeals concur that petitioner did not exercise due diligence in ascertaining the true ownership of the subject property, notwithstanding the existence of circumstances which should have impelled it to investigate further. Well-settled is the rule that factual findings of the RTC, when affirmed by the Court of Appeals, are accorded great weight and respect by this Court.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; BUYER IN GOOD FAITH; A PURCHASER CANNOT CLOSE HIS EYES TO FACTS WHICH SHOULD PUT A REASONABLE MAN ON HIS GUARD AND CLAIM THAT HE ACTED IN GOOD FAITH UNDER THE BELIEF THAT THERE WAS NO DEFECT IN THE TITLE OF THE VENDOR. — Moreover, the circumstance that the certificate of title covering the property offered as security was newly issued should have put petitioner on guard and prompted it to conduct an investigation surrounding the transfer of the property to defendant Gagan. Had it inquired further, petitioner would have discovered that the property was sold for an unconscionably low consideration of only ₱120,000.00 when it could have fetched as high as ₱900,000.00. A purchaser cannot close his eyes to facts which should put a reasonable man on his guard and claim that he acted in good faith under the belief that there was no defect in the title of the vendor. His mere refusal to believe that such defect exists or the willful closing of his eyes to the possibility of the existence of a defect in his vendor's title, will not make him an innocent purchaser for value if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defect as would have led to its discovery had he acted with that measure of precaution which may reasonably be required of a prudent man in a like situation.

3. ID.; ID.; ID.; ID.; REQUIREMENT OF GOOD FAITH; ENTITIES ENGAGED IN THE BUSINESS OF EXTENDING CREDIT TO THE PUBLIC IS EXPECTED TO EXERCISE DUE DILIGENCE IN DEALING WITH PROPERTIES OFFERED AS SECURITY. — We cannot sustain petitioner's claim that it should not be required to look beyond the certificate of title for flaws in the ownership of

the property in view of the presumption that a *Torrens* title is regularly issued and that the burden is on respondents to rebut the presumption of good faith. Petitioner is engaged in the business of extending credit to the public and is, thus, expected to exercise due diligence in dealing with properties offered as security. In *Expresscredit Financing Corporation v. Spouses Velasco*, the Court held that entities engaged in the business of offering real estate loans must exercise a higher degree of caution in accepting properties as security, thus: x x x To fulfill the requirement of good faith, it is imperative for a mortgagee of the land, in the possession of persons not the mortgagor, to inquire and investigate into the rights or title of those in possession. It is true that a person dealing with the owner of registered land is not bound to go beyond the certificate of title. He may rely on the notices of the encumbrances on the property annotated on the certificate of title or absence of any annotation. However, we note that the Garcia spouses are unlike other mortgagors. They are in the business of constructing and selling townhouses and are past masters in real estate transactions. Further, petitioner is in the business of extending credit to the public, including real estate loans. In both these businesses, it devolves upon both, greater charge than ordinary buyers or encumbrancers for value, who are not in such venture. It is standard in their business, as a matter of due diligence required of banks and financing companies, to ascertain whether the property being offered as security for the debt has already been sold to another to prevent injury to prior innocent buyers. They also have the resources to ascertain any encumbrances over the properties they are dealing with.

4. ID.; ID.; ID.; ID.; PURCHASER OR MORTGAGEE OF LAND IS NOT REQUIRED TO LOOK FURTHER THAN WHAT APPEARS ON THE FACE OF THE TITLE; RULE NOT APPLICABLE WHEN THE PURCHASER OR MORTGAGEE IS A FINANCING INSTITUTION. — In *Agag v. Alpha Financing Corp.*, the Court explicitly declared that when the purchaser or mortgagee is a financing institution, the general rule that a purchaser or mortgagee of land is not required to look further than what appears on the face of the title does not apply. The Court explained, thus: So also, in *Cruz v. Bancom Finance Corporation*, a case for reconveyance of property against a purchaser in a foreclosure sale, it was stressed that the due diligence required of banks extended even

to persons regularly engaged in the business of lending money secured by real estate mortgages. Their expertise or experience in dealing with encumbrances on lands, not to mention the public interest affecting their business, require them to exercise more care and prudence in dealing even with registered lands. Respondent, being a financial institution, cannot claim good faith considering that neither it nor the alleged mortgagee bank was in possession of the lots prior and after the foreclosure sale. Had respondent conducted an ocular inspection of the premises, this being the standard practice in the real estate industry, it would have discovered that the land is occupied by petitioner. The failure of respondent to take such precautionary steps is considered negligence on its part and would thereby preclude the defense of good faith.

5. ID.; ID.; ID.; ID.; THE PARTY FOUND NEGLIGENT IN ASCERTAINING THE TRUE OWNERSHIP OF THE PROPERTY OFFERED AS A SECURITY SHALL BEAR THE LOSS THEREOF. — In *Adriano v. Pangilinan*, petitioner therein also entrusted the certificate of title of his property to a third person who fraudulently caused the annotation of a real estate mortgage on the title in favor of respondent. The Court held that respondent, who was engaged in the real estate business but failed to verify the essential facts, should bear the loss because his negligence was the primary, immediate and overriding reason that put him in his predicament. Applying the principle in *Adriano*, petitioner must bear the loss of the property because of its failure to ascertain the true ownership of the subject property, notwithstanding the fact that it is engaged in the business of offering real estate loans to the public and is, therefore, required to exercise a higher degree of diligence in investigating the status and condition of the properties offered as securities.

6. ID.; DAMAGES; MORAL AND EXEMPLARY DAMAGES; INCREASE IN THE AWARD THEREOF IS UNJUSTIFIED. — Petitioner asks the Court to reduce its liability for moral and exemplary damages in accordance with *Cavite Development Bank v. Lim* where petitioner-bank was also found negligent in failing to ascertain the mortgagor's title to the property offered as security. The Court however found excessive the RTC's award of moral and exemplary damages and accordingly

reduced the amounts involved to ₱50,000.00 and ₱30,000.00, respectively. In the instant case, the Court of Appeals modified the award by ordering the payment of moral damages of ₱200,000.00 and exemplary damages of ₱200,000.00 both to each respondents, or a total of ₱800,000.00. The Court finds the increase in the award of damages unjustified under the circumstances and, thus, reinstates the award of the RTC.

APPEARANCES OF COUNSEL

Nitorreda Nasser and Layusa for petitioner.
Antonio A. Navarro III for respondents.

D E C I S I O N

TINGA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, assailing the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. CV No. 82017. The Court of Appeals' decision affirmed with modification the decision of the Regional Trial Court (RTC) of Muntinlupa City, Branch 276 in Civil Case No. 98-086 which, among others, nullified the property sale between herein respondents and defendant Blesilda Gagan (Gagan) and the subsequent mortgage to petitioner and foreclosure of the subject property.

Respondents, spouses Ferdinand and Perseveranda Dolleton, were the registered owners of a parcel of land situated in Barangay Putatan, Muntinlupa City and covered by Transfer Certificate of Title (TCT) No. 153554. Erected on the 166-sq. m. property is a four-door apartment building being leased by respondents to various tenants. On 9 August 1990, respondents mortgaged the property to a certain Joseph Patrick Santos (Santos) to secure

---

[1] Dated 20 December 2005; penned by *J*. Martin S. Villarama, Jr. and concurred in by *JJ*. Edgardo F. Sundiam and Japar B. Dimaampao, members of the Eleventh Division; *rollo*, pp. 40-67.

[2] Dated 6 February 2006; *id*. at 69.

a loan in the amount of ₱100,000.00. Upon payment of the loan on 15 August 1994, Santos executed a release and cancellation of the mortgage. The same was annotated on the TCT.

On 15 September 1994, TCT No. 153554 in the name of respondents was cancelled and a new TCT No. 197220 was issued in the name of Gagan on the basis of a Deed of Absolute Sale dated 5 August 1994 whereby respondents purportedly sold to Gagan the subject property for the sum of ₱120,000.00.

On 19 September 1994, petitioner Lloyd's Enterprises and Credit Corporation lent to Gagan and her live-in partner, a certain Feliciano Fajardo Guevarra (Guevarra) the sum of ₱391,512.00. The loan was secured by a real estate mortgage on the subject property, which was duly annotated on TCT No. 197220 on 27 September 1994. After payment of the loan, petitioner executed a Cancellation of Mortgage, which was annotated on the same TCT on 14 September 1995. On even date, petitioner granted another loan to Gagan and Guevarra for a bigger sum of ₱542,928.00, as evidenced by a promissory note dated August 1995. A new real estate mortgage was constituted over the property. This undated mortgage deed appears to have been notarized in 1995. The second real estate mortgage was likewise annotated on the TCT on 14 September 1995.

Gagan and Guevarra failed to pay the second loan upon its maturity. Thus, petitioner instituted extrajudicial foreclosure proceedings on the subject property. At the auction sale conducted by Sheriff-in-charge Melvin T. Bagabaldo, petitioner's bid of ₱645,000.00 was declared the highest.[3] The property was not redeemed within the one-year period, hence, ownership was consolidated in favor of petitioner. On 29 September 1997, TCT No. 197220 in the name of Gagan was cancelled and TCT No. 210363 was issued in the name of petitioner.

Petitioner sent notices to the apartment tenants informing them about the transfer of the property to petitioner and allowing them the option either to vacate the apartment or to pay a monthly rental of ₱2,000.00. Thus, the apartment tenants did

[3] Records, pp. 494-495.

not remit the rentals to respondents anymore, prompting the latter to cause the annotation of an adverse claim on TCT No. 210363 on 15 December 1997.

On 7 May 1998, respondents filed a complaint, praying among others for the nullification of the Deed of Absolute Sale, the two real estate mortgage contracts and the extrajudicial foreclosure proceedings; the cancellation of TCT Nos. 197220 and 210363; and the restoration of TCT No. 153554 in the name of respondents.[4] Named defendants were Gagan, Guevarra, herein petitioner, the Sheriff-in-charge of the RTC of Muntinlupa and the Office of the Register of Deeds for Makati.

In the said complaint,[5] respondents denied having executed the Deed of Absolute Sale and alleged that they had merely offered to sell to defendant Gagan the subject property for ₱900,000.00 on installment basis so that they could pay their loan obligation to Santos. They averred that after defendant Gagan had initially paid ₱200,000.00, they entrusted the owner's copy of TCT No. 153554 to defendant Gagan who however undertook to effect the cancellation of the mortgage in favor of Santos and to prepare the contract of sale on installment basis. Respondents further alleged that except for the additional amount of ₱185,000.00, defendant Gagan was unable to pay the balance of the purchase price. They also accused Gagan of having caused the fraudulent cancellation of TCT No. 153554 and the issuance of TCT No. 197220 in her name, and of eventually using TCT No. 197220 to secure the loans obtained from petitioner. Respondents also faulted petitioner for failing to make adequate inquiries on the true ownership of the property considering the suspicious circumstances surrounding Gagan's and Guevarra's request for loan immediately after the issuance of the new certificate of title.

The summons on defendants Gagan and Guevarra were returned unserved as their whereabouts were unknown. Upon motion by respondents, the RTC directed the issuance and service of

---

[4] *Id*. at 19-20.

[5] *Id*. at 1-23.

alias summons by publication.[6] Subsequently, defendants Gagan and Guevarra were declared in default for failure to file their responsive pleading to the complaint that was published in a newspaper of general circulation.[7]

In its answer with counterclaim,[8] petitioner raised the defense of lack of cause of action, asserting that it exercised due diligence in verifying the status of the subject property and that it would not have accepted the same as security for the loan if the title were not clean. It also claimed that respondents were guilty of estoppel by laches as they failed to take the necessary measures to protect their rights and interest. Petitioner also filed an amended answer with counterclaim, which included a cross-claim against defendants Gagan and Guevarra for the amount of the purchase price at the foreclosure sale and for the litigation expenses. Petitioner's cross-claim pleaded that in the event that its certificate of title over the subject property be cancelled, defendants Gagan and Guevara should be held solidarily liable for ₱645,000.00, which is the amount petitioner paid at the foreclosure sale, plus additional expenses incurred in transferring the subject property and in defending its rights and interest as a consequence of the filing of the case.

After trial, the RTC rendered judgment declaring the Deed of Absolute Sale dated 5 August 1994 as spurious. The dispositive portion of the 8 November 2003 RTC Decision reads:

> PREMISES CONSIDERED, this Court is not convinced that defendant Lloyd Enterprises and Credit Corporation is a mortgagee in good faith, the mortgage in their favor being illegal and fraudulently obtained with the use of a title issued thru misrepresentations and [a] forged document, did not confer ownership on the forger. The mortgage over this property, is not a valid encumbrance, which did not give a right to the said defendant, to foreclose and take ownership. The loan not obtained by the true owners of the property, equity and fairness demands that they should not suffer from that unfaithful

[6] *Id*. at 200.

[7] *Id*. at 296.

[8] *Id*. at 154-165.

conveyance, much more, forfeit ownership of their parcel of land and the improvements thereon. Defendants had the unconscionable and unscrupulous intentions to get the land with improvement, hence neglected to check its ownership, are not mortgagees in good faith.

Defendants are therefore directed to reconvey the property to the true and genuine owners, the spouses Ferdinand and Perseveranda Dolleton, not being mortgagees in good faith, while the mortgage itself over a parcel not owned by the mortgagors, did not confer a valid mortgage. It cannot be a basis of a valid foreclosure. It is not even legally recorded, hence no date to reckon the maturity of their loan.

Defendants are further directed to remit payment of rental of the property to the plaintiffs from December 1998 to the present on the rental sum equal to the totality of the monthly rental from the said date to the present, at the amount being paid and received by the Defendant from the tenants of the apartments, or in the total sum of ₱525,600.00.

Plaintiffs are also entitled to moral damages in the amount of ₱300,000.00 with exemplary damages in the amount of ₱300,000.00.

Since plaintiffs were forced to prosecute this claim, Plaintiffs incurred actual expenses of ₱50,000.00 which should be refunded to them by defendant.

Plaintiffs were also forced to litigate to defend and enforce their rights of ownership over this parcel of land subject of this litigation, attorney's fees of ₱100,000.00 is also adjudged against defendant, as well as the cost of this litigation.

IT IS SO ORDERED.[9]

On 20 December 2005, the Court of Appeals rendered the assailed decision, modifying the award of moral and exemplary damages from ₱300,000.00 for both respondents to ₱200,000.00 for each of the respondents. The appellate court rejected the RTC's factual finding that the two loans were granted simultaneously to defendants Gagan and Guevarra. Just the same, it upheld the finding that the Deed of Absolute Sale was a forgery and that petitioner was grossly negligent in accepting

[9] *Rollo*, pp. 207-208.

the mortgage as security for the loan. In a Resolution[10] dated 6 February 2006, the Court of Appeals denied petitioner's Motion for Reconsideration[11] for lack of merit.

Petitioner filed a Petition for Review on *Certiorari*,[12] which the Court initially denied in a Resolution dated 5 June 2006 on the ground that the issues raised are factual and that the petition failed to sufficiently show that the appellate court committed any reversible error. Petitioner filed a motion for reconsideration, which was granted in a Resolution dated 28 August 2006. The said resolution also directed the reinstatement of the petition and the filing of a comment thereon.

The instant petition raises the following arguments:

I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN LAW WHEN IT FAILED TO DECLARE PETITIONER AS MORTGAGEE IN GOOD FAITH AS THE LATTER TOOK THE NECESSARY STEPS WHICH AN ORDINARY AND PRUDENT MAN WOULD HAVE TAKEN BEFORE BUYING THE PROPERTY IN QUESTION;

II. WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT RULED THAT THE PETITIONER IS LIABLE FOR DAMAGES WHEN THE RESPONDENT IS NOT ENTIRELY WITHOUT FAULT;

III. WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT FAILED TO RULE ON THE LIABILITY OF THE GAGANS IN THIS CASE;

IV. WHETHER OR NOT THE AMOUNT OF DAMAGES AWARDED BY THE HONORABLE COURT OF APPEALS IS CONSISTENT WITH THE EXISTING JURISPRUDENCE AND NORMS OF MORALITY.[13]

First, petitioner insists that it is a mortgagee in good faith because it is not privy to the transaction between respondents and defendant Gagan or to the source of the invalid title.

---

[10] *Supra* note 2.

[11] *Id*. at 243-249.

[12] *Id*. at 14-36.

[13] *Id*. at 24-30.

Whether petitioner is a mortgagee-purchaser in good faith and for value is a factual issue. In a petition for review, only questions of law may be raised. Even though there are exceptions, petitioner did not show that this case is one of them.[14] Moreover, the RTC and the Court of Appeals concur that petitioner did not exercise due diligence in ascertaining the true ownership of the subject property, notwithstanding the existence of circumstances which should have impelled it to investigate further. Well-settled is the rule that factual findings of the RTC, when affirmed by the Court of Appeals, are accorded great weight and respect by this Court.

We quote with approval the following observations of the Court of Appeals:

> In this case, appellant LECC merely submitted in evidence forms for credit investigation haphazardly accomplished by its supposed credit investigators who were not presented as witnesses in court. While their report on the credit check for the September 1994 and August 1995 loans indicated that they verified on the borrower's capacity to pay, there is no showing that they actually inspected the property offered as collateral. As correctly noted by the trial court, had this precautionary measure been taken, the lending company's representatives would have easily discovered that the four (4)-door apartment in the premises being mortgaged is rented by tenants and they could have been provided with information that plaintiffs-appellees are still the present lessors/owners thereof.
>
> x x x x x x x x x
>
> Hence, such gross negligence in failing to verify the actual condition of the property, particularly as to who is in actual possession and if the premises are leased to third persons, who is receiving the rental payments therefore, hardly makes the appellant LECC a mortgagee in good faith. x x x[15]

Moreover, the circumstance that the certificate of title covering the property offered as security was newly issued should have put petitioner on guard and prompted it to conduct an investigation

---

[14] *Villarico v. Court of Appeals*, 424 Phil. 26, 32 (2002).

[15] *Rollo*, pp. 62-63.

surrounding the transfer of the property to defendant Gagan. Had it inquired further, petitioner would have discovered that the property was sold for an unconscionably low consideration of only ₱120,000.00 when it could have fetched as high as ₱900,000.00.[16] A purchaser cannot close his eyes to facts which should put a reasonable man on his guard and claim that he acted in good faith under the belief that there was no defect in the title of the vendor. His mere refusal to believe that such defect exists or the willful closing of his eyes to the possibility of the existence of a defect in his vendor's title, will not make him an innocent purchaser for value if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defect as would have led to its discovery had he acted with that measure of precaution which may reasonably be required of a prudent man in a like situation.[17]

We cannot sustain petitioner's claim that it should not be required to look beyond the certificate of title for flaws in the ownership of the property in view of the presumption that a *Torrens* title is regularly issued and that the burden is on respondents to rebut the presumption of good faith.

Petitioner is engaged in the business of extending credit to the public and is, thus, expected to exercise due diligence in dealing with properties offered as security. In *Expresscredit Financing Corporation v. Spouses Velasco*,[18] the Court held that entities engaged in the business of offering real estate loans must exercise a higher degree of caution in accepting properties as security, thus:

> x x x To fulfill the requirement of good faith, it is imperative for a mortgagee of the land, in the possession of persons not the mortgagor, to inquire and investigate into the rights or title of those in possession. It is true that a person dealing with the owner of registered land is not bound to go beyond the certificate of title. He

---

[16] *Id*. at 25.

[17] *Expresscredit Financing Corporation v. Velasco,* G.R. No. 156033, 20 October 2005, 473 SCRA 570, 580.

[18] G.R. No. 156033, 20 October 2005, 473 SCRA 570.

may rely on the notices of the encumbrances on the property annotated on the certificate of title or absence of any annotation. However, we note that the Garcia spouses are unlike other mortgagors. They are in the business of constructing and selling townhouses and are past masters in real estate transactions. Further, petitioner is in the business of extending credit to the public, including real estate loans. In both these businesses, it devolves upon both, greater charge than ordinary buyers or encumbrancers for value, who are not in such venture. It is standard in their business, as a matter of due diligence required of banks and financing companies, to ascertain whether the property being offered as security for the debt has already been sold to another to prevent injury to prior innocent buyers. They also have the resources to ascertain any encumbrances over the properties they are dealing with.[19]

In *Agag v. Alpha Financing Corp.*,[20] the Court explicitly declared that when the purchaser or mortgagee is a financing institution, the general rule that a purchaser or mortgagee of land is not required to look further than what appears on the face of the title does not apply. The Court explained, thus:

So also, in *Cruz v. Bancom Finance Corporation*, a case for reconveyance of property against a purchaser in a foreclosure sale, it was stressed that the due diligence required of banks extended even to persons regularly engaged in the business of lending money secured by real estate mortgages. Their expertise or experience in dealing with encumbrances on lands, not to mention the public interest affecting their business, require them to exercise more care and prudence in dealing even with registered lands.

Respondent, being a financial institution, cannot claim good faith considering that neither it nor the alleged mortgagee bank was in possession of the lots prior and after the foreclosure sale. Had respondent conducted an ocular inspection of the premises, this being the standard practice in the real estate industry, it would have discovered that the land is occupied by petitioner. The failure of respondent to take such precautionary steps is considered negligence on its part and would thereby preclude the defense of good faith.[21]

---

[19] *Id*. at 578-579.

[20] 455 Phil. 397 (2003).

[21] *Id*. at 409.

Petitioner also contends that respondents are not without fault in carelessly allowing defendant Gagan to obtain the certificate of title and cause the fraudulent transfer of the property. It asserts that when one of two innocent persons must suffer by the wrongful act of a third person, the loss falls on him who had put it into the power of that third person to perpetrate the wrong.

In *Adriano v. Pangilinan*,[22] petitioner therein also entrusted the certificate of title of his property to a third person who fraudulently caused the annotation of a real estate mortgage on the title in favor of respondent. The Court held that respondent, who was engaged in the real estate business but failed to verify the essential facts, should bear the loss because his negligence was the primary, immediate and overriding reason that put him in his predicament.[23]

Applying the principle in *Adriano*, petitioner must bear the loss of the property because of its failure to ascertain the true ownership of the subject property, notwithstanding the fact that it is engaged in the business of offering real estate loans to the public and is, therefore, required to exercise a higher degree of diligence in investigating the status and condition of the properties offered as securities.

Petitioner, however, is not without relief even at this juncture. It correctly filed a cross-claim against defendants Gagan and Guevarra for the purchase price of the foreclosed property in the amount of ₱645,000.00 plus other expenses of transfer and litigation, the actual damages it incurred at the foreclosure sale, and all other expenses for which petitioner may be held liable. Although the RTC and the Court of Appeals failed to resolve the cross-claim, to avoid further delay, this Court can very well adjudicate upon the liabilities of defendants Gagan and Guevara to petitioner. Petitioner submitted in evidence a copy of the sheriff's certificate of sale, evincing that petitioner paid the amount of ₱645,000.00 at the foreclosure sale of the subject property.[24]

---

[22] 424 Phil. 578 (2002).

[23] *Id*. at 595.

[24] *Supra* note 3.

However, as to other alleged actual expenses incurred by petitioner as a result of the filing of the case, no evidence was offered to prove the same. Defendants Gagan and Guevara should ultimately bear the damages incurred by petitioner at the foreclosure sale, considering that no evidence was presented to prove petitioner's complicity in the forgery of the Deed of Absolute Sale and that the instant controversy arose because of the acts of defendants Gagan and Guevara.

One last point. Petitioner asks the Court to reduce its liability for moral and exemplary damages in accordance with *Cavite Development Bank v. Lim*[25] where petitioner-bank was also found negligent in failing to ascertain the mortgagor's title to the property offered as security. The Court however found excessive the RTC's award of moral and exemplary damages and accordingly reduced the amounts involved to ₱50,000.00 and ₱30,000.00, respectively. In the instant case, the Court of Appeals modified the award by ordering the payment of moral damages of ₱200,000.00 and exemplary damages of ₱200,000.00 both to each respondents, or a total of ₱800,000.00. The Court finds the increase in the award of damages unjustified under the circumstances and, thus, reinstates the award of the RTC.

Except for the modified award of moral and exemplary damages due the respondents, the Court of Appeals decision affirmed, albeit impliedly, the RTC decision in all other respects including the award of actual litigation expenses and attorney's fees.

WHEREFORE, the instant petition for review on *certiorari* is *PARTIALLY GRANTED* and the Decision of the Court of Appeals in CA-G.R. CV No. 82017 is *AFFIRMED IN ALL RESPECTS* with the following *MODIFICATIONS*: (1) the other monetary awards granted by the Regional Trial Court, Branch 276, Muntinlupa City are *RESTORED* and petitioner is accordingly *ORDERED* to pay respondents moral damages of ₱300,000.00, exemplary damages of ₱300,000.00, actual litigation expenses of ₱50,000.00 and attorney's fees of ₱100,000.00; and (2) defendants Blesilda Gagan and Feliciano Fajardo Guevarra

---

[25] 381 Phil. 355 (2000).

are *ORDERED* to pay jointly and severally petitioner Lloyd's Enterprises and Credit Corporation on its cross-claim the amount of ₱645,000.00, plus legal interest of 6% *per annum* from the date of the RTC Decision. Costs against petitioner.

SO ORDERED.

Quisumbing (Chairperson), Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

THIRD DIVISION

[G.R. No. 172752. June 18, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RODOLFO SISON,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; APPELLATE COURTS WILL NOT INTERFERE WITH THE JUDGMENT OF THE TRIAL COURT WITH RESPECT THERETO; EXCEPTIONS; NOT PRESENT IN CASE AT BAR. — It is settled that appellate courts will not interfere with the judgment of the trial court on the credibility of witnesses, unless there appears in the record some facts or circumstances of weight and influence which have been overlooked and, if considered, would affect the result. Findings of facts and assessment of credibility of witnesses is a matter best left to the trial court because of its unique position and opportunity of being able to observe the witnesses' deportment on the stand while testifying. That opportunity is denied to the appellate courts. We find that the RTC calibration of the credibility of the witnesses is not flawed. The testimonies of Bernadette, Bernie, Bernalyn, and Lydia

positively established, beyond reasonable doubt, that it was appellant who shot Bernabe.

2. ID.; ID.; DENIAL; CANNOT PREVAIL OVER THE POSITIVE AND CATEGORICAL IDENTIFICATION PROVIDED BY THE EYEWITNESSES. — The bare denial of appellant cannot succeed in light of the positive testimonies of the prosecution witnesses. It is settled that denials which are unsubstantiated by clear and convincing evidence are negative and self-serving evidence. It merits no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmatives matters. Denial, like alibi, is an inherently weak defense and cannot prevail over the positive and categorical identification provided by eyewitnesses.

3. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; EVIDENT PREMEDITATION; REQUISITES IN ORDER TO BE APPRECIATED; NOT PRESENT IN CASE AT BAR. — In order that evident premeditation may be appreciated, the following requisites must concur: (1) the time when accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow accused to reflect upon the consequences of the act. We agree with appellant that there was no evident premeditation. There is no evidence that appellant and Sendaydiego planned to kill Bernabe. Even the Solicitor General admits that the lapse of time from the stoning incident until the shooting cannot be considered sufficient for appellant to reflect upon the consequences of his act. The interval of time was only for several minutes. Evident premeditation should not be appreciated where, as in this case, there is neither evidence of planning or preparation to kill nor of the time when the plot was conceived.

4. ID.; ID.; TREACHERY; ESSENCE; PRESENT IN CASE AT BAR. — We, however, find that the qualifying circumstance of treachery attended the killing of the victim. Article 14(6) of the Revised Penal Code provides that there is treachery (*alevosia*) "when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the

defense which the offended party might make." The essence of treachery lies in the attack which comes without warning, and is swift, deliberate and unexpected, and affords the hapless, unarmed and unsuspecting victim no chance to resist or escape, ensuring its commission without risk to the aggressor, without the slightest provocation on the part of the victim. What is decisive in treachery is that the execution of the attack made it impossible for the victim to defend himself or retaliate. Treachery may also be appreciated even if the victim was warned of the danger to his life where he was defenseless and unable to flee at the time of the infliction of the *coup de grace*. Here, Bernabe was suddenly shot without any warning by appellant at a distance of about 3 to 4 meters. An unexpected and sudden attack, which renders the victim unable and unprepared to defend himself by reason of the suddenness of the attack, constitutes *alevosia*. Even a frontal attack could be treacherous when unexpected and on an unarmed victim would be in no position to repel the attack or avoid it.

5. ID.; MURDER; IMPOSABLE PENALTY. — Murder is punishable by *reclusion perpetua* to death. There being no mitigating nor aggravating circumstances, appellant was correctly sentenced by the RTC and the CA to *reclusion perpetua*.

6. ID.; ID.; CIVIL LIABILITIES OF ACCUSED-APPELLANT. — Both the RTC and the CA awarded the heirs of Bernabe the amount of ₱75,000.00 as actual damages. It is settled that actual damages must be duly substantiated by documentary evidence, such as receipts to prove the expenses incurred as a result of the death of the victim. Here, only the amount of ₱6,030.00 is supported by the evidence on record. Too, the alleged miscellaneous expenses of ₱68,970.00 cannot be the basis of an award because they were not sufficiently proven. However, consistent with Our ruling in *People v. Werba*, which affirmed the case of *People v. Villanueva*, We award temperate damages in the amount of ₱25,000.00 in lieu of the actual damages of a lesser amount. As well stated in said cases, to rule otherwise would be anomalous and unfair because the victim's heirs who tried but succeeded in proving actual damages of an amount less than ₱25,000 would be in a worse situation than those who might have presented no receipts at all but would now be entitled to ₱25,000 temperate damages. Civil indemnity of ₱50,000.00 and moral damages in the

amount of ₱50,000.00 were correctly awarded. Pursuant to Article 2206(3) of the Civil Code, the spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased resulting from a crime. The award of exemplary damages in the amount of ₱25,000.00 is likewise justified when treachery is proved, as in this case.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

WE review on appeal by *certiorari* the Decision[1] of the Court of Appeals (CA) affirming with modification that[2] of the Regional Trial Court (RTC) in Lingayen, Pangasinan, finding appellant Rodolfo Sison, *alias* "Danny" and "Pagong," guilty of murder.

The Facts

On November 25, 1993, at about 10:00 p.m., Bernadette dela Cruz, her brother Bernie, sister Bernalyn, and her grandfather were at the second floor of their house in Balang Street, *barangay* Maniboc, Lingayen, Pangasinan.[3] While lying in bed, they heard stones landing at the roof of their house.[4] Bernadette immediately peeped through their window. She saw appellant Rodolfo Sison, together with Corleto Sendaydiego, in a sitting position atop a

---

[1] *Rollo,* pp. 3-12. CA-G.R. CR-H.C. No. 01502. Penned by Associate Justice Eliezer R. de los Santos (deceased), with Associate Justices Jose C. Reyes and Arturo R. Tayag, concurring.

[2] *Id*. at 31-47. Penned by Judge Salvador P. Vedaña.

[3] TSN, July 29, 1998, p. 3; *id*. at 5-6.

[4] *Id*. at 6.

Pepsi stand outside their fence.[5] A moment later, she saw her father Bernabe dela Cruz come out of their house clad in an undershirt and underwear.[6]

Bernabe walked towards appellant and Sendaydiego to confront them. Unexpectedly, appellant drew a gun and shot Bernabe thrice, hitting him in the chest and stomach.[7] Bernabe cried out in pain and clutched his stomach.[8] After the shooting, the duo fled the crime scene post-haste. Bernabe was brought to a hospital. He later expired as efforts to revive him proved futile.

On January 6, 1994, appellant and Sendaydiego were charged with murder in an Information bearing the following accusation:

The undersigned hereby accuses DANNY SISON @ "Pagong" and CORLETO SENDAYDIEGO @ "Kolet" of the crime of MURDER, committed as follows:

That on or about the 25th day of November 1993 in the evening, in Balang Street, *barangay* Maniboc, Municipality of Lingayen, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, armed with a gun, with treachery and evident premeditation and intent to kill, did then and there willfully, unlawfully and feloniously attack, shoot and hit Bernabe dela Cruz, inflicting upon him, the following:

x x x x x x x x x

which injuries directly caused his death, to the damage and prejudice of the heirs of the said Bernabe dela Cruz.

CONTRARY to Art. 248 of the Revised Penal Code.[9]

Appellant was also charged with possession of an unlicensed firearm, in a separate Information which reads:

---

[5] *Id*. at 8.

[6] *Id*. at 8-9; *rollo,* p. 10.

[7] *Id*. at 9.

[8] *Id*. at 11.

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

That on or about the 25th day of November 1993 in the evening, in *barangay* Maniboc, municipality of Lingayen, province of Pangasinan, Philippines and within the jurisdiction of the Honorable Court, the above named accused, did then and there willfully, unlawfully and feloniously have in his possession, custody and control an unlicensed firearm without first securing the necessary permit and/or license from the lawful authorities to possess the same.

Contrary to P.D. 1866.[10]

He was arrested after the lapse of almost five (5) years since the death of Bernabe. Co-accused Sendaydiego, however, has remained at large.

Appellant pleaded not guilty to both Informations. Joint trial ensued after the arraignment.

Bernadette testified on the events that led to the killing of Bernabe. She testified on the stoning incident and the shooting of her father. Bernie[11] and Bernalyn[12] narrated the same story.

Lydia, Bernabe's widow, testified that at about 10:00 p.m. of November 25, 1993, she was lying at the ground floor of their house[13] while her husband was playing video games.[14] Moments later, their house was hit by a stone, prompting her husband to go out of the house.[15] She heard three consecutive gunshots.[16] Later, she saw her husband fall down. She likewise saw appellant and Sendaydiego fleeing from the crime scene. Lydia testified that she knew appellant well, they being neighbors for quite some time.[17]

---

[10] *Id*. at 32.

[11] TSN, August 15, 1998, pp. 4-19.

[12] TSN, March 9, 1999, pp. 4-12.

[13] *Id*. at 5.

[14] *Id*. at 6.

[15] *Id*.

[16] *Id*. at 8.

[17] *Id*. at 9.

Lydia ran to the house of their neighbor Emily Sison to call for help.[18] When she returned, she was informed that her husband was brought to the hospital.[19] It was while in the police station that she learned of her husband's death.[20]

Dr. Jose U. Martinez conducted an autopsy on the victim and submitted an Autopsy Report, which reads:

External findings:
- Gunshot wound over the (L) chest, about 3 inches above and medial to the (L) nipple, measuring about 1/5 x 1/5 inches in diameter, the trajectory cannot be determined until the chest and the abdominal cavity was opened, by following the hole found over the chest wall and the information that the gun used was *desabog*, point of entrance.
- Multiple abrasion like wounds over the chest and abdomen, with 3 small metal places recovered embedded in the abrasive wounds over the chest and abdomen.
- Gunshot wound over (L) back, lat. aspect about the level of the 8th thoracic certibra about 7 inches lateral to it, measuring 1/5 x 1/5 inches in diameter, suspected point of exist of above gunshot wound.

Internal findings:
- On exposing the thoracic wall shows a hole over the 3rd & 4th intercostal space, medial aspect, measuring about ½ x ½ inches in diameter.
- On opening the thoracic cavity shows accumulation of fresh and clotted blood of about 700-800 cc.
- Perforation of the (L) surface of the (L) lung.
- The heart is clean.

Cause of death:
- Respiratory arrest, shock and hemorrhage sec. to lung damage and loss of blood due to gunshot wound to the (L) chest.[21]

---

[18] *Id*. at 12.

[19] *Id*. at 13.

[20] *Id*. at 15.

[21] CA *rollo,* pp. 110-111.

Dr. Martinez also testified that he recovered three metal pellets embedded in Bernabe's chest wounds and in the left part of his abdomen. He concluded that the firearm used in the crime was possibly a "*desabog*" (shotgun).

Dr. Ronald Bandonill, Medico-Legal Officer II of the NBI CAR, Baguio City,[22] corroborated the testimony of Dr. Martinez. He conducted an autopsy on the exhumed cadaver of the victim. Dr. Bandonill testified that the cause of death of Bernabe was the gunshot wounds.[23] He stated that the bullet is possibly a "*domdom*," which shatters into small metals when it hits a hard object.

The defense anchored its evidence on denial.[24] Lone defense witness, appellant Rodolfo Sison himself, claimed that on November 25, 1995, at about 10:00 p.m., he and Sendaydiego were on their way home. They came from the birthday party of a certain Patrolman Bert Santiago.

When they reached the house of Bernabe, Sendaydiego started throwing stones at the house of the victim.[25] He tried to pacify Sendaydiego. Sendaydiego, however, was adamant. As Sendaydiego persisted in his mischief, appellant hid himself behind the fence of a neighbor.[26]

After the stoning incident, appellant heard Sendaydiego fire four to five shots.[27] Appellant ran away and went home.[28] When they met later, Sendaydiego told him that he only wanted to avenge his father who was mauled and killed by Bernabe.[29] Appellant then told Sendaydiego to go as far away as possible.[30]

---

[22] TSN, February 9, 1999, p. 2.

[23] *Id*. at 19.

[24] TSN, April 7, 1999, pp. 3-4.

[25] *Id*. at 7.

[26] *Id*. at 8.

[27] *Id*.

[28] *Id*.

[29] *Id*. at 10.

[30] *Id*.

The following day, appellant returned to Manila where he was employed as a taxi driver.[31] He did not see Sendaydiego anymore although he knew that the latter is a tricycle driver in Pasig City, Metro Manila.[32] Appellant denied hiding from the police. He claimed that he frequently goes to Lingayen, Pangasinan on holidays, *barangay* fiesta,[33] and every time his wife gives birth.[34] According to appellant, he would often invite members of the Lingayen Police Office who are his friends whenever there are occasions in his house.[35]

On cross-examination, appellant admitted that Bernabe had previously filed a case against him for frustrated homicide; that it resulted to his conviction for less serious physical injuries. He claimed he did not harbor any ill-feelings against Bernabe.[36] Appellant likewise admitted that he did not surrender to the police although he knew of the filing of the murder charge.[37]

RTC and CA Dispositions

On August 19, 1999, the RTC rendered a decision convicting appellant of murder but acquitting him of illegal possession of firearm, thus:

> WHEREFORE, foregoing considerations taken, the Court hereby convicts the accused Rodolfo Sison *alyas* "Danny" and "Pagong" guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code as amended by R.A. 7659 and hereby sentences him to suffer a penalty of *reclusion perpetua*, and to pay the heirs of Bernabe dela Cruz the sum of ₱50,000.00 as indemnity, ₱75,000.00 as actual damages and ₱25,000.00 as exemplary damages.

---

[31] *Id*. at 11.

[32] *Id*. at 20.

[33] *Id*. at 17.

[34] *Id*. at 15.

[35] *Id*. at 18.

[36] *Id*. at 43.

[37] *Id*. at 40.

Insofar as the charge of Illegal Possession of Firearm and Ammunition is concerned, defined and penalized under P.D. 1866 as amended by R.A. 8294, accused Rodolfo Sison @ Pagong and Danny is hereby ACQUITTED.

Meanwhile, let a warrant be issued for the arrest of accused Corleto Sendaydiego @ Kolet in Criminal Case No. L-4976.

SO ORDERED.[38]

The case was then elevated to Us but conformably with Our decision in *People v. Mateo*,[39] this Court transferred the case to the CA for proper disposition.

On January 31, 2006, the CA rendered judgment affirming with modification the conviction of appellant for murder. The *fallo* of the said decision reads:

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Lingayen, Pangasinan finding accused-appellant Rodolfo Sison *alias* "Danny" and "Pagong" guilty beyond reasonable doubt of murder is hereby AFFIRMED with MODIFICATION. In addition to the penalty of *reclusion perpetua* imposed, and the award of ₱50,000.00 as civil indemnity, ₱75,000.00 as actual damages and ₱25,000.00 as exemplary damages, accused-appellant is likewise ordered to pay the heirs of the victim the amount of ₱50,000.00 as moral damages.

SO ORDERED.[40]

Hence, the present recourse.

Issues

Appellant imputes to the CA twin errors, *viz.*:

---

[38] *Id*. at 46-47.

[39] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640. This case modified the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Sections 3 and 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 RTCs to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment.

[40] *Rollo,* p. 11.

I.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

II.

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT COMMITTED THE ACTS COMPLAINED OF, THE COURT *A QUO* NEVERTHELESS ERRED IN CONVICTING HIM OF THE CRIME OF MURDER INSTEAD OF HOMICIDE.[41]

Our Ruling

The guilt of appellant was proven beyond reasonable doubt. His bare denial cannot prevail over his positive identification by eyewitnesses.

Appellant contends that the prosecution fell short of its duty to prove his guilt beyond reasonable doubt. He claims he was innocently implicated in the killing of Bernabe. He points to co-accused Sendaydiego as the gunman. Appellant also questions the RTC finding of facts and appreciation of evidence, particularly the credibility of the prosecution witnesses.

It is settled that appellate courts will not interfere with the judgment of the trial court on the credibility of witnesses, unless there appears in the record some facts or circumstances of weight and influence which have been overlooked and, if considered, would affect the result.[42] Findings of facts and assessment of credibility of witnesses is a matter best left to the trial court because of its unique position and opportunity of being able to observe the witnesses' deportment on the stand while testifying.

That opportunity is denied to the appellate courts. We find that the RTC calibration of the credibility of the witnesses is not flawed. The testimonies of Bernadette, Bernie, Bernalyn,

---

[41] *Id*. at 104-105.

[42] *People v. Agbayani,* G.R. No. 122770, January 16, 1998, 284 SCRA 315.

and Lydia positively established, beyond reasonable doubt, that it was appellant who shot Bernabe.

The said witnesses testified in a clear, straightforward, and convincing manner on the material events that led to the shooting of Bernabe, to wit: (1) the stoning of their house; (2) how they immediately stood up and peeped through the window and saw appellant and Sendaydiego sitting on their fence; (3) how Bernabe came out from their house; (4) how appellant shot Bernabe while the latter was about to approach the place where appellant and Sendaydiego were situated; (5) how they vividly witnessed the shooting of Bernabe by appellant because of the moonlight and the illumination coming from street lamp; (6) how Bernabe held his stomach and jumped after the shooting; and (7) how appellant and Sendaydiego ran away after the shooting.

Bernadette, on direct examination, testified that she saw appellant shoot his father, thus:

Q: Will you please tell the Court on that evening of November 25, 1993, if there was anything unusual that happened?
A: Yes, Sir. On that night time someone stone our house.

Q: When your house was stone, what did you do?
A: After the stoning, I woke up, together with my sister, and we peep at the hole of our window.

x x x x x x x x x

Q: And so from the second storey, you saw this two persons from the distance of 8 to 10 meters?
A: Yes, Sir.

Q: What were those two persons doing?
A: Danny Sison and his companion were sitting in the fence.

Q: Were you able to recognize the companion of Danny Sison?
A: Yes, Sir, person with a nickname Kulot.

Q: Do you know his true name?
A: Corleto Sendaydiego, Sir.

Q: You saw these two persons Corleto Sendaydiego and Danny Sison, what happened next?

A: I saw these persons and after a while my father coming out to our house passing at the back door, he went to see these persons who stone our house.

x x x x x x x x x

Q: **When your father came out to your house and see those person who stone your house, what happened next?**
A: **Then we saw that they shot my father.**

Q: **Do you know who shot your father?**
A: **Yes, Sir.**

Q: **Who shot your father?**
A: **Rodolfo Sison *alias* "Danny." (Witness pointing to the accused Danny Sison.)**

Q: Could you tell this Honorable Court how far were the two persons when Danny Sison shot your father?
A: (Witness pointing about 2 to 3 meters away.)

Q: **And how were you able to recognize that it was the accused Rodolfo Sison *alias* "Danny" who shot your father?**
A: **The moon was bright and there was a straight [street] lamp to the road.**

Bernadette remained unwavering on cross examination. She was categorical that it was appellant who shot her father:

Q: You said that when you peeped, you noticed the accused, Pagong, did I get you right?
A: Yes, Sir. Two of them.

x x x x x x x x x

Q: You were still peeping when your father was shot?
A: The incident happened so fast and my mother, followed by my brother came out of the house and shouting for help, Sir.

COURT:

Q: **You claimed that you were then peeping when you saw your father in relation to the sketch near the Pepsi stand. Did you see actually Pagong fired a gun at your father at the time you were peeping?**
A: **Yes, Sir.**

Q: **Are you sure of that?**
A: **Yes, Sir.**

Q: **What kind of firearm did Pagong use if you really see?**
A: **I do not know what kind of caliber the gun but it is short gun, Sir.**[43] (Emphasis supplied)

The testimony of Bernadette that it was appellant who shot her father was corroborated by Bernie and Bernalyn, who also witnessed the incident. The widow of the victim, Lydia, similarly testified that it was appellant who shot her husband, thus:

Q: When you said somebody stoned your house, what did your husband do?
A: My husband went out.

Q: What about you, what did you do when your husband went out?
A: I was following him.

Q: When your husband went out of your house, will you please tell the Honorable Court if there was anything unusual that happened?
A: There was, Sir.

Q: Will you please tell the Honorable Court what is that incident that happened?
A: My husband was already shot.

Q: **You said that you were following him and he was shot, will you please tell the Honorable Court how far were you, from your husband when he was shot?**
A: **From here up to there?**

COURT:
4-5 meters.

Q: **You said that your husband was shot from that distance which is 4-5 meters away from you, could you please tell the Honorable Court how many shots did you hear?**
A: **Three (3) shots.**

Q: And when your husband was shot according to you, what happened to him?

---

[43] TSN, August 3, 1998, pp. 6-11.

A: He fell down.

Q: And when he fell down, what did your husband say, if there was anything?
A: There was, Sir.

Q: **What did he utter or tell?**
A: **When my husband fell down, he uttered, "*Baon-inam Pagong, nak-naak*," which means in English "vulva of your mother, Pagong, I'm shot."**

Q: **When you saw your husband fell down and you heard those words uttered, what happened?**
A: **I went out and went to see what happened.**

x x x x x x x x x

Q: **You said that you went out to see what happened and you saw those two (2) persons running, will you please tell the Honorable Court who were those persons who were running whom you saw?**
A: **Danny Sison and Kolet**.[44] (Emphasis supplied)

The bare denial of appellant cannot succeed in light of the positive testimonies of the prosecution witnesses. It is settled that denials which are unsubstantiated by clear and convincing evidence are negative and self-serving evidence. It merits no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmatives matters.[45] Denial, like alibi, is an inherently weak defense and cannot prevail over the positive and categorical identification provided by eyewitnesses.[46]

Appellant was correctly convicted of murder. Although there was no evident premeditation, the qualifying circumstance of treachery was proven.

---

[44] TSN, March 9, 1999, pp. 4-5.

[45] *People v. Sernadilla,* G.R. No. 137696, January 24, 2001, 350 SCRA 243.

[46] *Olivarez v. Court of Appeals,* G.R. No. 163866, July 29, 2005, 465 SCRA 465.

Appellant argues[47] that assuming it was he who shot Bernabe, the lower court nevertheless erred in convicting him of murder because the qualifying circumstances of treachery and evident premeditation were not adequately proven. According to him, if ever he is guilty, he should be convicted only of homicide.

In order that evident premeditation may be appreciated, the following requisites must concur: (1) the time when accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow accused to reflect upon the consequences of the act.[48]

We agree with appellant that there was no evident premeditation. There is no evidence that appellant and Sendaydiego planned to kill Bernabe. Even the Solicitor General admits that the lapse of time from the stoning incident until the shooting cannot be considered sufficient for appellant to reflect upon the consequences of his act. The interval of time was only for several minutes. Evident premeditation should not be appreciated where, as in this case, there is neither evidence of planning or preparation to kill nor of the time when the plot was conceived.

We, however, find that the qualifying circumstance of treachery attended the killing of the victim.

Article 14(6) of the Revised Penal Code provides that there is treachery (*alevosia*) "when the offender commits any of the crimes against the person, employing means, methods or forms

---

[47] CA *rollo,* pp. 106-108.

[48] *People v. Ventura,* G.R. Nos. 148145-46, July 5, 2004, 433 SCRA 389, 400; *People v. Manlansing,* G.R. Nos. 131736-37, March 11, 2002, 378 SCRA 685, 701; *People v. Cabote,* G.R. No. 136143, November 15, 2001, 369 SCRA 65; *People v. Kinok,* G.R. No. 104629, November 13, 2001, 368 SCRA 510, 521; *People v. Bautista,* G.R. No. 131840, April 27, 2000, 331 SCRA 170; *People v. Valdez,* G.R. No. 127663, March 11, 1999, 304 SCRA 611, 626; *People v. Raquipo,* G.R. No. 90766, August 13, 1990, 188 SCRA 571, 577.

[49] *People v. Arca,* G.R. No. 135857, June 18, 2003, 404 SCRA 311; *People v. Mesa,* G.R. No. 120072, July 28, 1997, 276 SCRA 407; *People v. Patrolla, Jr.,* G.R. No. 112445, March 7, 1996, 254 SCRA 467; *People*

in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make."[49]

The essence of treachery lies in the attack which comes without warning, and is swift, deliberate and unexpected, and affords the hapless, unarmed and unsuspecting victim no chance to resist or escape,[50] ensuring its commission without risk to the aggressor, without the slightest provocation on the part of the victim.[51] What is decisive in treachery is that the execution of the attack made it impossible for the victim to defend himself or retaliate.[52] Treachery may also be appreciated even if the victim was warned of the danger to his life where he was defenseless and unable to flee at the time of the infliction of the *coup de grace*.[53]

Here, Bernabe was suddenly shot without any warning by appellant at a distance of about 3 to 4 meters. An unexpected and sudden attack, which renders the victim unable and unprepared to defend himself by reason of the suddenness of the attack, constitutes *alevosia*.[54] Even a frontal attack could be treacherous when unexpected and on an unarmed victim would be in no position to repel the attack or avoid it.[55]

---

v. Lacao, Sr., G.R. No. 95320, September 4, 1991, 201 SCRA 317; *People v. Velaga, Jr.,* G.R. No. 87202, July 23, 1991, 199 SCRA 518, 523.

[50] *People v. Baltazar*, G.R. No. 143126, July 31, 2003, 407 SCRA 542.

[51] *People v. Gregorio,* G.R. No. 153781, September 24, 2003, 412 SCRA 90.

[52] *People v. Almedilla,* G.R. No. 150590, August 21, 2003, 409 SCRA 428.

[53] *People v. Escote, Jr.,* G.R. No. 140756, April 4, 2003, 400 SCRA 603, citing *People v. Bustos,* G.R. No. L-35475, March 16, 1989, 171 SCRA 243.

[54] *People v. Pinuela,* G.R. Nos. 140727-28, January 31, 2003, 396 SCRA 561.

[55] *People v. Gumayao,* G.R. No. 138933, October 28, 2003, 414 SCRA 539; *People v. Dala,* G.R. No. 134563, October 28, 2003, 414 SCRA 532; *People v. Perez,* G.R. No. 134485, October 23, 2003, 414 SCRA 106; *People v. Pedrigal,* G.R. No. 152604, September 18, 2003, 411 SCRA 339; *People v. Vicente,* G.R. No. 137296, June 26, 2003, 405 SCRA 40; *People v. Caballero,* G.R. Nos. 149028-30, April 2, 2003, 400 SCRA 424; *People v. Alfon,* G.R. No. 126028, March 14, 2003, 399 SCRA 64.

On the penalty and award of damages

Murder is punishable by *reclusion perpetua* to death.[56] There being no mitigating nor aggravating circumstances,[57] appellant was correctly sentenced by the RTC and the CA to *reclusion perpetua*.

We, however, modify the award of damages.

Both the RTC and the CA awarded the heirs of Bernabe the amount of ₱75,000.00 as actual damages. It is settled that actual damages must be duly substantiated by documentary evidence, such as receipts to prove the expenses incurred as a result of the death of the victim.[58] Here, only the amount of ₱6,030.00 is supported by the evidence on record.[59] Too, the alleged miscellaneous expenses of ₱68,970.00 cannot be the basis of an award because they were not sufficiently proven.[60]

However, consistent with Our ruling in *People v. Werba*,[61] which affirmed the case of *People v. Villanueva*,[62] We award temperate damages in the amount of ₱25,000.00 in lieu of the actual damages of a lesser amount. As well stated in said cases, to rule otherwise would be anomalous and unfair because the victim's heirs who tried but succeeded in proving actual damages of an amount less than ₱25,000 would be in a worse situation

---

[56] Revised Penal Code, Art. 248.

[57] *Id*., Art. 63(2).

[58] *Id*. at 431, citing Civil Code of the Philippines, Art. 2199; *People v. Perreras,* G.R. No. 139622, July 31, 2001, 362 SCRA 202, 214, citing *People v. Galo,* G.R. No. 132025, January 16, 2001, 349 SCRA 161.

[59] *People v. Ibañez,* G.R. Nos. 133923-24, July 30, 2003, 407 SCRA 406, 430; records, pp. 119-121.

[60] *Id*. at 430-431, citing *People v. Mercado,* G.R. No. 116239, November 29, 2000, 346 SCRA 256, 291; *People v. Nullan,* G.R. No. 126303, April 14, 1999, 305 SCRA 679, 706, citing *People v. Cordero,* G.R. No. 108919, October 11, 1996, 263 SCRA 122; *People v. Degoma,* G.R. Nos. 89404-05, May 22, 1992, 209 SCRA 266.

[61] G.R. No. 144599, June 9, 2004, 431 SCRA 482.

[62] G.R. No. 139177, August 11, 2003, 408 SCRA 571.

than those who might have presented no receipts at all but would now be entitled to ₱25,000 temperate damages.[63]

Civil indemnity of ₱50,000.00[64] and moral damages in the amount of ₱50,000.00 were correctly awarded. Pursuant to Article 2206(3) of the Civil Code, the spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased resulting from a crime.

The award of exemplary damages in the amount of ₱25,000.00 is likewise justified when treachery is proved,[65] as in this case.

WHEREFORE, the appealed judgment is *AFFIRMED WITH MODIFICATION*. Appellant Rodolfo Sison, *alias* "Danny" and "Pagong," is found *GUILTY* beyond reasonable doubt of murder qualified by treachery and sentenced to suffer *reclusion perpetua*.

Appellant is ordered to pay the heirs of Bernabe dela Cruz the amounts of ₱50,000.00 as **civil indemnity**, ₱50,000.00 as **moral damages**, ₱25,000.00 as **temperate damages,** and ₱25,000.00 as **exemplary damages**.

SO ORDERED.

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

---

[63] *People v. Werba, supra* at 499, citing *People v. Villanueva, id*.

[64] *People v. Mostrales,* G.R. No. 125937, August 28, 1998, 294 SCRA 701; *People v. Prades,* G.R. No. 127569, July 30, 1998, 293 SCRA 411.

[65] *People v. Malinao,* G.R. No. 128148, February 16, 2004, 423 SCRA 34; *People v. Ibañez, supra* note 59, citing *People v. Bernal,* G.R. Nos. 132791 & 140465-66, September 2, 2002, 388 SCRA 211; *People v. Escote, Jr., supra* note 53, citing *People v. Catubig,* G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

[*] Vice Associate Justice Antonio Eduardo B. Nachura. Justice Nachura is on official leave per Special Order No. 507 dated May 28, 2008.

SECOND DIVISION

[G.R. No. 179277. June 18, 2008]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **REMON COJA *y* SIMEON,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; GRAVAMEN OF THE OFFENSE. — The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent. Consequently, for the charge of rape to prosper, the prosecution must prove that (1) the accused had carnal knowledge of the complainant; and, (2) that the same was accomplished through force or intimidation.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT RELATIVE TO THE CREDIBILITY OF RAPE VICTIM ARE NORMALLY RESPECTED AND NOT DISTURBED ON APPEAL; EXCEPTIONS; NOT PRESENT IN CASE AT BAR. — In cases of rape, only two (2) persons are normally privy to its occurrence, the complainant and the accused. Generally, the nature of the offense is such that the only evidence that can prove the guilt of the accused is the testimony of the complainant herself. Thus, the prosecution of rape cases is anchored mainly on the credibility of the complaining witness. As a general rule, the findings of the trial court relative to the credibility of the rape victim are normally respected and not disturbed on appeal. More so, if they are affirmed by the appellate court. It is only in exceptional circumstances that this rule is brushed aside, such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which could affect the result of the case. The Court does not find any of these exceptions in the case at bar.

3. CRIMINAL LAW; RAPE; CARNAL KNOWLEDGE MAY BE PROVEN BY CIRCUMSTANTIAL EVIDENCE; REQUISITES; CASE AT BAR. — Naturally, AAA could not have seen appellant insert his penis into her vagina primarily because AAA lost

her consciousness. Hence, carnal knowledge may be proven by circumstantial evidence provided that there is more than one circumstance, the facts from which the inferences are derived are proved, and the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. x x x Indeed, the prosecution evidence has sufficiently established the following: first, AAA positively identified appellant as the one who went behind her back and covered her mouth with a handkerchief; second, appellant was the last person AAA saw before the latter lost consciousness; third, when she regained consciousness, she found herself in a very compromising situation, with her pants down and her legs spread apart; fourth, upon reaching the house of her godfather, AAA immediately declared that appellant was the one who ravished her; and fifth, the medical findings reveal injuries supportive of sexual assault. The combination of these circumstances establishes beyond reasonable doubt that AAA was raped by appellant while she was in a state of unconsciousness. These circumstances constitute an unbroken chain of events which inevitably points to appellant, to the exclusion of all others, as the perpetrator of the crime.

4. ID.; ID.; NOT NEGATED BY ABSENCE OF INJURIES OR HYMENAL LACERATIONS.— Appellant capitalizes on the absence of extragenital injuries, hymenal lacerations and spermatozoa to belie the accusation of rape against him. The absence of extragenital injuries only corroborated AAA's claim that she was unconscious at the time of the alleged rape. Clearly, AAA was not able to physically resist appellant's sexual advances. In any event, it must be stressed that medical findings of injuries or hymenal lacerations in the victim's genitalia are not essential elements of rape. Even the absence of such injuries does not negate rape. What is indispensable is that there was penetration of the penis, however slight, into the *labia* or lips of the female organ. Moreover, the presence of superficial abrasion in the fourchette corroborates the allegation that there was sexual assault. Although the medico-legal expert testified that it may have been caused by scratching or pressure exerted on the area, it is highly probable that it has been caused by penile penetration in light of the allegations of AAA that she was sexually molested the day before the examination.

5. REMEDIAL LAW; EVIDENCE; CONSPIRACY; PROVEN IN CASE AT BAR. — Appellant maintains that he was only charged of rape because he was the only person known to AAA at the time of the incident and was the last one she saw before she passed out. This argument is not well-taken. Aside from the fact that he was the last person AAA saw before she lost consciousness, appellant was also the one who covered her mouth with a handkerchief which caused her to lose consciousness. It is of no moment that AAA identified appellant and not the latter's cohorts as the perpetrator considering that the existence of conspiracy was alleged and proven by the concerted actions of appellant and four others in abducting AAA.

6. ID.; ID.; ALIBI; TO PROSPER, ACCUSED MUST PROVE PHYSICAL IMPOSSIBILITY FOR HIM TO HAVE BEEN AT THE SCENE OF THE CRIME. — The defense of alibi must fall in light of AAA's positive identification of appellant. For alibi to prosper, it does not suffice to prove that the accused was at another place when the crime was committed, but it must also be shown that there was physical impossibility for him to have been at the scene of the crime. It was not physically impossible for appellant to go to Noveleta and perpetrate the crime then proceed to Kawit where he was apprehended for it is only a short distance away as shown by the records.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TINGA, *J.*:

On automatic review is the Decision[1] of the Court of Appeals dated 30 April 2007 in CA-G.R. CR-H.C. No. 00849 affirming *in toto* the Decision[2] of the Regional Trial Court (RTC) of

[1] *Rollo,* pp. 4-23; penned by Associate Justice Edgardo F. Sundiam, and concurred in by Associate Justices Portia Aliño-Hormachuelos and Monina Arevalo-Zenarosa.

[2] CA *rollo*, pp. 22-30; penned by Judge Melchor Q. C. Sadang.

Cavite City, Branch 17, in Criminal Case No. 222-01 finding appellant Ramon Coja *y* Simeon guilty beyond reasonable doubt of the crime of rape, and sentencing him to suffer the penalty of *reclusion perpetua* and to pay ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

On 2 May 2001, appellant was charged in an Information for rape allegedly committed as follows:

> That on or about the 1st day of May 2001 in the Municipality of Noveleta, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with four (4) other persons whose real names, personal identities and whereabouts are still unknown, by means of force and taking advantage of superior strength, and while the herein private complainant, [AAA],[3] a minor of 16 years old, was deprived of reason or otherwise unconscious, with lewd designs and actuated by lust, did then and there, willfully, unlawfully, and feloniously have carnal knowledge of the said [AAA], against her will and consent, to her damage and prejudice.
>
> CONTRARY TO LAW.[4]

Upon arraignment, appellant pleaded not guilty. Trial then proceeded.

The prosecution presented the testimonies of the victim, AAA, her godfather, Rolando Valido (Valido), the police officer who conducted the investigation and effected the arrest of appellant, SPO1 Clipseo Mediran (Mediran), and medico-legal officer Dr. Annabelle Soliman (Soliman).

AAA narrated that on 1 May 2001, at around 6:00 p.m., she and her sister were in a vacant lot owned by AKI-RIN Restaurant

---

[3] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004, " and its implementing rules, the real name of the victim, together with that of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

[4] Records, p. 1.

located in Magdiwang, Noveleta, Cavite. She asked permission from her sister to visit her friend Cindy at Teacher's Village and on her way there, she met the brother of Cindy. After their talk, AAA decided not to proceed to Cindy's place anymore and instead returned to her sister. When she arrived at the vacant lot, she heard a whistle ("*sitsit*") coming from appellant. Suddenly, two (2) unidentified persons approached and held her by the arms. Appellant went behind her back and covered her nose and mouth with a black handkerchief. She lost consciousness. Upon regaining consciousness, AAA found herself lying on the ground in another vacant lot some 200 meters away from AKI-RIN Restaurant, with her legs spread apart, her pants down and her shoes gone. She felt pain in her legs and in her lower abdominal area. She managed to crawl away from the vacant lot to the house of her godfather, Valido. There, she cried and repeatedly uttered the name of appellant. Valido summoned AAA's aunts who in turn called for AAA's uncle. The latter called for the *barangay* patrol. All together, they went to the house of AAA in Putol and from there they proceeded to police station on their way to which they met AAA's mother.

At the police station, AAA gave a written statement. Appellant was immediately arrested and brought to the police station where AAA was able to identify him. The following day, AAA went to the National Bureau of Investigation (NBI) where she was examined by a doctor. When asked for the reason why appellant committed the alleged dastardly act, AAA answered that when she quit as a member of the fraternity headed by appellant, the latter threatened her that something would happen to her.[5]

Valido testified that he was inside his house in San Jose, Noveleta, Cavite watching television when he heard somebody outside the house calling out, "*Ninong, Ninong, tulungan mo ako*." He went out and saw AAA all dirtied and crying. He let her inside the house and there AAA told him, "*Ninong, ginalaw ako, ginalaw ako*." Valido asked AAA for the culprit and she replied, "*Coja, Coja*."[6]

---

[5] TSN, 14 August 2001, pp. 7-18.

[6] TSN, 22 January 2002, pp. 3-6.

Mediran was the police investigator assigned at the police station in Noveleta, Cavite on 1 May 2001. At 10:00 p.m., he received a complaint from AAA who reported that she was raped by five (5) men. Mediran, accompanied by Olan Monzon, PO1 Nolasco and Barangay Captain Lamit, then went to the house of appellant in Gahak, Kawit, Cavite but did not find him there. They continued searching for appellant until they found him in Kaingin attending a meeting *de avance*. They invited appellant to the police station where AAA positively identified him as one of those who raped her.[7]

Soliman, an NBI medico-legal officer conducted an examination on AAA. She issued Living Case No. MG-01-374 stating her findings as follows:

GENERAL PHYSICAL EXAMINATION:

x x x x x x x x x

No evident sign of extragenital physical injury noted.

GENITAL EXAMINATION

Pubic hair, fully grown, abundant. *Labia majora*, gaping, *Labia minora*, coaptated. Fourchette, tense, reddish, superficial abrasion. Vestibule, mucosa, pinkish. Hymen, tall, thick, intact.

CONCLUSIONS:

No evident signs of extragenital physical injury was[sic] noted on the body of the subject at the time of the examination.
Recent genital injury noted.[8]

The defense interposed alibi. Appellant recalled that he met AAA sometime in the second week of March 2001 when AAA joined the brotherhood Vampire Trasher, a group of skateboarders headed by him.[9] Appellant claimed that AAA stayed at his house for two days in March when she ran away from home. That was the last time appellant saw her. On 1 May 2001 at 4:00 p.m.

---

[7] TSN, 2 October 2001, pp. 4-8.

[8] Records, p. 86.

[9] TSN, 14 May 2002, pp. 3-7; 15-17.

appellant, together with his ten companions, was in Kaingin in Kawit, Cavite making tents for a wake. After the work, he then proceeded to a "*tapsihan,*" also in Kaingin, to attend a meeting *de avance*. It was there that he was arrested at around 10:00 p.m. that day and brought to the Noveleta Police Station.[10] The following day, he was brought to the Prosecutor's Office in Imus, Cavite.[11]

His alibi was corroborated by Alfred Solis who testified that he and several other persons were with appellant on that fateful day in Barangay Kaingin, Kawit, Cavite. They started their work on a tent at 4:00 p.m. and finished the same at 7:00 p.m. After completing the job, they then attended the meeting *de avance* of Mayor Poblete. At the said meeting, five police officers arrived and arrested appellant. He and his companions followed appellant to the police station but they were not able to give their statement to the police.[12]

Shirley Coja, appellant's mother, also testified that appellant asked her permission to leave the house at 4:00 p.m. on 1 May 2001 to attend a dance practice. She was surprised to learn that appellant was arrested by the police. She went to see appellant at the Noveleta Police Station after the arrest but she was likewise not allowed by the police investigator to explain her side.[13]

On 25 August 2003, the RTC rendered judgment finding appellant guilty beyond reasonable doubt of the crime of rape. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused Remon Coja guilty beyond reasonable doubt of the crime of rape defined and penalized under paragraph (1) (b) of Article 266-A of the Revised Penal Code, as amended by R.A. [No.] 8353, and hereby sentences him to suffer the penalty of *reclusion perpetua*.

---

[10] *Id*. at 10-13; 26-29.

[11] *Id*. at 29-30.

[12] TSN, 21 January 2003, pp. 7-12.

[13] TSN, 5 May 2003, pp. 6-8.

Further, he is hereby ordered to pay to private complainant the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.[14]

The issues boil down to two, namely: whether rape was consummated, and whether criminal culpability may be imputed to appellant.

In concluding that AAA was raped, the RTC relied on the findings of the medico-legal officer, thus:

> In the case at bar, the report of the medico-legal officer shows that [AAA] did not sustain extra-genital physical injury and her hymen was intact. Recent injury was, however, noted on her genitalia. Thus, the *labia majora* was gaping, the *labia minora* 'coaptated,' and the fourchette was tense with "reddish superficial abrasion." To the mind of this Court, these medical findings indicate more than mere scraping of the *mons pubis* or pudendum. At the very least, they show that there was touching of the *labia majora* and *labia minora* and therefore it may be legally said that private complainant's private organ was indeed penetrated or entered. Indeed, a gaping *labia minora* shows consummation of rape x x x
>
> The nature of the genital injuries are [*sic*] also reasonably consistent with penetration by the male organ. Anent the abrasion on the fourchette, Dr. Soliman testified the same could have been caused by pressure by a male organ on the outer part of the genitalia. [AAA] also stated that she felt pain on her abdominal area and her legs. Such pain could have been caused by pressure exerted on that area, such as by a person lying on top of her. (Citations omitted)[15]

On the basis of circumstantial evidence presented, the RTC had no doubt that appellant was the perpetrator of the crime. It found that:

> In the case at bar, the evidence shows that accused was known to [AAA] at the time of the incident and she could have easily identified him as the person who covered her mouth while two men held her arms. It is also reasonable to deduce that only the accused and his companions could have had control over the person of [AAA] after

---

[14] CA *rollo,* p. 30.

[15] *Id*. at 28-29.

she was rendered unconscious and it was only they who could have sexually molested her.

The evidence also shows that after she regained consciousness, [AAA] realized that she was abandoned at the wooded and grassy area and she felt weak. Her shoes were missing, her legs were spread apart, her pants have been lowered, and her bra was inverted. As earlier stated, she also felt pain in her abdominal area and her legs. These circumstances are telltale signs of sexual assault and this Court gives full faith and credence to [AAA's] testimony thereon. She testified in a direct and forthright manner on the witness stand and there is nothing in the evidence to show that she might have been actuated by ill-motives in imputing to accused a crime as serious as rape. The evidence also shows that [AAA] reported the matter to the police at 10 [p.m.] of the same day, May 1, 2001, or barely 4 hours after accused covered her mouth. She submitted herself to physical examination at the NBI Clinic, Manila the following morning 9:25 a.m. of May 2, 2001. The police investigator also observed that at the time [AAA] came to report the incident she appeared as though she was bewildered. These circumstances show that there was no time for [AAA] to concoct a rape story and that even in her weakened condition, she was determined to swiftly redeem her honor and bring her defiler to justice. Indeed, [AAA] would not have immediately come out in the open and expose herself to the shame and stigma of a public disclosure of the assault on her womanhood if the same were not true. (Citations omitted)[16]

On appeal, the Court of Appeals affirmed *in toto* the RTC ruling.

Appellant insists that his guilt has not been proven beyond reasonable doubt. He assails the credibility of AAA's testimony with respect to the commission of the crime and the identity of the alleged perpetrator. He raises doubts as to whether AAA was raped because there was no evident sign of extragenital injury nor traces of semen in her organ and because her hymen was still intact. These medical findings further lend dubiety to AAA's claim that at least five men raped her. Assuming further that AAA was indeed raped, appellant adds, there is no direct evidence that would directly implicate him as the perpetrator.

---

[16] *Id*. at 29-30.

Appellant asserts that there were no witnesses to corroborate AAA's statement before or after she passed out. He contends that AAA only implicated him mainly because he was the last one she had seen before she lost consciousness.[17]

For its part, the Office of the Solicitor General (OSG) maintains that appellant's guilt has been proven beyond reasonable doubt. It upholds the credibility of AAA's testimony pointing to appellant as the one who raped her. The OSG contends that while AAA was rendered unconscious and there were no witnesses to such rape, there was sufficient circumstantial evidence to establish with moral certainty that it was appellant who raped AAA.[18]

Essentially, the issue to be resolved is whether appellant's guilt has been proven beyond reasonable doubt.

The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent.[19] Consequently, for the charge of rape to prosper, the prosecution must prove that (1) the accused had carnal knowledge of the complainant; and, (2) that the same was accomplished through force or intimidation.[20]

In cases of rape, only two (2) persons are normally privy to its occurrence, the complainant and the accused.[21] Generally, the nature of the offense is such that the only evidence that can prove the guilt of the accused is the testimony of the complainant herself.[22] Thus, the prosecution of rape cases is anchored mainly on the credibility of the complaining witness.

As a general rule, the findings of the trial court relative to the credibility of the rape victim are normally respected and

---

[17] *Id*. at 59-62.

[18] *Id*. at 97-105.

[19] *People v. Agsaoay*, *Jr.,* G.R. Nos. 132125-26, 3 June 2004, 430 SCRA 450, 459; *People v. Dagami*, 461 Phil. 139 (2003).

[20] *People v. Layugan*, G.R. Nos. 130493-98, 28 April 2004, 428 SCRA 98, 105.

[21] *People v. Buenviaje*, 408 Phil. 342, 351 (2001)

[22] *People v. Bares*, 407 Phil. 747, 759 (2001).

not disturbed on appeal. More so, if they are affirmed by the appellate court.[23] It is only in exceptional circumstances that this rule is brushed aside, such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which could affect the result of the case.[24] The Court does not find any of these exceptions in the case at bar.

AAA's narration of the events surrounding the alleged sexual assault was adjudged by the trial court as credible. The narration reads, thus:

Q: Now, on May 1, 2001 at around six o'clock in the evening, can you recall where you were, Miss Witness?
A: We were at the vacant lot of AKI-RIN, ma'am.

Q: Where is this AKI-RIN located?
A: At Magdiwang, ma'am.

Q: In what municipality is this located?
A: In Noveleta, ma'am.

Q: Who were your companions at that time?
A: My sister, ma'am.

Q: What were you doing there at that time?
A: I was talking to my sister and I asked permission from her that I will go to my friend Cindy.

Q: And what did you do next, if any?
A: Then we separated, ma'am.

Q: And where did you go?
A: To my friend Cindy at Teacher's Village, ma'am.

Q: Where is this Teacher's Village located?
A: At Magdiwang, Noveleta, ma'am.

Q: Now, after going to the place of your friend, what did you do next?
A: I was not able to talk with my friend because I met the brother of my friend, Joseph.

---

[23] *Pucay v. People*, G.R. No. 167084, 31 October 2006, 506 SCRA 411, 420.

[24] *People v. Macapal, Jr.,* G.R. No. 155335, 14 July 2005, 463 SCRA 387, 400.

Q: So, what did you do next after talking to the brother of Joseph?
A: I went back and I also passed-by the same place AKI-RIN, ma'am.

Q: At around what time was that, Miss Witness?
A: More or less, 6:30, ma'am.

Q: So, while you were at AKI-RIN around 6:30 in the evening, can you recall if anything unusual happened?
A: I was already on my way going back to my sister and suddenly "*sinitsitan ako ni Coja*."

Q: What happened next after Coja called you?
A: Suddenly, two (2) persons approached me and held me at my arms, ma'am.

Q: Do you know who these two (2) persons were?
A: No, ma'am.

Q: If you will see these persons again, will you be able to identify them?
A: The one, ma'am.

Q: What about Remon Coja, what did he do, if any?
A: He at once went to my back, he covered by mouth and nose with black handkerchief and I lost consciousness, ma'am.

Q: Now, when did you regain your consciousness?
A: I cannot remember the time because I was still shocked and I was weak, ma'am.

Q: Can you recall where you were when you regained your consciousness?
A: Yes, ma'am.

Q: Where were you, Miss Witness?
A: At the vacant lot near RCBC, ma'am.

Q: Where is this RCBC located?
A: It was just after the bridge of Magdiwang.

Q: Also in the Municipality of Noveleta?
A: Yes, ma'am.

Q: Who were your companions when you regained your consciousness?
A: No one, ma'am.

Q: What did you see after you regained your consciousness?
A: When I regained consciousness, I noticed that I do not have my shoes, my legs were spread, and my pants was down, I experienced pain in my lower abdominal area, and my legs were aching.

Q: What happened next, Miss Witness?
A: I fixed myself, ma'am.

Q: And then what did you do next?
A: I crawled at the vacant lot because it was going up, ma'am.

Q: And what did you do next or where did you go?
A: I went to the house of my godfather because that was the nearest place I could go, ma'am.

Q: Where was that place, Miss Witness?
A: In San Jose II, ma'am.

Q: Also in Noveleta?
A: Yes, ma'am.

Q: What is the name of your godfather?
A: Rolando Valido, ma'am.

Q: Now, what happened when you went to the place of your godfather?
A: I cried and cried and I repeatedly said the name of Remon Coja, ma'am.[25]

Naturally, AAA could not have seen appellant insert his penis into her vagina primarily because AAA lost her consciousness. Hence, carnal knowledge may be proven by circumstantial evidence provided that there is more than one circumstance, the facts from which the inferences are derived are proved, and the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[26]

Jurisprudence is replete with cases of rape where the victim was unconscious and the accused was found guilty on the basis

---

[25] TSN, 14 August 2001, pp. 7-11.

[26] RULES OF COURT, Rule 133, Sec. 4*; Mallari v. People*, G.R. No. 153911, 10 December 2004, 446 SCRA 74, 91.

of circumstantial evidence. In *People v. Sabardan*,[27] the victim felt dizzy and lost consciousness after the accused forced her to drink beer. Upon waking up, she found herself completely naked and felt severe pains in her vagina. The Court upheld the culpability of the accused for rape. In *People v. Gaufo*,[28] the victim was hit on her head by the accused but she fought back and asked for help. The accused then punched her abdomen causing her to lose consciousness. Upon regaining her bearings, she noticed that her underwear was missing, her vagina was bleeding and her body was painful. The combination of these circumstances, among others, led the Court to adjudge the accused guilty of rape. In *People v. Perez*,[29] this Court ruled that the victim's positive identification of the accused as the person who came to her room and covered her nose and mouth with a foul smelling handkerchief until she lost consciousness, the blood and white substance found in her aching vagina, her torn shorts and her missing panties all led the Court to the conclusion that accused had raped her while she was unconscious.

The circumstances enumerated by the Court of Appeals yield the inescapable conclusion that rape did occur and was perpetrated by appellant, thus:

1. [AAA] joined the "Vampire [T]rasher Fraternity" with accused-appellant as the fraternity's acting president;
2. [AAA] left the fraternity and was warned with a retaliation from appellant;
3. [AAA] came across appellant who was then in company with other persons, on that hapless evening of May 1, 2001;
4. The two companions of appellant held [AAA] in both hands while accused-appellant covered her mouth with a black handkerchief and drugged her, rendering her unconscious[;]
5. When [AAA] regained consciousness, her shoes were missing, her pants were down and her legs were wide opened;

---

[27] G.R. No. 132135, 21 May 2004, 429 SCRA 9.

[28] 469 Phil. 66 (2004).

[29] 366 Phil. 741 (1999).

6. After the incident, [AAA] sought the help of her godfather, Rolando Valido who confirmed her ordeal and the fact that she pointed to appellant as her tormentor;

7. [AAA] reported the incident to the police, had her body examined and exposed herself to the rigors, the pain, the hardship and the humiliation of a public trial; and

8. Dr. Soliman confirmed in her testimony the presence of abrasion in [AAA's] *fourchette* and her gaping *labia majora*.[30]

Indeed, the prosecution evidence has sufficiently established the following: first, AAA positively identified appellant as the one who went behind her back and covered her mouth with a handkerchief; second, appellant was the last person AAA saw before the latter lost consciousness; third, when she regained consciousness, she found herself in a very compromising situation, with her pants down and her legs spread apart; fourth, upon reaching the house of her godfather, AAA immediately declared that appellant was the one who ravished her; and fifth, the medical findings reveal injuries supportive of sexual assault.

The combination of these circumstances establishes beyond reasonable doubt that AAA was raped by appellant while she was in a state of unconsciousness. These circumstances constitute an unbroken chain of events which inevitably points to appellant, to the exclusion of all others, as the perpetrator of the crime.

Appellant capitalizes on the absence of extragenital injuries, hymenal lacerations and spermatozoa to belie the accusation of rape against him. The absence of extragenital injuries only corroborated AAA's claim that she was unconscious at the time of the alleged rape. Clearly, AAA was not able to physically resist appellant's sexual advances. In any event, it must be stressed that medical findings of injuries or hymenal lacerations in the victim's genitalia are not essential elements of rape. Even the absence of such injuries does not negate rape. What is indispensable is that there was penetration of the penis, however slight, into the *labia* or lips of the female organ.[31]

---

[30] CA *rollo,* pp. 105-108.

[31] *People v. Padilla*, G.R. No. 142899, 31 March 2004, 426 SCRA 648, 663.

Moreover, the presence of superficial abrasion in the fourchette corroborates the allegation that there was sexual assault. Although the medico-legal expert testified that it may have been caused by scratching or pressure exerted on the area,[32] it is highly probable that it has been caused by penile penetration in light of the allegations of AAA that she was sexually molested the day before the examination.

Appellant maintains that he was only charged of rape because he was the only person known to AAA at the time of the incident and was the last one she saw before she passed out. This argument is not well-taken. Aside from the fact that he was the last person AAA saw before she lost consciousness, appellant was also the one who covered her mouth with a handkerchief which caused her to lose consciousness. It is of no moment that AAA identified appellant and not the latter's cohorts as the perpetrator considering that the existence of conspiracy was alleged and proven by the concerted actions of appellant and four others in abducting AAA.

The defense of alibi must fall in light of AAA's positive identification of appellant. For alibi to prosper, it does not suffice to prove that the accused was at another place when the crime was committed, but it must also be shown that there was physical impossibility for him to have been at the scene of the crime.[33] It was not physically impossible for appellant to go to Noveleta and perpetrate the crime then proceed to Kawit where he was apprehended for it is only a short distance away as shown by the records.

In sum, the physical evidence corroborated by circumstantial evidence justifies appellant's conviction and the imposition of the penalty of *reclusion perpetua*.

WHEREFORE, the Decision of the Court of Appeals of 30 April 2007 affirming the Decision dated 25 August 2003 of the Regional Trial Court of Cavite City, Branch 17 in Criminal Case

---

[32] TSN, 16 April 2002, pp. 17-18.

[33] *People v. Malejana*, G.R. No. 145002, 24 January 2006, 479 SCRA 610, 624-625.

No. 222-01, finding appellant Remon Coja *y* Simeon guilty beyond reasonable doubt of rape and sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to pay AAA the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, is hereby *AFFIRMED*.

SO ORDERED.

Quisumbing (Chairperson), Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

EN BANC

[A.M. No. MTJ-07-1682. June 19, 2008]

ESTER F. BARBERO, *complainant, vs.* **JUDGE CESAR M. DUMLAO, Municipal Trial Court, San Mateo, Isabela,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; WHERE FILED. — The criminal case Barbero filed against Medina was pending before the *RTC* of *Santiago City*. Judge Anghad of the RTC issued the warrant of arrest, and Medina was arrested by virtue of that warrant. Section 3, Rule 114 of the Rules of Court provides that no person under detention by legal process shall be released except when he is admitted to bail. Section 19 provides that the accused must be discharged upon approval of the bail by the judge with whom it was filed in accordance with Section 17. Section 17 provides that the bail may be filed with the *court where the case is pending*, unless (1) the judge in that court is absent or unavailable, or (2) the accused is arrested in a province, city, or municipality other than where the case is pending. If the judge is absent or unavailable, the bail should be filed with *another branch of the same court*.

If the accused is arrested in a province, city, or municipality other than where the case is pending, the bail should be filed with *any RTC of the place*. In the present case, there was no showing that Judge Anghad was absent or unavailable or that Medina was arrested outside Santiago City. Thus, Medina's bail should have been filed with Judge Anghad. Even if Judge Anghad were absent or unavailable or even if Medina were arrested in San Mateo, Judge Dumlao would still be liable because the bail should have been filed with another branch of the RTC in Santiago City or with the RTC of San Mateo, respectively. Since the criminal case was pending before the RTC of Santiago City and there was no showing that Judge Anghad of the RTC was absent or unavailable, Judge Dumlao lacked authority to approve the bail and order Medina's release.

2. JUDICIAL ETHICS; JUDGES; CHARGE OF GROSS IGNORANCE OF THE LAW; SILENCE IS ADMISSION OF THE TRUTH OF THE CHARGES. — The Court directed Judge Dumlao *several* times to comment on Barbero's allegations. Judge Dumlao opted to ignore all of the Court's directives. By his silence, Judge Dumlao admitted the truth of the allegations. In *Palon, Jr. v. Vallarta*, the Court held that silence is admission of the truth of the charges: Respondent judge failed to comment on the complaint or file any responsive pleading or manifestation despite receipt of notice to do so. x x x The natural instinct of man impels him to resist an unfounded claim or imputation and defend himself. It is against human nature to just remain reticent and say nothing in the face of false accusations. Hence, **silence** x x x **is an admission of the truth of the charges. Respondent judge is deemed to have admitted the charges against him**.

3. ID.; ID.; ID.; ACTS OF APPROVING BAIL AND ORDERING THE RELEASE OF ACCUSED WHOSE CASES ARE PENDING BEFORE OTHER COURTS CONSTITUTE GROSS IGNORANCE OF THE LAW. — The acts of approving bail and ordering the release of accused whose cases are pending before other courts constitute gross ignorance of the law. Gross ignorance of the law is a serious offense punishable by (1) dismissal from the service, forfeiture of all or part of the benefits, except accrued leave credits, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations; (2) suspension

from office without salary and other benefits for more than three but not exceeding six months; or (3) a fine of more than ₱20,000 but not exceeding ₱40,000.

4. ID.; ID.; NEW CODE OF JUDICIAL CONDUCT; COMPETENCE IS A PREREQUISITE TO THE DUE PERFORMANCE OF JUDICIAL OFFICE. — Aside from *Lim*, the Court also found Judge Dumlao grossly ignorant of the law in *Pascual v. Judge Dumlao*. In that case, Judge Dumlao (1) hastily ordered the issuance of a temporary restraining order (TRO) without notice and hearing; (2) ordered the issuance of the TRO even though there was no showing of any grave or irreparable injury; (3) hastily granted a motion to deposit harvest without notice and hearing; and (4) failed to order the sheriff to render an accounting of the harvest. Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary provides that competence is a prerequisite to the due performance of judicial office. Judge Dumlao lacks this prerequisite.

5. ID.; ID.; REFUSAL TO COMMENT ON ADMINISTRATIVE COMPLAINTS DESPITE SEVERAL DIRECTIVES FROM THE COURT CONSTITUTES GROSS MISCONDUCT, OUTRIGHT DISRESPECT, INDIFFERENCE, AND RECALCITRANT STREAK IN CHARACTER. — Judge Dumlao disrespected the Court by repeatedly refusing to comment on the affidavit-complaint. In its 1st Indorsement dated 7 August 2003, 1st Tracer dated 11 November 2003, and 2nd Tracer dated 10 March 2004, the OCA directed Judge Dumlao to comment on the affidavit-complaint. In its Resolutions dated 6 April 2005, 17 August 2005, and 6 February 2006, the Court fined Judge Dumlao ₱500, directed him to comment on the affidavit-complaint, and directed him to show cause why he should not be administratively dealt with for refusing to comment. Judge Dumlao unjustifiably ignored *all* six directives. Court resolutions directing judges to comment on administrative complaints are not mere requests. Judges are duty-bound to obey them fully and promptly. In refusing to comment on the affidavit-complaint for almost five years and despite several directives from the Court, Judge Dumlao blatantly demonstrated gross misconduct, outright disrespect, indifference, and a recalcitrant streak in his character.

6. ID.; ID.; ID.; VIOLATION OF SUPREME COURT DIRECTIVES IS A LESS SERIOUS OFFENSE; IMPOSABLE PENALTY.

— This is the third time Judge Dumlao disrespected the Court. In *Office of the Court Administrator v. Dumlao*, the Court found him liable for ignoring its directives. x x x. In *Lim*, the Court also found Judge Dumlao liable for ignoring its directives. In that case, the Court held that, "We agree with the OCA that [Judge Dumlao] must be held administratively liable for his unjustified failure to comment on an administrative complaint. This constitutes gross misconduct and insubordination." Violation of Supreme Court directives is a less serious offense punishable by (1) suspension from office without salary and other benefits for not less than one nor more than three months, or (2) a fine of more than ₱10,000 but not exceeding ₱20,000.

7. ID.; ID.; ID.; THE COURT WILL NOT HESITATE TO IMPOSE THE ULTIMATE PENALTY FOR IT CANNOT TOLERATE ANY CONDUCT THAT DIMINISHES THE FAITH OF THE PEOPLE IN THE JUDICIAL SYSTEM.— Aside from *Lim*, *Pascual*, and *Office of the Court Administrator*, Judge Dumlao has another administrative case decided against him. In *Morales, Sr. v. Judge Dumlao*, the Court found him liable for violating SC Administrative Circular No. 1-90. x x x. Judge Dumlao has amply demonstrated his incorrigibility and unfitness to be a judge. He is undeterred by the several penalties and stern warnings the Court has given him. The Court will not hesitate to impose the ultimate penalty for it cannot tolerate any conduct that diminishes the faith of the people in the judicial system.

D E C I S I O N

***PER CURIAM*:**

This is a complaint for gross ignorance of the law filed by Ester F. Barbero (Barbero) against Judge Cesar M. Dumlao (Judge Dumlao), Presiding Judge of the Municipal Trial Court, San Mateo, Isabela.

Barbero filed a criminal case[1] for estafa against a certain Herman A. Medina (Medina). The case was raffled to Judge Anastacio D. Anghad (Judge Anghad), Presiding Judge of the

[1] Docketed as Criminal Case No. 36-4142, entitled *"The People of the Philippines v. Herman Medina."*

Regional Trial Court (RTC), Judicial Region II, Branch 36, Santiago City, Isabela. On 19 February 2003, Judge Anghad issued a warrant of arrest[2] commanding the proper officer to arrest Medina.

Medina was arrested by virtue of the warrant of arrest. However, Judge Dumlao approved Medina's bail and, on 9 May 2003, issued an order[3] commanding the Bureau of Jail Management and Penology and the Philippine National Police to release Medina. Barbero alleged that Judge Dumlao's approval of Medina's bail and his order to release Medina were unlawful.

On 15 July 2003, the Office of the Court Administrator (OCA) received an affidavit-complaint[4] from Barbero charging Judge Dumlao with gross ignorance of the law. In its 1st Indorsement[5] dated 7 August 2003, the OCA directed Judge Dumlao to comment on the affidavit-complaint. Judge Dumlao ignored the 1st Indorsement. In its 1st Tracer[6] dated 11 November 2003, the OCA directed Judge Dumlao to comment on the affidavit-complaint. Judge Dumlao ignored the 1st Tracer. In its 2nd Tracer[7] dated 10 March 2004, the OCA directed Judge Dumlao to comment on the affidavit-complaint. Judge Dumlao ignored the 2nd Tracer. In a Resolution[8] dated 6 April 2005, the Court directed Judge Dumlao to comment on the affidavit-complaint and to show cause why he should not be administratively dealt with for ignoring the OCA's directives. Judge Dumlao ignored the 6 April 2005 Resolution.

In a Resolution[9] dated 17 August 2005, the Court reiterated its 6 April 2005 Resolution. Judge Dumlao ignored the 17 August

---

[2] *Rollo*, p. 3.

[3] *Id*. at 4.

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

[5] *Id*. at 7.

[6] *Id*. at 10.

[7] *Id*. at 11.

[8] *Id*. at 18.

[9] *Id*. at 20.

2005 Resolution. In a Resolution dated 6 February 2006, the Court fined Judge Dumlao ₱500 for ignoring its directives and directed Judge Dumlao to comply with the 17 August 2005 Resolution. Judge Dumlao ignored the 6 February 2006 Resolution. In Resolutions dated 18 September 2006 and 19 February 2007, the Court considered Judge Dumlao to have waived his right to comment on the affidavit-complaint and resolved to proceed with the administrative case based on the pleadings already filed.

The Court finds Judge Dumlao liable for gross ignorance of the law and for violation of Court directives.

Section 17(a), Rule 114 of the Rules of Court provides:

> SEC. 17. *Bail, where filed*. — (a) Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality. If the accused is arrested in a province, city, or municipality other than where the case is pending, bail may also be filed with any regional trial court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge therein.

In *Cruz v. Judge Yaneza*,[10] the Court held that:

> There are prerequisites to be complied with. First, the application for bail must be filed in the **court where the case is pending**. In the absence or unavailability of the judge thereof, the application for bail must be filed with **another branch of the same court within the province or city**. Second, if the accused is arrested in a province, city or municipality other than where the case is pending, bail may be filed with any **regional trial court** of the place. (Emphasis ours)

The criminal case Barbero filed against Medina was pending before the *RTC* of *Santiago City*. Judge Anghad of the RTC issued the warrant of arrest, and Medina was arrested by virtue of that warrant.

Section 3, Rule 114 of the Rules of Court provides that no person under detention by legal process shall be released except

[10] 363 Phil. 629, 644 (1999).

when he is admitted to bail. Section 19 provides that the accused must be discharged upon approval of the bail by the judge with whom it was filed in accordance with Section 17. Section 17 provides that the bail may be filed with the *court where the case is pending*, unless (1) the judge in that court is absent or unavailable, or (2) the accused is arrested in a province, city, or municipality other than where the case is pending. If the judge is absent or unavailable, the bail should be filed with *another branch of the same court*. If the accused is arrested in a province, city, or municipality other than where the case is pending, the bail should be filed with *any RTC of the place*.

In the present case, there was no showing that Judge Anghad was absent or unavailable or that Medina was arrested outside Santiago City. Thus, Medina's bail should have been filed with Judge Anghad. Even if Judge Anghad were absent or unavailable or even if Medina were arrested in San Mateo, Judge Dumlao would still be liable because the bail should have been filed with another branch of the RTC in Santiago City or with the RTC of San Mateo, respectively.[11]

Since the criminal case was pending before the RTC of Santiago City and there was no showing that Judge Anghad of the RTC was absent or unavailable, Judge Dumlao lacked authority to approve the bail and order Medina's release.

Barbero alleged that Judge Dumlao's acts of approving Medina's bail and ordering Medina's release were not in accordance with law:

[*N*]*apag-alaman ko* x x x *na* [*si* Medina] *ay basta na lang pinakawalan ni* x x x Judge Cesar M. Dumlao *ng* Municipal Trial Court *ng* San Mateo, Isabela x x x;

[*A*]*ng ginawa ni* Judge Cesar M. Dumlao *ay hindi naaayon sa batas sapagkat wala siyang kapangyarihang pakawalan* x x x [*si* Medina];

---

[11] *De Leon v. Corpuz*, A.M. No. RTJ-03-1780, 14 September 2005, 469 SCRA 624, 627-629; *Inoturan v. Limsiaco, Jr.*, A.M. No. MTJ-01-1362, 6 May 2005, 458 SCRA 48, 55; *Lim v. Dumlao*, A.M. No. MTJ-04-1556, 31 March 2005, 454 SCRA 196, 201; *Adapon v. Domagtoy*, A.M. No. MTJ-96-1112, 27 December 1996, 265 SCRA 824, 830-831.

[*N*]*apag-alaman ko rin na ang pagrerelease na ginawa ni* Judge Dumlao *ay base sa* [bail] *na ipinakita sa kanya*;

[*S*]*a akin pong pagkakaalam, lahat po ng* [bail] *sa* criminal cases *ay dapat aksyunan at aprubahan ng hukom o* judge *na siyang may hawak ng asunto*;

x x x x x x x x x

[*K*]*ung maaari po sana, dahil sa kawalang respeto* [*ni* Judge] Cesar M. Dumlao *sa ating batas* x x x, *ipinakikiusap* [*ko*] *na sana ay imbestigahan ang nasabing pagmamalabis at kawalan ng respeto*[.]

The Court directed Judge Dumlao *several* times to comment on Barbero's allegations. Judge Dumlao opted to ignore all of the Court's directives. By his silence, Judge Dumlao admitted the truth of the allegations. In *Palon, Jr. v. Vallarta*,[12] the Court held that silence is admission of the truth of the charges:

> Respondent judge failed to comment on the complaint or file any responsive pleading or manifestation despite receipt of notice to do so. x x x The natural instinct of man impels him to resist an unfounded claim or imputation and defend himself. It is against human nature to just remain reticent and say nothing in the face of false accusations. Hence, **silence** x x x **is an admission of the truth of the charges. Respondent judge is deemed to have admitted the charges against him**. (Emphasis ours)

This is the second time Judge Dumlao unlawfully approved the bail and ordered the release of Medina. The instant case has exactly the same set of facts as *Lim v. Dumlao*.[13] In that case (1) complainant filed two criminal cases for carnapping and theft against Medina; (2) the criminal cases were filed with the RTC, Judicial Region II, Branch 35, Santiago City, Isabela; (3) Judge Fe Albano Madrid of the RTC issued a warrant of arrest against Medina; (4) Medina was arrested by virtue of the warrant of arrest; (5) Judge Dumlao approved the bail of Medina; and (6) Judge Dumlao ordered the release of Medina.

---

[12] A.M. No. MTJ-04-1530, 7 March 2007, 517 SCRA 624, 628.

[13] *Supra* note 11 at 201-202.

In *Lim*,[14] the Court held that:

It is not disputed that the criminal cases filed by complainant against Herman Medina were pending before the Regional Trial Court of Santiago City, Isabela, Branch 35. In fact, the warrant of arrest was issued by Judge Fe Albano Madrid, presiding judge of the said court. The order of release therefore, on account of the posting of the bail, should have been issued by that court, or in the absence or unavailability of Judge Madrid, by another branch of an RTC in Santiago City. In this case, however, there is no proof that Judge Madrid was absent or unavailable at the time of the posting of the bail bond. In fact, complainant Lim avers that on the day [Judge Dumlao] ordered the release of Medina, Judge Madrid and *all* the judges of the RTC of Santiago City, Isabela were at their respective posts.

It is elementary that a municipal trial court judge has no authority to grant bail to an accused arrested outside of his territorial jurisdiction. The requirements of Section 17(a), Rule 114 x x x must be complied with before a judge may grant bail. **The Court recognizes that not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, but only in cases within the parameters of tolerable misjudgment. Where** x x x **the law is straightforward and the facts so evident, not to know it or to act as if one does not know it constitutes gross ignorance of the law**.

[**Judge Dumlao**] **undeniably erred in approving the bail and issuing the order of release. He is expected to know that certain requirements ought to be complied with before he can approve Medina's bail and issue an order for his release. The law involved is rudimentary that it leaves little room for error**. (Emphasis ours)

The acts of approving bail and ordering the release of accused whose cases are pending before other courts constitute gross ignorance of the law.[15] Gross ignorance of the law is a serious offense[16] punishable by (1) dismissal from the service, forfeiture

[14] *Id*. at 202.

[15] *Español v. Mupas*, A.M. No. MTJ-01-1348, 11 November 2004, 442 SCRA 13, 50.

[16] Section 8, Rule 140 of the Rules of Court.

of all or part of the benefits, except accrued leave credits, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations; (2) suspension from office without salary and other benefits for more than three but not exceeding six months; or (3) a fine of more than ₱20,000 but not exceeding ₱40,000.[17]

Aside from *Lim*, the Court also found Judge Dumlao grossly ignorant of the law in *Pascual v. Judge Dumlao*.[18] In that case, Judge Dumlao (1) hastily ordered the issuance of a temporary restraining order (TRO) without notice and hearing; (2) ordered the issuance of the TRO even though there was no showing of any grave or irreparable injury; (3) hastily granted a motion to deposit harvest without notice and hearing; and (4) failed to order the sheriff to render an accounting of the harvest.

Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary provides that competence is a prerequisite to the due performance of judicial office. Judge Dumlao lacks this prerequisite.

Judge Dumlao disrespected the Court by repeatedly refusing to comment on the affidavit-complaint. In its 1st Indorsement dated 7 August 2003, 1st Tracer dated 11 November 2003, and 2nd Tracer dated 10 March 2004, the OCA directed Judge Dumlao to comment on the affidavit-complaint. In its Resolutions dated 6 April 2005, 17 August 2005, and 6 February 2006, the Court fined Judge Dumlao ₱500, directed him to comment on the affidavit-complaint, and directed him to show cause why he should not be administratively dealt with for refusing to comment. Judge Dumlao unjustifiably ignored *all* six directives.

Court resolutions directing judges to comment on administrative complaints are not mere requests. Judges are duty-bound to obey them fully and promptly.[19] In refusing to comment on the affidavit-complaint for almost five years and despite several

---

[17] Section 11(A), Rule 140 of the Rules of Court.

[18] 414 Phil. 1, 10-13 (2001).

[19] *Palon, Jr. v. Vallarta*, *supra* note 12 at 628-629.

directives from the Court, Judge Dumlao blatantly demonstrated gross misconduct, outright disrespect, indifference, and a recalcitrant streak in his character.[20]

This is the third time Judge Dumlao disrespected the Court. In *Office of the Court Administrator v. Dumlao*,[21] the Court found him liable for ignoring its directives. In that case, the Court held that:

> **It appears that Judge Dumlao ignored and continued to ignore this Court's directive requiring him to file his comment** on complainant Sinaon, Jr.'s administrative complaint. He had been afforded more than ample time within which to file the required pleading. x x x [S]everal Resolutions had been issued by the OCA and this Court requiring Judge Dumlao to comment on the complaint against him. The first Resolution was issued as early as 2 August 2002 and the last was issued almost three years later, or 5 July 2005, by which time, the Court already deemed waived Judge Dumlao's right to file his comment and considered the case submitted for decision based on the pleadings filed. Subsequently, Judge Dumlao again failed to comply with the order of this Court to file his manifestation in the re-docketed administrative complaint (concerning his non-filing of the comment) despite due notice.
>
> **Judge Dumlao had been given more than ample time to abide with the orders of this Court, yet he persistently failed to do so. Judge Dumlao neither offered any reason nor raised any defense for his failure to comply with the mandates of this Court. Nothing was heard from Judge Dumlao as to what had prevented him from complying with the Court's directives. Such insolence should not go unpunished**. (Emphasis ours)

In *Lim*,[22] the Court also found Judge Dumlao liable for ignoring its directives. In that case, the Court held that, "We agree with the OCA that [Judge Dumlao] must be held administratively liable for his unjustified failure to comment on an administrative complaint. This constitutes gross misconduct and insubordination."

---

[20] *Imbang v. Del Rosario*, A.M. No. 03-1515-MTJ, 19 November 2004, 443 SCRA 79, 83-85.

[21] A.M. No. MTJ-07-1679, 4 March 2008.

[22] *Supra* note 11 at 204.

Violation of Supreme Court directives is a less serious offense[23] punishable by (1) suspension from office without salary and other benefits for not less than one nor more than three months, or (2) a fine of more than ₱10,000 but not exceeding ₱20,000.[24]

Aside from *Lim*, *Pascual*, and *Office of the Court Administrator*, Judge Dumlao has another administrative case decided against him. In *Morales, Sr. v. Judge Dumlao*,[25] the Court found him liable for violating SC Administrative Circular No. 1-90. In that case, the Court held that:

> [Judge Dumlao's] claim that he did not know how he inadvertently signed the notarized revocation of power of attorney in this case betrays a deficiency of that degree of circumspection demanded of all those who don the judicial robe. It is, in fact, an open admission of his negligence and lack of care in attending to the incidents brought before him for adjudication. This kind of judicial carelessness runs contrary to Canon 3 of the Code of Judicial Conduct, which states that:
>
> > A judge should perform official duties honestly, and with impartiality and ***diligence***. [(Emphasis ours)]
>
> While we do not expect judges to have an encyclopedic recollection of applicable laws, jurisprudence or administrative circulars we issue periodically in the discharge of their responsibilities, they nevertheless have the bounden duty to keep abreast with the law and the changes therein as well as the decisions of this Court. As a trial judge, [Judge Dumlao] is the visible representation of law and justice. Under Canon 1.01 of the Code of Judicial Conduct he is expected to be "the embodiment of competence, integrity and independence" to maintain public confidence in the legal system.
>
> Inefficient judges are equally impermissible in the judiciary as the incompetent and dishonest ones. Any of them tarnishes the image of the judiciary and brings it to public contempt, dishonor or disrespect and must then be administratively dealt with and punished accordingly.

Judge Dumlao has amply demonstrated his incorrigibility and unfitness to be a judge. He is undeterred by the several penalties

---

[23] Section 9, Rule 140 of the Rules of Court.

[24] Section 11(B), Rule 140 of the Rules of Court.

[25] 427 Phil. 56, 61-62 (2002).

and stern warnings the Court has given him. The Court will not hesitate to impose the ultimate penalty for it cannot tolerate any conduct that diminishes the faith of the people in the judicial system.[26]

WHEREFORE, the Court finds Judge Cesar M. Dumlao, Municipal Trial Court, San Mateo, Isabela, *GUILTY* of *GROSS IGNORANCE OF THE LAW* and *VIOLATION OF SUPREME COURT DIRECTIVES*. Accordingly, the Court *DISMISSES* him from the service, with forfeiture of all benefits except accrued leave credits, and with prejudice to reinstatement or appointment to any public office including government-owned or controlled corporations.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

Austria-Martinez, Carpio Morales, and *Nachura, JJ.,* on official leave.

SECOND DIVISION

[A.M. No. P-07-2413. June 19, 2008]
(Formerly OCA-IPI No. 07-2627-P)

JUDGE MANUEL V. GINETE, *complainant, vs.* **VILLA M. CABALLERO, Clerk of Court and EDWIN B. ALMOSARA, Junior Process Server,** *respondents.*

---

[26] *Escobar Vda. de Lopez v. Luna*, A.M. No. P-04-1786, 13 February 2006, 482 SCRA 265, 277-278.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHOUTING AT ONE ANOTHER IN THE WORKPLACE AND DURING OFFICE HOURS IS ARRANT DISCOURTESY AND DISRESPECT NOT ONLY TOWARDS CO-WORKERS BUT TO THE COURT AS WELL. — The Court finds reprehensible the altercation that ensued between respondents especially since it transpired within the premises of the court. Fighting between court employees during office hours is a disgraceful behavior reflecting adversely on the good image of the judiciary. It displays a cavalier attitude towards the seriousness and dignity with which court business should be treated. Shouting at one another in the workplace and during office hours is arrant discourtesy and disrespect not only towards co-workers, but to the court as well.

2. ID.; ID.; ID.; REQUIRED TO PRESERVE THE JUDICIARY'S GOOD NAME AND STANDING AS A TRUE TEMPLE OF JUSTICE. — Respondents and all court personnel for that matter should be reminded that the image of the judiciary is mirrored in the kind of conduct, official or otherwise, which the personnel within its employ display, from the judge to the lowliest clerk. Any fighting or misunderstanding becomes a disgraceful sight reflecting adversely on the good image of the judiciary. Professionalism, respect for the rights of others, good manners and right conduct are expected of all judicial officers and employees. Thus, all employees are required to preserve the judiciary's good name and standing as a true temple of justice.

3. ID.; ID.; ID.; VERBAL TUSSLE BETWEEN COURT EMPLOYEES; IMPOSABLE PENALTY FOR THE TRANSGRESSORS. — In the case of *Aquino v. Israel*, wherein a verbal tussle likewise occurred between court employees, the Court deemed it proper to fine all the transgressors ₱1,000.00 each. Thus, the Court in the instant case sustains the penalty recommended by the OCA.

4. ID.; ID.; ID.; IT IS COMMENDABLE TO STRIVE FOR AN IDEAL GOVERNMENT OFFICE WHERE EVERY PUBLIC SERVANT DEVOTES HIMSELF WHOLLY TO PUBLIC SERVICE WITH THE UTMOST INTEGRITY, HONESTY AND DILIGENCE IN WORK.— Finally, the Court takes heed

of the resented disposition of Caballero as clerk of court of the MTC of San Pascual, Masbate. It should be stressed that it is commendable to strive for an ideal government office where every public servant devotes himself wholly to public service with the utmost integrity, honesty and diligence in work. The Court's ruling in *Estoya v. Abraham-Singson* bears repetition, to wit: To be a good manager, one must be a good leader. One cannot be a good leader unless, among other things, he knows himself and his objectives, ever cognizant of the fact that he is dealing with beings endowed by God with human dignity and self-respect, each of whom is different from the other, is able to earn the trust and confidence of his subordinates and motivate them toward creativity, achievement, and success, and is able to marshal their potentials and the resources of his office for the effective performance of its functions and duties. His conduct and example must create an atmosphere of cordiality conducive to industry, dedication, and commitment to excellence.

R E S O L U T I O N

TINGA, *J.*:

The instant administrative complaint arose when respondent Villa M. Caballero (Caballero), Clerk of Court II of the Municipal Trial Court (MTC) of San Pascual, Masbate, filed a complaint before Judge Manuel V. Ginete (Judge Ginete) against respondent Edwin B. Almosara (Almosara), junior process server of the same court, in relation to an incident that occurred on 6 September 2006 within the premises of the trial court.

Judge Ginete conducted an inquiry on the matter and thereafter submitted a report to the Office of the Court of Administrator (OCA) with the following pertinent details:

In the morning of September 6, 2006, all personnel of the Municipal Trial Court (MTC) of San Pascual, Masbate-Villa M. Caballero (Clerk of Court II), Oscar A. Almodiel (Interpreter), Nora M. Abela, Eunice B. Jimenez (Stenographers), Lilia R. Butal (Clerk II), Edwin B. Almosara (Junior Process Server) and Gregorio O. Villar III (Court Aide) were present except Edgar Mahinay (Stenographer).

x x x x x x x x x

In the course of court business, at about 9:00 o'clock in the morning, Caballero asked Almosara about his Daily Time Record (DTR) for the month of August, [*sic*] 2006 and reminded him that all DTRs must be submitted to her at the end of every month. In response, Almosara complained about the absences incurred by his co-employees not only for the month of August or July, [*sic*] 2006, but also for prior months and years. But Caballero [referred] him to the Presiding Judge as the latter was the one signing the personnel's DTRs and leaves of absence. Then, Caballero inquired from Almosara about the status of five (5) subpoenas that she gave him for service since July 15, 2006 and demanded their return to her. However, Almosara requested deferment of his return as he was still in the process of completing service. He reasoned out he may opt to return them at least three (3) days before the scheduled trial on October 26 and 27, 2006 as he was prioritizing service thereof depending on the distance of the places where the parties reside. But Caballero stood pat on her demands. And, that started it all. What appeared to be just a routine job turned out into an unnecessary "words war" and "tongue lashing" incident fueled by uncontrolled temper. Their long standing and subsisting personal animosity may have triggered, and have erupted into, an untoward, unprofessional, discourteous, irresponsible, improper behavior and offensive conduct as their conversation had turned sour and had gone haywire culminating into a verbal tussles[*sic*]/quarrel thereby swelling their already hot heads and situation. They moves [*sic*] in and out and around the office while exchanging unwholesome remarks in a LOUD VOICE as if using a megaphone lasting for about forty five (45) minutes x x x displayed over acts amounting to irresponsible, improper and offensive conduct, conduct unbecoming of court employees, misconduct and conduct prejudicial to the best interest of the service.

Almosara's explanations as to how he was doing his job, the surrounding danger and difficulties entailed with it, coupled with request for compassion and understanding of his plight, turned to deaf ears and Caballero insisted on what she wanted that a [lengthy] verbal argument ensued. Almosara then got pissed off with the repetitious insistence of Caballero about the topic they were treating that he wrangled his right hand downward while pleading her to stop or end their arguments. He even suggested to her to just file a complaint, or charge him for anything just to evade their already becoming fiery verbal confrontation.

Couple of days later, Almosara turned over to Caballero the subject processes which were already served and accomplished except for one (Annexes "K", "K-1", "K-2" & "K-3"). The latter caused another subpoena to be prepared and served it to the parties involved after which she informed Almosara not to worry anymore about it as she has already notified the parties. But Almosara retorted that "You did it because you wanted to file a case against me to take me out of the service."

Onlookers witnessed Caballero and Almosara in their verbal quarrel, heard what they uttered, and saw their actuations.[1]

Judge Ginete reported that the enmity between the respondents is hinged on the following: (1) the unfair and unequal treatment of Caballero towards her co-employees; (2) the oppressive management style of Caballero; (3) and the bias and partiality of Caballero regarding the release of salary checks and other benefits to some of the court's employees. Judge Ginete moreover narrated that at one time, respondent Almosara's loan from the Judiciary Savings and Loan Association (JUSLA) was not released due to the information from Caballero that he had a pending administrative case.[2] Almosara, for his part, seeing the situation as unbearable, tendered his resignation from his office which Judge Ginete opposed.[3]

Judge Ginete asserted that his employees are of good moral character, respectful, god-fearing, industrious and hardworking. He narrated that his staff were working harmoniously until respondent Caballero assumed the position of clerk of court in 1995. Caballero turned out to be cantankerous, bossy, arrogant, lazy and inefficient. In time, the rest of the staff became vocal about their complaints regarding her behavior. To address the situation, Judge Ginete called staff conferences to thresh out their professional as well as personal conflicts. Further, Judge Ginete stated that he withdrew from Caballero the authority to sign the daily time records (DTRs) and leave applications.[4]

---

[1] *Rollo*, pp. 15-18.

[2] *Id*. at 18-21.

[3] *Id*. at 19.

[4] *Id*. at 21-24.

Judge Ginete included in his report the testimonies of Court Stenographer Nora M. Abela (Abela) and Court Interpreter Oscar A. Almodiel (Almodiel) which he recommended to be considered as complaints against respondent Caballero.

Abela, in her testimony taken on 26 September 2006, stated that she had seen the heated exchange between the respondents which occurred on 6 September 2006. Abela also testified that a day after the said incident, Caballero asked her to sign a joint affidavit to support the complaint against respondent Almosara for insubordination, gross misconduct and negligence of duty. When Abela refused to sign the document, Caballero advised her to be on guard as they would still be working together for another four (4) years.[5]

Almodiel, in his testimony taken on 28 September 2006, alleged that he witnessed the incident that happened on 6 September 2006. Almodiel also stated that the morning following the incident, Caballero told him that she would not file a case against Almosara provided that he voluntarily retire from office. Caballero moreover required Almodiel to sign a joint affidavit which he refused to do. In response, Caballero warned him that they would still be working together for yet another four (4) years. Almodiel likewise reported an incident wherein Caballero refused to hand him an order for the release of fishing vessels, which required immediate service, to the consternation of and damage to their owners.[6]

Finally, Judge Ginete reported that the copy of the joint affidavit attached to Caballero's letter-complaint which she submitted to the Executive Judge of the Regional Trial Court of Masbate contained the following notation: "Note: the signature of other employees is held in abeyance per instruction of Judge Manuel V. Ginete for he will come to investigate the case on the third week of Sept. according to Oscar Almodiel . . . V.M. Caballero." Notably, said notation does not appear on the original copy of the document. Judge Ginete alleged that Caballero merely included the notation in the copy of the said joint affidavit that was

[5] *Id*. at 76-80.

[6] *Id*. at 81-89.

submitted to the Executive Judge as an attempt to mislead the latter.[7]

In her Comment[8] dated 5 May 2007, Caballero alleged that on 6 September 2006, when she asked Almosara about his DTRs and the progress of his service of five (5) subpoenas, the latter admitted that he had failed to serve the subpoenas as he had no money and he was infirm. Caballero then advised him to find means to serve the subpoenas but Almosara suddenly pointed, his finger at her and in a loud voice urged her to file a case against him. Subsequently on 12 September 2006, noting that only four (4) subpoenas had been returned, Caballero prepared a subpoena and personally served the same. She informed Almosara of this development and again, in an outburst, the latter complained of a stomach ache, challenged her to file a case against him and arrogantly went out of the office. Thus, Caballero filed a complaint before Judge Ginete against Almosara for the latter's behavior.

According to Caballero, at the investigation conducted by Judge Ginete, she personally disputed the charges of grave misconduct, dishonesty, oppression and other violations, and pointed out that in her service as clerk of court for twelve (12) years not a single administrative case had been filed against her. Unlike her, however, Almosara had been evasive on the matter of his behavior during the subject incident.

Caballero further stated that she acted well within reason when she informed JUSLA of Almosara's pending administrative case. She also asserted that she follows the circular on the procedure in releasing checks and that she does not retain checks beyond the prescribed period. With respect to the contentious notation on the joint affidavit, Caballero maintained that she had not been dishonest in making the same as it was made based on the information supplied by Almodiel.

For his part, in his Comment[9] dated 25 May 2007, respondent Almosara pointed out that since the start of his employment in

---

[7] *Id*. at 31-34.

[8] *Id*. at 131-138.

[9] *Id*. at 168-169.

1987, there had not been an incident wherein a court employee had been berated or defamed by the clerk of court or by the presiding judge. In 1995, when respondent Caballero assumed office, the atmosphere had begun to change and the employees were made to suffer her authoritarian style of leadership. He claimed that in response to the situation, he quietly aired his grievances to Judge Ginete until he could no longer bear the situation and lost his temper on that fateful day. He further alleged that when Caballero lends money to her co-employees, she charges unconscionably high interests in return.

In a Report[10] dated 7 November 2007, the OCA stated that the charges of insubordination, dishonesty, and lending money at high interest rates against Caballero are unsubstantiated and hence, cannot be given due course. Other than the testimonies of the witnesses, no other evidence was presented to support the very serious accusations. However, the OCA recommended that both respondents should be made to answer for the behavior they had exhibited on 6 September 2006 within the court premises. Notably, both respondents admitted that the incident indeed occurred but they failed to offer any reason to defend their actuations. The OCA declared that respondents should be made aware that any quarrel within the court premises is a reprehensible occurrence that adversely affects the good image of the judiciary. The OCA would also like Caballero to be reminded that she is dealing with human beings endowed with dignity and self-respect, and that her conduct and example must create an atmosphere of cordiality conducive to industry, dedication and commitment to excellence.

The OCA recommended the following courses of action, to wit: (1) the instant complaint be re-docketed as a regular administrative matter; (2) respondent Caballero, Clerk of Court, be admonished to be more circumspect in her dealings with her co-employees; (3) as the Branch Clerk of Court having administrative supervision over court employees, she be advised to promote and maintain harmony among the court employees;

---

[10] *Id*. at 1-12.

and (4) that both respondents Caballero, Clerk of Court and Edwin B. Almosara, Junior Process Server, be FINED ₱1,000.00 each with a stern warning that a repetition of the same or similar acts in the future will be dealt with more severely.[11]

On 12 December 2007, the parties were required to manifest if they are willing to have the case resolved on the basis of the pleadings/records filed. On 26 January 2008, respondent Almosara manifested his willingness to submit the matter for resolution of the Court on the basis of the pleadings filed.[12] Respondent Caballero made the same manifestation on 11 February 2008.

The recommendation of the OCA is well-taken.

The Court finds reprehensible the altercation that ensued between respondents especially since it transpired within the premises of the court. Fighting between court employees during office hours is a disgraceful behavior reflecting adversely on the good image of the judiciary. It displays a cavalier attitude towards the seriousness and dignity with which court business should be treated. Shouting at one another in the workplace and during office hours is arrant discourtesy and disrespect not only towards co-workers, but to the court as well.[13]

Respondents and all court personnel for that matter should be reminded that the image of the judiciary is mirrored in the kind of conduct, official or otherwise, which the personnel within its employ display, from the judge to the lowliest clerk. Any fighting or misunderstanding becomes a disgraceful sight reflecting adversely on the good image of the judiciary. Professionalism, respect for the rights of others, good manners and right conduct are expected of all judicial officers and employees. Thus, all employees are required to preserve the judiciary's good name and standing as a true temple of justice.[14]

---

[11] *Rollo*, pp. 11-12.

[12] *Id*. at 238.

[13] *Aquino v. Israel*, A.M. No. P-04-1800, 25 March 2004, 426 SCRA 266, 267.

[14] *Casanova, Jr. v. Cajayon*, 448 Phil. 573, 582-583 (2003).

In the case of *Aquino v. Israel*,[15] wherein a verbal tussle likewise occurred between court employees, the Court deemed it proper to fine all the transgressors ₱1,000.00 each. Thus, the Court in the instant case sustains the penalty recommended by the OCA.

Finally, the Court takes heed of the resented disposition of Caballero as clerk of court of the MTC of San Pascual, Masbate. It should be stressed that it is commendable to strive for an ideal government office where every public servant devotes himself wholly to public service with the utmost integrity, honesty and diligence in work.[16] The Court's ruling in *Estoya v. Abraham-Singson*[17] bears repetition, to wit:

> To be a good manager, one must be a good leader. One cannot be a good leader unless, among other things, he knows himself and his objectives, ever cognizant of the fact that he is dealing with beings endowed by God with human dignity and self-respect, each of whom is different from the other, is able to earn the trust and confidence of his subordinates and motivate them toward creativity, achievement, and success, and is able to marshal their potentials and the resources of his office for the effective performance of its functions and duties. His conduct and example must create an atmosphere of cordiality conducive to industry, dedication, and commitment to excellence.[18]

WHEREFORE, the Court resolves to adopt the recommendation of the Office of the Court Administrator. Respondent Villa M. Caballero, Clerk of Court, and respondent Edwin B. Almosara, Junior Process Server, both of the Municipal Trial Court of San Pascual, Masbate, are *FINED* ₱1,000.00. Both are further *WARNED* that a repetition of the same or similar acts shall be dealt with more severely.

In addition, respondent Villa M. Caballero is *ADMONISHED* to be more circumspect in her dealings with her co-workers. She

---

[15] *Aquino v. Israel,* A.M. No. P-04-1800, 25 March 2004, 426 SCRA 266.

[16] *Amane v. Atty. Mendoza-Arce*, 376 Phil. 575, 600 (1999).

[17] A.M. No. RTJ-91-758, 26 September 1994, 237 SCRA 1.

[18] *Id*. at 23-24.

is further *ADVISED* to promote and maintain harmony among the court employees.

SO ORDERED.

Quisumbing (Chairperson), Reyes, Leonardo-de Castro, and Brion, JJ., concur.

EN BANC

[A.M. No. RTJ-06-2017. June 19, 2008]

LT. GEN. ALFONSO P. DAGUDAG (Ret.), *complainant, vs.* **JUDGE MAXIMO G.W. PADERANGA, Regional Trial Court, Branch 38, Cagayan de Oro City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; EXHAUSTION OF ADMINISTRATIVE REMEDIES; DOCTRINE. — Judge Paderanga should have dismissed the replevin suit outright for three reasons. First, under the doctrine of exhaustion of administrative remedies, courts cannot take cognizance of cases pending before administrative agencies. In *Factoran, Jr. v. Court of Appeals*, the Court held that: **The doctrine of exhaustion of administrative remedies is basic. Courts**, for reasons of law, comity and convenience, **should not entertain suits unless the available administrative remedies have first been resorted to and the proper authorities have been given an appropriate opportunity to act and correct their alleged errors, if any, committed in the administrative forum**.

2. ID.; ID.; ID.; COMPLAINT FOR REPLEVIN AND DAMAGES SHALL BE DISMISSED FOR LACK OF CAUSE OF ACTION WHERE PARTY FAILED TO EXHAUST ADMINISTRATIVE REMEDIES; ALL ACTIONS SEEKING

TO RECOVER FOREST PRODUCTS IN THE CUSTODY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL BE DIRECTED TO THAT AGENCY, NOT THE COURTS. — In the instant case, Edma did not resort to, or avail of, *any* administrative remedy. He went straight to court and filed a complaint for replevin and damages. Section 8 of Presidential Decree No. 705, as amended, states that (1) all actions and decisions of the Bureau of Forest Development Director are subject to review by the DENR Secretary; (2) the decisions of the DENR Secretary are appealable to the President; and (3) courts cannot review the decisions of the DENR Secretary except through a special civil action for *certiorari* or prohibition. In *Dy*, the Court held that all actions seeking to recover forest products in the custody of the DENR shall be directed to that agency — not the courts. In *Paat*, the Court held that: **Dismissal of the replevin suit for lack of cause of action in view of the private respondents' failure to exhaust administrative remedies should have been the proper course of action by the lower court instead of assuming jurisdiction over the case and consequently issuing the writ** [**of replevin**]. **Exhaustion of the remedies in the administrative forum**, being a condition precedent prior to one's recourse to the courts and more importantly, being an element of private respondents' right of action, **is too significant to be waylaid by the lower court**. x x x Moreover, **the suit for replevin is never intended as a procedural tool to question the orders of confiscation and forfeiture issued by the DENR** in pursuance to the authority given under P.D. 705, as amended. Section 8 of the said law is explicit that **actions taken by the Director of the Bureau of Forest Development** concerning the enforcement of the provisions of the said law **are subject to review by the Secretary of DENR and that courts may not review the decisions of the Secretary except through a special civil action for *certiorari* or prohibition**.

3. REMEDIAL LAW; COURTS; DOCTRINE OF PRIMARY JURISDICTION; COURTS CANNOT TAKE COGNIZANCE OF CASES PENDING BEFORE ADMINISTRATIVE AGENCIES OF SPECIAL COMPETENCE. — [U]nder the doctrine of primary jurisdiction, courts cannot take cognizance of cases pending before administrative agencies of special competence. The DENR is the agency responsible for the

enforcement of forestry laws. The complaint for replevin itself stated that members of *DENR's Task Force Sagip Kalikasan* took over the forest products and brought them to the *DENR Community Environment and Natural Resources Office*. This should have alerted Judge Paderanga that the DENR had custody of the forest products, that administrative proceedings may have been commenced, and that the replevin suit had to be dismissed outright. x x x In *Paat*, the Court held that: [T]he enforcement of forestry laws, rules and regulations and the protection, development and management of forest lands fall within the primary and special responsibilities of the Department of Environment and Natural Resources. By the very nature of its function, **the DENR should be given a free hand unperturbed by judicial intrusion to determine a controversy which is well within its jurisdiction. The assumption by the trial court, therefore, of the replevin suit filed by private respondents constitutes an unjustified encroachment into the domain of the administrative agency's prerogative. The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence**.

4. ID.; PROVISIONAL REMEDIES; REPLEVIN; PROPERTY LAWFULLY SEIZED BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES CANNOT BE THE SUBJECT OF REPLEVIN. — [T]he forest products are already in *custodia legis* and thus cannot be the subject of replevin. There was a violation of the Revised Forestry Code and the DENR seized the forest products in accordance with law. In *Calub v. Court of Appeals*, the Court held that properties lawfully seized by the DENR cannot be the subject of replevin: **Since there was a violation of the Revised Forestry Code and the seizure was in accordance with law, in our view the [properties seized] were validly deemed in *custodia legis*. [They] could not be subject to an action for replevin**. For it is property lawfully taken by virtue of legal process and considered in the custody of the law, and not otherwise.

5. JUDICIAL ETHICS; JUDGES; CHARGE OF GROSS IGNORANCE OF THE LAW; JUDGES SHOULD KEEP THEMSELVES ABREAST WITH LEGAL DEVELOPMENTS AND SHOW ACQUAINTANCE WITH THE LAWS. — Judge

Paderanga's acts of taking cognizance of the replevin suit and of issuing the writ of replevin constitute gross ignorance of the law. In *Tabao*, the Court held that: Under the doctrine of primary jurisdiction, courts cannot take cognizance of cases pending before administrative of special competence. x x x [**T**]**he plaintiff in the replevin suit who** [**sought**] **to recover the shipment from the DENR had not exhausted the administrative remedies available to him. The prudent thing for respondent judge to have done was to dismiss the replevin suit outright**. Under Section 78-A of the Revised Forestry Code, the DENR secretary or his authorized representatives may order the confiscation of forest products illegally cut, gathered, removed, or possessed or abandoned. x x x **Respondent judge's act of taking cognizance of the** x x x **replevin suit clearly demonstrates ignorance of the law**. x x x [J]udges are expected to keep abreast of all laws and prevailing jurisprudence. Judges are duty bound to have more than just a cursory acquaintance with laws and jurisprudence. **Failure to follow basic legal commands constitutes gross ignorance of the law from which no one may be excused, not even a judge**. Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary states that competence is a prerequisite to the due performance of judicial office. Section 3 of Canon 6 states that judges shall take reasonable steps to maintain and enhance their knowledge necessary for the proper performance of judicial duties. Judges should keep themselves abreast with legal developments and show acquaintance with laws.

6. ID.; ID.; ID.; A WANTON DISPLAY OF UTTER LACK OF FAMILIARITY WITH THE RULES INEVITABLY ERODES THE CONFIDENCE OF THE PUBLIC IN THE COMPETENCE OF THE COURTS TO RENDER JUSTICE; COURTS CANNOT PREMATURELY TAKE COGNIZANCE OF CASES PENDING BEFORE ADMINISTRATIVE AGENCIES. — The rule that courts cannot prematurely take cognizance of cases pending before administrative agencies is basic. There was no reason for Judge Paderanga to make an exception to this rule. The forest products were in the custody of the DENR and Edma had not availed of any administrative remedy. Judge Paderanga should have dismissed the replevin suit outright. In *Español v. Toledo-Mupas*, the Court held that: Being among the judicial front-liners who have direct contact

with the litigants, a wanton display of utter lack of familiarity with the rules by the judge inevitably erodes the confidence of the public in the competence of our courts to render justice. It subjects the judiciary to embarrassment. Worse, it could raise the specter of corruption. When the gross inefficiency springs from a failure to consider so basic and elemental a rule, a law, or a principle in the discharge of his or her duties, a judge is either too incompetent and undeserving of the exalted position and title he or she holds, or the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.

7. ID.; ID.; NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY; JUDGES MUST REFRAIN FROM INFLAMMATORY, EXCESSIVELY RHETORIC, OR VILE LANGUAGE. — Section 6, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary states that judges shall be patient, dignified, and courteous in relation to lawyers. Rule 3.04, Canon 3 of the Code of Judicial Conduct states that judges should be patient and courteous to lawyers, especially the inexperienced. They should avoid the attitude that the litigants are made for the courts, instead of the courts for the litigants. Judicial decorum requires judges to be temperate in their language at all times. They must refrain from inflammatory, excessively rhetoric, or vile language. They should (1) be dignified in demeanor and refined in speech; (2) exhibit that temperament of utmost sobriety and self-restraint; and (3) be considerate, courteous, and civil to all persons who come to their court. x x x. Judge Paderanga's refusal to consider the motion to quash the writ of replevin, repeated interruption of the lawyers, and utterance of "shut up," "that's baloney," "how dare you say that the court is wrong," "what kind of a lawyer are you?," and "the problem with you people is you do not use your heads" are undignified and very unbecoming a judge. In *Office of the Court Administrator v. Paderanga*, the Court already reprimanded Judge Paderanga for repeatedly saying "shut up," being arrogant, and declaring that he had "absolute power" in court. He has not changed.

8. ID.; ID.; GROSS IGNORANCE OF THE LAW; CLASSIFIED AS A SERIOUS OFFENSE; IMPOSABLE PENALTY; CONDUCT UNBECOMING A JUDGE CLASSIFIED AS A LIGHT OFFENSE; IMPOSABLE PENALTY. — Section 8,

Rule 140 of the Rules of Court classifies gross ignorance of the law as a serious offense. It is punishable by (1) dismissal from the service, forfeiture of benefits, and disqualification from reinstatement to any public office; (2) suspension from office without salary and other benefits for more than three months but not exceeding six months; or (3) a fine of more than ₱20,000 but not exceeding ₱40,000. Section 10 of Rule 140 classifies conduct unbecoming a judge as a light offense. It is punishable by (1) a fine of not less than ₱1,000 but not exceeding ₱10,000; (2) censure; (3) reprimand; or (4) admonition with warning.

9. ID.; ID.; ANY CONDUCT THAT VIOLATES THE NORMS OF PUBLIC ACCOUNTABILITY AND DIMINISHES THE FAITH OF THE PEOPLE IN THE JUDICIAL SYSTEM SHALL NOT BE TOLERATED. — The Court notes that this is Judge Paderanga's third offense. In *Office of the Court Administrator v. Paderanga*, the Court held him liable for grave abuse of authority and simple misconduct for unceremoniously citing a lawyer in contempt while declaring himself as having "absolute power" and for repeatedly telling a lawyer to "shut up." In *Beltran, Jr. v. Paderanga*, the Court held him liable for undue delay in rendering an order for the delay of nine months in resolving an amended formal offer of exhibits. In both cases, the Court sternly warned Judge Paderanga that the commission of another offense shall be dealt with more severely. The instant case and the two cases decided against him demonstrate Judge Paderanga's arrogance, incorrigibility, and unfitness to become a judge. Judge Paderanga has two other administrative cases pending against him — one for gross ignorance of the law, knowingly rendering an unjust judgment, and grave abuse of authority, and the other for gross misconduct, grave abuse of authority, and gross ignorance of the law. The Court will not hesitate to impose the ultimate penalty on those who have fallen short of their accountabilities. It will not tolerate any conduct that violates the norms of public accountability and diminishes the faith of the people in the judicial system.

APPEARANCES OF COUNSEL

Arcol and Musni for respondent.

D E C I S I O N

***PER CURIAM*:**

This is a complaint for gross ignorance of the law and conduct unbecoming a judge filed by retired Lt. Gen. Alfonso P. Dagudag (Gen. Dagudag), Head of Task Force Sagip Kalikasan, against Judge Maximo G. W. Paderanga (Judge Paderanga), Presiding Judge of the Regional Trial Court, Branch 38, Cagayan de Oro City.

On or about 30 January 2005, the Region VII Philippine National Police Regional Maritime Group (PNPRMG) received information that MV General Ricarte of NMC Container Lines, Inc. was shipping container vans containing illegal forest products from Cagayan de Oro to Cebu. The shipments were falsely declared as cassava meal and corn grains to avoid inspection by the Department of Environment and Natural Resources (DENR).[1]

On 30 and 31 January 2005, a team composed of representatives from the PNPRMG, DENR, and the Philippine Coast Guard inspected the container vans at a port in Mandaue City, Cebu. The team discovered the undocumented forest products and the names of the shippers and consignees:

Container Van No.	**Shipper**	**Consignee**
NCLU – 2000492-22GI	Polaris Chua	Polaris Chua
IEAU – 2521845-2210	Polaris Chua	Polaris Chua
NOLU – 2000682-22GI	Rowena Balangot	Rowena Balangot
INBU – 3125757-BB2210	Rowena Balangot	Rowena Balangot
NCLU – 20001591-22GI	Jovan Gomez	Jovan Gomez
GSTU – 339074-US2210	Jovan Gomez	Jovan Gomez
CRXU – 2167567	Raffy Enriquez	Raffy Enriquez
NCLU – 2001570-22GI	Raffy Enriquez	Raffy Enriquez

The crew of MV General Ricarte failed to produce the certificate of origin forms and other pertinent transport documents covering the forest products, as required by DENR Administrative

[1] *Rollo*, p. 1.

Order No. 07-94. Gen. Dagudag alleged that, since nobody claimed the forest products within a reasonable period of time, the DENR considered them as abandoned and, on 31 January 2005, the Provincial Environment and Natural Resources Office (PENRO) Officer-in-Charge (OIC), Richard N. Abella, issued a seizure receipt to NMC Container Lines, Inc.[2]

On 1 February 2005, Community Environment and Natural Resources Office (CENRO) OIC Loreto A. Rivac (Rivac) sent a notice to NMC Container Lines, Inc. asking for explanation why the government should not confiscate the forest products.[3] In an affidavit[4] dated 9 February 2005, NMC Container Lines, Inc.'s Branch Manager Alex Conrad M. Seno stated that he did not see any reason why the government should not confiscate the forest products and that NMC Container Lines, Inc. had no knowledge of the actual content of the container vans.

On 2, 9, and 15 February 2005, DENR Forest Protection Officer Lucio S. Canete, Jr. posted notices on the CENRO and PENRO bulletin boards and at the NMC Container Lines, Inc. building informing the unknown owner about the administrative adjudication scheduled on 18 February 2005 at the Cebu City CENRO. Nobody appeared during the adjudication.[5] In a resolution[6] dated 10 March 2005, Rivac, acting as adjudication officer, recommended to DENR Regional Executive Director Clarence L. Baguilat that the forest products be confiscated in favor of the government.

In a complaint[7] dated 16 March 2005 and filed before Judge Paderanga, a certain Roger C. Edma (Edma) prayed that a writ of replevin be issued ordering the defendants DENR, CENRO,

---

[2] *Id*. at 2.

[3] *Id*.

[4] *Id*. at 44-46.

[5] *Id*. at 2-3.

[6] *Id*. at 20-22.

[7] *Id*. at 13-19.

Gen. Dagudag, and others to deliver the forest products to him and that judgment be rendered ordering the defendants to pay him moral damages, attorney's fees, and litigation expenses. On 29 March 2005, Judge Paderanga issued a writ of replevin[8] ordering Sheriff Reynaldo L. Salceda to take possession of the forest products.

In a motion to quash the writ of replevin,[9] the defendants DENR, CENRO, and Gen. Dagudag prayed that the writ of replevin be set aside: (1) Edma's bond was insufficient; (2) the forest products were falsely declared as cassava meal and corn grains; (3) Edma was not a party-in-interest; (4) the forest products were not covered by any legal document; (5) nobody claimed the forest products within a reasonable period of time; (6) the forest products were already considered abandoned; (7) the forest products were lawfully seized under the Revised Forestry Code of the Philippines; (8) replevin was not proper; (9) courts could not take cognizance of cases pending before the DENR; (10) Edma failed to exhaust administrative remedies; and (11) the DENR was the agency responsible for the enforcement of forestry laws. In a motion to dismiss *ad cautelam*[10] dated 12 April 2005, the defendants prayed that the complaint for replevin and damages be dismissed: (1) the real defendant is the Republic of the Philippines; (2) Edma failed to exhaust administrative remedies; (3) the State cannot be sued without its consent; and (4) Edma failed to allege that he is the owner or is entitled to the possession of the forest products.

In an order[11] dated 14 April 2005, Judge Paderanga denied the motion to quash the writ of replevin for lack of merit.

Gen. Dagudag filed with the Office of the Court Administrator (OCA) an affidavit-complaint[12] dated 8 July 2005 charging Judge

---

[8] *Id*. at 23-24.

[9] *Id*. at 25-35.

[10] *Id*. at 48-61.

[11] *Id*. at 47.

[12] *Id*. at 1-12.

Paderanga with gross ignorance of the law and conduct unbecoming a judge. Gen. Dagudag stated that:

> During the x x x hearing, [Judge Paderanga] showed manifest partiality in favor of x x x Edma. DENR's counsel was lambasted, cajoled and intimidated by [Judge Paderanga] using words such as "SHUT UP" and "THAT'S BALONEY."
>
> x x x x x x x x x
>
> Edma in the replevin case cannot seek to recover the wood shipment from the DENR since he had not sought administrative remedies available to him. The prudent thing for [Judge Paderanga] to have done was to dismiss the replevin suit outright.
>
> x x x x x x x x x
>
> [Judge Paderanga's] act[s] of taking cognizance of the x x x replevin suit, issuing the writ of replevin and the subsequent denial of the motion to quash clearly demonstrates [sic] ignorance of the law.

In its 1st Indorsement[13] dated 1 August 2005, the OCA directed Judge Paderanga to comment on the affidavit-complaint. In his comment[14] dated 6 September 2005, Judge Paderanga stated that he exercised judicial discretion in issuing the writ of replevin and that he could not delve into the issues raised by Gen. Dagudag because they were related to a case pending before him.

In its Report[15] dated 10 July 2006, the OCA found that Judge Paderanga (1) violated the doctrine of exhaustion of administrative remedies; (2) violated the doctrine of primary jurisdiction; and (3) used inappropriate language in court. The OCA recommended that the case be re-docketed as a regular administrative matter; that Judge Paderanga be held liable for gross ignorance of the law and for violation of Section 6, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary;[16] and that he be fined ₱30,000.

---

[13] *Id*. at 103.

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

[15] *Id*. at 107-112.

[16] Section 6, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary provides:

In its Resolution[17] dated 16 August 2006, the Court re-docketed the case as a regular administrative matter and required the parties to manifest whether they were willing to submit the case for decision based on the pleadings already filed. Judge Paderanga manifested his willingness to submit the case for decision based on the pleadings already filed.[18] Since Gen. Dagudag did not file any manifestation, the Court considered him to have waived his compliance with the 16 August 2006 Resolution.[19]

The Court finds Judge Paderanga liable for gross ignorance of the law and for conduct unbecoming a judge.

The DENR is the agency responsible for the enforcement of forestry laws. Section 4 of Executive Order No. 192 states that the DENR shall be the primary agency responsible for the conservation, management, development, and proper use of the country's natural resources.

Section 68 of Presidential Decree No. 705, as amended by Executive Order No. 277, states that possessing forest products without the required legal documents is punishable. Section 68-A states that the DENR Secretary or his duly authorized representatives may order the confiscation of any forest product illegally cut, gathered, removed, possessed, or abandoned.

In the instant case, the forest products were possessed by NMC Container Lines, Inc. without the required legal documents and were abandoned by the unknown owner. Consequently, the DENR seized the forest products.

Judge Paderanga should have dismissed the replevin suit outright for three reasons. First, under the doctrine of exhaustion of

---

SEC. 6. Judges shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control.

[17] *Rollo*, p. 113.

[18] *Id*. at 114-115.

[19] Resolution, 23 April 2007, A.M. No. RTJ-06-2017.

administrative remedies, courts cannot take cognizance of cases pending before administrative agencies. In *Factoran, Jr. v. Court of Appeals*,[20] the Court held that:

> **The doctrine of exhaustion of administrative remedies is basic. Courts**, for reasons of law, comity and convenience, **should not entertain suits unless the available administrative remedies have first been resorted to and the proper authorities have been given an appropriate opportunity to act and correct their alleged errors, if any, committed in the administrative forum**. (Emphasis ours)

In *Dy v. Court of Appeals*,[21] the Court held that a party must exhaust all administrative remedies before he can resort to the courts. In *Paat v. Court of Appeals*,[22] the Court held that:

> This Court in a long line of cases has consistently held that **before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him**. Hence, **if a remedy within the administrative machinery can still be resorted to** by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction **then such remedy should be exhausted first before court's judicial power can be sought. The premature invocation of court's intervention is fatal to one's cause of action**. Accordingly, absent any finding of waiver or estoppel the case is susceptible of dismissal for lack of cause of action. (Emphasis ours)

In the instant case, Edma did not resort to, or avail of, *any* administrative remedy. He went straight to court and filed a complaint for replevin and damages. Section 8 of Presidential Decree No. 705, as amended, states that (1) all actions and decisions of the Bureau of Forest Development Director are subject to review by the DENR Secretary; (2) the decisions of

---

[20] 378 Phil. 282, 292 (1999).

[21] 363 Phil. 676, 682 (1999).

[22] G.R. No. 111107, 10 January 1997, 266 SCRA 167, 175.

the DENR Secretary are appealable to the President; and (3) courts cannot review the decisions of the DENR Secretary except through a special civil action for *certiorari* or prohibition. In *Dy*,[23] the Court held that all actions seeking to recover forest products in the custody of the DENR shall be directed to that agency — not the courts. In *Paat*,[24] the Court held that:

> **Dismissal of the replevin suit for lack of cause of action in view of the private respondents' failure to exhaust administrative remedies should have been the proper course of action by the lower court instead of assuming jurisdiction over the case and consequently issuing the writ** [**of replevin**]. **Exhaustion of the remedies in the administrative forum**, being a condition precedent prior to one's recourse to the courts and more importantly, being an element of private respondents' right of action, **is too significant to be waylaid by the lower court**.
>
> x x x x x x x x x
>
> Moreover, **the suit for replevin is never intended as a procedural tool to question the orders of confiscation and forfeiture issued by the DENR** in pursuance to the authority given under P.D. 705, as amended. Section 8 of the said law is explicit that **actions taken by the Director of the Bureau of Forest Development** concerning the enforcement of the provisions of the said law **are subject to review by the Secretary of DENR and that courts may not review the decisions of the Secretary except through a special civil action for *certiorari* or prohibition**. (Emphasis ours)

Second, under the doctrine of primary jurisdiction, courts cannot take cognizance of cases pending before administrative agencies of special competence. The DENR is the agency responsible for the enforcement of forestry laws. The complaint for replevin itself stated that members of *DENR's Task Force Sagip Kalikasan* took over the forest products and brought them to the *DENR Community Environment and Natural Resources Office*. This should have alerted Judge Paderanga that the DENR had custody of the forest products, that

---

[23] *Supra* note 21 at 683.

[24] *Supra* note 22 at 184-185.

administrative proceedings may have been commenced, and that the replevin suit had to be dismissed outright. In *Tabao v. Judge Lilagan*[25] — a case with a similar set of facts as the instant case — the Court held that:

> The complaint for replevin itself states that the shipment x x x [was] seized by the NBI for verification of supporting documents. It also states that the NBI turned over the seized items to the DENR "for official disposition and appropriate action." x x x To our mind, **these allegations [should] have been sufficient to alert respondent judge that the DENR has custody of the seized items and that administrative proceedings may have already been commenced concerning the shipment. Under the doctrine of primary jurisdiction, courts cannot take cognizance of cases pending before administrative agencies of special competence**. x x x **The prudent thing for respondent judge to have done was to dismiss the replevin suit outright**. (Emphasis ours)

In *Paat*,[26] the Court held that:

> [T]he enforcement of forestry laws, rules and regulations and the protection, development and management of forest lands fall within the primary and special responsibilities of the Department of Environment and Natural Resources. By the very nature of its function, **the DENR should be given a free hand unperturbed by judicial intrusion to determine a controversy which is well within its jurisdiction. The assumption by the trial court, therefore, of the replevin suit filed by private respondents constitutes an unjustified encroachment into the domain of the administrative agency's prerogative. The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence**. (Emphasis ours)

Third, the forest products are already in *custodia legis* and thus cannot be the subject of replevin. There was a violation of the Revised Forestry Code and the DENR seized the forest

---

[25] 416 Phil. 710, 719-720 (2001).

[26] *Supra* note 22 at 177-178.

products in accordance with law. In *Calub v. Court of Appeals*,[27] the Court held that properties lawfully seized by the DENR cannot be the subject of replevin:

> **Since there was a violation of the Revised Forestry Code and the seizure was in accordance with law, in our view the** [**properties seized**] **were validly deemed in *custodia legis***. [**They**] **could not be subject to an action for replevin**. For it is property lawfully taken by virtue of legal process and considered in the custody of the law, and not otherwise. (Emphasis ours)

Judge Paderanga's acts of taking cognizance of the replevin suit and of issuing the writ of replevin constitute gross ignorance of the law. In *Tabao*,[28] the Court held that:

> Under the doctrine of primary jurisdiction, courts cannot take cognizance of cases pending before administrative of special competence. x x x [**T**]**he plaintiff in the replevin suit who** [**sought**] **to recover the shipment from the DENR had not exhausted the administrative remedies available to him. The prudent thing for respondent judge to have done was to dismiss the replevin suit outright**.
>
> Under Section 78-A of the Revised Forestry Code, the DENR secretary or his authorized representatives may order the confiscation of forest products illegally cut, gathered, removed, or possessed or abandoned.
>
> x x x x x x x x x
>
> **Respondent judge's act of taking cognizance of the** x x x **replevin suit clearly demonstrates ignorance of the law**. x x x [J]udges are expected to keep abreast of all laws and prevailing jurisprudence. Judges are duty bound to have more than just a cursory acquaintance with laws and jurisprudence. **Failure to follow basic legal commands constitutes gross ignorance of the law from which no one may be excused, not even a judge**. (Emphasis ours)

Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary states that competence is a prerequisite to the due

---

[27] 387 Phil. 67, 79 (2000).

[28] *Supra* note 25 at 720-721.

performance of judicial office. Section 3 of Canon 6 states that judges shall take reasonable steps to maintain and enhance their knowledge necessary for the proper performance of judicial duties. Judges should keep themselves abreast with legal developments and show acquaintance with laws.[29]

The rule that courts cannot prematurely take cognizance of cases pending before administrative agencies is basic. There was no reason for Judge Paderanga to make an exception to this rule. The forest products were in the custody of the DENR and Edma had not availed of any administrative remedy. Judge Paderanga should have dismissed the replevin suit outright. In *Español v. Toledo-Mupas*,[30] the Court held that:

> Being among the judicial front-liners who have direct contact with the litigants, a wanton display of utter lack of familiarity with the rules by the judge inevitably erodes the confidence of the public in the competence of our courts to render justice. It subjects the judiciary to embarrassment. Worse, it could raise the specter of corruption.
>
> When the gross inefficiency springs from a failure to consider so basic and elemental a rule, a law, or a principle in the discharge of his or her duties, a judge is either too incompetent and undeserving of the exalted position and title he or she holds, or the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.

The OCA found Judge Paderanga liable for using inappropriate language in court: "We x x x find respondent's intemperate use of "Shut up!" and "Baloney!" well nigh inappropriate in court proceedings. The utterances are uncalled for."[31]

Indeed, the 14 and 22 April 2005 transcripts of stenographic notes show that Judge Paderanga was impatient, discourteous, and undignified in court:

> Atty. Luego: Your Honor, we want to have this motion because that is . . .

---

[29] *Atty. Macalintal v. Judge Teh*, 345 Phil. 871, 878 (1997).

[30] A.M. No. 03-1462-MTJ, 19 April 2007, 521 SCRA 403, 415-416.

[31] *Rollo*, p. 111.

Judge Paderanga: I am asking you why did you not make any rejoinder[?]

x x x x x x x x x

Atty. Luego: I apologize, Your Honor. We are ready to. . .

Judge Paderanga: Ready to what? Proceed.

Atty. Luego: Yes, Your Honor. We filed this motion to quash replevin, Your Honor, on the grounds, first and foremost, it is our contention, Your Honor,with all due respect of [sic] this Honorable Court, that the writ of replevin dated March 29, 2005 was improper, Your Honor, for the reasons that the lumber, subject matter of this case, were apprehended in accordance with . . .

Judge Paderanga: Where is your proof that it was apprehended? Where is your proof? Is that apprehension proven by a seizure receipt? Where is your seizure receipt?

Atty. Luego: Under the rules . . .

Judge Paderanga: Where is your seizure receipt? You read your rules. What does [sic] the rules say? Where in your rules does it say that it does not need any seizure receipt? You look at your rules. You point out the rules. You take out your rules and then you point out. Do you have the rules?

x x x x x x x x x

Atty. Luego: Your Honor, there was no seizure receipt, but during the apprehension, Your Honor, there was no claimant.

Judge Paderanga: Answer me. Is there a seizure receipt?

Atty. Luego: But during the apprehension, Your Honor, no owner has [sic] appeared.

x x x x x x x x x

Atty. Luego: According to [the] rules, Your Honor, if there is no . . .

Judge Paderanga: Whom are you seizing it from? To [*sic*] whom are you taking it from?

Atty. Luego: From the shipping company, Your Honor.

x x x x x x x x x

Atty. Luego: Your Honor please, the shipping company denied the ownership of that lumber.

x x x x x x x x x

Atty. Luego: But the shipping company, Your Honor, . . .

Judge Paderanga: **Shut up. That's baloney**. You are seizing it from nobody. Then how can you seize it from the shipping company. Are you not? You are a lawyer. Who is in possession of the property? The shipping company. Why did you not issue [a] seizure receipt to the shipping company?

Atty. Luego: But the . . . May I continue, Your Honor?

x x x x x x x x x

Judge Paderanga: Stop talking about the shipping company. Still you did not issue a seizure receipt here. Well, I'm telling you you should have issued [a] seizure receipt to the shipping company.

x x x x x x x x x

Judge Paderanga: You are a lawyer. **You should know how to write pleadings**. You write the pleadings the way it should be, not the way you think it should be.

Atty. Luego: I'm sorry, Your Honor.

Judge Paderanga: You are an officer of the court. **You should be careful with your language**. You say that I am wrong. **It's you who are** [sic] **wrong because you do not read the law.**

x x x x x x x x x

Judge Paderanga: Then you read the law. **How dare you say that the Court is wrong**.

x x x	x x x	x x x
Judge Paderanga:	Are you not representing [the DENR]?	
Atty. Luego:	Yes, in this case, Your Honor.	
Judge Paderanga:	Then you are representing them. They are your clients. **What kind of a lawyer are you?**[32]	
x x x	x x x	x x x
Atty. Tiamson:	Specifically it was stated in the [Factoran] *versus* Court of Appeals [case] that the Court should not interfere, Your Honor.	
Judge Paderanga:	**No**.	
x x x	x x x	x x x
Judge Paderanga:	**The problem with you people is you do not use your heads**.	
Atty. Tiamson:	We use our heads, your Honor.	
x x x	x x x	x x x
Atty. Tiamson:	Your Honor, we would like to put on record that we use our heads, your Honor.[33] (Emphasis ours)	

Section 6, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary states that judges shall be patient, dignified, and courteous in relation to lawyers. Rule 3.04, Canon 3 of the Code of Judicial Conduct states that judges should be patient and courteous to lawyers, especially the inexperienced. They should avoid the attitude that the litigants are made for the courts, instead of the courts for the litigants.

Judicial decorum requires judges to be temperate in their language at all times. They must refrain from inflammatory, excessively rhetoric, or vile language.[34] They should (1) be dignified in

---

[32] *Id*. at 64-80.

[33] *Id*. at 99-101.

[34] *Guanzon v. Rufon,* A.M. No. RTJ-07-2038, 19 October 2007, 537 SCRA 38.

demeanor and refined in speech; (2) exhibit that temperament of utmost sobriety and self-restraint; and (3) be considerate, courteous, and civil to all persons who come to their court.[35] In *Juan de la Cruz v. Carretas*,[36] the Court held that:

> A judge who is inconsiderate, discourteous or uncivil to lawyers x x x who appear in his sala commits an impropriety and fails in his duty to reaffirm the people's faith in the judiciary. He also violates Section 6, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary.
>
> x x x x x x x x x
>
> It is reprehensible for a judge to humiliate a lawyer x x x. The act betrays lack of patience, prudence and restraint. Thus, a judge must at all times be temperate in his language. He must choose his words x x x with utmost care and sufficient control. The wise and just man is esteemed for his discernment. Pleasing speech increases his persuasiveness.
>
> Equanimity and judiciousness should be the constant marks of a dispenser of justice. A judge should always keep his passion guarded. He can never allow it to run loose and overcome his reason. He descends to the level of a sharp-tongued, ill-mannered petty tyrant when he utters harsh words x x x. As a result, he degrades the judicial office and erodes public confidence in the judiciary.

Judge Paderanga's refusal to consider the motion to quash the writ of replevin, repeated interruption of the lawyers, and utterance of "shut up," "that's baloney," "how dare you say that the court is wrong," "what kind of a lawyer are you?," and "the problem with you people is you do not use your heads" are undignified and very unbecoming a judge. In *Office of the Court Administrator v. Paderanga*,[37] the Court already reprimanded Judge Paderanga for repeatedly saying "shut up," being arrogant, and declaring that he had "absolute power" in court. He has not changed.

---

[35] *Juan de la Cruz (Concerned Citizen of Legaspi City) v. Carretas*, A.M. No. RTJ-07-2043, 5 September 2007, 532 SCRA 218, 227-228.

[36] *Id*. at 228-229.

[37] A.M. No. RTJ-01-1660, 25 August 2005, 468 SCRA 21, 36.

Section 8, Rule 140 of the Rules of Court classifies gross ignorance of the law as a serious offense. It is punishable by (1) dismissal from the service, forfeiture of benefits, and disqualification from reinstatement to any public office; (2) suspension from office without salary and other benefits for more than three months but not exceeding six months; or (3) a fine of more than ₱20,000 but not exceeding ₱40,000.[38] Section 10 of Rule 140 classifies conduct unbecoming a judge as a light offense. It is punishable by (1) a fine of not less than ₱1,000 but not exceeding ₱10,000; (2) censure; (3) reprimand; or (4) admonition with warning.[39]

The Court notes that this is Judge Paderanga's third offense. In *Office of the Court Administrator v. Paderanga*,[40] the Court held him liable for grave abuse of authority and simple misconduct for unceremoniously citing a lawyer in contempt while declaring himself as having "absolute power" and for repeatedly telling a lawyer to "shut up." In *Beltran, Jr. v. Paderanga*,[41] the Court held him liable for undue delay in rendering an order for the delay of nine months in resolving an amended formal offer of exhibits. In both cases, the Court sternly warned Judge Paderanga that the commission of another offense shall be dealt with more severely. The instant case and the two cases decided against him demonstrate Judge Paderanga's arrogance, incorrigibility, and unfitness to become a judge.

Judge Paderanga has two other administrative cases pending against him — one[42] for gross ignorance of the law, knowingly rendering an unjust judgment, and grave abuse of authority, and the other[43] for gross misconduct, grave abuse of authority, and gross ignorance of the law.

---

[38] Sec. 11(A), Rule 140 of the Rules of Court.

[39] Sec. 11(C), Rule 140 of the Rules of Court.

[40] *Supra* note 37 at 36.

[41] 455 Phil. 227, 236 (2003).

[42] *Senarlo v. Judge Paderanga*, RTJ-06-2025.

[43] *Summit World CDO, Inc. v. Judge Paderanga*, OCA I.P.I. No. 05-2381-RTJ.

The Court will not hesitate to impose the ultimate penalty on those who have fallen short of their accountabilities. It will not tolerate any conduct that violates the norms of public accountability and diminishes the faith of the people in the judicial system.[44]

WHEREFORE, the Court finds Judge Maximo G.W. Paderanga, Regional Trial Court, Branch 38, Cagayan de Oro City, *GUILTY* of *GROSS IGNORANCE OF THE LAW* and *UNBECOMING CONDUCT*. Accordingly, the Court *DISMISSES* him from the service, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to reinstatement or appointment to any public office, including government-owned or controlled corporations.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

Austria-Martinez, Carpio Morales, and *Nachura, JJ.,* on official leave.

FIRST DIVISION

[G.R. No. 172573. June 19, 2008]

RICARDO SUAREZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and A.H. SHOPPERS' MART, INC.,** *respondents.*

---

[44] *Escobar Vda. de Lopez v. Luna*, A.M. No. P-04-1786, 13 February 2006, 482 SCRA 265, 277-278.

SYLLABUS

1. CRIMINAL LAW; B.P. BLG. 22; ELEMENTS. — To commit a violation of B.P. Blg. 22, the following elements must be present and proved: 1. the making, drawing and issuance of any check to apply for account or for value; 2. the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and 3. the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.

2. ID.; ID.; ID.; CIRCUMSTANCES SHOWING WHEN PRESUMPTION OF KNOWLEDGE OF INSUFFICIENCY OF FUNDS ARISES. — B.P. Blg. 22 creates a presumption of knowledge of insufficiency of funds under the following circumstances: Sec. 2. Evidence of knowledge of insufficient funds. — x x x The making, drawing, and issuance of a check payment of which is refused by the drawee because of insufficient funds or credit with such bank, when presented within ninety days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee. The presumption arises when it is proved that the issuer had received this notice, and that within five banking days from its receipt, he failed to pay the amount of the check or to make arrangements for its payment. The full payment of the amount appearing in the check within five banking days from notice of dishonor is a complete defense. Accordingly, procedural due process requires that a notice of dishonor be sent to and received by the petitioner to afford the opportunity to avert prosecution under B.P. Blg. 22.

3. ID.; ID.; ID.; ID.; ABSENT SUFFICIENT PROOF THAT THE ACCUSED RECEIVED THE NOTICE OF DISHONOR, THE PRESUMPTION THAT HE HAD KNOWLEDGE OF INSUFFICIENCY OF FUNDS CANNOT ARISE. — The evidence shows that the prosecution proved that a notice of dishonor was sent to petitioner through registered mail. The

prosecution presented a copy of the demand letter and properly authenticated the registry return receipt. However, it is not enough for the prosecution to prove that a notice of dishonor was sent to the petitioner. It is also incumbent upon the prosecution to show "that the drawer of the check received the said notice because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the drawee of the check." A review of the records shows that the prosecution did not prove that the petitioner received the notice of dishonor. Registry return cards must be authenticated to serve as proof of receipt of letters sent through registered mail. Thus, we held: . . . it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In fact, the registry return receipt itself provides that '[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it.' The failure of the prosecution to properly authenticate and identify the signature on the registry return card as that of the petitioner is evident from the testimony of its sole witness, the Collection Manager of Shoppers' Mart: x x x The presentation of the registry card, with an unauthenticated signature, does not meet the required proof beyond reasonable doubt that the petitioner received such notice, especially considering that he denied receiving it. As there is insufficient proof that the petitioner received notice of dishonor, the presumption that he had knowledge of insufficiency of funds cannot arise.

APPEARANCES OF COUNSEL

Trabajo-Lim Law Office for petitioner.
The Solicitor General for public respondent.
Lord R. Marapao IV for private respondent.

D E C I S I O N

PUNO, *C.J.*:

This Petition for Review on *Certiorari* assails the Decision[1] and Resolution[2] of the Court of Appeals, dated November 21, 2005 and April 10, 2006 respectively, in CA-G.R. SP No. 00284. The Court of Appeals set aside the Regional Trial Court's (RTC's) Omnibus Decision[3] dated August 30, 2004 and Order[4] dated September 13, 2004, and reinstated the Municipal Trial Court in Cities' (MTCC's) Joint Decision[5] dated April 23, 2004 in Criminal Case Nos. 14988 and 14989. The MTCC found petitioner Ricardo Suarez guilty of two (2) counts of violation of Batas Pambansa (B.P.) Blg. 22.

Petitioner is Ricardo Suarez, the owner of a grocery store, Suarez Commercial. Respondent A.H. Shoppers' Mart, Inc. (Shoppers' Mart) is a business establishment engaged in operating a grocery and department store.

Petitioner opened a credit line to purchase goods with Shoppers' Mart.[6] As payment for the goods, petitioner issued two postdated checks payable to the order of Shoppers' Mart: (1) Development Bank of the Philippines (DBP) Check No. 0008784 dated September 18, 1998 for the amount of PhP 82,812.00; and (2) DBP Check No. 0008777 dated September 26, 1998 for the amount of PhP 75,000.00.[7] Shoppers' Mart deposited the checks. However, DBP dishonored the checks for having been drawn against a closed account.[8] Shoppers' Mart sent the petitioner

---

[1] *Rollo,* pp. 24-34.

[2] *Id.* at 35-36.

[3] CA *rollo*, pp. 32-33.

[4] *Id.* at 38.

[5] MTCC records, pp. 107-111.

[6] *Rollo*, p. 25.

[7] *Id.*

[8] *Id.*

a demand letter dated March 22, 2002 to pay for the value of the checks, but the petitioner failed to make payment.[9]

Two informations for violation of B.P. Blg. 22 were filed against the petitioner before the MTCC.[10] Both informations are similarly worded except with respect to the check number, amount involved, and date corresponding to the check's issuance. The information in Criminal Case No. 14988 reads as follows:

> That, on or about the 18th day of September, 1998, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully and well that he did not have sufficient funds deposited with the bank, did, then and there feloniously make out and issue Development Bank of the Philippines Check No. 0008784 in the amount of EIGHTY TWO THOUSAND AND EIGHT HUNDRED TWELVE PESOS (₱ 82,812.00), Philippine Currency, drawn against Development Bank of the Philippines (DBP) Tagbilaran City Branch, Tagbilaran City, and to pay Shoppers Mart, and thereafter, did, then and there willfully, unlawfully and feloniously pass on, give and deliver the same to Shoppers Mart, in payment of a certain obligation; however, upon presentment of the check to the drawee bank for encashment or payment within a period of ninety (90) days from the date appearing thereon, the same was dishonored and refused payment for the reason "ACCOUNT CLOSED" and the accused neither paid nor made arrangement with the drawee bank within five (5) banking days from receipt of notice of non-payment, to the damage and prejudice of said Shoppers Mart, in the amount to be proved during the trial of the case.
>
> Acts committed contrary to the provisions of Batas Pambansa Blg. 22.[11]

Criminal Case Nos. 14988 and 14989 were consolidated and jointly tried. When arraigned, petitioner pleaded not guilty to the charges against him.[12] During trial, the prosecution presented one witness, Dolores Huan Agbayani, the Collection Manager

---

[9] *Id.* at 26.

[10] *Id.*

[11] *Id.*

[12] *Id.* at 27.

of Shoppers' Mart.[13] Petitioner filed a Demurrer to Evidence without leave of court, on the ground that no notice of dishonor had been sent to and received by him.[14] On January 26, 2004, the MTCC denied the Demurrer.[15]

On April 23, 2004, the MTCC found petitioner guilty of violating B.P. Blg. 22 in both cases. The dispositive portion of its Joint Decision states:

> WHEREFORE, the Court finds accused Ricardo Suarez GUILTY beyond reasonable doubt in each of the two (2) counts of Violation of Batas Pambansa Bilang 22 as charged in the two (2) informations and hereby imposes a penalty of FINE of:
>
> 1. EIGHTY FIVE THOUSAND PESOS (₱85,000.00) in Crim. Case No. 14988;
> 2. SEVENTY FIVE THOUSAND PESOS (₱75,000.00) in Crim. Case No. 14989,
>
> with subsidiary imprisonment in case of insolvency and to pay costs in each case.
>
> Accused is likewise ordered to pay complainant the total amount of ₱157,812.00 representing the total face value of the two (2) dishonored checks plus legal interest of six (6%) percent per annum from the filing of these cases on July 12, 2002 until finality of this judgment and twelve (12%) percent per annum from finality of this judgment until full payment and the sum of ₱5,000.00 as attorney's fees and litigation expenses.
>
> SO ORDERED.[16]

Petitioner appealed to the RTC, which ruled that the provision in B.P. Blg. 22 regarding criminal liability runs counter to the constitutional provision against imprisonment for nonpayment of a debt. The RTC modified the MTCC decision, *viz*:

---

[13] TSN, November 12, 2003, pp. 1-18.

[14] MTCC records, pp. 90-92.

[15] *Id.* at 93-94.

[16] *Id.* at 111.

WHEREFORE, in view of all the foregoing, the assailed Decision is modified and another judgment is hereby entered absolving herein accused Ricardo Suarez from criminal liability under BP Blg. 22. However, the civil liability imposed upon him in the Decision is hereby affirmed.[17]

On November 9, 2004, respondents assailed the RTC decision before the Court of Appeals.[18] The Court of Appeals set aside the RTC decision and reinstated the MTCC decision, holding that the RTC decision is void for absolving the petitioner of criminal liability despite a finding that he violated B.P. Blg. 22.[19]

Petitioner filed a Motion for Reconsideration before the Court of Appeals, reiterating the argument that the prosecution failed to prove that he had been sent and received a notice of dishonor, which is essential to support a conviction of B.P. Blg. 22.[20] The Court of Appeals denied the motion.[21]

Petitioner insists on the same argument before this Court. The Solicitor General supports the petitioner's argument and recommends the petitioner's acquittal for violation of B.P. Blg. 22.[22] Thus, the sole issue for resolution is whether the prosecution proved the element of knowledge of insufficiency of funds to hold the petitioner liable for violation of B.P. Blg. 22.

To commit a violation of B.P. Blg. 22,[23] the following elements must be present and proved:

---

[17] CA *rollo,* p. 33.

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

[19] *Rollo*, pp. 30-33.

[20] *Id.* at 46-55.

[21] *Id.* at 35-36.

[22] *Id.* at 86-97.

[23] Batas Pamabansa Blg. 22 (1979).

Section 1 states:

Checks without sufficient funds. — Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for

1. the making, drawing and issuance of any check to apply for account or for value;
2. the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and
3. the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[24]

B.P. Blg. 22 creates a presumption of knowledge of insufficiency of funds under the following circumstances:

Sec. 2. Evidence of knowledge of insufficient funds. — The making, drawing, and issuance of a check payment of which is refused by the drawee because of insufficient funds or credit with such bank, when presented within ninety days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.[25]

---

the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.

[24] *Sycip, Jr. v. Court of Appeals*, 385 Phil. 143, 154 (2000).

[25] B.P. Blg. 22, Sec. 2.

The presumption arises when it is proved that the issuer had received this notice, and that within five banking days from its receipt, he failed to pay the amount of the check or to make arrangements for its payment.[26] The full payment of the amount appearing in the check within five banking days from notice of dishonor is a complete defense.[27] Accordingly, procedural due process requires that a notice of dishonor be sent to and received by the petitioner to afford the opportunity to avert prosecution under B.P. Blg. 22.[28]

The evidence shows that the prosecution proved that a notice of dishonor was sent to petitioner through registered mail. The prosecution presented a copy of the demand letter and properly authenticated the registry return receipt.[29] However, it is not enough for the prosecution to prove that a notice of dishonor was sent to the petitioner. It is also incumbent upon the prosecution to show "that the drawer of the check received the said notice because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the drawee of the check."[30]

A review of the records shows that the prosecution did not prove that the petitioner received the notice of dishonor. Registry return cards must be authenticated to serve as proof of receipt of letters sent through registered mail. Thus, we held:

> . . . it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In fact, the registry return receipt itself provides that '[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it.'[31]

---

[26] *King v. People*, 377 Phil. 692, 710 (1999).

[27] *Lao v. Court of Appeals*, G.R. No. 119178, June 20, 1997, 274 SCRA 572, 594.

[28] *Id.*

[29] TSN, November 12, 2003, pp. 9-11.

[30] *Cabrera v. People*, 454 Phil. 759, 774 (2003).

[31] *Ting v. Court of Appeals*, 398 Phil. 481, 494 (2000).

The failure of the prosecution to properly authenticate and identify the signature on the registry return card as that of the petitioner is evident from the testimony of its sole witness, the Collection Manager of Shoppers' Mart:

Q: The return card evidencing actual receipt by the defendant, it is also included in Branch 2, City Court?

A: Yes, sir.

Q: I show you a return receipt, is this the return receipt you are referring to?

A: Yes, sir.[32]

The presentation of the registry card, with an unauthenticated signature, does not meet the required proof beyond reasonable doubt that the petitioner received such notice, especially considering that he denied receiving it.[33] As there is insufficient proof that the petitioner received notice of dishonor, the presumption that he had knowledge of insufficiency of funds cannot arise.

IN VIEW WHEREOF, the assailed November 21, 2005 Decision and April 10, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 00284, reinstating the April 23, 2004 Joint Decision of the MTCC in Tagbilaran City, Branch 1, in Criminal Case Nos. 14988 and 14989 convicting the petitioner of two (2) counts of violation of B.P. Blg. 22, are *MODIFIED*. Petitioner is *ACQUITTED* on reasonable doubt. However, the civil liability imposed on petitioner in the Joint Decision of the MTCC is *AFFIRMED*.

SO ORDERED.

Carpio, Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

---

[32] TSN, November 12, 2003, pp. 11-12.

[33] *Del Rosario v. Cedillo*, A.M. No. MTJ-04-1577, October 21, 2004, 441 SCRA 70, 77.

SECOND DIVISION

[A.C. No. 6962. June 25, 2008]

CHARLES B. BAYLON, *complainant, vs.* **ATTY. JOSE A. ALMO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARY PUBLIC; NOTARIZATION; IMPORTANCE. — We agree with the finding of the IBP that the respondent had indeed been negligent in the performance of his duties as a notary public in this case. The importance attached to the act of notarization cannot be overemphasized. In *Santiago v. Rafanan*, we explained, . . . Notarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. Notarization converts a private document into a public document thus making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. For this reason, notaries public should not take for granted the solemn duties pertaining to their office. Slipshod methods in their performance of the notarial act are never to be countenanced. They are expected to exert utmost care in the performance of their duties, which are dictated by public policy and are impressed with public interest.

2. ID.; ID.; REQUIRED TO EXERCISE UTMOST DILIGENCE IN ASCERTAINING THE TRUE IDENTITY OF THE PERSON WHO WISHES TO HAVE HIS DOCUMENT NOTARIZED. — Mindful of his duties as a notary public and taking into account the nature of the SPA which in this case authorized the complainant's wife to mortgage the subject real property, the respondent should have exercised utmost diligence in ascertaining the true identity of the person who represented himself and was represented to be the complainant. He should not have relied on the Community Tax Certificate presented by the said impostor in view of the ease with which community

tax certificates are obtained these days. As a matter of fact, recognizing the established unreliability of a community tax certificate in proving the identity of a person who wishes to have his document notarized, we did not include it in the list of competent evidence of identity that notaries public should use in ascertaining the identity of persons appearing before them to have their documents notarized. Moreover, considering that respondent admitted in the IBP hearing on February 21, 2005 that he had already previously notarized some documents for the complainant, he should have compared the complainant's signatures in those documents with the impostor's signature before he notarized the questioned SPA.

D E C I S I O N

QUISUMBING, *J.*:

This case stemmed from the administrative complaint filed by the complainant at the Integrated Bar of the Philippines (IBP) charging the respondent with fraud and deceit for notarizing a Special Power of Attorney (SPA) bearing the forged signature of the complainant as the supposed principal thereof.

Complainant averred that Pacita Filio, Rodolfo Llantino, Jr. and his late wife, Rosemarie Baylon, conspired in preparing an SPA[1] authorizing his wife to mortgage his real property located in Signal Village, Taguig. He said that he was out of the country when the SPA was executed on June 17, 1996, and also when it was notarized by the respondent on June 26, 1996. To support his contention that he was overseas on those dates, he presented (1) a certification[2] from the Government of Singapore showing that he was vaccinated in the said country on June 17, 1996; and (2) a certification[3] from the Philippine Bureau of Immigration showing that he was out of the country from March 21, 1995 to January 28, 1997. To prove that his signature on the SPA

---

[1] *Rollo*, p. 5.

[2] *Id*. at 6.

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

was forged, the complainant presented a report[4] from the National Bureau of Investigation stating to the effect that the questioned signature on the SPA was not written by him.

The complainant likewise alleged that because of the SPA, his real property was mortgaged to Lorna Express Credit Corporation and that it was subsequently foreclosed due to the failure of his wife to settle her mortgage obligations.

In his answer, the respondent admitted notarizing the SPA, but he argued that he initially refused to notarize it when the complainant's wife first came to his office on June 17, 1996, due to the absence of the supposed affiant thereof. He said that he only notarized the SPA when the complainant's wife came back to his office on June 26, 1996, together with a person whom she introduced to him as Charles Baylon. He further contended that he believed in good faith that the person introduced to him was the complainant because said person presented to him a Community Tax Certificate bearing the name Charles Baylon. To corroborate his claims, the respondent attached the affidavit of his secretary, Leonilita de Silva.

The respondent likewise denied having taken part in any scheme to commit fraud, deceit or falsehood.[5]

After due proceedings, the IBP-Commission on Bar Discipline recommended to the IBP-Board of Governors that the respondent be strongly admonished for notarizing the SPA; that his notarial commission be revoked; and that the respondent be barred from being granted a notarial commission for one year.[6]

In justifying its recommended sanctions, the IBP-Commission on Bar Discipline stated that

> In this instance, reasonable diligence should have compelled herein respondent to ascertain the true identity of the person seeking his legal services considering the nature of the document, *i.e.*, giving

---

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

[5] *Id*. at 124-126.

[6] *Id*. at 126.

a third party authority to mortgage a real property owned by another. The only saving grace on the part of respondent is that he relied on the fact that the person being authorized under the SPA to act as agent and who accompanied the impostor, is the wife of the principal mentioned therein.[7]

On October 22, 2005, the IBP-Board of Governors issued Resolution No. XVII-2005-109 which reads:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification,** the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's failure to properly ascertain the true identity of the person seeking his legal services considering the nature of the document, Atty. Jose A. Almo is hereby **SUSPENDED** from the practice of law for one (1) year and Respondent's notarial commission is **Revoked and Disqualified** (sic) from reappointment as Notary Public for two (2) years.[8]

In our Resolution[9] dated February 1, 2006, we noted the said IBP Resolution.

We agree with the finding of the IBP that the respondent had indeed been negligent in the performance of his duties as a notary public in this case.

The importance attached to the act of notarization cannot be overemphasized. In *Santiago v. Rafanan*,[10] we explained,

. . . Notarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. Notarization converts a private document into a public document thus making

---

[7] *Id*.

[8] *Id*. at 123.

[9] *Id*. at 127.

[10] A.C. No. 6252, October 5, 2004, 440 SCRA 91.

that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument.

For this reason, notaries public should not take for granted the solemn duties pertaining to their office. Slipshod methods in their performance of the notarial act are never to be countenanced. They are expected to exert utmost care in the performance of their duties, which are dictated by public policy and are impressed with public interest.[11]

Mindful of his duties as a notary public and taking into account the nature of the SPA which in this case authorized the complainant's wife to mortgage the subject real property, the respondent should have exercised utmost diligence in ascertaining the true identity of the person who represented himself and was represented to be the complainant.[12] He should not have relied on the Community Tax Certificate presented by the said impostor in view of the ease with which community tax certificates are obtained these days. [13] As a matter of fact, recognizing the established unreliability of a community tax certificate in proving the identity of a person who wishes to have his document notarized, we did not include it in the list of competent evidence of identity that notaries public should use in ascertaining the identity of persons appearing before them to have their documents notarized.[14]

---

[11] *Id*. at 99.

[12] See *Vda. de Bernardo v. Restauro*, Adm. Case No. 3849, June 25, 2003, 404 SCRA 599, 604.

[13] *Dela Cruz v. Zabala*, A.C. No. 6294, November 17, 2004, 442 SCRA 407, 411.

[14] 2004 RULES ON NOTARIAL PRACTICE, Rule II, Sec. 12.

SEC. 12. *Competent Evidence of Identity*. — The phrase "competent evidence of identity" refers to the identification of an individual based on:

(a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or

(b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the

Moreover, considering that respondent admitted[15] in the IBP hearing on February 21, 2005 that he had already previously notarized some documents[16] for the complainant, he should have compared the complainant's signatures in those documents with the impostor's signature before he notarized the questioned SPA.

WHEREFORE, the notarial commission, if still extant, of respondent Atty. Jose A. Almo is hereby *REVOKED*. He is likewise *DISQUALIFIED* to be reappointed as Notary Public for a period of two years.

To enable us to determine the effectivity of the penalty imposed, the respondent is *DIRECTED* to report the date of his receipt of this Decision to this Court.

Let copies of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the courts all over the country. Let a copy of this Decision likewise be attached to the personal records of the respondent.

SO ORDERED.

Puno, C.J.,[*] *Reyes,*[**] *Leonardo-de Castro,*[***] and *Brion, JJ.,* concur.

---

notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

[15] *Rollo*, pp. 103-108.

[16] *Id*. at 45-46. Affidavit dated November 26, 1993 and Deed of Absolute Sale dated November 26, 1993.

[*] Additional member in place of Associate Justice Dante O. Tinga who took no part because of close professional relation to a party.

[**] Additional member in place of Associate Justice Presbitero J. Velasco, Jr. who is on official leave.

[***] Additional member in place of Associate Justice Conchita Carpio Morales who is on official leave.

SECOND DIVISION

[G.R. No. 147782. June 25, 2008]

JUANITA A. AQUINO, *petitioner, vs.* **TERESITA B. PAISTE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT ARE GENERALLY NOT DISTURBED ON APPEAL; EXCEPTIONS; NOT PRESENT IN CASE AT BAR. — The instant petition hinges on the issue of the assessment of evidence and their admissibility. As consistently ruled in innumerable cases, this Court is not a trier of facts. The trial court is best equipped to make the assessment on said issues and, therefore, its factual findings are generally not disturbed on appeal unless the courts *a quo* are perceived to have overlooked, misunderstood, or misinterpreted certain facts or circumstances of weight, which, if properly considered, would affect the result of the case and warrant a reversal of the decision involved. We do not find in the instant case any such reason to depart from this general principle.

2. POLITICAL LAW; CONSTITUTIONAL LAW; RIGHTS OF THE ACCUSED; CUSTODIAL RIGHTS; APPLY TO SITUATIONS IN WHICH AN INDIVIDUAL HAS NOT BEEN FORMALLY ARRESTED BUT HAS MERELY BEEN INVITED FOR QUESTIONING. — Custodial investigation involves any questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. It is only after the investigation ceases to be a general inquiry into an unsolved crime and begins to focus on a particular suspect, the suspect is taken into custody, and the police carries out a process of interrogations that lend itself to eliciting incriminating statements, that the rule begins to operate. Republic Act No. (RA) 7438 has extended this constitutional guarantee to situations in which an individual has not been formally arrested but has merely been "invited" for questioning. Specifically, Sec. 2 of RA 7438 provides that "*custodial investigation* shall include the practice of issuing an *invitation*

to a person who is investigated in connection with an offense he is suspected to have committed x x x."

3. REMEDIAL LAW; EVIDENCE; WITNESSES; DISQUALIFICATION; CONSULTATION AND INFORMATION BETWEEN COUNSEL AND CLIENT IS PRIVILEGED COMMUNICATION AND THE COUNSEL MAY NOT DIVULGE THESE WITHOUT THE CONSENT OF THE CLIENT. — *Second*, petitioner made much of the fact that Atty. Uy was not presented as witness by the prosecution and that what petitioner and Atty. Uy supposedly conferred about was likewise not presented. Basic is the principle that consultation and information between counsel and client is privileged communication and the counsel may not divulge these without the consent of the client. Besides, a party in a case has full discretion to choose whoever it wants as testimonial witnesses to bolster its case. We cannot second guess the reason of the prosecution in not presenting Atty. Uy's testimony, more so on account of the counsel-client privileged communication. Furthermore, petitioner could have asserted its right "to have compulsory process to secure the attendance of witnesses," for which she could have compelled Atty. Uy to testify. She did not.

4. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; SERVICES OF THE LAWYER WHEN DEEMED ENGAGED BY THE ACCUSED. — [P]etitioner never raised any objection against Atty. Gordon Uy's appointment during the time she was in the NBI and thereafter, when she signed the amicable settlement. As this Court aptly held in *People v. Jerez*, when "the accused never raised any objection against the lawyer's appointment during the course of the investigation and the accused thereafter subscribes to the veracity of his statement before the swearing officer" the accused is deemed to have engaged such lawyer. Verily, in the instant case, petitioner is deemed to have engaged Atty. Uy when she conferred with him and thereafter signed the amicable settlement with waiver of right to counsel in his presence. We do not see how the answer of NBI agent Atty. Tolentino upon cross-examination about the petitioner's counsel in the NBI, could be evasive when the NBI agent merely stated the fact that an independent counsel, Atty. Uy, was provided petitioner.

5. POLITICAL LAW; CONSTITUTIONAL LAW; RIGHTS OF THE ACCUSED; RIGHT TO COUNSEL; INTENDED TO PRECLUDE THE SLIGHTEST COERCION AS WOULD LEAD THE ACCUSED TO ADMIT SOMETHING FALSE; AN AMICABLE SETTLEMENT IS NOT AND DOES NOT PARTAKE OF THE NATURE OF AN EXTRAJUDICIAL CONFESSION OR ADMISSION. — [W]hen petitioner engaged Atty. Uy as her lawyer, she undoubtedly executed the amicable settlement. Verily, she was provided with an independent counsel and such "right to counsel is intended to preclude the slightest coercion as would lead the accused to admit something false. The lawyer, however, should never prevent an accused from freely and voluntarily telling the truth." An amicable settlement is not and does not partake of the nature of an extrajudicial confession or admission but is a contract between the parties within the parameters of their mutually recognized and admitted rights and obligations. Thus, the presence of Atty. Uy safeguarded petitioner's rights even if the custodial investigation did not push through and precluded any threat of violence, coercion, or intimidation.

6. ID.; ID.; ID.; MIRANDA RIGHTS; VIOLATION THEREOF RENDERS INADMISSIBLE ONLY THE EXTRAJUDICIAL CONFESSION OR ADMISSION MADE DURING CUSTODIAL INVESTIGATION. — Moreover, while we hold in this case that petitioner's Miranda rights were not violated, still we will not be remiss to reiterate what we held in *People v. Malimit* that the infractions of the so-called Miranda rights render inadmissible "only the extrajudicial confession or admission made during custodial investigation. The admissibility of other evidence, provided they are relevant to the issue and is not otherwise excluded by law or rules, is not affected even if obtained or taken in the course of custodial investigation." An admission is an act, declaration or omission of a party as to a relevant fact, while confession is a declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein.

7. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; CONFESSION; TELLING THE ACCUSED THAT IT WOULD BE BETTER FOR HIM TO TELL THE TRUTH NOT CONSIDERED A SUFFICIENT INDUCEMENT AS TO RENDER OBJECTIONABLE A CONFESSION THEREBY

OBTAINED, UNLESS THREATS OR PROMISES ARE APPLIED. — [E]ven granting *arguendo* that the amicable settlement is in the nature of an admission, the document petitioner signed would still be admissible since none of her constitutional rights were violated. Petitioner's allegations of threat, violence, and intimidation remain but bare allegations. Allegations are not proof. Pertinently, this Court ruled in *People v. Calvo*: A confession is not rendered involuntary merely because defendant was told that he should tell the truth or that it would be better for him to tell the truth. Stated elsewise, telling the accused that it would be better for him to speak or tell the truth does not furnish any inducement, or a sufficient inducement, to render objectionable a confession thereby obtained, unless threats or promises are applied. **These threats or promises which the accused must successfully prove in order to make his confession inadmissible, must take the form of violence, intimidation, a promise of reward or leniency.**

8. ID.; ID.; CONSPIRACY; WHEN ARISES. — Conspiracy is deemed to arise when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proven by direct evidence of prior agreement to commit the crime. In criminal law, where the quantum of evidence required is proof beyond reasonable doubt, direct proof is not essential to show conspiracy — it may be deduced from the mode, method, and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action, and community of interest.

9. ID.; ID.; ID.; ONCE PROVED, THE ACT OF ONE BECOMES THE ACT OF ALL. — It is common design which is the essence of conspiracy — conspirators may act separately or together, in different manners but always leading to the same unlawful result. The character and effect of conspiracy are not to be adjudged by dismembering it and viewing its separate parts but only by looking at it as a whole — acts done to give effect to conspiracy may be, in fact, wholly innocent acts. Once proved, the act of one becomes the act of all. All the conspirators are answerable as co-principals regardless of the extent or degree of their participation.

10. ID.; ID.; ID.; NEITHER JOINT NOR SIMULTANEOUS ACTION IS *PER SE* SUFFICIENT PROOF OF CONSPIRACY. — To be held guilty as a co-principal by reason of conspiracy, the accused must be shown to have performed an overt act in pursuance or furtherance of the complicity. Mere presence when the transaction was made does not necessarily lead to an inference of concurrence with the criminal design to commit the crime of *estafa*. Even knowledge, acquiescence, or agreement to cooperate is not enough to constitute one as a party to a conspiracy because the rule is that neither joint nor simultaneous action is *per se* sufficient proof of conspiracy.

APPEARANCES OF COUNSEL

Nicasio C. Sevilla for petitioner.

D E C I S I O N

VELASCO, JR., *J.*:

Conspiracy may be deduced from the mode, method, and manner by which the offense was perpetuated, or inferred from the acts of the accused persons themselves when such acts point to a joint purpose and design, concerted action, and community of interests. In this case before us, a series of overt acts of a co-conspirator and her earlier admission of participation documented in an amicable settlement she signed in the presence of counsel, all lead to the conclusion that the co-accused conspired to commit *estafa*.

The Court of Appeals (CA) culled the facts this way, as established by the prosecution:

At about 9:00 o'clock in the morning of March 14, 1991, petitioner Juanita Aquino, Elizabeth Garganta, and another woman identified only as "Adeling," went to the house of respondent Teresita Paiste at 611 Peñalosa St., Tondo, Manila. The children of respondent and petitioner were grade school classmates. After the usual pleasantries, petitioner started to convince respondent to buy a gold bar owned by a certain Arnold,

an Igorot. After respondent was shown a sample of the gold bar, she agreed to go with them to a pawnshop in Tondo to have it tested. She was told that it was genuine. However, she told the three that she had no money.

Regardless, petitioner and Garganta went back to the house of respondent the following day. The two convinced her to go with them to Angeles City, Pampanga to meet Arnold and see the gold bar. They reached Angeles City around 2:30 p.m. and met Arnold who showed them the gold bar. Arnold informed her that it was worth PhP60,000. After respondent informed them again she had no money, petitioner continued to press her that buying the gold bar would be good investment. The three left and went home.

On March 16, 1991, petitioner, Garganta, and Adeling returned to the house of respondent. Again, they failed to convince her to buy the gold bar.

On the next day, the three returned, this time they told respondent that the price was reduced to PhP10,000. She agreed to go with them to Angeles City to meet Arnold once more. Arnold pretended to refuse the PhP10,000 offer and insisted on PhP50,000.

On petitioner's insistence, on March 18, 1991, the two went to Angeles City and bought the gold bar for PhP50,000.[1]

On March 19, 1991, respondent had the gold bar tested and she was informed that it was fake.[2] Respondent then proceeded to petitioner's house to inform the latter that the gold bar was fake. Petitioner replied that they had to see Garganta, and that she had nothing to do with the transaction.[3]

On March 27, 1991, respondent brought petitioner to the National Bureau of Investigation (NBI)-NCR in the presence of a certain Atty. Tolentino where petitioner amicably promised

---

[1] TSN, February 26, 1992, pp. 7-8.

[2] *Id*., September 7, 1992, p. 20.

[3] *Id*., August 19, 1993, p. 11.

respondent they would locate Garganta, and the document they both signed would be disregarded should they locate Garganta. The amicable settlement reads:

> In view of the acceptance of fault by MRS. JUANITA ASIO-AQUINO of the case/complaint filed by MRS. TERESITA PAISTE before the NBI-National Capital Region for Swindling, Mrs. J. Aquino agreed to pay the complainant half the amount swindled from the latter. Said ₱25,000.00 offered by Mrs. J. Aquino as settlement for the case of Estafa will be paid by her through installment scheme in the amount of ₱1,000.00 per month beginning from the month of March, 1991 until fully paid.
>
> In witness whereof, the parties hereunto set their hands this 27th day of March 1991 at NBI-NCR, Taft Avenue, Manila.
>
> (Sgd.) MRS. JUANITA ASIO-AQUINO
> Respondent
>
> (Sgd.) MRS. TERESITA PAISTE
> Complainant
>
> Witnesses:
>
> 1. Signed (Illegible)
> 2.
>
> WAIVER OF RIGHT TO COUNSEL
>
> The undersigned accused/respondent hereby waives her right to counsel despite the recital of her constitutional rights made by NBI agent Ely Tolentino in the presence of a lawyer Gordon S. Uy.
>
> (Sgd.) MRS. JUANITA ASIO-AQUINO
>
> (Sgd.) MRS. TERESITA PAISTE[4]

On April 6, 1991, petitioner brought Garganta to the house of respondent. In the presence of Barangay Chairperson Pablo Atayde and a police officer, respondent pointed to Garganta as the person who sold the fake gold bar. Garganta was brought to the police station where there was a demand against Garganta alone.

---

[4] *Rollo*, p. 46.

Subsequently, respondent filed a criminal complaint from which an Information against Garganta, petitioner, and three others for the crime of *estafa* in Criminal Case No. 92-99911 was filed before the Manila Regional Trial Court (RTC). The Information reads:

> That on or about March 18, 1991, in the City of Manila, Philippines, the said accused conspiring and confederating together with three others, whose true names, real identities and present whereabouts are still unknown and helping one another, did then and there willfully, unlawfully and feloniously defraud Teresita B. Paiste in the following manner to wit: the said accused, by means of false manifestations and fraudulent representations which they made to the said Teresita B. Paiste to the effect that a certain Arnold, an Igorot is selling a gold bar for ₱50,000.00, and by means of other similar deceits, induced and succeeded in inducing the said Teresita B. Paiste to buy the said gold bar and to give and deliver to said accused the total amount of ₱50,000.00, the herein accused well knowing that their manifestations and representations were all false and untrue and were made only for the purpose of obtaining, as in fact they did obtain the said amount of ₱50,000.00, which once in their possession, they thereafter willfully, unlawfully and feloniously, with intent to defraud, misappropriated, misapplied and converted to their own personal use and benefit, to the damage and prejudice of the said Teresita B. Paiste in the aforesaid amount of ₱50,000.00, Philippine Currency.[5]

Accused Garganta and the others remained at large; only petitioner was arraigned and entered a plea of not guilty.

Trial ensued with the prosecution presenting the testimonial evidence of private complainant, herein respondent, Yolanda Pomer, and Ely Tolentino. For her defense, petitioner testified along with Barangay Chairperson Atayde, Jose Aquino, and SPO1 Roberto Cailan. The prosecution presented as documentary evidence three (3) documents, one of which is the amicable settlement signed in the NBI, while the defense relied solely on its testimonial evidence.

---

[5] *Id.* at 41.

The Ruling of the Regional Trial Court

On July 16, 1998, the trial court rendered a Decision convicting petitioner of the crime charged, the dispositive portion of which reads:

> WHEREFORE, the Court finds the accused Juanita Aquino guilty beyond reasonable doubt of the crime of estafa and hereby sentences her to suffer the indeterminate penalty of FIVE (5) YEARS OF *PRISION CORRECCIONAL* as minimum to NINE (9) YEARS OF *PRISION MAYOR* as maximum, and to indemnify the complainant, Teresita B. Paiste the sum of ₱50,000.00 with 12% interest per annum counted from the filing of the Information until fully paid, and to pay the costs of suit.
>
> SO ORDERED.[6]

The RTC found that petitioner conspired with Garganta, Adeling, and Arnold in committing the crime of *estafa*. The trial court likewise gave credence to the amicable settlement as additional proof of petitioner's guilt as an amicable settlement in criminal cases is an implied admission of guilt.

The Ruling of the Court of Appeals

Aggrieved, petitioner brought on appeal the above RTC decision before the CA, which was docketed as CA-G.R. CR No. 22511.

After the parties filed their respective briefs, on November 10, 2000, the appellate court rendered the assailed Decision which affirmed *in toto*[7] the July 16, 1998 RTC Decision.

In affirming the trial court's findings and conclusions of law, the CA found that from the tenor of the amicable settlement, the investigation before the NBI did not push through as both parties came to settle the matter amicably. Nonetheless, the CA pointed out that petitioner was assisted, although unnecessarily, by an independent counsel, a certain Atty. Gordon S. Uy, during the proceedings. The CA held that petitioner's

---

[6] *Id*. at 40.

[7] *Id*. at 50.

mere bare allegation that she signed it under threat was insufficient for she presented no convincing evidence to bolster her claim. Consequently, the amicable settlement was admitted and appreciated as evidence against petitioner.

Nevertheless, the CA ruled that even if the amicable settlement was not admissible or was totally disregarded, the RTC still did not err in convicting petitioner as it was indubitably shown by the prosecution through convincing evidence replete in the records that respondent conspired with the other accused through active participation in the commission of the crime of *estafa*. *In fine*, the CA found that the prosecution had indeed established the guilt of petitioner beyond reasonable doubt.

Through the assailed April 6, 2001 Resolution, the appellate court denied petitioner's motion for reconsideration.

The Issues

Hence, we have the instant petition under Rule 45 of the 1997 Rules of Civil Procedure, ascribing the following errors, which are essentially the same ones raised before the CA:

I

THE COURT *A QUO* ERRED IN NOT DECLARING AS UNCONSTITUTIONAL AND LACKING IN CERTAIN PRESCRIBED REQUIREMENTS THE INVESTIGATION CONDUCTED BY THE INVESTIGATOR OF THE NATIONAL BUREAU OF INVESTIGATION (NBI), OF ACCUSED-APPELLANT AND COROLLARY THERETO, TO CONSIDER ANY AND ALL EVIDENCE PROCURED THEREBY TO BE INADMISSIBLE AS AGAINST ACCUSED-APPELLANT.

II

THE COURT *A QUO* ERRED IN NOT DECLARING AS UNCONSTITUTIONAL AND LACKING IN CERTAIN POSITIVE PARTICULARS AND STRICT COMPLIANCE THE MANNER IN WHICH THE WAIVER OF RIGHT TO COUNSEL HAD BEEN ASKED TO BE EXECUTED AND SUBSCRIBED BY ACCUSED-APPELLANT.

III

THE COURT *A QUO* ERRED IN FINDING THAT THE ACCUSED-APPELLANT TOOK AN ACTIVE PART IN THE COMMISSION OF THE FELONY IMPUTED TO HER AND IN DECLARING HER GUILTY THEREFOR BEYOND REASONABLE DOUBT.

IV

THE COURT *A QUO* ERRED IN FINDING THAT CONSPIRACY EXISTED BETWEEN HEREIN ACCUSED-APPELLANT AND HER CO-ACCUSED, ELIZABETH GARGANTA DELA CRUZ.[8]

The Court's Ruling

In gist, the instant petition proffers the twin issues on (1) whether the amicable settlement executed in the NBI is admissible as evidence, and (2) whether conspiracy has indeed been proven to convict petitioner of the crime of *estafa*.

The instant petition hinges on the issue of the assessment of evidence and their admissibility. As consistently ruled in innumerable cases, this Court is not a trier of facts. The trial court is best equipped to make the assessment on said issues and, therefore, its factual findings are generally not disturbed on appeal unless the courts *a quo* are perceived to have overlooked, misunderstood, or misinterpreted certain facts or circumstances of weight, which, if properly considered, would affect the result of the case and warrant a reversal of the decision involved. We do not find in the instant case any such reason to depart from this general principle. However, in the interest of substantial justice, we shall deal with the issues raised by petitioner.

First Core Issue: Admissibility of amicable instrument

Petitioner ascribes error to the CA when it gave due weight and consideration to the amicable settlement with waiver of right to counsel that she signed in the NBI during the custodial investigation. She claims she executed the agreement under threat and not freely and voluntarily, in violation of Sec. 12(1)[9]

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

[9] SEC. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to

of the Constitution which guarantees her rights under the Miranda Rule.

We are not convinced.

Custodial investigation involves any questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. It is only after the investigation ceases to be a general inquiry into an unsolved crime and begins to focus on a particular suspect, the suspect is taken into custody, and the police carries out a process of interrogations that lend itself to eliciting incriminating statements, that the rule begins to operate.[10] Republic Act No. (RA) 7438[11] has extended this constitutional guarantee to situations in which an individual has not been formally arrested but has merely been "invited" for questioning.[12] Specifically, Sec. 2 of RA 7438 provides that "*custodial investigation* shall include the practice of issuing an *invitation* to a person who is investigated in connection with an offense he is suspected to have committed x x x."

It is evident that when petitioner was brought by respondent before the NBI-NCR on March 27, 1991 to be investigated, she was already under custodial investigation and the constitutional guarantee for her rights under the Miranda Rule has set in. Since she did not have a lawyer then, she was provided with one in the person of Atty. Uy, which fact is undisputed.

However, it can be gleaned from the amicable agreement, as aptly pointed out by the CA, that the custodial investigation on

---

have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

[10] *People v. Marra*, G.R. No. 108494, September 20, 1994, 236 SCRA 565, 573.

[11] "An Act Defining Certain Rights of Person Arrested, Detained or under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof" (1992).

[12] Cited in *People v. Domantay*, G.R. No. 130612, May 11, 1999, 307 SCRA 1.

the inquiry or investigation for the crime was either aborted or did not push through as the parties, petitioner, and respondent agreed to amicably settle. Thus, the amicable settlement with a waiver of right to counsel appended was executed with both parties affixing their signatures on it in the presence of Atty. Uy and NBI agent Atty. Ely Tolentino.

Petitioner's contention that her constitutional rights were breached and she signed the document under duress falls flat for the following reasons:

First, it is undisputed that she was provided with counsel, in the person of Atty. Uy. The presumption that Atty. Uy is a competent and independent counsel whose interests are not adverse to petitioner has not been overturned. Petitioner has merely posed before the CA and now this Court that Atty. Uy may not be an independent and competent counsel. Without any shred of evidence to bolster such claim, it cannot be entertained.

Second, petitioner made much of the fact that Atty. Uy was not presented as witness by the prosecution and that what petitioner and Atty. Uy supposedly conferred about was likewise not presented. Basic is the principle that consultation and information between counsel and client is privileged communication and the counsel may not divulge these without the consent of the client. Besides, a party in a case has full discretion to choose whoever it wants as testimonial witnesses to bolster its case. We cannot second guess the reason of the prosecution in not presenting Atty. Uy's testimony, more so on account of the counsel-client privileged communication. Furthermore, petitioner could have asserted its right "to have compulsory process to secure the attendance of witnesses,"[13] for which she could have compelled Atty. Uy to testify. She did not.

Third, petitioner never raised any objection against Atty. Gordon Uy's appointment during the time she was in the NBI and thereafter, when she signed the amicable settlement. As this Court aptly held in *People v. Jerez*, when "the accused

---

[13] 1987 CONSTITUTION, Art. III, Sec. 14 (2).

never raised any objection against the lawyer's appointment during the course of the investigation and the accused thereafter subscribes to the veracity of his statement before the swearing officer"[14] the accused is deemed to have engaged such lawyer. Verily, in the instant case, petitioner is deemed to have engaged Atty. Uy when she conferred with him and thereafter signed the amicable settlement with waiver of right to counsel in his presence. We do not see how the answer of NBI agent Atty. Tolentino upon cross-examination about the petitioner's counsel in the NBI, could be evasive when the NBI agent merely stated the fact that an independent counsel, Atty. Uy, was provided petitioner.

Fourth, when petitioner engaged Atty. Uy as her lawyer, she undoubtedly executed the amicable settlement. Verily, she was provided with an independent counsel and such "right to counsel is intended to preclude the slightest coercion as would lead the accused to admit something false. The lawyer, however, should never prevent an accused from freely and voluntarily telling the truth."[15] An amicable settlement is not and does not partake of the nature of an extrajudicial confession or admission but is a contract between the parties within the parameters of their mutually recognized and admitted rights and obligations. Thus, the presence of Atty. Uy safeguarded petitioner's rights even if the custodial investigation did not push through and precluded any threat of violence, coercion, or intimidation.

Moreover, while we hold in this case that petitioner's Miranda rights were not violated, still we will not be remiss to reiterate what we held in *People v. Malimit* that the infractions of the so-called Miranda rights render inadmissible "only the extrajudicial confession or admission made during custodial investigation. The admissibility of other evidence, provided they are relevant to the issue and is not otherwise excluded by law or rules, is not affected even if obtained or taken in the course of custodial

---

[14] G.R. No. 114385, January 29, 1998, 285 SCRA 393, 401; citing *People v. Suarez*, G.R. No. 111193, January 28, 1997, 267 SCRA 119.

[15] *People v. Layuso*, G.R. No. 69210, July 5, 1989, 175 SCRA 47.

investigation."[16] An admission is an act, declaration or omission of a party as to a relevant fact,[17] while confession is a declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein.[18]

Fifth, even granting *arguendo* that the amicable settlement is in the nature of an admission, the document petitioner signed would still be admissible since none of her constitutional rights were violated. Petitioner's allegations of threat, violence, and intimidation remain but bare allegations. Allegations are not proof. Pertinently, this Court ruled in *People v. Calvo*:

> A confession is not rendered involuntary merely because defendant was told that he should tell the truth or that it would be better for him to tell the truth. Stated elsewise, telling the accused that it would be better for him to speak or tell the truth does not furnish any inducement, or a sufficient inducement, to render objectionable a confession thereby obtained, unless threats or promises are applied. **These threats or promises which the accused must successfully prove in order to make his confession inadmissible, must take the form of violence, intimidation, a promise of reward or leniency**.[19]

In fine, we agree with the courts *a quo* that even assuming *arguendo* that the amicable settlement is not admissible, still the conviction of petitioner would be affirmed as conspiracy was duly proven by other pieces of evidence.

Second Core Issue: Conspiracy duly proven

It is petitioner's strong contention in her last two assigned errors that conspiracy has not been proven to convict her of *estafa*. She asserts that there was no strong showing of any convincing and solidly conclusive proof that she took an active part in any phase of the transaction concerning the overt acts constituting *estafa* that has been imputed to her. She argues

---

[16] G.R. No. 109775, November 14, 1996, 264 SCRA 167, 177.

[17] REVISED RULES ON EVIDENCE, Rule 130, Sec. 26.

[18] REVISED RULES ON EVIDENCE, Rule 130, Sec. 33.

[19] G.R. No. 91694, March 14, 1997, 269 SCRA 676, 683-684.

that whatever act that might have been imputed to her has always been through the request or insistence of either Garganta or respondent as the transcript of stenographic notes reveals. She points out that after she introduced Garganta to respondent in the morning of March 14, 1991, she almost immediately left them and she did not accompany Garganta when the latter went back to respondent's house in the afternoon of March 14, 1991. And she avers that significantly, she did not remain in Pampanga after the completion of the transaction on March 18, 1991, but came to Manila with respondent. According to her, her non-participation in these two crucial meetings shows she was not part of any conspiracy to defraud respondent.

We are not persuaded.

Conspiracy is deemed to arise when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proven by direct evidence of prior agreement to commit the crime.[20] In criminal law, where the quantum of evidence required is proof beyond reasonable doubt, direct proof is not essential to show conspiracy — it may be deduced from the mode, method, and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action, and community of interest.[21]

It is common design which is the essence of conspiracy — conspirators may act separately or together, in different manners but always leading to the same unlawful result. The character and effect of conspiracy are not to be adjudged by dismembering it and viewing its separate parts but only by looking at it as a whole — acts done to give effect to conspiracy may be, in fact, wholly innocent acts.[22] Once proved, the act of one becomes

---

[20] *People v. Quirol*, G.R. No. 149259, October 20, 2005, 473 SCRA 509, 517.

[21] *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 159556, May 26, 2005, 459 SCRA 236, 258.

[22] *Preferred Home Specialties, Inc. v. Court of Appeals*, G.R. No. 163593, December 16, 2005, 478 SCRA 387, 415.

the act of all. All the conspirators are answerable as co-principals regardless of the extent or degree of their participation.

To be held guilty as a co-principal by reason of conspiracy, the accused must be shown to have performed an overt act in pursuance or furtherance of the complicity. Mere presence when the transaction was made does not necessarily lead to an inference of concurrence with the criminal design to commit the crime of *estafa*. Even knowledge, acquiescence, or agreement to cooperate is not enough to constitute one as a party to a conspiracy because the rule is that neither joint nor simultaneous action is *per se* sufficient proof of conspiracy.[23]

In the instant case, the courts *a quo* unanimously held that conspiracy was duly proven. As aptly observed by the CA, the records are replete with instances to show that petitioner actively participated to defraud respondent. The following instances all point to the conclusion that petitioner conspired with others to commit the crime:

First, petitioner was with her co-accused Garganta and Adeling when they went to respondent's house on March 14, 1991 to tell her of the existence of a gold bar, showed her a sample, tried to convince respondent to buy one, and went to a pawnshop in Tondo to have the sample gold bar tested.

Second, the following day, March 15, petitioner was again with her co-accused when they went to Angeles City to view the gold bar in the residence of Arnold, and participated in convincing respondent to raise PhP50,000 for the purchase of the gold bar, and if respondent did not have money, to find a buyer.

Third, on March 16, petitioner was again with her co-accused when they returned to the house of respondent to ask if she had found a buyer. Since she had not, they again pressed her to look for one.

---

[23] *Ladonga v. People*, G.R. No. 141066, February 17, 2005, 451 SCRA 673, 685-686.

Fourth, on March 17, she with her co-accused again accompanied respondent to Angeles City and met with Arnold to convince him to accept PhP10,000 as deposit, but were refused.

Fifth, on March 18, respondent again pressed respondent to buy the gold bar until the latter finally succumbed and paid PhP50,000. Petitioner even re-counted the cash payment, wrapped it in newspaper, and handed the money herself to Arnold.

It is unquestionable that petitioner was not a passive observer in the five days from March 14 to 18, 1991; she was an active participant in inducing respondent to buy the gold bar. We find no cogent reason to alter the conclusions of the CA. Indeed, the records bear out that conspiracy was duly proven by the coordinated actions of petitioner and her companions.

Clearly, petitioner's contention that all she did was at the behest of either Garganta or respondent is belied by the fact that she took part in all the phases of the inducement right up to the purchase by respondent of the fake gold. If it was true that she had no part in the transaction, why would she still accompany Garganta to visit respondent on the 15th, 16th, 17th, and 18th of March 1991? Moreover, with trips to Pampanga made on the 15th, 17th, and 18th that take several hours, it is unfathomable that petitioner was only doing a favor to either Garganta or respondent, or to both.

Ineluctably, after having been introduced to respondent, Garganta could have made the visits to respondent without tagging along petitioner. Yet, the facts clearly show that respondent could not have been thereby induced without petitioner's active participation in encouraging respondent to buy the gold bar. Petitioner is the lynchpin upon whom respondent's interest was stoked, and ultimately to succumb to the lure of gaining a fat profit by buying the gold bar.

Moreover, the fact that petitioner went back on the 18th with respondent to Manila instead of staying in Pampanga does not preclude her active participation in the conspiracy as shown by the foregoing narration. It would have been strange to respondent if petitioner stayed in Pampanga after the transaction.

Thus, petitioner indeed took active part in the perpetration of *estafa*. And, petitioner has not shown any convincing proof that she was not part of the transaction given the undisputed factual milieu of the instant case.

Finally, it bears stressing that petitioner was the one who knows respondent. She introduced respondent to the other accused.

WHEREFORE, the petition is *DENIED* for lack of merit. The CA's November 10, 2000 Decision and April 6, 2001 Resolution in CA-G.R. CR No. 22511 are hereby *AFFIRMED IN TOTO*. Costs against petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 164401. June 25, 2008]

LILIBETH SUNGA-CHAN and CECILIA SUNGA, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS; THE HONORABLE PRESIDING JUDGE, Regional Trial Court, Branch 11, Sindangan, Zamboanga Del Norte; THE REGIONAL TRIAL COURT SHERIFF, Branch 11, Sindangan, Zamboanga Del Norte; THE CLERK OF COURT OF MANILA, as *Ex-Officio* Sheriff; and LAMBERTO T. CHUA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; IT IS NOT THE DUTY OF THE SUPREME COURT, NOT BEING A TRIER OF

FACTS, TO ANALYZE ALL OVER AGAIN THE EVIDENCE SUPPORTIVE OF SUCH DETERMINATION, ABSENT THE MOST COMPELLING AND COGENT REASONS. — Neither is the Court inclined to interfere with the CA's conclusion as to the total amount of the partnership profit, that is, PhP 1,855,000, generated for the period January 1988 through May 30, 1992, and the total partnership assets of PhP3,227,100, 50% of which, or PhP 1,613,550, pertains to Chua as his share. To be sure, petitioners have not adduced adequate evidence to belie the above CA's factual determination, confirmatory of the trial court's own. Needless to stress, it is not the duty of the Court, not being a trier of facts, to analyze or weigh all over again the evidence or premises supportive of such determination, absent, as here, the most compelling and cogent reasons.

2. CIVIL LAW; DAMAGES; INTEREST; RULES ON THE IMPOSITION OF INTEREST. — In *Reformina v. Tomol, Jr.,* the Court held that the legal interest at 12% per annum under Central Bank (CB) Circular No. 416 shall be adjudged only in cases involving the loan or forbearance of money. And for transactions involving payment of indemnities in the concept of damages arising from default in the performance of obligations in general and/or for money judgment not involving a loan or forbearance of money, goods, or credit, the governing provision is Art. 2209 of the Civil Code prescribing a yearly 6% interest. x x x The term "forbearance," within the context of usury law, has been described as a contractual obligation of a lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay the loan or debt then due and payable. *Eastern Shipping Lines, Inc.* synthesized the rules on the imposition of interest, if proper, and the applicable rate, as follows: The 12% per annum rate under CB Circular No. 416 shall apply only to loans or forbearance of money, goods, or credits, as well as to judgments involving such loan or forbearance of money, goods, or credit, while the 6% per annum under Art. 2209 of the Civil Code applies "when the transaction involves the payment of indemnities in the concept of damage arising from the breach or a delay in the performance of obligations in general," with the application of both rates reckoned "from the time the complaint was filed until the [adjudged] amount is fully paid." In either instance, the reckoning period for the commencement

of the running of the legal interest shall be subject to the condition "that the courts are vested with discretion, depending on the equities of each case, on the award of interest."

3. ID.; ID.; ID.; UNTIL REASONABLY DETERMINED, AN UNLIQUIDATED CLAIM SHALL NOT EARN INTEREST. — Anent the impasse over the partnership assets, we are inclined to agree with petitioners' assertion that Chua's share and interest on such assets partake of an unliquidated claim which, until reasonably determined, shall not earn interest for him. As may be noted, the legal norm for interest to accrue is "reasonably determinable," not, as Chua suggested and the CA declared, determinable by mathematical computation.

4. ID.; ID.; ID.; A LIQUIDATED CLAIM CANNOT VALIDLY BE ASSERTED WITHOUT ACCOUNTING. — The Court has certainly not lost sight of the fact that the October 7, 1997 RTC decision clearly directed petitioners to render an accounting, inventory, and appraisal of the partnership assets and then to wind up the partnership affairs by restituting and delivering to Chua his one-half share of the accounted partnership affairs by restituting and delivering to Chua his one-half share of the accounted partnership assets. The directive itself is a recognition that the exact share and interest of Chua over the partnership cannot be determined with reasonable precision without going through with the inventory and accounting process. In fine, a liquidated claim cannot validly be asserted without accounting. In net effect, Chua's interest and share over the partnership asset, exclusive of the goodwill, assumed the nature of a liquidated claim only after the trial court, through its November 6, 2002 resolution, approved the assets inventory and accounting report on such assets.

5. ID.; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; SOLIDARY OBLIGATION; THE LAW IMPOSES A SOLIDARY OBLIGATION WHEN IT IS IMPOSSIBLE TO DRAW THE LINE BETWEEN WHEN THE LIABILITY OF ONE PETITIONER ENDS AND THE LIABILITY OF THE OTHERS STARTS. — Under the circumstances surrounding the case, we hold that the obligation of petitioners is solidary for several reasons. For one, the complaint of Chua for winding up of partnership affairs, accounting, appraisal, and recovery of share and damages is clearly a suit to enforce a solidary or joint and several obligation on the part of petitioners. As

it were, the continuance of the business and management of Shellite by petitioners against the will of Chua gave rise to a solidary obligation, the acts complained of not being severable in nature. Indeed, it is well-nigh impossible to draw the line between when the liability of one petitioner ends and the liability of the others starts. In this kind of situation, the law itself imposes solidary obligation. Art. 1207 of the Civil Code thus provides: x x x. Any suggestion that the obligation to undertake an inventory, render an accounting of partnership assets, and to wind up the partnership affairs is divisible ought to be dismissed. For the other, the duty of petitioners to remit to Chua his half interest and share of the total partnership assets proceeds from petitioners' indivisible obligation to render an accounting and inventory of such assets. The need for the imposition of a solidary liability becomes all the more pronounced considering the impossibility of quantifying how much of the partnership assets or profits was misappropriated by each petitioner. And for a third, petitioners' obligation for the payment of damages and attorney's and litigation fees ought to be solidary in nature, they having resisted in bad faith a legitimate claim and thus compelled Chua to litigate.

6. ID.; FAMILY CODE; ABSOLUTE COMMUNITY PROPERTY; MAY BE HELD LIABLE FOR THE OBLIGATIONS CONTRACTED BY EITHER SPOUSE; CASE AT BAR. — Given the solidary liability of petitioners to satisfy the judgment award, respondent sheriff cannot really be faulted for levying upon and then selling at public auction the property of petitioner Sunga-Chan to answer for the whole obligation of petitioners. The fact that levied parcel of land is a conjugal or community property, as the case may be, of spouses Norberto and Sunga-Chan does not per se vitiate the levy and the consequent sale of the property. Verily, said property is not among those exempted from execution under Section13, Rule 39 of the Rules of Court. And it cannot be overemphasized that the TRO issued by the Court on May 31, 2005 came after the auction sale in question. Parenthetically, the records show that spouses Sunga-Chan and Norberto were married on February 4, 1992, or after the effectivity of the Family Code on August 3, 1988. Withal, their absolute community property may be held liable for the obligations contracted by either spouse. Specifically, Art. 94 of said Code pertinently provides: Art. 94. The absolute community of property shall be liable for: (1) x x x (2) All

debts and obligations contracted during the marriage by the designated administrator-spouse for the benefit of the community, or by both spouses, **or by one spouse with the consent of the other**. (3) Debts and obligations contracted by either spouse without the consent of the other **to the extent that the family may have been benefited**. Absent any indication otherwise, the use and appropriation by petitioner Sunga-Chan of the assets of Shellite even after the business was discontinued on May 30, 1992 may reasonably be considered to have been used for her and her husband's benefit.

APPEARANCES OF COUNSEL

Manuel T. Chan & Romeo S. Salinas and *Albon & Serrano Law Office* for petitioners.

Pacatang Law Office and *Nelson A. Loyola* for L.T. Chua.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before us is a petition for review under Rule 45, seeking to nullify and set aside the Decision[1] and Resolution dated November 6, 2003 and July 6, 2004, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 75688. The impugned CA Decision and Resolution denied the petition for *certiorari* interposed by petitioners assailing the Resolutions[2] dated November 6, 2002 and January 7, 2003, respectively, of the Regional Trial Court (RTC), Branch 11 in Sindangan, Zamboanga Del Norte in Civil Case No. S-494, a suit for winding up of partnership affairs, accounting, and recovery of shares commenced thereat by respondent Lamberto T. Chua.

---

[1] *Rollo*, pp. 36-45. Penned by Associate Justice Romeo A. Brawner (Chairperson, now retired) and concurred in by Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr.

[2] *Id*. at 90-91. Penned by Judge Mariano S. Macias.

The Facts

In 1977, Chua and Jacinto Sunga formed a partnership to engage in the marketing of liquefied petroleum gas. For convenience, the business, pursued under the name, Shellite Gas Appliance Center (Shellite), was registered as a sole proprietorship in the name of Jacinto, albeit the partnership arrangement called for equal sharing of the net profit.

After Jacinto's death in 1989, his widow, petitioner Cecilia Sunga, and married daughter, petitioner Lilibeth Sunga-Chan, continued with the business without Chua's consent. Chua's subsequent repeated demands for accounting and winding up went unheeded, prompting him to file on June 22, 1992 a Complaint for *Winding Up of a Partnership Affairs, Accounting, Appraisal and Recovery of Shares and Damages with Writ of Preliminary Attachment*, docketed as Civil Case No. S-494 of the RTC in Sindangan, Zamboanga del Norte and raffled to Branch 11 of the court.

After trial, the RTC rendered, on October 7, 1997, judgment finding for Chua, as plaintiff *a quo*. The RTC's decision would subsequently be upheld by the CA in CA-G.R. CV No. 58751 and by this Court per its Decision dated August 15, 2001 in G.R. No. 143340.[3] The corresponding Entry of Judgment[4] would later issue declaring the October 7, 1997 RTC decision final and executory as of December 20, 2001. The *fallo* of the RTC's decision reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, as follows:
>
> (1) DIRECTING them **to render an accounting** in acceptable form under accounting procedures and standards **of the properties, assets, income and profits of [Shellite] since the time of death of Jacinto L. Sunga**, from whom they continued the business operations including all businesses derived from [Shellite]; submit an inventory, and appraisal of all these properties, assets, income, profits, *etc*. to the Court and to plaintiff for approval or disapproval;

[3] Reported in 363 SCRA 249.

[4] *Rollo*, p. 69.

(2) ORDERING them **to return and restitute** to the partnership any and all **properties, assets, income and profits they misapplied and converted** to their own use and advantage that legally pertain to the plaintiff and account for the properties mentioned in pars. A and B on pages 4-5 of this petition as basis;

(3) DIRECTING them to restitute and **pay to the plaintiff ½ shares and interest of the plaintiff** in the partnership of the listed properties, assets and good will in schedules A, B and C, on pages 4-5 of the petition;

(4) ORDERING them to **pay** the plaintiff earned but **unreceived income and profits from the partnership from 1988 to May 30, 1992**, when the plaintiff learned of the closure of the store the sum of **₱35,000.00 per month, with legal rate of interest until fully paid**;

(5) ORDERING them to wind up the affairs of the partnership and terminate its business activities pursuant to law, after delivering to the plaintiff all the ½ interest, shares, participation and equity in the partnership, or the value thereof in money or money's worth, if the properties are not physically divisible;

(6) FINDING them especially Lilibeth Sunga-Chan guilty of breach of trust and in bad faith and hold them liable to the plaintiff the sum of ₱50,000.00 as moral and exemplary damages; and,

(7) DIRECTING them to reimburse and pay the sum of ₱25,000.00 as attorney's [fee] and ₱25,000.00 as litigation expenses.

NO special pronouncements as to COSTS.

SO ORDERED.[5] (Emphasis supplied.)

Via an Order[6] dated January 16, 2002, the RTC granted Chua's motion for execution. Over a month later, the RTC, acting on another motion of Chua, issued an amended writ of execution.[7]

It seems, however, that the amended writ of execution could not be immediately implemented, for, in an omnibus motion of

[5] *Id*. at 38.

[6] *Id*. at 72.

[7] *Id*. at 73-76.

April 3, 2002, Chua, *inter alia*, asked the trial court to commission a certified public accountant (CPA) to undertake the accounting work and inventory of the partnership assets if petitioners refuse to do it within the time set by the court. Chua later moved to withdraw his motion and instead ask the admission of an accounting report prepared by CPA Cheryl A. Gahuman. In the report under the heading, *Computation of Claims*,[8] Chua's aggregate claim, arrived at using the compounding-of-interest method, amounted to PhP14,277,344.94. Subsequently, the RTC admitted and approved the computation of claims in view of petitioners' failure and refusal, despite notice, to appear and submit an accounting report on the winding up of the partnership on the scheduled hearings on April 29 and 30, 2002.[9]

After another lengthy proceedings, petitioners, on September 24, 2002, submitted their own CPA-certified valuation and accounting report. In it, petitioners limited Chua's entitlement from the winding up of partnership affairs to an aggregate amount of PhP3,154,736.65 only.[10] Chua, on the other hand, submitted a new computation,[11] this time applying simple interest on the various items covered by his claim. Under this methodology, Chua's aggregate claim went down to **PhP 8,733,644.75**.

On November 6, 2002, the RTC issued a Resolution,[12] rejecting the accounting report petitioners submitted, while approving the new computation of claims Chua submitted. The *fallo* of the resolution reads:

WHEREFORE, premises considered, this Court resolves, as it is hereby resolved, that the Computation of Claims submitted by the plaintiff dated October 15, 2002 amounting to ₱8,733,644.75 be APPROVED in all respects as the final computation and accounting of the defendants' liabilities in favor of the plaintiff in the above-

---

[8] *Id*. at 78-81.

[9] *Id*. at 77.

[10] *Id*. at 40.

[11] *Id*. at 85-89.

[12] *Id*. at 90.

captioned case, DISAPPROVING for the purpose, in its entirety, the computation and accounting filed by the defendants.

SO RESOLVED.[13]

Petitioners sought reconsideration, but their motion was denied by the RTC per its Resolution of January 7, 2003.[14]

In due time, petitioners went to the CA on a petition for *certiorari*[15] under Rule 65, assailing the November 6, 2002 and January 7, 2003 resolutions of the RTC, the recourse docketed as CA-G.R. SP No. 75688.

The Ruling of the CA

As stated at the outset, the CA, in the herein assailed Decision of November 6, 2003, denied the petition for *certiorari*, thus:

WHEREFORE, the foregoing considered, the Petition is hereby DENIED for lack of merit.

SO ORDERED.[16]

The CA predicated its denial action on the ensuing main premises:

1. Petitioners, by not appearing on the hearing dates, *i.e.*, April 29 and 30, 2002, scheduled to consider Chua's computation of claims, or rendering, as required, an accounting of the winding up of the partnership, are deemed to have waived their right to interpose any objection to the computation of claims thus submitted by Chua.

2. The 12% interest added on the amounts due is proper as the unwarranted keeping by petitioners of Chua's money passes as an involuntary loan and forbearance of money.

3. The reiterative arguments set forth in petitioners' pleadings below were part of their delaying tactics. Petitioners had come

---

[13] *Id*.

[14] *Id*. at 91.

[15] *Id*. at 93-112.

[16] *Supra* note 1, at 45.

to the appellate court at least thrice and to this Court twice. Petitioners had more than enough time to question the award and it is now too late in the day to change what had become final and executory.

Petitioners' motion for reconsideration was rejected by the appellate court through the assailed Resolution[17] dated July 6, 2004. Therein, the CA explained that the imposition of the 12% interest for forbearance of credit or money was proper pursuant to paragraph 1 of the October 7, 1997 RTC decision, as the computation done by CPA Gahuman was made in "acceptable form under accounting procedures and standards of the properties, assets, income and profits of [Shellite]."[18] Moreover, the CA ruled that the imposition of interest is not based on par. 3 of the October 7, 1997 RTC decision as the phrase "shares and interests" mentioned therein refers not to an imposition of interest for use of money in a loan or credit, but to a legal share or right. The appellate court also held that the imposition of interest on the partnership assets falls under par. 2 in relation to par. 1 of the final RTC decision as the restitution mentioned therein does not simply mean restoration but also reparation for the injury or damage committed against the rightful owner of the property.

Finally, the CA declared the partnership assets referred to in the final decision as "liquidated claim" since the claim of Chua is ascertainable by mathematical computation; therefore, interest is recoverable as an element of damage.

The Issues

Hence, the instant petition with petitioners raising the following issues for our consideration:

I.

Whether or not the Regional Trial Court can [impose] interest on a final judgment of unliquidated claims.

---

[17] *Rollo*, pp. 47-55.

[18] *Id*. at 52.

II.

Whether or not the Sheriff can enforce the whole divisible obligation under judgment only against one Defendant.

III.

Whether or not the absolute community of property of spouses Lilibeth Sunga Chan with her husband Norberto Chan can be lawfully made to answer for the liability of Lilibeth Chan under the judgment.[19]

Significant Intervening Events

In the meantime, pending resolution of the instant petition for review and even before the resolution by the CA of its CA-G.R. SP No. 75688, the following relevant events transpired:

1. Following the RTC's approval of Chua's computation of claims in the amount of PhP 8,733,644.75, the sheriff of Manila levied upon petitioner Sunga-Chan's property located along Linao St., Paco, Manila, covered by Transfer Certificate of Title (TCT) No. 208782,[20] over which a building leased to the Philippine National Bank (PNB) stood. In the auction sale of the levied lot, Chua, with a tender of PhP 8 million,[21] emerged as the winning bidder.

2. On January 21, 2005, Chua moved for the issuance of a final deed of sale and a writ of possession. He also asked the RTC to order the Registry of Deeds of Manila to cancel TCT No. 208782 and to issue a new certificate. Despite petitioners' opposition on the ground of prematurity, a final deed of sale[22] was issued on February 16, 2005.

3. On February 18, 2005, Chua moved for the confirmation of the sheriff's final deed of sale and for the issuance of an order for the cancellation of TCT No. 208782. Petitioners again interposed an opposition in which they informed the RTC that this Court had already granted due course to their petition for review on January 31, 2005;

---

[19] *Id*. at 175.

[20] *Id*. at 304-307.

[21] *Id*. at 92, Minutes of Sale.

[22] *Id*. at 256-257.

4. On **April 11, 2005**, the RTC, via a Resolution, confirmed the sheriff's final deed of sale, ordered the Registry of Deeds of Manila to cancel TCT No. 208782, and granted a writ of possession[23] in favor of Chua.

5. On May 3, 2005, petitioners filed before this Court a petition for the issuance of a temporary restraining order (TRO). On May 24, 2005, the sheriff of Manila issued a Notice to Vacate[24] against petitioners, compelling petitioners to repair to this Court anew for the resolution of their petition for a TRO.

6. **On May 31, 2005**, the **Court issued a TRO**,[25] enjoining the RTC and the sheriff from enforcing the April 11, 2005 writ of possession and the May 24, 2005 Notice to Vacate. Consequently, the RTC issued an Order[26] on June 17, 2005, suspending the execution proceedings before it.

7. Owing to the clashing ownership claims over the leased Paco property, coupled with the filing of an unlawful detainer suit before the Metropolitan Trial Court (MeTC) in Manila against PNB, the Court, upon the bank's motion, allowed, by Resolution[27] dated April 26, 2006, the consignation of the monthly rentals with the MeTC hearing the ejectment case.

The Court's Ruling

The petition is partly meritorious.

First Issue: Interest Proper in Forbearance of Credit

Petitioners, citing Article 2213[28] of the Civil Code, fault the trial court for imposing, in the execution of its final judgment, interests on what they considered as unliquidated claims. Among these was the claim for goodwill upon which the RTC attached

[23] *Id*. at 238-240.

[24] *Id*. at 264-265.

[25] *Id*. at 266-267.

[26] *Id*. at 276.

[27] *Id*. at 446A-446B.

[28] Art. 2213. Interest cannot be recovered upon unliquidated claims or damages, except when the demand can be established with reasonable certainty.

a monetary value of PhP 250,000. Petitioners also question the imposition of 12% interest on the claimed monthly profits of PhP 35,000, reckoned from 1988 to October 15, 1992. To petitioners, the imposable rate should only be 6% and computed from the finality of the RTC's underlying decision, *i.e.*, from December 20, 2001.

Third on the petitioners' list of unliquidated claims is the yet-to-be established value of the one-half partnership share and interest adjudicated to Chua, which, they submit, must first be determined with reasonable certainty in a judicial proceeding. And in this regard, petitioners, citing *Eastern Shipping Lines, Inc. v. Court of Appeals*,[29] would ascribe error on the RTC for adding a 12% per annum interest on the approved valuation of the one-half share of the assets, inclusive of goodwill, due Chua.

Petitioners are partly correct.

For clarity, we reproduce the summary valuations and accounting reports on the computation of claims certified to by the parties' respective CPAs. Chua claimed the following:

A 50% share on assets (exclusive of goodwill) at fair market value (*Schedule 1*)	₱ 1,613,550.00
B 50% share in the monetary value of goodwill (P500,000 x 50%)	250,000.00
C Legal interest on share of assets from June 1, 1992 to Oct. 15, 2002 at 12% interest per year (*Schedule 2*)	2,008,869.75
D Unreceived profits from 1988 to 1992 and its corresponding interest from Jan. 1, 1988 to Oct. 15, 2002 (*Schedule 3*)	4,761,225.00
E Damages	50,000.00
F Attorney's fees	25,000.00
G Litigation fees	25,000.00
TOTAL AMOUNT	**₱ 8,733,644.75**

[29] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

On the other hand, petitioners acknowledged the following to be due to Chua:

Total Assets – Schedule 1	₱2,431,956.35
50% due to Lamberto Chua	₱1,215,978.16
Total Alleged Profit, Net of Payments Made, May 1992-Sch. 2	1,613,758.49
50% share in the monetary value of goodwill (500,000 x 50%)	250,000.00
Moral and Exemplary Damages	50,000.00
Attorney's Fee	25,000.00
Litigation Fee	25,000.00
TOTAL AMOUNT	**₱3,154,736.65**

As may be recalled, the trial court admitted and approved Chua's computation of claims amounting to PhP 8,733,644.75, but rejected that of petitioners, who came up with the figure of only PhP 3,154,736.65. We highlight the substantial differences in the accounting reports on the following items, to wit: (1) the aggregate amount of the partnership assets bearing on the 50% share of Chua thereon; (2) interests added on Chua's share of the assets; (3) amount of profits from 1988 through May 30, 1992, net of alleged payments made to Chua; and (4) interests added on the amount entered as profits.

From the foregoing submitted valuation reports, there can be no dispute about the goodwill earned thru the years by Shellite. In fact, the parties, by their own judicial admissions, agreed on the monetary value, *i.e.,* PhP 250,000, of this item. Clearly then, petitioners contradict themselves when they say that such amount of goodwill is without basis. Thus, the Court is loathed to disturb the trial court's approval of the amount of PhP 250,000, representing the monetary value of the goodwill, to be paid to Chua.

Neither is the Court inclined to interfere with the CA's conclusion as to the total amount of the partnership profit, that is, PhP 1,855,000, generated for the period January 1988 through May 30, 1992, and the total partnership assets of PhP 3,227,100, 50% of which, or PhP 1,613,550, pertains to Chua as his share. To be sure, petitioners have not adduced adequate evidence to

belie the above CA's factual determination, confirmatory of the trial court's own. Needless to stress, it is not the duty of the Court, not being a trier of facts, to analyze or weigh all over again the evidence or premises supportive of such determination, absent, as here, the most compelling and cogent reasons.

This brings us to the question of the propriety of the imposition of interest and, if proper, the imposable rate of interest applicable.

In *Reformina v. Tomol, Jr.*,[30] the Court held that the legal interest at 12% per annum under Central Bank (CB) Circular No. 416 shall be adjudged only in cases involving the loan or forbearance of money. And for transactions involving payment of indemnities in the concept of damages arising from default in the performance of obligations in general and/or for money judgment not involving a loan or forbearance of money, goods, or credit, the governing provision is Art. 2209 of the Civil Code prescribing a yearly 6% interest. Art. 2209 pertinently provides:

> Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum.

The term "forbearance," within the context of usury law, has been described as a contractual obligation of a lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay the loan or debt then due and payable.[31]

Eastern Shipping Lines, Inc. synthesized the rules on the imposition of interest, if proper, and the applicable rate, as follows: The 12% per annum rate under CB Circular No. 416 shall apply only to loans or forbearance of money, goods, or credits, as well as to judgments involving such loan or forbearance

---

[30] No. 59096, October 11, 1985, 139 SCRA 260.

[31] *Eastern Shipping Lines, Inc.*, supra note 29, at 93-94; citing BLACK'S LAW DICTIONARY 644 (1990).

of money, goods, or credit, while the 6% per annum under Art. 2209 of the Civil Code applies "when the transaction involves the payment of indemnities in the concept of damage arising from the breach or a delay in the performance of obligations in general,"[32] with the application of both rates reckoned "from the time the complaint was filed until the [adjudged] amount is fully paid."[33] In either instance, the reckoning period for the commencement of the running of the legal interest shall be subject to the condition "that the courts are vested with discretion, depending on the equities of each case, on the award of interest."[34]

Otherwise formulated, the norm to be followed in the future on the rates and application thereof is:

I. – When an obligation, regardless of its source, is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

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 breached 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 loans 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

---

[32] *Id*. at 94.

[33] *Id*. at 92; citing *Florendo v. Ruiz*, G.R. No. 60225, May 8, 1992, 208 SCRA 542; *Reformina*, *supra* note 30.

[34] *Id*. at 94-95.

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.[35]

Guided by the foregoing rules, the award to Chua of the amount representing earned but unremitted profits, *i.e.*. PhP 35,000 monthly, from January 1988 until May 30, 1992, must earn interest at 6% per annum reckoned from October 7, 1997, the rendition date of the RTC decision, until December 20, 2001, when the said decision became final and executory. Thereafter, the total of the monthly profits inclusive of the add on 6% interest shall earn 12% per annum reckoned from December 20, 2001 until fully paid, as the award for that item is considered to be, by then, equivalent to a forbearance of credit. Likewise, the PhP 250,000 award, representing the goodwill value of the business, the award of Php 50,000 for moral and exemplary damages, PhP 25,000 attorney's fee, and PhP 25,000 litigation fee shall earn 12% per annum from December 20, 2001 until fully paid.

Anent the impasse over the partnership assets, we are inclined to agree with petitioners' assertion that Chua's share and interest on such assets partake of an unliquidated claim which, until reasonably determined, shall not earn interest for him. As may be noted, the legal norm for interest to accrue is "reasonably determinable," not, as Chua suggested and the CA declared, determinable by mathematical computation.

---

[35] *Id*. at 95-97.

The Court has certainly not lost sight of the fact that the October 7, 1997 RTC decision clearly directed petitioners to render an accounting, inventory, and appraisal of the partnership assets and then to wind up the partnership affairs by restituting and delivering to Chua his one-half share of the accounted partnership assets. The directive itself is a recognition that the exact share and interest of Chua over the partnership cannot be determined with reasonable precision without going through with the inventory and accounting process. In fine, a liquidated claim cannot validly be asserted without accounting. In net effect, Chua's interest and share over the partnership asset, exclusive of the goodwill, assumed the nature of a liquidated claim only after the trial court, through its November 6, 2002 resolution, approved the assets inventory and accounting report on such assets.

Considering that Chua's computation of claim, as approved by the trial court, was submitted only on October 15, 2002, no interest in his favor can be added to his share of the partnership assets. Consequently, the computation of claims of Chua should be as follows:

(1)	50% share on assets (exclusive of goodwill) at fair market value	PhP 1,613,550.00
(2)	50% share in the monetary value of goodwill (PhP 500,000 x 50%)	250,000.00
(3)	12% interest on share of goodwill from December 20, 2001 to October 15, 2000 [PhP 250,000 x 0.12 x 299/365 days]	24,575.34
(4)	Unreceived profits from 1988 to May 30, 1992	1,855,000.00
(5)	6% interest on unreceived profits from January 1, 1988 to December 20, 2001[36]	1,360,362.50

[36] Interest computed as follows:

Year	Principal	Interest Rate	Period (months)	Interest Earned	Balance
1988	420,000.00	6%	167.5	351,750.00	771,750.00
1989	420,000.00	6%	155.5	326,550.00	746,550.00

(6)	12% interest on unreceived profits from December 20, 2001 to October 15, 2002 [PhP3,215,362.50 x 12% x 299/365 days]	316,074.54
(7)	Moral and exemplary damages	50,000.00
(8)	Attorney's fee	25,000.00
(9)	Litigation fee	25,000.00
(10)	12% interest on moral and exemplary damages, attorney's fee, and litigation fee from December 20, 2001 to October 15, 2002 [PhP 100,000 x 12% x 299/365 days]	9,830.14
	TOTAL AMOUNT	**PhP 5,529,392.52**

Second Issue: Petitioners' Obligation Solidary

Petitioners, on the submission that their liability under the RTC decision is divisible, impugn the implementation of the amended writ of execution, particularly the levy on execution of the absolute community property of spouses petitioner Sunga-Chan and Norberto Chan. Joint, instead of solidary, liability for any and all claims of Chua is obviously petitioners' thesis.

Under the circumstances surrounding the case, we hold that the obligation of petitioners is solidary for several reasons.

For one, the complaint of Chua for winding up of partnership affairs, accounting, appraisal, and recovery of shares and damages is clearly a suit to enforce a solidary or joint and several obligation on the part of petitioners. As it were, the continuance of the business and management of Shellite by petitioners against the will of Chua gave rise to a solidary obligation, the acts complained of not being severable in nature. Indeed, it is well-nigh impossible to draw the line between when the liability of one petitioner ends and the liability of the other starts. In this kind of situation,

---

1990	420,000.00	6%	143.5	301,350.00	721,350.00
1991	420,000.00	6%	131.5	276,150.00	696,150.00
1992	175,000.00	6%	119.5	104,562.50	279,562.50
Totals	**1,855,000.00**			**1,360,362.50**	

TOTAL (Principal plus Interest), as of December 20, 2001 PhP 3,215,362.50

the law itself imposes solidary obligation. Art. 1207 of the Civil Code thus provides:

> Art. 1207. The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each of the latter is bound to render, entire compliance with the prestation. There is solidary liability only when the obligation expressly so states, or when the law or the **nature of the obligation requires solidarity**. (Emphasis ours.)

Any suggestion that the obligation to undertake an inventory, render an accounting of partnership assets, and to wind up the partnership affairs is divisible ought to be dismissed.

For the other, the duty of petitioners to remit to Chua his half interest and share of the total partnership assets proceeds from petitioners' indivisible obligation to render an accounting and inventory of such assets. The need for the imposition of a solidary liability becomes all the more pronounced considering the impossibility of quantifying how much of the partnership assets or profits was misappropriated by each petitioner.

And for a third, petitioners' obligation for the payment of damages and attorney's and litigation fees ought to be solidary in nature, they having resisted in bad faith a legitimate claim and thus compelled Chua to litigate.

Third Issue: Community Property Liable

Primarily anchored as the last issue is the erroneous theory of divisibility of petitioners' obligation and their joint liability therefor. The Court needs to dwell on it lengthily.

Given the solidary liability of petitioners to satisfy the judgment award, respondent sheriff cannot really be faulted for levying upon and then selling at public auction the property of petitioner Sunga-Chan to answer for the whole obligation of petitioners. The fact that the levied parcel of land is a conjugal or community property, as the case may be, of spouses Norberto and Sunga-Chan does not per se vitiate the levy and the consequent sale of the property. Verily, said property is not among those exempted

from execution under Section 13,[37] Rule 39 of the Rules of Court.

And it cannot be overemphasized that the TRO issued by the Court on May 31, 2005 came after the auction sale in question.

Parenthetically, the records show that spouses Sunga-Chan and Norberto were married on February 4, 1992, or after the effectivity of the Family Code on August 3, 1988. Withal, their absolute community property may be held liable for the obligations contracted by either spouse. Specifically, Art. 94 of said Code pertinently provides:

---

[37] SEC. 13. *Property exempt from execution*.—Except as otherwise expressly provided by law, the following property, and no other, shall be exempt from execution:

(a) The judgment obligor's family home as provided by law, or the homestead in which he resides, and the land necessarily used in connection therewith;

(b) Ordinary tools and implements personally used by him in his trade, employment or livelihood;

(c) Three horses x x x or other beasts of burden x x x;

(d) His necessary clothing and articles for ordinary personal use, excluding jewelry;

(e) Household furniture and utensils necessary for housekeeping x x x;

(f) Provisions for individual or family use sufficient for four months;

(g) The professional libraries and equipment of judges, lawyers, physicians x x x;

(h) One fishing boat and accessories x x x;

(i) So much of the salaries, wages, or earnings of the judgment obligor x x x;

(j) Lettered gravestones;

(k) Monies, benefits, privileges, or annuities accruing or x x x growing out of any life insurance;

(l) The right to receive legal support, or money or property obtained as such support, or any pension or gratuity from the Government;

(m) Properties specially exempted by law.

But no article or species of property mentioned in this section shall be exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage thereon.

Art. 94. The absolute community of property shall be liable for:

(1) x x x x x x x x x

(2) All debts and obligations contracted during the marriage by the designated administrator-spouse for the benefit of the community, or by both spouses, **or by one spouse with the consent of the other**.

(3) Debts and obligations contracted by either spouse without the consent of the other **to the extent that the family may have been benefited**. (Emphasis ours.)

Absent any indication otherwise, the use and appropriation by petitioner Sunga-Chan of the assets of Shellite even after the business was discontinued on May 30, 1992 may reasonably be considered to have been used for her and her husband's benefit.

It may be stressed at this juncture that Chua's legitimate claim against petitioners, as readjusted in this disposition, amounts to only PhP 5,529,392.52, whereas Sunga-Chan's auctioned property which Chua acquired, as the highest bidder, fetched a price of PhP 8 million. In net effect, Chua owes petitioner Sunga-Chan the amount of PhP 2,470,607.48, representing the excess of the purchase price over his legitimate claims.

Following the auction, the corresponding certificate of sale dated January 15, 2004 was annotated on TCT No. 208782. On January 21, 2005, Chua moved for the issuance of a final deed of sale (1) to order the Registry of Deeds of Manila to cancel TCT No. 208782; (2) to issue a new TCT in his name; and (3) for the RTC to issue a writ of possession in his favor. And as earlier stated, the RTC granted Chua's motion, albeit the Court restrained the enforcement of the RTC's package of orders via a TRO issued on May 31, 2005.

Therefore, subject to the payment by Chua of PhP 2,470,607.48 to petitioner Sunga-Chan, we affirm the RTC's April 11, 2005 resolution, confirming the sheriff's final deed of sale of the levied property, ordering the Registry of Deeds of Manila to cancel TCT No. 208782, and issuing a writ of possession in favor of Chua.

WHEREFORE, this petition is *PARTLY GRANTED*. Accordingly, the assailed decision and resolution of the CA in CA-G.R. SP No. 75688 are hereby *AFFIRMED* with the following *MODIFICATIONS*:

(1) The Resolutions dated November 6, 2002 and January 7, 2003 of the RTC, Branch 11 in Sindangan, Zamboanga Del Norte in Civil Case No. S-494, as effectively upheld by the CA, are *AFFIRMED* with the modification that the approved claim of respondent Chua is hereby corrected and adjusted to cover only the aggregate amount of PhP 5,529,392.52;

(2) Subject to the payment by respondent Chua of PhP 2,470,607.48 to petitioner Sunga-Chan, the Resolution dated April 11, 2005 of the RTC, confirming the sheriff's final deed of sale of the levied property, ordering the Registry of Deeds of Manila to cancel TCT No. 208782, and issuing a writ of possession in favor of respondent Chua, is *AFFIRMED*; and

The TRO issued by the Court on May 31, 2005 in the instant petition is *LIFTED*.

No pronouncement as to costs.

SO ORDERED.

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

EN BANC

[G.R. No. 173023. June 25, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RESURRECCION RANIN, JR.** ***y*** **JAMALI,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR VARIANCES IN THE DETAILS OF A WITNESS' ACCOUNT ARE BADGES OF TRUTH RATHER THAN INDICIA OF FALSEHOOD AND BOLSTER THE PROBATIVE VALUE OF THE TESTIMONY. — Suffice it to state that the perceived contradictions in the testimony of de Castro merely referred to minor matters that did not touch on the commission of the crime itself as to affect the substance of her declaration, and the veracity or weight of her eyewitness' testimony. Witnesses cannot be expected to give a flawless testimony all the time. We have repeatedly held that minor variances in the details of a witness' account, more frequently than not, are badges of truth rather than *indicia* of falsehood, and bolster the probative value of the testimony. Indeed, even the most candid witness often makes mistakes and falls into confused statements, and at times, far from eroding the effectiveness of the evidence, such lapses could instead constitute signs of veracity.

2. ID.; ID.; ID.; TRIAL COURT'S ASSESSMENT THEREOF IS ENTITLED TO GREAT RESPECT AND WILL NOT BE DISTURBED ON APPEAL; EXCEPTIONS; NOT PRESENT IN CASE AT BAR. — As a rule, the trial court's assessment of the credibility of witnesses is entitled to great respect and will not be disturbed on appeal, unless: (1) it is found to be clearly arbitrary or unfounded; (2) some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood, or misinterpreted; or (3) the trial judge gravely abused his or her discretion. None of the above circumstances applies to the case at hand.

3. ID.; ID.; ID.; FINDINGS OF FACT OF THE TRIAL COURT WILL NOT BE OVERTURNED BY REASON THAT THE

JUDGE WHO PENNED THE DECISION WAS NOT THE JUDGE WHO HEARD THE TESTIMONIES OF THE WITNESSES. — Moreover, the fact that the judge who penned the decision was not the judge who heard the testimonies of the witnesses was not enough reason to overturn the findings of fact of the trial court on the credibility of the witnesses. Though ideally a judge should hear all the testimonies personally, at times the reality is that a different judge might pen the decision because the predecessor judge has retired or died or has resigned. In this situation, it cannot be assumed that the findings of fact of the judge who took over the case are not reliable and do not deserve the respect of the appellate courts. The judge who did not hear the testimonies personally can always rely on the transcripts of stenographic notes taken during the trial. Such dependence does not violate substantive and procedural due process.

4. ID.; ID.; DEFENSES OF ALIBI AND DENIAL; POSITIVE IDENTIFICATION, WHERE CATEGORICAL, CONSISTENT, AND NOT ATTENDED BY ANY SHOWING OF ILL MOTIVE ON THE PART OF THE EYEWITNESS TESTIFYING ON THE MATTER, PREVAILS OVER UBSUBSTANTIATED ALIBI AND DENIAL. — Even as appellant Ranin had difficulty bending his right forefinger, this did not foreclose the possibility that he used any of his right hand fingers to pull the trigger. In fact, the result of the Nerve Conduction Studies administered on appellant Ranin unqualifiedly indicated normal sensory conduction of his right radial nerve. To merit credibility, denial must be buttressed by strong evidence of non-culpability. Unable to show such evidence, herein appellant Ranin failed to overcome de Castro's testimony, which positively identified him as the shooter. It is well settled that positive identification, where categorical, consistent, and not attended by any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving weight in law. In the same vein, appellant Ranin's alibi that he had never been to UP fails in the face of positive identification by de Castro.

5. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN PRESENT; EVIDENT PREMEDITATION;

ESSENCE; CASE AT BAR.— The Court likewise agrees with the trial court that treachery and evident premeditation attended the killing which qualified the offense to murder. There is treachery when the means, methods and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and such means, methods and forms of execution were deliberately and consciously adopted by the accused without danger to his person. The essence of evident premeditation, for its part, is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. Here, de Castro spotted appellant Ranin pacing the pathway of the UP Diliman Campus, occasionally looking at a photograph a day before the shooting incident. Verily, appellant Ranin had ample time to ruminate on the possible consequences of his act. As to the manner of attack, the testimony of Dr. Raquel Del Rosario-Fortun on the autopsy was enlightening: x x x Evidently, Calinao was unaware of the impending danger as appellant Ranin suddenly fired two successive shots at him.

6. ID.; MURDER; IMPOSABLE PENALTY. — Now, as to the imposable penalty on appellant Ranin, we take into account the passage of Republic Act No. 9346, which was signed into law by President Gloria Macapagal-Arroyo on June 24, 2006. x x x. In accordance with the new law, Rep. Act No. 9346, the penalty imposed upon appellant Ranin should be reduced to *reclusion perpetua*, but he shall not be eligible for parole under the Indeterminate Sentence Law.

7. ID.; ID.; CIVIL LIABILITIES OF THE ACCUSED-APPELLANT. — With regard to the amount of actual damages, only expenses supported by receipts will be allowed. Hence, the award of ₱77,000 as actual damages by the trial court should be reduced to ₱42,000. The parties have also stipulated on the entitlement of the victim's heirs to moral damages. The controlling case law sets the amount of moral damages at ₱50,000. The award of civil indemnity, on the other hand, is separate and distinct from the award of moral damages which is based on a different jural foundation and assessed by the Court in the exercise of sound discretion. In murder, the grant of civil indemnity requires no proof other than the fact of death as a result of the crime and proof of appellant's responsibility therefor. Under prevailing

jurisprudence, the Court has pegged the amount at ₱75,000. It should be paid by appellant Ranin to the heirs of Niño Calinao who are entitled to receive it. Finally, as evident premeditation has been taken to qualify the offense to murder, treachery may be appreciated as an ordinary aggravating circumstance, to support the award of exemplary damages in the amount of ₱25,000. In *People v. Aguila*, we emphasized that exemplary damages of ₱25,000 are recoverable if there was present an aggravating circumstance, whether qualifying or ordinary, in the commission of the crime.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Rigoroso & Galindez Law Offices for appellant.

D E C I S I O N

QUISUMBING, *J.*:

For review are the Decision[1] dated October 26, 2005 and Resolution[2] dated March 1, 2006 of the Court of Appeals in CA-G.R. CR No. 00424. The Court of Appeals had affirmed the Decision[3] dated July 8, 2004 of the Regional Trial Court (RTC), Branch 219, Quezon City which convicted appellant Resurreccion Ranin, Jr. of murder in Criminal Case No. Q-99-86998. The Court of Appeals likewise denied appellant Ranin's motion for reconsideration.

The antecedent facts culled from the records are as follows:

In the morning of February 18, 1999, Lina de Castro, a lady guard detailed at Palma Hall in the University of the Philippines

---

[1] *Rollo*, pp. 33-50. Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Eliezer R. De los Santos and Jose C. Reyes, Jr. concurring.

[2] *Id*. at 51. Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Eliezer R. De los Santos and Mariano C. Del Castillo concurring.

[3] CA *rollo*, pp. 122-162. Penned by Pairing Judge Jose G. Paneda.

(UP), Diliman Campus, noticed appellant Ranin pacing the pathway. Appellant Ranin intermittently glanced at a photo which he kept in his pocket while his three companions sat on a bench. Sensing that the four were outsiders, de Castro asked them to leave.

Yet again, at around 3:30 p.m. the following day, de Castro saw appellant Ranin walking by the CASAA canteen as his companions rested on a bench. De Castro accosted appellant Ranin and demanded that he leave. Without responding, the latter headed towards the photocopying machine at the Arts and Sciences Building and then back. He did this routine four times while constantly checking a photo hidden in his pocket.

Meanwhile, Niño Calinao was seated on a bench with other UP students. When appellant Ranin neared their bench, he suddenly fired two successive shots at Calinao. The other students ran away as Calinao fell to the ground. While the latter was crawling on the ground holding his stomach, appellant Ranin shot him a third time. Then, appellant Ranin fired a fourth time at the fallen body of Calinao. De Castro tugged on appellant Ranin's shirt and told him, "*Dodong, Dodong, tama na yan, patay na yang bata.*"[4] Appellant Ranin pointed the gun at her but put it down right away. After that, appellant Ranin and his companions fled.

On September 21, 1999, Resurreccion Ranin, Jr. *y* Jamali, Besmart Al-Baddar Lauppah *y* Umparah, Rizal Sarri Lamsani *y* Jamang and Ommar Hadjula *y* Kainong were charged with murder in an Information[5] which reads as follows:

> On or about February 19, 1999, in Quezon City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, while confederating, conniving, conspiring and mutually helping and aiding one another, with evident premeditation and treachery, taking advantage of superior strength and employing means to weaken the defense of the victim, did then and there, with criminal and malicious intent to kill, wilfully, unlawfully, feloniously, shoot

[4] TSN, Vol. 1, March 29, 2000, p. 29.

[5] Records, pp. 1-2.

Ni[ñ]o Calinao with a .45 caliber pistol which caused his instantaneous death, to the damage and prejudice of his heirs.

CONTRARY TO LAW.[6]

On arraignment, all of them pleaded not guilty. Trial thereafter ensued.

Appellant Ranin claimed that he had never been to UP, and that both his hands were injured. His left suffered from atrophy and had a deep diagonal scar. The bone in his right forearm was broken and stainless steel had been placed inside. On demonstration, appellant Ranin could not cock a .45 caliber pistol using his left arm and pull the trigger with his forefinger.

In its Decision dated July 8, 2004, the RTC convicted appellant Ranin thus:

WHEREFORE, judgment is hereby rendered:

a) Finding the accused BESMART AL-BADDAR LAUPPAH *Y* UMPARAH and OMMAR HADJULA *Y* KAINONG culpability not proven beyond reasonable doubt, the Court hereby ACQUITS them of the offense charged;

b) The Jail Warden of the BJMP-Q.C. is hereby directed to release from his custody the persons of BESMART AL-BADDAR LAUPPAH *Y* UMPARAH and OMMAR HADJULA *Y* KAINONG unless they are being held for any other lawful cause/s;

c) Finding the accused RESURRE[C]CION RANIN, JR. *Y* JAMALI, guilty of the crime of MURDER beyond reasonable doubt;

d) Sentencing RESURRE[C]CION RANIN, JR. *Y* JAMALI to suffer the maximum penalty of DEATH;

e) Ordering RESURRE[C]CION RANIN, JR. *Y* JAMALI to indemnify the heirs of NIÑO CALINAO in the sum of ₱77,000.00 as actual damages and ₱500,000.00 as moral damages.

SO ORDERED.[7]

---

[6] *Id*. at 1.

[7] CA *rollo*, pp. 161-162.

The trial court denied the motion for reconsideration filed by appellant Ranin.

On appeal, the Court of Appeals affirmed the RTC's decision. The appellate court ruled that without any definite scientific findings that appellant Ranin is not capable of using his right hand, the possibility that it can be used is presumed.[8] Likewise, it sustained the prosecution witness' positive identification of appellant Ranin as the killer against the latter's alibi. The Court of Appeals found the inconsistency in de Castro's testimony as regards the interval between the 2nd, 3rd and 4th shots inconsequential.

Appellant Ranin moved for reconsideration but it was denied by the Court of Appeals in a Resolution dated March 1, 2006.

Now, appellant Ranin seeks a review of his conviction on a lone assignment of error:

THE HONORABLE COURT *A QUO* ERRED IN AFFIRMING THE DECISION OF THE HONORABLE TRIAL COURT AS HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[9]

Appellant Ranin argues that the Court of Appeals disregarded vital physical evidence which casts reasonable doubt on his guilt. He adds that it also shifted the burden of evidence on appellant Ranin to prove his innocence when it held that absent a conclusive medical finding that he was incapable of using his right hand, its possible use is presumed. Appellant Ranin also states that the appellate court erred in trivializing the contradictions in de Castro's testimony as to the interval between shots, and his distance from Calinao when he allegedly fired them. Appellant Ranin finally insists that the rule on appreciation of evidence by the trial court should not be applied since the judge who tried the case was not the one who penned the decision.

The Office of the Solicitor General (OSG) counters that the factual findings of the trial court were supported by the evidence

---

[8] *Rollo*, pp. 13-14.

[9] *Id*. at 25.

on record: Lina de Castro positively identified appellant Ranin as the shooter; Rina Sartin confirmed his presence at the crime scene; and the radiologist Dr. Eugene Dy and neurologist Dr. Jose C. Navarro did not completely rule out the use by appellant Ranin of his fingers. Also, the OSG agrees with the trial court that evident premeditation and treachery attended the killing of Calinao.

The Information charged appellant Ranin with Murder under Article 248,[10] paragraphs (1) and (5) of the Revised Penal Code. To be liable for murder, the prosecution must prove that: (a) a person was killed; (b) the accused killed him; (c) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (d) the killing is neither parricide nor infanticide.[11]

In the case at bar, appellant Ranin makes issue of the discrepancies in de Castro's testimony. At the onset, de Castro stated that a minute separated the second and third shots; and two minutes passed before appellant Ranin fired a fourth time. She later changed her account to add a minute interval between the shots. Appellant Ranin reasons that it would be highly unusual to take five minutes to shoot, and then get lost behind a crowd afterwards. Likewise, de Castro approximated appellant Ranin to have fired the gun 0.8 meters away from Calinao, but the forensic pathologist found no zone of blackening typical of gunshot wounds sustained at close range.

---

[10] ART. 248. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua,* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

x x x x x x x x x

5. With evident premeditation;

x x x x x x x x x

[11] *Sullon v. People*, G.R. No. 139369, June 27, 2005, 461 SCRA 248, 257.

Suffice it to state that the perceived contradictions in the testimony of de Castro merely referred to minor matters that did not touch on the commission of the crime itself as to affect the substance of her declaration, and the veracity or weight of her eyewitness' testimony. Witnesses cannot be expected to give a flawless testimony all the time.[12] We have repeatedly held that minor variances in the details of a witness' account, more frequently than not, are badges of truth rather than *indicia* of falsehood, and bolster the probative value of the testimony. Indeed, even the most candid witness often makes mistakes and falls into confused statements, and at times, far from eroding the effectiveness of the evidence, such lapses could instead constitute signs of veracity.[13]

In no uncertain terms, de Castro elucidated what transpired after appellant Ranin discharged the first two shots:

ATTY. PAGGAO:

x x x x x x x x x

Q: After the firing of the gun to Niño, do you know what happened to Niño?
A: Yes, Sir.

ATTY. PAGGAO:

Q: What happened?
A: He rolled down on the ground, Sir.

Q: What about his three (3) companions on the bench?
A: They were gone, Sir. **They ran away**, Sir.[14] (Emphasis supplied.)

x x x x x x x x x

Contrary to appellant Ranin's claim, Calinao's friends did not linger to watch the shooter let off the third and fourth shots.

---

[12] *People v. Bustamante*, G.R. Nos. 140724-26, February 12, 2003, 397 SCRA 326, 341.

[13] *People v. Sades*, G.R. No. 171087, July 12, 2006, 494 SCRA 716, 725-726.

[14] TSN, Vol. 1, March 29, 2000, pp. 26-27.

They scampered for safety, thereby affording appellant Ranin an occasion to carry out his design with impunity.

As a rule, the trial court's assessment of the credibility of witnesses is entitled to great respect and will not be disturbed on appeal, unless: (1) it is found to be clearly arbitrary or unfounded; (2) some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood, or misinterpreted; or (3) the trial judge gravely abused his or her discretion.[15] None of the above circumstances applies to the case at hand.

Moreover, the fact that the judge who penned the decision was not the judge who heard the testimonies of the witnesses was not enough reason to overturn the findings of fact of the trial court on the credibility of the witnesses. Though ideally a judge should hear all the testimonies personally, at times the reality is that a different judge might pen the decision because the predecessor judge has retired or died or has resigned. In this situation, it cannot be assumed that the findings of fact of the judge who took over the case are not reliable and do not deserve the respect of the appellate courts. The judge who did not hear the testimonies personally can always rely on the transcripts of stenographic notes taken during the trial. Such dependence does not violate substantive and procedural due process.[16]

Neither did the appellate court discount any exculpatory physical evidence. Even as the prosecution proved that appellant Ranin could not grasp a .45 caliber pistol with his left hand, de Castro specified the right hand as the one used by appellant Ranin to fire the gun, thus:

ATTY. PAGGAO:

x x x x x x x x x

---

[15] *Hugo v. Court of Appeals*, G.R. No. 126752, September 6, 2002, 388 SCRA 458, 465-466.

[16] *People v. Buayaban,* G.R. No. 112459, March 28, 2003, 400 SCRA 48, 57.

Q: With what hand did Ranin draw out from his waist his gun?

A: His **right hand**, Sir.

Q: You mean the hand with the rolled up sleeve?

A: Yes, Sir.[17] (Emphasis supplied.)

x x x x x x x x x

Thereafter, the dexterity of appellant Ranin's right hand fingers was assessed:

x x x x x x x x x

ATTY. RIGOROSO:

May I request, Your Honor, the witness to try to bend the pointer of his right arm, [Y]our Honor.

WITNESS:

(Trying to bend the pointer of his right arm).

ATTY. RIGOROSO:

May I manifest, Your Honor, that the witness is incapable of bending the finger at the middle panel . . .

ATTY. MALLABO:

I felt it is very hard, Your Honor.

ATTY. PAGGAO:

I noticed all the other fingers, the index finger are movable, Your Honor, the witness can actually bend all the four fingers.

ATTY. RIGOROSO:

Except for the pointer, Your Honor. The pointer [cannot] be ben[t], Your Honor. May we also manifest, Your Honor, that the forefinger is also deformed and smaller, it tilts towards the middle finger, Your Honor.[18]

x x x x x x x x x

---

[17] TSN, Vol. 1, March 29, 2000, p. 25.

[18] TSN, Vol. 3, August 26, 2002, pp. 35-36.

Even as appellant Ranin had difficulty bending his right forefinger, this did not foreclose the possibility that he used any of his right hand fingers to pull the trigger. In fact, the result of the Nerve Conduction Studies[19] administered on appellant Ranin unqualifiedly indicated normal sensory conduction of his right radial nerve. To merit credibility, denial must be buttressed by strong evidence of non-culpability. Unable to show such evidence, herein appellant Ranin failed to overcome de Castro's testimony, which positively identified him as the shooter.[20] It is well settled that positive identification, where categorical, consistent, and not attended by any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving weight in law.[21] In the same vein, appellant Ranin's alibi that he had never been to UP fails in the face of positive identification by de Castro.

The Court likewise agrees with the trial court that treachery and evident premeditation attended the killing which qualified the offense to murder.

There is treachery when the means, methods and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and such means, methods and forms of execution were deliberately and consciously adopted by the accused without danger to his person.[22] The essence of evident premeditation, for its part, is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[23]

---

[19] Records, pp. 461-462.

[20] *People v. Visperas, Jr.*, G.R. No. 147315, January 13, 2003, 395 SCRA 128, 137.

[21] *People v. Abolidor*, G.R. No. 147231, February 18, 2004, 423 SCRA 260, 268.

[22] *People v. Sades*, *supra* note 13, at 727-728.

[23] *People v. Guzman*, G.R. No. 169246, January 26, 2007, 513 SCRA 156, 177.

Here, de Castro spotted appellant Ranin pacing the pathway of the UP Diliman Campus, occasionally looking at a photograph a day before the shooting incident. Verily, appellant Ranin had ample time to ruminate on the possible consequences of his act. As to the manner of attack, the testimony of Dr. Raquel Del Rosario-Fortun on the autopsy was enlightening:

x x x x x x x x x

ATTY. PAGGAO:

x x x x x x x x x

Q: Will you describe to us exactly the direction of the bullet or with what direction did it exit after entering the blood opening?

A: I assessed that the trajectory of the first gunshot would be to the left to right downward and backward. That is based on the anatomic position.

x x x x x x x x x

Q: Would you say that [it] is possible or probable that the victim was on the sitting position while the gunman was standing on his left side?

A: It's possible, Sir.[24]

x x x x x x x x x

Evidently, Calinao was unaware of the impending danger as appellant Ranin suddenly fired two successive shots at him.

Now, as to the imposable penalty on appellant Ranin, we take into account the passage of Republic Act No. 9346,[25] which was signed into law by President Gloria Macapagal-Arroyo on June 24, 2006. The pertinent provisions of said law states that:

SECTION 1. The imposition of the penalty of death is hereby prohibited. Accordingly, Republic Act No. Eight Thousand One Hundred Seventy-Seven (R.A. No. 8177), otherwise known as the Act Designating Death by Lethal Injection, is hereby repealed.

---

[24] TSN, Vol. 1, March 20, 2000, pp. 23-24.

[25] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

Republic Act No. Seven Thousand Six Hundred Fifty-Nine (R.A. No. 7659), otherwise known as the Death Penalty Law, and all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly.

[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

x x x x x x x x x

[SEC.] 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.[26]

In accordance with the new law, Rep. Act No. 9346, the penalty imposed upon appellant Ranin should be reduced to *reclusion perpetua*, but he shall not be eligible for parole under the Indeterminate Sentence Law.[27]

With regard to the amount of actual damages, only expenses supported by receipts will be allowed.[28] Hence, the award of ₱77,000 as actual damages by the trial court should be reduced to ₱42,000.[29] The parties have also stipulated on the entitlement

---

[26] *People v. Salome*, G.R. No. 169077, August 31, 2006, 500 SCRA 659, 675.

[27] AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES (Rep. Act No. 4103, as amended), approved and effective on December 5, 1933.

x x x x x x x x x

Sec. 2. This act shall not apply to persons convicted of offenses punished with death penalty or life-imprisonment; . . .

x x x x x x x x x

[28] *People v. Guzman*, *supra* note 23, at 178.

[29] TSN, Vol. 3, January 16, 2002, pp. 41-44.

of the victim's heirs to moral damages.[30] The controlling case law[31] sets the amount of moral damages at ₱50,000.

The award of civil indemnity, on the other hand, is separate and distinct from the award of moral damages which is based on a different jural foundation and assessed by the Court in the exercise of sound discretion. In murder, the grant of civil indemnity requires no proof other than the fact of death as a result of the crime and proof of appellant's responsibility therefor.[32] Under prevailing jurisprudence,[33] the Court has pegged the amount at ₱75,000. It should be paid by appellant Ranin to the heirs of Niño Calinao who are entitled to receive it.

Finally, as evident premeditation has been taken to qualify the offense to murder, treachery may be appreciated as an ordinary aggravating circumstance, to support the award of exemplary damages in the amount of ₱25,000. In *People v. Aguila*,[34] we emphasized that exemplary damages of ₱25,000 are recoverable if there was present an aggravating circumstance, whether qualifying or ordinary, in the commission of the crime.[35]

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals in CA-G.R. CR No. 00424 are hereby *AFFIRMED with MODIFICATION*. In view of Rep. Act No. 9346 prohibiting the imposition of the death penalty, appellant Ranin is hereby sentenced to *reclusion perpetua* without possibility of parole. The award of actual damages is reduced to ₱42,000, while that of moral damages is also reduced to ₱50,000. The appellant is further *ORDERED* to pay the heirs of Niño Calinao ₱75,000 as civil indemnity and ₱25,000 as exemplary damages.

---

[30] *Id.* at 20-25.

[31] *People v. Malinao*, G.R. No. 128148, February 16, 2004, 423 SCRA 34, 54; *People v. Panado*, G.R. No. 133439, December 26, 2000, 348, SCRA 679, 690.

[32] *People v. Malinao*, *id*. at 53.

[33] *People v. Brodett*, G.R. No. 170136, January 18, 2008, pp. 1, 6.

[34] G.R. No. 171017, December 6, 2006, 510 SCRA 642.

[35] *Id*. at 663.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

Carpio Morales, Velasco, Jr., and *Nachura, JJ.,* on official leave.

SECOND DIVISION

[G.R. No. 173088. June 25, 2008]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **IMPERIAL CREDIT CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PUBLIC LAND ACT; APPLICATION FOR CONFIRMATION AND REGISTRATION OF AN IMPERFECT OR INCOMPLETE TITLE; REQUISITES. — There is no dispute that respondent's petition for registration was based on paragraph (1) of Section 14, P.D. No. 1529, as can be gleaned from the contents of its petition. As a matter of fact, the RTC's decision concluded that respondent's evidence satisfied all the conditions under the said provision. x x x. It is doctrinally settled that a person who seeks confirmation of an imperfect or incomplete title to a piece of land on the basis of possession by himself and his predecessors-in-interest shoulders the burden of proving by clear and convincing evidence compliance with the requirements of Section 48(b) of Commonwealth Act No. 141, as amended. Accordingly, applicants for confirmation and registration of imperfect title must prove: (a) that the land forms part of the alienable lands of the public domain; and

(b) that they have been in open, continuous, exclusive, and notorious possession and occupation of the alienable and disposable land of the public domain, under a *bona fide* claim of acquisition or ownership, since 12 June 1945.

2. ID.; ID.; ID.; ID.; ID.; ACQUISITION OF OWNERSHIP OF PUBLIC LANDS, RECKONING DATE. — The date "12 June 1945" under the aforequoted provision is a reiteration of Section 4 of P.D. No. 1073, which, in turn, amended Section 48(b) on the Public Land Act. The reckoning date under the Public Land Act, as amended, for the acquisition of ownership of public lands is likewise 12 June 1945 or earlier, and evidence of possession from that date or earlier is essential for a grant of an application for judicial confirmation of imperfect title. Respondent's evidence based on the CENRO certification conclusively proved that the property sought to be registered had been released into the alienable and disposable zone of the public domain as early as 1927. Thus, there is no longer any question that the property may be registered under the Torrens system. However, a perusal of the records leads the Court to reverse the RTC'S conclusion that respondent's predecessor-in-interest possessed and occupied the property as early as 12 June 1945. Respondent was able to trace back its alleged possession and occupation of the property only as far back as 1966 when it acquired the same from Jose Tajon. Other than the bare allegation in the petition, respondent's evidence failed to show that Jose Tajon, respondent's predecessor-in-interest, had occupied the property on 12 June 1945 or earlier.

3. ID.; ID.; ID.; ID.; ID.; CENRO CERTIFICATION EVIDENCES THE ALIENABILITY OF THE LAND NOT THE OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION AND OCCUPATION THEREOF. — The CENRO certification does not help respondent's cause. In *Republic v. San Lorenzo Development Corporation,* the Court held that all the CENRO certification evidences is the alienability of the land involved, not the open, continuous, exclusive and notorious possession and occupation thereof by the respondent or its predecessors-in-interest for the period prescribed by law.

4. ID.; ID.; ID.; ID.; ID.; OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION AND OCCUPATION OF THE LAND, EXPLAINED. — Moreover, respondent's

evidence on its alleged open, continuous, exclusive and notorious possession and occupation of the property falls short of the requirements under the law. Possession is open when it is patent, visible, apparent, notorious and not clandestine. It is continuous when uninterrupted, unbroken and not intermittent or occasional; exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit; and notorious when it is so conspicuous that it is generally known and talked off by the public or the people in the neighborhood. Use of land is adverse when it is open and notorious. The openness and notoriety of respondent's occupation could have been persuasively established by the owners of the lands adjacent to the subject property. Although the petition stated and identified these neighbors, not even one of them was presented as a witness. Only the respondent's caretaker and its attorney-in-fact testified on respondent's possession. But said possession started only after respondent acquired the property.

5. ID.; ID.; ID.; ID.; ID.; TAX DECLARATION BY ITSELF IS NOT SUFFICIENT TO PROVE OWNERSHIP BUT THE SAME MAY SERVE AS SUFFICIENT BASIS FOR INFERRING POSSESSION. — The tax declaration submitted in evidence could have clearly manifested respondent's adverse claim on the property. While a tax declaration by itself is not sufficient to prove ownership, it may serve as sufficient basis for inferring possession. After all, the voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's *bona fide* claim of acquisition of ownership. However, respondent submitted only one tax declaration filed belatedly in the year 1993, If respondent genuinely and consistently believed its claim of ownership, it should have regularly complied with its real estate tax obligations from the start of its alleged occupation.

6. ID.; ID.; ID.; ID.; ID.; WHEN WARRANTED, THE SUPREME COURT WILL NOT HESITATE TO REVIEW THE FINDINGS AND REVERSE THE CONCLUSIONS OF THE LOWER COURTS APPROVING THE REGISTRATION OF

LANDS. — All told, respondent failed to discharge the burden of proving that respondent or its predecessor-in-interest had occupied and possessed the property in an open, continuous, exclusive and notorious manner since 12 June 1945 or earlier. While it is true that the issue of possession and occupation is a question of fact which ordinarily cannot be entertained in a Rule 45 petition, one of the exceptions to the rule obtains in the instant case, that is, the evidence on record does not support the conclusion made by the RTC. Besides, on many occasions where warranted by the circumstances of the case, the Court has not hesitated to review the findings and reverse the conclusions of the trial courts and appellate court approving the registration of lands.

7. ID.; ID.; ID.; PARAGRAPH 2, SECTION 14 THEREOF; APPLICANT MUST CONCLUSIVELY PROVE THAT THE LAND IS PRIVATE AND NOT PART OF THE PUBLIC DOMAIN. — Paragraph (2) of Section 14, P.D. No. 1529 is inapplicable because the property sought to be registered has not been clearly shown to be a private land. For a piece of land to be qualified for registration under paragraph (2) of Section 14, P.D. No. 1529, the applicant must conclusively prove that the land is private and not part of the public domain. Otherwise, if the land is part of the disposable zone of the public domain, as in the instant case, the applicant must prove that he has complied with the conditions under paragraph (1) of Section 14, P.D. No. 1529. This is premised on the basic doctrine that all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State.

8. ID.; ID.; ID.; CONVERSION OF PUBLIC LAND INTO A PRIVATE LAND UNDER THE LAWS OF PRESCRIPTION, REQUISITES. — Of course, it is possible that a piece of land may be segregated from the mass of public land, therefore, coverted into a private land under the laws of prescription. Ordinary acquisitive prescription requires possession in good faith and with just title for ten (10) years. In extraordinary prescription ownership and other real rights over immovable property are acquired through uninterrupted adverse possession thereof for thirty (30) years without need of title or of good faith. With such conversion, such property may now fall within the contemplation of "private lands" under Section 14(2), and thus susceptible to registration by those who have acquired

ownership through prescription. However, as already explained above, respondent failed to present sufficient evidence to prove its uninterrupted adverse possession of the property for thirty years. Neither has it been established that respondent's predecessor-in-interest possessed the property for the length of time required for prescription to set in.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Henry Y. Tuason for respondent.

D E C I S I O N

TINGA, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Court, assailing the Decision[2] of the Court of Appeals in CA-G.R. CV No. 78240. The said decision affirmed the Decision[3] of the Regional Trial Court (RTC) of Antipolo City, Branch 74, which granted respondent's application for land registration in LRC Case No. 00-2493.

The following factual antecedents are matters of record.

Herein respondent Imperial Credit Corporation is a corporation duly organized and existing under the laws of the Philippines. On 07 March 1966, respondent purchased from a certain Jose Tajon a parcel of land situated in Barrio Colaique (now Barangay San Roque), Antipolo City, Rizal for the sum of ₱17,986.00 as evidenced by a Deed of Sale with Mortgage.[4] In December 1997, through judicial consignation, respondent paid the remaining balance of ₱1,909.00, caused the release of the mortgage

[1] *Rollo*, pp. 8-37.

[2] *Id.* at 40-51; dated 02 June 2006 and penned by *J.* Lucenito N. Tagle and concurred in by *JJ.* Rodrigo V. Cosico, Chairman of the Seventh Division and Regalado E. Maambong.

[3] *Id.* at 52-55; dated 21 November 2002.

[4] Records, pp. 9-11.

constituted thereon and consolidated ownership in its name.[5] The property was thereafter privately surveyed under PSU-178075 and approved on 25 January 2000.[6]

On 14 February 2000, respondent filed before the RTC of Antipolo City a petition[7] for the registration of a parcel of land, as shown on Plan PSU-178075 containing an area of 8,993 sq. m. The application was docketed as LRC Case No. 00-2493 and raffled to Branch 74 of said RTC. The petition alleged, among others, that respondent was "subrogated [to] former owner Jose Tajon, who has been in open, continuous, exclusive and notorious possession and occupation of the parcel of land, x x x being a part of the alienable and disposable lands of the public domain, under a bona fide claim of ownership since 12 June 1945, by virtue of Deed of Sale with Mortgage executed on 07 March 1966"[8] After allowing respondent to present evidence establishing the jurisdictional facts, the RTC issued an order of general default against the whole world and directed respondent to present its evidence in chief *ex parte*.[9]

At the hearing, Ricardo Santos, respondent's duly authorized attorney-in-fact, testified on the fact of respondent's actual possession through its caretaker, Teodisia Palapus, who had been overseeing said property since its acquisition from Jose Tajon. Palapus also corroborated Santos' testimony and added that except for some trespassers, no one else had laid possessory claim on the property.[10]

Aside from the transfer documents, the other documentary evidence submitted consisted of a 1993 tax declaration, a tracing cloth plan, a survey description, a certification from the Land Management Sector in lieu of the geodetic engineer's certificate,

---

[5] *Id.* at 58-63.

[6] *Rollo*, p. 42.

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

[8] *Id.* at 57.

[9] Records, p. 152.

[10] *Rollo*, pp. 53-54.

and a report of the Community Environment and Natural Resources Office (CENRO) stating that the property falls within the alienable and disposable zone "under Land Classification Project No. 1-A Blk-1 per L.C. Map No. 639 certified released on March 11, 1927."[11]

On 21 November 2002, the RTC rendered judgment granting respondent's application for registration. The dispositive portion of the decision reads:

> WHEREFORE, from the evidence presented both testimonial and documentary, the Court is satisfied that the applicant has a registerable title over the parcel of land applied for and after affirming the order of general default against the whole world, hereby adjudicates the parcel of land more specifically identified in Plan Psu 178075 containing an area of [EIGHT] THOUSAND NINE HUNDRED NINETY THREE (8,993) SQUARE METERS in favor of the applicant IMPERIAL CREDIT CORPORATION with business address at Unit 3-C-2, JMT Corporate Condominium, ADB Ave., Ortigas Center, Pasig City, Metro Manila.
>
> Once this decision becomes final, let an Order issue directing the Administrator of the Land Registration Authority, Quezon City, to issue the corresponding Decree of Registration.
>
> SO ORDERED.[12]

Petitioner Republic of the Philippines, through the Office of the Solicitor General (OSG), seasonably appealed from the RTC's decision to the Court of Appeals, contending that respondent failed to present incontrovertible evidence that respondent and its predecessor-in-interest had been in open, continuous, exclusive and notorious possession and occupation of the property since 12 June 1945 or earlier.[13]

On 02 June 2006, the Court of Appeals rendered a decision dismissing the appeal. Hence, the instant petition, assigning a lone error, to wit:

---

[11] *Id*. at 52-53.

[12] *Rollo*, pp. 54-55.

[13] *Id*. at 43.

THE COURT OF APPEALS ERRED IN AFFIRMING THE RTC DECISION WHICH GRANTED RESPONDENT'S APPLICATION FOR ORIGINAL REGISTRATION OF TITLE, HOLDING AS BASIS THEREOF PARAGRAPHS (2) AND (4) OF SECTION 14 OF PD 1529 ("THE PROPERTY REGISTRATION DECREE").[14]

In affirming the registration of the property under the Torrens system, the Court of Appeals essentially held that through extraordinary acquisitive prescription, respondent obtained title to the property and, therefore, was qualified to register the same under paragraphs (2) and (4) of Section 14[15] of Presidential Decree (P.D.) No. 1529.[16]

Petitioner argues that contrary to the ruling of the Court of Appeals, respondent's application for registration was actually based on paragraph (1) of Section 14, P.D. No. 1529,[17] the conditions under which have not been sufficiently established by respondent's evidence. Although petitioner concedes that respondent was able to show that the land applied for has been

---

[14] *Id*. at 15.

[15] Presidential Decree No. 1529 (1978), Section 14. *Who may apply*. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

(2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws.

(3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.

(4) Those who have acquired ownership of land in any other manner provided for by law.

x x x x x x x x x

[16] Entitled "AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES"; Effective upon approval on 11 June 1978.

[17] *Supra*.

reclassified as alienable public agricultural land from forest or timber land, respondent's evidence failed to satisfy the requirement, under paragraph (1) of Section 14, P.D. No. 1529, that is, that it must have been in possession and occupation of the property for the length of time and in the manner required by law.

The petition is meritorious.

There is no dispute that respondent's petition for registration was based on paragraph (1) of Section 14, P.D. No. 1529,[18] as can be gleaned from the contents of its petition.[19] As a matter of fact, the RTC's decision concluded that respondent's evidence satisfied all the conditions under the said provision.[20]

Section 14, paragraph (1) of P.D. No. 1529 states:

> SEC. 14. *Who may apply*. — The following persons may file in the proper Court of First Instance [now Regional Trial Court] an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

It is doctrinally settled that a person who seeks confirmation of an imperfect or incomplete title to a piece of land on the basis of possession by himself and his predecessors-in-interest shoulders the burden of proving by clear and convincing evidence compliance with the requirements of Section 48 (b) of Commonwealth Act No. 141, as amended.[21] Accordingly, applicants for confirmation and registration of imperfect title must prove: (a) that the land forms part of the alienable lands of the public domain; and (b) that

---

[18] *Supra*.

[19] *Rollo*, p. 57.

[20] *Id*. at 54.

[21] *Reyes v. Republic*, G.R. No. 141924, 23 January 2007, 512 SCRA 217, 220.

they have been in open, continuous, exclusive, and notorious possession and occupation of the alienable and disposable land of the public domain, under a *bona fide* claim of acquisition or ownership, since 12 June 1945.[22]

The date "12 June 1945" under the aforequoted provision is a reiteration of Section 4[23] of P.D. No. 1073,[24] which, in turn, amended Section 48 (b)[25] of the Public Land Act. [26] The reckoning date under the Public Land Act, as amended, for the acquisition of ownership of public lands is likewise 12 June 1945 or earlier,

---

[22] *Id*.

[23] SEC. 4. The provisions of Section 48 (b) and Section 48 (c), Chapter VIII, of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or through his predecessor-in-interest, under a *bona fide* claim of acquisition of ownership, since June 12, 1945.

[24] Entitled "Extending the Period of Filing Applications for Administrative Legalization (Free Patent) and Judicial Confirmation of Imperfect and Incomplete Titles to Alienable and Disposable lands of the Public Domain under Chapter VII and VIII of Commonwealth Act No. 141 as Amended. For Eleven (11) Years commencing January 1, 1977; Effective 25 January 1977.

[25] Commonwealth Act No. 141 (1936), Sec 48 (b), as amended by R.A. No. 1942 states: The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or all interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefore, under the Land Registration Act, to wit: . . .

x x x x x x x x x

(b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, for at least thirty years preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

[26] See *Republic v. Kalaw*, G.R. No. 155138, 08 June 2004, 431 SCRA 401; and *Republic of the Philippines v. Doldol,* 356 Phil. 671 (1998).

and evidence of possession from that date or earlier is essential for a grant of an application for judicial confirmation of imperfect title.[27]

Respondent's evidence based on the CENRO certification conclusively proved that the property sought to be registered had been released into the alienable and disposable zone of the public domain as early as 1927. Thus, there is no longer any question that the property may be registered under the Torrens system.

However, a perusal of the records leads the Court to reverse the RTC's conclusion that respondent's predecessor-in-interest possessed and occupied the property as early as 12 June 1945. Respondent was able to trace back its alleged possession and occupation of the property only as far back as 1966 when it acquired the same from Jose Tajon. Other than the bare allegation in the petition, respondent's evidence failed to show that Jose Tajon, respondent's predecessor-in-interest, had occupied the property on 12 June 1945 or earlier.

The CENRO certification does not help respondent's cause. In *Republic v. San Lorenzo Development Corporation*,[28] the Court held that all the CENRO certification evidences is the alienability of the land involved, not the open, continuous, exclusive and notorious possession and occupation thereof by the respondent or its predecessors-in-interest for the period prescribed by law.

Moreover, respondent's evidence on its alleged open, continuous, exclusive and notorious possession and occupation of the property falls short of the requirements under the law. Possession is open when it is patent, visible, apparent, notorious and not clandestine. It is continuous when uninterrupted, unbroken and not intermittent or occasional; exclusive when the adverse possessor can show exclusive dominion over the land and an

---

[27] *Republic v. San Lorenzo Development Corporation,* G.R. No. 170724, 29 January 2007, 513 SCRA 294, 301, citing *Republic v. Manna Properties, Inc*., 450 SCRA 247 (2005).

[28] *Supra*.

appropriation of it to his own use and benefit; and notorious when it is so conspicuous that it is generally known and talked off by the public or the people in the neighborhood. Use of land is adverse when it is open and notorious.[29]

The openness and notoriety of respondent's occupation could have been persuasively established by the owners of the lands adjacent to the subject property. Although the petition stated and identified these neighbors, not even one of them was presented as a witness. Only the respondent's caretaker and its attorney-in-fact testified on respondent's possession. But said possession started only after respondent acquired the property.

The tax declaration submitted in evidence could have clearly manifested respondent's adverse claim on the property. While a tax declaration by itself is not sufficient to prove ownership, it may serve as sufficient basis for inferring possession.[30] After all, the voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's *bona fide* claim of acquisition of ownership.[31] However, respondent submitted only one tax declaration filed belatedly in the year 1993. If respondent genuinely and consistently believed its claim of ownership, it should have regularly complied with its real estate tax obligations from the start of its alleged occupation.

All told, respondent failed to discharge the burden of proving that respondent or its predecessor-in-interest had occupied and possessed the property in an open, continuous, exclusive and notorious manner since 12 June 1945 or earlier. While it is true that the issue of possession and occupation is a question of fact

---

[29] *Director of Lands v. Intermediate Appellate Court*, G.R. No. 68946, 22 May 1992, 209 SCRA 214, 224.

[30] *Republic v. Manna Properties, Inc.*, G.R. No. 146527, 31 January 2005, 450 SCRA 247, 260.

[31] *Director of Lands v. Intermediate Appellate Court, supra* note 28.

which ordinarily cannot be entertained in a Rule 45 petition, one of the exceptions to the rule obtains in the instant case, that is, the evidence on record does not support the conclusion made by the RTC. Besides, on many occasions where warranted by the circumstances of the case, the Court has not hesitated to review the findings and reverse the conclusions of the trial courts and appellate court approving the registration of lands.[32]

Now, if respondent does not qualify for registration under paragraph (1) of Section 14, P.D. No. 1529, may it still qualify under paragraphs (2) and (4) of Section 14, P.D. No. 1529? The Court of Appeals' answer is in the affirmative, premised on its finding that the property is private which may be acquired through extraordinary prescription. It held that since respondent has been in possession of the property in the concept of an owner since 1966, it acquired ownership thereof after the lapse of thirty years and, therefore, qualified for registration under paragraph (2) of Section 14, P.D. No. 1529.

Paragraph (2) of Section 14, P.D. No. 1529[33] is inapplicable because the property sought to be registered has not been clearly shown to be a private land. For a piece of land to be qualified for registration under paragraph (2) of Section 14, P.D. No. 1529, the applicant must conclusively prove that the land is private and not part of the public domain. Otherwise, if the

---

[32] See *Republic v. San Lorenzo Development Corporation*, G.R. No. 170724, 29 January 2007, 513 SCRA 294; *Republic v. Carrasco*, G.R. No. 143491, 06 December 2006, 510 SCRA 150; *Republic v. Enciso*, G.R. No. 160145, 11 November 2005, 474 SCRA 700; *Republic v. Manna Properties, Inc.*, G.R. No. 146527, 31 January 2005, 450 SCRA 247; *Republic v. Kalaw*, G.R. No. 155138, 08 June 2004, 431 SCRA 401; *The Director of Lands Management Bureau v. Court of Appeals*, 381 Phil. 761 (2000); *Director of Lands v. Intermediate Appellate Court*, G.R. No. 68946, 22 May 1992, 209 SCRA 214.

[33] Sec. 14: *Who may apply*. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

x x x x x x x x x

(2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws.

land is part of the disposable zone of the public domain, as in the instant case, the applicant must prove that he has complied with the conditions under paragraph (1) of Section 14, P.D. No. 1529.[34] This is premised on the basic doctrine that all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State.[35]

Of course, it is possible that a piece of land may be segregated from the mass of public land and, therefore, converted into a private land under the laws of prescription. Ordinary acquisitive prescription requires possession in good faith and with just title for ten (10) years. In extraordinary prescription ownership and other real rights over immovable property are acquired through uninterrupted adverse possession thereof for thirty (30) years without need of title or of good faith.[36] With such conversion, such property may now fall within the contemplation of "private lands" under Section 14 (2), and thus susceptible to registration by those who have acquired ownership through prescription.[37] However, as already explained above, respondent failed to present sufficient evidence to prove its uninterrupted adverse possession of the property for thirty years. Neither has it been established that respondent's predecessor-in-interest possessed the property for the length of time required for prescription to set in.

Respondent may neither apply for registration under paragraph (4) of Section 14, P.D. No. 1529.[38] Said provision contemplates

---

[34] See *Republic v. Carrasco*, G.R. No. 143491, 06 December 2006, 510 SCRA 150.

[35] *Republic v. Manna Properties, Inc., supra* note 29.

[36] *Dr. Gesmundo v. Court of Appeals*, 378 Phil. 1099, 1107 (1999).

[37] *Republic v. Court of Appeals*, G.R. No. 144057, 17 January 2005, 448 SCRA 442, 453.

[38] Section 14: *Who may apply*. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

x x x x x x x x x

(4) Those who have acquired ownership of land in any other manner provided for by law.

registration of lands acquired through modes other than those specifically enumerated under Section 14, P.D. No. 1529. Respondent acquired an alienable and disposable land of the public domain, thus, its application for registration must comply with the requisites under paragraph (1) and not paragraph (4) of Section 14.

WHEREFORE, the instant petition for review on *certiorari* is *GRANTED* and the decision of the Court of Appeals in CA-G.R. CV No. 78240 is *REVERSED* and *SET ASIDE*. The petition in LRC Case No. 00-2493 of the Regional Trial Court, Branch 74, Antipolo City is hereby *DISMISSED*.

SO ORDERED.

Quisumbing (Chairperson), Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

EN BANC

[G.R. No. 173308. June 25, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs*. **ELMER DE LA CRUZ and TRANQUILINO MARTINEZ,** *appellants*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; VOLUNTARY SUBMISSION TO THE COURT BY ENTERING A PLEA DEEMED A WAIVER OF THE RIGHT TO ASSAIL LEGALITY OF THE ARREST. — We agree with the CA that, even if his arrest was unlawful because of the absence of a valid warrant of arrest, he was deemed to have waived his right to assail the same, as he never bothered to question the legality thereof and, in fact, even voluntarily entered

his plea. In *People v. Asis*, we held that the accused-appellants therein were deemed to have waived their right to assail the legality of their arrest when they voluntarily submitted themselves to the court by entering a plea, instead of filing a motion to quash the information for lack of jurisdiction over their person.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S EVALUATION THEREOF IS ENTITLED TO THE HIGHEST RESPECT; EXCEPTIONS; NOT PRESENT IN CASE AT BAR. — Time and again, we have held that the trial court's evaluation of the credibility of a witness is entitled to the highest respect as it had the opportunity to observe the witness' demeanor on the stand and his manner of testifying. Trial court judges are in a unique position to ascertain whether or not a witness is telling the truth. Consequently, unless it is shown that a trial judge overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment of credibility must be upheld. In this case, we find no reason to overturn the conclusion arrived at by the trial court. It held that Aaron's testimony was credible as he delivered his testimony in a clear, direct and positive manner. He positively identified accused-appellant Martinez twice, from the ID of the accused-appellant shown to him by the police and in open court, as the man who handcuffed him and drove the family car from his school. He also categorically stated that he saw him again in the vacant house where he and De la Cruz were brought.

3. ID.; ID.; ID.; THE MOST NATURAL REACTION OF VICTIMS OF CRIMES IS TO STRIVE TO SEE THE FEATURES AND FACES OF THE PERPETRATORS AND OBSERVE THE MANNER THEY COMMIT THE CRIME. — Moreover, it cannot be said that Aaron could not have possibly taken a good look at the man he identified as Martinez by mere reason of the hat or sunvisor which supposedly effectively concealed the latter's face throughout the whole ordeal. It is natural for persons who find themselves thrust into extraordinary circumstances to remember many of the important details then taking place. The most natural reaction of victims of crimes is to strive to see the features and faces of the perpetrators and observe the manner they commit the crime. In this case, it must be noted that Aaron had several face-to-face encounters

with Martinez: he was the one who first boarded the car; he was the one who handcuffed the child; and he was the one who drove the car and was thus seated beside him until they fetched Dano in Batasan Hills.

4. ID.; ID.; DEFENSE OF DENIAL AND ALIBI; CANNOT BE GIVEN GREATER EVIDENTIARY VALUE THAN THE TESTIMONIES OF CREDIBLE WITNESSES WHO TESTIFY ON AFFIRMATIVE MATTERS. — Consequently, Martinez's defense of denial and alibi (that he was supposedly with his brother in Barangay Paltik, Dingalan, Aurora Province on November 4, 5, 8 and 9, 1998, managing his fishing boat) must crumble in the face of Aaron's positive and clear identification of him as one of the perpetrators of the crime. Denial and alibi cannot be given greater evidentiary value than the testimonies of credible witnesses who testify on affirmative matters. Positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical.

5. ID.; ID.; ALIBI; TO PREVAIL, THE DEFENSE MUST ESTABLISH BY POSITIVE, CLEAR AND SATISFACTORY PROOF THAT IT WAS PHYSICALLY IMPOSSIBLE FOR THE ACCUSED TO HAVE BEEN AT THE SCENE OF THE CRIME AT THE TIME OF ITS COMMISSION. — Besides, for alibi to prevail, the defense must establish by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that the accused was then somewhere else. In the instant case, Martinez failed to show that it was physically impossible for him to have been at the scene of the crime. He could have easily traveled from Aurora Province (located in Central Luzon) to Manila by land. It would have taken him only a few hours to reach Manila. Thus, there was no physical impossibility for him to have been present at the scene of the crime when it was committed.

6. POLITICAL LAW; CONSTITUTIONAL LAW; RIGHTS OF THE ACCUSED; RIGHT TO DUE PROCESS OF LAW; SATISFIED WHEN THE PARTIES ARE AFFORDED A FAIR AND REASONABLE OPPORTUNITY TO EXPLAIN THEIR RESPECTIVE SIDES OF THE CONTROVERSY. — Furthermore, Martinez's contention (that his right to produce evidence and witnesses on his behalf was violated when the

trial court refused to grant his request to present corroborative witnesses to support his alibi) is untenable. The denial of said request did not result in manifest injustice to Martinez for no amount of corroborative evidence could alter and reverse the categorical and positive testimony of the minor pointing to him as one of his kidnappers. Due process of law is not denied by the exclusion of irrelevant, immaterial or incompetent evidence, or the testimony of an incompetent witness. Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy. In this case, there is no showing of violation of due process which justifies the reversal of the trial court's findings.

7. REMEDIAL LAW; EVIDENCE; WITNESSES; STATE WITNESS; DISCHARGE OF ACCUSED TO BE A STATE WITNESS, GROUNDS. — For an accused to be discharged as a state witness, the following conditions must be present: When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that: a. There is absolute necessity for the testimony of the accused whose discharge is requested; b. There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused; c. The testimony of said accused can be substantially corroborated in its material points; d. Said accused does not appear to be the most guilty; and, e. Said accused has not at any time been convicted of any offense involving moral turpitude. x x x The provision does not require that a state witness should appear to be the "least guilty" among the accused. Rather, it provides that he "does not appear to be the most guilty." The findings of the lower court revealed that Tano merely facilitated the commission of the crime. He merely boarded the car and sat beside accused-appellant De la Cruz throughout the whole ride and accompanied accused-appellant Martinez in going back to Batasan Hills after leaving Aaron and accused-appellant De la Cruz in Bulacan. True, he was the one who placed the call to Erwin to demand ransom. However,

he was neither the mastermind nor the one who hatched the plan to kidnap Aaron in exchange for money. Clearly, he did not appear to be the most guilty among the accused. Thus, we uphold the propriety of the trial court's designation of Tano as state witness.

8. ID.; ID.; CONSPIRACY; WHEN PRESENT; CASE AT BAR. — Moreover, his testimony was absolutely necessary as it was the only direct evidence establishing the presence of conspiracy, from the planning stage up to the commission of the crime. On the issue of conspiracy, we hold that the prosecution sufficiently established it. There is conspiracy when two or more persons agree to commit a felony and decide to commit it. It need not be proven by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they acted with common purpose and design. The prosecution was able to present direct evidence of the conspiracy (by state witness Tano) and to show that the conduct of all the accused overwhelmingly pointed to the unanimity in design, intent and execution of the crime against the victim. Each of them performed specific acts according to place and in close coordination with one another, unmistakably indicating a common purpose to bring about Aaron's abduction in exchange for money.

9. CRIMINAL LAW; KIDNAPPING FOR RANSOM; IMPOSABLE PENALTY. — While this Court affirms the finding of guilt of accused-appellants, it can no longer impose the penalty of death in view of RA 9346. Section 2 of RA 9346 mandates that, in lieu of the death penalty, *reclusion perpetua* without eligibility for parole should instead be imposed.

10. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANTS. — In line with prevailing jurisprudence, the award of ₱50,000 civil indemnity was proper. Pursuant to *People v. Garalde*, ₱200,000 for moral damages is awarded to Aaron considering his minority. Moreover, since the crime was attended by a demand for ransom, and by way of example or correction, Aaron is entitled to ₱100,000 exemplary damages.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Mariano R. Santiago for appellants.

D E C I S I O N

CORONA, *J.*:

For review is the November 2, 2005 decision[1] of the Court of Appeals (CA) in CA-G.R. HC-CR No. 00947 affirming with modification the November 18, 2002 decision[2] of the Regional Trial Court (RTC) of Quezon City, Branch 89 in Criminal Case No. Q-99-80669 finding the accused-appellants Elmer de la Cruz (De la Cruz) and Tranquilino Martinez (Martinez) guilty of the crime of kidnapping for ransom and sentencing them to suffer the penalty of death.

Charged with the crime of kidnapping for ransom were accused-appellants De la Cruz and Martinez, along with three others, namely, Aldrin Tano (Tano), Romeo Dano (Dano) and Rex Tarnate (Tarnate). The information read:

> That on or about November 9, 1998 in Quezon City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously take, carry away and deprive AARON DENNIS ONG *Y* RODRIGUEZ, a minor of eight (8) years old, of his liberty against his will for purposes of extorting money as in fact a demand for money was made as a condition for his release.
>
> CONTRARY TO LAW.[3]

---

[1] Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Elvi John S. Asuncion (dismissed from the service) and Noel G. Tijam of the Fifteenth Division of the Court of Appeals. *Rollo*, pp. 3-26.

[2] Penned by Judge Elsa I. de Guzman. CA *rollo*, pp. 95-111.

[3] *Id*., p. 7.

On arraignment, only accused-appellant De la Cruz, Tarnate and Tano, assisted by their counsel, appeared. They all entered a plea of not guilty. Accused-appellant Martinez was arrested subsequently and he likewise pleaded not guilty upon his arraignment. Dano, on the other hand, remains at large to the present.

During trial, the RTC received a letter from the Quezon City Jail Warden that accused Tarnate died of cardiac arrest during incarceration.

Thereafter, while in the process of presenting its witnesses, the prosecution filed a motion to discharge accused Tano as a state witness. Accused-appellants De la Cruz and Martinez filed their separate oppositions thereto. The RTC granted the motion and denied the motion for reconsideration.

The prosecution presented six witnesses, namely: the victim Aaron Dennis Ong (Aaron), his father Erwin Ong (Erwin), Delfin Quinano (Quinano), Fortunato Sauquillo (Sauquillo), state witness Tano and Chief Inspector Rolando Anduyan (Anduyan) of the Presidential Anti-Organized Crime Task Force (PAOCTF).

As established during the trial, accused-appellant De la Cruz was employed by Erwin as a family driver. He brought Aaron, then an eight-year-old third-grade student, to and from Claret School.

State witness Tano relayed that on November 4, 1998, he, accused-appellants De la Cruz and Martinez, along with Dano, had a meeting wherein De la Cruz broached the idea of kidnapping Aaron. According to De la Cruz, the child was a "good catch" as his boss' family had "plenty of money." He knew this because he had accompanied Erwin to the bank thrice. Martinez agreed that it was a good idea to abduct Aaron.

The group discussed the plan to kidnap Aaron on two other occasions. On November 5, 1998, they agreed that Martinez should act as their leader, while De la Cruz would provide the tips. On November 8, 1998, De la Cruz informed them that he would raise the hood of the car he was driving upon his arrival at the Claret School as a signal to put the plan into action.

On November 9, 1998, De la Cruz fetched Aaron from school. As the boy took the car's front passenger seat, De la Cruz placed Aaron's bag at the back seat of the car. De la Cruz told the child that the car was overheating and proceeded to open the hood of the car and the rear compartment. He took a container of water and poured it on the car's engine. Martinez got inside the car and handcuffed Aaron's left wrist. De la Cruz then closed the rear compartment, boarded the car and seated himself behind the driver. He was also handcuffed by Martinez to Aaron.

Tano then went in and seated himself at the right side of the back seat beside De la Cruz and behind Aaron. Martinez then drove the car all the way to Batasan Hills where Dano resided. They fetched Dano who took over control of the car from Martinez. They proceeded to Minuyan, San Jose del Monte, Bulacan, reaching the place at around 8:00-9:00 p.m.

Upon arrival, they removed Aaron's handcuff and entered a vacant house. Martinez and Tano left Aaron with De la Cruz and proceeded to Tarnate's house. Martinez instructed Tarnate to feed the boy. He told the child not to make any noise as somebody was guarding them outside. He left Aaron and De la Cruz who later told the child that he was able to untie himself. Despite the chance to escape, however, he took a nap.

At around 10:00 p.m. that same evening, Martinez, Tano, Dano and Tarnate drove the Ongs' car and went back to Batasan Hills in Quezon City. When the vehicle overheated, they abandoned it and boarded a tricycle to get to their destination.

Erwin, who was by then frantically searching for his son in several hospitals and police stations, received a phone call at around 10:45 p.m. from a man who told him not to look for his son anymore as Aaron was with him. When Erwin asked to speak to his son, the man ignored him and told him to wait for another call.

The following morning, November 10, 1998, Martinez gave Tano a piece of paper with a telephone number. Written there were the words *"Maghanda ng tatlong milyon para sa kaligtasan ng anak mo."* (Prepare ₱3 million for your son's safety.) He

ordered Tano to call Erwin and relay the written message to him.

Back at the vacant house where Aaron and De la Cruz were being kept, Quinano peeped inside, saw the two and asked them why they were there. De la Cruz responded by asking him to open the door. Quinano, who was with two women (one of them Editha Arizobal, Tarnate's common-law wife), opened the door. When they asked De la Cruz what they were doing inside the vacant house, the latter replied that their car was borrowed for a medical emergency. Aaron, on the other hand, told Quinano that some men took their car and left them there. One of the women suggested that they report the incident to the police. De la Cruz said no and replied that he just wanted to go home.

Quinano then brought the two to the *barangay* hall and presented them to barangay kagawad Sauquillo who took their statements and entered them in the *barangay* logbook. This was signed and verified by both Aaron and De la Cruz. Erwin was then informed by phone that his son was already in the custody of the *barangay* officials in Barangay Minuyan, San Jose del Monte, Bulacan.

When Erwin arrived, the *barangay* chairman recommended that the incident be reported to the San Jose del Monte, Bulacan Police. They went to the police station to file a complaint and give their statements. They were fetched by PAOCTF personnel and met up with Col. Cesar Mancao at McDonald's Commonwealth Avenue. The latter assigned Chief Inspector Anduyan to investigate the case.

After discussing the events surrounding the incident, Aaron, Erwin, De la Cruz, Anduyan and his team proceeded to San Jose del Monte, Bulacan and interviewed Sauquillo. After learning that Tarnate and Editha Arizobal were in charge of the vacant house where the two had been kept, Anduyan went to Tarnate's house to investigate. Tarnate immediately admitted his participation and revealed information on the identities and whereabouts of the other accused. He named Dano, Tano, and Martinez and led Anduyan's group to Martinez's house in Batasan Hills.

Anduyan and his men proceeded to Batasan Hills and there waited for the other accused. An hour later, a taxicab arrived and the three other accused alighted. As the police team moved to arrest them, Dano and Martinez were able to escape in the confusion and only Tano was arrested. The house was searched and the authorities found Aaron's bag inside. Anduyan spoke with the cab driver who identified the escapees as Dano and Martinez. The police recovered Dano's and Martinez's identification (ID) cards and two guns which were brought to Camp Crame.

When the identification cards were shown to Aaron, he was able to identify Dano and Martinez. Anduyan and his men were able to arrest Martinez later on in connection with another kidnapping case.

The defense presented the testimonies of both accused-appellants. Martinez's defense hinged on denial and alibi. De la Cruz, on the other hand, invoked his innocence.

After trial on the merits, the RTC convicted both accused-appellants of the crime charged. The dispositive portion of the decision[4] read:

> WHEREFORE, premises considered, judgment is rendered finding accused Elmer dela Cruz and Tranquilino Martinez guilty of the crime of Kidnapping with Ransom as defined and penalized under paragraph of Art. 267 of the Revised Penal Code. Accordingly, accused Elmer dela Cruz and Tranquilino Martinez are hereby each sentenced to death.
>
> With respect to Rex Tarnate, his conviction cannot be pronounced as the same has been extinguished by his death.
>
> With cost against convicted accused.

The case was forwarded to this Court on automatic review but we referred it to the CA in accordance with *People v. Mateo*.[5] The CA affirmed the RTC decision:

---

[4] CA *rollo*, p. 111.

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

WHEREFORE, premises considered, the Decision of the Regional Trial Court of Quezon City, Branch 89 in Criminal Case No. Q-99-80669 sentencing accused-appellants Elmer dela Cruz and Tranquilino Martinez to DEATH for kidnapping for ransom is **AFFIRMED** with the **MODIFICATION** that they shall pay *in solidum* the amount of twenty five thousand pesos (₱25,000.00) as exemplary damages to the victim, Aaron Dennis Ong.

Finding that the penalty of death should be imposed, We thereby **CERTIFY** the case and elevate the entire record to the Supreme Court for review[6] and final disposition, pursuant to Section 13 (a & b), Rule 124 of the Revised Rules of Court.

SO ORDERED.

We affirm accused-appellants' guilt.

In his brief, Martinez averred that there was no valid warrant for his arrest when he was shot in the back by police officers at the time of his arrest. He recounted that he was merely walking along Roxas Boulevard and was not committing any illegal act at the time, nor did the arresting officers have any knowledge of facts indicating that he had just committed a crime. As such, his arrest without a warrant could not be justified.

We agree with the CA that, even if his arrest was unlawful because of the absence of a valid warrant of arrest, he was deemed to have waived his right to assail the same, as he never bothered to question the legality thereof and, in fact, even voluntarily entered his plea. In *People v. Asis*,[7] we held that the accused-appellants therein were deemed to have waived their right to assail the legality of their arrest when they voluntarily submitted themselves to the court by entering a plea, instead of filing a motion to quash the information for lack of jurisdiction over their person.

---

[6] Section 13 (a), Rule 124 as amended by A.M. No. 00-5-03-SC.

[7] 439 Phil. 707, 720 (2002), citing *People v. Bongalon*, 425 Phil. 96, 119-120 (2002); *People v. Whisenhunt*, 420 Phil. 677, 698 (2001); *People v. Castillon III*, 439 Phil. 92, 103 (2001); and *People v. Del Mundo*, 418 Phil. 740, 756 (2001).

Martinez further argued that the court *a quo* erred in ruling that he was a co-conspirator in the crime charged as the identification by the minor victim that he was one of the perpetrators of the crime was unreliable and that the testimony of the state witness regarding his complicity in the crime was doubtful. He harped on the fact that Aaron could not have possibly taken a good look at the person he later on identified in open court as Martinez because, by the child's own testimony, the man who handcuffed him was wearing a hat or a sunvisor which he did not remove during the entire duration of the kidnapping incident.

It must be pointed out that this averment goes into the issue of the witness' credibility. Time and again, we have held that the trial court's evaluation of the credibility of a witness is entitled to the highest respect as it had the opportunity to observe the witness' demeanor on the stand and his manner of testifying. Trial court judges are in a unique position to ascertain whether or not a witness is telling the truth. Consequently, unless it is shown that a trial judge overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment of credibility must be upheld.[8]

In this case, we find no reason to overturn the conclusion arrived at by the trial court. It held that Aaron's testimony was credible as he delivered his testimony in a clear, direct and positive manner. He positively identified accused-appellant Martinez twice, from the ID of the accused-appellant shown to him by the police and in open court, as the man who handcuffed him and drove the family car from his school. He also categorically stated that he saw him again in the vacant house where he and De la Cruz were brought.

Moreover, it cannot be said that Aaron could not have possibly taken a good look at the man he identified as Martinez by mere reason of the hat or sunvisor which supposedly effectively concealed the latter's face throughout the whole ordeal. It is natural for persons who find themselves thrust into extraordinary circumstances to remember many of the important details then

---

[8] *People v. Castillon III, supra*.

taking place. The most natural reaction of victims of crimes is to strive to see the features and faces of the perpetrators and observe the manner they commit the crime.[9] In this case, it must be noted that Aaron had several face-to-face encounters with Martinez: he was the one who first boarded the car; he was the one who handcuffed the child; and he was the one who drove the car and was thus seated beside him until they fetched Dano in Batasan Hills.

Consequently, Martinez's defense of denial and alibi (that he was supposedly with his brother in Barangay Paltik, Dingalan, Aurora Province on November 4, 5, 8 and 9, 1998, managing his fishing boat) must crumble in the face of Aaron's positive and clear identification of him as one of the perpetrators of the crime. Denial and alibi cannot be given greater evidentiary value than the testimonies of credible witnesses who testify on affirmative matters. Positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical.[10]

Besides, for alibi to prevail, the defense must establish by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that the accused was then somewhere else.[11] In the instant case, Martinez failed to show that it was physically impossible for him to have been at the scene of the crime. He could have easily traveled from Aurora Province (located in Central Luzon) to Manila by land. It would have taken him only a few hours to reach Manila. Thus, there was no physical impossibility for him to have been present at the scene of the crime when it was committed.

Furthermore, Martinez's contention (that his right to produce evidence and witnesses on his behalf was violated when the trial court refused to grant his request to present corroborative witnesses to support his alibi) is untenable. The denial of said

---

[9] *People v. Martinez*, 469 Phil. 558, 570 (2004).

[10] *People v. Delim, et al.*, G.R. No. 175942, 13 September 2007.

[11] *People v. Tumulak*, G.R. No. 177299, 28 November 2007.

request did not result in manifest injustice to Martinez for no amount of corroborative evidence could alter and reverse the categorical and positive testimony of the minor pointing to him as one of his kidnappers. Due process of law is not denied by the exclusion of irrelevant, immaterial or incompetent evidence, or the testimony of an incompetent witness. Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy.[12] In this case, there is no showing of violation of due process which justifies the reversal of the trial court's findings.

For his part, De la Cruz questioned the trial court's act of discharging accused Tano as a state witness on two points: Tano did not appear to be the least guilty among the accused and his testimony was not necessary.

For an accused to be discharged as a state witness, the following conditions must be present:

> When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:
>
> a. There is absolute necessity for the testimony of the accused whose discharge is requested;
> b. There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;
> c. The testimony of said accused can be substantially corroborated in its material points;
> d. Said accused does not appear to be the most guilty; and,
> e. Said accused has not at any time been convicted of any offense involving moral turpitude.[13]
>
> x x x x x x x x x

[12] *People v. Larranaga*, 466 Phil. 324, 373-374 (2004).

[13] RULES OF COURT, Rule 119, Sec. 17.

The provision does not require that a state witness should appear to be the "least guilty" among the accused. Rather, it provides that he "does not appear to be the most guilty." The findings of the lower court revealed that Tano merely facilitated the commission of the crime. He merely boarded the car and sat beside accused-appellant De la Cruz throughout the whole ride and accompanied accused-appellant Martinez in going back to Batasan Hills after leaving Aaron and accused-appellant De la Cruz in Bulacan. True, he was the one who placed the call to Erwin to demand ransom. However, he was neither the mastermind nor the one who hatched the plan to kidnap Aaron in exchange for money. Clearly, he did not appear to be the most guilty among the accused. Thus, we uphold the propriety of the trial court's designation of Tano as state witness.

Moreover, his testimony was absolutely necessary as it was the only direct evidence establishing the presence of conspiracy,[14] from the planning stage up to the commission of the crime.

On the issue of conspiracy, we hold that the prosecution sufficiently established it. There is conspiracy when two or more persons agree to commit a felony and decide to commit it. It need not be proven by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they acted with common purpose and design.[15]

The prosecution was able to present direct evidence of the conspiracy (by state witness Tano) and to show that the conduct of all the accused overwhelmingly pointed to the unanimity in design, intent and execution of the crime against the victim. Each of them performed specific acts according to place and in close coordination with one another, unmistakably indicating a common purpose to bring about Aaron's abduction in exchange for money.

---

[14] *People v. Martinez*, *supra* note 9, at 574.

[15] *People v. Barcenal*, G.R. No. 175925, 17 August 2007, 530 SCRA 706, 726.

As to whether or not De la Cruz was a co-conspirator of the other accused, the records show that he was undoubtedly part of the planned abduction. When the abduction commenced, De la Cruz even had the presence of mind to close the rear compartment of the car even after seeing his ward being handcuffed. There was an opportunity for him to escape since it was not shown that he was forced to board the car against his will. It was therefore beyond comprehension, to say the least, why he did not even try to run away from the scene. He clearly boarded the car on his own free will and allowed his co-accused Martinez to handcuff him.

Moreover, De la Cruz again showed no intention of escaping despite another chance to do so after untying himself. Considering the critical situation they were in, he even decided to catch some sleep as if it was the most natural thing to do under such circumstances.

Equally confounding was the fact that all the other accused left them in the vacant house and went back to Batasan Hills without leaving anyone to stand guard over them.

Furthermore, De la Cruz even tried to cover up for the abductors by telling the witness Quinano and his companions that their car was used for an "emergency" when the latter asked what they were doing inside the vacant house. And when one of the women suggested that the crime be reported to the police, De la Cruz suspiciously brushed off the suggestion and replied, *"Huwag na*," because he would rather "go home." All told, these were not actuations of an innocent person victimized by a kidnap-for-ransom gang. The circumstances indubitably pointed to the fact that he was one of the authors of the crime.

While this Court affirms the finding of guilt of accused-appellants, it can no longer impose the penalty of death in view of RA 9346.[16] Section 2 of RA 9346 mandates that, in lieu of the death penalty, *reclusion perpetua* without eligibility for parole should instead be imposed.

---

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

In line with prevailing jurisprudence, the award of ₱50,000 civil indemnity[17] was proper. Pursuant to *People v. Garalde*,[18] ₱200,000 for moral damages is awarded to Aaron considering his minority.[19] Moreover, since the crime was attended by a demand for ransom, and by way of example or correction, Aaron is entitled to ₱100,000 exemplary damages.[20]

WHEREFORE, the decision of the Court of Appeals in CA-G.R. HC-CR No. 00947 is hereby *AFFIRMED WITH MODIFICATIONS*. Elmer De la Cruz and Tranquilino Martinez are found guilty beyond reasonable doubt of kidnapping for ransom. They are sentenced to *reclusion perpetua* with no possibility of parole and ordered to pay, jointly and severally, ₱50,000 civil indemnity, ₱200,000 moral damages and ₱100,000 exemplary damages to the minor victim, Aaron Dennis Ong.

Costs against appellants.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

Austria-Martinez, Carpio Morales, and *Nachura, JJ.,* on official leave.

---

[17] *See People v. Solangon*, G.R. No. 172693, 21 November 2007; *People v. Yambot*, 397 Phil. 23, (2000).

[18] G.R. No. 173055, 13 April 2007.

[19] *See also People v. Solangon*, *supra*; *People v. Baldogo*, 444 Phil. 35, 66 (2003); *People v. Garcia*, 424 Phil. 158, 194 (2002).

[20] *Id*.

SPECIAL SECOND DIVISION

[G.R. No. 173942. June 25, 2008]

FIL-ESTATE PROPERTIES, INC. and FAIRWAYS AND BLUE-WATERS RESORT AND COUNTRY CLUB, INC., *petitioners, vs.* **HON. MARIETTA J. HOMENA-VALENCIA, in her capacity as Presiding Judge of Branch 1, Regional Trial Court, Kalibo, Aklan, and SULLIAN SY NAVAL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; GENERAL RULE; PROCEDURAL RULES MAY BE GIVEN RETROACTIVE EFFECT TO ACTIONS PENDING AND UNDETERMINED AT THE TIME OF THEIR PASSAGE, THERE BEING NO VESTED RIGHTS IN THE RULES OF PROCEDURE; "FRESH PERIOD" RULE APPLIED TO CASE AT BAR. — The determinative issue is whether the "fresh period" rule announced in *Neypes* could retroactively apply in cases where the period for appeal had lapsed prior to 14 September 2005 when *Neypes* was promulgated. That question may be answered with the guidance of the general rule that procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in the rules of procedure. Amendments to procedural rules are procedural or remedial in character as they do not create new or remove vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing. *Sps. De los Santos* reaffirms these principles and categorically warrants that *Neypes* bears the quested retroactive effect, to wit: Procedural law refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice. Procedural laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statues — they may be given retroactive effect on actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, insomuch as there are no vested rights in rules of procedure. The "fresh

period rule" is a procedural law as it prescribes a fresh period of 15 days within which an appeal may be made in the event that the motion for reconsideration is denied by the lower court. Following the rule on retroactivity of procedural laws, the "fresh period rule" should be applied to pending actions, such as the present case. Also, to deny herein petitioners the benefit of the "fresh period rule" will amount to injustice, if not absurdity, since the subject notice of judgment and final order were issued two years later or in the year 2000, as compared to the notice of judgment and final order in *Neypes* which were issued in 1998. It will be incongruous and illogical that parties receiving notices of judgment and final orders issued in the year 1998 will enjoy the benefit of the "fresh period rule" while those later rulings of the lower courts such as in the instant case, will not. Notably, the subject incidents in *Sps. De los Santos* occurred in August 2000, at the same month as the relevant incidents at bar. There is no reason to adopt herein a rule that is divergent from that in *Sps. De los Santos*.

2. ID.; EVIDENCE; THE SUPREME COURT IS NOT A TRIER OF FACTS. — We deem the challenges raised by petitioners against the correctness of the RTC's decision and its subsequent resolution on the motion for reconsideration as inappropriate for this Court to decide. Such issues may very well be tackled in petitioners' appeal before the Court of Appeals. After all, as is now conceded, the appeal was timely filed and the existence of such appeal would, per Section 1, Rule 65, bar the *certiorari* action from correcting errors which may be reversed on appeal. Besides, the resolution of such issues requires a certain level of factual determination, especially as to the circumstances surrounding the resignation of the counsel who had initially appeared in behalf of the petitioners, the service of the order resetting the pre-trial and all subsequent notices of trial to petitioners after private respondent had been allowed to present evidence *ex parte*. Unlike the Court of Appeals, this Court is not a trier of facts.

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for petitioners.
Tanjuatco & Partners Law Offices for private respondent.

R E S O L U T I O N

TINGA, *J.*:

For resolution is a Motion for Reconsideration[1] dated 19 November 2007 filed by petitioners Fil-Estate Properties, Inc. and Blue-waters Resort and Country Club, seeking reconsideration of the Decision[2] of this Court dated 15 October 2007 which denied their petition.

A brief recapitulation of the relevant facts, even though they have already been narrated in the Decision, is in order.

In 1998, private respondent Sullian Sy Naval filed a complaint[3] against petitioners, seeking the recovery of a parcel of land which petitioners had allegedly taken possession of by constructing a golf course within the vicinity of her property. Counsel for petitioners failed to attend the pre-trial, and only private respondent presented evidence before the Regional Trial Court (RTC) of Aklan which heard the complaint. The RTC rendered a decision[4] in favor of private respondent of which petitioners moved for reconsideration.

The crux of the present matter lies with the facts surrounding the motion for reconsideration. The motion was filed on 10 May 2000,[5] thirteen (13) days after petitioners received their copy of the RTC's decision. On 26 July 2000, the RTC issued an order[6] of even date denying the motion. Petitioners alleged in their petition that they received the order denying the motion for reconsideration on 9 August 2000. They filed a Notice of Appeal on 11 August 2000,[7] but the postal money orders

---

[1] *Rollo*, pp. 424-436.

[2] *Id*. at 406-423.

[3] *Id*. at 72-77.

[4] *Id*. at 99-108.

[5] *Id*. at 109-111.

[6] *Id*. at 118-121.

[7] *Id*. at 122-123.

purchased and obtained to pay the filing fee were posted only on 25 August 2000, or beyond the reglementary period to perfect the appeal. Consequently, the RTC denied the appeal[8] and such denial was sustained by the Court of Appeals after petitioners filed a special civil action for *certiorari*[9] assailing the RTC's refusal to give due course to the appeal.

The Petition[10] before this Court relied on a rather idiosyncratic theory that only upon the adoption of the amendments to Section 13, Rule 41 of the Rules of Civil Procedure effective 1 May 2000 did it become obligatory on the part of trial courts to dismiss appeals on account of the failure to pay the full docket fees. The Court, in its 15 October 2007 Decision,[11] rejected this theory and reaffirmed the rule ordaining the disallowance of the appeal or notice of appeal when the docket fee is not paid in full within the period for taking the appeal.

The present Motion for Reconsideration[12] centers on a different line of argument: that following our 2005 decision in *Neypes v. Court of Appeals,*[13] their Notice of Appeal was perfected on time as the full docket fees were paid within fifteen (15) days from their receipt of the RTC's order denying their motion for reconsideration. *Neypes* has established a new rule whereby an appellant is granted a fresh 15-day period, reckoned from receipt of the order denying the motion for reconsideration, within which to perfect the appeal.

Petitioners clarify that they received the RTC's order denying their motion for reconsideration on 11 August 2005,[14] a fact

[8] *Id*. at 124-125.

[9] *Id*. at 126-153.

[10] *Id*. at 10-56.

[11] *Supra* note 2.

[12] *Supra* note 1.

[13] G.R. No. 141524, 14 September 2005, 469 SCRA 633.

[14] *Rollo*, pp. 432-433. Petitioners support this assertion by attaching to their Motion for Reconsideration a copy of the registry receipt which indicated that its then counsel, Atty. Uytiepo, received the order on "8/11/00." See *id*. at 438.

which is confirmed by the case records even though the petition had misstated that said order was received on 9 August 2005. Petitioners argue that following *Neypes*, they were entitled to a new 15-day period, *i.e*., until 26 August 2005 or one (1) day after they had posted the full appellate docket fees, to perfect the appeal.

Most vitally, petitioners point out that on 10 October 2007, or just five (5) days before the promulgation of the assailed Decision, the Court through the Third Division rendered a decision in *Sps. De los Santos v. Vda. De Mangubat*[15] declaring that the *Neypes* ruling indeed can be retroactively applied to prior instances.

Private respondent filed her Comment[16] on the Motion for Reconsideration. She insists that *Neypes* should not be retroactively applied, but she fails to cite any authority on that argument or otherwise contend with the ruling in *Sps. De los Santos*.

The determinative issue is whether the "fresh period" rule announced in *Neypes* could retroactively apply in cases where the period for appeal had lapsed prior to 14 September 2005 when *Neypes* was promulgated. That question may be answered with the guidance of the general rule that procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in the rules of procedure.[17] Amendments to procedural rules are procedural or remedial in character as they do not create new or remove vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing.[18]

Sps. De los Santos reaffirms these principles and categorically warrants that *Neypes* bears the quested retroactive effect, to wit:

---

[15] G.R. No. 149508, 10 October 2007, 535 SCRA 411.

[16] *Rollo*, pp. 446-455.

[17] *Pfizer, Inc. v. Galan*, 410 Phil. 483, 491 (2001).

[18] *Id*.

Procedural law refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice. Procedural laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statues — they may be given retroactive effect on actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, insomuch as there are no vested rights in rules of procedure.

The "fresh period rule" is a procedural law as it prescribes a fresh period of 15 days within which an appeal may be made in the event that the motion for reconsideration is denied by the lower court. Following the rule on retroactivity of procedural laws, the "fresh period rule" should be applied to pending actions, such as the present case.

Also, to deny herein petitioners the benefit of the "fresh period rule" will amount to injustice, if not absurdity, since the subject notice of judgment and final order were issued two years later or in the year 2000, as compared to the notice of judgment and final order in *Neypes* which were issued in 1998. It will be incongruous and illogical that parties receiving notices of judgment and final orders issued in the year 1998 will enjoy the benefit of the "fresh period rule" while those later rulings of the lower courts such as in the instant case, will not.[19]

Notably, the subject incidents in *Sps. De los Santos* occurred in August 2000, at the same month as the relevant incidents at bar. There is no reason to adopt herein a rule that is divergent from that in *Sps. De los Santos*.

We have reexamined the petition to ascertain whether there is any other impediment to granting favorable relief to petitioners based on the retroactive application of the *Neypes* doctrine.

Private respondent does argue in her comment on the petition[20] and on the motion for reconsideration[21] that petitioners' special civil action for *certiorari* before the Court of Appeals was not

---

[19] *De los Santos v. Vda. De Mangubat*, *supra* note 15, at 422-423.

[20] *Rollo*, pp. 337-353.

[21] *Id*. at 446-456.

timely lodged. This argument is premised on petitioners' requested relief that direct that proceedings *de novo* be had starting from pre-trial, by annulling the RTC's decision and the court's ruling on the motion for reconsideration, which was filed by petitioners beyond the 60-day period mandated by Section 4, Rule 65 of the Rules of Court for filing a special civil action for *certiorari*.

Petitioners, in their Reply,[22] argue that the *certiorari* action was timely filed since the RTC had disallowed the notice of appeal in its 13 September 2000 Order, a copy of which was received by petitioners on 22 September 2000 or within the 60-day period prior to the filing of their *certiorari* petition.

Certainly, the RTC's order denying the notice of appeal was timely assailed by petitioners via a special civil action filed with the Court of Appeals. Granting positive relief on that point would have the effect of giving due course to the notice of appeal. But is there basis for this Court to take the extra step as requested by petitioners and go as far as to annul the RTC's rulings that granted the complaint filed by private respondent?

We deem the challenges raised by petitioners against the correctness of the RTC's decision and its subsequent resolution on the motion for reconsideration as inappropriate for this Court to decide. Such issues may very well be tackled in petitioners' appeal before the Court of Appeals. After all, as is now conceded, the appeal was timely filed and the existence of such appeal would, per Section 1, Rule 65, bar the *certiorari* action from correcting errors which may be reversed on appeal. Besides, the resolution of such issues requires a certain level of factual determination, especially as to the circumstances surrounding the resignation of the counsel who had initially appeared in behalf of the petitioners, the service of the order resetting the pre-trial and all subsequent notices of trial to petitioners after private respondent had been allowed to present evidence *ex parte*. Unlike the Court of Appeals, this Court is not a trier of facts.[23]

---

[22] *Id*. at 358-373.

[23] See, *e.g*., *Naguiat v. Court of Appeals*, 459 Phil. 237, 241-242 (2003).

WHEREFORE, the motion for reconsideration is *GRANTED* and the instant petition is *GRANTED IN PART*. The assailed rulings of the Court of Appeals and the RTC Order dated 13 September 2000 are *SET ASIDE*. The Court of Appeals is *DIRECTED* to give due course to petitioners' appeal in Civil Case No. 5626, and to hear and decide such appeal with deliberate dispatch. No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 176150. June 25, 2008]

IBARRA P. ORTEGA, *petitioner, vs.* **SOCIAL SECURITY COMMISSION and SOCIAL SECURITY SYSTEM,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; APPEAL AND *CERTIORARI* ARE MUTUALLY EXCLUSIVE AND NOT ALTERNATIVE OR SUCCESSIVE; ELUCIDATED. — In not granting *imprimatur* to this type of unorthodox strategy, the Court ruled, in a similar case, that a party should not join both petitions in one pleading. A petition cannot be subsumed simultaneously under Rule 45 and Rule 65 of the Rules of Court, nor may it delegate upon the court the task of determining under which rule the petition should fall. It is a firm judicial policy that the remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive. It bears stressing that Rule 45 and Rule 65 pertain to different remedies and have distinct applications. It is axiomatic that the remedy of

certiorari is not available where the petitioner has the remedy of appeal or some other plain, speedy and adequate remedy in the course of law. The petition for review under Rule 45 covers the mode of appeal from a judgment, final order, resolution or one which completely disposes of the case, like the herein assailed Decision and Resolution of the appellate court. There being already a final judgment at the time of the filing of the petition, a petition for review under Rule 45 is the appropriate remedy.

2. ID.; EVIDENCE; FINDINGS OF FACT OF ADMINISTRATIVE AGENCIES AND QUASI-JUDICIAL BODIES ARE GENERALLY ACCORDED NOT ONLY RESPECT BUT FINALITY WHEN AFFIRMED BY THE COURT OF APPEALS. — It is settled that the Court is not a trier of facts and accords great weight to the factual findings of lower courts or agencies whose function is to resolve factual matters. It is not for the Court to weigh evidence all over again. Moreover, findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but finality when affirmed by the Court of Appeals.

3. ID.; ID.; WEIGHT AND SUFFICIENCY; SUBSTANTIAL EVIDENCE; REQUISITE QUANTUM OF PROOF IN CASES FILED BEFORE ADMINISTRATIVE OR QUASI-JUDICIAL BODIES; PRESENT IN CASE AT BAR. — The requisite quantum of proof in cases filed before administrative or quasi-judicial bodies is neither proof beyond reasonable doubt nor preponderance of evidence. In this type of cases, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. In this case, substantial evidence abounds.

4. LABOR AND SOCIAL LEGISLATION; CLAIMS UNDER THE LABOR CODE FOR COMPENSATION AND UNDER THE SOCIAL SECURITY LAW FOR BENEFITS ARE NOT THE SAME AS TO THEIR NATURE AND PURPOSE; EXPLAINED. — Claims under the Labor Code for compensation and under the Social Security Law for benefits are not the same as to their nature and purpose. On the one hand, the pertinent provisions of the Labor Code govern compensability of work-related disabilities or when there is loss of income due to work-

connected or work-aggravated injury or illness. On the other hand, the benefits under the Social Security Law are intended to provide insurance or protection against the hazards or risks of disability, sickness, old age or death, *inter alia*, irrespective of whether they arose from or in the course of the employment. And unlike under the Social Security Law, a disability is total and permanent under the Labor Code if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days regardless of whether he loses the use of any of his body parts.

5. REMEDIAL LAW; APPEALS; FACTUAL QUESTION MAY NOT BE RAISED FOR THE FIRST TIME ON APPEAL. — [T]he appellate court correctly ruled that it could not consider such allegation of subsequent events since "a factual question may not be raised for the first time on appeal[,] and documents forming no part of the proofs before the appellate court will not be considered in disposing of the issues of an action." The issues in every case are limited to those presented in the pleadings. The object of the pleadings is to draw the lines of battle between the litigants and to indicate fairly the nature of the claims or defenses of both parties. A change of theory on appeal is not allowed. In this case, the matter of petitioner's serious heart condition was not raised in his application before the SSS or in his June 19, 2000 petition before the SSC.

APPEARANCES OF COUNSEL

Naomi Alcid-Antazo for SSC.
Joseph C. Desunia for SSS.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner Ibarra P. Ortega assails the Court of Appeals' August 7, 2006 Decision[1] dismissing his petition for review and upholding the denial by respondent Social Security Commission (SSC) of

[1] Penned by Justice Arturo G. Tayag with the concurrence of Justices Elvi John S. Asuncion and Jose Catral Mendoza, *rollo*, pp. 55-71.

his application for total permanent disability benefits, and the Resolution[2] of January 16, 2007 denying his motions for reconsideration and inhibition.

Petitioner, a member of respondent Social Security System (SSS), filed claims for partial permanent disability benefits on account of his condition of Generalized Arthritis and Partial Ankylosis,[3] which claims the SSS granted for a total monthly pension of 23 months.[4]

After the expiration of his disability pension, petitioner filed with the SSS Malabon Branch Office on April 26, 2000 a claim for total permanent disability benefits.[5] His application, docketed as BO-0000-1755, was denied, however, on the ground that he was already granted disability benefits for the same illness and physical examination showed no progression of illness.[6] Dr. Juanillo Descalzo III, SSS Malabon Branch senior physician, observed that petitioner merely had a "slight limitation of grasping movement for both hands."[7]

Aggrieved, petitioner filed before the SSC an unverified Petition of June 19, 2000,[8] alleging that the SSS denied his application despite the fact that his attending physician, Dr. Rafael Recto, Jr., diagnosed him to be suffering from **Trigger finger 4th (L) and thumb (L)**[9] while another private medical practitioner, Dr.

---

[2] *Id*. at 72-77.

[3] Illness coded as 1373 (General Arthritis) and as 1414, 1416 and 1418 (Partial Ankylosis) based on the Manual on Ratings of Physical Impairments; records, Vol. I, pp. 133-134.

[4] *Id*. at 132. Petitioner received partial permanent disability benefits twice: first, on February 10, 1998 for 15 months; and second, on August 25, 1999 for eight months or for a total monthly pension of 23 months or a cash equivalent of ₱66,700.00.

[5] *Id*. at 14.

[6] *Id*. at 13, 61-62 on the letter-reports of April 23, 2001 and May 29, 2001.

[7] Letter-reports of April 23, 2001 and May 29, 2001; *id*. at 61-62.

[8] *Id*. at 2-10.

[9] Medical Certificate of March 6, 2000; *id*. at 87.

Flo dela Cruz, diagnosed him to be also suffering from **Bronchial Asthma, Hypertension and Gastro-Esophageal Reflux Disease**.[10]

Further claiming to be afflicted with rheumatoid arthritis of both hands affecting all fingers and both palms,[11] petitioner contended that the medical opinion of the SSS physician who interviewed him for less than three minutes cannot prevail over the findings of his physicians who have been treating him over a long period of time.

Before taking cognizance of his appeal, the SSC directed the exhaustion of administrative remedies, by letter of June 30, 2000. The matter was thus referred to the SSS Office of the Medical Program Director for review of petitioner's disability claim.[12]

Meanwhile, by letter of July 17, 2000, the SSS Legal Department denied a reconsideration of the denial of his claim,[13] prompting petitioner to submit a letter-opposition of August 15, 2000.[14]

Upon referral of the SSC, the SSS Medical Program Department, through Dr. Carlota A. Cruz-Tutaan and Dr. Jesus S. Tan, confirmed that, upon examination of petitioner, there was no progression of his illness,[15] prompting petitioner to submit a letter-opposition of November 11, 2000 charging the SSS medical officers of issuing fraudulent medical findings.[16] Unperturbed, the SSS Medical Program Department stood its

---

[10] Medical Certificate of April 5, 2000; *id*. at 15.

[11] *Id*. at 6.

[12] Signed by Merceditas G. Caculitan, SSC Corporate Secretary; *id*. at 39.

[13] Signed by Amador M. Monteiro, SSS Senior Vice President - Legal and Collection; *id*. at 36.

[14] *Id*. at 29-35.

[15] Medical Report of August 3, 2000; *id*. at 63, 137. Medical Fieldwork Service Request Form of September 14, 2000; *id*. at 138.

[16] *Id*. at 40-51.

ground and denied with finality petitioner's claim, by letter of November 22, 2000.[17]

On January 29, 2001, SSC finally docketed petitioner's June 19, 2000 petition as SSC Case No. 1-15115-2001,[18] after petitioner complied with SSC's directives[19] to verify the petition and submit certain document-annexes. SSS then filed its Answer of May 31, 2001,[20] to which petitioner submitted a Reply of June 25, 2001.[21] After the August 10, 2001 pre-hearing conference,[22] the SSS filed its Position Paper of September 7, 2001 while petitioner submitted his Reply of October 19, 2001.

By Resolution of April 3, 2002,[23] the SSC denied petitioner's claim for entitlement to total permanent disability for lack of merit. And it opined that, considering that he had reached the retirement age of 60, on March 19, 1998, with 41 contributions to his name, petitioner may opt:

(a) [t]o continue paying to the SSS monthly contributions (including employer's share) on his own to complete the required 120 monthly contributions in order to avail of the retirement pension benefit;

(b) [to] leave his monthly contributions with the SSS for his and his family's future benefits; or

(c) [to a]vail of the lump sum retirement benefit.[24]

Petitioner moved for reconsideration of the Resolution. The SSC thus directed the SSS to file its comment[25] and, by a subsequent

---

[17] *Id*. at 140, signed by Dr. Vicente A. Curimao, Jr.

[18] *Id*. at 85.

[19] CA *rollo*, p. 68.

[20] Records, Vol. I, pp. 58-60.

[21] *Id*. at 70-84.

[22] Petitioner adopted his complaint/petition and other pleadings as his Position Paper but reserved to file a Reply and additional evidence; *id*. at 116, 122.

[23] *Rollo*, pp. 78-83; penned by Commissioner Efren P. Aranzamendez.

[24] *Id*. at 82.

[25] Order of May 17, 2002; records, Vol. I, p. 214.

order, to conduct a domiciliary visit and physical examination on petitioner to ascertain whether he could already qualify for such benefit.[26] In compliance therewith, Dr. Rebecca Sison, SSS senior physician, examined petitioner on August 29, 2002 and found no sufficient basis to warrant the granting of total permanent disability benefits to him.[27]

Petitioner's motion for reconsideration having been denied by Order[28] of January 29, 2003, petitioner appealed via Rule 43 to the Court of Appeals[29] which promulgated in CA-G.R. SP No. 75653 the assailed issuances affirming *in toto* the SSC Resolution and Order.

There is at the outset a need to thresh out procedural issues attending the petition drafted by petitioner himself, apparently without the aid of counsel. While the petition was admittedly filed as a petition for *certiorari* under Rule 65, it contains a rider averring that it was filed also as a petition for review on *certiorari* under Rule 45.[30]

In not granting imprimatur to this type of unorthodox strategy, the Court ruled, in a similar case,[31] that a party should not join both petitions in one pleading. A petition cannot be subsumed simultaneously under Rule 45 and Rule 65 of the Rules of Court, nor may it delegate upon the court the task of determining under which rule the petition should fall.[32] It is a firm judicial policy

---

[26] Order of July 31, 2002; *id*. at 221.

[27] Memorandum of September 2, 2002 with attached Medical Report; *id*. at 242-244.

[28] *Rollo*, pp. 84-87; penned by Commissioner Efren P. Aranzamendez.

[29] The appellate court initially dismissed outright his petition for having been filed out of time as it only granted an extension of 15 days instead of the requested 45 days. Upon motion, the appellate reconsidered its earlier resolution and reinstated the petition; CA *rollo*, pp. 7, 145, 199-200.

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

[31] *Nagkahiusang Mamumuo sa PICOP Resources, Inc.-Southern Philippines Federation of Labor v. Court of Appeals*, G.R. Nos. 148839-40, November 2, 2006, 506 SCRA 542.

[32] *Ybañez v.Court of Appeals*, 323 Phil. 643 (1996).

that the remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.[33]

Palpably, petitioner crafted this unconventional two-headed petition under no other pretext but to second-guess at the appropriate remedy. His apparent bewilderment led him to later rectify a supposed typographical error in the caption such that instead of "petition for review," the title be read as a "petition for *certiorari*."[34] The subsequent filing of the Correction of Clerical Errors served no redeeming purpose as it only evinced petitioner's decision to consider the petition as a special civil action for *certiorari*, which is an improper remedy.

It bears stressing that Rule 45 and Rule 65 pertain to different remedies and have distinct applications.[35] It is axiomatic that the remedy of *certiorari* is not available where the petitioner has the remedy of appeal or some other plain, speedy and adequate remedy in the course of law.[36] The petition for review under Rule 45 covers the mode of appeal from a judgment, final order, resolution or one which completely disposes of the case, like the herein assailed Decision and Resolution of the appellate court. There being already a final judgment at the time of the filing of the petition, a petition for review under Rule 45 is the appropriate remedy.

Petitioner failed to carve out an exception to this rule, as he did not — and could not — illustrate the inadequacy of an appeal as a remedy that could promptly relieve him from the injurious effects of the assailed judgment.[37] In fact, by seeking the same

---

[33] *Young v. Sy*, G.R. No. 157745, September 26, 2006, 503 SCRA 151.

[34] *Rollo*, p. 11.

[35] In *Mackay v. Judge Angeles*, 458 Phil. 1031, 1037-1038 (2003), it was held that "[*c*]*ertiorari* as a mode of appeal under Rule 45 should be distinguished from *certiorari* as an original action under Rule 65. In an appeal by *certiorari*, the petition is based on questions of law which the appellant desires the appellate court to resolve. In *certiorari* as an original action, the only question that may be raised is whether or not the lower court acted without or in excess of jurisdiction or with grave abuse of discretion. x x x" (Italics omitted)

[36] *Vide* RULES OF COURT, Rule 65, Sec. 1.

[37] Cf. *Bristol Myers Squibb, (Phils.), Inc. v. Viloria*, G.R. No. 148156, September 27, 2004, 439 SCRA 202 for instances where *certiorari* may be

kind of reliefs via two remedies rolled into one pleading, he implicitly admits that an appeal suffices. Moreover, the probability of divergent rulings, a scenario transpiring in *G & S Transport Corp. v. CA,*[38] is far from obtaining in this case since the assailed issuances emanated from only one court and cannot be elevated separately in different fora.

While the Court may dismiss a petition outright for being an improper remedy,[39] it may, in certain instances where a petition was filed on time both under Rules 45 and 65 and in the interest of justice, proceed to review the substance of the petition and treat it as having been filed under Rule 45.[40] Either way, however, the present petition just the same merits dismissal since it puts to issue questions of fact rather than questions of law which are appropriate for review under a Rule 45 petition.

It is settled that the Court is not a trier of facts and accords great weight to the factual findings of lower courts or agencies whose function is to resolve factual matters.[41] It is not for the Court to weigh evidence all over again.[42] Moreover, findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but finality when affirmed by the Court of Appeals.[43]

---

granted despite the availability of appeal after trial, which presupposes that an appeal is not available until after trial.

[38] 432 Phil. 7 (2002).

[39] *Vide Mercado v. Court of Appeals,* G.R. No. 150241, November 4, 2004, 441 SCRA 463-470 which states that the liberality of construction of the rules should not be a panacea for all procedural maladies as it is not invoked to cover up a party's neglect or sheer ignorance of procedure.

[40] *Vide Nuñez v. GSIS Family Bank*, G.R. No. 163988, November 17, 2005, 475 SCRA 305; *Republic v. Court of Appeals*, 379 Phil. 92 (2000).

[41] *Lazaro v. Social Security Commission*, 479 Phil. 384 (2004).

[42] *Chua v. Court of Appeals*, G.R. No. 125837, October 6, 2004, 440 SCRA 121.

[43] *Reyes v. National Labor Relations Commission*, G.R. No. 160233, August 8, 2007, 529 SCRA 487.

The requisite quantum of proof in cases filed before administrative or quasi-judicial bodies is neither proof beyond reasonable doubt nor preponderance of evidence. In this type of cases, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[44] In this case, substantial evidence abounds.

The conclusion that petitioner is not entitled to total permanent disability benefits under the Social Security Law was reached after petitioner was examined not just by one but four SSS physicians, namely, Dr. Juanillo Descalzo III, Dr. Carlota A. Cruz-Tutaan, Dr. Jesus S. Tan and Dr. Rebecca Sison.

The initial physical examination and interview revealed that petitioner had slight limitation of grasping movement for both hands. According to Dr. Descalzo, this finding was not enough to grant an extension of benefit since petitioner had already received benefits equivalent to 30% of the body. Responding to the allegation that the April 2000 physical examination was performed in a short period of time, the doctor credibly explained that petitioner's movements were already being monitored and evaluated from a distance as part of the examination of his extremities in order to minimize malingering and overacting.[45]

Meanwhile, the medical findings of Dr. Carlota A. Cruz-Tutaan and Dr. Jesus S. Tan in August and September 2000 were summarized as follows:

Heart:
- manifest regular rhythm
- no murmurs

Lungs:
- on ausculation showed no evidence of wheezing
- breath sounds are normal and;
- he is not in a state of respiratory distress

Hypertension:
- Blood Pressure is 140/80, hence, under control

---

[44] RULES OF COURT, Rule 133, Sec. 5.

[45] Records, Vol. I, p. 61.

Extremities: (Hands)

– No deformities noted except for the right small finger, the distal interphalangeal joint is bent at about 30°. No abnormal limitation of movement noted on all the fingers, grasping has improved[46]

Contrary to petitioner's asseverations, the SSC did not ignore the certifications of petitioner's attending physicians as, in fact, it ordered the SSS in June 2001 to conduct an investigation as to the medical findings and final diagnosis by his attending physicians.[47] It was surfaced that petitioner's medical records in the custody of Dr. Flo dela Cruz could not be found as they were allegedly destroyed by inundation.[48] And it was found that the July 10, 2001 letter-certification by Dr. Rafael Recto, Jr. only narrated the recurring condition of petitioner's trigger finger, the administration to him of local steroid injections, and the performance of surgical release on his left 4th trigger finger on June 16, 1998; and that he was diagnosed on August 28, 2000 with mallet finger (R, 5th), for which he was advised to undergo reconstructive surgery.[49]

Adopting a liberal attitude and exercising sound discretion, the SSC even directed the conduct of another physical examination on petitioner to judiciously resolve his motion for reconsideration. Pursuant thereto, Dr. Sison physically examined petitioner in August 2002, the results of which were reflected in a medical report, *viz*:

Physical Examination:

General Survey: well nourished, well developed, conscious, coherent but talks with sarcasm and arrogance.

EENT: normocephalic, pinkish conjunctiva, anicteric sclerae; negative tonsillo-pharyngeal congestion

---

[46] Memorandum of September 20, 2000 signed by senior physician, Dr. Vicente A. Curimao, Jr.; *id*. at 52-53.

[47] Order of June 19, 2001; *id*. at 65.

[48] *Id*. at 103.

[49] *Id*. at 96-97.

C/L: clear breath sounds, no wheezes; (-) dyspnea
Heart: normal rate, regular rhythm.
Abdomen: negative tenderness
Extremeties: no neurological and sensory deficit
no gross deformity, (+) scar, 4th finger (L)
no loss of grasping power for large and small objects
no loss of opposition between thumb and forefingers
can bend fully to reach toes
can bend both knees fully without pain or difficulty
can raise both arms above shoulder level without pain and difficulty
can bend both elbows without limitation

The member was requested to submit recent ECG, x-rays and other laboratory work-up results but he could not locate them during visit and would still look for the said medical documents and mail them to SSS.

He was then advised to come to SSS, Diliman Branch for ECG and x-ray, however he refused.

He also refused to affix his signature on the medical field service form to confirm the visit of our Medical Officer.

Based on these recent physical examination findings and functional assessment and the medical certificate (Form MMD 102) with final diagnosis of Trigger Finger, there is no sufficient basis that warrants the granting of Total Permanent disability.[50] (Underscoring supplied)

Dr. Sison subsequently noted that petitioner's Electrocardiograph, Chest X-ray, Kidney and Urinary Bladder Ultrasound indicated his condition as normal,[51] which conclusion was arrived at by going through the same medical documents presented by petitioner following a series of tests conducted on him by hospitals of his choice.

From the foregoing recital of petitioner's medical history, the SSC concluded that petitioner is not entitled to total permanent disability benefits under the Social Security Law, the pertinent provisions of which read:

---

[50] *Id*. at 243-244; after presenting the "conditions as alleged by [petitioner]."

[51] Memorandum of November 19, 2002 with attachments; *id*. at 245-248.

x x x x x x x x x

(d) The following disabilities shall be deemed permanent total:

1. Complete loss of sight of both eyes;
2. Loss of two limbs at or above the ankle or wrists;
3. Permanent complete paralysis of two limbs;
4. Brain injury resulting to incurable imbecility or insanity; and
5. Such cases as determined and approved by the SSS.

x x x x x x x x x

(f) If the disability is permanent partial and such disability occurs after thirty-six (36) monthly contributions have been paid prior to the semester of disability, the benefit shall be the monthly pension for permanent total disability payable not longer than the period designated in the following schedule:

COMPLETE AND PERMANENT LOSS OF USE OF	NUMBER OF MONTHS
One thumb	10
One index finger	8
One middle finger	6
One ring finger	5
One little finger	3
One big toe	6
One hand	39
One arm	50
One foot	31
One leg	46
One ear	10
Both ears	20
Hearing of one ear	10
Hearing of both ears	50
Sight of one eye	25

(g) The percentage degree of disability which is equivalent to the ratio that the designated number of months of compensability bears to seventy-five (75), rounded to the next higher integer, shall not be additive for distinct, separate and unrelated permanent partial disabilities, but shall be additive for deteriorating and related permanent partial disabilities to a maximum of one hundred percent

(100%), in which case, the member shall be deemed as permanently totally disabled.[52]

Indeed, the evidence indicates that petitioner's condition at the time material to the case does not fall under the enumeration in the above-quoted provisions of the Social Security Law. Moreover, as correctly held by the appellate court, the proviso of such provisions on the percentage degree of disability applies when there is a related deterioration of the illness previously considered as partial permanent disability. In this case, there is dearth of evidence on the proposition that petitioner's array of illnesses is related to Generalized Arthritis and Partial Ankylosis of the specific body parts.

Petitioner's reliance on jurisprudence[53] on work-connected disability claims insofar as it relates to a demonstration of disability to perform his trade and profession[54] is misplaced.

Claims under the Labor Code for compensation and under the Social Security Law for benefits are not the same as to their nature and purpose. On the one hand, the pertinent provisions of the Labor Code govern compensability of work-related disabilities or when there is loss of income due to work-connected or work-aggravated injury or illness.[55] On the other hand, the benefits under the Social Security Law are intended to provide insurance or protection against the hazards or risks of disability, sickness, old age or death, *inter alia*, irrespective of whether they arose from or in the course of the employment.[56] And unlike under the Social Security Law, a disability is total and

---

[52] *Id.*, Sec. 13-A (d), (f)-(g).

[53] *Vicente v. Employees' Compensation Commission,* G.R. No. 85024, January 23, 1991, 193 SCRA 190 and other cases cited in the petition; *rollo*, pp. 41-42.

[54] Petitioner's occupations include "consultant," "security consultant," "security officer," and "investigator."

[55] *Vide Candano Shipping Lines, Inc. v. Sugata-on*, G.R. No. 163212, March 13, 2007, 518 SCRA 221.

[56] *Valencia v. Manila Yacht Club, Inc.*, 138 Phil. 761, 764-765 (1969).

permanent under the Labor Code if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days regardless of whether he loses the use of any of his body parts.[57]

The Court notes that the main issue petitioner proffers is whether he is entitled to total permanent disability benefits from the SSS given his "angioplasty operation of the heart, coronary artery disease, ischemic heart disease, severe hypertension and a host of other serious illnesses filed with the SSS[.]"[58]

A perusal of the records shows that when the case was already submitted for decision before the appellate court, petitioner manifested that he suffered a heart attack on February 25, 2004,[59] for which he claimed to have undergone a coronary angiogram on March 9, 2005 and a coronary angioplasty on September 27, 2005 at the Philippine Heart Center.[60]

Unfortunate as these events were, the appellate court correctly ruled that it could not consider such allegation of subsequent events since "a factual question may not be raised for the first time on appeal[,] and documents forming no part of the proofs before the appellate court will not be considered in disposing of the issues of an action."[61]

The issues in every case are limited to those presented in the pleadings. The object of the pleadings is to draw the lines of battle between the litigants and to indicate fairly the nature of the claims or defenses of both parties.[62] A change of theory

---

[57] *Vide* LABOR CODE, Arts. 173, 192; Amended Rules on Employees' Compensation, Rule VII, Sec. 2 (b); *Palisoc v. Easways Marine, Inc.*, G.R. No. 152273, September 11, 2007, 532 SCRA 585.

[58] *Rollo*, pp. 19-20.

[59] CA *rollo*, pp. 278.

[60] *Id*. at 287, 299.

[61] *Rollo*, p. 76 citing *F.F. Marine Corporation v. National Labor Relations Commission, Second Division*, G.R. No. 152039, April 8, 2005, 455 SCRA 154 which adds that the rule also applies to decisions elevated for review which originated from a quasi-judicial body.

[62] *Lianga Lumber Co. v. Lianga Timber Co., Inc.*, 166 Phil. 661-686 (1977).

on appeal is not allowed.[63] In this case, the matter of petitioner's serious heart condition was not raised in his application before the SSS or in his June 19, 2000 petition before the SSC.

Fair play dictates that the SSS be afforded the opportunity to properly meet the issue[64] with respect to the new ailments besetting petitioner, in line with the actual practice that only qualified government physicians, by virtue of their oath as civil service officials, are competent to examine persons and issue medical certificates which will be used by the government for a specific official purpose.[65] This holds greater significance where there exist differences or doubts as to the medical condition of the person.

In this case, the SSS medical examiners are tasked by law to analyze the extent of personal incapacity resulting from disease or injury. Oftentimes, a physician who is adequately versed in the knowledge of anatomy and physiology will find himself deficient when called upon to express an opinion on the permanent changes resulting from a disability. Unlike the general practitioner who merely concerns himself with the examination of his patient for purposes of diagnosis and treatment, the medical examiner has to consider varied factors and ascertain the claimant's related history and subjective complaints.[66] The members of this Court cannot strip their judicial robe and don the physician's gown, so to speak, in a pretense to correlate variances in medical findings.

---

[63] *Drilon v. CA*, 336 Phil. 949-956 (1997).

[64] Vide *Bank of the Philippine Islands v. ALS Management and Development Corporation*, G.R. No. 151821, April 14, 2004, 427 SCRA 564, 578-579.

[65] *People v. Court of Appeals*, G.R. No. 144332, June 10, 2004, 431 SCRA 610, 621.

[66] SSS Medical Department's Manual on Disability Rating; records, Vol. I, pp. 142-143. Varied factors come into play in the proper analysis of a disability– the anatomical alterations involved, the permanent residual effects, the date when the permanency of the condition has set in, the occupation of the claimant, and foremost of all is the problem of ascertaining how the resulting depreciated physique could presently adapt to the circumstances of the environment.

Finding no cogent reason to discuss the ancillary issues, the Court dismisses the petition, without prejudice to the filing of a new application by petitioner who is not left without any recourse in his legal bout respecting his supervening claims anchored mainly on Coronary Artery Disease 1VD and Diabetes Mellitus Type 2, these illnesses having been found to be dissimilar from the subject matter of the present action.[67]

WHEREFORE, the petition is, in light of the foregoing disquisitions, *DENIED*.

SO ORDERED.

Quisumbing (Chairperson), Tinga, Velasco, Jr., and *Leonardo-de Castro,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 176434. June 25, 2008]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **LIFETIME MARKETING CORPORATION,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; BANKS; GENERAL BANKING LAW OF 2000; THE STATE RECOGNIZES THE FIDUCIARY NATURE OF BANKING THAT REQUIRES HIGH STANDARDS OF INTEGRITY AND PERFORMANCE. — We have repeatedly emphasized that the banking industry is impressed with public interest. Of paramount importance thereto

---

[67] *Rollo*, pp. 76-77.

[*] Additional member per Raffle dated April 16, 2008 pursuant to Administrative Circular No. 84-2007 in lieu of Justice Arturo D. Brion who inhibited.

is the trust and confidence of the public in general. Accordingly, the highest degree of diligence is expected, and high standards of integrity and performance are required of it. By the nature of its functions, a bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of its relationship with them. The fiduciary nature of banking, previously imposed by case law, is now enshrined in Republic Act No. 8791 or the General Banking Law of 2000. Section 2 thereof specifically says that the state recognizes the fiduciary nature of banking that requires high standards of integrity and performance.

2. CIVIL LAW; EXTRA-CONTRACTUAL OBLIGATIONS; *QUASI-DELICT*; ELEMENTS. — LMC sought recovery from BPI on a cause of action based on tort. Article 2176 of the Civil Code provides, "Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence if there is no pre-existing contractual relation between the parties, is called a *quasi-delict* and is governed by the provisions of this Chapter." There are three elements of *quasi-delict*: (a) fault or negligence of the defendant, or some other person for whose acts he must respond; (b) damages suffered by the plaintiff; and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by the plaintiff.

3. ID.; ID.; ID.; NEGLIGENCE; DEFINED. — Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do. Negligence in this case lies in the tellers' disregard of the validation procedures in place and BPI's utter failure to supervise its employees. Notably, BPI's managers admitted in several correspondences with LMC that the deposit transactions were cancelled without LMC's knowledge and consent and based only upon the request of Alice Laurel and her husband.

4. ID.; ID.; ID.; PROXIMATE CAUSE; DEFINED. — Proximate cause is that cause which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.

5. ID.; OBLIGATIONS AND CONTRACTS; EFFECTS OF OBLIGATION; DAMAGES AWARDED CORRECTLY REDUCED ON ACCOUNT OF RESPONDENT'S OWN CONTRIBUTORY NEGLIGENCE. — It is also true, however, that LMC should have been more vigilant in managing and overseeing its own financial affairs. The damages awarded to it were correctly reduced on account of its own contributory negligence in accordance with Article 1172 of the Civil Code.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A PARTY WHO DOES NOT APPEAL FROM THE DECISION MAY NOT OBTAIN ANY AFFIRMATIVE RELIEF FROM THE APPELLATE COURT OTHER THAN WHAT HE HAS OBTAINED FROM THE LOWER COURT WHOSE DECISION IS BROUGHT UP ON APPEAL; EXCEPTIONS. — Be that as it may, we find the appellate court's decision increasing the award of actual damages in favor of LMC improper since the latter did not appeal from the decision of the trial court. It is well-settled that a party who does not appeal from the decision may not obtain any affirmative relief from the appellate court other than what he has obtained from the lower court whose decision is brought up on appeal. The exceptions to this rule, such as where there are (1) errors affecting the lower court's jurisdiction over the subject matter, (2) plain errors not specified, and (3) clerical errors, do not apply in this case.

APPEARANCES OF COUNSEL

Benedicto Versoza Felipe Burkley & Associates for petitioner.

Wilfredo Topacio Garcia & Associates Law Office for respondent.

D E C I S I O N

TINGA, *J.*:

The Bank of the Philippine Islands (BPI) seeks the reversal of the Decision[1] of the Court of Appeals dated 31 July 2006

[1] *Rollo*, pp. 7-21; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Josefina Guevara-Salonga and Aurora Santiago-Lagman.

in CA-G.R. CV No. 62769 which ordered it to pay Lifetime Marketing Corporation (LMC) actual damages in the amount of ₱2,075,695.50 on account of its gross negligence in handling LMC's account.

The following facts, quoted from the decision of the Court of Appeals, are undisputed:

On October 22, 1981, Lifetime Marketing Corporation (LMC, for brevity), opened a current account with the Bank of the Philippine Islands (BPI, for brevity), Greenhills-Edsa branch, denominated as Account No. 3101-0680-63. In this account, the "sales agents" of LMC would have to deposit their collections or payments to the latter. As a result, LMC and BPI, made a special arrangement that the former's agents will accomplish three (3) copies of the deposit slips, the third copy to be retained and held by the teller until LMC's authorized representatives, Mrs. Virginia Mongon and Mrs. Violeta Ancajas, shall retrieve them on the following banking day.

Sometime in 1986, LMC availed of the BPI's inter-branch banking network services in Metro Manila, whereby the former's agents could make [a] deposit to any BPI branch in Metro Manila under the same account. Under this system, BPI's bank tellers were no longer obliged to retain the extra copy of the deposit slips instead, they will rely on the machine-validated deposit slip, to be submitted by LMC's agents. For its part, BPI would send to LMC a monthly bank statement relating to the subject account. This practice was observed and complied with by the parties.

As a business practice, the registered sales agents or the Lifetime Educational Consultants of LMC, can get the books from the latter on consignment basis, then they would go directly to their clients to sell. These agents or Lifetime Educational Consultants would then pay to LMC, seven (7) days after they pick up all the books to be sold. Since LMC have several agents around the Philippines, it required to remit their payments through BPI, where LMC maintained its current account. It has been LMC's practice to require its agents to present a validated deposit slip and, on that basis, LMC would issue to the latter an acknowledgment receipt.

Alice Laurel, is one of LMC's "Educational Consultants" or agents. On various dates covering the period from May, [*sic*] 1991 up to August, 1992, Alice Laurel deposited checks to LMC's subject account at different branches of BPI, specifically: at the Harrison/

Buendia branch-8 checks; at Arrangue (sic) branch-4 checks; at Araneta branch-1 check; at Binondo branch-3 checks; at Ermita branch-5 checks; at Cubao Shopping branch-1 check; at Escolta branch-4 checks; at the Malate branch-2 checks; at Taft Avenue branch-2 checks; at Paseo de Roxas branch-1 check; at J. Ruiz, San Juan branch, at West Avenue and Commonwealth Quezon City branch- 2 checks; and at Vito Cruz branch-2 checks.

Each check thus deposited were retrieved by Alice Laurel after the deposit slips were machine-validated, except the following thirteen (13) checks, which bore no machine validation, to wit: CBC Check No. 484004, RCBC Check No. 419818, CBC Check No. 484042, FEBTC Check No. 171857, RCBC Check No. 419847, CBC Check No. 484053, MBTC Check No. 080726, CBC Check No. 484062, PBC Check No. 158076, CBC Check No. 484027, CBC Check No. 484017, CBC Check No. 484023 and CBC Check No. 218190.

A verification with BPI by LMC showed that Alice Laurel made check deposits with the named BPI branches and, after the check deposit slips were machine-validated, requested the teller to reverse the transactions. Based on general banking practices, however, the cancellation of deposit or payment transactions upon request by any depositor or payor, requires that all copies of the deposit slips must be retrieved or surrendered to the bank. This practice, in effect, cancels the deposit or payment transaction, thus, it leaves no evidence for any subsequent claim or misrepresentation made by any innocent third person. Notwithstanding this, the verbal requests of Alice Laurel and her husband to reverse the deposits even after the deposit slips were already received and consummated were accommodated by BPI tellers.

Alice Laurel presented the machine-validated deposit slips to LMC which, on the strength thereof, considered her account paid. LMC even granted her certain privileges or prizes based on the deposits she made.

The total aggregate amount covered by Alice Laurel's deposit slips was Two Million Seven Hundred Sixty Seven Thousand, Five Hundred Ninety Four Pesos (₱2,767,594.00) and, for which, LMC paid Laurel the total sum of Five Hundred Sixty Thousand Seven Hundred Twenty Six Pesos (₱560,726.00) by way of "sales discount and promo prizes."

The above fraudulent transactions of Alice Laurel and her husband was made possible through BPI teller's failure to retrieve the duplicate

original copies of the deposit slips from the former, every time they ask for cancellation or reversal of the deposit or payment transaction.

Upon discovery of this fraud in early August 1992, LMC made queries from the BPI branches involved. In reply to said queries, BPI branch managers formally admitted that they cancelled, without the permission of or due notice to LMC, the deposit transactions made by Alice and her husband, and based only upon the latter's verbal request or representation.

Thereafter, LMC immediately instituted a criminal action for Estafa against Alice Laurel and her husband Thomas Limoanco, before the Regional Trial Court of Makati, Branch 65, docketed as Criminal Case No. 93-7970 to 71, entitled *People of the Philippines v. Thomas Limoanco and Alice Laurel*. This case for estafa, however, was archived because summons could not be served upon the spouses as they have absconded. Thus, the BPI's apparent reluctance to admit liability and settle LMC's claim for damages, and a hopeless case of recovery from Alice Laurel and her husband, has left LMC, with no option but to recover damages from BPI.

On July 24, 1995, LMC, through its representative, Miss Consolacion C. Rogacion, the President of the company, filed a Complaint for Damages against BPI, docketed as Civil Case No. 95-1106, and was raffled to Regional Trial Court of Makati City, Branch 141.

After trial on the merits, the court *a quo* rendered a Decision in favor of LMC. The dispositive portion of which reads, as follows:

WHEREFORE*, decision is hereby rendered ordering defendant bank to pay plaintiff actual damages equitably reduced to one (1) million pesos plus attorney's fees of ₱100,000.00.*

No pronouncement as to costs.

SO ORDERED.[2]

Only BPI filed an appeal. The Court of Appeals affirmed the decision of the trial court but increased the award of actual damages to ₱2,075,695.50 and deleted the award of ₱100,000.00

[2] *Id*. at 8-13.

as attorney's fees.[3] Citing public interest, the appellate court denied reconsideration in a Resolution[4] dated 30 January 2007.

In this Petition for Review[5] dated 19 March 2007, BPI insists that LMC should have presented evidence to prove not only the amount of the checks that were deposited and subsequently reversed, but also the actual delivery of the books and the payment of "sales and promo prizes" to Alice Laurel. Failing this, there was allegedly no basis for the award of actual damages. Moreover, the actual damages should not have been increased because the decision of the trial court became conclusive as regards LMC when it did not appeal the said decision.

BPI further avers that LMC's negligence in considering the machine-validated check deposit slips as evidence of Alice Laurel's payment was the proximate cause of its own loss. Allegedly, by allowing its agents to make deposits with other BPI branches, LMC violated its own special arrangement with BPI's Greenhills-EDSA branch for the latter to hold on to an extra copy of the deposit slip for pick up by LMC's authorized representatives. BPI points out that the deposits were in check and not in cash. As such, LMC should have borne in mind that the machine validation in the deposit slips is still subject to the sufficiency of the funds in the drawers' account. Furthermore, LMC allegedly ignored the express notice indicated in its monthly bank statements and consequently failed to check the accuracy of the transactions reflected therein.

In its Manifestation of Compliance by Respondent on the Order Dated 20 June 2007 Received on 29 July 2007 to Submit Comment,[6] dated 9 August 2007, LMC insists that it is indeed entitled to the actual damages awarded to it by the appellate court.

BPI filed a Reply[7] dated 15 January 2008, in reiteration of its submissions.

---

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

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

[5] *Id*. at 28-49.

[6] *Id*. at 84-88.

[7] Temporary *Rollo*.

We have repeatedly emphasized that the banking industry is impressed with public interest. Of paramount importance thereto is the trust and confidence of the public in general. Accordingly, the highest degree of diligence is expected, and high standards of integrity and performance are required of it. By the nature of its functions, a bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of its relationship with them.[8] The fiduciary nature of banking, previously imposed by case law, is now enshrined in Republic Act No. 8791 or the General Banking Law of 2000. Section 2 thereof specifically says that the state recognizes the fiduciary nature of banking that requires high standards of integrity and performance.[9]

Whether BPI observed the highest degree of care in handling LMC's account is the subject of the inquiry in this case.

LMC sought recovery from BPI on a cause of action based on tort. Article 2176 of the Civil Code provides, "Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter." There are three elements of *quasi-delict*: (a) fault or negligence of the defendant, or some other person for whose acts he must respond; (b) damages suffered by the plaintiff; and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by the plaintiff.[10]

In this case, both the trial court and the Court of Appeals found that the reversal of the transactions in question was unilaterally undertaken by BPI's tellers without following normal

---

[8] *Citibank, N.A. v. Cabamongan*, G.R. No. 146918, 2 May 2006, 488 SCRA 517, 531; *Prudential Bank v. Lim*, G.R. No. 136371, 11 November 2005, 474 SCRA 485, 495.

[9] *Associated Bank v. Tan*, G.R. No. 156940, 14 December 2004, 446 SCRA 282, 292.

[10] *Philippine Bank of Commerce v. CA,* 336 Phil. 667, 675 (1997).

banking procedure which requires them to ensure that all copies of the deposit slips are surrendered by the depositor. The machine-validated deposit slips do not show that the transactions have been cancelled, leading LMC to rely on these slips and to consider Alice Laurel's account as already paid.

Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do.[11] Negligence in this case lies in the tellers' disregard of the validation procedures in place and BPI's utter failure to supervise its employees. Notably, BPI's managers admitted in several correspondences with LMC that the deposit transactions were cancelled without LMC's knowledge and consent and based only upon the request of Alice Laurel and her husband.[12]

It is well to reiterate that the degree of diligence required of banks is more than that of a reasonable man or a good father of a family. In view of the fiduciary nature of their relationship with their depositors, banks are duty-bound to treat the accounts of their clients with the highest degree of care.[13]

BPI cannot escape liability because of LMC's failure to scrutinize the monthly statements sent to it by the bank. This omission does not change the fact that were it not for the wanton and reckless negligence of BPI's tellers in failing to require the surrender of the machine-validated deposit slips before reversing the deposit transactions, the loss would not have occurred. BPI's negligence is undoubtedly the proximate cause of the loss. Proximate cause is that cause which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.[14]

---

[11] *Philippine Bank of Commerce v. CA,* 336 Phil. 667, 676 (1997).

[12] Records, pp. 28-36.

[13] *Supra*, note 10.

[14] *Bank of the Philippine Islands v. Casa Montessori Internationale*, G.R. No. 149507, 28 May 2004, 430 SCRA 261, 287.

It is also true, however, that LMC should have been more vigilant in managing and overseeing its own financial affairs. The damages awarded to it were correctly reduced on account of its own contributory negligence in accordance with Article 1172 of the Civil Code.[15]

Parenthetically, we find no merit in BPI's allegation that LMC should have presented evidence of delivery of the books and payment of sales and promo prizes to Alice Laurel. The evidence presented by LMC in the form of BPI's own admission that the deposit transactions were reversed at the instance of Alice Laurel and her husband, coupled with the machine-validated deposit slips[16] which were supposed to have been deposited to LMC's account but were cancelled without its knowledge and consent, sufficiently form the bases for the actual damages claimed because they are the very same documents relied upon by LMC in considering Alice Laurel's account paid and in granting her monetary privileges and prizes.

Be that as it may, we find the appellate court's decision increasing the award of actual damages in favor of LMC improper since the latter did not appeal from the decision of the trial court. It is well-settled that a party who does not appeal from the decision may not obtain any affirmative relief from the appellate court other than what he has obtained from the lower court whose decision is brought up on appeal. The exceptions to this rule, such as where there are (1) errors affecting the lower court's jurisdiction over the subject matter, (2) plain errors not specified, and (3) clerical errors, do not apply in this case.[17]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CV No. 62769 dated 31 July 2006 and its Resolution dated January 30, 2007 are *AFFIRMED* with the *MODIFICATION* that the Bank of the Philippine Islands is ordered to pay actual

---

[15] *The Consolidated Bank & Trust Corporation v. Court of Appeals*, 457 Phil. 688, 713 (2003).

[16] Records, pp. 15-27.

[17] *Real v. Belo*, G.R. No. 146224, 26 January 2007, 513 SCRA 111, 126-127; *Santos v. Court of Appeals*, G.R. No. 100963, 6 April 1993, 221 SCRA 42, 46.

damages to Lifetime Marketing Corporation in the amount of One Million Pesos (₱1,000,000.00). No pronouncement as to costs.

SO ORDERED.

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

EN BANC

[G.R. No. 181097. June 25, 2008]

NORLAINIE MITMUG LIMBONA, *petitioner, vs*. **COMMISSION ON ELECTIONS and MALIK "BOBBY" T. ALINGAN,** *respondents*.

SYLLABUS

1. POLITICAL LAW; ELECTION LAW; OMNIBUS ELECTION CODE; PERMANENT LEGAL EFFECTS PRODUCED BY FILING OF A CERTIFICATE OF CANDIDACY REMAIN EVEN IF CERTIFICATE ITSELF BE SUBSEQUENTLY WITHDRAWN; CASE AT BAR. — The withdrawal of a certificate of candidacy does not necessarily render the certificate void *ab initio*. Once filed, the permanent legal effects produced thereby remain even if the certificate itself be subsequently withdrawn. Section 73 of the Omnibus Election Code of the Philippines (B.P. Blg. 881, as amended) provides: Sec. 73. **Certificate of candidacy.** — No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein. **A person who has filed a certificate of candidacy may, prior to the election, withdraw the same by submitting to the office concerned a written declaration under oath.** x x x No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for

more than one office, he shall not be eligible for any of them. However, before the expiration of the period for the filing of certificate of candidacy, the person who has filed more than one certificate of candidacy may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices. x x x **The filing or withdrawal of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which a candidate may have incurred**. When petitioner filed her certificate of candidacy on March 29, 2007, such act produced legal effects, and the withdrawal of the same, despite the approval of the Comelec, did not bar or render nugatory the legal proceedings it had set in motion. As such, the Comelec did not commit grave abuse of discretion when it ruled on the merits of the petition despite the withdrawal of petitioner's certificate of candidacy. The Comelec correctly held that a case only becomes moot when "there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits."

2. ID.; ID.; ELECTORAL REFORMS LAW OF 1987; AUTHORIZES COMELEC TO TRY AND DECIDE PETITIONS FOR DISQUALIFICATIONS EVEN AFTER THE ELECTIONS. — Moreover, the Electoral Reforms Law of 1987 (R.A. No. 6646) "authorizes the Commission (Comelec) to try and decide petitions for disqualifications even after the elections" thus: SEC. 6. *Effect of Disqualification Case.* — x x x Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. **If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest** x x x and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong. As such, the Comelec did not err when it continued with the trial and hearing of the petition for disqualification.

3. ID.; ID.; QUALIFICATIONS FOR ELECTIVE OFFICE; RESIDENCY REQUIREMENTS; ELUCIDATED. — The

Comelec correctly found that petitioner failed to satisfy the one-year residency requirement. The term "residence" as used in the election law is synonymous with "domicile," which imports not only intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention. The manifest intent of the law in fixing a residence qualification is to exclude a stranger or newcomer, unacquainted with the conditions and needs of a community and not identified with the latter, from an elective office to serve that community. For purposes of election law, the question of residence is mainly one of intention. There is no hard and fast rule by which to determine where a person actually resides. Three rules are, however, well established: first, that a man must have a residence or domicile somewhere; *second,* that where once established it remains until a new one is acquired; and *third*, a man can have but one domicile at a time.

4. ID.; ID.; ACQUISITION OF DOMICILE; REQUISITES. — In order to acquire a domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. A person's "domicile" once established is considered to continue and will not be deemed lost until a new one is established.

5. ID.; ID.; CHANGE OF DOMICILE, HOW EFFECTED. — To successfully effect a change of domicile one must demonstrate an actual removal or an actual change of domicile; a *bona fide* intention of abandoning the former place of residence and establishing a new one, and definite acts which correspond with the purpose. In other words, there must basically be *animus manendi* coupled with *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.

6. ID.; LOCAL GOVERNMENT CODE; RULES ON SUCCESSION; PETITIONER'S DISQUALIFICATION WOULD NOT RESULT IN RESPONDENT'S PROCLAMATION WHO CAME IN SECOND DURING THE SPECIAL ELECTION. — [F]or failure to comply with the residency requirement, petitioner is disqualified to run for the office of mayor of Pantar, Lanao del Norte. However, petitioner's disqualification

> would not result **in** Malik's proclamation who came in second during the special election. The rules on succession under the Local Government Code shall apply, to wit: SECTION 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor. — If a permanent vacancy occurs in the office of the x x x mayor, the x x x vice-mayor concerned shall become the x x x mayor. x x x For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, **fails to qualify or is removed from office**, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office. x x x

APPEARANCES OF COUNSEL

Dimnatang T. Saro for petitioner.
The Solicitor General for public respondent.
Tingcap T. Mortaba for private respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for *certiorari* with prayer for issuance of a temporary restraining order and/or writ of preliminary injunction seeks to reverse and nullify the September 4, 2007 Resolution[1] of the Commission on Elections (Comelec) in SPA Case No. 07-611 disqualifying petitioner to run as mayor of the municipality of Pantar, Lanao del Norte, as well as the January 9, 2008 Resolution[2] denying the motion for reconsideration.

Petitioner Norlainie Mitmug Limbona (Norlainie), her husband, Mohammad G. Limbona (Mohammad), and respondent Malik "Bobby" T. Alingan (Malik) were mayoralty candidates in Pantar,

---

[1] *Rollo*, pp. 30-36; penned by Commissioner Rene V. Sarmiento and concurred in by Commissioners Florentino A. Tuason, Jr. and Nicodemo T. Ferrer.

[2] *Id*. at 39-43; signed by Acting Chairman Resurreccion Z. Borra and Commissioners Florentino A. Tuason, Jr., Romeo A. Brawner, Rene V. Sarmiento, Nicodemo T. Ferrer, and Moslemen T. Macarambon.

Lanao del Norte during the 2007 Synchronized National and Local Elections. Mohammad and Norlainie filed their certificates of candidacy with Acting Election Officer, Alauya S. Tago, on January 22, 2007 and March 29, 2007, respectively; while Malik filed his certificate of candidacy with the Office of the Election Officer on March 26, 2007.

On April 2, 2007, Malik filed a petition to disqualify Mohammad for failure to comply with the residency requirement. The petition was docketed as SPA No. 07-188. Subsequently, or on April 12, 2007, Malik filed another petition to disqualify Norlainie also on the ground of lack of the one-year residency requirement. The petition was docketed as SPA No. 07-611.[3]

On April 21, 2007, Norlainie filed an Affidavit of Withdrawal of Certificate of Candidacy.[4] Thereafter, or on May 2, 2007, she filed before the Office of the Provincial Election Supervisor a Motion to Dismiss[5] the petition for disqualification in SPA No. 07-611 on the ground that the petition had become moot in view of the withdrawal of her certificate of candidacy.

The Comelec *en banc* granted the withdrawal of Norlainie's certificate of candidacy in Resolution No. 7949[6] dated May 13, 2007, the dispositive portion of which provides:

The Commission **RESOLVED**, as it hereby **RESOLVES**, to **approve** the foregoing recommendations of the Law Department, as concurred in by Commissioner Florentino A. Tuason, Jr., as follows:

1. To **GIVE** due course to the Affidavits of Withdrawal of Certificates of Candidacy of the following candidates:

x x x x x x x x x

Norlaine M. Limbona Mayor Pantar, Lanao del Norte

x x x x x x x x x

[3] *Id*. at 106-115.

[4] *Id*. at 157.

[5] *Id*. at 155-156.

[6] *Id*. at 198-200.

2. To direct the Election Officers concerned to **DELETE** the aforementioned names of candidates from the Certified List of Candidates.

Let the Law Department implement this resolution with dispatch.

SO ORDERED.

Meanwhile, the First Division of Comelec issued on May 24, 2007 a Resolution[7] in SPA No. 07-188 granting the petition filed by Malik and disqualifying Mohammad from running as municipal mayor of Pantar, Lanao del Norte for failing to satisfy the one year residency requirement and for not being a registered voter of the said place, thus:

WHEREFORE, premises considered, the instant petition is GRANTED. Respondent Mohammad "Exchan" G. Limbona is hereby disqualified. Accordingly, his name is ordered deleted from the official list of candidates for the position of mayor of the municipality of Pantar, Lanao del Norte.

SO ORDERED.

The May 24, 2007 Resolution became final and executory on June 2, 2007.[8]

Consequently, Norlainie filed a new certificate of candidacy as substitute candidate for Mohammad which was given due course by the Comelec *en banc* in its Resolution No. 8255[9] dated July 23, 2007, the dispositive portion of which states:

The Commission **RESOLVED**, as it hereby **RESOLVES**, to **approve** the foregoing recommendations of the Law Department, as follows:

1. To **GIVE** due course to the Certificate of Candidacy and Certificate of Nomination and Acceptance of **Norlainie**

---

[7] Annex 1 of Comment. Per Commissioners Resurreccion Z. Borra and Romeo A. Brawner.

[8] Per Order of the COMELEC *En Banc* dated July 19, 2007. See Annex "2" to the Comment.

[9] *Rollo*, pp. 152-154.

"Lai-Exchan" Mitmug Limbona as substitute candidate for **Mohammad "Exchan" G. Limbona** for Mayor, Pantar, Lanao del Norte; and

2. To direct the Election Officer of Pantar, Lanao del Norte to **DELETE** the name of **Mohammad "Exchan" G. Limbona** from the Certified List of Candidates for Mayor, Pantar, Lanao del Norte and to **INCLUDE** therein the name of **Norlainie "Lai-Exchan" Mitmug Limbona**.

Let the Law Department implement this resolution with dispatch.

SO ORDERED.

Thus, Malik filed a second petition for disqualification against Norlainie docketed as SPA No. 07-621.

After the elections, Norlainie emerged as the winning candidate and accordingly took her oath and assumed office.

However, on September 4, 2007, the Second Division of Comelec in SPA No. 07-611 disqualified Norlainie on three grounds: lack of the one-year residency requirement; not being a registered voter of the municipality; and, nullity of her certificate of candidacy for having been filed at a place other than the Office of the Election Officer.

Norlainie filed an Omnibus Motion to declare the petition in SPA No. 07-611 moot and/or for reconsideration, arguing that the Comelec *en banc* had approved the withdrawal of her first certificate of candidacy and had given due course to her new certificate of candidacy as a substitute candidate for Mohammad. Malik opposed the omnibus motion.

Meanwhile, the Second Division of Comelec in SPA No. 07-621, promulgated on November 23, 2007 a Resolution[10] disqualifying Norlainie from running as mayor of Pantar, Lanao del Norte. It held thus:

As regards the residency requirement, We rule for petitioner.

As borne out from the record, respondent's domicile of origin was in Maguing, Lanao del Norte, which is her place of birth. When

[10] Annex 4 of Comment.

she got married, she became a resident of Marawi City, specifically, in Barangay Rapasun where her husband served as *Barangay* Chairman until November 2006. This is her domicile by operation of law pursuant to the Family Code as applied in the case of *Larrazabal v. Comelec (G.R. No. 100739, September 3, 1991)*.

What respondent now is trying to impress upon Us is that she has changed her aforesaid domicile and resided in Pantar, Lanao del Norte. x x x

In the present case, the evidence adduced by respondent, which consists merely of self-serving affidavits cannot persuade Us that she has abandoned her domicile of origin or her domicile in Marawi City. It is alleged that respondent "*has been staying, sleeping and doing business in her house for more than 20 months"* in Lower Kalanganan and yet, there is no independent and competent evidence that would corroborate such statement.

Further, We find no other act that would indicate respondent's intention to stay in Pantar for an indefinite period of time. The filing of her Certificate of Candidacy in Pantar, standing alone, is not sufficient to hold that she has chosen Pantar as her new residence. We also take notice of the fact that in SPA No. 07-611, this Commission has even found that she is not a registered voter in the said municipality warranting her disqualification as a candidate.[11]

On January 9, 2008, the Comelec *en banc* in SPA No. 07-611 denied Norlainie's motion for reconsideration.

Hence, the instant petition alleging that the Comelec gravely abused its discretion in proceeding to resolve the petition in SPA No. 07-611 despite the approval of petitioner's withdrawal of certificate of candidacy.[12]

On January 29, 2008, the Court resolved to issue a temporary restraining order effective immediately enjoining respondents from enforcing and implementing the Comelec Resolutions disqualifying petitioner as a candidate for mayor in Pantar, Lanao del Norte.[13]

---

[11] Annexes 4-D to 4-E of Comment.

[12] *Rollo*, p. 5.

[13] *Id*. at 211.

The petition lacks merit.

The withdrawal of a certificate of candidacy does not necessarily render the certificate void *ab initio*. Once filed, the permanent legal effects produced thereby remain even if the certificate itself be subsequently withdrawn. [14] Section 73 of the Omnibus Election Code of the Philippines (B.P. Blg. 881, as amended) provides:

> Sec. 73. **Certificate of candidacy.** — No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein. **A person who has filed a certificate of candidacy may, prior to the election, withdraw the same by submitting to the office concerned a written declaration under oath.** No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them. However, before the expiration of the period for the filing of certificate of candidacy, the person who has filed more than one certificate of candidacy may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices. **The filing or withdrawal of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which a candidate may have incurred.** (Emphasis supplied)

Thus, when petitioner filed her certificate of candidacy on March 29, 2007, such act produced legal effects, and the withdrawal of the same, despite the approval of the Comelec, did not bar or render nugatory the legal proceedings it had set in motion. As such, the Comelec did not commit grave abuse of discretion when it ruled on the merits of the petition despite the withdrawal of petitioner's certificate of candidacy. The Comelec correctly held that a case only becomes moot when "there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits."[15] In the instant case, although petitioner withdrew her first certificate

---

[14] *Monroy v. Court of Appeals*, 127 Phil. 1, 6 (1967).

[15] *Enrile v. Senate Electoral Tribunal*, G.R. No. 132986, May 19, 2004, 428 SCRA 472, 477.

of candidacy, the subsequent disqualification of her husband required that she file a new certificate of candidacy as a substitute candidate. The second filing of a certificate of candidacy thus once again put her qualifications in issue. Hence, a ruling upon the same is necessary.

The fact that petitioner's certificate of candidacy as a substitute candidate was given due course by the Comelec did not bar the Comelec from deciding on her qualifications to run as municipal mayor. As correctly found by the Comelec:

> Said resolution (Comelec Resolution No. 8255) discloses only the following: a) movant is given the green lights to be the substitute candidate for her husband who was disqualified; b) her certificate of candidacy was duly accomplished in form and substance and c) the certificate of candidacy will not cause confusion among the voters. Clearly, no issue of disqualification was passed upon by the Commission in the said resolution.
>
> Movant may have been given the impression that the Commission's act of giving due course to her substitute certificate of candidacy constitutes a pronouncement that she is not disqualified. It must be pointed out, however, that the bases for giving due course to a certificate of candidacy are totally different from those for enunciating that the candidate is not disqualified. x x x[16]

Moreover, the Electoral Reforms Law of 1987 (R.A. No. 6646) "authorizes the Commission (Comelec) to try and decide petitions for disqualifications even after the elections,"[17] thus:

> SEC. 6. *Effect of Disqualification Case.* — Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. **If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest** and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension

---

[16] *Rollo*, p. 41.

[17] *Frivaldo v. Commission on Elections*, 327 Phil. 521, 568 (1996).

of the proclamation of such candidate whenever the evidence of his guilt is strong. (Emphasis ours)

As such, the Comelec did not err when it continued with the trial and hearing of the petition for disqualification.

The Comelec correctly found that petitioner failed to satisfy the one-year residency requirement. The term "residence" as used in the election law is synonymous with "domicile," which imports not only intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention.[18] The manifest intent of the law in fixing a residence qualification is to exclude a stranger or newcomer, unacquainted with the conditions and needs of a community and not identified with the latter, from an elective office to serve that community.[19]

For purposes of election law, the question of residence is mainly one of intention. There is no hard and fast rule by which to determine where a person actually resides.[20] Three rules are, however, well established: first, that a man must have a residence or domicile somewhere; *second,* that where once established it remains until a new one is acquired; and *third*, a man can have but one domicile at a time.[21]

In order to acquire a domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile.[22] A person's "domicile" once established is considered to continue and will not be deemed lost until a new one is established.[23]

To successfully effect a change of domicile one must demonstrate an actual removal or an actual change of domicile;

---

[18] *Gallego v. Verra*, 73 Phil. 453, 456 (1941).

[19] *Id*. at 458.

[20] *Alcantara v. Secretary of Interior*, 61 Phil. 459, 465 (1935).

[21] *Id*.

[22] *Gallego v. Verra*, *supra*.

[23] *Domino v. Commission on Elections*, 369 Phil. 798, 819 (1999).

a *bona fide* intention of abandoning the former place of residence and establishing a new one, and definite acts which correspond with the purpose. In other words, there must basically be *animus manendi* coupled with *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.[24]

Petitioner's claim that she has been physically present and actually residing in Pantar for almost 20 months prior to the elections,[25] is self-serving and unsubstantiated. As correctly observed by the Comelec:

> In the present case, the evidence adduced by respondent, which consists merely of self-serving affidavits cannot persuade Us that she has abandoned her domicile of origin or her domicile in Marawi City. It is alleged that respondent "*has been staying, sleeping and doing business in her house for more than 20 months"* in Lower Kalanganan and yet, there is no independent and competent evidence that would corroborate such statement.
>
> Further, We find no other act that would indicate respondent's intention to stay in Pantar for an indefinite period of time. The filing of her Certificate of Candidacy in Pantar, standing alone, is not sufficient to hold that she has chosen Pantar as her new residence. We also take notice of the fact that in SPA No. 07-611, this Commission has even found that she is not a registered voter in the said municipality warranting her disqualification as a candidate.[26]

We note the findings of the Comelec that petitioner's domicile of origin is Maguing, Lanao del Norte,[27] which is also her place of birth; and that her domicile by operation of law (by virtue of marriage) is Rapasun, Marawi City. The Comelec found that Mohammad, petitioner's husband, effected the change of his

---

[24] *Id*.

[25] *Rollo*, p. 18.

[26] Annex 4-E of Comment.

[27] Should be Lanao del Sur.

domicile in favor of Pantar, Lanao del Norte only on November 11, 2006. Since it is presumed that the husband and wife live together in one legal residence,[28] then it follows that petitioner effected the change of her domicile also on November 11, 2006. Articles 68 and 69 of the Family Code provide:

> Art. 68. **The husband and wife are obliged to live together**, observe mutual love, respect and fidelity, and render mutual help and support.
>
> Art. 69. **The husband and wife shall fix the family domicile**. In case of disagreement, the court shall decide. **The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption**. However, such exemption shall not apply if the same is not compatible with the solidarity of the family. (Emphasis ours)

Considering that petitioner failed to show that she maintained a separate residence from her husband, and as there is no evidence to prove otherwise, reliance on these provisions of the Family Code is proper and is in consonance with human experience.[29]

Thus, for failure to comply with the residency requirement, petitioner is disqualified to run for the office of mayor of Pantar, Lanao del Norte. However, petitioner's disqualification would not result **in** Malik's proclamation who came in second during the special election.

The rules on succession under the Local Government Code shall apply, to wit:

> SECTION 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor. — If a permanent vacancy occurs in the office of the x x x mayor, the x x x vice-mayor concerned shall become the x x x mayor.
>
> x x x x x x x x x

---

[28] *Abella v. Comelec*, G.R. Nos. 100710 & 100739, September 3, 1991, 201 SCRA 259, 264.

[29] *Id.* at 262.

For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, **fails to qualify or is removed from office**, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

x x x x x x x x x

(Emphasis ours)

Considering the disqualification of petitioner to run as mayor of Pantar, Lanao del Norte, the proclaimed Vice-Mayor shall then succeed as mayor.

WHEREFORE, the petition for *certiorari* is *DISMISSED*. The September 4, 2007 Resolution of the Commission on Elections in SPA Case No. 07-611 disqualifying petitioner Norlainie Mitmug Limbona from running for office of the Mayor of Pantar, Lanao del Norte, and the January 9, 2008 Resolution denying the motion for reconsideration, are *AFFIRMED*. In view of the permanent vacancy in the Office of the Mayor, the proclaimed Vice-Mayor shall *SUCCEED* as Mayor. The temporary restraining order issued on January 29, 2008 is ordered *LIFTED*.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

FIRST DIVISION

[A.M. No. P-05-1971. June 26, 2008]
(Formerly OCA IPI No. 04-1915-P)

JORGE Q. GO, *complainant, vs.* **VINEZ A. HORTALEZA, Deputy Sheriff, Regional Trial Court-Office of the Clerk of Court, Dagupan City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; PROPER EXECUTION OF A VALID WRIT IS A MANDATORY DUTY. — Time and again we have ruled that high standards of conduct are expected of sheriffs who play an important role in the administration of justice because they are tasked to execute final judgments of the courts. Thus, when a writ is placed in the hands of a sheriff, it becomes his ministerial duty to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. This duty, in the proper execution of a valid writ, is not just directory, but mandatory. He has no discretion whether to execute the writ or not. He is mandated to uphold the majesty of the law as embodied in the decision. As we explained in *Zarate v. Untalan*: . . . the primary duty of sheriffs is to execute judgments and orders of the court to which they belong. It must be stressed that a judgment, if not executed, would be an empty victory on the part of the prevailing party. It is said that execution is the fruit and the end of the suit and is very aptly called the life of the law. It is also indisputable that the most difficult phase of any proceeding is the execution of judgment. Hence, the officers charged with this delicate task must, in the absence of a restraining order, act with considerable dispatch so as not to unduly delay the administration of justice; otherwise, the decisions, orders, or other processes of the courts of justice would be futile.

2. REMEDIAL LAW; RULES OF COURT; LEGAL ETHICS; LEGAL FEES; STEPS TO BE FOLLOWED BEFORE AN INTERESTED PARTY PAYS THE SHERIFF'S EXPENSE. — The steps that must be followed before an interested party pays the sheriff's expenses are: 1) the sheriff must make an estimate of the expenses to be incurred by him; 2) he must obtain court approval for such estimated expenses; 3) the approved estimated expenses shall be deposited by the interested party with the Clerk of Court and *ex-officio* sheriff; 4) the Clerk of Court shall disburse the amount to the executing sheriff; and 5) the executing sheriff shall liquidate his expenses within the same period for rendering a return on the writ. Any unspent amount should be refunded to the party making the deposit. Thereafter, the sheriff must render a full report.

3. POLITICAL LAW; ADMINISTRATIVE LAW; CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES; DUTIES OF PUBLIC OFFICIALS AND EMPLOYEES; RULE. — Republic Act (R.A.) No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, pertinently provides: Sec. 5. *Duties of Public Officials and Employees*. In the performance of their duties, all public officials and employees are under obligation to: (a) *Act promptly on letters and requests*. All public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain the action taken on the request. x x x (d) *Act immediately on the public's personal transactions*. All public officials and employees must attend to anyone who wants to avail himself of the services of their offices and must, at all times, act promptly and expeditiously.

4. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; EVERY EMPLOYEE OF THE JUDICIARY SHOULD BE AN EXAMPLE OF INTEGRITY, UPRIGHTNESS AND HONESTY AS THE IMAGE OF THE SUPREME COURT IS MIRRORED IN THE CONDUCT, NOT ONLY OF THE JUSTICES, BUT OF EVERY MAN AND WOMAN WORKING THEREAT. — Respondent as an officer of the court should have shown a high degree of professionalism in the performance of his duties. Instead, he failed to comply with his duties under the law and to observe proper procedure dictated by the rules. A sheriff is a front-line representative of the justice system in this country. Once he loses the people's trust, he diminishes the people's faith in the judiciary. Every employee of the judiciary should be an example of integrity, uprightness and honesty as the image of the Supreme Court is mirrored in the conduct, not only of the Justices, but of every man and woman working thereat. Any act which diminishes or tends to diminish the faith of the people in the judiciary shall not be countenanced.

5. ID.; ID.; ID.; RESPONDENT'S VIOLATION OF THE RULES CONSTITUTES SIMPLE MISCONDUCT. — Respondent sheriff departed from the procedure prescribed by the Rules in the collection of payment for sheriff's expenses in implementing a writ of execution. Respondent's violation of

the Rules constitutes simple misconduct, as ruled in the similar case of *Danao v. Franco, Jr.* Under Section 52, B(2), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, simple misconduct, classified as a less grave offense, is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, while violation of Section 5 (a) and (d) of R.A. No. 6713 is punishable by reprimand for the first offense, being classified as a light offense, under Section 52, C(13) of the same rule.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This administrative case stemmed from a verified complaint dated April 26, 2004 filed with the Office of the Court Administrator (OCA) by Jorge Q. Go, charging the respondent, Vinez A. Hortaleza, Deputy Sheriff, Regional Trial Court-Office of the Clerk of Court (OCC), Dagupan City, with Abuse of Authority and Illegal Exaction in connection with the implementation of the writ of execution issued by the Municipal Trial Court (MTC) of Mangaldan, Pangasinan in Civil Case No. 1512, entitled *"Spouses Gromeo Evangelista and Jovita Abuan vs. Spouses Jorge Go and Teresita Geronimo,"* for Ejectment.

The record shows that complainant and his spouse were the defendants in the above-mentioned *Civil Case No. 1512.* The MTC of Mangaldan, Pangasinan rendered an adverse decision against the said defendants-spouses.

On November 25, 2002, the MTC granted the Motion for Execution filed by the plaintiff in the said civil case, prompting the defendant therein to file a motion for reconsideration dated April 14, 2003.

On August 21, 2003 and pending resolution of the said motion for reconsideration, respondent seized and levied upon the complainant's Toyota Corolla car with Plate No. ADV-767. Respondent impounded and stored said vehicle at the parking lot of the Hall of Justice in Dagupan City, which according to complainant exposed it to the elements. To secure the release

of the car, complainant deposited, under protest, the amount of ₱161,042.00[1] with the OCC.

On October 8, 2003, a Resolution was issued by the MTC denying complainant's Motion for Reconsideration dated April 14, 2003 but granted his Motion for Release of Motor Vehicle dated August 25, 2003 in view of the deposit of ₱161,042.00.[2]

Accordingly, upon order of the MTC, respondent released to the complainant, through Melanio Balolong, complainant's Toyota Corolla. However, according to complainant, before effecting the release of the said vehicle, respondent demanded from complainant's representative, Melanio Balolong, the amount of ₱5,000.00, which purportedly would answer for the expenses in the implementation of the writ of execution. Respondent did not deny his receipt of the said sum of money as he in fact issued an ACKNOWLEDGMENT RECEIPT[3] on October 29, 2003.

Complainant claimed to have repeatedly demanded to no avail the return of the said ₱5,000.00 or the issuance of an official receipt if the aforementioned expenses could properly be charged to complainant, the losing party in the MTC case.

Hence, this complaint praying for the imposition of appropriate sanctions on respondent.

As required by the Court Administrator, respondent filed his comment dated June 24, 2004[4] which prayed for the dismissal of the complaint. Respondent cited Rule 39 of the Rules of Court, requiring the requesting party to pay sheriff's expenses incurred in enforcing writs of execution. He explained that he paid ₱4,000.00 to a mechanic and ₱500.00 to a key master and the balance of ₱500.00 was spent for his transportation expenses and other expenses in serving the writ. The mechanic removed the vehicle's wheel to prevent it from being taken by

---

[1] Annex "A" of Complaint, *rollo*, p. 5.

[2] Annex "B", *id*. at 6-10.

[3] Annex "C", *id*. at 11.

[4] *Id*. at 17.

bad element and also watched over the same while it was stored in the courtyard.

In its Memorandum Report, the OCA recommended that the present case be re-docketed as a regular administrative matter and that respondent be suspended for one (1) month, pursuant to Section 52(B)(1) of CSC Resolution No. 99-19 dated August 31, 1999, with a stern warning that a repetition of a similar infraction in the future shall be dealt with more severely.

We agree with the OCA's recommendation that respondent be found guilty of simple misconduct but with modification as to the proposed penalty.

The culpability of the respondent lies not in the implementation of the writ of execution during the pendency of the motion for reconsideration of the MTC Resolution granting the Motion for Writ of Execution of the judgment, since the latter was already final and executory. Rather, he is answerable for his act of demanding and receiving money from complainant without observing the proper procedure prescribed in Section 9, Rule 141 of the Revised Rules of Court.

Time and again we have ruled that high standards of conduct are expected of sheriffs who play an important role in the administration of justice because they are tasked to execute final judgments of the courts. Thus, when a writ is placed in the hands of a sheriff, it becomes his ministerial duty to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. This duty, in the proper execution of a valid writ, is not just directory, but mandatory. He has no discretion whether to execute the writ or not.[5] He is mandated to uphold the majesty of the law as embodied in the decision. As we explained in *Zarate v. Untalan*:[6]

. . . the primary duty of sheriffs is to execute judgments and orders of the court to which they belong. It must be stressed that a judgment,

---

[5] *Zarate v. Untalan*, A.M. No. MTJ-05-1584, March 31, 2005, 454 SCRA 206, 215.

[6] *Ibid.*

if not executed, would be an empty victory on the part of the prevailing party. It is said that execution is the fruit and the end of the suit and is very aptly called the life of the law. It is also indisputable that the most difficult phase of any proceeding is the execution of judgment. Hence, the officers charged with this delicate task must, in the absence of a restraining order, act with considerable dispatch so as not to unduly delay the administration of justice; otherwise, the decisions, orders, or other processes of the courts of justice would be futile.

Thus, respondent sheriff cannot be faulted for immediately implementing the writ of execution, there being no injunction nor temporary restraining order being issued by the court. However, the OCA correctly found him accountable administratively for his failure to adhere to the rules governing the acceptance of money from parties-litigants as well as to respond to the letter of the complainant inquiring about the nature of the ₱5,000.00 exacted from the latter's representative and to issue an official receipt for the said amount.

Section 9, Rule 141 of the Revised Rules of Court prescribes the procedure to be followed by the sheriffs in implementing a writ of execution, as follows:

SEC. 9. Sheriffs and other persons serving processes. —

x x x x x x x x x.

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-officio* sheriff, who shall disburse 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. 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.

In accordance with the above-quoted Rule, the steps that must be followed before an interested party pays the sheriff's expenses are: 1) the sheriff must make an estimate of the expenses to be incurred by him; 2) he must obtain court approval for such estimated expenses; 3) the approved estimated expenses shall be deposited by the interested party with the Clerk of Court and *ex-officio* sheriff; 4) the Clerk of Court shall disburse the amount to the executing sheriff; and 5) the executing sheriff shall liquidate his expenses within the same period for rendering a return on the writ.[7] Any unspent amount should be refunded to the party making the deposit. Thereafter, the sheriff must render a full report.

Here, respondent demanded and received the sum of ₱5,000.00 from complainant without first making an estimate of the sheriff's expenses. Hence, nothing was submitted to the court for approval. Also, it was respondent sheriff, and not the Clerk of Court, who took custody of the fund. While in his comment, respondent was able to show the breakdown of all the expenses amounting to ₱5,000.00, this, however, does not justify his deviation from the procedure laid down in the above-quoted rule. The Court also doubts the veracity of the belated manifestation of respondent that he turned over the ₱5,000.00 to the counsel of the judgment creditor, the plaintiff in the MTC case.

Likewise, respondent, failed to comply with a duty imposed on public officials and employees by Republic Act (R.A.) No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, which pertinently provides:

> Sec. 5. *Duties of Public Officials and Employees*. In the performance of their duties, all public officials and employees are under obligation to:
>
> (a) *Act promptly on letters and requests*. All public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications

---

[7] *Abalde v. Roque*, A.M. No. P-02-1643, April 1, 2003, 400 SCRA 210, 214.

sent by the public. The reply must contain the action taken on the request.

x x x x x x x x x

(d) *Act immediately on the public's personal transactions*. All public officials and employees must attend to anyone who wants to avail himself of the services of their offices and must, at all times, act promptly and expeditiously.

Supreme Court Administrative Circular No. 08-99 dated July 2, 1999 reminds all officials and employees in the judiciary to strictly follow the mandate of the above-quoted provision in this wise:

TO: ALL OFFICIALS AND PERSONNEL OF THE JUDICIARY

RE: PROMPT ACTION ON LETTERS AND REQUESTS AND PUBLIC'S PERSONAL TRANSACTION

It has been observed by, and brought to the attention of, the Chief Justice that in some instances complaints, letters or requests from the public addressed to the officials of the Judiciary are belatedly answered or not answered at all.

All concerned are reminded of paragraphs (a) and (d) of Section 5 of R.A. No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, which explicitly mandate as follows:

. . . . . .

The Presiding Justices of the Court of Appeals and the Sandiganbayan, the Court Administrator, the Deputy Court Administrators, the Assistant Court Administrators, the Clerk of Court of the Supreme Court, the Presiding Judge of the Court of Tax Appeals, and all Executive Judges and clerks of court of all other courts shall see to it that this Circular is immediately disseminated and strictly observed.

This Circular shall take effect immediately.

City of Manila, 02 July 1999.

(Sgd.) HILARIO G. DAVIDE, JR.

Chief Justice

Respondent had been remiss in his duties as a court officer. He did not respond to complainant's letter and he ignored complainant's request for an official receipt for the ₱5,000.00 he received in the course of the performance of his official duties.

Respondent as an officer of the court should have shown a high degree of professionalism in the performance of his duties. Instead, he failed to comply with his duties under the law and to observe proper procedure dictated by the rules. A sheriff is a front-line representative of the justice system in this country. Once he loses the people's trust, he diminishes the people's faith in the judiciary.[8] Every employee of the judiciary should be an example of integrity, uprightness and honesty as the image of the Supreme Court is mirrored in the conduct, not only of the Justices, but of every man and woman working thereat. Any act which diminishes or tends to diminish the faith of the people in the judiciary shall not be countenanced.[9]

Nonetheless, there is no clear showing in the records that in demanding the amount of ₱5,000.00, respondent was motivated by intent to gain which warrants a finding of dishonesty or serious misconduct on his part. Indubitably, however, respondent sheriff departed from the procedure prescribed by the Rules in the collection of payment for sheriff's expenses in implementing a writ of execution. Respondent's violation of the Rules constitutes simple misconduct, as ruled in the similar case of *Danao v. Franco, Jr.*[10]

Under Section 52, B(2), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, simple misconduct, classified as a less grave offense, is punishable by

---

[8] *Visitacion, Jr. v. Ediza*, A.M. No. P-01-1495, August 9, 2001, 362 SCRA 403, 406.

[9] *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division*, A.M. No. 2001-7-SC, July 22, 2005, 464 SCRA 1, 15.

[10] A.M. No. P-02-1569, November 13, 2002, 391 SCRA 516, 521.

suspension for one (1) month and one (1) day to six (6) months for the first offense, while violation of Section 5 (a) and (d) of R.A. No. 6713 is punishable by reprimand for the first offense, being classified as a light offense, under Section 52, C(13) of the same rule.

WHEREFORE, the Court finds respondent Vinez A. Hortaleza guilty of simple misconduct. He is hereby *SUSPENDED* from the service for two (2) months without pay. Respondent is likewise guilty of violating Sec. 5(a) and (d) of R.A. No. 6713 for which he is hereby *REPRIMANDED*. Respondent is sternly WARNED that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Puno (Chairperson), C.J., Carpio, Corona, and *Azcuna, JJ.,* concur.

FIRST DIVISION

[A.M. No. P-06-2121. June 26, 2008]
(Formerly OCA A.M. No. 05-12-746-RTC)

IN-HOUSE FINANCIAL AUDIT, CONDUCTED IN THE BOOKS OF ACCOUNTS OF KHALIL B. DIPATUAN, RTC-MALABANG, LANAO DEL SUR

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; CLERKS OF COURT; AS DESIGNATED CUSTODIANS OF COURT'S FUNDS AND PROPERTIES, THEY ARE LIABLE FOR ANY LOSS, SHORTAGE, DESTRUCTION OR IMPAIRMENT OF SUCH FUNDS AND PROPERTIES. — Dipatuan is clearly

administratively liable for his actions. As held in *Soria v. Oliveros,* clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office is the core of adjudicative and administrative orders, processes and concerns. They perform delicate functions as designated custodians of the court's funds, revenues, records, properties and premises. As such they are generally also treasurers, accountants, guards and physical plant managers. They are liable for any loss, shortage, destruction or impairment of such funds and property.

2. ID.; ID.; ID.; ID.; ID.; AS MANDATED BY THE CIRCULARS ON DEPOSITS OF COLLECTIONS, THEY SHALL DEPOSIT IMMEDIATELY ALL FIDUCIARY COLLECTIONS WITH AN AUTHORIZED GOVERNMENT DEPOSITORY BANK. — It is the duty of clerks of court to perform their responsibilities faithfully, so that they can fully comply with circulars on deposits of collections. They are reminded to deposit immediately, with authorized government depositories, the various funds they have collected, because they are not authorized to keep those funds in their custody. Failure to fulfill these responsibilities deserves administrative sanction, and not even the full payment or over-remittance, as in this case, will exempt the accountable officer from liability.

3. ID.; ID.; ID.; ID.; ID.; ID.; DELAY IN THE REMITTANCES OF COLLECTIONS CONSTITUTES NEGLECT OF DUTY; PENALTY. — Delay in the remittances of collections constitutes neglect of duty. Further, we held that the failure to remit on time judiciary collections deprives the court of interest that may be earned if the amounts are deposited in a bank. Under the Civil Service Rules and the Omnibus Rules implementing it, simple neglect of duty is a less grave offense penalized with suspension for one month and one day to six months for the first offense; and dismissal for the second offense.

R E S O L U T I O N

AZCUNA, *J.*:

This administrative matter stemmed from an in-house financial audit conducted on the books of account of Khalil B. Dipatuan,

Clerk of Court VI of the Regional Trial Court of Malabang, Lanao del Sur on October 15, 2003 by the Office of the Court Administrator (OCA), in view of the expiration of his appointment. The audit covered the period from January 1, 2002 until October 31, 2003.

Based on the documents submitted, the following balances resulted in the reconciliation of the different judiciary funds, *to wit:*

A. General Fund

Total Collections	₱ 14,832.50
Less: Total Remittances	14,836.50
Balance of Accountability (Over-remittance)	**₱ (4.00)**

B. Sheriff's General Fund

Total Collections	₱ 1,042.00
Less: Total Remittances	1,042.00
Balance of Accountability (Over-remittance)	**₱ 0.00**

C. Judiciary Development Fund

Total Collections	₱104,978.00
Less: Total Remittances	105,331.05
Balance of Accountability (Over-remittance)	**₱ (353.05)**

D. Fiduciary Fund

Unwithdrawn Fiduciary Fund, as of 12-31-01	₱ 15,000.00
Add: Total Collections	127,000.00
Total	₱142,000.00
Less: Total Withdrawals	87,000.00
Unwithdrawn Fiduciary Fund, as of 10-31-03	₱ 55,000.00
Less: Bank Balance, as of 10-31-03	56,000.00
Balance of Accountability (Excess Cash)	**₱ (1,000.00)**

In a Memorandum dated November 25, 2005, the OCA submitted to the Chief Justice a report on the Financial Audit on the Books of Accounts of Dipatuan. The OCA found that Dipatuan did not incur any accountability, but made over-remittances instead, as shown in the above computations. This was the result of Dipatuan's practice of not depositing his

collections on time, thus depositing a wrong amount, in violation of the following provisions, *viz*:

- **Section 21 of the New Government Accounting System (NGAS)**

"All collecting officers shall deposit intact all their collections, as well as collections turned over to them by sub-collectors/tellers, with the Authorized Government Depository Bank (AGDB) daily or not later than the next banking day."

- **Administrative Circular No. 3-2000**

"The daily collections for the Judiciary Development Fund in the 1st and 2nd level courts shall be deposited everyday with the nearest LBP branch for the account of the Judiciary Development Bank, Supreme Court, Manila — Savings Account No. 0591-0116-34 or if depositing daily is not possible, deposits for the Fund shall be at the end of every month, provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the period above indicated."

The OCA report continues:

Further, personal postdated checks of Mr. Dipatuan were deposited with the Fiduciary Fund account of the court with LBP Savings Account No. 3381-0108-71, an account which should be used only for Fiduciary Fund transactions. This enables him to withdraw the amount of a postdated check even before its maturity date from the current balance of the Fiduciary Fund account of the court. This is tantamount to encashment of personal checks from the collections of the court, in violation of a provision of **Administrative Circular No. 3-2000**, which states:

> "Collections shall not be used for encashment of personal checks, salary checks, *etc*. x x x . . ."

Finally, the Court Administrator recommended that:

x x x this report be **DOCKETED** as a regular administrative complaint against Mr. Khalil B. Dipatuan and that he be **FINED** in the amount of ₱5,000.00 for not remitting his collections on time and for depositing personal postdated checks to the Fiduciary Fund account of the court in violation of Administrative Circular No. 3-2000, the amount to be deducted from his terminal leave pay, the remainder to be released to Mr. Dipatuan subject to usual clearance requirements.

In a Resolution dated February 13, 2006, the Court redocketed the matter as a regular administrative case against Dipatuan.

We agree with the findings and recommendations of the OCA.

Dipatuan is clearly administratively liable for his actions. As held in *Soria v. Oliveros,*[1] clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office is the core of adjudicative and administrative orders, processes and concerns. They perform delicate functions as designated custodians of the court's funds, revenues, records, properties and premises. As such they are generally also treasurers, accountants, guards and physical plant managers. They are liable for any loss, shortage, destruction or impairment of such funds and property.

Supreme Court Administrative Circular No. 5-93[2] provides the guidelines for all Clerks of Court concerning the proper administration of court funds. This circular mandates that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank.

Furthermore, Supreme Court Administrative Circular No. 5-93 provides that collections for the Judiciary Development Fund (JDF) shall be deposited every day with the local or nearest branch of the Land Bank of the Philippines (LBP). If depositing daily is not possible, deposits for the judiciary fund shall be every second and third Fridays and at the end of every month. In case the collections reach ₱500, the same shall be deposited

---

[1] A.M. No. P-00-1372, May 16, 2005, 458 SCRA 410, 422; citing *Re: Misappropriation of the Judiciary Fund Collections by Ms. Juliet C. Banag, Clerk of Court*, *MTC, Plaridel, Bulacan,* A.M. No. P-02-1641, 20 January 2004, 420 SCRA 150, *Reyes-Domingo v. Morales*, A.M. No. P-99-1285, 04 October 2000, 342 SCRA 6, *Escañan v. Monterola II*, A.M. No. P-99-1347, 06 February 2001, 351 SCRA 228, *Gutierrez v. Quitalig,* A.M. No. P-02-1545, 02 April 2003, 400 SCRA 391, *Re: Initial Report on the Financial Audit Conducted in the Municipal Trial Court of Pulilan, Bulacan,* A.M. No. 01-11-291-MTC, 07 July 2004, 433 SCRA 486.

[2] Issued on April 30, 1993.

immediately even before the days indicated. When there is no LBP branch at the station of the judge concerned, the collections shall be sent by postal money order payable to the Chief Accountant of the Supreme Court, at the latest before 3:00 P.M. of the particular day of the week. A separate "Monthly Report of Collections" shall be regularly prepared for the JDF, which shall be submitted to the Chief Accountant of the Supreme Court within ten (10) days after the end of every month, together with the duplicate of the official receipts issued during such month covered and validated copy of the Deposit Slips.[3]

It is the duty of clerks of court to perform their responsibilities faithfully, so that they can fully comply with circulars on deposits of collections. They are reminded to deposit immediately, with authorized government depositories, the various funds they have collected, because they are not authorized to keep those funds in their custody.[4]

Failure to fulfill these responsibilities deserves administrative sanction, and not even the full payment or over-remittance, as in this case, will exempt the accountable officer from liability.

Delay in the remittances of collections constitutes neglect of duty.[5] Further, we held that the failure to remit on time judiciary collections deprives the court of interest that may be earned if the amounts are deposited in a bank.[6] Under the Civil Service

---

[3] *Ibid*.

[4] *Office of the Clerk of Court v. Bernardino*, A.M. No. P-97-1258, January 31, 2005, 450 SCRA 88, 111; citing *Re: Withholding of Other Emoluments of the Following Clerks of Court: Elsie C. Remoroza, et al.*, A.M. No. 01-4-133-MTC, August 26, 2003, 409 SCRA 575, 583.

[5] *Report on the Financial Audit on the Books of Accounts of Mr. Delfin C. Polido, Former Clerk of Court of Municipal Circuit Trial Court, Victoria-La Paz, Tarlac,* A.M. No. 05-11-320-MCTC, February 17, 2006, 482 SCRA 571, 576, citing *Re: Withholding of Other Emoluments of the following Clerks of Court: Elsie C. Remoroza, et al.*, A.M. No. 01-4-133-MTC, August 26, 2003, 409 SCRA 574, 584.

[6] *Id*. at 576, citing *Sollesta v. Mission*, A.M. No. P-03-1755, April 29, 2005, 457 SCRA 519, 534.

Rules and the Omnibus Rules implementing it, simple neglect of duty is a less grave offense penalized with suspension for one month and one day to six months for the first offense; and dismissal for the second offense.

However, since Dipatuan had retired from the service, and this is his first infraction, we find in order the Court Administrator's recommended penalty of ₱5,000.00 by way of a fine.

WHEREFORE, Khalil B. Dipatuan, Clerk of Court VI of the Regional Trial Court of Malabang, Lanao del Sur, is found *GUILTY* of simple neglect of duty and *FINED* ₱5,000. Let the retirement benefits of respondent Khalil B. Dipatuan be released immediately, subject to the deduction of the ₱5,000 fine and the usual clearances.

SO ORDERED.

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

FIRST DIVISION

[A.M. No. RTJ-08-2118. June 26, 2008]

REGIDOR GUTIERREZ, *complainant, vs.* **JUDGE MEDEL ARNALDO B. BELEN, Regional Trial Court, Branch 36, Calamba, Laguna,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; SUBSTANTIAL EVIDENCE; ADMINISTRATIVE CHARGES AGAINST MEMBERS OF THE JUDICIARY MUST BE SUPPORTED AT LEAST BY SUBSTANTIAL EVIDENCE. — Administrative charges against members of the judiciary

must be supported at least by substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In *Planas v. Reyes*, the Court emphasized that: x x x In administrative proceedings, the burden of proof that respondent committed the act complained of rests on the complainant. The complainant must present sufficient evidence to support such accusation. It must be stressed that in administrative proceedings, the quantum of proof required to establish a respondent's malfeasance is not proof beyond reasonable doubt but substantial evidence, *i.e.,* that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. More importantly, in administrative proceedings, the complainant has the burden of proving by substantial evidence to the contrary, the presumption that the respondent has regularly performed his duties will prevail. Indeed, if a respondent judge or a court employee should be disciplined for a grave offense, the evidence against him should be competent and derived from direct knowledge.

2. ID.; ID.; ID.; ID.; ID.; WHERE THERE IS FAILURE OF THE COMPLAINANT TO PRESENT SUBSTANTIAL EVIDENCE TO PROVE HIS CHARGES, THERE IS NO BASIS TO IMPOSE SANCTIONS UPON RESPONDENT JUDGE. — Applying the foregoing principles to the present case, this Court finds that complainant failed to present substantial evidence to prove his charges. The basis for filing the charges was respondent judge's alleged actuation in making the phone call to complainant, but complainant failed to prove that respondent judge employed duress or any form of harassment. Clearly, there is no basis to impose sanctions upon respondent judge.

APPEARANCES OF COUNSEL

Exconde and Exconde Law Offices for complainant.

D E C I S I O N

AZCUNA, *J.*:

Complainant Regidor A. Gutierrez filed an administrative case against Judge Medel Arnaldo B. Belen of the Regional Trial Court

(RTC), Branch 36, Calamba, Laguna charging him with Unbecoming Conduct and/or Harassment.

In his Complaint dated September 11, 2006, complainant alleged that he worked as a postman for more than 30 years. He was assigned at the Post Office in Alaminos, Laguna for fifteen years and, later, he was transferred to the San Pablo City Post Office where he worked from August 1, 2004 up to the present. On August 8, 2006, State Prosecutor Ma. Victoria Suñega-Lagman requested complainant to execute an Affidavit attesting to the fact that on May 14, 2004, he delivered Registered Mail No. CP-1662 intended for respondent judge, then a private practitioner, but it was received by one Walter Maloles. The said mail matter contained a Resolution dated April 30, 2004 of State Prosecutor Suñega-Lagman in a Criminal Complaint for Estafa/Violation of B.P. Blg. 22, docketed as I.S. No. 04-313 entitled "*Medel B. Belen v. Theresa Cabahug @ Theresa Lamson*," directing the respondent judge, as therein complainant, to pay the filing fee corresponding to the amount sought to be recovered. Respondent judge failed to pay the amount of the filing fee and the case was dismissed by the Municipal Trial Court in Cities of San Pablo City. State Prosecutor Suñega-Lagman informed complainant that the Affidavit he executed could be used in the cases which respondent judge may file against the former in the Integrated Bar of the Philippines and the Office of the Ombudsman.

Upon verification with the Alaminos, Laguna Post Office that he was the one who delivered the mail matter which was the subject of the affidavit, complainant agreed to execute an Affidavit dated August 8, 2006 attesting to the fact that on May 14, 2004, he delivered Registered Mail No. CP-1662, addressed to respondent judge with postal address at Corner Francisco Fule Street and Socorro Fule Street, Alaminos, Laguna; that the mail matter was received by Walter Maloles; that he personally knew respondent judge as he had previously talked to him and that respondent judge's father was the former Postmaster in Laguna; that since he frequented Manila, respondent judge instructed him to forward all his correspondence to Walter Maloles or Walter's mother, Francisca, and in their absence, to

any member of the Maloles family, as they are his relatives and they served as caretakers of his house.

At about 7:45 a.m. of August 16, 2006, Francisca Maloles and Rodel Belen, brother of respondent judge, went to the San Pablo City Office and requested complainant to sign a prepared Clarificatory Affidavit. The proposed Clarificatory Affidavit stated that on May 14, 2004, he was supposed to deliver Registered Mail No. CP-1662, addressed to respondent judge, at corner Francisco Fule Street and Socorro Fule Street, Alaminos, Laguna, where the parents of respondent judge used to stay, but there was no occupant therein so he proceeded to the house of Walter Maloles at Bagong Silang, Alaminos, Laguna to inquire on the whereabouts of respondent judge; that upon being informed that no one was residing therein because Spouses Sofronio D. Belen, parents of respondent judge, had migrated to the United States while respondent judge was residing in Parañaque, Metro Manila and instead of having the same returned to sender, he requested Walter Maloles to receive the mail matter with the instruction to hand it to respondent judge; and that Walter Maloles told him that there was no assurance that he (Maloles) could forward the mail matter to respondent judge who rarely stayed in the house of his parents.

After consulting Postmaster Gemma Vidaleon, complainant informed Rodel Belen and Francisca Maloles that he would not sign the affidavit. At about 8:00 a.m. of that same day, complainant received a phone call from respondent judge who was in Calamba, Laguna where he was assigned as an RTC judge. According to complainant, respondent judge was very angry and uttered the invective, "*Punyeta ka*" and also threatened to file a case against him. Complainant was able to identify the voice of respondent judge as he had previously talked to him and that Postmaster Vidaleon had told him that respondent judge called for him.

As a consequence of the incident, complainant filed the present administrative complaint against respondent judge for Unbecoming Conduct and/or Harassment. Complainant averred that it was the threat of respondent judge to file a case against him that

prompted him to file the complaint, not respondent judge's utterance of the invective "*Punyeta ka*" supposedly directed to him.

In his Comment dated January 8, 2007, respondent judge appended the Joint Affidavits of Sheriffs Crisenciano Rimas and Edgardo Torres. He denied having met complainant. Respondent judge admitted that he made a phone call to complainant at San Pablo City Post Office but only to explain to the latter that he did not know him and that he did not request him to deliver any mail matter to Walter Maloles and that complainant must execute an affidavit to clarify that matter; that despite his explanation, complainant arrogantly said that he cannot sign the Clarificatory Affidavit for fear that he might be subjected to administrative complaints for erroneous delivery of mails.

In his Reply dated January 22, 2007, complainant maintained that he was executing said affidavit as he did not want to be caught in the "crossfire between respondent judge and Prosecutor Ma. Victoria Lagman, together with the other personnel of the Office of the Regional State Prosecutor" and to prevent future incidents that may endanger his person, his job, or his family. He suggested that the Joint Affidavit of Deputy Sheriffs Crisenciano Rimas and Edgardo Torres was not credible as they were sheriffs assigned to the RTC of Calamba City where respondent judge was also assigned and that the two might have been constrained to execute the same so as not to antagonize respondent judge.

In his Supplemental Reply Affidavit dated October 17, 2007, complainant expressed that the insistence to make him sign the Clarificatory Affidavit amounted to coercion on the part of respondent judge and that it was, in effect, inducing complainant to commit perjury which constitutes serious misconduct.

The Office of the Court Administrator (OCA), in a Report dated May 3, 2007, recommended that the case be referred to a Consultant in the OCA for investigation, report, and recommendation as both parties had conflicting versions. However, the Court, in its Resolution dated July 9, 2007, directed

that the administrative complaint instead be referred to the Presiding Justice of the Court of Appeals for raffle to a Justice therein for investigation, report, and recommendation.

On December 10, 2007, Investigating Justice Portia Aliño-Hormachuelos submitted a Partial Report and sought extension of time of 30 days, or until January 17, 2008, within which to submit her report and recommendation due to the following reasons, to wit: the parties had yet to submit their memoranda and other papers; her official trip to Beijing, China from December 12 to 17, 2007; and the impending holidays.

In the Final Report and Recommendation dated January 17, 2008,[1] the Investigating Justice recommended that the complaint be dismissed for lack of factual or legal basis, based on the following:

FINDINGS AND EVALUATION:

It is uncontroverted that respondent judge did indeed:

1. prepare a clarificatory affidavit which he sent through his brother and Francisca Maloles for the complaint to sign, but which the latter declines;

2. that he called complainant over the phone and told him that charges would be filed against him for executing a perjurious affidavit.

The only factual issue raised is whether respondent shouted the invective "*punyeta ka*" at the complainant in an angry manner because complainant refused to sign the Clarificatory Affidavit. Complainant asseverates that by doing so, along with the above actuations not denied by respondent judge, the latter engaged in conduct unbecoming a judge and/or harassment.

On this lone factual issue, the undersigned Investigating Justice finds in favor of the respondent. Judge Belen's denial that he shouted at the complainant or that he uttered "*punyeta ka*" is credible especially since it was corroborated by Sheriff Rimas, a disinterested witness, who was seated at his desk only 1 to 2 meters away from the phone when the call was made by respondent. Rimas testified

[1] Sealed Final Report and Recommendation, pp. 15-21.

that he did not hear Judge Belen shout or say "*punyeta ka*"; that had Judge Belen shouted or uttered the invective, he (Rimas) would have heard it, being quite near. Sheriff Rimas was not shown to have any bias in favor of respondent judge as to make him testify falsely. Rimas is not assigned in the respondent's sala but in the Office of the Clerk of Court, RTC, Calamba, Laguna, hence respondent would hardly be able to exercise influence or suasion over him. Further, Sheriff Rimas testified in a brief, simple, straightforward manner that he lent credence to his testimony. On the other hand, complainant's case is riddled with contradictions as already adverted to. His allegations therefore in this regard must be rejected for lack of credibility.

The remaining question is whether respondent Judge's actuations subject of this Complaint amounted to Conduct Unbecoming a Judge and/or Harassment.

That respondent Judge caused the preparation of the Clarificatory Affidavit is not controverted. However, after he made the phone call, respondent never called complainant again, never told the latter to see him regarding the affidavit, and never even filed any case against the complainant despite his caution that charges could be filed for making a perjurious affidavit. And as borne out by the subsequent admissions of the complainant during the investigation, at least three of the separate statements complainant made in his affidavit dated Aug. 16, 2002 are not true, *viz*:

1. that he knew respondent personally;
2. that respondent instructed him to deliver his mail matter to Maloles; and
3. that he delivered the matter at the stated address, corner Fule St., Alaminos, Laguna (he delivered it to Maloles at Bagong Silang, Alaminos, about 1 kilometer away from Fule St.).

This being so, respondent Medel cannot be faulted for trying to put the record straight by way of the proposed Clarificatory Affidavit which was meant to correct the erroneous, if not untrue, statements in complainant's earlier affidavit. More importantly, respondent acted in his capacity as a party in the botched Estafa case and not in his capacity as a judge. That respondent is a judge is merely incidental. He did not use his position to obtain his objective which was to clarify, or correct, the statements in complainant's affidavit

which had a bearing on his rights as a citizen and an ordinary party in a case. The stringent requirements relative to a judge's conduct never factored into the case because respondent acted merely in his capacity as an ordinary citizen entitled to proper government service *vis-à-vis* his mail matter.

It bears stressing that the mail matter involved was registered and addressed to respondent. It contained an Order for respondent to pay filing fees in an Estafa case he had instituted against a certain party. Proper delivery of registered mail matter is mandated under Sec. 16 of the Philippine Postal Manual.

The Estafa case respondent filed was eventually dismissed.

Neither will the charge of harassment prosper.

Respondent called complainant only once and never again even though the contents of his Proposed Clarificatory Affidavit might have warranted a later call or persuasion since, as later borne out by complainant's admission, respondent was justified in asking for a clarification and/or correction of complainant's earlier affidavit.

As for the alleged threat to file charges against the complainant, it is well-settled that the threat must be of an unjust act in order to hold the supposed threatener liable. A threat to file a case or cases to enforce one's claim or rights is not an unjust act but a valid and legal act that is not culpable. Indeed, a threat to enforce one's right through competent authority, if the claim is just or legal, is in keeping with the fundamental principle of the primacy of the rule of law. The law provides for certain means for the enforcement of a claim, and it is not a threat to resort to these means.

The Court finds that the charges of unbecoming conduct and/or harassment against respondent judge are bereft of merit. Complainant cannot rely on mere suspicion and unfounded charges. In the hearing before the Investigating Justice on October 18, 2007,[2] complainant admitted that on May 14, 2004, he delivered the subject mail matter, addressed to respondent judge, to Walter Maloles at Bagong Silang, Alaminos, and not at the respondent judge's address, as stated in his affidavit, at Corner Francisco Fule St., Alaminos, Laguna. Complainant said that he delivered

[2] TSN, October 18, 2007, *rollo*, pp. 93-126.

it to Maloles because the latter had been the caretaker of respondent judge's house and either Walter Maloles or Francisca Maloles had previously received the mails of respondent judge as shown by different logbooks in the Alaminos Post Office. When queried, complainant declared that respondent judge did not categorically instruct him to forward all his correspondence and mail matter to Walter or Francisca Maloles or any member of the Maloles family, thus, contradicting his own statement in the Affidavit dated August 8, 2006. With regard to the follow-up question of whether complainant personally knew respondent judge, complainant replied that he was never introduced personally to respondent judge. He also affirmed that once, while respondent judge was standing by the terrace of his house, someone pointed to a man and informed him that he was respondent judge. Again, the contents in the affidavit contradicted his testimony.

In the hearing of October 25, 2007,[3] complainant presented certified xeroxed copies of the logbooks of the Post Office of Alaminos, Laguna and a copy of the Registry Return Card for I.S. No. 04-313 from the Office of the City Prosecutor, San Pablo City, which showed that the incident of May 14, 2004 was not the first time that a registered mail addressed to the respondent judge was delivered to a member of the Maloles family. Complainant also declared that the reason why he was filing the present administrative case was respondent judge's utterance of the invective against him; threat to file a case against him; and coercing him to sign the Clarificatory Affidavit as presented by respondent judge's brother which he refused to sign as it was contrary to the Affidavit dated August 8, 2006 he had earlier executed.

On the other hand, Deputy Sheriff Crisenciano Rimas corroborated, in the hearing of October 25, 2007, that respondent judge never raised his voice while talking to complainant. Sheriff Rimas also testified that on August 16, 2006, between 8:00-8:30 a.m. when the telephone call to the complainant was made by Judge Belen, he was just one to two meters away and he

---

[3] TSN, October 25, 2007, *id.* at 127-163.

never heard respondent judge shout "*punyeta ka*." He stated that while he heard respondent judge telling complainant that he will file a case against him, the statements were not said in a shouting or angry manner.

Faced with the conflicting versions, the Court finds the declarations of respondent judge to be credible. It is obvious that complainant filed this administrative case as a retaliatory measure or to seek leverage over respondent judge in anticipation of whatever appropriate legal action or case the latter may take against him for declaring untruthful statements in his Affidavit dated August 8, 2006. Respondent judge has adequately explained the reason why he called up complainant, that is, to rectify the erroneous declarations in the said affidavit. While it was in fact established that respondent judge called complainant, the alleged invective was not substantiated nor was any basis for complainant's allegation of harassment given. There was no undue injury caused to complainant's person.

Administrative charges against members of the judiciary must be supported at least by substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[4] In *Planas v. Reyes*,[5] the Court emphasized that:

> In administrative proceedings, the burden of proof that respondent committed the act complained of rests on the complainant. The complainant must present sufficient evidence to support such accusation (citing *Ong v. Rosete*, A.M. No. 04-1538, October 22, 2004, 441 SCRA 150).
>
> It must be stressed that in administrative proceedings, the quantum of proof required to establish a respondent's malfeasance is not proof beyond reasonable doubt but substantial evidence, *i.e.,* that amount of relevant evidence that a reasonable mind might accept as

---

[4] *Kilat v. Macias*, A.M. No. RTJ-5-1960, October 25, 2005, 474 SCRA 101 citing *Portic v. Villalon-Pornillos*, A.M. No. RTJ-02-1717, May 28, 2004, 430 SCRA 29, 34 and *Lachica v. Judge Flordeliza*, A.M. No. MTJ-94-921, March 5, 1996, 324 Phil. 534, 254 SCRA 278.

[5] A.M. No. RTJ-05-1905, February 23, 2005, 452 SCRA 146.

adequate to support a conclusion, is required. More importantly, in administrative proceedings, the complainant has the burden of proving by substantial evidence to the contrary, the presumption that the respondent has regularly performed his duties will prevail. Indeed, if a respondent judge or a court employee should be disciplined for a grave offense, the evidence against him should be competent and derived from direct knowledge. Charges based on mere suspicion and speculation cannot be given credence. Hence, when the complainant relies on mere conjectures and suppositions, and fails to substantiate his claim, as in this case, the administrative complaint must be dismissed for lack of merit (citing *Ever Emporium, Inc. v. Judge Maceda,* A.M. Nos. RTJ-04-1881 and RTJ-04-1882, October 14, 2004, 440 SCRA 298).

The Court will not shirk from its responsibility of imposing discipline upon erring members of the bench. At the same time, however, the Court should not hesitate to shield them from unfounded suits that only serve to disrupt rather than promote the orderly administration of justice. This Court could not be the instrument that would destroy the reputation of any member of the bench, by pronouncing guilt on mere speculation (citing *Ong v. Rosete*, A.M. No. 04-1538, October 22, 2004, 441 SCRA 150).

Applying the foregoing principles to the present case, this Court finds that complainant failed to present substantial evidence to prove his charges. The basis for filing the charges was respondent judge's alleged actuation in making the phone call to complainant, but complainant failed to prove that respondent judge employed duress or any form of harassment. Clearly, there is no basis to impose sanctions upon respondent judge.

WHEREFORE, the administrative complaint against respondent Judge Medel Arnaldo B. Belen of the Regional Trial Court, Branch 36, Calamba, Laguna for Unbecoming Conduct and/or Harassment is *DISMISSED*.

No costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 131903. June 26, 2008]

OSCAR R. BADILLO, GIOVANNI C. ONG, EDGAR A. RAGASA represented by heirs CYNTHIA G. RAGASA, and their children JOSEPH, CATHERINE and CHARMAINE all surnamed RAGASA, ROLANDO SANCADA, and DIONISIO UMBALIN, *petitioners, vs.* **COURT OF APPEALS, REGISTER OF DEEDS OF QUEZON CITY, GOLDKEY DEVELOPMENT CORPORATION, JOSEFA CONEJERO, IGNACIO D. SONORON, PEDRO DEL ROSARIO, and DOWAL REALTY AND MANAGEMENT SYSTEM COMPANY,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE BODIES; HOUSING AND LAND USE REGULATORY BOARD; SOLE REGULATORY BODY FOR HOUSING AND LAND DEVELOPMENT. — The HLURB is the sole regulatory body for housing and land development. The extent to which an administrative agency may exercise its powers depends on the provisions of the statute creating such agency. Courts will not determine a controversy where the issues for resolution demand the exercise of sound administrative discretion.

2. ID.; ID.; ID.; ID.; HLURB'S JURISDICTION TO HEAR AND DECIDE CASES IS DETERMINED BY THE NATURE OF THE CAUSE OF ACTION, THE SUBJECT MATTER OR PROPERTY INVOLVED, AND THE PARTIES; CASE AT BAR FALLS UNDER THE HLURB'S EXCLUSIVE JURISDICTION. — The scope and limitation of the HLURB's jurisdiction are well-defined. The HLURB's jurisdiction to hear and decide cases is determined by the nature of the cause of action, the subject matter or property involved, and the parties. In the present case, petitioners are the registered owners of several lots adjoining a subdivision road lot connecting their properties to the main road. Petitioners allege that the

subdivision lot owners sold the road lot to a developer who is now constructing cement fences, thus blocking the passageway from their lots to the main road. In sum, petitioners are enforcing their statutory and contractual rights against the subdivision owners. This is a specific performance case which falls under the HLURB's exclusive jurisdiction.

3. ID.; ID.; ID.; WHEN AN ADMINISTRATIVE AGENCY IS CONFERRED QUASI-JUDICIAL FUNCTIONS, ALL CONTROVERSIES RELATING TO THE SUBJECT MATTER PERTAINING TO ITS SPECIALIZATION ARE DEEMED TO BE INCLUDED WITHIN ITS JURISDICTION. — In *Peña v. GSIS*, the Court ruled that when an administrative agency is conferred quasi-judicial functions, all controversies relating to the subject matter pertaining to its specialization are deemed to be included within its jurisdiction. Split jurisdiction is not favored. As observed in *C.T. Torres Enterprises, Inc. v. Hibionada*: The argument that only courts of justice can adjudicate claims resoluble under the provisions of the Civil Code is out of step with the fast-changing times. There are hundreds of administrative bodies now performing this function by virtue of a valid authorization from the legislature. This quasi-judicial function, as it is called, is exercised by them as an incident of the principal power entrusted to them of regulating certain activities falling under their particular expertise. In the Solid Homes case for example the Court affirmed the competence of the Housing and Land Use Regulatory Board to award damages although this is an essentially judicial power exercisable ordinarily only by the courts of justice. This departure from the traditional allocation of governmental powers is justified by expediency, or the need of the government to respond swiftly and competently to the pressing problems of the modern world.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI*; WHERE ONLY QUESTIONS OF LAW ARE RAISED OR INVOLVED, APPEAL SHALL BE TO THE SUPREME COURT BY PETITION FOR REVIEW ON *CERTIORARI* IN ACCORDANCE WITH RULE 45 OF THE RULES OF COURT. — In *Sevilleno v. Carilo*, citing *Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals*, this Court summarized the rule on appeals: x x x **In all cases decided by the RTC in the exercise of its original**

jurisdiction where the appellant raises only questions of law, the appeal must be taken to the Supreme Court on a petition for review on *certiorari* under Rule 45. x x x

5. ID.; ID.; ID.; ID.; ID.; QUESTION ON JURISDICTION IS ONE OF LAW; QUESTION OF LAW, EXPLAINED. — The question on jurisdiction is undoubtedly one of law. We have held that "a question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted." Consequently, it is not disputed that the issue brought by petitioners to the Court of Appeals involves solely the trial court's jurisdiction over the subject matter of the case. The appellate court can determine the issue raised without reviewing or evaluating the evidence.

6. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT A REMEDY FOR LOST APPEAL. — As held in *Balayan v. Acorda*, "the special civil action for *certiorari* is a limited form of review and is a remedy of last recourse." It lies only where there is no appeal or plain, speedy, and adequate remedy in the ordinary course of law. In the present case, petitioners chose the wrong mode of appeal. Hence, the instant petition cannot prevail since a petition for *certiorari* is not a substitute for a lost appeal, especially if the loss or lapse was an error in petitioners' choice of remedy. We have held in *David v. Cordova* that: A petition for *certiorari* cannot be a substitute for an appeal from a lower court decision. Where appeal is available to the aggrieved party, the action for *certiorari* will not be entertained. The remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternate 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**. x x x

7. ID.; ID.; ID.; ALTHOUGH THE COURT HAS THE DISCRETION TO TREAT A PETITION FOR *CERTIORARI* AS HAVING BEEN FILED UNDER RULE 45, THERE IS NOTHING IN THE PRESENT CASE TO WARRANT A LIBERAL APPLICATION OF THE RULES. — There were instances when the Court has relaxed the rule on the special

civil action for *certiorari* as a substitute for failure to file a timely petition for review on *certiorari* under Rule 45 such as where the application of this rule would result in a manifest failure or miscarriage of justice. Although the Court has the discretion to treat a petition for *certiorari* as having been filed under Rule 45, there is nothing in the present case to warrant a liberal application of the rules.

APPEARANCES OF COUNSEL

Juan Maria Hans F. Durante III for Heirs of Edgar A. Ragasa.
Maria E. Valderrama for private respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for *certiorari*[1] assails the 17 September 1997 Decision[2] of the Court of Appeals in CA-G.R. CV No. 50035. The Court of Appeals dismissed the appeal filed by petitioners Oscar R. Badillo, Giovanni C. Ong, Edgar A. Ragasa, Rolando Sancada, and Dionisio Umbalin (petitioners) questioning the 5 June 1995 Order[3] of Branch 222 of the Regional Trial Court of Quezon City in Civil Case No. Q-91-10510 for Annulment of Documents with Prayer for Issuance of Prohibitory and Mandatory Injunction and Damages.

The Facts

Petitioners alleged that they are the registered owners of several lots adjoining a road lot known as Lot 369-A-29 or Apollo Street of subdivision plan Psd-37971 (road lot). The road lot is a short access road which connects petitioners' properties to the

[1] Under Rule 65 of the Rules of Court.

[2] *Rollo*, pp. 28-44. Penned by Associate Justice Corona Ibay-Somera, and concurred in by Associate Justices Antonio M. Martinez and Romeo A. Brawner.

[3] *Id*. at 25-26. Penned by Judge Eudarlio B. Valencia.

main road known as Road 20. The road lot is covered by Transfer Certificate of Title (TCT) No. RT-20895 (22682) and registered in the name of respondent Pedro del Rosario (del Rosario). Annotated at the back of TCT No. RT-20895 is a court-ordered Entry No. 605/T-22655 which reads as follows: "It is hereby made of record that as per order of the Court, the street lot covered by this title shall not be closed or disposed of by the registered owner without previous approval of the court."[4]

Petitioners alleged that in gross violation of the court order, del Rosario sold an unsegregated portion of the road lot to his co-respondents Josefa Conejero (Conejero) and Ignacio Sonoron (Sonoron) without obtaining prior court approval. Del Rosario, Conejero, and Sonoron then entered into a partition agreement to divide the road lot into four lots which resulted in the partial cancellation of TCT No. RT-20895 and the subsequent issuance of TCT Nos. 35899 and 35100 in the name of Conejero, TCT No. 35101 in the name of del Rosario, and TCT No. 35102 in the name of Sonoron.[5]

Petitioners stated that del Rosario sold TCT No. 35101 to Goldkey Development Corporation (Goldkey).[6]

Petitioners alleged that the Register of Deeds violated the court order when it allowed the registration of the sales and the subsequent issuance of new titles without first obtaining judicial approval. Petitioners claimed that Goldkey had built cement fences on the lot, thus blocking the ingress and egress of petitioners.[7]

Petitioners prayed that the sales made in favor of Conejero, Sonoron, and Goldkey and the partition of the road lot be declared void.[8]

In its Comment, Goldkey alleged that the Housing and Land Use Regulatory Board (HLURB) has exclusive jurisdiction over

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

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

[6] *Id*.

[7] *Id*. at 9.

[8] *Id*. at 19.

the cases mentioned in Section 1 of Presidential Decree No. (PD) 1344.[9] Goldkey argued that the Court of Appeals correctly dismissed petitioners' appeal because petitioners merely assigned an error involving a pure question of law. Goldkey added that petitioners are using the present petition as a substitute for an already lost appeal since petitioners' counsel had received the decision on 17 October 1997 and the present petition was posted only on 16 December 1997.[10]

In May 1991, petitioners filed an initial complaint with the Office of the Building Official (building official) of Quezon City, docketed as Building Case No. R-10-91-006 entitled *Giovanni C. Ong, et al. v. Manuel Chua* (building case).[11] Petitioners, who initiated the building case when Goldkey started putting up fences in some portions of the property, claimed that the parcel of land was a road lot.[12]

On 10 September 1991, the HLURB issued a Development Permit to Goldkey allowing it to develop the land into residential townhouse units. The permit also mentioned that the project is classified as "Residential Townhouse Subdivision" and, as evaluated, the same is "in accordance with the Zoning Ordinance of Quezon City."[13]

On 4 November 1991,[14] petitioners filed a case for Annulment of Title and Damages[15] with the Regional Trial Court of Quezon City.

Subsequently, the building official of Quezon City resolved the building case against petitioners and this decision became

---

[9] *Id*. at 146.

[10] *Id*. at 147.

[11] *Id*. at 29.

[12] *Id*. at 82 and 336.

[13] *Id*. at 336-337.

[14] *Id*. at 10.

[15] *Id*. at 16.

final and executory.[16] The ruling held that the property is not a road lot but a residential lot.[17]

On 5 June 1995, Branch 222 of the Regional Trial Court (trial court) of Quezon City issued an order dismissing the case for lack of jurisdiction over the subject matter.

The Ruling of the Trial Court

The trial court dismissed petitioners' case for lack of jurisdiction over the subject matter. The trial court pointed out that there was a decision rendered by the building official of Quezon City declaring the disputed property a residential lot and not a road lot; hence, the building official issued a building permit. The HLURB also issued a permit for the development of the land into a townhouse project. Petitioners did not appeal both rulings. The trial court stated that petitioners' contention that the property is a road lot had been rendered moot by the finding of the building official which made the contrary declaration. If petitioners had any objection to the ruling, they should have appealed the same to the Secretary of Public Works and Highways as provided in Section 307 of Executive Order No. (EO) 1096. The findings of administrative agencies which have expertise are generally accorded not only respect but even finality.

The trial court also stated that the property had been approved by the HLURB for development into a townhouse project. The subject land was therefore removed from the jurisdiction of the regular courts. The HLURB's decision was also not appealed to the Office of the President as provided in Section 4 of PD 1344 which gave the HLURB quasi-judicial powers.

The Ruling of the Appellate Court

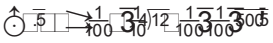
On 17 September 1997, the Court of Appeals dismissed the appeal on the ground that it has no jurisdiction to entertain the same. The appellate court stated that the original and amended complaints filed by petitioners were both premised on the claim that the subject parcels of land were subdivision road lots that

[16] *Id*. at 30.

[17] *Id*. at 337.

were illegally converted into residential lots and thereafter disposed by del Rosario, the subdivision developer. Therefore, petitioners' complaints were filed for the purpose of enforcing a contractual and statutory obligation of del Rosario to preserve a subdivision road lot for street purposes. As such, the agency with jurisdiction is the HLURB, pursuant to the provisions of PD 957, 1216, and 1344, EO 648 dated 7 February 1981 and EO 90 dated 17 December 1986.

Further, the appellate court ruled that the error assigned by petitioners involves the issue on what law will apply to determine the jurisdiction of a tribunal over the subject matter of the complaints. Petitioners' assigned error involves a pure question of law; hence, petitioners appealed to the wrong forum. Petitioners should have elevated their appeal to the Supreme Court and not to the Court of Appeals by way of a simple appeal.



The Issues

Petitioners raise three issues in this petition:

1. Whether the appellate court acted without or in excess of jurisdiction or with grave abuse of discretion by dismissing petitioners' appeal on the ground that jurisdiction does not lie with the regular courts but with the HLURB;
2. Whether the Court of Appeals acted without or in excess of jurisdiction or grave abuse of discretion by dismissing petitioners' appeal on the ground that petitioners did not assign any error of fact; and
3. Whether a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure is the proper remedy for petitioners.

The Ruling of the Court

The petition lacks merit.

The HLURB is the sole regulatory body for housing and land development.[18] The extent to which an administrative agency

[18] *Teotico v. Baer*, G.R. No. 147464, 8 June 2006, 490 SCRA 279.

may exercise its powers depends on the provisions of the statute creating such agency.[19] Courts will not determine a controversy where the issues for resolution demand the exercise of sound administrative discretion.[20]

Jurisdiction Lies with the HLURB

PD 957,[21] otherwise known as "The Subdivision and Condominium Buyers' Protective Decree," granted the National Housing Authority (NHA) the exclusive jurisdiction to regulate the real estate business. The scope of the regulatory authority lodged in the NHA is indicated in the second whereas clause which states:

"WHEREAS, numerous reports reveal that many real estate subdivision owners, developers, operators, and/or sellers have **reneged on their representations and obligations to provide and maintain properly subdivision roads**, drainage, sewerage, water systems, lighting systems, and other similar basic requirements, thus endangering the health and safety of home and lot buyers," (Emphasis supplied)

Thus, Section 22 of PD 957 provides:

Sec. 22. *Alteration of Plans*. — **No owner or developer shall change or alter the roads**, open spaces, infrastructures, facilities for public use and/or other form of subdivision development as contained in the approved subdivision plan and/or represented in its advertisements, **without the permission of the Authority and the written conformity or consent of the duly organized homeowners association**, or in the absence of the latter, by the majority of the lot buyers in the subdivision. (Emphasis supplied)

PD 1344[22] amended PD 957 by empowering the NHA to issue writs of execution in the enforcement of its decisions. Section 1 of PD 1344 states:

---

[19] *Osea v. Ambrosio*, G.R. No. 162774, 7 April 2006, 486 SCRA 599.

[20] *Id*.

[21] The law became effective on 12 July 1976.

[22] The law became effective on 2 April 1978.

Section 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have **exclusive jurisdiction to hear and decide cases** of the following nature:

a. Unsound real estate business practices;

b. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and

c. **Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman**. (Emphasis supplied)

Under EO 648,[23] the NHA's functions were transferred to the Human Settlement Regulatory Commission. Section 8 of EO 648 provides:

Section 8. Transfer of Functions. — The regulatory functions of the National Housing Authority pursuant to Presidential Decrees No. 957, 1216, 1344 and other related laws are hereby transferred to the Commission, together with such applicable personnel, appropriation, records, equipment and property necessary for the enforcement and implementation of such functions. Among these regulatory functions are: (1) Regulation of the real estate trade and business; (2) Registration of subdivision lots and condominium projects; (3) Issuance of license to sell subdivision lots and condominium units in the registered units; (4) Approval of performance bond and the suspension of license to sell; (5) Registration of dealers, brokers and salesmen engaged in the business of selling subdivision lots or condominium units; (6) Revocation of registration of dealers, brokers and salesmen; (7) Approval or mortgage on any subdivision lot or condominium unit made by the owner or developer; (8) Granting of permits for the alteration of plans and the extension of period for completion of subdivision or condominium projects; (9) **Approval of the conversion to other purposes of roads and open spaces found within the project** which have been donated to the city or

[23] It is otherwise known as "Charter of the Human Settlements Regulatory Commission." The law became effective on 7 February 1981.

municipality concerned; (10) Regulation of the relationship between lessors and lessees; and (11) **Hear and decide** cases on unsound real estate business practices; claims involving refund filed against project owners, developers, dealers, brokers or salesmen and **cases of specific performance**. (Emphasis supplied)

EO 90[24] renamed the Human Settlement Regulatory Commission the Housing and Land Use Regulatory Board. The HLURB retained the regulatory and adjudicatory functions of the NHA.

Clearly, the scope and limitation of the HLURB's jurisdiction are well-defined. The HLURB's jurisdiction to hear and decide cases is determined by the nature of the cause of action, the subject matter or property involved, and the parties.[25] In the present case, petitioners are the registered owners of several lots adjoining a subdivision road lot connecting their properties to the main road. Petitioners allege that the subdivision lot owners sold the road lot to a developer who is now constructing cement fences, thus blocking the passageway from their lots to the main road. In sum, petitioners are enforcing their statutory and contractual rights against the subdivision owners. This is a specific performance case which falls under the HLURB's exclusive jurisdiction.

In *Osea v. Ambrosio*,[26] the Court held that the provisions of PD 957 were intended to encompass all questions relating to subdivisions. This intention was aimed to provide for an appropriate government agency, which is the HLURB, to which all parties aggrieved in the implementation of provisions and the enforcement of contractual rights with respect to said category of real estate may take recourse.

Petitioners claim that respondents violated the annotation at the back of TCT No. RT-20895 by selling an unsegregated

---

[24] The law became effective on 17 December 1986.

[25] *Delos Santos v. Sarmiento*, G.R. No. 154877, 27 March 2007, 519 SCRA 62, 73.

[26] G.R. No. 162774, 7 April 2006, 486 SCRA 599, 607.

portion of the lot without obtaining prior court approval. The date of entry of this annotation is 18 August 1953. When PD 957, PD 1344, and EO 648 were enacted in 1976, 1978, and 1981, respectively, this annotation was impliedly modified such that the conversion of the road lot in the subdivision plan would fall under the HLURB's jurisdiction pursuant to these laws.

Petitioners argue that they can file a specific performance case to compel respondents to comply with their contractual and statutory obligation to maintain the road lot. However, petitioners can only be granted complete relief if the subject sales are declared void and the subsequent partition is declared illegal. Petitioners further contend that the HLURB, having only the jurisdiction to hear and decide specific performance cases, can only compel petitioners to file a case for annulment of title and prosecute the action. Petitioners insist that in the final analysis, a case for annulment of title would still have to be filed with the ordinary courts.[27]

In *Peña v. GSIS*,[28] the Court ruled that when an administrative agency is conferred quasi-judicial functions, all controversies relating to the subject matter pertaining to its specialization are deemed to be included within its jurisdiction. Split jurisdiction is not favored.

As observed in *C.T. Torres Enterprises, Inc. v. Hibionada*:[29]

> The argument that only courts of justice can adjudicate claims resoluble under the provisions of the Civil Code is out of step with the fast-changing times. There are hundreds of administrative bodies now performing this function by virtue of a valid authorization from the legislature. This quasi-judicial function, as it is called, is exercised by them as an incident of the principal power entrusted to them of regulating certain activities falling under their particular expertise.
>
> In the Solid Homes case for example the Court affirmed the competence of the Housing and Land Use Regulatory Board to award

---

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

[28] G.R. No. 159520, 19 September 2006, 502 SCRA 383, 402.

[29] G.R. No. 80916, 9 November 1990, 191 SCRA 268, 272-273.

damages although this is an essentially judicial power exercisable ordinarily only by the courts of justice. This departure from the traditional allocation of governmental powers is justified by expediency, or the need of the government to respond swiftly and competently to the pressing problems of the modern world.

Finally, in *Cristobal v. Court of Appeals*,[30] we held that "questions relating to non-compliance with the requisites for conversion of subdivision lots are properly cognizable by the NHA, now the HLURB, pursuant to Section 22 of PD 957 and not by the regular courts."

Appeal by *Certiorari* Involving Questions of Law

Section 2, Rule 41 of the Rules of Court states:

Sec. 2. *Mode of appeal*.—

(a) *Ordinary Appeal*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for Review*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari*. — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45. (Emphasis supplied)

In *Sevilleno v. Carilo*,[31] citing *Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals*, this Court summarized the rule on appeals:

---

[30] G.R. No. 125339, 22 June 1998, 291 SCRA 122, 132.

[31] G.R. No. 146454, 14 September 2007, 533 SCRA 385, 388.

(1) In all cases decided by the RTC in the exercise of its original jurisdiction, appeal may be made to the Court of Appeals by mere notice of appeal where the appellant raises questions of fact or mixed questions of fact and law;

(2) **In all cases decided by the RTC in the exercise of its original jurisdiction where the appellant raises only questions of law, the appeal must be taken to the Supreme Court on a petition for review on *certiorari* under Rule 45**.

(3) All appeals from judgments rendered by the RTC in the exercise of its appellate jurisdiction, regardless of whether the appellant raises questions of fact, questions of law, or mixed questions of fact and law, shall be brought to the Court of Appeals by filing a petition for review under Rule 42. (Emphasis supplied)

In *First Bancorp, Inc. v. Court of Appeals*,[32] this Court also explained the two modes of appeal from a final order of the trial court in the exercise of its original jurisdiction:

(1) by writ of error under Section 2(a), Rule 41 of the Rules of Court if questions of fact or questions of fact and law are raised or involved; or

(2) **appeal by *certiorari* under Section 2(c), Rule 41, in relation to Rule 45, where only questions of law are raised or involved**. (Emphasis supplied)

In the present case, petitioners raised only one issue in their Appellants' Brief — whether "the Honorable Trial Court *a quo* seriously erred in holding that it has no jurisdiction over the subject matter of the case when in fact it has already acquired jurisdiction over the persons of the defendants and the subject matter of the case."

The question on jurisdiction is undoubtedly one of law. We have held that "a question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence

[32] G.R. No. 151132, 22 June 2006, 492 SCRA 221, 235.

presented, the truth or falsehood of facts being admitted."[33] Consequently, it is not disputed that the issue brought by petitioners to the Court of Appeals involves solely the trial court's jurisdiction over the subject matter of the case. The appellate court can determine the issue raised without reviewing or evaluating the evidence.

As petitioners' appeal solely involves a question of law, the appellate court did not err in dismissing the appeal on the ground of lack of jurisdiction pursuant to Section 2, Rule 50 of the Rules of Court which provides:

> Sec. 2. *Dismissal of improper appeal to the Court of Appeals*. — **An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed**, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.
>
> An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright. (Emphasis supplied)

Rule 65 is not a remedy for lost appeal.

Petitioners should have directly taken their appeal to this Court by filing a petition for review on *certiorari* under Rule 45 and not an ordinary appeal with the Court of Appeals under Rule 41 nor a petition for *certiorari* with this Court under Rule 65.

As held in *Balayan v. Acorda*,[34] "the special civil action for *certiorari* is a limited form of review and is a remedy of last recourse." It lies only where there is no appeal or plain, speedy, and adequate remedy in the ordinary course of law.

In the present case, petitioners chose the wrong mode of appeal. Hence, the instant petition cannot prevail since a petition

---

[33] *Bukidnon Doctors' Hospital, Inc. v. Metropolitan Bank & Trust Co.*, G.R. No. 161882, 8 July 2005, 463 SCRA 222, 233.

[34] G.R. No. 153537, 5 May 2006, 489 SCRA 637, 641.

for *certiorari* is not a substitute for a lost appeal, especially if the loss or lapse was an error in petitioners' choice of remedy. We have held in *David v. Cordova*[35] that:

> A petition for *certiorari* cannot be a substitute for an appeal from a lower court decision. Where appeal is available to the aggrieved party, the action for *certiorari* will not be entertained. The remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternate 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 therefore is grave abuse of discretion. (Emphasis supplied)

There were instances when the Court has relaxed the rule on the special civil action for *certiorari* as a substitute for failure to file a timely petition for review on *certiorari* under Rule 45 such as where the application of this rule would result in a manifest failure or miscarriage of justice.[36] Although the Court has the discretion to treat a petition for *certiorari* as having been filed under Rule 45, there is nothing in the present case to warrant a liberal application of the rules.

WHEREFORE, we *DISMISS* the petition. We *AFFIRM* the 17 September 1997 Decision of the Court of Appeals. Costs against petitioners.

SO ORDERED.

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

---

[35] G.R. No. 152992, 28 July 2005, 464 SCRA 384, 394-395.

[36] *VMC Rural Electric Service Cooperative, Inc. v. Court of Appeals*, G.R. No. 153144, 16 October 2006, 504 SCRA 336, 353.

FIRST DIVISION

[G.R. No. 149801. June 26, 2008]

SPOUSES RENATO and FLORINDA DELA CRUZ, *petitioners, vs.* **SPOUSES GIL and LEONILA SEGOVIA,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; VOIDABLE CONTRACTS; FOUR-YEAR PERIOD FOR FILING AN ACTION FOR ANNULMENT, ON GROUND OF VITIATED CONSENT, HAD ALREADY LAPSED WHEN COMPLAINT WAS FILED; RULE. — We agree with the two courts below when they declared that the four (4)-year period for filing an action for annulment of the September 9, 1991 Agreement, on ground of vitiated consent, had already lapsed when the complaint subject of the present controversy was filed on March 8, 1996. This is in accordance with Article 1391 of the Civil Code, which pertinently reads: Art. 1391. The action for annulment shall be brought within four years. This period shall begin: x x x In case of mistake or fraud, from the time of the discovery of the same. x x x.

2. ID.; FAMILY CODE; ARTICLE 124, PROVIDING THAT THE ADMINISTRATION OF THE CONJUGAL PARTNERSHIP IS NOW A JOINT UNDERTAKING OF THE HUSBAND AND WIFE, FINDS NO APPLICATION IN CASE AT BAR. — We also agree with the ruling that the absence of Renato's signature in the September 9, 1991 Agreement bears little significance to its validity. Article 124 of the Family Code relied upon by petitioners provides that the administration of the conjugal partnership is now a joint undertaking of the husband and the wife. x x x In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal partnership, the other spouse may assume sole powers of administration. However, the power of administration does not include the power to dispose or encumber property belonging to the conjugal partnership. In all instances, the present law specifically requires the written consent of the other spouse, or authority of the court for the disposition or

encumbrance of conjugal partnership property without which, the disposition or encumbrance shall be void. The foregoing provision finds no application in this case because the transaction between Florinda and Leonila in reality did not involve any disposition of property belonging to any of the sisters' conjugal assets.

APPEARANCES OF COUNSEL

R.A. Din, Jr. & Associates Law Offices for petitioners.
Eduardo Q. Cabreros, Jr. for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the April 17, 2001 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 64487, as reiterated in its Resolution[2] of September 4, 2001, affirming the decision of the Regional Trial Court (RTC) of Manila, Branch 44 in its Civil Case No. 96-77509, an action for Nullity of Contract/Agreement with Damages thereat commenced by spouses Renato and Florinda dela Cruz (petitioners) against respondent spouses Gil and Leonila Segovia.

The facts, as culled from the records, are as follows.

Sometime in July 1985, petitioner Florinda dela Cruz (Florinda) wanted to purchase two (2) parcels of land located at Paltok Street, Sta. Mesa, Manila, Lot 503 with an apartment unit erected thereon and Lot 505 with a residential house. The two lots were being sold together for ₱180,000.00. Inasmuch as Florinda had only ₱144,000.00 at hand, she asked her sister, respondent Leonila Segovia (Leonila), to contribute ₱36,000.00 to complete

---

[1] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Fermin A. Martin, Jr. (ret.) and Mercedes Gozo-Dadole, concurring; *Rollo*, pp. 32-41.

[2] *Id.*, p. 49.

the purchase price. The sisters agreed that Lot 503 and the apartment unit thereat would belong to Leonila upon full payment of its purchase price of ₱80,000.00, while Lot 505 with a residential house would belong to Florinda. The properties were then registered in the name of petitioner Renato dela Cruz married to Florinda. The parties, however, verbally agreed that Leonila and her family would stay at Lot 505 until she had fully paid for Lot 503.

Desiring to reduce the verbal agreement into writing, the parties executed and signed a handwritten covenant entitled Note of Agreement [3] dated April 28, 1990, which read:

Ano mang oras o panahon maaring ilipat kay Mo/Gil Segovia [respondent] ang pag-aari ng sasakyan at bahay kung mababayaran nila ang ₱18,000 at ₱34,000 na balance sa Apt. na walang ano mang condition, interest at ano mang hangad hanggang year 1999.

Ang halagang ₱18,000 ay may interest na 2% hanggang sa ito ay mabayaran kay Flor dela Cruz [petitioner]. Ang halagang ₱34,000 ay walang interest at ito ay babayaran up to 1999. Ang upa sa apt. ay cocolectahin ni Flor kapalit sa residential house.

Ang ano mang mga gastos sa papeles ay sasagutin ni Mo/Gil Segovia [respondent] kung ililipat sa pangalan niya ang sasakyan na Pinoy Fierra-Van NEX 741. Ang pagbili sa lupa at bahay 503 Paltok ay ganoon din. (underscoring supplied)

Sometime in 1991, Linda Duval, a sister of Florinda and Leonila, arrived from the United States to attend their mother's funeral. Linda noticed the strained relations between her two siblings. When she inquired about the status of her sisters' agreement regarding Lot 503, Leonila informed Linda that the agreement was yet to be reduced into a formal contract. Linda offered to prepare a contract between Florinda and Leonila who acceded to the offer. Thus, on September 9, 1991, Florinda and Leonila signed an Agreement [4] embodying the detailed scheme of payment for the lot covered by the sisters' agreement, to wit:

---

[3] *Id.*, pp. 51-53.

[4] *Id.*, pp. 54-55.

We, Gil and Leonila Segovia, husband and wife, of legal age, residing at 505 A. Paltok Street, Sta. Mesa, Manila, jointly agrees to pay Florinda dela Cruz the sum of ₱34,000.00 pesos Philippine currency in the following terms and conditions:

1. All previous contract or agreement is superseded by this existing contract.

2. Payment of the said amount will be payable in installment basis; in a monthly fashion respectively with no specific amount of payment within the period of ten (10) years; effectively after the contract is signed by both parties. ₱314.81 per month or ₱ 3,1777.77 (*sic*) per year. And by the year 1999 will be ₱34,000.00.

3. The borrowers (Sps. Segovia) agree to put their real property located at 505 B Paltok St., Sta. Mesa, Mla., with TCT # 177862- Registry of deeds (public document) as guarantees for the above loan, which has a monthly rent of ₱1,200.00 and will be collected by the Lender (Florinda) as part of the agreement of the loan.

4. As part of the agreement, the borrowers will live in the Lender's house, located at 505 Paltok St. in exchange for her property rents.

5. The lender also agrees that the borrowers manage the collection of rents around the house and endorse said rents to the owner who is the Lender. Lender gives her full consent to the borrowers to sub-rent whatever rooms she chooses inside her premises.

6. If payment was not made after ten (10) years, the Lender will take ownership of the property described above.

7. If payment is made on or before the due date of the agreement, the Lender shall immediately take care of all the necessary action with regards to impediment, attachment, encumbrances to the property.

x x x x x x x x x

After the Note of Agreement of April 28, 1990 and Agreement of September 9, 1991, Leonila continued paying the balance she owed Florinda. Particularly, she paid the amount of ₱10,000.00 in September 1990 and ₱7,555.44 on May 16, 1995. Finally,

in October 1995, Leonila attempted to pay the remaining balance of ₱26,444.56 in full satisfaction of her obligation but Florinda refused to accept the same on the ground that, the ten-year period for the payment of the balance, reckoned from July 1985, the alleged date of the verbal agreement between them, had already expired. Thereafter Florinda demanded that Leonila and her family vacate the house at 505 Paltok Street, which prompted respondents to consign the ₱26,444.56 in court.[5]

On March 8, 1996, petitioners filed with the RTC of Manila, Branch 44, a complaint for Nullity of Contract/Agreement with Damages on the ground that the Agreement executed on September 9, 1991 did not contain the true intention of the parties because Florinda's consent thereto was vitiated by mistake. Allegedly, Florinda did not know that the agreement provided that the ten-year period for payment of the balance commenced from September 1991 and not from July 1985 which was her true intention.

On May 5, 1999, the RTC rendered a decision dismissing the complaint for Nullity of Contract/Agreement with Damages and declaring the subject Agreement valid and subsisting. The decision's dispositive portion reads:

> WHEREFORE, in view of the foregoing considerations and a thorough examination of the evidence, and the pleadings together with the supporting documents, this Court finds the Agreement valid and subsisting – thus, the complaint filed by plaintiffs on March 8, 1996 is hereby ordered dismissed for lack of merit.
>
> The defendants are hereby ordered to pay the amount of ₱26,000.00 which is the remaining balance to complete the purchase price of the 503 Paltok Street, Sta. Mesa, Manila property to the plaintiffs afterwhich the latter and all the persons claiming under them, to surrender the ownership of 503 Paltok Street, Sta. Mesa, Manila, vacate and to surrender possession thereof.
>
> The plaintiffs are hereby ordered to pay defendants attorney's fees in the amount of ₱50,000.00, and to pay the costs.

---

[5] Record, pp. 324-328.

The counterclaim is denied.

SO ORDERED.[6]

In arriving at its decision, the RTC explained:

Granting *arguendo*, that Florinda dela Cruz's allegation that she has not read the Agreement is true, signing a contract without fully knowing the stipulations does not vitiate consent. Prudence dictates that Florinda dela Cruz who presented the agreement for signature should acquaint herself first with the "fine prints" of a contract before stamping her approval thereto. As it is, the fact remains that Florinda dela Cruz signed the agreement voluntarily on September 9, 1991 binding themselves that the balance of ₱34,000.00 be paid in installments within ten (10) years upon signing the agreement or until 1999. Indeed, the evidence will show that Florinda dela Cruz voluntarily entered into the Agreement and participated in the preparation thereof and after it has been prepared, the same was read to and by the parties themselves including Florinda dela Cruz and later voluntarily affixed her signature. Renato dela Cruz was also present at the time of the signing of the Agreement and presented a copy thereof.

A further reading of the complaint in paragraph 7 thereof, it is clear from the allegations that the Agreement is a valid existing contract only it did not express the intention of the parties, which may be a ground for reformation of contract only under Article 1359 of the Civil Code of the Philippines which provides that "when, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed."

x x x x x x x x x

Thus, the four year period to file the action for annulment, assuming there were indeed mistakes therein which vitiated plaintiffs' [petitioners] consent commenced to run on September 9, 1991. The action had already prescribed or lapsed and plaintiffs [petitioners] could no longer ask for the annulment of the agreement.

---

[6] CA *rollo*, pp. 101-114.

As to the contention that the subject agreement had no force and effect on account of the absence of the signature of Florinda's husband, petitioner Renato dela Cruz (Renato), the RTC ruled to the contrary, thus:

> Indeed, Renato dela Cruz did not sign the Agreement, however, he was present at the time the Agreement was signed by the parties and their witnesses, and the same was presented to him for his signature. In fact, attempts were even made to procure his signature, but plaintiff wife Florinda dela Cruz insisted that her signature already carries that of her husband Renato dela Cruz. The parties never insisted that Renato dela Cruz sign the Agreement as the wife has spoken. It is further observed that by his actuations Renato dela Cruz has agreed and has given his conformity to the agreement. He also did not object to the execution of the same at the time it was signed by his wife Florinda dela Cruz on September 9, 1991, even he was present and he was shown and furnished a copy of the said agreement.
>
> x x x x x x x x x
>
> It must be pointed out that plaintiff Florinda dela Cruz always consult her husband, Renato dela Cruz on all matters respecting their transactions (pp. 42-43, tsn, Sept. 13, 1996; p. 25, tsn, Aug. 15, 1997).
>
> So that the claim of Florinda dela Cruz that she has never informed her husband involving a very substantial property registered in his name, for ten years that it had allegedly been in effect and that she has been regularly collecting defendants staggered installment payments for the said property for a number of years lacks basis.
>
> More, Renato's claim that he was never aware of the agreement between the parties is doomed, since he was present at the time of the purchase of the property where he witnessed Leonila Segovia contributed their hard earned savings in the amount of ₱36,000.00 to complete their share to the purchase price of ₱180,000.00 of the properties in question, and who reminded defendants that the subject property will ultimately be theirs upon completion of their amortizations.

Finally, the RTC ruled that the action for annulment had already lapsed when the Complaint was filed on March 8, 1996.

The action for annulment shall be brought within four (4) years from the time of discovery of the mistake (Art. 1391, New Civil Code of the Philippines).

On the other hand, the defendants' [respondents'] evidence that after the preparation by Linda Duval on September 9, 1991, the Agreement was read to and by the parties, shown and signed by the parties and furnished each a copy of the agreement. Therefore, it could not be said that plaintiffs [petitioners] were not aware of the terms and conditions of the Agreement and did not discover the alleged mistakes contained therein on September 9, 1991.

More, plaintiffs [petitioners] likewise never raise any objection nor declare that there were mistakes in the agreement. It was only on March 8, 1996 that the present action for annulment was filed.

Their motion for reconsideration having been denied, petitioners filed with the RTC a Notice of Appeal.[7] Respondents too filed a Notice of Partial Appeal[8] questioning the dismissal of their counter-claim for damages. Accordingly, the records of the case were elevated to the CA, where both appeals were docketed as CA-G.R. CV No. 64487.

The CA affirmed the findings of the RTC in its decision,[9] promulgated on April 17, 2001. In so ruling, the CA also declared that, while the expiry date of the payment period was an important stipulation, it could not be considered as the substance of the contract nor the primary motivation for which the parties entered into the agreement. The substance of the Agreement was the sale of the property at 503 Paltok Street. The "mistake" that petitioners point to pertains to their interpretation of the contract, which is not a ground to annul the same. The CA found that the stipulations of the written agreement, signed on September 9, 1991, clearly intended to give the respondents ten (10) years from 1991 within which to effect payment of the balance of the consideration for the sale of the 503 property. In view of

---

[7] Record, p. 470.

[8] *Id.*, p. 475.

[9] *Supra* note 1.

the explicit terms of the said written agreement, the verbal agreement of July 1985 was already of no moment.

The motion for reconsideration of petitioners was denied by the CA in the resolution dated September 4, 2001.

Aggrieved by the foregoing CA decision, petitioners elevated the case to this Court raising the following assignment of errors:

I.

THE COURT OF APPEALS WITH DUE RESPECT SERIOUSLY ERRED IN HOLDING THAT THE AGREEMENT IS VALID AND SUBSISTING AND ORDERING THE PETITIONERS TO SURRENDER OWNERSHIP OF THE SUBJECT PROPERTY TO THE RESPONDENTS.

II.

THE COURT OF APPEALS WITH DUE RESPECT SERIOUSLY ERRED IN HOLDING THAT PETITIONER RENATO DELA CRUZ BY HIS ACTUATIONS HAD AGREED AND HAD GIVEN HIS CONFORMITY TO THE AGREEMENT.

We deny the petition.

We agree with the two courts below when they declared that the four (4)-year period for filing an action for annulment of the September 9, 1991 Agreement, on ground of vitiated consent, had already lapsed when the complaint subject of the present controversy was filed on March 8, 1996.

This is in accordance with Article 1391 of the Civil Code, which pertinently reads:

Art. 1391. The action for annulment shall be brought within four years.

This period shall begin:

x x x x x x x x x

In case of mistake or fraud, from the time of the discovery of the same.

x x x x x x x x x.

The complaint for Nullity of Contract/Agreement with Damages was filed on March 7, 1996, while the agreement subject thereof was entered into on September 9, 1991. The Agreement was read to the parties before they affixed their signatures thereon. Petitioners were thereafter furnished a copy of the subject Agreement. Petitioners are presumed to have discovered the alleged mistake on September 9, 1991. Hence, the action for annulment which was filed four years and six months from the time of the discovery of the mistake had already prescribed. Evidently, the Agreement could no longer be set aside.

We also agree with the ruling that the absence of Renato's signature in the September 9, 1991 Agreement bears little significance to its validity. Article 124 of the Family Code relied upon by petitioners provides that the administration of the conjugal partnership is now a joint undertaking of the husband and the wife. In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal partnership, the other spouse may assume sole powers of administration. However, the power of administration does not include the power to dispose or encumber property belonging to the conjugal partnership. In all instances, the present law specifically requires the written consent of the other spouse, or authority of the court for the disposition or encumbrance of conjugal partnership property without which, the disposition or encumbrance shall be void.

The foregoing provision finds no application in this case because the transaction between Florinda and Leonila in reality did not involve any disposition of property belonging to any of the sisters' conjugal assets. It may be recalled that the agreement was for the acquisition of two lots which were being sold together for ₱180,000.00. Florinda who had only ₱144,000.00 asked Leonila to contribute ₱36,000.00 to complete the purchase price of said lots. With money pooled together, the sisters agreed that Lot 503 be valued at ₱80,000.00 and Lot 505 valued at ₱100,000.00. The ₱36,000.00 contribution of Leonila shall be applied to the 503 property which upon full payment of the remaining balance of ₱44,000.00 advanced by Florinda shall belong to Leonila. On the other hand, of Florinda's ₱144,000.00

contribution, ₱ 100,000.00 shall be considered as full payment for the purchase of the 505 property and the ₱44,000.00 which was the balance of the purchase price of Lot 503, as loan to Leonila. To secure payment of the loan, Lot 503 was provisionally registered in the name of petitioners. Hence Lot 503 was at the outset not intended to be part of the conjugal asset of the petitioners but only as a security for the payment of the ₱44,000.00 due from respondents.

Moreover, while Florinda's husband did not affix his signature to the above-mentioned Agreement, we find no ground to disturb the uniform findings of the trial court and appellate court that Renato, by his actuations, agreed and gave his conformity to the Agreement. As found by the courts below, Renato's consent to the Agreement was drawn from the fact that he was present at the time it was signed by the sisters and their witnesses; he had knowledge of the Agreement as it was presented to him for his signature, although he did not sign the same because his wife Florinda insisted that her signature already carried that of her husband; Renato witnessed the fact that Leonila contributed her hard earned savings in the amount of ₱36,000.00 to complete their share in the purchase price of the properties in question in the total amount of ₱180,000.00. The aforesaid factual findings of the courts below are beyond review at this stage.[10]

WHEREFORE, the petition is *DENIED* and the assailed decision and resolution of the Court of Appeals are *AFFIRMED*.

Costs against the petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Azcuna, JJ.,* concur.

---

[10] *Isaias F. Fabrigas and Marcelina R. Fabrigas v. San Francisco Del Monte, Inc.,* G.R. No. 152346, November 25, 2005, 476 SCRA 263.

FIRST DIVISION

[G.R. No. 152580. June 26, 2008]

CONSUELO METAL CORPORATION, *petitioner, vs.* **PLANTERS DEVELOPMENT BANK and ATTY. JESUSA PRADO-MANINGAS, in her capacity as *Ex-officio* Sheriff of Manila,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; SECURITIES AND REGULATION CODE; SECURITIES AND EXCHANGE COMMISSION RETAINS JURISDICTION OVER PENDING SUSPENSION OF PAYMENTS/ REHABILITATION CASES FILED AS OF 30 JUNE 2000 UNTIL FINALLY DISPOSED; CASE AT BAR. — Republic Act No. 8799 (RA 8799) transferred to the appropriate regional trial courts the SEC's jurisdiction defined under Section 5(d) of Presidential Decree No. 902-A. Section 5.2 of RA 8799 provides: The Commission's jurisdiction over all cases enumerated under Sec. 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: x x x **The Commission shall retain jurisdiction over pending suspension of payments/ rehabilitation cases filed as of 30 June 2000 until finally disposed**. The SEC assumed jurisdiction over CMC's petition for suspension of payment and issued a suspension order on 2 April 1996 after it found CMC's petition to be sufficient in form and substance. While CMC's petition was still pending with the SEC as of 30 June 2000, it was finally disposed of on 29 November 2000 when the SEC issued its Omnibus Order directing the dissolution of CMC and the transfer of the liquidation proceedings before the appropriate trial court. The SEC finally disposed of CMC's petition for suspension of payment when it determined that CMC could no longer be successfully rehabilitated.

2. ID.; ID.; ID.; JURISDICTION OVER LIQUIDATION OF THE CORPORATION PERTAINS TO THE APPROPRIATE REGIONAL TRIAL COURTS. — While the SEC has jurisdiction to order the dissolution of a corporation, jurisdiction

over the liquidation of the corporation now pertains to the appropriate regional trial courts. This is the reason why the SEC, in its 29 November 2000 Omnibus Order, directed that "the proceedings on and implementation of the order of liquidation be commenced at the Regional Trial Court to which this case shall be transferred." This is the correct procedure because the liquidation of a corporation requires the settlement of claims for and against the corporation, which clearly falls under the jurisdiction of the regular courts. The trial court is in the best position to convene all the creditors of the corporation, ascertain their claims, and determine their preferences.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ORDER OF PREFERENCE OF CREDITS; SECURED CREDITORS SHALL ENJOY PREFERENCE OVER UNSECURED CREDITORS; RIGHT TO FORECLOSE THE REAL ESTATE MORTGAGE; WHEN MAY BE EXERCISED. — In *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, we held that if rehabilitation is no longer feasible and the assets of the corporation are finally liquidated, secured creditors shall enjoy preference over unsecured creditors, subject only to the provisions of the Civil Code on concurrence and preference of credits. Creditors of secured obligations may pursue their security interest or lien, or they may choose to abandon the preference and prove their credits as ordinary claims. Moreover, Section 2248 of the Civil Code provides: Those credits which enjoy preference in relation to specific real property or real rights, exclude all others to the extent of the value of the immovable or real right to which the preference refers. In this case, Planters Bank, as a secured creditor, enjoys preference over a specific mortgaged property and has a right to foreclose the mortgage under Section 2248 of the Civil Code. The creditor-mortgagee has the right to foreclose the mortgage over a specific real property whether or not the debtor-mortgagor is under insolvency or liquidation proceedings. The right to foreclose such mortgage is merely suspended upon the appointment of a management committee or rehabilitation receiver or upon the issuance of a stay order by the trial court. However, the creditor-mortgagee may exercise his right to foreclose the mortgage upon the termination of the rehabilitation proceedings or upon the lifting of the stay order.

4. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; FORECLOSURE PROCEEDINGS PRESUMED TO HAVE BEEN REGULARLY PERFORMED; BURDEN OF EVIDENCE TO REBUT THE SAME IS ON THE PARTY THAT SEEKS TO CHALLENGE THE PROCEEDINGS. — Foreclosure proceedings have in their favor the presumption of regularity and the burden of evidence to rebut the same is on the party that seeks to challenge the proceedings. CMC's challenge to the foreclosure proceedings has no merit. The notice of sale clearly specified that the auction sale will be held "at 10:00 o'clock in the morning or soon thereafter, but not later than 2:00 o'clock in the afternoon." The Sheriff's Minutes of the Sale stated that "the foreclosure sale was actually opened at 10:00 A.M. and commenced at 2:30 P.M." There was nothing irregular about the foreclosure proceedings.

APPEARANCES OF COUNSEL

Yngson & Associates for petitioner.
Raymundo Santos Senga & Associates for Planters Dev't. Bank.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] seeking to reverse the 14 December 2001 Decision[2] and the 6 March 2002 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 65069. In its 14 December 2001 Decision, the Court of Appeals dismissed petitioner Consuelo Metal Corporation's (CMC) petition for *certiorari* and affirmed the 25 April 2001 Order[4] of the Regional Trial Court, Branch

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 49-56. Penned by Associate Justice Alicia L. Santos, with Associate Justices Buenaventura J. Guerrero and Marina L. Buzon, concurring.

[3] *Id*. at 57-59.

[4] CA *rollo*, pp. 32-35. Penned by Judge Artemio S. Tipon.

46, Manila (trial court). In its 6 March 2002 Resolution, the Court of Appeals partially granted CMC's motion for reconsideration and remanded the case to the Securities and Exchange Commission (SEC) for further proceedings.

The Facts

On 1 April 1996, CMC filed before the SEC a petition to be declared in a state of suspension of payment, for rehabilitation, and for the appointment of a rehabilitation receiver or management committee under Section 5(d) of Presidential Decree No. 902-A.[5] On 2 April 1996, the SEC, finding the petition sufficient in form and substance, declared that "all actions for claims against CMC pending before any court, tribunal, office, board, body and/or commission are deemed suspended immediately until further order" from the SEC.[6]

In an Order dated 13 September 1999, the SEC directed the creation of a management committee to undertake CMC's rehabilitation and reiterated the suspension of all actions for claims against CMC.[7]

On 29 November 2000, upon the management committee's recommendation,[8] the SEC issued an Omnibus Order directing

---

[5] Section 5(d) of Presidential Decree No. 902-A provides:

Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving x x x

(d) Petitions of corporations, partnerships or associations to be declared in a state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities but is under the management of a Rehabilitation Receiver or Management Committee.

[6] CA *rollo*, p. 61.

[7] *Rollo*, pp. 102-107.

[8] CA *rollo*, pp. 68-70.

the dissolution and liquidation of CMC.[9] The SEC also directed that "the proceedings on and implementation of the order of liquidation be commenced at the Regional Trial Court to which this case shall be transferred."[10]

Thereafter, respondent Planters Development Bank (Planters Bank), one of CMC's creditors, commenced the extra-judicial foreclosure of CMC's real estate mortgage. Public auctions were scheduled on 30 January 2001 and 6 February 2001.

CMC filed a motion for the issuance of a temporary restraining order and a writ of preliminary injunction with the SEC to enjoin the foreclosure of the real estate mortgage. On 29 January 2001, the SEC issued a temporary restraining order to maintain the status quo and ordered the immediate transfer of the case records to the trial court.[11]

The case was then transferred to the trial court. In its 25 April 2001 Order, the trial court denied CMC's motion for issuance of a temporary restraining order. The trial court ruled that since the SEC had already terminated and decided on the merits CMC's petition for suspension of payment, the trial court no longer had legal basis to act on CMC's motion.

On 28 May 2001, the trial court denied CMC's motion for reconsideration.[12] The trial court ruled that CMC's petition for suspension of payment could not be converted into a petition for dissolution and liquidation because they covered different subject matters and were governed by different rules. The trial court stated that CMC's remedy was to file a new petition for dissolution and liquidation either with the SEC or the trial court.

CMC filed a petition for *certiorari* with the Court of Appeals. CMC alleged that the trial court acted with grave abuse of discretion amounting to lack of jurisdiction when it required

---

[9] *Rollo*, pp. 108-113.

[10] *Id*. at 113.

[11] *Id*. at 114-116.

[12] CA *rollo*, pp. 36-37.

CMC to file a new petition for dissolution and liquidation with either the SEC or the trial court when the SEC clearly retained jurisdiction over the case.

On 13 June 2001, Planters Bank extra-judicially foreclosed the real estate mortgage.[13]

The Ruling of the Court of Appeals

On 14 December 2001, the Court of Appeals dismissed the petition and upheld the 25 April 2001 Order of the trial court. The Court of Appeals held that the trial court correctly denied CMC's motion for the issuance of a temporary restraining order because it was only an ancillary remedy to the petition for suspension of payment which was already terminated. The Court of Appeals added that, under Section 121 of the Corporation Code,[14] the SEC has jurisdiction to hear CMC's petition for dissolution and liquidation.

CMC filed a motion for reconsideration. CMC argued that it does not have to file a new petition for dissolution and liquidation with the SEC but that the case should just be remanded to the SEC as a continuation of its jurisdiction over the petition for suspension of payment. CMC also asked that Planters Bank's foreclosure of the real estate mortgage be declared void.

In its 6 March 2002 Resolution, the Court of Appeals partially granted CMC's motion for reconsideration and ordered that the case be remanded to the SEC under Section 121 of the Corporation Code. The Court of Appeals also ruled that since the SEC already ordered CMC's dissolution and liquidation, Planters Bank's foreclosure of the real estate mortgage was in order.

---

[13] *Id.* at 130-132.

[14] Section 121 of the Corporation Code provides:

Sec. 121. *Involuntary dissolution.* — A corporation may be dissolved by the Securities and Exchange Commission upon the filing of a verified complaint and after proper notice and hearing on grounds provided by existing laws, rules and regulations.

Planters Bank filed a motion for reconsideration questioning the remand of the case to the SEC. In a resolution dated 19 July 2002, the Court of Appeals denied the motion for reconsideration.

Not satisfied with the 6 March 2002 Resolution, CMC filed this petition for review on *certiorari*.

The Issues

CMC raises the following issues:

1. Whether the present case falls under Section 121 of the Corporation Code, which refers to the SEC's jurisdiction over CMC's dissolution and liquidation, or is only a continuation of the SEC's jurisdiction over CMC's petition for suspension of payment; and
2. Whether Planters Bank's foreclosure of the real estate mortgage is valid.

The Court's Ruling

The petition has no merit.

The SEC has jurisdiction to order CMC's dissolution but the trial court has jurisdiction over CMC's liquidation.

While CMC agrees with the ruling of the Court of Appeals that the SEC has jurisdiction over CMC's dissolution and liquidation, CMC argues that the Court of Appeals remanded the case to the SEC on the wrong premise that the applicable law is Section 121 of the Corporation Code. CMC maintains that the SEC retained jurisdiction over its dissolution and liquidation because it is only a continuation of the SEC's jurisdiction over CMC's original petition for suspension of payment which had not been "finally disposed of as of 30 June 2000."

On the other hand, Planters Bank insists that the trial court has jurisdiction over CMC's dissolution and liquidation. Planters Bank argues that dissolution and liquidation are entirely new proceedings for the termination of the existence of the corporation which are incompatible with a petition for suspension of payment which seeks to preserve corporate existence.

Republic Act No. 8799 (RA 8799)[15] transferred to the appropriate regional trial courts the SEC's jurisdiction defined under Section 5(d) of Presidential Decree No. 902-A. Section 5.2 of RA 8799 provides:

> The Commission's jurisdiction over all cases enumerated under Sec. 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. **The Commission shall retain jurisdiction over pending suspension of payments/ rehabilitation cases filed as of 30 June 2000 until finally disposed.** (Emphasis supplied)

The SEC assumed jurisdiction over CMC's petition for suspension of payment and issued a suspension order on 2 April 1996 after it found CMC's petition to be sufficient in form and substance. While CMC's petition was still pending with the SEC as of 30 June 2000, it was finally disposed of on 29 November 2000 when the SEC issued its Omnibus Order directing the dissolution of CMC and the transfer of the liquidation proceedings before the appropriate trial court. The SEC finally disposed of CMC's petition for suspension of payment when it determined that CMC could no longer be successfully rehabilitated.

However, the SEC's jurisdiction does not extend to the liquidation of a corporation. While the SEC has jurisdiction to order the dissolution of a corporation,[16] jurisdiction over the liquidation of the corporation now pertains to the appropriate regional trial courts. This is the reason why the SEC, in its 29 November 2000 Omnibus Order, directed that "the proceedings on and implementation of the order of liquidation be commenced

---

[15] Also known as "The Securities Regulation Code" which took effect on 8 August 2000.

[16] Sections 119 and 121 of the Corporation Code.

at the Regional Trial Court to which this case shall be transferred." This is the correct procedure because the liquidation of a corporation requires the settlement of claims for and against the corporation, which clearly falls under the jurisdiction of the regular courts. The trial court is in the best position to convene all the creditors of the corporation, ascertain their claims, and determine their preferences.

Foreclosure of real estate mortgage is valid.

CMC maintains that the foreclosure is void because it was undertaken without the knowledge and previous consent of the liquidator and other lien holders. CMC adds that the rules on concurrence and preference of credits should apply in foreclosure proceedings. Assuming that Planters Bank can foreclose the mortgage, CMC argues that the foreclosure is still void because it was conducted in violation of Section 15, Rule 39 of the Rules of Court which states that the sale "should not be earlier than nine o'clock in the morning and not later than two o'clock in the afternoon."

On the other hand, Planters Bank argues that it has the right to foreclose the real estate mortgage because of non-payment of the loan obligation. Planters Bank adds that the rules on concurrence and preference of credits and the rules on insolvency are not applicable in this case because CMC has been not been declared insolvent and there are no insolvency proceedings against CMC.

In *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*,[17] we held that if rehabilitation is no longer feasible and the assets of the corporation are finally liquidated, secured creditors shall enjoy preference over unsecured creditors, subject only to the provisions of the Civil Code on concurrence and preference of credits. Creditors of secured obligations may pursue their security interest or lien, or they may choose to abandon the preference and prove their credits as ordinary claims.[18]

---

[17] 378 Phil. 10 (1999).

[18] Vitug, *J.*, *COMMERCIAL LAWS AND JURISPRUDENCE*, 557 (Volume 1, ed. 2006).

Moreover, Article 2248 of the Civil Code provides:

> Those credits which enjoy preference in relation to specific real property or real rights, exclude all others to the extent of the value of the immovable or real right to which the preference refers.

In this case, Planters Bank, as a secured creditor, enjoys preference over a specific mortgaged property and has a right to foreclose the mortgage under Article 2248 of the Civil Code. The creditor-mortgagee has the right to foreclose the mortgage over a specific real property whether or not the debtor-mortgagor is under insolvency or liquidation proceedings. The right to foreclose such mortgage is merely suspended upon the appointment of a management committee or rehabilitation receiver[19] or upon the issuance of a stay order by the trial court.[20] However, the creditor-mortgagee may exercise his right to foreclose the mortgage upon the termination of the rehabilitation proceedings or upon the lifting of the stay order.[21]

Foreclosure proceedings have in their favor the presumption of regularity and the burden of evidence to rebut the same is on the party that seeks to challenge the proceedings.[22] CMC's challenge to the foreclosure proceedings has no merit. The notice of sale clearly specified that the auction sale will be held "at 10:00 o'clock in the morning or soon thereafter, but not later than 2:00 o'clock in the afternoon."[23] The Sheriff's Minutes of the Sale stated that "the foreclosure sale was actually opened at 10:00 A.M. and commenced at 2:30 P.M."[24] There was nothing irregular about the foreclosure proceedings.

---

[19] Section 6(c) of Presidential Decree No. 902-A.

[20] Section 6, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation.

[21] Section 12, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation.

[22] *Union Bank of the Philippines v. Court of Appeals*, G.R. No. 164910, 30 September 2005, 471 SCRA 751.

[23] CA *rollo*, p. 130.

[24] *Rollo*, p. 62.

WHEREFORE, we *DENY* the petition. We ***REINSTATE*** the 29 November 2000 Omnibus Order of the Securities and Exchange Commission directing the Regional Trial Court, Branch 46, Manila to immediately undertake the liquidation of Consuelo Metal Corporation. We *AFFIRM* the ruling of the Court of Appeals that Planters Development Bank's extra-judicial foreclosure of the real estate mortgage is valid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 154953. June 26, 2008]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **T.A.N. PROPERTIES, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND TITLES AND DEEDS; LAND REGISTRATION; BURDEN OF PROOF TO OVERTURN BY INCONTROVERTIBLE EVIDENCE THE PRESUMPTION THAT THE LAND SUBJECT OF AN APPLICATION FOR REGISTRATION IS ALIENABLE AND DISPOSABLE RESTS WITH THE APPLICANT. — The well-entrenched rule is that all lands not appearing to be clearly of private dominion presumably belong to the State. The *onus* to overturn, by incontrovertible evidence, the presumption that the land subject of an application for registration is alienable and disposable rests with the applicant.

2. ID.; ID.; ID.; ID.; PRESUMPTION NOT OVERTURNED BY INCONTROVERTIBLE EVIDENCE IN CASE AT BAR. —

> [I]t is not enough for the PENRO or CENRO to certify that a land is alienable and disposable. The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable. Respondent failed to do so because the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable.

3. REMEDIAL LAW; EVIDENCE; PUBLIC DOCUMENTS, DEFINED. — Public documents are defined under Section 19, Rule 132 of the Revised Rules on Evidence as follows: (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country; (b) Documents acknowledged before a notary public except last wills and testaments; and (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

4. ID.; ID.; ID.; CERTIFICATIONS ARE *PRIMA FACIE* EVIDENCE OF THEIR DUE EXECUTION AND DATE OF ISSUANCE BUT THEY DO NOT CONSTITUTE *PRIMA FACIE* EVIDENCE OF THE FACTS STATED THEREIN. — The CENRO and Regional Technical Director, FMS-DENR, certifications do not prove that Lot 10705-B falls within the alienable and disposable land as proclaimed by the DENR Secretary. Such government certifications do not, by their mere issuance, prove the facts stated therein. Such government certifications may fall under the class of documents contemplated in the second sentence of Section 23 of Rule 132. As such, the certifications are *prima facie* evidence of their due execution and date of issuance but they do not constitute *prima facie* evidence of the facts stated therein.

5. ID.; ID.; ID.; ID.; A DOCUMENT OR WRITING ADMITTED AS PART OF THE TESTIMONY OF A WITNESS DOES NOT CONSTITUTE PROOF OF THE FACTS STATED

THEREIN; CASE AT BAR. — The Court has also ruled that a document or writing admitted as part of the testimony of a witness does not constitute proof of the facts stated therein. Here, Torres, a private individual and respondent's representative, identified the certifications but the government officials who issued the certifications did not testify on the contents of the certifications. As such, the certifications cannot be given probative value. The contents of the certifications are hearsay because Torres was incompetent to testify on the veracity of the contents of the certifications. Torres did not prepare the certifications, he was not an officer of CENRO or FMS-DENR, and he did not conduct any verification survey whether the land falls within the area classified by the DENR Secretary as alienable and disposable.

6. CIVIL LAW; LAND TITLES AND DEEDS; TAX DECLARATIONS ARE NOT CONCLUSIVE EVIDENCE OF OWNERSHIP BUT CONSTITUTE PROOF OF CLAIM OF OWNERSHIP. — The tax declarations presented were only for the years starting 1955. While tax declarations are not conclusive evidence of ownership, they constitute proof of claim of ownership. Respondent did not present any credible explanation why the realty taxes were only paid starting 1955 considering the claim that the Dimayugas were allegedly in possession of the land before 1945. The payment of the realty taxes starting 1955 gives rise to the presumption that the Dimayugas claimed ownership or possession of the land only in that year.

7. POLITICAL LAW; CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; PRIVATE CORPORATIONS CANNOT ACQUIRE ANY KIND OF ALIENABLE LAND OF THE PUBLIC DOMAIN. — The 1987 Constitution absolutely prohibits private corporations from acquiring any kind of alienable land of the public domain. In *Chavez v. Public Estates Authority*, the Court traced the law on disposition of lands of the public domain. Under the 1935 Constitution, there was no prohibition against private corporations from acquiring agricultural land. The 1973 Constitution limited the alienation of lands of the public domain to individuals who were citizens of the Philippines. Under the 1973 Constitution, private corporations, even if wholly owned by Filipino citizens, were no longer allowed to acquire alienable lands of the public domain. The present 1987 Constitution continues the prohibition

against private corporations from acquiring any kind of alienable land of the public domain.

8. CIVIL LAW; LAND TITLES AND DEEDS; OPEN, EXCLUSIVE, AND UNDISPUTED POSSESSION OF ALIENABLE LAND FOR THE PERIOD PRESCRIBED BY LAW CREATED THE LEGAL FICTION WHEREBY THE LAND, UPON COMPLETION OF THE REQUISITE PERIOD, *IPSO JURE* AND WITHOUT THE NEED OF JUDICIAL OR OTHER SANCTION CEASES TO BE PUBLIC LAND AND BECOME PRIVATE PROPERTY. — In *Director of Lands*, the Court further ruled that open, exclusive, and undisputed possession of alienable land for the period prescribed by law created the legal fiction whereby the land, upon completion of the requisite period, *ipso jure* and without the need of judicial or other sanction ceases to be public land and becomes private property. The Court ruled: x x x Nothing can more clearly demonstrate the logical inevitability of considering possession of public land which is of the character and duration prescribed by statute as the equivalent of an express grant from the State than the dictum of the statute itself that the possessor(s) "x x x shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title x x x." No proof being admissible to overcome a conclusive presumption, confirmation proceedings would, in truth be little more than a formality, at the most limited to ascertaining whether the possession claimed is of the required character and length of time; and registration thereunder would not confer title, but simply recognize a title already vested. The proceedings would not *originally* convert the land from public to private land, but only confirm such a conversion already effected by operation of law from the moment the required period of possession became complete. x x x [A]lienable public land held by a possessor, personally or through his predecessors-in-interest, openly, continuously and exclusively for the prescribed statutory period of (30 years under The Public Land Act, as amended) is converted to private property by the mere lapse or completion of said period, *ipso jure*.

9. ID.; ID.; ID.; TO ENABLE A CORPORATION TO FILE FOR REGISTRATION OF ALIENABLE AND DISPOSABLE LAND, THE CORPORATION MUST HAVE ACQUIRED

THE LAND WHEN ITS TRANSFEROR HAD ALREADY A VESTED RIGHT TO A JUDICIAL CONFIRMATION OF TITLE TO THE LAND. — For *Director of Lands* to apply and enable a corporation to file for registration of alienable and disposable land, the corporation must have acquired the land when its transferor had already a vested right to a judicial confirmation of title to the land by virtue of his open, continuous and adverse possession of the land in the concept of an owner for at least 30 years since 12 June 1945. x x x Thus, in *Natividad v. Court of Appeals*, the Court declared: Under the facts of this case and pursuant to the above rulings, the parcels of land in question had already been converted to private ownership through acquisitive prescription by the predecessors-in-interest of TCMC when the latter purchased them in 1979. All that was needed was the confirmation of the titles of the previous owners or predecessors-in-interest of TCMC. Being already private land when TCMC bought them in 1979, the prohibition in the 1973 Constitution against corporations acquiring alienable lands of the public domain except through lease (Article XIV, Section 11, 1973 Constitution) did not apply to them for they were no longer alienable lands of the public domain but private property. x x x What is determinative for the doctrine in *Director of Lands* to apply is for the corporate applicant for land registration to establish that when it acquired the land, the same was already private land by operation of law because the statutory acquisitive prescriptive period of 30 years had already lapsed. The length of possession of the land by the corporation cannot be tacked on to complete the statutory 30 years acquisitive prescriptive period. Only an individual can avail of such acquisitive prescription since both the 1973 and 1987 Constitutions prohibit corporations from acquiring lands of the public domain.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Roxas Delos Reyes Laurel and Rosario for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 21 August 2002 Decision[2] of the Court of Appeals in CA-G.R. CV No. 66658. The Court of Appeals affirmed *in toto* the 16 December 1999 Decision[3] of the Regional Trial Court of Tanauan, Batangas, Branch 6 (trial court) in Land Registration Case No. T-635.

The Antecedent Facts

This case originated from an Application for Original Registration of Title filed by T.A.N. Properties, Inc. covering Lot 10705-B of the subdivision plan Csd-04-019741 which is a portion of the consolidated Lot 10705, Cad-424, Sto. Tomas Cadastre. The land, with an area of 564,007 square meters, or 56.4007 hectares, is located at San Bartolome, Sto. Tomas, Batangas.

On 31 August 1999, the trial court set the case for initial hearing at 9:30 a.m. on 11 November 1999. The Notice of Initial Hearing was published in the Official Gazette, 20 September 1999 issue, Volume 95, No. 38, pages 6793 to 6794,[4] and in the 18 October 1999 issue of People's Journal Taliba,[5] a newspaper of general circulation in the Philippines. The Notice of Initial Hearing was also posted in a conspicuous place on the bulletin board of the Municipal Building of Sto. Tomas, Batangas, as well as in a conspicuous place on the land.[6] All adjoining

---

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 63-70. Penned by Associate Justice Buenaventura J. Guerrero with Associate Justices Rodrigo V. Cosico and Perlita J. Tria Tirona, concurring.

[3] *Id*. at 56-61. Penned by Judge Flordelis Ozaeta Navarro.

[4] Records, p. 78.

[5] *Id*. at 81.

[6] *Id*. at 66.

owners and all government agencies and offices concerned were notified of the initial hearing.[7]

On 11 November 1999, when the trial court called the case for initial hearing, there was no oppositor other than the Opposition dated 7 October 1999 of the Republic of the Philippines represented by the Director of Lands (petitioner). On 15 November 1999, the trial court issued an Order[8] of General Default against the whole world except as against petitioner.

During the hearing on 19 November 1999, Ceferino Carandang (Carandang) appeared as oppositor. The trial court gave Carandang until 29 November 1999 within which to file his written opposition.[9] Carandang failed to file his written opposition and to appear in the succeeding hearings. In an Order[10] dated 13 December 1999, the trial court reinstated the Order of General Default.

During the hearings conducted on 13 and 14 December 1999, respondent presented three witnesses: Anthony Dimayuga Torres (Torres), respondent's Operations Manager and its authorized representative in the case; Primitivo Evangelista (Evangelista), a 72-year old resident of San Bartolome, Sto. Tomas, Batangas since birth; and Regalado Marquez, Records Officer II of the Land Registration Authority (LRA), Quezon City.

The testimonies of respondent's witnesses showed that Prospero Dimayuga (Kabesang Puroy) had peaceful, adverse, open, and continuous possession of the land in the concept of an owner since 1942. Upon his death, Kabesang Puroy was succeeded by his son Antonio Dimayuga (Antonio). On 27 September 1960, Antonio executed a Deed of Donation covering the land in favor of one of his children, Fortunato Dimayuga (Fortunato). Later, however, Antonio gave Fortunato another piece of land. Hence, on 26 April 1961, Antonio executed a Partial Revocation of Donation, and the land was adjudicated to one of Antonio's

---

[7] *Id*. at 69.

[8] *Id*. at 99.

[9] *Id*. at 101.

[10] *Id*. at 111.

children, Prospero Dimayuga (Porting).[11] On 8 August 1997, Porting sold the land to respondent.

The Ruling of the Trial Court

In its 16 December 1999 Decision, the trial court adjudicated the land in favor of respondent.

The trial court ruled that a juridical person or a corporation could apply for registration of land provided such entity and its predecessors-in-interest have possessed the land for 30 years or more. The trial court ruled that the facts showed that respondent's predecessors-in-interest possessed the land in the concept of an owner prior to 12 June 1945, which possession converted the land to private property.

The dispositive portion of the trial court's Decision reads:

> WHEREFORE, and upon previous confirmation of the Order of General Default, the Court hereby adjudicates and decrees Lot 10705-B, identical to Lot 13637, Cad-424, Sto. Tomas Cadastre, on plan Csd-04-019741, situated in Barangay of San Bartolome, Municipality of Sto. Tomas, Province of Batangas, with an area of 564,007 square meters, in favor of and in the name of T.A.N. Properties, Inc., a domestic corporation duly organized and existing under Philippine laws with principal office at 19th Floor, PDCP Bank Building, 8737 Paseo de Roxas, Makati City.
>
> Once this Decision shall have become final, let the corresponding decree of registration be issued.
>
> SO ORDERED.[12]

Petitioner appealed from the trial court's Decision. Petitioner alleged that the trial court erred in granting the application for registration absent clear evidence that the applicant and its predecessors-in-interest have complied with the period of possession and occupation as required by law. Petitioner alleged that the testimonies of Evangelista and Torres are general in nature. Considering the area involved, petitioner argued that

---

[11] Also referred to as Forting.

[12] *Rollo*, pp. 60-61.

additional witnesses should have been presented to corroborate Evangelista's testimony.

The Ruling of the Court of Appeals

In its 21 August 2002 Decision, the Court of Appeals affirmed *in toto* the trial court's Decision.

The Court of Appeals ruled that Evangelista's knowledge of the possession and occupation of the land stemmed not only from the fact that he worked there for three years but also because he and Kabesang Puroy were practically neighbors. On Evangelista's failure to mention the name of his uncle who continuously worked on the land, the Court of Appeals ruled that Evangelista should not be faulted as he was not asked to name his uncle when he testified. The Court of Appeals also ruled that at the outset, Evangelista disclaimed knowledge of Fortunato's relation to Kabesang Puroy, but this did not affect Evangelista's statement that Fortunato took over the possession and cultivation of the land after Kabesang Puroy's death. The Court of Appeals further ruled that the events regarding the acquisition and disposition of the land became public knowledge because San Bartolome was a small community. On the matter of additional witnesses, the Court of Appeals ruled that petitioner failed to cite any law requiring the corroboration of the sole witness' testimony.

The Court of Appeals further ruled that Torres was a competent witness since he was only testifying on the fact that he had caused the filing of the application for registration and that respondent acquired the land from Porting.

Petitioner comes to this Court assailing the Court of Appeals' Decision. Petitioner raises the following grounds in its Memorandum:

> The Court of Appeals erred on a question of law in allowing the grant of title to applicant corporation despite the following:
>
> 1. Absence of showing that it or its predecessors-in-interest had open, continuous, exclusive, and notorious possession and occupation in the concept of an owner since 12 June 1945 or earlier; and

2. Disqualification of applicant corporation to acquire the subject tract of land.[13]

The Issues

The issues may be summarized as follows:

1. Whether the land is alienable and disposable;
2. Whether respondent or its predecessors-in-interest had open, continuous, exclusive, and notorious possession and occupation of the land in the concept of an owner since June 1945 or earlier; and
3. Whether respondent is qualified to apply for registration of the land under the Public Land Act.

The Ruling of this Court

The petition has merit.

Respondent Failed to Prove that the Land is Alienable and Disposable

Petitioner argues that anyone who applies for registration has the burden of overcoming the presumption that the land forms part of the public domain. Petitioner insists that respondent failed to prove that the land is no longer part of the public domain.

The well-entrenched rule is that all lands not appearing to be clearly of private dominion presumably belong to the State.[14] The *onus* to overturn, by incontrovertible evidence, the presumption that the land subject of an application for registration is alienable and disposable rests with the applicant.[15]

In this case, respondent submitted two certifications issued by the Department of Environment and Natural Resources (DENR). The 3 June 1997 Certification by the Community Environment and Natural Resources Offices (CENRO), Batangas

---

[13] *Id*. at 173-174.

[14] *Republic v. Naguiat*, G.R. No. 134209, 24 January 2006, 479 SCRA 585.

[15] *Id*.

City,[16] certified that "lot 10705, Cad-424, Sto. Tomas Cadastre situated at Barangay San Bartolome, Sto. Tomas, Batangas with an area of 596,116 square meters falls within the ALIENABLE AND DISPOSABLE ZONE under Project No. 30, Land Classification Map No. 582 certified [on] 31 December 1925." The second certification[17] in the form of a memorandum to the trial court, which was issued by the Regional Technical Director, Forest Management Services of the DENR (FMS-DENR), stated "that the subject area falls within an alienable and disposable land, Project No. 30 of Sto. Tomas, Batangas certified on Dec. 31, 1925 per LC No. 582."

The certifications are not sufficient. DENR Administrative Order (DAO) No. 20,[18] dated 30 May 1988, delineated the functions and authorities of the offices within the DENR. Under DAO No. 20, series of 1988, the CENRO issues certificates of land classification status for areas below 50 hectares. The Provincial Environment and Natural Resources Offices (PENRO) issues certificate of land classification status for lands covering over 50 hectares. DAO No. 38,[19] dated 19 April 1990, amended DAO No. 20, series of 1988. DAO No. 38, series of 1990 retained the authority of the CENRO to issue certificates of land classification status for areas below 50 hectares, as well as the authority of the PENRO to issue certificates of land classification status for lands covering over 50 hectares.[20] In

---

[16] Records, p. 143. Signed by CENR Officer Pancrasio M. Alcantara.

[17] *Id*. at 91. Signed by Wilfredo M. Riña.

[18] Delineation of Regulatory Functions and Authorities.

[19] Revised Regulations on the Delineation of Functions and Delineation of Authorities.

[20] On 2 June 1998, DAO No. 98-24 was issued, adopting a DENR Manual of Approvals delegating authorities and delineating functions in the DENR Central and Field Offices. DAO No. 98-24 superseded DAO Nos. 38 and 38-A and all inconsistent orders and circulars involving delegated authority. DAO No. 98-24 is silent on the authority to issue certificates of land classification status, whether for areas below 50 hectares or for lands covering over 50 hectares. The CENRO certification in this case was issued prior to the adoption of the DENR Manual of Approvals.

this case, respondent applied for registration of Lot 10705-B. The area covered by Lot 10705-B is over 50 hectares (564,007 square meters). The CENRO certificate covered the entire Lot 10705 with an area of 596,116 square meters which, as per DAO No. 38, series of 1990, is beyond the authority of the CENRO to certify as alienable and disposable.

The Regional Technical Director, FMS-DENR, has no authority under DAO Nos. 20 and 38 to issue certificates of land classification. Under DAO No. 20, the Regional Technical Director, FMS-DENR:

1. Issues original and renewal of ordinary minor products (OM) permits except rattan;
2. Approves renewal of resaw/mini-sawmill permits;
3. Approves renewal of special use permits covering over five hectares for public infrastructure projects; and
4. Issues renewal of certificates of registration for logs, poles, piles, and lumber dealers.

Under DAO No. 38, the Regional Technical Director, FMS-DENR:

1. Issues original and renewal of ordinary minor [products] (OM) permits except rattan;
2. Issues renewal of certificate of registration for logs, poles, and piles and lumber dealers;
3. Approves renewal of resaw/mini-sawmill permits;
4. Issues public gratuitous permits for 20 to 50 cubic meters within calamity declared areas for public infrastructure projects; and
5. Approves original and renewal of special use permits covering over five hectares for public infrastructure projects.

Hence, the certification issued by the Regional Technical Director, FMS-DENR, in the form of a memorandum to the trial court, has no probative value.

Further, it is not enough for the PENRO or CENRO to certify that a land is alienable and disposable. The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per

verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable. Respondent failed to do so because the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable.

Only Torres, respondent's Operations Manager, identified the certifications submitted by respondent. The government officials who issued the certifications were not presented before the trial court to testify on their contents. The trial court should not have accepted the contents of the certifications as proof of the facts stated therein. Even if the certifications are presumed duly issued and admissible in evidence, they have no probative value in establishing that the land is alienable and disposable.

Public documents are defined under Section 19, Rule 132 of the Revised Rules on Evidence as follows:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

Applying Section 24 of Rule 132, the record of public documents referred to in Section 19(a), when admissible for any purpose, may be evidenced by an official publication thereof **or by a copy attested by the officer having legal custody of the record, or by his deputy** x x x. The CENRO is not the official repository or legal custodian of the issuances of the DENR Secretary declaring public lands as alienable and disposable. The CENRO should have attached an official publication[21] of the DENR Secretary's issuance declaring the land alienable and disposable.

[21] *Salic v. Comelec*, 469 Phil. 775 (2004).

Section 23, Rule 132 of the Revised Rules on Evidence provides:

> Sec. 23. *Public documents as evidence*. Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts stated therein. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

The CENRO and Regional Technical Director, FMS-DENR, certifications do not fall within the class of public documents contemplated in the first sentence of Section 23 of Rule 132. The certifications do not reflect "entries in public records made in the performance of a duty by a public officer," such as entries made by the Civil Registrar[22] in the books of registries, or by a ship captain in the ship's logbook.[23] The certifications are not the certified copies or authenticated reproductions of original official records in the legal custody of a government office. The certifications are not even records of public documents.[24] The certifications are conclusions unsupported by adequate proof, and thus have no probative value.[25] Certainly, the certifications cannot be considered *prima facie* evidence of the facts stated therein.

The CENRO and Regional Technical Director, FMS-DENR, certifications do not prove that Lot 10705-B falls within the alienable and disposable land as proclaimed by the DENR Secretary. Such government certifications do not, by their mere issuance, prove the facts stated therein.[26] Such government certifications may fall under the class of documents contemplated in the second sentence of Section 23 of Rule 132. As such, the certifications are *prima facie* evidence of their due execution

---

[22] Article 410, Civil Code.

[23] *Haverton Shipping Ltd. v. NLRC*, 220 Phil. 356 (1985).

[24] *Delfin v. Billones*, G.R. No. 146550, 17 March 2006, 485 SCRA 38.

[25] *Ambayec v. Court of Appeals*, G.R. No. 162780, 21 June 2005, 460 SCRA 537.

[26] *Supra* note 23.

and date of issuance but they do not constitute *prima facie* evidence of the facts stated therein.

The Court has also ruled that a document or writing admitted as part of the testimony of a witness does not constitute proof of the facts stated therein.[27] Here, Torres, a private individual and respondent's representative, identified the certifications but the government officials who issued the certifications did not testify on the contents of the certifications. As such, the certifications cannot be given probative value.[28] The contents of the certifications are hearsay because Torres was incompetent to testify on the veracity of the contents of the certifications.[29] Torres did not prepare the certifications, he was not an officer of CENRO or FMS-DENR, and he did not conduct any verification survey whether the land falls within the area classified by the DENR Secretary as alienable and disposable.

Petitioner also points out the discrepancy as to when the land allegedly became alienable and disposable. The DENR Secretary certified that based on Land Classification Map No. 582, the land became alienable and disposable on 31 December 1925. However, the certificate on the blue print plan states that it became alienable and disposable on 31 December 1985.

We agree with petitioner that while the certifications submitted by respondent show that under the Land Classification Map No. 582, the land became alienable and disposable on 31 December 1925, the blue print plan states that it became alienable and disposable on 31 December 1985. Respondent alleged that "the blue print plan merely serves to prove the precise location and the metes and bounds of the land described therein x x x and does not in any way certify the nature and classification of the land involved."[30] It is true that the notation by a surveyor-geodetic engineer on the survey plan that the land formed part

---

[27] *Id*.

[28] *Id*.

[29] *People v. Patamama*, 321 Phil. 193 (1995).

[30] *Rollo*, p. 152.

of the alienable and disposable land of the public domain is not sufficient proof of the land's classification.[31] However, respondent should have at least presented proof that would explain the discrepancy in the dates of classification. Marquez, LRA Records Officer II, testified that the documents submitted to the court consisting of the tracing cloth plan, the technical description of Lot 10705-B, the approved subdivision plan, and the Geodetic Engineer's certification were faithful reproductions of the original documents in the LRA office. He did not explain the discrepancy in the dates. Neither was the Geodetic Engineer presented to explain why the date of classification on the blue print plan was different from the other certifications submitted by respondent.

There was No Open, Continuous, Exclusive, and Notorious Possession and Occupation in the Concept of an Owner

Petitioner alleges that the trial court's reliance on the testimonies of Evangelista and Torres was misplaced. Petitioner alleges that Evangelista's statement that the possession of respondent's predecessors-in-interest was open, public, continuous, peaceful, and adverse to the whole world was a general conclusion of law rather than factual evidence of possession of title. Petitioner alleges that respondent failed to establish that its predecessors-in-interest had held the land openly, continuously, and exclusively for at least 30 years after it was declared alienable and disposable.

We agree with petitioner.

Evangelista testified that Kabesang Puroy had been in possession of the land before 1945. Yet, Evangelista only worked on the land for three years. Evangelista testified that his family owned a lot near Kabesang Puroy's land. The Court of Appeals took note of this and ruled that Evangelista's knowledge of Kabesang Puroy's possession of the land stemmed "not only from the fact that he had worked thereat but more so that they were practically neighbors."[32] The Court of Appeals observed:

---

[31] *Menguito v. Republic*, 401 Phil. 274 (2000).

[32] *Rollo*, p. 67.

> In a small community such as that of San Bartolome, Sto. Tomas, Batangas, it is not difficult to understand that people in the said community knows each and everyone. And, because of such familiarity with each other, news or events regarding the acquisition or disposition for that matter, of a vast tract of land spreads like wildfire, thus, the reason why such an event became of public knowledge to them.[33]

Evangelista testified that Kabesang Puroy was succeeded by Fortunato. However, he admitted that he did not know the exact relationship between Kabesang Puroy and Fortunato, which is rather unusual for neighbors in a small community. He did not also know the relationship between Fortunato and Porting. In fact, Evangelista's testimony is contrary to the factual finding of the trial court that Kabesang Puroy was succeeded by his son Antonio, not by Fortunato who was one of Antonio's children. Antonio was not even mentioned in Evangelista's testimony.

The Court of Appeals ruled that there is no law that requires that the testimony of a single witness needs corroboration. However, in this case, we find Evangelista's uncorroborated testimony insufficient to prove that respondent's predecessors-in-interest had been in possession of the land in the concept of an owner for more than 30 years. We cannot consider the testimony of Torres as sufficient corroboration. Torres testified primarily on the fact of respondent's acquisition of the land. While he claimed to be related to the Dimayugas, his knowledge of their possession of the land was hearsay. He did not even tell the trial court where he obtained his information.

The tax declarations presented were only for the years starting 1955. While tax declarations are not conclusive evidence of ownership, they constitute proof of claim of ownership.[34] Respondent did not present any credible explanation why the realty taxes were only paid starting 1955 considering the claim that the Dimayugas were allegedly in possession of the land before 1945. The payment of the realty taxes starting 1955

---

[33] *Id*. at 68.

[34] *Ganila v. Court of Appeals*, G.R. No. 150755, 28 June 2005, 461 SCRA 435.

gives rise to the presumption that the Dimayugas claimed ownership or possession of the land only in that year.

Land Application by a Corporation

Petitioner asserts that respondent, a private corporation, cannot apply for registration of the land of the public domain in this case.

We agree with petitioner.

Section 3, Article XII of the 1987 Constitution provides:

> Sec. 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead or grant.
>
> Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.

The 1987 Constitution absolutely prohibits private corporations from acquiring any kind of alienable land of the public domain. In *Chavez v. Public Estates Authority*,[35] the Court traced the law on disposition of lands of the public domain. Under the 1935 Constitution, there was no prohibition against private corporations from acquiring agricultural land. The 1973 Constitution limited the alienation of lands of the public domain to individuals who were citizens of the Philippines. Under the 1973 Constitution, private corporations, even if wholly owned by Filipino citizens, were no longer allowed to acquire alienable lands of the public

[35] 433 Phil. 506 (2002).

domain. The present 1987 Constitution continues the prohibition against private corporations from acquiring any kind of alienable land of the public domain.[36] The Court explained in *Chavez*:

> The 1987 Constitution continues the State policy in the 1973 Constitution banning private corporations from acquiring ***any kind of alienable land of the public domain.*** Like the 1973 Constitution, the 1987 Constitution allows private corporations to hold alienable lands of the public domain ***only through lease***. x x x x
>
> [I]f the constitutional intent is to prevent huge landholdings, the Constitution could have simply limited the size of alienable lands of the public domain that corporations could acquire. The Constitution could have followed the limitations on individuals, who could acquire not more than 24 hectares of alienable lands of the public domain under the 1973 Constitution, and not more than 12 hectares under the 1987 Constitution.
>
> If the constitutional intent is to encourage economic family-size farms, placing the land in the name of a corporation would be more effective in preventing the break-up of farmlands. If the farmland is registered in the name of a corporation, upon the death of the owner, his heirs would inherit shares in the corporation instead of subdivided parcels of the farmland. This would prevent the continuing break-up of farmlands into smaller and smaller plots from one generation to the next.
>
> In actual practice, the constitutional ban strengthens the constitutional limitation on individuals from acquiring more than the allowed area of alienable lands of the public domain. Without the constitutional ban, individuals who already acquired the maximum area of alienable lands of the public domain could easily set up corporations to acquire more alienable public lands. An individual could own as many corporations as his means would allow him. An individual could even hide his ownership of a corporation by putting his nominees as stockholders of the corporation. The corporation is a convenient vehicle to circumvent the constitutional limitation on acquisition by individuals of alienable lands of the public domain.
>
> The constitutional intent, under the 1973 and 1987 Constitutions, is to transfer ownership of only a limited area of alienable land of the public domain to a qualified individual. This constitutional intent

---

[36] *Id*.

is safeguarded by the provision prohibiting corporations from acquiring alienable lands of the public domain, since the vehicle to circumvent the constitutional intent is removed. The available alienable public lands are gradually decreasing in the face of an ever-growing population. The most effective way to insure faithful adherence to this constitutional intent is to grant or sell alienable lands of the public domain only to individuals. This, it would seem, is the practical benefit arising from the constitutional ban.[37]

In *Director of Lands v. IAC*,[38] the Court allowed the land registration proceeding filed by Acme Plywood & Veneer Co., Inc. (Acme) for five parcels of land with an area of 481,390 square meters, or 48.139 hectares, which Acme acquired from members of the Dumagat tribe. The issue in that case was whether the title could be confirmed in favor of Acme when the proceeding was instituted after the effectivity of the 1973 Constitution which prohibited private corporations or associations from holding alienable lands of the public domain except by lease not to exceed 1,000 hectares. The Court ruled that **the land was already private land when Acme acquired it from its owners in 1962**, and thus Acme acquired a registrable title. Under the 1935 Constitution, private corporations could acquire public agricultural lands not exceeding 1,024 hectares while individuals could acquire not more than 144 hectares.[39]

In *Director of Lands*, the Court further ruled that open, exclusive, and undisputed possession of alienable land for the period prescribed by law created the legal fiction whereby the land, upon completion of the requisite period, *ipso jure* and

---

[37] *Id.* at 557-559.

[38] 230 Phil. 590 (1986).

[39] Section 2, Article XIII of the 1935 Constitution provides: "No private corporation or association may acquire, lease, or hold public agricultural lands in excess of one thousand and twenty four hectares, nor may any individual acquire such lands by purchase in excess of one hundred and forty four hectares, or by lease in excess of one thousand and twenty four hectares, or by homestead in excess of twenty-four hectares. Lands adapted to grazing, not exceeding two thousand hectares, may be leased to an individual, private corporation, or association."

without the need of judicial or other sanction ceases to be public land and becomes private property. The Court ruled:

> Nothing can more clearly demonstrate the logical inevitability of considering possession of public land which is of the character and duration prescribed by statute as the equivalent of an express grant from the State than the dictum of the statute itself that the possessor(s) "x x x shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title x x x." No proof being admissible to overcome a conclusive presumption, confirmation proceedings would, in truth be little more than a formality, at the most limited to ascertaining whether the possession claimed is of the required character and length of time; and registration thereunder would not confer title, but simply recognize a title already vested. The proceedings would not *originally* convert the land from public to private land, but only confirm such a conversion already effected by operation of law from the moment the required period of possession became complete.
>
> x x x [A]lienable public land held by a possessor, personally or through his predecessors-in-interest, openly, continuously and exclusively for the prescribed statutory period of (30 years under The Public Land Act, as amended) is converted to private property by the mere lapse or completion of said period, *ipso jure*. Following that rule and on the basis of the undisputed facts, **the land subject of this appeal was already private property at the time it was acquired from the Infiels by Acme. Acme thereby acquired a registrable title,** there being at the time no prohibition against said corporation's holding or owning private land. x x x.[40] (Emphasis supplied)

Director of Lands is not applicable to the present case. In *Director of Lands*, the "**land x x x was already private property at the time it was acquired x x x by Acme**." In this case, respondent acquired the land on 8 August 1997 from Porting, who, along with his predecessors-in-interest, has not shown to have been, as of that date, in open, continuous, and adverse possession of the land for 30 years since 12 June 1945. In short, when respondent acquired the land from Porting, the land was not yet private property.

---

[40] 230 Phil. 590, 602 and 605 (1986).

For *Director of Lands* to apply and enable a corporation to file for registration of alienable and disposable land, the corporation must have acquired the land when its transferor had already a vested right to a judicial confirmation of title to the land by virtue of his open, continuous and adverse possession of the land in the concept of an owner for at least 30 years since 12 June 1945. Thus, in *Natividad v. Court of Appeals*,[41] the Court declared:

> Under the facts of this case and pursuant to the above rulings, the parcels of land in question had already been converted to private ownership through acquisitive prescription by the predecessors-in-interest of TCMC when the latter purchased them in 1979. All that was needed was the confirmation of the titles of the previous owners or predecessors-in-interest of TCMC.
>
> Being already private land when TCMC bought them in 1979, the prohibition in the 1973 Constitution against corporations acquiring alienable lands of the public domain except through lease (Article XIV, Section 11, 1973 Constitution) did not apply to them for they were no longer alienable lands of the public domain but private property.

What is determinative for the doctrine in *Director of Lands* to apply is for the corporate applicant for land registration to establish that when it acquired the land, the same was already private land by operation of law because the statutory acquisitive prescriptive period of 30 years had already lapsed. The length of possession of the land by the corporation cannot be tacked on to complete the statutory 30 years acquisitive prescriptive period. Only an individual can avail of such acquisitive prescription since both the 1973 and 1987 Constitutions prohibit corporations from acquiring lands of the public domain.

Admittedly, a corporation can at present still apply for original registration of land under the doctrine in *Director of Lands*. Republic Act No. 9176[42] (RA 9176) further amended the Public

---

[41] G.R. No. 88233, 4 October 1991, 202 SCRA 493.

[42] Approved on 13 November 2002. An earlier law, Republic Act No. 6940, had extended the period up to 31 December 2000 under the same conditions.

Land Act[43] and extended the period for the filing of applications for judicial confirmation of imperfect and incomplete titles to alienable and disposable lands of the public domain until 31 December 2020. Thus:

> Sec. 2. Section 47, Chapter VIII of the same Act, as amended, is hereby further amended to read as follows:
>
> Sec. 47. The persons specified in the next following section are hereby granted time, not to extend beyond December 31, 2020 within which to avail of the benefits of this Chapter: *Provided*, That this period shall apply only where the area applied for does not exceed twelve (12) hectares: *Provided, further*, That the several periods of time designated by the President in accordance with Section Forty-five of this Act shall apply also to the lands comprised in the provisions of this Chapter, but this Section shall not be construed as prohibiting any of said persons from acting under this Chapter at any time prior to the period fixed by the President.
>
> Sec. 3. All pending applications filed before the effectivity of this amendatory Act shall be treated as having been filed in accordance with the provisions of this Act.

Under RA 9176, the application for judicial confirmation is limited only to 12 hectares, consistent with Section 3, Article XII of the 1987 Constitution that a private individual may only acquire not more than 12 hectares of alienable and disposable land. Hence, respondent, as successor-in-interest of an individual owner of the land, cannot apply for registration of land in excess of 12 hectares. Since respondent applied for 56.4007 hectares, the application for the excess area of 44.4007 hectares is contrary to law, and thus void *ab initio*. In applying for land registration, a private corporation cannot have any right higher than its predecessor-in-interest from whom it derived its right. This assumes, of course, that the corporation acquired the land, not exceeding 12 hectares, when the land had already become private land by operation of law. In the present case, respondent has failed to prove that any portion of the land was already private land when respondent acquired it from Porting in 1997.

---

[43] Commonwealth Act No. 141, as amended.

WHEREFORE, we *SET ASIDE* the 21 August 2002 Decision of the Court of Appeals in CA-G.R. CV No. 66658 and the 16 December 1999 Decision of the Regional Trial Court of Tanauan, Batangas, Branch 6 in Land Registration Case No. T-635. We *DENY* the application for registration filed by T.A.N. Properties, Inc.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 159934. June 26, 2008]

METROPOLITAN BANK and TRUST COMPANY and ROGELIO T. UY, *petitioners, vs.* **JOSE B. TAN and REY JOHN TAN,** *respondents.*

SYLLABUS

1. CIVIL LAW; SALES; ACT 3135; ISSUANCE OF A WRIT OF POSSESSION IS A MINISTERIAL DUTY OF THE COURT DURING THE PERIOD OF REDEMPTION. — The applicable law thus states that it is the court's ***ministerial*** duty to issue a writ of possession in favor of the purchaser of the mortgaged realty during the period of redemption. The trial court committed no grave abuse of discretion as no exercise of discretion is required. It is ministerial upon the court to issue a writ of possession in favor of a purchaser, provided that a proper motion is filed, a bond is approved, and no third person is involved. The pendency of an action to annul the mortgage is not a ground for non-enforcement of the writ of possession. The ministerial duty of the trial court does not become discretionary upon the filing of a complaint questioning the mortgage.

2. REMEDIAL LAW; CIVIL PROCEDURE; FINAL ORDER; TRIAL COURT'S ORDER GRANTING WRIT OF POSSESSION IS FINAL; PROPER REMEDY THEREFOR IS AN APPEAL. — We agree with Metrobank's contention that the trial court's order granting the writ of possession is final. The proper remedy for respondents is an appeal and not a petition for *certiorari.* As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctable by an appeal if the aggrieved party raised factual and legal issues; or a petition for review under Rule 45 of the Rules of Court if only questions of law are involved.

APPEARANCES OF COUNSEL

Del Castillo Quina Real & Roa for petitioners.
Demosthenes V. Mediante for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari*[1] assailing the Decision dated 21 March 2003[2] and the Resolution dated 1 September 2003[3] of the Court of Appeals (appellate court) in CA-G.R. SP No. 68523. The appellate court reversed the Decision dated 2 April 2001[4] of the Regional Trial Court of Cagayan de Oro City (trial court) in Miscellaneous Case (MC) No. 2000-117.

---

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 26-36. Penned by Associate Justice Teodoro P. Regino, with Associate Justices Buenaventura J. Guerrero and Mariano C. Del Castillo, concurring.

[3] *Id*. at 58-59. Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Eubolo G. Verzola and Mariano C. Del Castillo, concurring.

[4] CA *rollo*, pp. 85-86. Penned by Judge Arcadio D. Fabria.

The trial court granted Metropolitan Bank and Trust Company (Metrobank) a Writ of Possession over the properties covered by TCT No. T-134333, TCT No. 134331, and TCT No. 134332.

The Facts

The appellate court stated the facts as follows:

Petitioner Rey John Tan is the owner and actual possessor of a parcel of land situated at Carmen, Cagayan de Oro City, specifically described under Transfer Certificate of Title (TCT) No. T-37311 and registered with the Registry of Deeds of Cagayan de Oro City.

On the other hand, petitioner Jose B. Tan is also an owner of a parcel of commercial land situated at Lapasan, Cagayan de Oro City, duly registered under Transfer Certificate of Title (TCT) No. T-53267 of the Registry of Deeds of Cagayan de Oro City.

Private respondent Metropolitan Bank and Trust Company alleges that petitioner Jose B. Tan had been duly authorized, pursuant to a special power of attorney given by a [sic] Ariel Tan, to mortgage the commercial properties of the latter covered by Transfer Certificate of Title (TCT) Nos. T-42033 and T-42032, both registered with the Register of Deeds of Cagayan de Oro City, in favor of private respondent bank.

Subsequently, a petition for the extra-judicial foreclosure of Transfer Certificate of Title (TCT) Nos. T-37311, T-53267, T-42033, and T-42032, was filed by Metropolitan Bank and Trust Company and Rogelio T. Uy with the Office of the Provincial Sheriff of Misamis Oriental. The said petition was acted upon by public respondent Sheriff Albano Cuarto who then undertook to schedule the public auction sale of the aforementioned parcels of land on April 17, 1998. The said public auction was to be conducted in order to satisfy an alleged obligation of ₱48,311,003.39 that were all secured by real estate mortgages over the aforementioned lots. The subject parcels of land were auctioned off by public respondent Albano Cuarto, as scheduled.

Prior to the date of the auction sale, or on April 16, 1998 to be exact, petitioners Jose B. Tan and his wife, Eliza Go Tan, filed an action to "Remove Cloud of Doubt on Title, Injunction with prayer for issuance of a writ of preliminary injunction or temporary restraining order," before the Regional Trial Court of Misamis Oriental, Branch 38, docketed as Civil Case No. 98-225, entitled

"*JOSE B. TAN AND ELIZA GO TAN, plaintiffs, versus METROPOLITAN BANK AND TRUST COMPANY, ROGELIO T. UY and ALBANO L. CUARTO*, as Sheriff IV, Office of the Provincial Sheriff of Misamis Oriental, *defendants*."

In a Decision, dated March 5, 2001, the court *a quo* rendered the following pronouncement, the dispositive portion of which is hereby quoted as follows:

a) Declaring that, because of the fact that plaintiff Eliza G. Tan did not give her consent to all the real estate mortgages annotated at the back of her title, TCT No. T-53267, of the Registry of Deeds for Cagayan de Oro, all said mortgages are null and void *ab initio*;

b) Declaring that, because plaintiff Jose B. Tan did not execute the real estate mortgages annotated at the back of his title, TCT No. T-53267, of the Registry of Deeds of Cagayan de Oro, all said mortgages are null and void;

c) Declaring that extra-judicial foreclosure proceedings taken by the defendant-sheriff, including the sheriff's certificate of sale, as null and void;

d) Making permanent the writ of preliminary injunction against the defendant sheriff, and the office of the provincial Sheriff of Misamis Oriental, enjoining and restraining them, their agents, and their representatives from issuing a final certificate of sale in favor of defendant METROBANK covering the parcel of land covered by TCT No. T-53267;

e) Ordering the removal of the cloud on the title, TCT No. T- 53267, of the Registry of Deeds of Cagayan de Oro, and the cancellation of all the entries of the real estate mortgages and amendment of mortgages annotated at the back of TCT No. T-53267 of the Registry of Deeds for Cagayan de Oro City;

f) Absolving the plaintiffs spouses from financial liability for the null and void real estate mortgages;

g) Declaring the principal obligations obtained by Rey John Tan through the annulled real estate mortgages as FULLY PAID by him;

x x x x x x x x x

SO ORDERED.

Notwithstanding the aforementioned pronouncement of the Regional Trial Court of Misamis Oriental, Branch 38, private respondents METROBANK and Rogelio T. Uy filed, on January 20, 2001, an *Ex Parte* Petition for a writ of possession docketed under Miscellaneous Case No. 2000-117 before Branch 21, of the same Regional Trial Court concerning three (3) parcels of land covered by Transfer Certificates of Title (TCT) Nos. T-42033, T-42032, T-37311 which had been incidentally cancelled by Transfer Certificates of Title (TCT) Nos. T-13432 [sic], T-13431 [sic], and T-13433 [sic].

Since herein petitioners were not notified of the hearing set by the court in Miscellaneous Case No. 2000-117, private respondent METROBANK was allowed to present its evidence *ex parte* on February 8, 2001, before the Branch Clerk of Court of Branch 21.

On April 2, 2001, the Regional Trial Court of Misamis Oriental, Branch 21, rendered its Decision in Miscellaneous Case No. 2000-117, the dispositive portion of which reads:

> WHEREFORE, petitioner having sufficiently established to the satisfaction of this Court all the allegations in its petition and finding the petition to be deserving of merit, the same is hereby granted. Accordingly, a Writ of Possession over the properties covered by TCT No. T-134333, TCT No. T-134331 and TCT No. T-134332 is hereby ordered issued in favor of the petitioner against any and all occupants/possessor of the aforementioned properties.
>
> SO ORDERED.

On July 10, 2001, a writ of possession, in Miscellaneous Case No. 2000-117 involving the three (3) parcels of land covered by Transfer Certificates of Title (TCT) Nos. T-13432 [sic], T-13431 [sic], and T-13433 [sic], was issued by the Branch Clerk of Court, to wit:

> Pursuant to the Decision of the Honorable Court, dated April 2, 2001, you are hereby commanded to place in possession the herein petitioner METROPOLITAN BANK & TRUST CO. over a parcel of land including all improvements thereon, covered by Transfer Certificates of Title Nos. T-13433 [sic], T-13431 [sic], and TCT No. T-13432 [sic] and cause REY JOHN TAN and/or any other person thereof to vacate from the premises of the said property.

> The Chief of Police of Cagayan de Oro City or any of his duly authorized representatives are hereby directed to assist the Sheriff to enforce this Writ of Possession.
>
> Witness the Hon. ARCADIO D. FABRIA presiding Judge of this Court, this 10th day of July.

On even date, or on July 10, 2001, to be exact, public respondent Sheriff IV Albano L. Cuarto issued a "NOTICE TO VACATE" to petitioner Rey John Tan regarding the three (3) lots now covered by TCT Nos. T-13433 [sic], T-134331, and T-13432 [sic].

In an attempt to forestall the implementation of the assailed writ of possession, petitioner Rey John Tan, and Ariel Tan, moved for the reconsideration of the Decision dated April 2, 2001 granting the writ prayed for, and to quash the writ of possession as well as the notice to vacate. Respondent judge granted herein petitioners time to consolidate their exhibits. Among the five (5) exhibits presented by the herein petitioners, is a copy of the Decision, dated March 5, 2001, of the Regional Trial Court of Misamis Oriental, Branch 38, declaring the alleged real estate mortgages and extra-judicial foreclosure proceedings as null and void *ab initio* and/or null and void.

The said Motion was denied in an Order, dated November 21, 2001, of the Regional Trial Court of Misamis Oriental, Branch 21, the dispositive portion of which reads:

> WHEREFORE, premises considered, oppositors' motion for reconsideration and motion to quash writ of possession and notice to vacate are hereby denied for want of merit. Consequently, petitioner's motion to break open is granted. Petitioner is thus allowed to break open the foreclosed property in order for the latter to be placed in complete control and possession thereof.
>
> SO ORDERED.

The motion for the reconsideration of the Order, dated November 21, 2001, was likewise denied in another Order of the said Court on December 13, 2001.[5]

Rey John Tan and Jose B. Tan (respondents) filed an appeal before the appellate court. They questioned the ruling of the

[5] *Rollo*, pp. 27-31.

trial court because in Civil Case No. 98-225, a co-equal court declared all the real estate mortgages void. They stated that a writ of possession should not issue from a void mortgage.

The Appellate Court's Ruling

In its Decision dated 21 March 2003, the appellate court reversed the decision of the trial court in MC No. 2000-117. The appellate court stated that there is no factual and legal basis to uphold the trial court's ruling granting the issuance of a writ of possession in favor of Metrobank because a co-equal court declared the real estate mortgages void. The appellate court ruled that the issuance of a writ of possession amounted to interference with the judgment of another court of concurrent jurisdiction. The dispositive portion of the Decision reads:

> WHEREFORE, the instant petition for *certiorari* is GRANTED. The Decision, dated April 2, 2001, of the Regional Trial Court of Misamis Oriental, in Miscellaneous Case No. 2000-117 entitled, "*In Re: Petition for Writ of Possession in TCT No. 13433 [sic], formerly registered in the name of REY JOHN TAN, TCT Nos. 13431 [sic] and T-13432 [sic] formerly registered in the name of ARIEL TAN,*"granting the issuance of a writ of possession in favor of private respondents Metropolitan Bank and Trust Company and Rogelio T. Uy, is hereby REVERSED and SET ASIDE. Costs against private respondents.
>
> SO ORDERED.[6]

Metrobank asked the appellate court to reconsider its decision. Metrobank stated that there was no grave abuse of discretion in the issuance of the writ of possession and that the decision in MC No. 2000-117 did not interfere with the proceedings of a co-equal court.

In resolving Metrobank's motion for reconsideration, the appellate court took note of the general rule that the "pendency of a separate civil suit questioning the validity of the mortgage cannot bar the issuance of the writ of possession because the same is a ministerial act of the trial court." The appellate court

---

[6] *Id*. at 35.

further stated that the present case falls under the exception to the general rule because it is attended with equitable considerations. The ruling in Civil Case No. 98-225 is presumed regular, although the pronouncement of invalidity of the mortgages is not yet definitive as the ruling is still under appeal. The appellate court then amended the dispositive portion of its 21 March 2003 decision to read as follows:

> WHEREFORE, under paragraph (d) of the instant petition praying for "such other relief and remedy deemed just and equitable in the premises," the Court hereby orders that the decision dated 02 April 2001 insofar as its factual and legal basis is AFFIRMED but its order directing that a writ of possession of the properties covered by TCT No. T-13433 [sic], TCT No. T-13431 [sic] and TCT No. 13432 [sic] be issued is held in abeyance until a final decision by the proper appellate court is rendered in the appeal of Civil Case No. 98-225.
>
> SO ORDERED.[7]

Hence, this appeal.

The Issues

Metrobank questions the appellate court's decision and resolution by raising procedural and substantive issues:

1. The lower court erred in not dismissing the petition on the ground that the respondents have squandered the remedy of appeal and that the extraordinary remedy of *certiorari* cannot be a substitute for a lost appeal.
2. The lower court erred in not dismissing the petition on the ground that respondents have two adequate remedies in Section 8, Act 3135 and in Civil Case No. 98-225.
3. The lower court erred in not dismissing the petition on the ground that the trial court did not gravely abuse its discretion.
4. The lower court erred in holding in abeyance the implementation of the writ to await the outcome of Civil Case No. 98-225.[8]

---

[7] *Id*. at 59.

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

The Ruling of the Court

We find the petition meritorious. As the errors raised are interrelated, we shall discuss them jointly.

Issuance of a Writ of Possession

Respondents theorize that the issuance of a writ of possession rests on the validity of the mortgage. Respondents thus rely heavily on the ruling in Civil Case No. 98-225, where the trial court declared all the real estate mortgages void and ruled that Rey John Tan had fully paid the obligations related to the real estate mortgages. The appellate court, in CA G.R. CV No. 70742, agreed with respondents' theory.

However, our ruling in *Metropolitan Bank and Trust Company v. Tan*,[9] promulgated on 30 November 2006, set aside the ruling of the appellate court in CA G.R. CV No. 70742 and dismissed Civil Case No. 98-225. We ruled that the respondents in that case failed to prove that the property in issue is conjugal. Moreover, we found that the debit memos represented payment only in the bank's book of entries but did not actually involve the payment or settlement of the original obligation. We thus declared that the extrajudicial foreclosure and subsequent sale of the mortgaged property covered by the title in question are valid. Our ruling in G.R. No. 163712 knocks off a leg from respondents' theory that the issuance of a writ of possession upon a property is dependent upon the validity of the mortgage.

Notwithstanding respondents' theory, no discretion is left to the trial court in the issuance of a writ of possession. Sections 7 and 8 of Act 3135 read:

> Section 7. In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] 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

[9] G.R. No. 163712, 30 November 2006, 509 SCRA 383.

with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

Section 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.

The applicable law thus states that it is the court's ***ministerial*** duty to issue a writ of possession in favor of the purchaser of the mortgaged realty during the period of redemption. The trial court committed no grave abuse of discretion as no exercise of discretion is required.[10] It is ministerial upon the court to issue a writ of possession in favor of a purchaser, provided that a proper motion is filed, a bond is approved, and no third person is involved.[11] The pendency of an action to annul the mortgage

[10] See *De Gracia v. San Jose*, 94 Phil. 623 (1954).

[11] *PNB v. Hon. Adil, etc., et al.*, 203 Phil. 492, 499 (1982).

is not a ground for non-enforcement of the writ of possession.[12] The ministerial duty of the trial court does not become discretionary upon the filing of a complaint questioning the mortgage.

Finally, we agree with Metrobank's contention that the trial court's order granting the writ of possession is final. The proper remedy for respondents is an appeal and not a petition for *certiorari*. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctable by an appeal if the aggrieved party raised factual and legal issues; or a petition for review under Rule 45 of the Rules of Court if only questions of law are involved.[13]

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Decision dated 21 March 2003 and the Resolution dated 1 September 2003 of the Court of Appeals in CA-G.R. SP No. 68523.

SO ORDERED.

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

---

[12] *PNB v. Hon. Adil, etc., et al.*, 203 Phil. 492 (1982).

[13] *San Fernando Rural Bank v. Pampanga Omnibus Development Corporation and Dominic G. Aquino,* G.R. No. 168088, 4 April 2007, 520 SCRA 564.

FIRST DIVISION

[G.R. No. 166104. June 26, 2008]

RN DEVELOPMENT CORPORATION, *petitioner, vs.* **A.I.I. SYSTEM, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; DISMISSAL OF CASES FOR FAILURE TO PROSECUTE RESTS ON THE SOUND DISCRETION OF THE COURT. — In *Bank of the Philippine Islands v. Court of Appeals*, we cautioned the courts against the improvident dismissal of cases for failure to prosecute, thus: x x x. In *Marahay v. Melicor*, we said — While a court can dismiss a case on the ground of *non prosequitur*, the real test of such power is whether, under the circumstances, plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude. In the absence of a pattern or a scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense rather than wield their authority to dismiss. Indeed, the dismissal of a case whether for failure to appear during trial or prosecute an action for an unreasonable length of time rests on the sound discretion of the trial court. But this discretion must not be abused, nay gravely abused, and must be exercised soundly. Deferment of proceedings may be tolerated so that cases may be adjudged only after a full and free presentation of all the evidence by both parties. The propriety of dismissing a case must be determined by the circumstances surrounding each particular case. There must be sufficient reason to justify the dismissal of a complaint.

2. ID.; ID.; PRE-TRIAL; NOT A MERE TECHNICALITY IN COURT PROCEEDING; OBJECTIVES. — Pre-trial is not a mere technicality in court proceeding for it is essential in the simplification and the speedy disposition of disputes. The Court observed in the case of *Development Bank of the Philippines v. Court of Appeals* that: Everyone knows that a pre-trial in civil actions is mandatory, and has been so since

January 1, 1964. Yet to this day its place in the scheme of things is not fully appreciated, and it receives but perfunctory treatment in many courts. Some courts consider it a mere technicality, serving no useful purpose save perhaps, occasionally to furnish ground for non-suiting the plaintiff, or declaring a defendant in default, or, wistfully, to bring about a compromise. The pre-trial device is not thus put to full use. Hence it has failed in the main to accomplish the chief objective for it: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. This is a great pity, because the objective is attainable, and with not much difficulty, if the device were more intelligently and extensively handled.

3. ID.; RULES OF PROCEDURE ARE MERE TOOLS DESIGNED TO FACILITATE THE ATTAINMENT OF JUSTICE; COURTS MUST AVOID RIGID APPLICATION THEREOF WHICH TENDS TO FRUSTRATE RATHER THAN PROMOTE THE ENDS OF JUSTICE. — It is the policy of the Court to afford every litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Since rules of procedure are mere tools designed to facilitate the attainment of justice, courts must avoid the rigid application thereof which tends to frustrate rather than promote the ends of justice. Here, the counsel for respondent, upon receiving the order dismissing the complaint, immediately filed a motion for reconsideration which adequately explained his late arrival for four (4) minutes, which was not disputed before the trial court. Under the circumstances, the latter should have granted respondent's motion for reconsideration of the dismissal of the complaint. The interest of justice will be better served by the continuation of the proceedings and final disposition of the case on the merits before the trial court. Thus, the appellate court did not commit any reversible error when it set aside the order of the trial court dismissing the respondent's complaint.

APPEARANCES OF COUNSEL

Jose S. Santos, Jr. & Associates for petitioner.
Jovencio H. Evangelista for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In this petition for review under Rule 45 of the Rules of Court, petitioner RN Development Corporation (now Fontana Development Corporation) seeks the reversal of the September 2, 2004 decision[1] of the Court of Appeals (CA) in *CA-G.R. CV No. 75227* entitled *A.I.I. Systems, Inc. v. RN Development Corporation* as reiterated in its November 22, 2004 Resolution[2] denying petitioner's motion for reconsideration.

The assailed decision reversed and set aside an earlier Order and Resolution of the Regional Trial Court (RTC) of Quezon City, Branch 226, in *Civil Case No. QOO-41445*, dismissing respondent's complaint for its failure to appear for pre-trial and for lack of interest. The respondent's motion for reconsideration of the said Order was denied by the RTC in its Resolution dated March 22, 2002, which is quoted hereunder:

> As set forth in the Order of November 27, 2001, the pre-trial in this case has been reset for five times already: first on February 6, 2001, then on April 24, 2001, on August 7, 2001, September 18, 2001 and on November 27, 2001. Let it be noted that on April 24, 2001, there was no appearance for [respondent] and counsel. Again, on August 7, 2001, [respondent] and counsel did not appear, which prompted the Court to reset the pre-trial for the last time to September 18, 2001, with a warning that should the [respondent] and counsel not appear on the next setting, the Court will dismiss the case for lack of interest. On September 18, 2001, counsel for the [respondent] moved for a resetting since the new counsel had not yet studied the proposals for settlement made by the [petitioner]. Thus, pre-trial was again reset for the last time to November 27, 2001. On November 27, 2001, there was again no appearance for the [respondent] and its counsel.

---

[1] Penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Ruben T. Reyes (now Associate Justice of the Supreme Court) and Jose C. Reyes, Jr., *rollo*, pp. 32-38.

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

The record thus bears out that the Court had been very lenient to the [respondent] when it allowed the resetting of the pre-trial for five times. In fact, the Court set the pre-trial "for the last time" twice. It is litigants like [respondent] who unduly clog the court dockets by taking advantage of the court's leniency. If only to decongest the court dockets and to serve as a lesson to [respondent] and counsel to be more considerate of the time and resources of the Court, the amended motion for reconsideration is DENIED, for lack of merit.

WHEREFORE, in view of the foregoing, the amended Motion for Reconsideration is DENIED, for lack of merit. The Order of November 27, 2001 is REITERATED.

SO ORDERED.[3]

Aggrieved, respondent went on appeal to the CA on the lone issue as to whether or not its complaint was properly dismissed for its failure to appear on November 27, 2001 for pre-trial and for its lack of interest to prosecute the case.

In its assailed Decision dated September 2, 2004, the CA reversed and set aside the RTC's Order dated November 27, 2001 and the Resolution dated March 22, 2002 and remanded the case to the said trial court for further proceedings. We quote the *fallo* of the CA decision:

WHEREFORE, the appealed Order and Resolution of Branch 226 of the Regional Trial Court of Quezon City, in Civil Case No. QOO-41445, dated 27 November 2001 and 22 March 2002, respectively, are hereby REVERSED AND SET ASIDE. The case is remanded to the trial court for further proceedings.

The petitioner sought reconsideration of the above-cited decision, which was denied by the appellate court.

Hence, the petitioner is now before this Court contending that the CA erred in reversing the RTC's Order dismissing the petitioner's complaint because "the inference made by the Court of Appeals was manifestly mistaken; its judgment was based on misapprehension of facts; and the Court of Appeals manifestly

[3] *Id*. at 84.

overlooked certain facts not disputed by the parties and which, if properly considered, would justify a different conclusion." Petitioner added that the trial court did not commit grave abuse of discretion in dismissing respondent's complaint.

The facts of the case are summed up by the CA from the records in its decision, which reads in part:

> On 28 July 2000, AII Systems, Inc. [respondent] filed a Complaint for Sum of Money against RN Development Corporation [petitioner], seeking to collect the outstanding balance of the purchase price of the pipes and fittings, valves and electrical panels which [petitioner] allegedly ordered from [respondent].
>
> On 09 November 2000, [petitioner] filed its answer. On 20 November 2000, [respondent] filed an *Ex-Parte* Motion to Set Case for Pre-Trial which was granted by the court *a quo* scheduling the case for pre-trial on 06 February 2001.
>
> During the 06 February 2001 pre-trial conference, parties' counsel manifested their intention to settle the case. In view thereof the pre-trial was reset to 24 April 2001.
>
> At the calendared 24 April 2001 pre-trial, only [petitioner's] counsel appeared. He manifested that there are negotiations for the settlement of the case and moved for the resetting of the pre-trial. The trial court granted said request in order to give the parties an opportunity to settle the case. Pre-trial was rescheduled to 07 August 2001.
>
> In the 07 August 2001 pre-trial meeting, [petitioner's] counsel appeared but [respondent] and counsel were absent. The trial court deferred the pre-trial and set the same to 18 September 2001, with a proviso that said resetting shall be "*the last time*" and warned that if [respondent] and his counsel will not appear again "*the Court shall dismiss the case for lack of interest."*
>
> During the 18 September 2001 pre-trial, [respondent's] new counsel appeared. He requested the resetting of the pre-trial because he has yet to study [petitioner's] proposals for the settlement of the case. Despite its warning in the 07 August 2001 Order the trial court relented to [respondent's] request setting another date, 27 November 2001, for pre-trial. The trial court again cautioned the parties that the resetting shall be for the "*last time*."

On 27 November 2001, pre-trial proceeded. [Petitioner] appeared but [respondent] did not. Pursuant to the trial court's warning contained in the 07 August 2001 Order, the [respondent's] Complaint was dismissed, thus:

> When this case was called for pre-trial, only [the] counsel for the [petitioner] appeared; there was no appearance for the [respondent] and its counsel.
>
> The court issued a warning during the hearing held on August [7,] 2001 that should the [respondent] and counsel fail to appear again today for pre-trial, the case shall be dismissed. The Court observes that this is the fifth time that this case has been reset for pre-trial…
>
> WHEREFORE, as prayed for, the complaint is hereby DISMISSED for failure of the [respondent] and counsel to appear for pre-trial and for lack of interest…
>
> SO ORDERED.

On 03 December 2001, [respondent] filed its Motion for Reconsideration explaining his failure to attend the 27 November 2001 pre-trial, thus:

1. The instant case was scheduled for Pre-Trial last November 27, 2001 at 8:30 a.m. However, the … counsel [for respondent] arrived in court at 8:34 a.m. or four (4) minutes late ...

2. The … counsel [for respondent] sincerely apologizes for … tardiness which was entirely unintentional. [He] left his residence [in Sampaloc, Manila] at 7:00 a.m. allotting the usual one (1) hour for his trip to Quezon City knowing that [the] Honorable Court starts its hearing at exactly 8:30 [a.m.] but… along the way [his vehicle suffered] a flat tire… It took … thirty (30) minutes to replace the … tire and [he arrived at] Quezon City Hall at 8:20 a.m. … unfortunately [he] had a hard time locating a parking space. [He] arrived in court at 8:34 a.m.

3. [Counsel] for [respondent] had always been punctual in attending the hearing in this case.

On March 22, 2002 [respondent's] motion for reconsideration was denied by the trial court, hence, this appeal.

According to petitioner, the case was scheduled for pre-trial for five (5) times, particularly, on February 6, April 24, August 7, September 18, and November 27, 2001. The pre-trial set for April 24 and August 7, 2001 were reset when respondent and counsel did not appear without any motion for postponement. The pre-trial scheduled for September 18, 2001 was again reset on motion of respondent's counsel who had not studied yet the proposals for settlement. In two of these four resettings, the trial court warned respondent that the resetting "was for the last time" and that in case of another failure to appear, the case would be dismissed for lack of interest. It was only when respondent and counsel failed to appear on November 27, 2001, despite warning, that the trial court dismissed the complaint. Under the foregoing circumstances, petitioner contended that the CA committed a reversible error when it inferred that the trial court had been unduly strict in applying the rules of procedure and that it entirely had no reason to dismiss the complaint. Petitioner likewise disputed the appellate court's observation that the trial court's inflexible attitude failed to meet the fundamental requirement of fairness and justice.

After a careful study and a thorough examination of the records, we find no substantial reason to overturn the findings and conclusions of the CA, particularly, that the respondent should not be blamed entirely for the resetting of the pre-trial, which were duly approved by the trial court for the reasons cited in its orders, quoted hereunder:

1. The Order dated February 6, 2001 which reset the pre-trial at the instance of both parties —

When this case was called for pre-trial, the respective counsel of the parties appeared and manifested before the Court their desire for an amicable settlement of this case. In view of this, reset the pre-trial to April 24, 2001 at 8:30 a.m., sharp.

2. The Order dated April 24, 2001 which reset the pre-trial at the instance of the petitioner's counsel also in view of the on-going negotiations between the parties —

When this case was called for pre-trial, only the defendant's (petitioner's) counsel, appeared. However, he manifested before

this Court that there are negotiations for the settlement of this case and asked for a resetting of the pre-trial today, in order to give the parties time to settle the case. Wherefore, reset the pre-trial to August 7, 2001 at 8:30 a.m., sharp.

3. The Order dated August 7, 2001 which allowed for the last time the postponement of the scheduled pre-trial at the request of [petitioner's] counsel —

When this case was called for pre-trial, only the defendant's (petitioner's) counsel appeared. There was no appearance for the plaintiff (respondent) and counsel. As manifested in open court, to show good faith on the part of the defendant's (petitioner's) counsel and so as not to take advantage of the absence of plaintiff (respondent) and counsel, reset the pre-trial for the last time to September 18, 2001 at 8:30 a.m. sharp.

Notify the plaintiff and counsel. Should the plaintiff and counsel not appear on the next setting, the Court will dismiss the case for lack of interest.

4. The Order dated September 18, 2001 which still allowed the postponement of the pre-trial despite the previous warning in the 7 August 2001 Order, on motion of respondent's new counsel to enable him to study the petitioner's proposal for amicable settlement —

When this case was called for pre-trial, the respective counsel of the parties appeared, counsel for the plaintiff moved for a resetting of this case since the new counsel had not yet studied the proposals for settlement made by the defendant.

Wherefore, reset this case for pre-trial for the last time to November 27, 2001, with additional setting for initial trial on January 21, 2002, both dates at 8:30 in the morning, sharp.

What remains for consideration is the cancellation of the pre-trial on November 27, 2001 which resulted in the dismissal of the complaint by the trial court. The counsel for respondent sought the reconsideration of the dismissal of the case on the ground that he was only four (4) minutes late. He explained why he came late for pre-trial on November 27, 2001, but nonetheless apologized to the court for his tardiness which was not intentional.

While petitioner now raises a factual issue as to whether or not the counsel for respondent actually arrived in court four (4) minutes late on November 27, 2001, there is nothing on record to show that the allegation of the counsel for respondent on this factual matter was disputed before the trial court. Hence, the CA did not err when it found that the respondent only failed to arrive on time for the pre-trial, instead of finding that there was failure to appear and lack of interest on the part of the respondent. Under this factual setting, the CA properly applied our ruling in *Africa vs. Intermediate Appellate Court*,[4] which set aside the order of default issued by the trial court due to the ten-minute delay of petitioner's counsel, ratiocinating that:

> . . . petitioner was declared in default . . . for his lawyer's ten-minute delay at the pre-trial . . .
>
> It is quite obvious that petitioner was denied his basic right to be heard, even after his counsel had promptly explained the reason for his tardiness at the pre-trial . . . [I]t would seem that the proverbial wheels of justice literally "oversped". For an innocuous delay of ten minutes, petitioner was ultimately denied due process of law which could have, had respondent judge been in a less hurry to clear his docket, enable him to present his defenses . . .
>
> While it is desirable that the Rules of Court be faithfully observed, courts should not be obsessively strict over the occasional lapses of litigants. Given a good reason, the trial court should set aside its order of default, constantly bearing in mind that it is the exception and not the rule of the day. A default order must be resorted to only in clear cases of obstinate refusal or inordinate neglect to comply with the orders of the court.

Further, in *Bank of the Philippine Islands v. Court of Appeals*,[5] we cautioned the courts against the improvident dismissal of cases for failure to prosecute, thus:

> x x x. In *Marahay v. Melicor*, we said —
>
> While a court can dismiss a case on the ground of *non prosequitur*, the real test of such power is whether, under the

---

[4] G.R. No. 76372, August 14, 1990, 188 SCRA 586.

[5] G.R. No. 117385, February 11, 1999, 303 SCRA 19, 24-25.

> circumstances, plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude. In the absence of a pattern or a scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense rather than wield their authority to dismiss.

Indeed, the dismissal of a case whether for failure to appear during trial or prosecute an action for an unreasonable length of time rests on the sound discretion of the trial court. But this discretion must not be abused, nay gravely abused, and must be exercised soundly. Deferment of proceedings may be tolerated so that cases may be adjudged only after a full and free presentation of all the evidence by both parties. The propriety of dismissing a case must be determined by the circumstances surrounding each particular case. There must be sufficient reason to justify the dismissal of a complaint.

Pre-trial is not a mere technicality in court proceeding for it is essential in the simplification and the speedy disposition of disputes. The Court observed in the case of *Development Bank of the Philippines v. Court of Appeals*[6] that:

> Everyone knows that a pre-trial in civil actions is mandatory, and has been so since January 1, 1964. Yet to this day its place in the scheme of things is not fully appreciated, and it receives but perfunctory treatment in many courts. Some courts consider it a mere technicality, serving no useful purpose save perhaps, occasionally to furnish ground for non-suiting the plaintiff, or declaring a defendant in default, or, wistfully, to bring about a compromise. The pre-trial device is not thus put to full use. Hence it has failed in the main to accomplish the chief objective for it: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. This is a great pity, because the objective is attainable, and with not much difficulty, if the device were more intelligently and extensively handled.

It is the policy of the Court to afford every litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Since rules of procedure

---

[6] G.R. No. L-49410, January 26, 1989, 169 SCRA 409, 411.

are mere tools designed to facilitate the attainment of justice, courts must avoid the rigid application thereof which tends to frustrate rather than promote the ends of justice.[7] Here, the counsel for respondent, upon receiving the order dismissing the complaint, immediately filed a motion for reconsideration which adequately explained his late arrival for four (4) minutes, which was not disputed before the trial court. Under the circumstances, the latter should have granted respondent's motion for reconsideration of the dismissal of the complaint. The interest of justice will be better served by the continuation of the proceedings and final disposition of the case on the merits before the trial court. Thus, the appellate court did not commit any reversible error when it set aside the order of the trial court dismissing the respondent's complaint.

WHEREFORE, the instant petition is *DENIED* for lack of merit. The Decision of the Court of Appeals dated September 2, 2004 is *AFFIRMED*. Civil Case No. QOO-41445 is remanded to the court of origin which is directed to resolve the case with dispatch.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Azcuna, JJ.,* concur.

---

[7] *Dalton-Reyes v. Court of Appeals,* G.R. No. 149580, March 16, 2005, 453 SCRA 498.

FIRST DIVISION

[G.R. No. 166810. June 26, 2008]

JUDE JOBY LOPEZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ESTAFA BY MEANS OF DECEIT; ELEMENTS. — By settled jurisprudence, the elements of the crime of estafa, x x x are as follows: (1) the offender has postdated or issued a check in payment of an obligation contracted at the time of the postdating or issuance; (2) at the time of postdating or issuance of said check, the offender has no funds in the bank or the funds deposited are not sufficient to cover the amount of the check; and (3) the payee has been defrauded. Damage and deceit are essential elements of the offense and must be established with satisfactory proof to warrant conviction, while the false pretense or fraudulent act must be committed prior to, or simultaneous with, the issuance of the bad check. The drawer of the dishonored check is given three days from receipt of the notice of dishonor to cover the amount of the check, otherwise, a *prima facie* presumption of deceit arises.

2. ID.; ID.; ID.; ID.; CRIMINAL FRAUD OR DECEIT; EXPLAINED. — [I]t is settled that it is criminal fraud or deceit in the issuance of a check which is made punishable under the Revised Penal Code, and not the nonpayment of a debt. Deceit is the false representation of a matter of fact whether by words or conduct by false or misleading allegations or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury. Concealment which the law denotes as fraudulent implies a purpose or design to hide facts which the other party ought to have. The postdating or issuing of a check in payment of an obligation when the offender had no funds in the bank or his funds deposited therein are not sufficient to cover the amount of the check is a false pretense or a fraudulent act.

3. ID.; ID.; ID.; ID.; RECEIPT BY DRAWER OF NOTICE OF DISHONOR IS NOT AN ELEMENT OF THE OFFENSE; PRESUMPTION ONLY DISPENSES WITH PRESENTATION OF EVIDENCE OF DECEIT IF SUCH NOTIFICATION IS RECEIVED AND DRAWER OF CHECK FAILED TO DEPOSIT AMOUNT NECESSARY TO COVER HIS CHECK WITHIN THREE (3) DAYS FROM RECEIPT OF NOTICE OF DISHONOR. — The receipt by the drawer of the notice of dishonor is not an element of the offense. The presumption only dispenses with the presentation of evidence of deceit if such notification is received and the drawer of the check failed to deposit the amount necessary to cover his check within three (3) days from receipt of the notice of dishonor of the check. The presumption indulged in by law does not preclude the presentation of other evidence to prove deceit. It is not disputed by petitioner that, as found by the CA, respondent Ables "called" up petitioner to inform him of the dishonor of the check. Moreover, when petitioner issued the check in question on March 23, 1998, he knew that his current account with the DBP was a closed account as early as January 27, 1998.

4. MERCANTILE LAW; NEGOTIABLE INSTRUMENTS LAW; NOTICE OF DISHONOR; WHEN MAY NOT BE GIVEN; CASE AT BAR. — Section 114(d) of the Negotiable Instruments Law provides: Sec. 114 — *When notice need not be given to drawer*. — Notice of dishonor is not required to be given to the drawer in either of the following cases: x x x d. Where the drawer has no right to expect or require that the drawee or acceptor will honor the check. Since petitioner's bank account was already closed even before the issuance of the subject check, he had no right to expect or require the drawee bank to honor his check. By virtue of the aforequoted provision of law, petitioner is not entitled to be given a notice of dishonor.

5. CRIMINAL LAW; INDETERMINATE SENTENCE LAW; INDETERMINATE PENALTY OF OFFENSES PUNISHED BY REVISED PENAL CODE OR ITS AMENDMENTS. — The Indeterminate Sentence Law provides that if an offense is punished by the Revised Penal Code or its amendments, the court shall sentence the accused to an indeterminate penalty, the maximum term of which shall be that which, in view of the attending circumstances, can be properly imposed under the rules of the Revised Penal Code, while the minimum term of

which shall be within the range of the penalty next lower to that prescribed by the Code for the offense.

6. ID.; ESTAFA BY DECEIT; PENALTY IMPOSED BY TRIAL COURT WAS CORRECTLY AFFIRMED BY APPELLATE COURT. — Under Article 315, as amended by P.D. No. 818, the penalty of *reclusion temporal* is imposed if the amount defraud is over ₱12,000.00 but does not exceed ₱22,000.00. The amount involved in this case is within the above-mentioned range. Applying the Indeterminate Sentence Law, the maximum imposable penalty is *reclusion temporal* while the minimum term should be within the range of the penalty next lower to that prescribed by the Code for the offense, which is *prision mayor*. Thus, the CA correctly affirmed the penalty imposed by the trial court which is six (6) years and one (1) day of *prision mayor* as minimum to twelve years (12) and one (1) day of *reclusion temporal* as maximum.

APPEARANCES OF COUNSEL

De Vera Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari* filed by JUDE JOBY LOPEZ from the decision[1] dated January 12, 2005 of the Court of Appeals (CA), Ninth Division, in *CA-G.R. CR No. 27057*, affirming an earlier decision[2] of the Regional Trial Court (RTC), Branch 53, Sorsogon, Sorsogon, which found petitioner guilty beyond reasonable doubt of the crime of Estafa as defined under Article 315, par. 2(d) of the Revised Penal Code, as amended by Republic Act (R.A.) No. 4885 and sentenced him

[1] Penned by Associate Justice Magdangal M. De Leon, and concurred in by then Associate Justices Romeo A. Brawner and Mariano C. del Castillo; *rollo*, pp. 17-23.

[2] RTC Record, pp. 154-157.

to suffer an indeterminate penalty of 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, and to indemnify the private complainant in the amount of Twenty Thousand Pesos (₱20,000.00) plus costs.

On October 6, 1998, in the RTC of Sorsogon, an Information for estafa was filed against herein petitioner Jude Joby G. Lopez which was docketed in as Criminal Case No. 98-4690. The said Information alleged:

> That on or about March 23, 1998, in the municipality of Sorsogon, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to defraud, did then and there, willfully, unlawfully and feloniously, make, draw, and issue to apply on account and/or for value received a DBP Check No. 0859279 payable to EFREN R. ABLES in the amount of TWENTY THOUSAND PESOS (₱20,000.00), Philippine Currency, knowing fully well that at the time of issue, accused did not have sufficient fund and/or his account is already closed with the drawee bank and that upon presentment of the check for payment on May 27, 1998, the same was dishonored and/or refused payment by the drawee bank for the reason that the account of the said accused is already closed and/or without sufficient fund and despite repeated demands after receipt of notice of said dishonor and thereafter made by Efren R. Ables, accused refused and still refuses to pay the latter, to his damage and prejudice in the aforementioned amount of ₱20,000.00, Philippine Currency.
>
> Contrary to law.[3]

When arraigned on April 13, 1999, petitioner pleaded "Not Guilty"[4] to the offense charged. During the trial on the merits, the prosecution presented the testimonies of private complainant Efren R. Ables and Valentin Luzuriaga, a bank teller of the Development Bank of the Philippines (DBP). The prosecution presented Exhibits "A" to "E" with submarkings consisting of the check issued by the petitioner, the demand letter sent by private complainant to petitioner and bank records to show that

---

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

[4] *Id*. at 29.

the said check was dishonored as the account was closed even before the said check was issued. All of the aforesaid exhibits were admitted by the trial court in its Order dated August 27, 2001. On the other hand, petitioner did not present any witness but only offered his documentary evidence, consisting of: Exh. 1 — the said demand letter of the private complainant; Exh. 1-A — stamp "Return to Sender" on the envelope of Exh. 1; Exh. 2 — the Transcript of Stenographic Notes (TSN of the Hearing on December 20, 1999); Exh. 2-a, page 9 of the said TSN; and Exh. 2-b, the No. 5 question and answer in Exh. 2.

The trial court convicted the accused (herein petitioner) of the crime of estafa penalized by Article 315, par. 2(d) of the Revised Penal Code as amended by R.A. No. 4885 in its decision dated June 17, 2002. The dispositive portion of the decision reads:

> WHEREFORE, the Court finds the accused Jude Joby G. Lopez guilty beyond reasonable doubt of the crime of ESTAFA defined and penalized under Art. 315, par. 2 (d) of the Revised Penal Code as amended by R.A. 4885 and taking into consideration the Indeterminate Sentence Law, the Court hereby sentences him to suffer an imprisonment of 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 and to indemnify the private complainant, Efren Ables in the amount of ₱20,000.00 Philippine currency and to pay the costs.
>
> SO ORDERED.[5]

In his Motion for Reconsideration, petitioner, citing the case of *Pacheco v. Court of Appeals* (G.R. No. 126670, December 2, 1999, 319 SCRA 595), argued that Ables knew at the time of the issuance of the check that accused had no funds in the bank and therefore, the element of deceit was absent. The said Motion for Reconsideration was denied by the trial court.

Petitioner appealed to the CA, reiterating his argument that the element of deceit was not proven and that the lower court

---

[5] *Id*. at 157.

imposed excessive penalty. The CA rendered its Decision on January 12, 2005 in *CA-G.R. CR No. 27057* affirming *in toto* the decision of the trial court in this case.

Hence, the petitioner interposed this appeal, contending that the CA erred —

1. In affirming the decision of the lower court convicting the accused of the crime of estafa.
2. In not applying the provisions of the negotiable instruments law.
3. In not ruling on the excessive penalty imposed by the trial court.

We find no merit in the instant appeal.

Article 315, paragraph 2(d), of the Revised Penal Code, as amended by R.A. 4885 penalizes estafa when committed as follows:

> 2. By means of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> x x x x x x x x x
>
> d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act.

By settled jurisprudence, the elements of the crime of estafa, as defined in the above quoted provision of law, are as follows: (1) the offender has postdated or issued a check in payment of an obligation contracted at the time of the postdating or issuance; (2) at the time of postdating or issuance of said check, the offender has no funds in the bank or the funds deposited are

not sufficient to cover the amount of the check; and (3) the payee has been defrauded. Damage and deceit are essential elements of the offense and must be established with satisfactory proof to warrant conviction, while the false pretense or fraudulent act must be committed prior to, or simultaneous with, the issuance of the bad check. The drawer of the dishonored check is given three days from receipt of the notice of dishonor to cover the amount of the check, otherwise, a *prima facie* presumption of deceit arises.[6]

Further it is settled that it is criminal fraud or deceit in the issuance of a check which is made punishable under the Revised Penal Code, and not the nonpayment of a debt. Deceit is the false representation of a matter of fact whether by words or conduct by false or misleading allegations or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury. Concealment which the law denotes as fraudulent implies a purpose or design to hide facts which the other party ought to have. The postdating or issuing of a check in payment of an obligation when the offender had no funds in the bank or his funds deposited therein are not sufficient to cover the amount of the check is a false pretense or a fraudulent act.[7]

The trial court and the CA found these elements of the crime charged present in this case. There is no dispute as to the findings of fact of the CA that respondent gave the sum of ₱20,000.00 to the accused in exchange for a postdated check in the same amount issued by petitioner and that the said check was dishonored by the bank. We quote the appellate court's factual findings, which sustained the trial court's decision as follows:

---

[6] *People v. Juliano*, G.R. No. 134120, January 17, 2005, 448 SCRA 370, 379, citing *People v. Holzer*, G.R. No. 132323, July 20, 2000, 336 SCRA 319; *People v. Chua*, G.R. No. 130632, September 28, 1999, 315 SCRA 326, 336; and *People v. Ojeda*, G.R. Nos. 104238-58, June 3, 2004, 430 SCRA 436.

[7] *Recuerdo v. People*, G.R. No. 168217, June 27, 2006, 493 SCRA 517, citing *Villarta v. CA*, No. L-40195, May 29, 1987, 150 SCRA 336; *Guinhawa v. People*, G.R. No. 162822, August 25, 2005, 468 SCRA 278.

Indisputably, on March 23, 1998, appellant issued and postdated a check with a value equivalent to the sum of ₱20,000.00 which he obtained from Efren. He accomplished deceit when he led Efren to believe that, prior to, or simultaneous with, their arrangement, the subject check is good upon its maturity on April 30, 1998. However, the check turned out to be worthless because, when Efren deposited it with the Legaspi Savings Bank, the same was dishonored due to "Account Closed." Evidently, Efren was prejudiced and damaged by appellant's fraudulent ploy.[8]

In the motion for reconsideration of the decision of the trial court finding petitioner guilty of the crime of estafa, the latter raised only the issue of whether or not deceit was proven by the prosecution. Petitioner likewise dwelt on the said issue in his appeal to the CA.

Re: First and Second Assigned Errors

In his first assignment of error, petitioner anchored his argument that no deceit was established by the prosecution because of the failure of the latter to prove the fact of receipt by petitioner of the notice of dishonor of the check. Petitioner argued that no presumption or *prima facie* evidence of guilt would arise if there is no proof as to the date of receipt by the drawer of the said notice "since there would simply be no way of reckoning the crucial 3-day period" from receipt of notice of dishonor of the check within which the amount necessary to cover the check may be done as provided by paragraph 2(d) of Article 315 of the Revised Penal Code, as amended.

On this issue, the CA ruled as follows:

As against appellant's insistence, the *prima facie* presumption of deceit perforce applies here. It must be noted that exactly on the same day, May 29, 1998, after Efren received the Debit Memo (Exh. "B") on the rubber check from the Legaspi Savings Bank, he called, then sent a demand letter (Exh. "C") to, appellant, informing him of its dishonor.[9] (Emphasis supplied)

---

[8] *Rollo*, p. 21.

[9] *Id*. at 22.

We sustain the CA. The receipt by the drawer of the notice of dishonor is not an element of the offense. The presumption only dispenses with the presentation of evidence of deceit if such notification is received and the drawer of the check failed to deposit the amount necessary to cover his check within three (3) days from receipt of the notice of dishonor of the check. The presumption indulged in by law does not preclude the presentation of other evidence to prove deceit. It is not disputed by petitioner that, as found by the CA, respondent Ables "called" up petitioner to inform him of the dishonor of the check. Moreover, when petitioner issued the check in question on March 23, 1998, he knew that his current account with the DBP was a closed account as early as January 27, 1998.

Petitioner disclaim employing deceit by asserting that respondent knew that petitioner had no funds with the bank, as he was so informed by the petitioner himself at the time of the issuance of the check (Appellant's Brief, CA-G.R. No. 27057). Assuming that petitioner did so, petitioner could not escape culpability because he was not in a position to make good the check at any time since his current account was already closed. This fact petitioner failed to disclose to respondent.

The absence of proof as to receipt of the written notice of dishonor notwithstanding, the evidence shows that petitioner had actual notice of the dishonor of the check because he was verbally notified by the respondent and notice whether written or verbal was a surplusage and totally unnecessary considering that almost two (2) months before the issuance of the check, petitioner's current account was already closed. Under these circumstances, the notice of dishonor would have served no useful purpose as no deposit could be made in a closed bank account.

Pertinently, Section 114(d) of the Negotiable Instruments Law provides:

Sec. 114 — *When notice need not be given to drawer*. — Notice of dishonor is not required to be given to the drawer in either of the following cases:

x x x x x x x x x

d. Where the drawer has no right to expect or require that the drawee or acceptor will honor the check.

Since petitioner's bank account was already closed even before the issuance of the subject check, he had no right to expect or require the drawee bank to honor his check. By virtue of the aforequoted provision of law, petitioner is not entitled to be given a notice of dishonor.

We now review the penalties imposed by the appellate court, affirming *in toto* the judgment of the trial court.

Presidential Decree (P.D.) No. 818[10] amended Article 315 of the Revised Penal Code insofar as the penalties for felonies under paragraph 2(d) are concerned, *viz*:

SECTION 1. Any person who shall defraud another by means of false pretenses or fraudulent acts as defined in paragraph 2(d) of Article 315 of the Revised Penal Code, as amended by Republic Act No. 4885, shall be punished by:

1st. The penalty of *reclusion temporal* if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos but the total penalty which may be imposed shall in no case exceed thirty years. In such cases, and in connection with the accessory penalties which may be imposed under the Revised Penal Code, the penalty shall be termed *reclusion perpetua;*

2nd. The penalty of *prision mayor* in its maximum period, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of *prision mayor* in its medium period, if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By *prision mayor* in its minimum period, if such amount does not exceed 200 pesos.

The Indeterminate Sentence Law provides that if an offense is punished by the Revised Penal Code or its amendments, the

---

[10] Took effect on October 22, 1995.

court shall sentence the accused to an indeterminate penalty, the maximum term of which shall be that which, in view of the attending circumstances, can be properly imposed under the rules of the Revised Penal Code, while the minimum term of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense.

Under Article 315, as amended by P.D. No. 818, the penalty of *reclusion temporal* is imposed if the amount defraud is over ₱12,000.00 but does not exceed ₱22,000.00. The amount involved in this case is within the above-mentioned range. Applying the Indeterminate Sentence Law, the maximum imposable penalty is *reclusion temporal* while the minimum term should be within the range of the penalty next lower to that prescribed by the Code for the offense, which is *prision mayor*. Thus, the CA correctly affirmed the penalty imposed by the trial court which is six (6) years and one (1) day of *prision mayor* as minimum to twelve years (12) and one (1) day of *reclusion temporal* as maximum.

WHEREFORE, premises considered, the petition is hereby *DENIED* for utter lack of merit, and the Decision appealed from is *AFFIRMED in toto.*

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Azcuna, JJ.,* concur.

THIRD DIVISION

[G.R. No. 170181. June 26, 2008]

HANJIN HEAVY INDUSTRIES AND CONSTRUCTION CO. LTD., HAK KON KIM and/or JHUNIE ADAJAR, *petitioners, vs.* **FELICITO IBAÑEZ, ALIGWAS CAROLINO, ELMER GACULA, ENRIQUE DAGOTDOT and RUEL CALDA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS ARE BINDING UPON THE SUPREME COURT; EXCEPTION. — As a general rule, the factual findings of the Court of Appeals are binding upon the Supreme Court. One exception to this rule is when the factual findings of the former are contrary to those of the trial court or the lower administrative body, as the case may be. The main question that needs to be settled — whether respondents were regular or project employees — is factual in nature. Nevertheless, this Court is obliged to resolve it due to the incongruent findings of the NLRC and those of the Labor Arbiter and the Court of Appeals.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; PROJECT EMPLOYEE DISTINGUISHED FROM REGULAR EMPLOYEE; RULE. — Article 280 of the Labor Code distinguishes a "project employee" from a "regular employee" thus: Article 280. Regular and Casual Employment —The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, *except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee* or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season. An employment shall be deemed to be casual if it is not covered by the preceding paragraph:

Provided, That, any employee who has rendered at least one year service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

3. ID.; ID.; ID.; LENGTH OF SERVICE OR THE RE-HIRING OF CONSTRUCTION WORKERS ON A PROJECT-TO-PROJECT BASIS DOES NOT CONFER UPON THEM REGULAR EMPLOYMENT STATUS; PROJECT EMPLOYEES, DEFINED. — [T]he Court has held that the length of service or the re-hiring of construction workers on a project-to-project basis does not confer upon them regular employment status, since their re-hiring is only a natural consequence of the fact that experienced construction workers are preferred. Employees who are hired for carrying out a separate job, distinct from the other undertakings of the company, *the scope and duration of which has been determined and made known to the employees at the time of the employment*, are properly treated as project employees and their services may be lawfully terminated upon the completion of a project. Should the terms of their employment fail to comply with this standard, they cannot be considered project employees.

4. ID.; ID.; STIPULATION ON EMPLOYMENT CONTRACT PROVIDING FOR A FIXED PERIOD OF EMPLOYMENT SHOULD BE KNOWINGLY AND VOLUNTARILY AGREED UPON BY THE PARTIES. — In *Caramol v. National Labor Relations Commission*, and later reiterated in *Salinas, Jr. v. National Labor Relations Commission*, the Court markedly stressed the importance of the employees' *knowing* consent to being engaged as project employees when it clarified that "there is no question that stipulation on employment contract providing for a fixed period of employment such as 'project-to-project' contract is valid **provided the period was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent x x x.**"

5. ID.; ID.; ABSENCE OF A WRITTEN CONTRACT OF EMPLOYMENT DOES NOT BY ITSELF GRANT

REGULAR STATUS OF EMPLOYMENT; SUCH CONTRACT IS EVIDENCE THAT EMPLOYEES WERE INFORMED OF THE DURATION AND SCOPE OF THEIR WORK AND THEIR STATUS AS PROJECT EMPLOYEES. — While the absence of a written contract does not automatically confer regular status, it has been construed by this Court as a red flag in cases involving the question of whether the workers concerned are regular or project employees. x x x Even though the absence of a written contract does not by itself grant regular status to respondents, such a contract is evidence that respondents were informed of the duration and scope of their work and their status as project employees. In this case, where no other evidence was offered, the absence of an employment contract puts into serious question whether the employees were properly informed at the onset of their employment status as project employees.

6. ID.; ID.; TERMINATION OF EMPLOYMENT; IN ILLEGAL DISMISSAL CASES, THE EMPLOYER HAS THE BURDEN OF PROVING WITH CLEAR, ACCURATE, CONSISTENT AND CONVINCING EVIDENCE THAT A DISMISSAL WAS VALID. — It is doctrinally entrenched that in illegal dismissal cases, the employer has the burden of proving with clear, accurate, consistent and convincing evidence that a dismissal was valid.

7. ID.; ID.; ID.; PROJECT EMPLOYMENT; INDICATORS. — x x x Indicators of project employment, as prescribed under Section 2.2(e) and (f) of Department Order No. 19, Series of 1993, entitled Guidelines Governing the Employment of Workers in the Construction Industry, issued by the DOLE: 2.2 Indicators of project employment. — Either one or more of the following circumstances, among others, may be considered as indicators that an employee is a project employee. (a) The duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable. (b) Such duration, as well as the specific work/service to be performed, is defined in an employment agreement and is made clear to the employee at the time of hiring. (c) The work/service performed by the employee is in connection with the particular project/undertaking for which he is engaged. (d) The employee, while not employed and awaiting engagement, is free to offer his services to any other employer. **(e) The termination of**

his employment in the particular project/undertaking is reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees' terminations/dismissals/suspensions. (f) An undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies.

8. ID.; ID.; ID.; ID.; ID.; FAILURE OF AN EMPLOYER TO FILE A TERMINATION REPORT WITH THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) EVERY TIME A PROJECT OR A PHASE THEREOF IS COMPLETED INDICATES THAT RESPONDENTS WERE NOT PROJECT EMPLOYEES. — It also bears to note that petitioners did not present other Termination Reports apart from that filed on 11 April 2002. The failure of an employer to file a Termination Report with the DOLE every time a project or a phase thereof is completed indicates that respondents were not project employees. Employers cannot mislead their employees, whose work is necessary and desirable in the former's line of business, by treating them as though they are part of a work pool from which workers could be continually drawn and then assigned to various projects and thereafter denied regular status at any time by the expedient act of filing a Termination Report. This would constitute a practice in which an employee is unjustly precluded from acquiring security of tenure, contrary to public policy, morals, good customs and public order.

9. ID.; ID.; ID.; ID.; ID.; A COMPLETION BONUS, IF PAID AS A MERE AFTERTHOUGHT, CANNOT BE USED TO DETERMINE WHETHER OR NOT THE EMPLOYMENT WAS REGULAR OR MERELY FOR A PROJECT. — Assuming that petitioners actually paid respondents a completion bonus, petitioners failed to present evidence showing that they undertook to pay respondents such a bonus upon the completion of the project, as provided under Section 2.2(f) of Department Order No. 19, Series of 1993. Petitioners did not even allege how the "completion bonus" was to be computed or the conditions that must be fulfilled before it was to be given. A completion bonus, if paid as a mere afterthought, cannot be used to determine whether or not the employment was regular

or merely for a project. Otherwise, an employer may defeat the workers' security of tenure by paying them a completion bonus at any time it is inclined to unjustly dismiss them.

10. ID.; ID.; ID.; QUITCLAIMS; AS A RULE, IT IS LOOKED UPON WITH DISFAVOR AND FROWNED UPON AS CONTRARY TO PUBLIC POLICY, THUS INEFFECTIVE TO BAR CLAIMS FOR THE FULL MEASURE OF A WORKER'S LEGAL RIGHTS; EXCEPTION NOT APPLICABLE IN CASE AT BAR. — [T]he Quitclaims which the respondents signed cannot bar them from demanding what is legally due them as regular employees. As a rule, quitclaims and waivers or releases are looked upon with disfavor and frowned upon as contrary to public policy. They are thus ineffective to bar claims for the full measure of a worker's legal rights, particularly when the following conditions are applicable: 1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or (2) where the terms of settlement are unconscionable on their face. To determine whether the Quitclaims signed by respondents are valid, one important factor that must be taken into account is the consideration accepted by respondents; the amount must constitute a reasonable settlement equivalent to the full measure of their legal rights. In this case, the Quitclaims signed by the respondents do not appear to have been made for valuable consideration. Respondents, who are regular employees, are entitled to backwages and separation pay and, therefore, the Quitclaims which they signed cannot prevent them from seeking claims to which they are entitled.

11. ID.; ID.; IF DOUBTS EXIST BETWEEN THE EVIDENCE PRESENTED BY THE EMPLOYER AND THAT BY THE EMPLOYEE, THE SCALES OF JUSTICE MUST BE TILTED IN FAVOR OF THE EMPLOYEE. — Due to petitioners' failure to adduce any evidence showing that petitioners were project employees who had been informed of the duration and scope of their employment, they were unable to discharge the burden of proof required to establish that respondents' dismissal was legal and valid. Furthermore, it is a well-settled doctrine that if doubts exist between the evidence presented by the employer and that by the employee, the scales of justice must be tilted in favor of the latter. For these reasons, respondents are to be considered regular employees of HANJIN.

APPEARANCES OF COUNSEL

Jewel D. Bulos for petitioners.
Amelia C. Gachitorena and Abraham C. Ong for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision,[1] dated 28 July 2005, rendered by the Court of Appeals, reversing the Decision,[2] promulgated by the National Labor Relations Commission (NLRC) on 7 May 2004. The Court of Appeals, in its assailed Decision, declared that respondents are regular employees who were illegally dismissed by petitioner Hanjin Heavy Industries and & Construction Company, Limited (HANJIN).

Petitioner HANJIN is a foreign company duly registered with the Securities and Exchange Commission to engage in the construction business in the Philippines. Petitioners Hak Kon Kim and Jhunie Adajar were employed as Project Director and Supervisor, respectively, by HANJIN.

On 11 April 2002, respondents Felicito Ibañez, Aligwas Carolino, Elmer Gacula, Enrique Dagotdot, Ruel Calda, and four other co-workers filed a complaint before the NLRC, docketed as NLRC Case No. RAB-IV-04-15515-02-RI, for illegal dismissal with prayer for reinstatement and full backwages against petitioners. In their Position Paper dated 29 July 2002, respondents alleged that HANJIN hired them for various positions on different dates, hereunder specified:

	Position	**Date of Employment**
Felicito Ibañez	Tireman	7 March 2000
Elmer Gacula	Crane Operator	1992

[1] Penned by Associate Justice Renato C. Dacudao with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao, concurring. *Rollo*, pp. 273-289.
[2] *Rollo*, pp. 200-216.

Enrique Dagotdot	Welder	1995
Aligwas Carolino	Welder	September 1994
Ruel Calda	Warehouseman	26 January 1996[3]

Respondents stated that their tasks were usual and necessary or desirable in the usual business or trade of HANJIN. Respondents additionally averred that they were employed as members of a work pool from which HANJIN draws the workers to be dispatched to its various construction projects; with the exception of Ruel Calda, who as a warehouseman was required to work in HANJIN's main office.[4] Among the various construction projects to which they were supposedly assigned, respondents named the North Harbor project in 1992-1994; Manila International Port in 1994-1996; Batangas Port in 1996-1998; the Batangas Pier, and La Mesa Dam.[5]

On 15 April 2002, Hanjin dismissed respondents from employment. Respondents claimed that at the time of their dismissal, HANJIN had several construction projects that were still in progress, such as Metro Rail Transit (MRT) II and MRT III, and continued to hire employees to fill the positions vacated by the respondents.[6]

Petitioners denied the respondents' allegations. They maintained that respondents were hired as project employees for the construction of the LRT/MRT Line 2 Package 2 and 3 Project. HANJIN and respondents purportedly executed contracts of employment, in which it was clearly stipulated that the respondents were to be hired as project employees for a period of only three months, but that the contracts may be renewed, to wit:

Article II
TERM OF AGREEMENT

This Agreement takes effect xxx for the duration of three (3) months *and shall be* considered automatically renewed in the absence

[3] *Id.* at 82-83.

[4] *Id.* at 83.

[5] *Id*. at 237.

[6] *Id*. at 99.

of any Notice of Termination by the EMPLOYER to the PROJECT EMPLOYEE. *This* AGREEMENT automatically terminates at the completion of the project or any particular phase thereof, *depending upon the progress of the project*.[7]

However, petitioners failed to furnish the Labor Arbiter a copy of said contracts of employment.

Petitioners asserted that respondents were duly informed of HANJIN's policies, rules and regulations, as well as the terms of their contracts. Copies of the employees' rules and regulations were posted on the bulletin boards of all HANJIN campsite offices.[8]

Petitioners further emphasized that prior to 15 April 2002, Hak Kon Kim, HANJIN's Project Director, notified respondents of the company's intention to reduce its manpower due to the completion of the LRT/MRT Line 2 Package 2 and 3 Project. Respondents were among the project employees who were thereafter laid off, as shown in the Establishment Termination Report filed by HANJIN before the Department of Labor and Employment (DOLE) Regional Office (IV) in Cainta, Rizal on 11 April 2002.[9]

Finally, petitioners insist that in accordance with the usual practice of the construction industry, a completion bonus was paid to the respondents.[10] To support this claim, they offered as evidence payroll records for the period 4 April 2002 to 20 April 2002, with the words "completion bonus" written at the lower left corner of each page.[11]

Petitioners attached copies of the Quitclaims,[12] executed by the respondents, which uniformly stated that the latter received

---

[7] *Id*. at 43.

[8] *Id*.

[9] *Id*. at 43 and 52-59.

[10] *Id*. at 47.

[11] *Id* at 60-63.

[12] *Id*. at 72-80.

all wages and benefits that were due them and released HANJIN and its representatives from any claims in connection with their employment. These Quitclaims also contained Clearance Certificates which confirmed that the employees concerned were cleared of all accountabilities at the close of the working hours on 15 April 2002.

In their Reply[13] dated 27 August 2002, respondents vehemently refuted having signed any written contract stating that they were project employees.

The Labor Arbiter found merit in the respondents' complaint and declared that they were regular employees who had been dismissed without just and valid causes and without due process. It ruled that HANJIN's allegation that respondents were project employees was negated by its failure to present proof thereof. It also noted that a termination report should be presented after the completion of every project or a phase thereof and not just the completion of one of these projects. The Labor Arbiter further construed the number of years that respondents rendered their services for HANJIN as an indication that respondents were regular, not project, employees.[14] The Labor Arbiter ordered in its Decision, dated 30 April 2003, that:

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

1) Declaring respondent HANJIN HEAVY INDUSTRIES & CONSTRUCTION CO. LTD. guilty of illegal dismissal

2) Ordering respondent to reinstate all the complainants to positions previously occupied by them with full backwages from the time compensation was withheld from them up to date of actual reinstatement in the following amount (as of date of this decision):

1. Felicito Ibañez	₱ 88,020.83
2. Elmer A. Gacula	88,020.83
3. Rizalino De Vera	88,020.83

[13] *Id*. at 89.

[14] *Id*. at 100-101.

4. Enrique Dagotdot	88,020.83
5. Carolino Aligwas	88,020.83
6. Ruel Calda	88,020.83
7. Roldan Lanojan	88,020.83
8. Pascual Caranguian	88,020.83
9. Carmelito Dalumangcad	88,020.83
Total	**₱792,187.47**

3) In lieu of reinstatement, respondent is ordered to pay complainants their separation pay in the following sum:

Felicito Ibañez	₱ 19,500.00
Elmer A. Gacula	71,500.00
Rizaliano De Vera	19,500.00
Enrique Dagotdot	52,000.00
Carolino Aligwas	58,500.00
Ruel Calda	45,500.00
Roldan Lanojan	19,500.00
Pascual Caranguian	26,000.00
Carmelito Dalumangcad	78,000.00
Total	**₱390,000.00**

4) Ordering respondent to pay each complainant ₱50,000.00 for moral damages and ₱30,000.00 as exemplary damages, or the total sum of ₱450,000.00 and ₱270,000.00, respectively; and

5) Ordering respondent to pay complainants litigation expenses in the sum of ₱30,000.00

All other claims are DISMISSED for lack of merit.[15]

Petitioners filed an appeal before the NLRC. In their Notice of Appeal/Memorandum Appeal[16] dated 5 July 2003, petitioners discarded their earlier claim that respondents signed employment contracts, unequivocally informing them of their status as project employees. Nonetheless, they still contended that the absence of respondents' contracts of employment does not vest the latter with regular status.

---

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

[16] *Id*. at 103-120.

The NLRC reversed the Labor Arbiter's Decision dated 30 April 2003, and pronounced that the respondents were project employees who were legally terminated from employment.[17] The NLRC gave probative value to the Termination Report submitted by HANJIN to the DOLE, receipts signed by respondents for their completion bonus upon phase completion, and the Quitclaims executed by the respondents in favor of HANJIN. The NLRC also observed that the records were devoid of any proof to support respondents' allegation that they were employed before 1997, the time when construction work on the MRT started. Lastly, it overruled the Labor Arbiter's award of moral and exemplary damages.[18] The dispositive part of the Decision dated 7 May 2004 of the NLCR states that:

> WHEREFORE, in view of the foregoing, the decision subject of appeal is hereby REVERSED and SET ASIDE and a new one is entered DISMISSING complainants' complaint for lack of merit.[19]

On appeal, the Court of Appeals reversed the NLRC Decision, dated 7 May 2004. The appellate court looked with disfavor at the change in HANJIN's initial position before the Labor Arbiter — from its initial argument that respondents executed employment contracts; to its modified argument during its appeal before the NLRC — that respondents could still be categorized as project workers despite the absence of contracts of employment. Additionally, it adjudged the Termination Report as inconclusive proof that respondents were project employees. Emphasizing that the employer had the burden of proving the legality of the dismissal, the appellate court ruled that respondents were regular employees and upheld the Labor Arbiter's finding that they were illegally dismissed. The Court of Appeals, however, adopted

---

[17] *Id*. at 212-213. Respondents' four other co-workers who originally joined the complaint but failed to sign the position papers were excluded as complainants. Another co-worker, Carmelito Dalumangcad, who died on 5 May 2002, before the conduct of the conciliation/mediation proceedings and filing of the position papers, was likewise excluded as a complainant.

[18] *Id*. at 212-215.

[19] *Id*. at 215.

the NLRC's deletion of the award of damages.[20] The decretal portion of the Decision of the Court of Appeals reads:

> **UPON THE VIEW WE TAKE OF THIS CASE, THUS**, the challenged decision and resolution of the NLRC must be, as they hereby are, **REVERSED** and **SET ASIDE**. The decision of the Labor Arbiter is hereby **REINSTATED** relative to the award to petitioners of full backwages, separation pay in lieu of reinstatement, and litigation expenses, but **not** with respect to the awards for moral damages or for exemplary damages, both of which are hereby **DELETED**. Without costs in this instance.[21]

Hence, the present Petition, in which the following issues are raised:

I

WHETHER OR NOT THE FINDINGS OF THE HONORABLE COURT OF APPEALS ARE MERE CONCLUSIONS WITHOUT DELVING INTO THE RECORDS OF THE CASE AND EXAMINE (sic) FOR ITSELF THE QUESTIONED FINDINGS OF THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION CONTRARY TO THE RULING IN THE CASE OF *AGABON VS. NLRC, ET AL.* 442 SCRA 573.

II

WHETHER OR NOT THE HONORABLE COURT OF APPEALS MANIFESTLY OVERLOOKED CERTAIN RELEVANT FACTS WHICH, IF PROPERLY CONSIDERED, WOULD RESULT IN A DIFFERENT CONCLUSION.

III

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE PERTINENT PROVISIONS OF POLICY INSTRUCTIONS NO. 20, AS AMENDED BY DEPARTMENT ORDER NO. 19 SERIES OF 1993 IN RELATION TO ARTICLE 280 OF THE LABOR CODE IN CONSIDERING WHETHER OR NOT RESPONDENTS ARE PROJECT EMPLOYEES.

---

[20] *Id.* at 286-288.

[21] *Id.* at 288-289.

IV

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT RESPONDENTS WERE ILLEGALLY DISMISSED.[22]

The Petition is without merit.

As a general rule, the factual findings of the Court of Appeals are binding upon the Supreme Court. One exception to this rule is when the factual findings of the former are contrary to those of the trial court or the lower administrative body, as the case may be. The main question that needs to be settled —whether respondents were regular or project employees — is factual in nature. Nevertheless, this Court is obliged to resolve it due to the incongruent findings of the NLRC and those of the Labor Arbiter and the Court of Appeals.[23]

Article 280 of the Labor Code distinguishes a "project employee" from a "regular employee" thus:

> Article 280. Regular and Casual Employment — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, *except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee* or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists. (Emphasis supplied.)

---

[22] *Id*. at 402-403.

[23] *Filipinas Pre-Fabricated Building Systems (Filsystems), Inc. v. Puente*, G.R. No. 153832, 18 March 2005, 453 SCRA 820, 826.

From the foregoing provision, the principal test for determining whether particular employees are properly characterized as "project employees" as distinguished from "regular employees" is whether or not the project employees were assigned to carry out a "specific project or undertaking," the duration and scope of which were specified at the time the employees were engaged for that project.[24]

In a number of cases,[25] the Court has held that the length of service or the re-hiring of construction workers on a project-to-project basis does not confer upon them regular employment status, since their re-hiring is only a natural consequence of the fact that experienced construction workers are preferred. Employees who are hired for carrying out a separate job, distinct from the other undertakings of the company, *the scope and duration of which has been determined and made known to the employees at the time of the employment*, are properly treated as project employees and their services may be lawfully terminated upon the completion of a project.[26] Should the terms of their employment fail to comply with this standard, they cannot be considered project employees.

In *Abesco Construction and Development Corporation v. Ramirez*,[27] which also involved a construction company and its workers, this Court considered it crucial that the employees were informed of their status as project employees:

The principal test for determining whether employees are "project employees" or "regular employees" is whether they are

---

[24] *ALU-TUCP v. National Labor Relations Commission*, G.R. No. 109902, 2 August 1994, 234 SCRA 678, 685.

[25] *Cioco, Jr. v. C.E. Construction Corporation*, G.R. Nos. 156748 and 156896, 8 September 2004, 437 SCRA 648, 652; *Filipinas Pre-Fabricated Building System (Filsystem), Inc. v. Puente*, *supra* note 23 at 831; *Abesco Construction and Development Corporation v. Ramirez*, G.R. No. 141168, 10 April 2006, 487 SCRA 9, 14; D.M. *Consunji, Inc. v. National Labor Relations Commission*, 401 Phil. 635, 641 (2000).

[26] *ALU-TUCP v. National Labor Relations Commission*, *supra* note 24 at 685; *Grandspan Development Corporation v. Bernardo*, G.R. No. 141464, 21 September 2005, 470 SCRA 461, 470.

[27] *Supra* note 25 at 14-15.

assigned to carry out a specific project or undertaking, the duration and scope of which are specified at the time they are engaged for that project. Such duration, as well as the particular work/service to be performed, is defined in an employment agreement and is made clear to the employees at the time of hiring.

In this case, petitioners did not have that kind of agreement with respondents. Neither did they inform respondents of the nature of the latters' work at the time of hiring. Hence, for failure of petitioners to substantiate their claim that respondents were project employees, we are constrained to declare them as regular employees.

In *Caramol v. National Labor Relations Commission*,[28] and later reiterated in *Salinas, Jr. v. National Labor Relations Commission*,[29] the Court markedly stressed the importance of the employees' *knowing* consent to being engaged as project employees when it clarified that "there is no question that stipulation on employment contract providing for a fixed period of employment such as 'project-to-project' contract is valid **provided the period was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent x x x.**"

During the proceedings before the Labor Arbiter, the petitioners' failure to produce respondents' contracts of employment was already noted, especially after they alleged in their pleadings the existence of such contracts stipulating that respondents' employment would only be for the duration of three months, automatically renewed in the absence of notice, and terminated at the completion of the project. Respondents denied having executed such contracts with HANJIN. In their appeal before the NLRC until the present, petitioners now claim that due to a lapse in management procedure, no such employment contracts were executed; nonetheless, the absence of a written contract does not remove respondents from the ambit of being project employees.[30]

---

[28] G.R. No. 102973, 24 August 1993, 225 SCRA 582, 586.

[29] G.R. No. 114671, 24 November 1999, 319 SCRA 54, 61.

[30] *Rollo*, pp. 410-411.

While the absence of a written contract does not automatically confer regular status, it has been construed by this Court as a red flag in cases involving the question of whether the workers concerned are regular or project employees. In *Grandspan Development Corporation v. Bernardo*[31] and *Audion Electric Co., Inc. v. National Labor Relations Commission*,[32] this Court took note of the fact that the employer was unable to present employment contracts signed by the workers, which stated the duration of the project. In another case, *Raycor v. Aircontrol Systems, Inc. v. National Labor Relations Commission*,[33] this Court refused to give any weight to the employment contracts offered by the employers as evidence, which contained the signature of the president and general manager, but not the signatures of the employees. In cases where this Court ruled that construction workers repeatedly rehired retained their status as project employees, the employers were able to produce employment contracts clearly stipulating that the workers' employment was coterminous with the project to support their claims that the employees were notified of the scope and duration of the project.[34]

Hence, even though the absence of a written contract does not by itself grant regular status to respondents, such a contract is evidence that respondents were informed of the duration and scope of their work and their status as project employees. In this case, where no other evidence was offered, the absence of an employment contract puts into serious question whether the employees were properly informed at the onset of their employment status as project employees. It is doctrinally entrenched that in illegal dismissal cases, the employer has the burden of proving with clear, accurate, consistent and convincing

---

[31] *Supra* note 26 at 470.

[32] G.R. No. 106648, 17 June 1999, 308 SCRA 341, 350.

[33] G.R. No. 114290, 9 September 1996, 261 SCRA 589, 608.

[34] *Cioco, Jr. v. C.E. Construction Corporation*, *supra* note 25 at 649; *Filipinas Pre-Fabricated Building System (Filsystem), Inc. v. Puente*, *supra* note 23 at 828.

evidence that a dismissal was valid.[35] Absent any other proof that the project employees were informed of their status as such, it will be presumed that they are regular employees in accordance with Clause 3.3(a) of Department Order No. 19, Series of 1993, which states that:

> a) **Project employees whose aggregate period of continuous employment in a construction company is at least one year shall be considered regular employees, in the absence of a "day certain" agreed upon by the parties** for the termination of their relationship. Project employees who have become regular shall be entitled to separation pay.
>
> A "day" as used herein, is understood to be that which must necessarily come, although it may not be known exactly when. This means that where the final completion of a project or phase thereof is in fact determinable and the expected completion is made known to the employee, such project employee may not be considered regular, notwithstanding the one-year duration of employment in the project or phase thereof or the one-year duration of two or more employments in the same project or phase of the project. (Emphasis provided.)

Petitioners call attention to the fact that they complied with two of the indicators of project employment, as prescribed under Section 2.2(e) and (f) of Department Order No. 19, Series of 1993, entitled Guidelines Governing the Employment of Workers in the Construction Industry, issued by the DOLE:

> 2.2 Indicators of project employment. — Either one or more of the following circumstances, among others, may be considered as indicators that an employee is a project employee.
>
> (a) The duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable.
>
> (b) Such duration, as well as the specific work/service to be performed, is defined in an employment agreement and is made clear to the employee at the time of hiring.

---

[35] *Austria v. National Labor Relations Commission*, G.R. No. 123646, 14 July 1999, 310 SCRA 293, 300; *Bank of the Philippine Islands v. Uy*, G.R. No. 156994, 31 August 2005, 468 SCRA 633, 646; and *Grandspan Development Corporation v. Bernardo*, *supra* note 26 at 470.

(c) The work/service performed by the employee is in connection with the particular project/undertaking for which he is engaged.

(d) The employee, while not employed and awaiting engagement, is free to offer his services to any other employer.

(e) The termination of his employment in the particular project/undertaking is reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees' terminations/dismissals/suspensions.

(f) An undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies. (Emphasis provided.)

Petitioners argue that the Termination Report filed before the DOLE Regional Office (IV) in Cainta, Rizal on 11 April 2002 signifies that respondents' services were engaged merely for the LRT/MRT Line 2 Package 2 and 3 Project.

Given the particular facts established in this case, petitioners' argument fails to persuade this Court. Petitioners were not able to offer evidence to refute or controvert the respondents' claim that they were assigned to various construction projects, particularly the North Harbor Project in 1992-1994; Manila International Port in 1994-1996; Batangas Port in 1996-1998; the Batangas Pier; and La Mesa Dam.[36] Had respondents' allegations been false, petitioners could simply present as evidence documents and records in their custody to disprove the same, *i.e.*, payroll for such projects or termination reports, which do not bear respondents' names. Petitioners, instead, chose to remain vague as to the circumstances surrounding the hiring of the respondents. This Court finds it unusual that petitioners cannot even categorically state the exact year when HANJIN employed respondents.

It also bears to note that petitioners did not present other Termination Reports apart from that filed on 11 April 2002.

[36] *Rollo*, p. 237.

The failure of an employer to file a Termination Report with the DOLE every time a project or a phase thereof is completed indicates that respondents were not project employees.[37] Employers cannot mislead their employees, whose work is necessary and desirable in the former's line of business, by treating them as though they are part of a work pool from which workers could be continually drawn and then assigned to various projects and thereafter denied regular status at any time by the expedient act of filing a Termination Report. This would constitute a practice in which an employee is unjustly precluded from acquiring security of tenure, contrary to public policy, morals, good customs and public order.[38]

In this case, only the last and final termination of petitioners was reported to the DOLE. If respondents were actually project employees, petitioners should have filed as many Termination Reports as there were construction projects actually finished and for which respondents were employed. Thus, a lone Termination Report filed by petitioners only upon the termination of the respondents' final project, and after their previous continuous employment for other projects, is not only unconvincing, but even suspicious.

Petitioners insist that the payment to the respondents of a completion bonus indicates that respondents were project employees. To support their claim, petitioners presented payroll records for the period 4 April 2002 to 20 April 2002, with the words "completion bonus" written at the lower left corner of each page.[39] The amount paid to each employee was equivalent

---

[37] *Violeta v. National Labor Relations Commission*, G.R. No. 119523, 10 October 1997, 280 SCRA 520, 533; *Audion Electric Co., Inc. v. National Labor Relations Commission*, *supra* note 32 at 350; *E. Ganzon, Inc. v. National Labor Relations Commission*, G.R. No. 123769, 22 December 1999, 321 SCRA 434, 442.

[38] *Samson v. National Labor Relations Commission*, G.R. No. 113166, 1 February 1996, 253 SCRA 112, 124; *Salinas, Jr. v. National Labor Relations Commission*, *supra* note 29 at 61; and *Caramol v. National Labor Relations Commission*, *supra* note 28 at 586.

[39] *Rollo*, pp. 60-63.

to his fifteen-day salary. Respondents, however, deny receiving any such amount.

Assuming that petitioners actually paid respondents a completion bonus, petitioners failed to present evidence showing that they undertook to pay respondents such a bonus upon the completion of the project, as provided under Section 2.2(f) of Department Order No. 19, Series of 1993.[40] Petitioners did not even allege how the "completion bonus" was to be computed or the conditions that must be fulfilled before it was to be given. A completion bonus, if paid as a mere afterthought, cannot be used to determine whether or not the employment was regular or merely for a project. Otherwise, an employer may defeat the workers' security of tenure by paying them a completion bonus at any time it is inclined to unjustly dismiss them.

Department Order No. 19, Series of 1993, provides that in the absence of an undertaking that the completion bonus will be paid to the employee, as in this case, the employee may be considered a non-project employee, to wit:

> 3.4 **Completion of the project.** Project employees who are separated from work as a result of the completion of the project or any phase thereof in which they are employed are entitled to the pro-rata completion bonus if there is an undertaking by for the grant of such bonus. **An *undertaking* by the employer to pay a completion bonus shall be an indicator that an employee is a project employee. Where there is no such undertaking, the employee may be considered a non-project employee.** The pro-rata completion bonus may be based on the industry practice which is at least the employee's one-half (1/2) month salary for every 12 months of service and may be put into effect for any project bid (in case of bid projects) or tender submitted (in case of negotiated projects) thirty (30) days from the date of issuances of these Guidelines. (Emphasis supplied.)

---

[40] 2.2 Indicators of project employment. — Either one or more of the following circumstances, among others, may be considered as indicators that an employee is a project employee.

x x x x x x x x x

(f) An undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies. (Emphasis provided.)

Furthermore, after examining the payroll documents submitted by petitioners, this Court finds that the payments termed as "completion bonus" are not the completion bonus paid in connection with the termination of the project. First of all, the period from 4 April 2002 to 20 April 2002, as stated in the payrolls, bears no relevance to a completion bonus. A completion bonus is paid in connection with the completion of the project, and is not based on a fifteen-day period. Secondly, the amount paid to each employee as his completion bonus was uniformly equivalent to his fifteen-day wages, without consideration of the number of years of service rendered. Section 3.4 of Department Order No. 19, Series of 1993, provides that based on industry practice, the completion bonus is at least the employee's one-half month salary for every twelve months of service.

Finally, the Quitclaims which the respondents signed cannot bar them from demanding what is legally due them as regular employees. As a rule, quitclaims and waivers or releases are looked upon with disfavor and frowned upon as contrary to public policy. They are thus ineffective to bar claims for the full measure of a worker's legal rights, particularly when the following conditions are applicable: 1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or (2) where the terms of settlement are unconscionable on their face.[41] To determine whether the Quitclaims signed by respondents are valid, one important factor that must be taken into account is the consideration accepted by respondents; the amount must constitute a reasonable settlement equivalent to the full measure of their legal rights.[42] In this case, the Quitclaims signed by the respondents do not appear to have been made for

---

[41] *Philippine Employ Services and Resources, Inc. v. Paramio*, G.R. No. 144786, 15 April 2004, 427 SCRA 732, 755.

[42] *Land and Housing Development Corporation v. Esquillo*, G.R. No. 152012, 30 September 2005, 471 SCRA 488, 499; *C. Planas Commercial v. National Labor Relations Commission*, G.R. No. 144619, 11 November 2005, 474 SCRA 608, 620; *Martinez v. National Labor Relations Commission*, G.R. No. 118743, 12 October 1998, 297 SCRA 643, 652.

valuable consideration. Respondents, who are regular employees, are entitled to backwages and separation pay and, therefore, the Quitclaims which they signed cannot prevent them from seeking claims to which they are entitled.[43]

Due to petitioners' failure to adduce any evidence showing that petitioners were project employees who had been informed of the duration and scope of their employment, they were unable to discharge the burden of proof required to establish that respondents' dismissal was legal and valid. Furthermore, it is a well-settled doctrine that if doubts exist between the evidence presented by the employer and that by the employee, the scales of justice must be tilted in favor of the latter.[44] For these reasons, respondents are to be considered regular employees of HANJIN.

Finally, in the instant case, records failed to show that HANJIN afforded respondents, as regular employees, due process prior to their dismissal, through the twin requirements of notice and hearing. Respondents were not served notices informing them of the particular acts for which their dismissal was sought. Nor were they required to give their side regarding the charges made against them. Certainly, the respondents' dismissal was not carried out in accordance with law and was, therefore, illegal.[45]

IN VIEW OF THE FOREGOING, the instant Petition is *DENIED*. This Court *AFFIRMS* the assailed Decision of the Court of Appeals in CA-G.R. SP No. 87474, promulgated on 28 July 2005, declaring that the respondents are regular employees who have been illegally dismissed by Hanjin Heavy Industries &

---

[43] *Sanyo Travel Corporation v. National Labor Relations Commission*, G.R. No. 121449, 2 October 1997, 280 SCRA 129, 139.

[44] *Nicario v. National Labor Relations Commission*, G.R. No. 125340, 17 September 1998, 295 SCRA 619, 626-627; *Asuncion v. National Labor Relations Commission*, 414 Phil. 329, 341-342 (2001); *Raycor v. Aircontrol Systems, Inc. v. National Labor Relations Commission supra* note 33 at 612.

[45] *Abesco Construction and Development Corporation v. Ramirez*, *supra* note 25 at 15; *Grandspan Development Corporation v. Bernardo*, *supra* note 26 at 470; and *Raycor v. Aircontrol Systems, Inc. v. National Labor Relations Commission, id*. at 613.

Construction Company, Limited, and are, therefore, entitled to full backwages, separation pay, and litigation expenses. Costs against the petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 172585. June 26, 2008]

CRISTITA BUSTON-ARENDAIN and HEIRS OF BAUTISTA ARENDAIN represented by CRISTITA BUSTON-ARENDAIN, *petitioners, vs.* **ANTONIA GIL, MIGUEL ANTONIO GIL, MARLYN GIL and MANOLO GIL,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; ELUCIDATED. — Under the doctrine of exhaustion of administrative remedies, an administrative decision must first be appealed to the administrative superiors at the highest level before it may be elevated to a court of justice for review. This Court has consistently held that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed himself of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the court's

intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or estoppel, the case is susceptible of dismissal for lack of cause of action.

2. ID.; ID.; ID.; RATIONALE. — This doctrine of exhaustion of administrative remedies is not without its practical and legal reasons; for one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case.

3. ID.; ID.; ID.; EXCEPTIONS. — [T]he principle of exhaustion of administrative remedies, as tested by a battery of cases, is not an ironclad rule. This doctrine is a relative one, and its flexibility is called upon by the peculiarity and uniqueness of the factual and circumstantial settings of a case. Hence, it is disregarded (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; **(9) when the subject matter is a private land in land case proceedings;** (10) when the rule does not provide a plain, speedy and adequate remedy; and (11) when there are circumstances indicating the urgency of judicial intervention.

4. ID.; ID.; ID.; ID.; ONCE A PATENT IS REGISTERED AND THE CORRESPONDING CERTIFICATE OF TITLE IS ISSUED IN THE NAME OF THE GRANTEE, THE LAND CEASES TO BE A PART OF THE PUBLIC DOMAIN AND BECOMES PRIVATE PROPERTY OVER WHICH THE DIRECTOR OF LANDS HAS NEITHER CONTROL NOR JURISDICTION; ACTION FOR RECONVEYANCE IS THE PROPER REMEDY. — Based on the ninth exception stated in the preceding paragraph, the doctrine requiring the prior

exhaustion of administrative remedies before recourse to the courts can be had is confined to land cases involving public lands; it is inapplicable to cases in which the subject matter is private lands. Upon registration, the homestead granted to Antonia and Miguel Gil ceased to have the character of public land and so was removed from the operation of the doctrine of exhaustion of administrative remedies. Since the free patent applications of Miguel and Antonia Gil over the disputed lots were granted and the corresponding certificates of title were accordingly issued in their names in 1976, the said properties then became private and ceased to be part of the public domain, over which the Director of Lands no longer has control or jurisdiction. The pieces of land thus covered by OCTs No. P-6079 and No. P-6080, in the names of Miguel and Antonia Gil, respectively, thereby assume the character of registered properties in accordance with the provisions of Section 122 of the Land Registration Act, and the remedy of any party who has been injured by their alleged fraudulent registration is an action for reconveyance instituted before the proper trial courts.

5. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; EXPLAINED. — Forum shopping is the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. In *Balite v. Court of Appeals,* the Court held that there is forum shopping when a party seeks to obtain remedies in an action in one court, which has already been solicited, and in other courts and other proceedings in another tribunal. While a party may avail himself of the remedies prescribed by the Rules of Court, such party is not free to resort to them simultaneously or at his/her pleasure or caprice. A party should not be allowed to present simultaneous remedies in two different forums, for it degrades and wreaks havoc upon the rule on orderly procedure. A party must follow the sequence and hierarchical order in availing himself of such remedies and not resort to shortcuts in procedure or to playing fast and loose with the said rules. Forum shopping, an act of malpractice, is considered as trifling with the courts and abusing their processes. It is improper conduct and degrades the administration of justice.

APPEARANCES OF COUNSEL

Liza Galicia Galicia and Associates Law Office for petitioners.

Primo S. Delos Reyes for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed in the instant Petition for Review on *Certiorari* are (1) the Decision[1] of the Court of Appeals in CA-G.R. CV No. 63440 dated 20 January 2006 denying the appeal of the petitioners; and (2) the Resolution[2] of the same court dated 31 March 2006 denying their Motion for Reconsideration.

The antecedent facts of the present case are as follows:

On 24 October 1995, herein respondent Antonia Gil (married to the late Miguel Gil) and her children, the herein respondents Miguel Antonio, Marlyn, and Manolo, all surnamed Gil, filed a complaint with the Regional Trial Court (RTC) of Davao City, Branch 16, for the declaration of nullity of titles, quieting of title, recovery of possession, accounting, damages with notice of *lis pendens*, with prayer for receivership, against spouses Domingo Arendain and Irene Taroy-Arendain (spouses Domingo and Irene); spouses Bautista Arendain and herein petitioner Cristita Buston-Arendain (spouses Bautista and Cristita); the Register of Deeds of Davao City; the Community Environment Natural Resources Office (CENRO), Davao City; and the Director of Lands. Their complaint was docketed as Civil Case No. 23963-95.

In their complaint,[3] respondents alleged that they are co-owners of parcels of land with a total land area of 50,130 square meters located in Cabantian, Davao City, and covered by the

---

[1] Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Romulo V. Borja and Ricardo R. Rosario, concurring. *Rollo*, pp. 33-41.

[2] *Rollo*, p. 44.

[3] *Id*. at 45.

following original certificates of title (OCTs): (1) OCT No. P-6075, in the name of Miguel Gil, covering 25,080 square meters; (2) OCT No. P-6079, in the name of Miguel Gil, covering 10,771 square meters; and (3) OCT No. P-6080, in the name of Antonia Gil, covering 14,279 square meters. Respondents averred that Miguel and Antonia acquired their titles as early as 1976.

Respondents accused the spouses Domingo and Irene and spouses Bautista and Cristita of fraudulently and maliciously obtaining, sometime in March 1981, the following OCTs: (1) OCT No. 10541, in the name of Domingo Arendain, married to Irene Taroy-Arendain, including therein the lot already registered in the name of respondent Miguel Gil under OCT No. P-6079; and (2) OCT No. P-10522, in the name of Bautista Arendain married to petitioner Cristita Buston-Arendain, covering the same lot registered in the name of respondent Antonia Gil under OCT No. P-6080.

Since 1976 up to the present, through threats of bodily harm utilized by the spouses Domingo and Irene and Bautista and Cristita, respondents were illegally deprived of enjoyment and possession over the aforementioned parcels of land. The former being adjacent owners of lands having common boundaries with respondents' land, have extended their boundaries and enlarged their parcels of lands by usurping the real rights of ownership/ possession of the latter over the said lands.

The CENRO, in its answer to respondents' complaint, explained that:

4. That there is pending before the DENR-CENRO XI-4C x x x involving Original Certificate of Title No. P-10552, issued in the name of Bautista Arendain, and Original Certificate of Title No. P-6080, issued in the name of Antonia C. Gil;

5. That the administrative case above-mentioned is docketed as Lot No. 7566 (portion of Lot 1080), Cad-102, Cabantian, Davao City, as shown in the enclosed Order of Investigation, dated August 03, 1993, herewith attached as Annex "A"[4];

[4] The Order of Investigation dated 3 August 1993 issued by the Department of Environment and Natural Resources, Office of the Regional Director, reads:

6. That parties were previously sent copies of said Annex "A" but as of date, the Applicant-Patentee Antonia C. Gil has not actively pursued the matter with the DENR, hence, said Office cannot categorically state at this point in time whether or not any of the certificates of title above-mentioned has preference over that of the other pending the termination of administrative proceedings;

7. That the then District Land Officer was Mr. Uldarico G. Aquino at the time Original Certificate of Title No. P-6080 was issued to Antonia C. Gil, whereas the then District Land Officer was Atty. Bienvenido Sambrano at the time Original Certificate of Title No. P-10522 was issued to Bautista Arendain, married to Cristita Buston;

F.P.A. (XI-1) 17553 (Patent No. (XI-1) 142 (O.C.T. No. P-6080) ANTONIA C. Gil Applicant-Patentee, - versus - F.P.A. (XI-1) 20829: (Free Patent No. (XI-1) 4656: (O.C.T. No. P-10522) BAUTISTA ARENDAIN, Applicant-Patentee.	x : : : : : : : : : : x	RED Claim No. _____ FENR " " _____ CENR " " _____ Lot No. 7566 (Portion of Lot 1080) Cad. 102 Cabantian, DAVAO CITY

x - x

ORDER OF INVESTIGATION

It appearing that Original Certificate of Title No. P-10552, registered and recorded in the name of Bautista Arendain is the same and identical tract of land likewise covered by Original Certificate of Title No. P-6080 registered in the name of Antonia C. Gil, identified as Lot No. 7566 (Portion of lot 1080) Cad. 102, situated at Cabantian, Davao City.

IT IS ORDERED, that the CENR Officer, CENRO XI-4C, Davao City (East) cause the investigation of this case is strict accordance with Sections 6 and 7 of Lands Administrative Order No. 6 and with the guidelines set forth under Lands Office Circular No. 68, dated August 28, 1978, and thereafter, submit his report with the corresponding comment and recommendation to this Office within forty-five (45) days from the termination of the investigation for evaluation and appropriate action.

SO ORDERED.

Davao City, Philippines

ISRAEL C. GADDI
OIC, Regional Executive Director (*Rollo*, p. 70)

8. That undersigned public respondent has no objection to the pursuit of this case before this Honorable Court provided that Plaintiff Antonia C. Gil submit[s] the necessary manifestation before the DENR-CENRO XI-4C x x x for the withdrawal of the case x x x so that the matter can be singly and fully litigated before this forum only.

WHEREFORE, it is respectfully prayed of this Honorable Court that the instant complaint be heard without need of separate administrative proceedings before the DENR-CENRO x x x.[5]

In their answer[6] to respondents' complaint, spouses Domingo and Irene and spouses Bautista and Cristita essentially sought the outright dismissal of the same on the grounds that respondents had no cause of action against them and the RTC lacked jurisdiction over the case because respondents had not exhausted all administrative remedies.

The case was thereafter called for pre-trial conference. Both spouses Domingo and Irene and spouses Bautista and Cristita failed to file their pre-trial brief and to appear for pre-trial; sequentially, the RTC issued an Order[7] dated 11 September 1996 declaring them "as in default."

The spouses Bautista and Cristita *via* a Petition for *Certiorari*[8] filed with the Court of Appeals, docketed as CA-G.R. SP No.

---

[5] *Rollo,* pp. 67-68.

[6] *Id*. at 59.

[7] The RTC Order states:

ORDER

On motion of the plaintiffs, the defendants Domingo Arendain, Irene Taroy-Arendain, Bautista Arendain and Cristita Bustos Arendain are declared as in default for failure to file their pre-trial brief and failure to appear for pre-trial this afternoon and also the defendant CENRO is declared as in default, for failure to file Pre-trial brief.

The Director of Lands and the Registry of Deeds did not file their answer. The reception of plaintiffs' evidence *ex-parte* is set on November 7, 1996, at 2:00 P.M.

Plaintiffs are directed to file a motion to declare defendants Registry of Deeds and the Director of Lands in default. (*Rollo,* p. 158-A.)

[8] Entitled *Bautista Arendain, et al. v. Hon. Romeo Marasigan*. The petitioners in CA-G.R. SP No. 44118 are not completely enumerated in the case title so it cannot be stated with certainty whether spouses Domingo and Irene joined

44118, assailed the issuance by the RTC of the order of default against them. However, in a Decision dated 30 September 1997,[9] the appellate court dismissed CA-G.R. SP No. 44118 and affirmed the order of default of the RTC.[10] The spouses Bautista and Cristita[11] then filed a Petition for Review on *Certiorari* before this Court, docketed as G.R. No. 131877, challenging the dismissal by the Court of Appeals of their Petition in CA-G.R. SP No. 44118. In a Resolution of this Court dated 18 March 1998,[12] G.R. No. 131877 was dismissed since the said appeal was filed beyond the reglementary period[13] and the petition failed to sufficiently show that the Court of Appeals had committed any reversible error in rendering the questioned judgment.[14]

Hence, the proceedings in Civil Case No. 23963-95 resumed. On the basis of the evidence presented by the respondents, the RTC rendered its Decision on 28 October 1998, the dispositive portion of which reads:

PREMISES CONSIDERED, judgment is hereby rendered:

---

the spouses Bautista and Cristita in CA-G.R. SP No. 44118 before the Court of Appeals.

[9] *Rollo*, p. 159.

[10] *Id*. at 159.

[11] Entitled *Bautista Arendain, et al. v. Antonio Gil, et al. Rollo,* p. 164.

[12] *Rollo*, p. 164.

[13] Rule 45
APPEAL BY *CERTIORARI* TO THE SUPREME COURT

x x x x x x x x x

SEC. 2. *Time for filing; extension.* — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

[14] G.R. No. 131877 was denied with finality and judgment ordered entered in the Book of Entries of judgment in a resolution of this Court dated 2 June 1998. (*Roll*o, p. 165.)

I DECLARING —

1) OCT No. P-10522 in the name of Bautista Arendain as totally null and void;

2) OCT No. P-10541 in the name of Domingo Arendain as null and void but only in so far as it covers/involves or/affects the 10,771 square meters in P-6079;

II ORDERING —

1) the Register of Deeds of Davao City to cancel totally OCT No. P-10522 and OCT No. P-10541 but only in so far as it involves the 10,771 square meters in P-6079;

2) Defendants-spouses Domingo Arendain and Irene Taroy-Arendain and defendants-spouses Bautista Arendain and Cristita Buston Arendain to vacate the parcels of land covered by OCT No. P-6075, P-6079 and P-6080.[15]

From the foregoing judgment rendered by the trial court, only the spouses Bautista and Cristita filed with the Court of Appeals an appeal docketed as CA-G.R. CV No. 63440. Spouses Domingo and Irene no longer appealed; hence, the RTC Decision dated 28 October 1998 has become final and executory as to them.[16]

In a Decision dated 20 January 2006, the Court of Appeals denied spouses Bautista and Cristita's appeal, ratiocinating that:

As correctly found by the court *a quo*, OCT No. P-6079 in the name of MIGUEL GIL married to ANTONIA GIL which was transcribed in the registration book for the province of Davao City on 13 August 1976 covered Lot 5022-C, Csd-11-001848, consisting of ten thousand seven hundred and seventy-one (10,771) square meters. This parcel of land is one of the two parcels of land embraced

---

[15] *Rollo,* p. 74.

[16] Failure to interpose an appeal within the reglementary period renders an order or decision final and executory unless a party files a motion for reconsideration within the 15-day reglementary period. x x x. (*Heirs of the Late Flor Tungpalan v. Court of Appeals,* G.R. No. 136207, 21 June 2005, 460 SCRA 392, 397.)

in OCT No. P-10541 in the name of DOMINGO ARENDAIN married to IRENE TAROY and which was transcribed in the registration book for the province of Davao City on 18 March 1981. Likewise, OCT No. P-6080 in the name of ANTONIA C. GIL married to MIGUEL GIL which was transcribed in the registration book for the province of Davao City on 13 August 1976 included the same parcel of land covered by OCT No. P-10522 in the name of BAUTISTA ARENDAIN married to CRISTITA BUSTON and which was transcribed in the registration book for the province of Davao City on 12 March 1981.

It is well-settled that once a patent is registered and the corresponding certificate of title is issued, the land ceases to be part of public domain and becomes private property over which the Director of Lands has neither control nor jurisdiction. Equally settled is the rule that the doctrine requiring prior exhaustion of administrative remedies before recourse to courts may be had is confined to public lands. It is inapplicable to private lands.

x x x x x x x x x

In the case at bench, the records disclosed that original certificates of title were issued over subject parcels of land in favor of MIGUEL GIL and ANTONIA GIL as early as 1976, thus, subject parcels of land ceased to be part of the public domain and became private property over which the Director of Lands has neither control nor jurisdiction. Consequently, the doctrine of exhaustion of administrative remedies before recourse to courts does not apply.[17]

The Court of Appeals thus ruled:

WHEREFORE, the appeal DENIED (sic) and the assailed Decision is AFFIRMED *in toto*.[18]

Herein petitioners now come before this Court raising the following issues in their petition:

FIRST:

The Honorable Court of Appeals erred in affirming the decision of the trial court declaring as null and void OCT No. P-10522 in the name of Petitioners when respondents have not yet exhausted

---

[17] *Rollo*, pp. 38-40.

[18] *Id*. at 15.

the administrative remedies, thus, in effect, departed from the accepted and usual course of judicial proceedings as would justify the call for an exercise of the power of supervision by this Honorable Court.

SECOND:

In filing the instant petition for review on *certiorari*, the Petitioners did not commit forum shopping.[19]

Significantly, in their petition,[20] herein petitioners Cristita Buston-Arendain and heirs of Bautista Arendain,[21] represented by Cristita Buston-Arendain, insist that herein respondents failed to exhaust administrative remedies when they filed Civil Case No. 23963-95 before the RTC, Branch 16 of Davao City, on 24 October 1995[22] without awaiting the resolution by the DENR-CENRO Davao City of the administrative case filed by Antonia Gil involving OCT No. P-10552 covering Lot No. 7566 in the name of spouses Bautista and Cristita Buston-Arendain.

The Court denies the petition at bar.

Under the doctrine of exhaustion of administrative remedies, an administrative decision must first be appealed to the administrative superiors at the highest level before it may be elevated to a court of justice for review.[23] This Court has consistently held that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed himself of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought.

---

[19] *Id*. at 124-125.

[20] *Id*. at 22.

[21] Bautista Arendain died on 5 January 2005. *Rollo*, p. 22.

[22] *Rollo*, p. 45.

[23] *Philippine Health Insurance Corporation v. Chinese General Hospital and Medical Center,* G.R. No. 163123, 15 April 2005, 456 SCRA 459, 472.

The premature invocation of the court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or estoppel, the case is susceptible of dismissal for lack of cause of action.[24]

This doctrine of exhaustion of administrative remedies is not without its practical and legal reasons; for one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case.[25]

However, the principle of exhaustion of administrative remedies, as tested by a battery of cases, is not an ironclad rule. This doctrine is a relative one, and its flexibility is called upon by the peculiarity and uniqueness of the factual and circumstantial settings of a case. Hence, it is disregarded (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; **(9) when the subject matter is a private land in land case proceedings;** (10) when the rule does not provide a plain, speedy and adequate remedy; and (11) when there are circumstances indicating the urgency of judicial intervention.[26]

Based on the ninth exception stated in the preceding paragraph, the doctrine requiring the prior exhaustion of administrative

---

[24] *Soto v. Jareno*, 228 Phil. 117, 119 (1986).

[25] *Paat v. Court of Appeals*, 334 Phil. 146, 152-153 (1997).

[26] *Id*.

remedies before recourse to the courts can be had is confined to land cases involving public lands; it is inapplicable to cases in which the subject matter is private lands. Upon registration, the homestead granted to Antonia and Miguel Gil ceased to have the character of public land and so was removed from the operation of the doctrine of exhaustion of administrative remedies.[27]

Since the free patent applications of Miguel and Antonia Gil over the disputed lots were granted and the corresponding certificates of title were accordingly issued in their names in 1976, the said properties then became private and ceased to be part of the public domain, over which the Director of Lands no longer has control or jurisdiction. The pieces of land thus covered by OCTs No. P-6079 and No. P-6080, in the names of Miguel and Antonia Gil, respectively, thereby assume the character of registered properties in accordance with the provisions of Section 122[28] of the Land Registration Act, and the remedy of any party who has been injured by their alleged fraudulent registration is an action for reconveyance instituted before the proper trial courts.[29]

---

[27] *Soto v. Jareno*, *supra* note 24, citing *Ramoso v. Obligado*, 70 Phil. 86 (1940), *Pamintuan v. San Agustin,* 43 Phil. 558 (1922).

[28] SEC. 122. Whenever public lands x x x belonging to the Government of the [Republic of the Philippines] are alienated, granted, or conveyed to persons or to public or private corporations, the same shall be brought forthwith under the operation of this Act and shall become registered lands. It shall be the duty of the official issuing the instrument of alienation, grant, or conveyance in behalf of the Government to cause such instrument before its delivery to the grantee, to be filed with the register of deeds for the province where the land lies and to be there registered like other deeds and conveyances, whereupon a certificate shall be entered as in other cases of registered land, and an owner's duplicate certificate issued to the grantee. The deed, grant, or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land, but shall operate only as contract between the Government and the grantee and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the land, and in all cases under this Act registration shall be made in the office of the register of deeds for the province where the land lies. x x x.

[29] *Lee Hong Hok v. David,* 150-C Phil. 542, 550 (1972).

An original certificate of title issued on the strength of a homestead patent partakes of the nature of a certificate of title issued in a judicial proceeding and becomes indefeasible and incontrovertible upon the expiration of one year from the date of promulgation of the order of the Director of Lands for the issuance of the patent. Thus, while the Director of Lands has the power to review homestead patents, he may do so only so long as the land remains part of the public domain, but once the patent is registered and a certificate of title issued, the land ceases to be part of the public domain and becomes private property over which the Director of Lands has neither control nor jurisdiction.[30]

Upon its registration, the land falls under the operation of Act No. 496 [31] and becomes registered land. Time and again, we have said that a Torrens certificate is evidence of an indefeasible title to property in favor of the person whose name appears thereon.[32]

That the patent applications of Miguel and Antonia Gil over the disputed lots were approved and that their certificates of title thereto were issued five years ahead of respondents are questions of fact already settled by both the RTC and the Court of Appeals. It is axiomatic that factual findings of trial courts, when adopted and confirmed by the Court of Appeals, are binding and conclusive and will not be disturbed on appeal. This Court is not a trier of facts. It is not its function to examine and determine the weight of evidence supporting the assailed decision. Moreover, well-rooted is the prevailing jurisprudence that only errors of law and not of facts are reviewable by this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court.[33]

---

[30] *Heirs of Gregorio Tengco v. Heirs of Jose Aliwalas,* G.R. No. 77541, 29 November 1988, 168 SCRA 198, 203-204.

[31] The Land Registration Act.

[32] *Republic v. Guerrero*, G.R. No.133168, 28 March 2006, 485 SCRA 424, 435-436.

[33] *Estate of Salvador Serra Serra v. Heirs of Primitivo Hernaez,* G.R. No. 142913, 9 August 2005, 466 SCRA 120, 128-129.

On the issue that petitioners committed forum shopping when they filed the Petition at bar, respondents beckon this Court to bring our attention to the fact that way back 17 December 1970, the late Bautista Arendain already filed Civil Case No. 7068 before the then Court of First Instance (CFI) of Davao City, Branch 1, entitled, *"Bautista Arendain v. The Honorable Director of Lands and Miguel Gil" for Declaration of judgment and/or Order as null and void*.[34]

In his complaint in Civil Case No. 7068 against the Director of Lands and Miguel Gil, Bautista Arendain prayed that the Order dated 17 July 1961[35] of the Director of Lands giving due course to Homestead Application No. 85563 in the name of Miguel Gil be declared null and void *ab initio*. However, while it appears that the then CFI of Davao City, Branch I, already resolved Civil Case No. 7068 filed by Bautista Arendain when it issued an Order[36] dated 19 February 1971 dismissing the complaint therein, only the homestead application number and sketch of the land being disputed were provided in connection with Civil Case No. 7068. This Court cannot therefore ascertain whether said case involves the same property subject of the present petition.

Forum shopping is the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.

In *Balite v. Court of Appeals,*[37] the Court held that there is forum shopping when a party seeks to obtain remedies in an action in one court, which has already been solicited, and in

---

[34] *Rollo*, p. 196.

[35] *Id*. at 193.

[36] ORDER

On the ground that the Court has no jurisdiction over the subject matter or nature of the action and of the relief sought, on motion of defendant Miguel Gil, thru counsel, the above-entitled case is hereby dismissed, without costs. (*Rollo*, p. 196.)

[37] G.R. No. 140931, 26 November 2004, 444 SCRA 410, 421-422.

other courts and other proceedings in another tribunal. While a party may avail himself of the remedies prescribed by the Rules of Court, such party is not free to resort to them simultaneously or at his/her pleasure or caprice. A party should not be allowed to present simultaneous remedies in two different forums, for it degrades and wreaks havoc upon the rule on orderly procedure. A party must follow the sequence and hierarchical order in availing himself of such remedies and not resort to shortcuts in procedure or to playing fast and loose with the said rules. Forum shopping, an act of malpractice, is considered as trifling with the courts and abusing their processes. It is improper conduct and degrades the administration of justice.[38]

In the case at bar, since it was not sufficiently established that Civil Case No. 7068 and the present petition involve the same subject matter and/or issues, this Court refrains from making a finding herein that petitioners are indeed guilty of forum shopping.

Nonetheless, all told, the Court still denies the Petition on the basis of its earlier discussion that the doctrine of non-exhaustion of administrative remedies, on which petitioners essentially anchor their Petition, cannot justify the position they have taken.

WHEREFORE, premises considered, the instant Petition is *DENIED* for lack of merit. The Decision of the Court of Appeals dated 20 January 2006 in CA-G.R. CV No. 63440 affirming *in toto* the Decision dated 28 October 1998 of the Regional Trial Court, Branch 16, Davao City, in Civil Case No. 23963-95 is *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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

---

[38] *Kiani v. Bureau of Immigration and Deportation (BID),* G.R. No. 160922, 27 February 2006, 483 SCRA 341, 353-354.

THIRD DIVISION

[G.R. No. 176735. June 26, 2008]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JERRY SANTOS *y* MACOL and RAMON CATOC *y* PICAYO,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; APEALS; FINDINGS OF FACT OF TRIAL COURTS, WHEN ACCORDED RESPECT. — Fundamental is the principle that findings of the trial courts which are factual in nature and which involve the credibility of witnesses are accorded respect when no glaring errors; gross misapprehension of facts; and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; ELEMENTS. — For the successful prosecution of offenses involving the illegal sale of drugs under Section 5, Article II of Republic Act No. 9165, the following elements must be proven: (1) the identity of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti.*

3. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; UPHELD IN THE CASE AT BAR. — As observed by the trial court, the self-serving disclaimers of the appellants inspired less belief than the testimonies of the prosecution witnesses, who had in their favor a presumption of regularity accorded to them by

law. The respective alibis of appellants and their witnesses also contained irreconcilable inconsistencies that only weakened their worth. We uphold the presumption of regularity in the performance of official duties. This presumption in favor of PO3 Luna and SPO3 Matias was not overcome. As testified to by the appellants, they did not know any of the policemen who arrested them, and it was only during the trial in open court that they came to know of the identities of the above-mentioned policemen. Thus, there was no indication that the police were impelled by any improper motive in making the arrests.

4. ID.; ID.; ALIBI; WHEN TO PROSPER AS A DEFENSE. — [T]he established doctrine is that, for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus criminis* or within its immediate vicinity. The defense of alibi must be established by positive, clear and satisfactory evidence, the reason being that it is easily manufactured and usually so unreliable that it can rarely be given credence. This is especially true in case of positive identification of the culprit by reliable witnesses, which renders their alibis worthless. Positive identification prevails over denials and alibis.

5. ID.; CRIMINAL PROCEDURE; ARREST; ILLEGAL ARREST OF AN ACCUSED IS NOT A SUFFICIENT CAUSE FOR SETTING ASIDE A VALID JUDGMENT RENDERED UPON A SUFFICIENT COMPLAINT AFTER A TRIAL FREE FROM ERROR; SUCH ARREST DOES NOT NEGATE THE VALIDITY OF THE CONVICTION OF THE ACCUSED. — The claim of appellants that their warrantless arrests were illegal also lacks merit. The Court notes that nowhere in the records did we find any objection by appellants to the irregularity of their arrests prior to their arraignment. We have held in a number of cases that the illegal arrest of an accused is not a sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error; such arrest does not negate the validity of the conviction of the accused. It is much too late in the day to complain about the warrantless arrest after a valid information has been filed, the accused arraigned, trial commenced and completed, and a judgment of conviction rendered against him.

6. ID.; ID.; ID.; AN ARREST MADE AFTER AN ENTRAPMENT DOES NOT REQUIRE A WARRANT INASMUCH AS IT IS CONSIDERED A VALID WARRANTLESS ARREST; RULE. — In ***People v. Cabugatan,*** the rule is settled that an arrest made after an entrapment does not require a warrant inasmuch as it is considered a valid warrantless arrest pursuant to Rule 113, Section 5(a) of the Rules of Court, which states: SEC. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.

7. CRIMINAL LAW; CONSPIRACY, DEFINED; PROOF NECESSARY TO ESTABLISH CONSPIRACY. — There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The same degree of proof necessary to prove the crime is required to support a finding of criminal conspiracy. Direct proof, however, is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. Proof of concerted action before, during and after the crime, which demonstrates their unity of design and objective is sufficient. As correctly held by the trial court, the act of appellant Santos in receiving the marked money from PO3 Luna and handing the same to appellant Catoc, who in turn gave a sachet containing *shabu* to appellant Santos to give the policeman, unmistakably revealed a common purpose and a community of interest indicative of a conspiracy between the appellants.

8. ID.; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); LIMITED APPLICABILITY OF THE REVISED PENAL CODE TO THE PROVISIONS THEREOF; RULE. — In accordance with Section 98, Article XIII of Republic Act No. 9165, the provisions of the Revised Penal Code find limited applicability with respect to the provisions of the said Act. Section 98 reads: Sec. 98. *Limited Applicability of the Revised Penal Code*. — Notwithstanding any law, rule or regulation to the contrary, the provisions of the Revised Penal Code (Act No. 3815), as amended, shall not apply to the provisions of this Act, except in the case of minor offenders. Where the offender is a minor, the penalty for acts punishable by life imprisonment to death

provided herein shall be *reclusion perpetua* to death. Thus, in determining the imposable penalty, Article 63(2) of the Revised Penal Code shall not be applied. Since Section 98 of the Drugs Law contains the word "shall," the non-applicability of the Revised Penal Code provisions is mandatory, subject to exception only in case the offender is a minor.

9. ID.; REPUBLIC ACT NO. 9346 (AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES); IMPOSITION OF THE SUPREME PENALTY OF DEATH HAS BEEN PROHIBITED. — In the imposition of the proper penalty, the courts, taking into account the circumstances attendant in the commission of the offense, are given the discretion to impose either life imprisonment or death, and the fine as provided for by law. In light, however, of the effectivity of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been prohibited. Consequently, the penalty to be meted out to appellant shall only be life imprisonment and fine.

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.*:

Assailed before Us is the Decision[1] of the Court of Appeals dated 29 November 2006 in CA-G.R. C.R.-HC No. 01291 which affirmed the Decision[2] of the Regional Trial Court (RTC) of Pasig City, Branch 70, in Criminal Cases No. 12193-D and No. 12194-D, finding accused-appellants Jerry Santos *y* Macol

---

[1] Penned by Associate Justice Magdangal M. de Leon with Associate Justices Rebecca de Guia-Salvador and Ramon R. Garcia concurring; *rollo*, pp. 2-14.

[2] Penned by Judge Pablito M. Rojas; records, pp. 19-26.

and Ramon Catoc *y* Picayo guilty of illegal sale of methamphetamine hydrochloride, more popularly known as *shabu*, and finding accused-appellant Ramon Catoc *y* Picayo guilty of illegal possession of the said prohibited drug, respectively.

On 10 March 2003, two Informations were filed against appellants Jerry Santos *y* Macol and Ramon Catoc *y* Picayo before the RTC of Pasig City, for violating the provisions of Republic Act No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

In Criminal Case No. 12193-D, appellants Santos and Catoc allegedly violated Section 5, Article II of Republic Act No. 9165[3] in the following manner:

> On or about March 8, 2003, in Pasig City and within the jurisdiction of this Honorable Court, the accused, **conspiring and confederating together and both of them mutually helping and aiding one another**, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously **sell, deliver and give away to PO3 Carlo Luna, a police poseur buyer, one (1) heat-sealed transparent plastic sachet containing three (3) centigrams (0.03 gram) of white crystalline substance, which was found positive to the test for methylamphethamine hydrochloride**, a dangerous drug, in violation of the said law.[4] (Emphasis ours)

On the other hand, in Criminal Case No. 12194-D, appellant Catoc was additionally charged with violation of Section 11, Article II of the same law,[5] committed as follows:

---

[3] SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[4] CA *rollo*, p. 8.

[5] SEC. 11. *Possession of Dangerous Drugs*. — x x x

On or about March 8 2003, in Pasig City and within the jurisdiction of this Honorable Court, the accused, **not being lawfully authorized to possess any dangerous drug**, did then and there willfully, unlawfully and feloniously **have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet containing three (3) centigrams (0.03 gram) of white crystalline substance, which was found positive to the test for methylamphethamine hydrochloride**, a dangerous drug, in violation of the said law.[6] (Emphasis ours)

During their arraignment on 19 May 2003, appellants Santos and Catoc pleaded not guilty to the above-mentioned charges.[7]

On 3 June 2003, the Pre-Trial Conference of the cases was terminated without the prosecution and the defense agreeing to any stipulation of facts.[8]

On 5 August 2003, the parties, however, agreed to re-open the Pre-Trial Conference and they entered into a stipulation of facts as to the testimony to be given by the first prosecution witness, Forensic Chemist Police Inspector (P/Insp.) Lourdeliza Cejes.[9] As contained in the Pre-Trial Order dated 5 August 2003, the parties stipulated on: (1) the due execution and genuineness of the Request for Laboratory Examination dated 8 March 2003, and the stamp showing receipt thereof by the Philippine National Police (PNP) Crime Laboratory; (2) the

---

x x x x x x x x x

(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.

[6] CA *rollo*, pp. 10-11.

[7] Records, p. 19.

[8] *Id*. at 24.

[9] *Id*. at 32.

due execution, genuineness and truth of the contents of Physical Science Report No. D-405-03E issued by Forensic Chemist P/Insp. Lourdeliza Cejes, the finding or conclusion appearing on the report, and the signature of the forensic chemist over her typewritten name appearing therein; and (3) the existence of the plastic sachets, but not their source or origin, contained in a brown envelope, the contents of which were the subject of the Request for Laboratory Examination.[10]

Thereafter, the cases were consolidated and tried jointly.[11]

The prosecution presented two witnesses: (1) Police Officer (PO)3 Carlo Luna [12] and (2) Senior Police Officer (SPO)3 Leneal Matias,[13] both members of the Station Drug Enforcement Unit (SDEU)[14] of the Pasig City Police Station.

The defense, on the other hand, presented (1) appellant Jerry Santos *y* Macol[15]; (2) appellant Ramon Catoc *y* Picayo[16]; (3) Maria Violeta Catoc,[17] sister of appellant Catoc; and (4) Eric Santos,[18] brother of appellant Santos.

The People's version of the facts shows that on 8 March 2003, the SDEU operatives of the Pasig City Police conducted

---

[10] *Id*. at 34-35.

[11] Section 22, Rule 119 of the Rules of Court provides:

Sec. 22. *Consolidation of trials of related offenses.* — Charges for offenses founded on the same facts or forming part of a series of offenses of similar character may be tried jointly at the discretion of the court.

[12] TSN, 2 September 2003.

[13] TSN, 13 October 2003 and 3 December 2003.

[14] In other parts of the Records, SDEU was referred to as *Special* Drug Enforcement Unit; see Transcript of Stenographic Notes dated 2 September 2003, p. 4, and the Decision of the Regional Trial Court dated 4 May 2005, p. 3 (CA *rollo*, pp. 19-26).

[15] TSN, 25 May 2004.

[16] TSN, 4 August 2004.

[17] TSN, 29 September 2004.

[18] TSN, 17 November 2004.

a buy-bust operation in a residential area along Dr. Sixto Antonio Avenue, Brgy. Rosario, Pasig City, on the basis of reports that a certain *alias* Monching Labo was selling illegal drugs in the said locality.[19] Accompanied by a confidential informant, the police team composed of PO3 Carlo Luna, SPO3 Leneal Matias, PO1 Michael Espares and PO1 Michael Familara, proceeded to the target area at around 1:15 to 1:20 a.m. on the above-mentioned date. PO3 Carlo Luna was to act as the poseur-buyer, whereas the other members of the team were to serve as his backup.[20]

Upon reaching the designated place, PO3 Luna and the informant alighted from their vehicle, while the rest of the team were left inside.[21] The informant then pointed to two persons standing along the target area, one of whom was Monching Labo, later identified as appellant Ramon Catoc *y* Picayo.[22] After approaching, the informant introduced PO3 Luna as a *shabu* customer to one of the persons, later identified as appellant Jerry Santos *y* Macol. Appellant Santos then asked PO3 Luna how much worth of *shabu* he was buying and asked for the money. PO3 Luna gave appellant Santos the buy-bust money consisting of a pre-marked ₱100.00 bill.[23] Appellant Santos handed this money to appellant Catoc, who took out from his pocket a sealed transparent plastic sachet containing a white crystalline substance,[24] which he handed back to appellant Santos. When appellant Santos gave the plastic sachet to PO3 Luna, the latter nabbed the former and introduced himself as a policeman.[25]

---

[19] TSN, 2 September 2003, p. 4.

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

[21] *Id*. at 20.

[22] *Id*. at 7.

[23] Exhibit "D" for the prosecution, Records, p. 10; TSN, 2 September 2003, p. 8.

[24] Exhibit "C-1" for the prosecution, Records, p. 7; TSN, 2 September 2003, p. 15.

[25] TSN, 2 September 2003, p. 9.

At that point, the other members of the team arrived and likewise held and arrested appellant Catoc. SPO3 Matias then ordered appellant Catoc to empty the contents of his pockets. After having done so, another plastic sachet containing a similar crystalline substance[26] was recovered from appellant Catoc, together with the marked ₱100.00 buy-bust money.[27] Immediately thereafter, the policemen marked the two plastic sachets.[28] The sachet handed by appellant Santos to PO3 Luna was marked with the latter's initials "CEL," his signature, and appellant Santos's initials "JMS."[29] On the other hand, the sachet recovered from appellant Catoc by SPO3 Matias was marked with the latter's initials "LTM," his signature and appellant Catoc's initials "RPC."[30] The policemen then informed the appellants of their violations and apprised them of their constitutional rights.[31] Afterwards, appellants Santos and Catoc were brought to the Pasig City Police Station at Pariancillo Park, Pasig City, for proper investigation.

PO3 Luna submitted the two plastic sachets containing the white crystalline substance to the PNP Crime Laboratory Service, Eastern Police District in Mandaluyong City for an examination of the contents thereof.[32] The laboratory test results as contained in Chemistry Report No. D-405-03E[33] stated the following:

SPECIMEN SUBMITTED:

Two (2) heat-sealed transparent plastic sachets with markings "CEL/JMS 030803 and RPC/LTM 030803" containing 0.03 gram of white crystalline substance and marked as A and B respectively.

---

[26] Exhibit "C-2" for the prosecution, Records, p. 7; TSN, 2 September 2003, p. 15.

[27] TSN, 13 October 2004, p. 6.

[28] TSN, 2 September 2003, p. 10.

[29] *Id*. at 14.

[30] *Id*. at 14-15; TSN, 13 October 2004, p. 9.

[31] TSN, 13 October 2004, p. 8.

[32] Records, p. 7.

[33] *Id*. at 8.

x x x x x x x x x

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave [a] POSITIVE result to the tests for Methylamphetamine hydrochloride, a dangerous drug. x x x

CONCLUSION:

Specimens A and B contains (sic) Methylamphetamine hydrochloride, a dangerous drug.

As expected, the appellants offered a version of the facts that was diametrically opposed to that of the prosecution. According to them, there was no buy-bust operation to speak of and that prior to their arrests, they were literally strangers to each other.

Appellant Jerry Santos *y* Macol testified that on 8 March 2003, at around 12:00 midnight to 1:00 a.m., while he was watching television at their house at 151 Dr. Sixto Antonio Avenue, Barangay (Brgy.) Rosario, Pasig City, and was about to sleep, five male persons in civilian clothing suddenly entered and handcuffed him.[34] Santos claimed that he voluntarily went with the men when they tried to arrest him because his ailing mother, who was then awakened, was already becoming nervous.[35] Santos was brought outside and placed in a tricycle, and the entire group left for the police station. There, Santos was detained and questioned about the marked money, which he said he knew nothing about. Santos was then charged with the offense of selling illegal drugs in violation of Section 5, Article II of Republic Act No. 9165.[36] It was also at that time in the police station where he first met appellant Catoc.[37]

For his part, appellant Ramon Catoc *y* Picayo narrated that on 8 March 2003, between the hours of 11:00 p.m. and 12:00

---

[34] TSN, 25 May 2004, pp. 3-4, 6-8.

[35] *Id*. at 8.

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

[37] *Id*. at 10.

midnight, he awoke to a loud sound at the door of their house at 125 Dr. Sixto Antonio Avenue, Brgy. Rosario, Pasig City.[38] When Catoc opened the door, five male persons with guns entered their house.[39] The men frisked Catoc and searched his house. After being likewise awakened, Catoc's mother asked the men what his son's fault was. They replied that they were looking for the drugs that Catoc was selling.[40] When their search yielded nothing, the men mauled Catoc. Afterwards, Catoc was placed in a tricycle and the group headed for a gasoline station along J. E. Manalo Street. There, Catoc was transferred to a parked van; inside the vehicle was appellant Jerry Santos *y* Macol, whom the former saw for the first time.[41] The men took the appellants to the police station in Pariancillo Park where they were again mauled. The policemen who arrested the appellants produced two plastic sachets of *shabu* and a ₱100.00 bill and alleged that the same were taken from Catoc's possession. The appellants were then charged with violation of Sections 5 and 11, Article II of Republic Act No. 9165.[42]

On 4 May 2005, the trial court rendered its decision, the pertinent portion of which states:

> The Court is more inclined to give credence to the testimonies of the prosecution witnesses given the presumption of regularity in the performance of official duty accorded to them by law and jurisprudence *vis-à-vis* the self-serving disclaimers of the herein accused whose version of the incident as narrated above hardly inspires belief.
>
> It has been clearly established from the evidence adduced by the State that at around 1:00 in the morning of March 8, 2003, accused Jerry Santos and Ramon Catoc, in conspiracy with one another, sold or traded and delivered, to PO3 Carlo Luna, in a buy-bust operation, one transparent plastic sachet of *shabu* containing white crystalline

---

[38] TSN, 4 August 2004, pp. 3-4.

[39] *Id*. at 5.

[40] *Id*. at 6.

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

[42] *Id*. at 9-12.

substance (Exh. "C-1") in consideration of the amount of PHP 100.00 (Exh. "D"). x x x

That there was [a] conspiracy between the two accused as alleged in the information in Criminal Case No. 12193-D, is evident. The transaction was successfully consummated between the poseur buyer PO3 Luna, on the one hand, and the accused Ramon Catoc, together with his co-accused, Jerry Santos, on the other, with accused Santos receiving the marked money from the poseur buyer and thereafter handing the same to his co-accused Catoc who, thereafter, took out from his right pocket a plastic sachet of *shabu* which he gave to Santos, and which the latter in turn handed to PO3 Luna. There can be no other conclusion that can be drawn from the above concerted actions of both accused, but that they were bound by a common purpose and community of interest, indicative of conspiracy, in committing the offense charged against them.

On the same occasion of the buy-bust operation, the police officers were also able to recover from the possession of accused Ramon Catoc another sachet of *shabu* weighing 0.03 grams (Exh. "C-2") which is in violation of Section 11 (Possession of Dangerous Drugs), Article II of the same law, subject of Criminal Case No. 12194-D, which penalizes the mere possession of dangerous drugs w/o (sic) being authorized by law.

x x x x x x x x x

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

In **Criminal Case No. 12193-D**, both accused, **JERRY SANTOS *y* MACOL** and **RAMON CATOC *y* PICAYO** are hereby found **GUILTY** beyond reasonable doubt of the offense of Violation of Section 5, Article II, Republic Act [No.] 9165 (illegal sale of *shabu*) and are hereby sentenced to **LIFE IMPRISONMENT** and to solidarily pay a **Fine** of **Five Hundred Thousand Pesos (PHP500,000.00)**.

In **Criminal Case No. 12194-D**, accused **RAMON CATOC *y* PICAYO** is hereby found **GUILTY** beyond reasonable doubt of the offense of Violation of Section 11, Article II, Republic Act [No.] 9165 (illegal possession of *shabu*) and is hereby sentenced to **Twelve (12) Years** and **One (1) Day** to **Twenty (20) Years** and to pay a **Fine** of **Three Hundred Thousand Pesos (PHP 300,000.00)**.

Considering the penalty imposed by the Court, [t]he immediate commitment of accused Jerry Santos and Ramon Catoc to the National Penitentiary, New Bilibid Prisons, Muntinlupa City is hereby ordered.

Pursuant to Section 20 of Republic Act [No.] 9165, the amount of PHP 100.00 recovered from accused Ramon Catoc representing the proceeds from the illegal sale of the transparent plastic sachet of shabu is hereby ordered forfeited in favor of the government.

Again, pursuant to Section 21 of the same law, representatives from the Philippine Drug Enforcement Agency (PDEA) is (sic) hereby ordered to take charge and have custody over the sachets of *shabu* subject of these cases, for proper disposition.[43]

In an Order dated 21 June 2005, the trial court elevated the entire records of the case to the Court of Appeals for automatic review in accordance with our ruling in *People v. Mateo*.[44]

On 29 November 2006, the Court of Appeals rendered its decision, the dispositive portion of which reads:

WHEREFORE, the Decision appealed from is hereby **AFFIRMED**.

---

[43] CA *rollo,* pp. 31-33.

[44] In the said case, We ruled thus:

While the Fundamental Law requires a mandatory review by the Supreme Court of cases where the penalty imposed is *reclusion perpetua*, life imprisonment, or death, nowhere, however, has it proscribed an intermediate review. If only to ensure utmost circumspection before the penalty of death, *reclusion perpetua* or life imprisonment is imposed, the Court now deems it wise and compelling to provide in these cases a review by the Court of Appeals before the case is elevated to the Supreme Court. Where life and liberty are at stake, all possible avenues to determine his guilt or innocence must be accorded an accused, and no care in the evaluation of the facts can ever be overdone. A prior determination by the Court of Appeals on, particularly, the factual issues, would minimize the possibility of an error of judgment. **If the Court of Appeals should affirm the penalty of death, *reclusion perpetua* or life imprisonment, it could then render judgment imposing the corresponding penalty as the circumstances so warrant, refrain from entering judgment and elevate the entire records of the case to the Supreme Court for its final disposition**. (G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640, 656). (Emphasis ours)

In sustaining the trial court, the Court of Appeals ruled that the buy-bust operation conducted by the SDEU operatives was legitimate and regular.[45] Furthermore, the testimonies of the appellants and their witnesses were said to have contained irreconcilable inconsistencies and that no ill motive for the alleged frame-up was put forth by the appellants.[46]

Appellants Santos and Catoc filed a Notice of Appeal assailing the appellate court's decision before the Supreme Court.[47]

In a Resolution[48] dated 4 June 2007, the Court required the parties to file their respective supplemental briefs, if they so desired, within 30 days from notice. The parties manifested their intention not to file their supplemental briefs anymore, as their respective Briefs already encapsulated all the matters and arguments that support their positions.[49]

In pleading for their innocence, appellants assign the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF VIOLATION OF SECTIONS 5 AND 11, ARTICLE II, OF THE REPUBLIC ACT NO. 9165, WHEN THE LATTER'S GUILT WERE NOT PROVEN BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING [THAT] THE ACCUSED-APPELLANTS CONSPIRED IN COMMITTING ILLEGAL SELLING AND ILLEGAL POSSESSION OF DANGEROUS DRUGS.

Appellants contend that the trial court erred in convicting them, as their guilt was not proven beyond reasonable doubt,

---

[45] *Rollo*, p. 10.

[46] *Id*. at 13.

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

[48] *Id*. at 18.

[49] *Id*. at 19-20, 22-23.

considering that the prosecution failed to prove that a buy-bust operation took place and that their arrests without warrant were not legally effected. Appellants also maintain that there was no basis for the trial court's conclusion that a conspiracy existed between them.

The arguments put forth by the appellants fail to persuade.

Fundamental is the principle that findings of the trial courts which are factual in nature and which involve the credibility of witnesses are accorded respect when no glaring errors; gross misapprehension of facts; and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[50]

After a careful evaluation of the entire records of the instant case, we find no error in the trial and the appellate courts' factual findings and conclusions.

For the successful prosecution of offenses involving the illegal sale of drugs under Section 5, Article II of Republic Act No. 9165, the following elements must be proven: (1) the identity of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment therefor.[51] What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.[52]

In the present case, all the elements of the crime have been sufficiently established. The prosecution witnesses PO3 Luna and SPO3 Matias consistently testified that a buy-bust operation

---

[50] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 547.

[51] *People v. Padasin*, 445 Phil. 448, 461 (2003).

[52] *People v. Macabalang*, G.R. No. 168694, 27 November 2006, 508 SCRA 282, 293-294.

did indeed take place, and the *shabu* subject of the sale was presented and duly identified in open court. PO3 Luna, being the poseur-buyer, positively identified appellants Santos and Catoc as the persons who sold the sachet containing a white crystalline substance,[53] which was later confirmed by a chemical analysis thereof to be *shabu*.[54]

The relevant portions of PO3 Luna's testimony that detailed the events leading to the arrests of appellants are as follows:

Q: Do you remember having been assigned as a poseur buyer on said date, March 8, 2003?

A: Yes, sir.

Q: Against whom was supposed to be the task that you are going to perform as a poseur buyer?

A: Against Monching Labo, sir.

x x x x x x x x x

Q: What was the basis of this planned operation against Monching Labo?

A: Because we have been receiving reports that this certain Monching Labo has been selling illegal drugs along Dr. Sixto Avenue in Pasig, sir.

Q: Are you trying to say that March 8 was not the first time that you received information regarding Monching Labo?

A: Yes, sir.

Q: But it was only March 8 that you decided to conduct a buy-bust operation against Monching Labo?

A: Yes, sir.

Q: Were there preparations made by your office or by you regarding this plan, buy-bust operation, to be conducted against Monching Labo?

A: Yes, sir, we contacted an informant to confirm where Monching Labo sells illegal drugs.

[53] TSN, 2 September 2003, pp. 11-12.

[54] Records, p. 8.

x x x x x x x x x

Q: What are you going to use in buying?

A: Marked money, sir.

Q: Did you prepare for that also?

A: Yes, sir.

Q: Were there other police personnel that were assigned, aside from you, to conduct this buy-bust operation against Monching Labo?

A: Yes, sir, SPO3 Leneal Matias, PO1 Michael Espares and PO1 Michael Familara.

x x x x x x x x x

Q: What were supposed to be the role of these other police officers that were going to accompany you particularly, Matias, Espares and Familara?

A: They will act as back-up, sir.

Q: You said you prepared for a buy-money, how much was this?

A: One Hundred (PHP 100.00) Peso bill, sir.

x x x x x x x x x

Q: Did you proceed, as plan, to the target area?

A: Yes, sir.

Q: And where was this, mr. (sic) witness?

A: Along Dr. Sixto Antonio, Brgy. Rosario, Pasig City, sir.

Q: What time did you reach that place?

A: About 1:15 to 1:20, sir.

Q: Of?

A: In the early morning of 1:15 to 1:20 a.m., sir.

Q: What else happened after you reached the place?

A: When we were ten (10) meters away from the designated area, the informant pointed to us to two persons who were standing along Dr. Sixto Antonio Avenue, Rosario, Pasig City, sir.

x x x x x x x x x

Q: Who are these two persons, if you know?

A: According to the informant, he is Monching Labo, sir.

Q: Meaning, one of them is Monching Labo?

A: Yes, sir.

Q: After one of them has been identified by your informant, what else did you do if any, mr. (sic) witness?

A: The informant and I approached them, and I was introduced by the informant, sir.

Q: How were you introduced?

A: That I was a customer for *shabu*, and that I wanted to buy, sir.

Q: To whom did he tell from these two persons that you were interested to buy?

A: I was introduced to Jerry Santos, sir.

Q: In other words, the other person is a certain Jerry Santos?

A: Yes, sir.

x x x x x x x x x

Q: After you were introduced as [an] interested buyer to said Jerry Santos, what else happened after that?

A: He asked me how much would I buy, and he asked me for the money. And then, I told him just PHP100.00, sir.

Q: And when Jerry Santos asked you for the money, did you give him the money?

A: Yes, sir.

Q: And after you gave him the money, what happened next?

A: I saw Jerry handed the money to the other person, sir.

Q: When you say other person, this is Monching Labo?

A: Yes, sir.

Q: And after Jerry Santos handed the One Hundred (PHP100.00) Peso bill to Monching Labo, what else happened, if any?

A: Monching Labo took the PHP100.00 bill. After that, he put it inside his pocket, and then, he got something from his pocket and handed it to Jerry, sir.

Q: And after this something was handed to Jerry Santos, what else happened?

A: Jerry Santos gave to me what was given to him by Monching, sir.

Q: And to your personal knowledge, what is that something that was given by Monching to Jerry Santos who, Jerry Santos in turn handed to you?

A: That was the *shabu* I was buying which was contained in a plastic sachet, sir.

Q: When you say contained in a plastic sachet, you mean there is only one (1)?

A: Yes, sir.

Q: After you received this one alleged plastic sachet of *shabu* from Jerry Santos, what else did you do, if any?

A: I held Jerry Santos and introduced myself as a police officer, sir.

Q: After that, what happened next, if any?

A: My companions arrived and then, they also held Monching Labo sir.

Q: What else happened after that, mr. (sic) witness?

A: Police Officer Matias ordered Monching Labo to empty the contents of his pocket, sir.

Q: And did Monching Labo comply?

A: Yes, sir.

Q: Would you know what Matias discovered after Monching Labo complied with his order to empty his pocket?

A: Yes, sir, because he also recovered another plastic sachet, sir.

Q: Who recovered?

A: SPO3 Matias, sir.

Q: Which came from the pocket of Monching Labo?

A: Yes, sir.

Q: After this, what did you do or, your team do to the two persons?

A: We brought them to our office at the Headquarters for proper investigation, sir.

Q: How about the two plastic sachets, the first one that was sold and the other one that was recovered by SPO3 Matias, what was your disposition about it?

A: Right there and then at the place, we already placed the markings on the sachets, sir.

Q: After that, what else did you do with these two sachets?

A: We submitted the same to the laboratory for examination, sir.

Q: Do you remember who delivered it personally?

A: Yes, sir.

Q: Who?

A: I did, sir.

Q: Did you come to know later the true identity of Jerry Santos and Monching Labo to whom you have transaction?

A: Yes, sir.

Q: Would Jerry Santos [be] the true name of this Jerry Santos you mentioned earlier?

A: Yes, sir.

Q: How about this Monching Labo, did you come to know what is his true name?

A: Yes, sir. After we have brought him to the police station, that's when we discovered his real name, sir.

Q: And what is his real name?

A: Ramon Catoc, sir.[55]

The testimony of SPO3 Matias on the conduct of the buy-bust operation corroborated the above testimony of PO3 Luna on all material points and was equally clear and categorical.

Also proven from the testimonies of both PO3 Luna and SPO3 Matias is the charge against appellant Catoc in Criminal Case No. 12194-D for violation of Section 11, Article II, Republic Act No. 9165 (illegal possession of dangerous drugs). It was shown that appellant knowingly carried with him the plastic sachet of *shabu* without legal authority at the time he was caught during the buy-bust operation.

On the other hand, the appellants' contention that no buy-bust operation took place was plainly anchored on the testimonies of both appellants, who both gave different versions of what transpired during the time and date in question; of Maria Violeta Catoc, sister of appellant Ramon Catoc; and of Eric Santos, the brother of appellant Jerry Santos. Both appellants chorused a single line — alibi. They strongly insisted that they were in their respective houses during the alleged operations.

The singular reliance of the appellants on their alibis to argue their cases was misplaced. As observed by the trial court, the self-serving disclaimers of the appellants inspired less belief than the testimonies of the prosecution witnesses, who had in their favor a presumption of regularity accorded to them by law.[56] The respective alibis of appellants and their witnesses also contained irreconcilable inconsistencies that only weakened their worth.

We uphold the presumption of regularity in the performance of official duties. This presumption in favor of PO3 Luna and SPO3 Matias was not overcome. As testified to by the appellants, they did not know any of the policemen who arrested them, and it was only during the trial in open court that they came to

---

[55] TSN, 2 September 2003, pp. 4-11.

[56] CA *rollo*, p. 24.

know of the identities of the above-mentioned policemen.[57] Thus, there was no indication that the police were impelled by any improper motive in making the arrests.

In appellant Jerry Santos's testimony on the events leading to his arrest, he repeatedly changed his answer upon being asked why he voluntarily went with the five men who entered his house on the night in question. In his direct testimony, appellant Santos testified that he went with the men so that his mother's nervousness would not be further aggravated.[58] During his cross-examination, he then stated that he voluntarily went with the men so as not to awaken his sleeping mother.[59] Upon being confronted with these statements, Santos then changed his answer again and stated that his mother was already awake at the time he went with the policemen.[60]

More glaring than the above-mentioned inconsistencies, however, are the discrepancies in the testimonies of appellants Jerry Santos and Ramon Catoc on the manner in which they were taken to the police station and the circumstances of their first meeting. The very premise of their defense is that they were total strangers to each other; thus, they could not have been together at the time when they were arrested, much less were they in conspiracy with each other in the alleged commission of the crimes charged.

Appellant Jerry Santos testified that after he was brought out of his house, he was placed in a tricycle and was then taken straight to the police station in Pariancillo Park, Pasig City.[61] While in detention, he allegedly met Ramon Catoc for the first time.[62]

---

[57] TSN, 25 May 2004, p. 7, 19: TSN, 4 August 2004, pp. 5-6, 11, 22.

[58] *Id*. at 8.

[59] *Id*. at 17.

[60] *Id*. at 18.

[61] *Id*. at 9.

[62] *Id*. at 10.

Appellant Ramon Catoc, on the other hand, gave an entirely contradictory account of the said events. Catoc narrated in his direct testimony that after the men took him and placed him in a tricycle, he was taken to a gasoline station along J. E. Manalo Street and was transferred to a parked van. Aboard the vehicle, he said, was appellant Santos, whom he claimed he saw and came to know for the first time.[63]

Even the testimony of defense witness Eric Santos, the brother of appellant Jerry Santos, contained some noticeable incongruity with the appellants' narration of events. As remarked upon by the Court of Appeals,[64] Eric Santos testified that the arrest of his brother was made at 8:00 p.m. on 8 March 2003.[65] The timeline of both the prosecution and the defense, however, puts the occurrence of the events in question between the hours of 11:00 p.m. and 1:00 a.m.[66]

The testimonies of Maria Violeta Catoc, sister of appellant Catoc, and Eric Santos, brother of appellant Santos, are also suspect. Without clear and convincing evidence, no credence can be accorded them.

In all of the above instances, no satisfactory explanation was offered by appellants to resolve the conflicting accounts. No other evidence was likewise offered to buttress these testimonies, thereby weakening appellants' alibis, as against the candid and straightforward testimonies of the prosecution witnesses.

As consistently enunciated by this Court, the established doctrine is that, for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus criminis* or within its immediate vicinity. The defense of alibi must be established by positive, clear and satisfactory evidence, the reason being that

---

[63] TSN, 4 August 2004, pp. 7-8.

[64] *Rollo*, p. 12.

[65] TSN, 17 November 2004, p. 3.

[66] TSN, 4 August 2004, p. 4; TSN, 25 May 2004, p. 4.

it is easily manufactured and usually so unreliable that it can rarely be given credence. This is especially true in case of positive identification of the culprit by reliable witnesses, which renders their alibis worthless. Positive identification prevails over denials and alibis.[67]

What is quite important to note at this point is the fact that the defense failed to point out any single mistake or inconsistency in the testimonies of either policeman. Consequently, the respective rulings of the trial court and the Court of Appeals upholding the regularity and the legitimacy of the conduct of the buy-bust operation in this case are hereby affirmed.

The claim of appellants that their warrantless arrests were illegal also lacks merit. The Court notes that nowhere in the records did we find any objection by appellants to the irregularity of their arrests prior to their arraignment. We have held in a number of cases that the illegal arrest of an accused is not a sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error; such arrest does not negate the validity of the conviction of the accused. It is much too late in the day to complain about the warrantless arrest after a valid information has been filed, the accused arraigned, trial commenced and completed, and a judgment of conviction rendered against him.[68]

Nevertheless, our ruling in *People v. Cabugatan*[69] provides that:

The rule is settled that an arrest made after an entrapment does not require a warrant inasmuch as it is considered a valid warrantless arrest pursuant to Rule 113, Section 5(a) of the Rules of Court, which states:

> SEC. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:

---

[67] *People v. Ballesteros*, 349 Phil. 366, 375 (1998).

[68] *People v. Emoy*, 395 Phil. 371, 384 (2000).

[69] *Supra* note 50 at 552**,** citing *Teodosio v. Court of Appeals,* G.R. No. 124346, 8 June 2004, 431 SCRA 194, 203.

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.

As we have already declared the legality of the buy-bust operation that was conducted by the police, it follows that the subsequent warrantless arrests were likewise legally effected. Furthermore, any search resulting from the lawful warrantless arrests was also valid, because the appellants committed a crime *in flagrante delicto*; that is, the persons arrested committed a crime in the presence of the arresting officers.[70]

As for appellants' contention that the trial court erred in finding the existence of a conspiracy, the same should also fail. Contrary to appellants' assertions,[71] the findings of the trial court that they conspired with each other is limited only to the crime of illegal sale of dangerous drugs in Criminal Case No. 12193-D, and does not pertain to the crime of illegal possession of dangerous drugs in Criminal Case No. 12194-D.

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The same degree of proof necessary to prove the crime is required to support a finding of criminal conspiracy. Direct proof, however, is not essential to show conspiracy.[72] It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. Proof of concerted action before, during and after the crime, which demonstrates their unity of design and objective is sufficient.[73] As correctly held by the trial court, the act of appellant Santos in receiving the marked money from PO3 Luna and handing the same to appellant Catoc, who in turn gave a sachet containing *shabu* to appellant Santos to give the policeman,

---

[70] See *Teodosio v. Court of Appeals, id*. at 203.

[71] CA *rollo*, pp. 11-12.

[72] *People v. Ponce*, 395 Phil. 563, 571-572 (2000).

[73] *Id*.

unmistakably revealed a common purpose and a community of interest indicative of a conspiracy between the appellants.[74]

In light of the foregoing, we rule that the guilt of appellants Santos and Catoc has been established beyond reasonable doubt. A determination of the appropriate penalties to be imposed upon them is now in order.

Under the law, the illegal sale of *shabu* carries with it 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), regardless of the quantity and purity of the substance involved or shall act as a broker in any such transaction.[75] On the other hand, the illegal possession of less than five (5) grams of said dangerous drug is penalized with 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).[76]

In accordance with Section 98, Article XIII of Republic Act No. 9165, the provisions of the Revised Penal Code find limited applicability with respect to the provisions of the said Act. Section 98 reads:

> Sec. 98. *Limited Applicability of the Revised Penal Code*. — Notwithstanding any law, rule or regulation to the contrary, the provisions of the Revised Penal Code (Act No. 3815), as amended, shall not apply to the provisions of this Act, except in the case of minor offenders. Where the offender is a minor, the penalty for acts punishable by life imprisonment to death provided herein shall be *reclusion perpetua* to death.

Thus, in determining the imposable penalty, Article 63(2) of the Revised Penal Code shall not be applied. Under this article, in all cases in which the law prescribes a penalty composed of two indivisible penalties, the lesser penalty shall be applied when

---

[74] CA *rollo*, p. 25.

[75] Republic Act No. 9165, Article II, Section 5.

[76] *Id*., Section 11.

there are neither mitigating nor aggravating circumstances.[77] Since Section 98 of the Drugs Law contains the word "shall," the non-applicability of the Revised Penal Code provisions is mandatory, subject to exception only in case the offender is a minor.[78]

In the imposition of the proper penalty, the courts, taking into account the circumstances attendant in the commission of the offense, are given the discretion to impose either life imprisonment or death, and the fine as provided for by law. In light, however, of the effectivity of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been prohibited. Consequently, the penalty to be meted out to appellant shall only be life imprisonment and fine.[79] Hence, the penalty of life imprisonment and a fine of ₱500,000.00 were properly imposed on appellants Jerry Santos *y* Macol and Ramon Catoc *y* Picayo in Criminal Case No. 12193-D for illegal sale of *shabu*.

Likewise, the conviction of appellant Ramon Catoc *y* Picayo and the imposition of the penalty of twelve (12) years and one (1) day to fifteen (15) years imprisonment and the fine of ₱300,000.00 meted out by the trial court with respect to Criminal Case No. 12194-D for illegal possession of *shabu*, are affirmed.

WHEREFORE, premises considered, the Decision dated 29 November 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01291, affirming *in toto* the Decision of the Regional Trial

---

[77] ART. 63. *Rules for the application of indivisible penalties*.

x x x x x x 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 x x x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[78] *People v. Nicolas*, G.R. No. 170234, 8 February 2007, 515 SCRA 187, 205.

[79] *Id*.

Court of Pasig City, Branch 70, in Criminal Case No. 12193-D and Criminal Case No. 12194-D, is hereby *AFFIRMED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Azcuna,[*] and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 181568. June 26, 2008]

SPOUSES MANALO P. HERNAL, JR. and MILDRED VILLAROMAN-HERNAL, *petitioners, vs.* **SPOUSES PAULINO DE GUZMAN, JR. and ANA DIZON-DE GUZMAN,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; FORMAL SERVICE OF JUDGMENT IS NECESSARY AS A RULE; THE LACK OF FORMAL NOTICE CANNOT PREVAIL AGAINST THE FACT OF ACTUAL NOTICE; CASE AT BAR. — In *Santiago v. Guadiz*, we held: Formal service of the judgment is indeed necessary as a rule but not, as it happens, in the case at bar. The reason is that the petitioners had filed a motion for reconsideration of the decision of Judge Guadiz, which would indicate that they were then already informed of such decision. The petitioners cannot now invoke due process on the basis of a feigned ignorance as **the lack of formal notice cannot prevail against the fact of actual notice.** Be that as it may, the fact was that respondent spouses' counsel himself had *actual*

---

[*] Justice Adolfo S. Azcuna was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 30 October 2007.

notice of the first RTC resolution. This was evidenced by his act of filing the motion for reconsideration on May 8, 2003. The same was an admission on his part that he was very much aware of the existence of the first RTC resolution and had read its contents, for how else could he have prepared, signed and filed the pleading? It was thus irrelevant that he received the first RTC resolution only on May 15, 2003. For this reason, we rule that the CA erred when it stated that respondents seasonably filed their notice of appeal on May 27, 2003.

APPEARANCES OF COUNSEL

The Law Firm of Mario M. Pangilinan & Associates for petitioners.

Victor T. Avena for respondents.

R E S O L U T I O N

CORONA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks to set aside the September 21, 2007 decision[1] and January 24, 2008 resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 80538.

Respondent spouses Paulino de Guzman, Jr. and Ana Dizon-de Guzman filed a complaint for legal redemption with damages against petitioner spouses Manalo P. Hernal, Jr. and Mildred Villaroman-Hernal.[3] In their supplemental complaint, they alleged tender of payment to petitioner spouses who, however, refused the same. Petitioner spouses moved to dismiss the complaint

---

[1] Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Rebecca de Guia-Salvador and Magdangal M. de Leon of the Twelfth Division of the Court of Appeals. *Rollo,* pp. 50-58.

[2] *Id*., pp. 68-69.

[3] Respondent spouses alleged that they were co-owners of several parcels of land, a portion of which was sold by the other co-owners to petitioners without respondents' knowledge.

for respondent spouses' failure to tender payment within the period provided for by law.

The Regional Trial Court (RTC) granted petitioner spouses' motion to dismiss (first RTC resolution).[4] *Respondents received a copy thereof on April 23, 2003*. They moved for reconsideration on May 8, 2003 but it was denied as it lacked a notice of hearing.

Respondents received a copy of the denial order on May 23, 2003. *On May 27, 2003, they filed a notice of appeal in the RTC.*

The RTC denied the notice of appeal (second RTC resolution)[5] for having been filed way beyond the 15-day period to file a notice of appeal. It ruled that, since the motion for reconsideration lacked a notice of hearing, it was a mere scrap of paper that did not toll the reglementary period for perfecting an appeal.[6] Consequently, the notice of appeal (which was filed 34 days after respondents received a copy of the first RTC resolution on April 23, 2003) was filed late. Respondents moved for reconsideration. It was denied.[7]

Respondents then filed a petition for *certiorari* in the CA assailing the second RTC resolution. The appellate court granted the petition. It held that when a party is represented by counsel in an action or proceedings in court, all notices, orders and other court processes issued therein must be sent to the counsel of record, not to the client. A notice given to the client, and not to his attorney, is not a notice in law. The CA concluded that respondents' receipt of the first RTC resolution should not have been the reckoning point for the computation of the reglementary period to appeal required by the rules. *Instead, the period should have started from May 15, 2003 when respondents' counsel received his copy of said resolution*. Respondents therefore

---

[4] *Rollo*, pp. 18-34.

[5] *Id*., pp. 45-46. Dated July 3, 2003.

[6] It is for this reason that *Neypes v. CA* (G.R. No. 141524, 14 September 2005, 469 SCRA 633) would not apply. *Neypes* contemplates a case where a motion for reconsideration was duly and timely filed.

[7] *Rollo*, pp. 47-48. Dated August 20, 2003.

had until May 30, 2003 to appeal the first RTC resolution. Thus, their notice of appeal filed on May 27, 2003 was within the proper period.

Petitioners moved for reconsideration of the assailed CA decision. However, it was denied.

Hence, this petition.

The issue before us is whether the CA erred in holding that the period for respondent spouses to appeal commenced only from their counsel's receipt of the first RTC resolution on May 15, 2003.

In *Santiago v. Guadiz*,[8] we held:

> Formal service of the judgment is indeed necessary as a rule but not, as it happens, in the case at bar. The reason is that the petitioners had filed a motion for reconsideration of the decision of Judge Guadiz, which would indicate that they were then already informed of such decision. The petitioners cannot now invoke due process on the basis of a feigned ignorance as **the lack of formal notice cannot prevail against the fact of actual notice.** (Emphasis supplied)

Be that as it may, the fact was that respondent spouses' counsel himself had *actual notice* of the first RTC resolution. This was evidenced by his act of filing the motion for reconsideration on May 8, 2003. Worthy of note was the fact that, in his motion, he stated:

> PLAINTIFFS, **by the undersigned counsel** and unto this Honorable Court[,] respectfully moves for the reconsideration of the Resolution dated April 11, 2003, granting defendants['] Demurrer to Evidence and dismissing the instant case, copy of which was received on April 23, 2003, upon the ground that the dismissal is, with all due respect, unjustified and contrary to law and jurisprudence x x x
>
> x x x (Emphasis supplied).

The same was an admission on his part that he was very much aware of the existence of the first RTC resolution and had read its contents, for how else could he have prepared, signed

---

[8] G.R. No. 85923, 26 February 1992, 206 SCRA 590, 597.

and filed the pleading?[9] It was thus irrelevant that he received the first RTC resolution only on May 15, 2003. For this reason, we rule that the CA erred when it stated that respondents seasonably filed their notice of appeal on May 27, 2003.

WHEREFORE, the petition is hereby *GRANTED*. The September 21, 2007 decision and January 24, 2008 resolution of the Court of Appeals in CA-G.R. SP No. 80538 are *REVERSED and SET ASIDE*. The July 3, 2003 and August 20, 2003 resolutions of the Regional Trial Court of Cabanatuan City, Branch 29 in Civil Case No. 3871 denying the notice of appeal are *REINSTATED*.

SO ORDERED.

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

THIRD DIVISION

[A.C. No. 7494. June 27, 2008]

WILSON CHAM, *complainant, vs.* **ATTY. EVA PAITA-MOYA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; GROSS MISCONDUCT; RESPONDENT IS GUILTY OF WILLFUL FAILURE TO PAY A JUST DEBT; COMPLAINANT ESTABLISHED THAT RESPONDENT HAS EXISTING OBLIGATIONS

[9] Section 3, Rule 7 of the Rules of Court provides that "the signature of counsel constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay."

THAT SHE FAILED TO SETTLE. — A review of the records would reveal that respondent is, indeed, guilty of willful failure to pay just debt. Complainant is able to fully substantiate that respondent has existing obligations that she failed to settle. Annex "D" of the Complaint is a letter dated 11 September 2000 signed by complainant and addressed to respondent demanding that she settle her unpaid rentals for the period of three months, particularly, from 1 July to 30 September 2000. The letter appears to have been received by one Purificacion D. Flores. Annex "H" of the same Complaint is another letter dated 30 August 2004 by complainant reiterating his earlier demand for respondent to settle her unpaid rentals, as well as her unpaid Meralco bills. This second letter of demand was sent through registered mail and received by one Nonie Catindig. Respondent did not expressly deny receipt of both letters of demand in her Answer to the Complaint. Having failed to rebut the foregoing allegations, she must be deemed to have admitted them. Section 11, Rule 8 of the Rules of Court, provides: SEC. 11. Allegations not specifically denied deemed admitted. — Material averment in the complaint, other than those as to the amount of unliquidated damage, shall be deemed admitted when not specifically denied. Moreover, a settled rule of evidence is that the one who pleads payment has the burden of proving it. Even where it is the plaintiff (complainant herein) who alleges non-payment, the general rule is that the burden rests on the defendant (respondent herein) to prove payment, rather than on the plaintiff to prove non-payment. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.

2. ID.; ID.; RESPONDENT FAILED TO DISCHARGE THE BURDEN OF PROVING PAYMENT. — Apropos is another well-settled rule in our jurisprudence that a receipt of payment is the best evidence of the fact of payment. In *Monfort v. Aguinaldo,* the receipts of payment, although not exclusive, were deemed to be the best evidence. A receipt is a written and signed acknowledgment that money or goods have been delivered. In the instant case, the respondent failed to discharge the burden of proving payment, for she was unable to produce receipts or any other proof of payment of the rentals due for the period of 1 July to 20 September 2000. It is thus evident to this Court that respondent willfully failed to pay her just debts. Her unpaid rentals and electric bills constitute "just debts,"

which could be any of the following: (1) claims adjudicated by a court of law; or (2) claims the existence and justness of which are admitted by the debtor.

3. ID.; ID.; RESPONDENT'S ABANDONMENT OF THE LEASED PREMISES TO VOID HER OBLIGATIONS FOR THE RENT IS VIOLATIVE OF CANON I AND RULE 1.01 OF THE CODE OF PROFESSIONAL RESPONSIBILITY. — Having incurred just debts, respondent had the moral duty and legal responsibility to settle them when they became due. Respondent should have complied with just contractual obligations, and acted fairly and adhered to high ethical standards to preserve the court's integrity, since she is an employee thereof. Indeed, when respondent backtracked on her duty to pay her debts, such act already constituted a ground for administrative sanction. Respondent left the apartment unit without settling her unpaid obligations, and without the complainant's knowledge and consent. Respondent's abandonment of the leased premises to avoid her obligations for the rent and electricity bills constitutes deceitful conduct violative of the Code of Professional Responsibility, particularly Canon I and Rule 1.01 thereof, which explicitly state: "CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes. "Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." Respondent's defense that she does not know where to find the complainant or his office is specious and does not inspire belief considering that she had been occupying the apartment unit and paying the rents due (except for the period complained of) for almost two years. How she could have dealt with complainant and GRDC for two years without at all knowing their office address and contact numbers totally escapes this Court. This is only a desperate attempt to justify what is clearly an unjustifiable act.

4. ID.; ID.; MEMBERSHIP IN THE LEGAL PROFESSION IS A PRIVILEGE AND DEMANDS A HIGH DEGREE OF GOOD MORAL CHARACTER, NOT ONLY AS A CONDITION PRECEDENT TO ADMISSION, BUT ALSO A CONTINUING REQUIREMENT FOR THE PRACTICE OF LAW; RESPONDENT FELL SHORT OF THE EXACTING STANDARDS EXPECTED OF HER AS GUARDIAN OF THE LAW AND JUSTICE. — Lawyers are

instruments for the administration of justice. As vanguards of our legal system, they are expected to maintain not only legal proficiency but also a high standard of morality, honesty, integrity and fair dealing. In so doing, the people's faith and confidence in the judicial and legal system is ensured. Verily, lawyers must at all times faithfully perform their duties to society, to the bar, to the courts and to their clients. As part of those duties, they must promptly pay their financial obligations. Their conduct must always reflect the values and norms of the legal profession as embodied in the Code of Professional Responsibility. On these considerations, the Court may disbar or suspend lawyers for any professional or private misconduct showing them to be wanting in moral character, honesty, probity and good demeanor — or to be unworthy to continue as officers of the Court. The Court stresses that membership in the legal profession is a privilege. It demands a high degree of good moral character, not only as a condition precedent to admission, but also as a continuing requirement for the practice of law. In this case, respondent fell short of the exacting standards expected of her as a guardian of law and justice.

5. ID.; ID.; RESPONDENT'S GROSS MISCONDUCT WARRANTS ADMINISTRATIVE SANCTION. — Any gross misconduct of a lawyer in his or her professional or private capacity is a ground for the imposition of the penalty of **suspension** or disbarment because good character is an essential qualification for the admission to the practice of law and for the continuance of such privilege. The Court has held that the deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with one year's suspension from the practice of law, or a suspension of six months upon partial payment of the obligation. Accordingly, administrative sanction is warranted by respondent's gross misconduct. The case at bar merely involves the respondent's deliberate failure to pay her just debts, without her issuing a worthless check, which would have been a more serious offense. The Investigating Commissioner of the IBP recommended that she be suspended from the practice of law for three months, a penalty which this Court finds sufficient.

RESOLUTION

CHICO-NAZARIO, *J.*:

Before Us is a Complaint[1] for disbarment filed by complainant Wilson Cham against respondent Atty. Eva Paita-Moya, who he alleged committed deceit in occupying a leased apartment unit and, thereafter, vacating the same without paying the rentals due.

According to the Complaint, on 1 October 1998, respondent entered into a Contract of Lease[2] with Greenville Realty and Development Corp. (GRDC), represented by complainant as its President and General Manager, involving a residential apartment unit owned by GRDC located at No. 61-C Kalayaan Avenue, Quezon City, for a consideration of ₱8,000.00 per month for a term of one year.

Upon the expiration of said lease contract, respondent informed the complainant that she would no longer renew the same but requested an extension of her stay at the apartment unit until 30 June 2000 with a commitment that she would be paying the monthly rental during the extension period. Complainant approved such request but increased the rental rate to ₱8,650.00 per month for the period beginning 1 October 1999 until 30 June 2000.

Respondent stayed at the leased premises up to October 2000 without paying her rentals from July to October 2000. She also failed to settle her electric bills for the months of September and October 2000. The Statement of Account as of 15 October 2004[3] shows that respondent's total accountability is ₱71,007.88.

Sometime in October 2000, a report reached complainant's office that respondent had secretly vacated the apartment unit, bringing along with her the door keys. Also, respondent did not heed complainant's repeated written demands for payment of

---

[1] *Rollo*, pp. 2-5.

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

[3] *Id*. at 17.

her obligations despite due receipt of the same, compelling complainant to file the present Complaint.

In her Answer,[4] respondent alleged that she had religiously paid her monthly rentals and had not vacated the apartment unit surreptitiously. She also averred that she transferred to another place because she was given notice by the complainant to vacate the premises to give way for the repair and renovation of the same, but which never happened until presently. Respondent actually wanted to ask that complainant to account for her deposit for the apartment unit, but she could not do so since she did not know complainant's address or contact number. For the same reason, she could not turn over to the complainant the door keys to the vacated apartment unit.

After the mandatory preliminary conference conducted by the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) at the IBP Building, Ortigas Center, Pasig City, the parties were given time to submit their respective Position Papers per Order[5] dated 17 February 2006. On 29 March 2006, complainant filed his Position Paper.[6] Respondent, despite the extension given, did not file hers. Hence, the case was deemed submitted for resolution.

On 8 September 2006, Investigating Commissioner Acerey C. Pacheco submitted his Report and Recommendation,[7] recommending the imposition of the penalty of three-month suspension on respondent for violation of the Code of Professional Responsibility, to wit:

> WHEREFORE, it is respectfully recommended that herein respondent be held guilty of having violated the aforequoted provision of the Code of Professional Responsibility and imposed upon her the penalty of three (3) months suspension from the practice of law.

---

[4] *Id*. at 40-41.

[5] *Id*. at 57.

[6] *Id*. at 62-67.

[7] *Id*. at 72-74.

The IBP Board of Governors, however, passed Resolution No. XVII-2006-585[8] dated 15 December 2006, amending the recommendation of the Investigating Commissioner and approving the dismissal of the Complaint, thus:

> RESOLVED to AMEND, as it is hereby AMENDED, the Recommendation of the Investigating Commissioner, and to APPROVE the DISMISSAL of the above-entitled case for lack of merit.

We do not agree with the foregoing Resolution of the IBP Board of Governors. The Complaint should not be dismissed and respondent must face the consequences of her actions.

It is undisputed that by virtue of a lease contract she executed with GRDC, respondent was able to occupy the apartment unit for a period of one year, from 1 October 1998 to 30 September 1999, paying a monthly rental of ₱8,000.00. Upon the expiration of the lease contract[9] on 30 September 1999, the same was renewed, but on a month-to-month basis at an increased rental rate of ₱8,650.00. Under such an arrangement, respondent was able to stay at the leased premises until October 2000, undoubtedly incurring electric bills during the said period.

A review of the records would reveal that respondent is, indeed, guilty of willful failure to pay just debt. Complainant is able to fully substantiate that respondent has existing obligations that she failed to settle.

Annex "D"[10] of the Complaint is a letter dated 11 September 2000 signed by complainant and addressed to respondent demanding that she settle her unpaid rentals for the period of three months, particularly, from 1 July to 30 September 2000. The letter appears to have been received by one Purificacion D. Flores. Annex "H" of the same Complaint is another letter dated 30 August 2004 by complainant reiterating his earlier demand

---

[8] *Id*. at 71.

[9] Annex "D", *id*. at 14.

[10] *Id*.

for respondent to settle her unpaid rentals, as well as her unpaid Meralco bills. This second letter of demand was sent through registered mail and received by one Nonie Catindig. Respondent did not expressly deny receipt of both letters of demand in her Answer to the Complaint. Having failed to rebut the foregoing allegations, she must be deemed to have admitted them. Section 11, Rule 8 of the Rules of Court, provides:

> SECTION 11. Allegations not specifically denied deemed admitted. — Material averment in the complaint, other than those as to the amount of unliquidated damage, shall be deemed admitted when not specifically denied.

Moreover, a settled rule of evidence is that the one who pleads payment has the burden of proving it. Even where it is the plaintiff (complainant herein) who alleges non-payment, the general rule is that the burden rests on the defendant (respondent herein) to prove payment, rather than on the plaintiff to prove non-payment. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.[11]

Apropos is another well-settled rule in our jurisprudence that a receipt of payment is the best evidence of the fact of payment.[12] In *Monfort v. Aguinaldo,*[13] the receipts of payment, although not exclusive, were deemed to be the best evidence. A receipt is a written and signed acknowledgment that money or goods have been delivered. In the instant case, the respondent failed to discharge the burden of proving payment, for she was unable to produce receipts or any other proof of payment of the rentals due for the period of 1 July to 20 September 2000.

It is thus evident to this Court that respondent willfully failed to pay her just debts. Her unpaid rentals and electric bills constitute

---

[11] *Alonzo v. San Juan,* G.R. No. 137549, 11 February 2005, 451 SCRA 45, 55-56; *Far East Bank and Trust Company v. Querimit,* 424 Phil. 721, 730-731 (2002).

[12] *Philippine National Bank v. Court of Appeals*, 326 Phil. 326, 335-336 (1996), cited in *Towne and City Dev't. Corp. v. Court of Appeals*, G.R. No. 135043, 14 July 2004, 434 SCRA 356, 361-363.

[13] 91 Phil. 913 (1952).

"just debts," which could be any of the following: (1) claims adjudicated by a court of law; or (2) claims the existence and justness of which are admitted by the debtor.[14]

Having incurred just debts, respondent had the moral duty and legal responsibility to settle them when they became due. Respondent should have complied with just contractual obligations, and acted fairly and adhered to high ethical standards to preserve the court's integrity, since she is an employee thereof. Indeed, when respondent backtracked on her duty to pay her debts, such act already constituted a ground for administrative sanction.

Respondent left the apartment unit without settling her unpaid obligations, and without the complainant's knowledge and consent. Respondent's abandonment of the leased premises to avoid her obligations for the rent and electricity bills constitutes deceitful conduct violative of the Code of Professional Responsibility, particularly Canon I and Rule 1.01 thereof, which explicitly state:

"CANON 1— A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.

"Rule 1.01— A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

Respondent's defense that she does not know where to find the complainant or his office is specious and does not inspire belief considering that she had been occupying the apartment unit and paying the rents due (except for the period complained of) for almost two years. How she could have dealt with complainant and GRDC for two years without at all knowing their office address and contact numbers totally escapes this Court. This is only a desperate attempt to justify what is clearly an unjustifiable act.

Lawyers are instruments for the administration of justice. As vanguards of our legal system, they are expected to maintain not only legal proficiency but also a high standard of morality,

---

[14] *Orasa v. Seva*, 472 Phil. 75, 83 (2005).

honesty, integrity and fair dealing.[15] In so doing, the people's faith and confidence in the judicial and legal system is ensured.

Verily, lawyers must at all times faithfully perform their duties to society, to the bar, to the courts and to their clients. As part of those duties, they must promptly pay their financial obligations. Their conduct must always reflect the values and norms of the legal profession as embodied in the Code of Professional Responsibility. On these considerations, the Court may disbar or suspend lawyers for any professional or private misconduct showing them to be wanting in moral character, honesty, probity and good demeanor — or to be unworthy to continue as officers of the Court.[16]

The Court stresses that membership in the legal profession is a privilege.[17] It demands a high degree of good moral character, not only as a condition precedent to admission, but also as a continuing requirement for the practice of law.[18] In this case, respondent fell short of the exacting standards expected of her as a guardian of law and justice.[19]

Any gross misconduct of a lawyer in his or her professional or private capacity is a ground for the imposition of the penalty of **suspension** or disbarment because good character is an essential qualification for the admission to the practice of law and for the continuance of such privilege.[20] The Court has held that

---

[15] *Maligsa v. Atty. Cabanting*, 338 Phil. 912, 916-917 (1997).

[16] *Co v. Bernardino*, A.C. No. 3919, 28 January 1998, 285 SCRA 102, 106; *Nakpil v. Valdes*, 350 Phil. 412, 430 (1998).

[17] *Dumadag v. Atty. Lumaya*, 390 Phil. 1, 10 (2000); *National Bureau of Investigation v. Judge Reyes*, 382 Phil. 872, 886 (2000).

[18] *Id*.

[19] *Barrios v. Martinez*, A.C. No. 4585, 12 November 2004, 442 SCRA 324, 338.

[20] *Whitson v. Atienza*, A.C. No. 5535, 28 August 2003, 410 SCRA 10, 15, citing *Jesena v. Oñasa*, 211 Phil. 543, 546 (1983); *Lao v. Medel*, A.C. No. 5916, 1 July 2003, 405 SCRA 227, 234; *Dumadag v. Lumaya*, *supra* note 17 at 10; *Arrieta v. Llosa*, 346 Phil. 932, 939 (1997); *National Bureau of Investigation v. Judge Reyes*, *supra* note 17 at 886.

the deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct,[21] for which a lawyer may be sanctioned with one year's suspension from the practice of law,[22] or a suspension of six months upon partial payment of the obligation.[23]

Accordingly, administrative sanction is warranted by respondent's gross misconduct. The case at bar merely involves the respondent's deliberate failure to pay her just debts, without her issuing a worthless check, which would have been a more serious offense. The Investigating Commissioner of the IBP recommended that she be suspended from the practice of law for three months, a penalty which this Court finds sufficient.

WHEREFORE, Atty. Eva Paita-Moya is found guilty of gross misconduct and is hereby *SUSPENDED* for one month from the practice of law, effective upon her receipt of this Decision. She is warned that a repetition of the same or a similar act will be dealt with more severely.

Let copies of this Resolution be entered in the record of respondent and served on the IBP, as well as on the court administrator who shall circulate it to all courts for their information and guidance.

SO ORDERED.

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

---

[21] *Barrientos v. Libiran-Meteoro*, A.C. No. 6408, 31 August 2004, 437 SCRA 209, 216.

[22] *Lao v. Atty. Medel*, 453 Phil. 115, 121 (2003).

[23] *Barrientos v. Libiran-Meteoro*, *supra* note 21 at 220.

EN BANC

[A.M. No. 10654-Ret. June 27, 2008]

IN RE: PETITION FOR THE FAVORABLE CONSIDERATION OF THE FOUR (4) YEARS LENGTH OF SERVICE AS A SANGGUNIANG BAYAN MEMBER OF THE PETITIONER TO COMPLETE THE TWENTY-ONE YEARS OF GOVERNMENT SERVICE FOR PURPOSES OF RECEIVING HIS MONTHLY LIFETIME PENSION AFTER FIVE (5) YEARS, JUDGE ANTONIO S. ALANO (Ret.), *petitioner*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; RIGHTS AND PRIVILEGES; RETIREMENT; THE TWENTY (20) YEARS SERVICE REQUIREMENT UNDER R.A. NO. 910 MAKES NO DISTINCTION WHETHER IT WAS RENDERED IN THE EXECUTIVE, LEGISLATIVE OR JUDICIAL BRANCH. — Records show that Judge Alano served as Sangguniang Bayan member of Isabela, Basilan from January 10, 1976 up to January 31, 1980, or for a period of **4 years and 21 days**. He was also elected as Provincial Board member of the same province from February 1, 1980 up to April 20, 1986, or for a period of **6 years, 2 months, and 19 days**. On January 1, 1990, he was appointed as presiding judge and he served as such up to April 4, 2001, or for a period of **11 years, 3 months, and 3 days**. Thus, he has rendered a total of **21 years, 6 months, and 13 days** of government service. Section 1 of R.A. No. 910, as amended, provides: Section 1. When a justice of the Supreme Court or of the Court of Appeals, a judge of the Court of First Instance, Industrial Relations, Agrarian Relations, Tax Appeals, Juvenile and Domestic Relations, or a city or municipal judge who has rendered at least twenty years service in the judiciary or **in any other branch of the Government**, or in both, (a) retires for having attained the age of seventy years, or (b) resigns by reason of his incapacity to discharge the duties of his office, he shall receive during the residue of his natural life, in the manner hereinafter provided, the salary which he was receiving

at the time of his retirement or resignation. And when a justice of the Supreme Court or of the Court of Appeals, a judge of Court of First Instance, Industrial Relations, Agrarian Relations, Tax Appeals, Juvenile and Domestic Relations, or a city or municipal judge has attained the age of sixty years and has rendered at least twenty years service **in the Government**, the last five of which shall have been continuously rendered in the judiciary, he shall likewise be entitled to retire and receive during the residue of his natural life, also in the manner hereinafter provided, the salary which he was then receiving. x x x. It is clear from the foregoing that the 20 years service requirement for a retiree who has reached the age of 70 must be rendered "in the judiciary or in any branch of the government." There is no distinction whether it was rendered in the executive, legislative, or judicial branch. On the other hand, for a retiree who has reached the age of 60, it is required that the last 5 years of his 20 years of government service be continuously rendered in the judiciary.

2. ID.; ID.; ID.; ID.; HAVING APPLIED FOR DISABILITY RETIREMENT WILL NOT SERVE TO DEPRIVE PETITIONER OF HIS MONTHLY PENSION, ASSUMING HE IS STILL ALIVE BEYOND THE PERIOD OF 10 YEARS AFTER HIS RETIREMENT. — It appears that Judge Alano was qualified to retire under the second category because he retired before reaching the age of 70 and after rendering more than 20 years of government service, the last five years of which was served in the judiciary. However, he opted to retire under Sec. 3 of R.A. No. 910 by reason of a permanent disability which should have entitled him to receive a gratuity equivalent to 10 years' salary, but with no further annuity payable during the rest of his natural life. We note, however, that upon his retirement on April 4, 2001, Judge Alano only received a lump sum payment equivalent to five years' salary. Thus, pursuant to Sec. 3 of R.A. No. 910, Judge Alano should be granted an additional gratuity equivalent to 5 years' salary. Ordinarily, since Judge Alano retired under Sec. 3 of R.A. No. 910, he will no longer be entitled to a monthly pension during the rest of his natural life. However, at the time Judge Alano retired on April 4, 2001, he was already qualified to retire under Sec. 1. Thus, pursuant to our ruling in *Re: Ruperto G. Martin,* his having applied for disability retirement would not serve to deprive him of his monthly pension, assuming he is still alive

beyond the period of 10 years after his retirement on April 4, 2001.

3. ID.; ID.; ID.; ID.; NOTWITHSTANDING THE LAPSE OF TIME, THE COURT HAS THE OBLIGATION UNDER R.A. NO. 910 TO GRANT PETITIONER HIS VESTED RIGHT TO HIS RETIREMENT BENEFITS. — In the case of *Re: Ruperto G. Martin,* this Court granted Justice Martin's application for lifetime pension which was filed 11 years after his retirement. Justice Martin, like Judge Alano, retired by reason of permanent disability before reaching the age of 70 and after rendering over 20 years of service in the government, the last five of which had been continuously rendered in the judiciary. Although Justice Martin already received the ten-year lump sum retirement gratuity under the second paragraph of Section 3, R.A. No. 910, as amended, the Court nevertheless granted his application for a monthly pension. Finally, we note that the instant petition was filed four years, eight months and 24 days after the Court denied petitioner's *Motion for Partial Reconsideration* on April 10, 2002. Notwithstanding the lapse of time, this Court has the obligation under R.A. No. 910 to grant petitioner his vested right to his retirement benefits. Under Article 1144 of the Civil Code, petitioner has 10 years reckoned from the time the right of action accrues, to bring an action upon an obligation created by law. Besides, the instant petition is not adversarial in nature; it is an administrative matter regarding a retiree's application for monthly pension. Notably, in *Re: Ruperto G. Martin*, this Court granted Justice Martin's application for lifetime pension although it was filed 11 years after the approval of his application for disability retirement. Petitioner deserves no less.

4. ID.; ID.; ID.; ID.; RETIREMENT LAWS SHOULD BE LIBERALLY CONSTRUED AND ALL DOUBTS AS TO THE INTENT OF THE LAW SHOULD BE RESOLVED IN FAVOR OF THE RETIREE TO ACHIEVE ITS HUMANITARIAN PURPOSES; RETIRED JUDGES DESERVE FULL MEASURE OF THE NATION'S GRATITUDE FOR GIVING THE BEST YEARS OF THEIR LIFE IN THE SERVICE OF THE GOVERNMENT AND THE PEOPLE. — It is axiomatic that retirement laws should be liberally construed and applied in favor of the persons intended to be benefited by them, and all doubts as to the intent of the

law should be resolved in favor of the retiree to achieve its humanitarian purposes. This Court is not insensitive to the plight of retired judges who, because of deteriorating health brought about by old age, need financial assistance and support in the twilight years of their life when they can no longer work with much vigor to earn a living. They deserve the full measure of the nation's gratitude for giving the best years of their life in the service of the government and the people.

R E S O L U T I O N

YNARES-SANTIAGO, *J.*:

Can the length of service of Judge Antonio S. Alano as a former Sangguniang Bayan member be credited in his favor in order to complete the 20 years of government service requirement for the purpose of availing the monthly lifetime pension under Republic Act (R.A.) No. 910[1]?

This administrative matter involves the entitlement of Judge Antonio S. Alano, former presiding judge of the Regional Trial Court of General Santos City, Branch 35, to a lifetime pension under Sec. 1 of R.A. No. 910, as amended.

The facts are as follows:

On November 27, 2001, the Court *En Banc* approved petitioner's application for **disability** retirement under R.A. No. 910, to wit:

Acting on the Application for Disability Retirement filed by Judge Antonio S. Alano, RTC, Branch 35, General Santos City, under R.A. 910, as amended by R.A. 5095 and P.D. 1438, and it appearing that applicant is: (1) over 69 years old with more than 17 years of government service and (2) suffering from Cerebrovascular Accident, [recurrent infarct], left Middle Cerebral Artery in distribution; with

---

[1] AN ACT TO PROVIDE FOR THE RETIREMENT OF JUSTICES OF THE SUPREME COURT AND OF THE COURT OF APPEALS, FOR THE ENFORCEMENT OF THE PROVISIONS HEREOF BY THE GOVERNMENT SERVICE INSURANCE SYSTEM, AND TO REPEAL COMMONWEALTH ACT NUMBERED FIVE HUNDRED AND THIRTY-SIX.

Right-Sided Hemiparesis; Hypertensive Cardiovascular Disease; Diabetes Mellitus, Type II, which condition falls within the classification of a total permanent disability per Memorandum dated 24 September 2001 of the Medical Services of this Court, the Court Resolved to APPROVE the application effective 4 April 2001 x x x.

A copy of the Resolution was received by petitioner on December 21, 2001.[2] Claiming that the Court erroneously credited him with only 17 years of government service, which consists 11 years as a judge and six years as Provincial Board Member of Basilan, petitioner filed a Motion for Partial Reconsideration contending that if his four years of service as a Sangguniang Bayan member is added to his 17 years of government service, then he would have rendered more than 21 years of government service which would qualify him to avail the monthly lifetime pension under R.A. No. 910. Attached to the *Motion for Partial Reconsideration* is petitioner's Service Record duly signed by Nonito T. Ramirez, Secretary to the Sanggunian.

In a minute resolution dated April 10, 2002, the Court denied the motion, stating thus:

The Court resolved, upon recommendation of Deputy Court Administrator Christopher O. Lock in his Memorandum dated 1 March 2002, to DENY the Motion for Partial Reconsideration of the resolution of 27 November 2001, dated 1 January 2001 of former Judge Antonio S. Alano, RTC, Branch 35, General Santos City. Services rendered for the period 10 January 1976 to 31 January 1980 as Sangguniang Bayan Member cannot be accredited as government service for purposes of retirement.

On December 12, 2006, petitioner filed the instant petition reiterating his plea that his more than four years of government service as a Sangguniang Bayan member of the Municipality of Isabela, Basilan for the period January 10, 1976 to January 31, 1980 be credited in his favor and that based on the applicable last salary and other benefits he was receiving prior to his retirement, he be granted a monthly pension for the rest of his natural life to answer for his rehabilitation, medicines, doctor's bills, and expenses for his support.

[2] Petitioner's *Motion for Partial Reconsideration,* p. 1.

Petitioner alleged that he has reached the age of 75 last June 13, 2006; that since the approval of his retirement on April 4, 2001, a substantial portion, if not all, of his retirement benefits have been spent for his rehabilitation, medicines, medical care and maintenance; that if his request be granted, the proceeds of his monthly pension will be spent in meeting his rehabilitation, medicines, doctor's bills and expenses for his support. He thus prayed for the Court to give due course to his petition and thereafter render a more humane and equitable judgment. Petitioner attached to his petition his Service Record duly signed by Otilla W. Ricablanca, Chief, Human Resource Management Office, Isabela, Basilan.

In a Resolution dated March 6, 2007, we required Judge Alano to submit additional proof that he served in the Sangguniang Bayan of Isabela. In compliance, Judge Alano submitted a) a certified true copy of a certification issued by Francisco R. Pia, former Vice-Mayor of Isabela, certifying that he and Judge Alano served together as members of the Sangguniang Bayan of Isabela in 1976-1980; and b) certified true copies of excerpts from minutes of the Sessions of the Sangguniang Bayan of Isabela from 1976 to 1979, which were attended and participated in by Judge Alano.

In a Memorandum dated March 19, 2007, the Office of the Court Administrator recommended that the request of Judge Alano for accreditation of his services rendered as Sangguniang Bayan Member of Isabela, Basilan for four years and 21 days be granted; and that he be entitled to receive an additional 5-year lump sum gratuity having met the 20 years government service required to qualify and be entitled to the 10-year lump sum gratuity provided for Disability Retirement under R.A. No. 910, as amended.

However, the Court deferred action on the matter pending submission of additional proof that Judge Alano served in the Sangguniang Bayan of Isabela. Thus, on June 19, 2007, the Court resolved to require the Office of the Court Administrator to secure proof from the Department of Interior and Local

Government (DILG) of Judge Alano's appointment as Member of the Sangguniang Bayan of Isabela, Basilan.

In a Certification dated July 24, 2007, the DILG stated that it has no available copies of documents[3] to prove that former Judge Alano has been a Member of the Sangguniang Bayan of Isabela, Basilan. However, it also stated that DILG only requires submission of said documents when the need arises and that the local government unit concerned could have kept on file said documents.

Consequently, we required the local government of Isabela, Basilan to issue a certification. In a Certification dated January 10, 2007,[4] Otilla W. Ricablanca, Human Resource Management Officer of Isabela, Basilan stated, thus:

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that insofar as the records of the appointment of Atty. (now Judge) Antonio S. Alano, as a member of the Sangguniang Bayan, of the Municipality (now City) of Isabela, Basilan Province, for his term of office from January 10, 1976 to January 31, 1980, are no longer available, as the same were destroyed, when the water tank above the Archives room where the said records are located leaked, and water therefrom seeped through the ceiling into the public documents, papers and records located and stored inside the said room below, and destroyed the same, sometime in the early 1980's.

It is further certified that his **Service Record** as a member of the Sangguniang Bayan of the Municipality (now City) of Isabela, Basilan Province, and the **various "*Excerpts of from the Minutes of the Regular and Special Sessions of the Sangguniang Bayan*"** showing that he attended the said sessions and voted in the approval of the various Ordinances of the said legislative body during his term of office, **are the only available records as of the present,**

---

[3] Biodata or Personal Data Sheet, Appointment and Designation Papers, Updated Service Record, Oath of Office and Statement of Assets and Liabilities and Net Worth.

[4] Should read as January 10, 2008.

the copies of which have already been furnished to Judge Antonio S. Alano.

x x x x x x x x x

Records show that Judge Alano served as Sangguniang Bayan member of Isabela, Basilan from January 10, 1976 up to January 31, 1980, or for a period of **4 years and 21 days**. He was also elected as Provincial Board member of the same province from February 1, 1980 up to April 20, 1986, or for a period of **6 years, 2 months, and 19 days**. On January 1, 1990, he was appointed as presiding judge and he served as such up to April 4, 2001, or for a period of **11 years, 3 months, and 3 days**. Thus, he has rendered a total of **21 years, 6 months, and 13 days** of government service.

Section 1 of R.A. No. 910, as amended, provides:

> Section 1. When a justice of the Supreme Court or of the Court of Appeals, a judge of the Court of First Instance, Industrial Relations, Agrarian Relations, Tax Appeals, Juvenile and Domestic Relations, or a city or municipal judge who has rendered at least twenty years service in the judiciary or **in any other branch of the Government**, or in both, (a) retires for having attained the age of seventy years, or (b) resigns by reason of his incapacity to discharge the duties of his office, he shall receive during the residue of his natural life, in the manner hereinafter provided, the salary which he was receiving at the time of his retirement or resignation. And when a justice of the Supreme Court or of the Court of Appeals, a judge of Court of First Instance, Industrial Relations, Agrarian Relations, Tax Appeals, Juvenile and Domestic Relations, or a city or municipal judge has attained the age of sixty years and has rendered at least twenty years service **in the Government**, the last five of which shall have been continuously rendered in the judiciary, he shall likewise be entitled to retire and receive during the residue of his natural life, also in the manner hereinafter provided, the salary which he was then receiving. x x x. (Emphasis supplied)

It is clear from the foregoing that the 20 years service requirement for a retiree who has reached the age of 70 must be rendered "in the judiciary or in any branch of the government." There is no distinction whether it was rendered in the executive,

legislative, or judicial branch. On the other hand, for a retiree who has reached the age of 60, it is required that the last 5 years of his 20 years of government service be continuously rendered in the judiciary.

In *Re: Application for Retirement Under R.A. No. 910 of Associate Justice Ramon B. Britanico of the Intermediate Appellate Court*,[5] the Court enunciated in this wise:

> As provided in Section 1, the justices or judges who may enjoy retirement benefits with lifetime annuity, should, as a condition *sine qua non*, have rendered "at least 20 years service in the judiciary or in any other branch of the Government, or both." They fall into three (3) categories:
>
> 1. Those who mandatorily retire at age 70 and had rendered at least 20 years service in the judiciary or any other branch of the Government or both;
>
> 2. Those who resign by reason of incapacity to discharge the duties of their office and had rendered at least 20 years service in the judiciary or in any other branch of the Government or both;
>
> 3. Those who voluntarily retire at age 60 after having rendered at least 20 years service in the Government, the last 5 years of which were continuously rendered in the judiciary.

It appears that Judge Alano was qualified to retire under the second category because he retired before reaching the age of 70 and after rendering more than 20 years of government service, the last five years of which was served in the judiciary. However, he opted to retire under Sec. 3 of R.A. No. 910 by reason of a permanent disability which should have entitled him to receive a gratuity equivalent to 10 years' salary, but with no further annuity payable during the rest of his natural life. We note, however, that upon his retirement on April 4, 2001, Judge Alano only received a lump sum payment equivalent to five years' salary. Thus, pursuant to Sec. 3 of R.A. No. 910, Judge Alano should be granted an additional gratuity equivalent to 5 years' salary.

---

[5] A.M. No. 6484-Ret., May 15, 1989, 173 SCRA 421, 426.

Ordinarily, since Judge Alano retired under Sec. 3 of R.A. No. 910, he will no longer be entitled to a monthly pension during the rest of his natural life. However, at the time Judge Alano retired on April 4, 2001, he was already qualified to retire under Sec. 1. Thus, pursuant to our ruling in *Re: Ruperto G. Martin*,[6] his having applied for disability retirement would not serve to deprive him of his monthly pension, assuming he is still alive beyond the period of 10 years after his retirement on April 4, 2001.

In the case of *Re: Ruperto G. Martin*, this Court granted Justice Martin's application for lifetime pension which was filed 11 years after his retirement. Justice Martin, like Judge Alano, retired by reason of permanent disability before reaching the age of 70 and after rendering over 20 years of service in the government, the last five of which had been continuously rendered in the judiciary. Although Justice Martin already received the ten-year lump sum retirement gratuity under the second paragraph of Section 3, R.A. No. 910, as amended, the Court nevertheless granted his application for a monthly pension. The Court ratiocinated in this wise:

> It is indeed true that the purpose of the ten-year lump sum under Sec. 3 is to enable the retiree to meet the medical and hospital expenses for the treatment of his illness. If at the time of retirement he was already entitled to retire under Section 1 of RA 910 and to receive his 5-year lump sum plus a lifetime pension after five years, his having applied for disability retirement under Section 3 of the law in order that he may receive the 10-year lump sum gratuity, should not result in the forfeiture of his right to a lifetime pension if he should still be alive after ten (10) years from his retirement. x x x
>
> x x x x x x x x x
>
> Where a retiree by reason of permanent disability is entitled to and chooses retirement under Section 3 of RA 910 (ten-year lump sum without the lifetime annuity) although he would also have been entitled to retire under Section 1 (5-year lump sum with lifetime annuity) for having met the age and service requirements of the law, he is not deemed to have waived the lifetime annuity. In the event

[6] A.M. No. 747-RET, July 13, 1990, 187 SCRA 477.

that he survives beyond the period of ten years after his retirement, his application for disability retirement under Section 3 may be converted into an application for voluntary retirement under Section 1 x x x.[7] (Emphasis supplied)

Finally, we note that the instant petition was filed four years, eight months and 24 days after the Court denied petitioner's *Motion for Partial Reconsideration* on April 10, 2002. Notwithstanding the lapse of time, this Court has the obligation under R.A. No. 910 to grant petitioner his vested right to his retirement benefits. Under Article 1144 of the Civil Code, petitioner has 10 years reckoned from the time the right of action accrues, to bring an action upon an obligation created by law. Besides, the instant petition is not adversarial in nature; it is an administrative matter regarding a retiree's application for monthly pension. Notably, in *Re: Ruperto G. Martin,* this Court granted Justice Martin's application for lifetime pension although it was filed 11 years after the approval of his application for disability retirement. Petitioner deserves no less.

It is axiomatic that retirement laws should be liberally construed and applied in favor of the persons intended to be benefited by them, and all doubts as to the intent of the law should be resolved in favor of the retiree to achieve its humanitarian purposes.[8] This Court is not insensitive to the plight of retired judges who, because of deteriorating health brought about by old age, need financial assistance and support in the twilight years of their life when they can no longer work with much vigor to earn a living. They deserve the full measure of the nation's gratitude for giving the best years of their life in the service of the government and the people.

WHEREFORE, Judge Antonio S. Alano's length of service as Sangguniang Bayan member is ordered *CREDITED* in his favor, thereby making his total length of government service equivalent to 21 years, 6 months and 13 days. Considering that

---

[7] *Id*. at 482-483.

[8] *Ortiz v. Commission on Elections*, G.R. No. 78957, June 28, 1988, 162 SCRA 812, 821-822.

he received only a five years' salary lump sum payment when he retired on April 4, 2001, he is therefore *GRANTED* an additional five years' salary lump sum payment pursuant to Sec. 3 of R.A. No. 910. In case Judge Alano survives beyond the period of 10 years after his retirement on April 4, 2001, he is likewise *ENTITLED* to receive a monthly pension for the rest of his natural life.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 145842. June 27, 2008]

EDSA SHANGRI-LA HOTEL AND RESORT, INC., RUFO B. COLAYCO, RUFINO L. SAMANIEGO, KUOK KHOON CHEN, and KUOK KHOON TSEN, *petitioners, vs.* **BF CORPORATION,** *respondent.*

[G.R. No. 145873. June 27, 2008]

CYNTHIA ROXAS-DEL CASTILLO, *petitioner, vs.* **BF CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS, AFFIRMATORY OF THAT OF THE TRIAL COURT, ARE FINAL AND CONCLUSIVE ON THE COURT AND MAY NOT BE REVIEWED ON APPEAL; EXCEPTIONS TO THE RULE; NOT OBTAINING IN CASE

AT BAR. — It should be stressed that the second and third issues tendered relate to the correctness of the CA's factual determinations, specifically on whether or not BF was in delay and had come up with defective works, and whether or not petitioners were guilty of malice and bad faith. It is basic that in an appeal by *certiorari* under Rule 45, only questions of law may be presented by the parties and reviewed by the Court. Just as basic is the rule that factual findings of the CA, affirmatory of that of the trial court, are final and conclusive on the Court and may not be reviewed on appeal, except for the most compelling of reasons, such as when: (1) the conclusion is grounded on speculations, surmises, or conjectures; (2) the inference is manifestly mistaken, absurd, or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) such findings are contrary to the admissions of both parties; and (7) the CA manifestly overlooked certain relevant evidence and undisputed facts, that, if properly considered, would justify a different conclusion. In our review of this case, we find that none of the above exceptions obtains. Accordingly, the factual findings of the trial court, as affirmed by the CA, that there was delay on the part of ESHRI, that there was no proof that BF's work was defective, and that petitioners were guilty of malice and bad faith, ought to be affirmed.

2. ID.; ID.; BEST EVIDENCE RULE; DOES NOT APPLY WHEN THE ORIGINAL IS IN THE CUSTODY OR UNDER THE CONTROL OF THE ADVERSE PARTY. — The only actual rule that the term "best evidence" denotes is the rule requiring that the original of a writing must, as a general proposition, be produced and secondary evidence of its contents is not admissible except where the original cannot be had. Rule 130, Section 3 of the Rules of Court enunciates the best evidence rule: SEC. 3. *Original document must be produced; exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases: (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror; (b) **When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice**; Complementing the above provision is Sec. 6 of Rule 130, which reads: SEC. 6.

When original document is in adverse party's custody or control. — If the document is in the custody or under control of the adverse party, he must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of loss. Secondary evidence of the contents of a written instrument or document refers to evidence other than the original instrument or document itself. A party may present secondary evidence of the contents of a writing not only when the original is lost or destroyed, but also when it is in the custody or under the control of the adverse party. In either instance, however, certain explanations must be given before a party can resort to secondary evidence.

3. ID.; ID.; THE CONDITIONS *SINE QUA NON* FOR THE PRESENTATION AND RECEPTION OF THE PHOTOCOPIES OF THE ORIGINAL DOCUMENT AS SECONDARY EVIDENCE HAVE BEEN MET IN CASE AT BAR. — The trial court correctly allowed the presentation of the photocopied documents in question as secondary evidence. Any suggestion that BF failed to lay the required basis for presenting the photocopies of Progress Billing Nos. 14 to 19 instead of their originals has to be dismissed. The stenographic notes of the exchanges between Atty. Andres and Atty. Autea, counsel for BF and ESHRI, respectively, reveal that BF had complied with the requirements. Four factual premises are readily deducible from the exchanges, to wit: (1) the existence of the original documents which ESHRI had possession of; (2) a request was made on ESHRI to produce the documents; (3) ESHRI was afforded sufficient time to produce them; and (4) ESHRI was not inclined to produce them. Clearly, the circumstances obtaining in this case fall under the exception under Sec. 3 (b) of Rule 130. In other words, the conditions *sine qua non* for the presentation and reception of the photocopies of the original document as secondary evidence have been met. These are: (1) there is proof of the original document's execution or existence; (2) there is proof of the cause of the original document's unavailability; and (3) the offeror is in good faith. While perhaps not on all fours because it involved a check, what the Court said in *Magdayao v. People* is very much apt.

4. ID.; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; PETITIONER'S CLAIM FOR RESTITUTION IS NEGATED BY THE FACT THAT THE EXECUTED APPEALED DECISION IN CIVIL CASE NO. 63435 WAS UPHELD *IN TOTO*. — Petitioners' contention on the restitution angle has no merit, for, as may be recalled, the CA, simultaneously with the nullification and setting aside of its August 13, 1999 Resolution, affirmed, via its assailed November 12, 1999 Decision, the RTC Decision of September 23, 1996, the execution pending appeal of which spawned another dispute between the parties. And as may be recalled further, the appellate court nullified its August 13, 1999 Resolution on the basis of Sec. 5, Rule 39, which provides: Sec. 5. *Effect of reversal of executed judgment*. — Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances. On the strength of the aforequoted provision, the appellate court correctly dismissed ESHRI's claim for restitution of its garnished deposits, the executed appealed RTC Decision in Civil Case No. 63435 having in fact been upheld *in toto*. It is true that the Court's Decision of August 11, 1998 in G.R. No. 132655 recognized the validity of the issuance of the desired restitution order. It bears to emphasize, however, that the CA had since then decided CA-G.R. CV No. 57399, the main case, on the merits when it affirmed the underlying RTC Decision in Civil Case No. 63435. This CA Decision on the original and main case effectively rendered our decision on the incidental procedural matter on restitution moot and academic. Allowing restitution at this point would not serve any purpose, but only prolong an already protracted litigation.

5. ID.; ID.; JUDGMENTS; THE REGIONAL TRIAL COURT DECISION IN QUESTION, AS COUCHED, DOES NOT PROVIDE THE FACTUAL OR LEGAL BASIS FOR HOLDING PETITIONER IN G.R. NO. 145873 PERSONALLY LIABLE UNDER THE PREMISES. — First off, Roxas-del Castillo submits that the RTC decision in question violated the requirements of due process and of Sec. 14, Article VII of the Constitution that states, "No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." Roxas-

del Castillo's threshold posture is correct. Indeed, the RTC decision in question, as couched, does not provide the factual or legal basis for holding her personally liable under the premises. In fact, only in the dispositive portion of the decision did her solidary liability crop up. And save for her inclusion as party defendant in the underlying complaint, no reference is made in other pleadings thus filed as to her liability.

6. MERCANTILE LAW; CORPORATION CODE; NO ACT OF MALICE OR LIKE DISHONEST PURPOSE IS ASCRIBED ON PETITIONER, AS CORPORATE OFFICER, TO WARRANT THE LIFTING OF THE CORPORATE VEIL. — The Court notes that the appellate court, by its affirmatory ruling, effectively recognized the applicability of the doctrine on piercing the veil of the separate corporate identity. Under the circumstances of this case, we cannot allow such application. A corporation, upon coming to existence, is invested by law with a personality separate and distinct from those of the persons composing it. Ownership by a single or a small group of stockholders of nearly all of the capital stock of the corporation is not, without more, sufficient to disregard the fiction of separate corporate personality. Thus, obligations incurred by corporate officers, acting as corporate agents, are not theirs, but direct accountabilities of the corporation they represent. Solidary liability on the part of corporate officers may at times attach, but only under exceptional circumstances, such as when they act with malice or in bad faith. Also, in appropriate cases, the veil of corporate fiction shall be disregarded when the separate juridical personality of a corporation is abused or used to commit fraud and perpetrate a social injustice, or used as a vehicle to evade obligations. In this case, no act of malice or like dishonest purpose is ascribed on petitioner Roxas-del Castillo as to warrant the lifting of the corporate veil.

7. ID.; ID.; TO HOLD PETITIONER IN G.R. NO. 145873 PERSONALLY LIABLE AS CORPORATE DIRECTOR, IT MUST BE SHOWN THAT SHE ACTED IN A MANNER AND UNDER THE CIRCUMSTANCES CONTEMPLATED IN SECTION 31 OF THE CORPORATION CODE. — The conclusion would still hold even if petitioner Roxas-del Castillo, at the time ESHRI defaulted in paying BF's monthly progress bill, was still a director, for, before she could be held personally liable as corporate director, it must be shown that she acted

in a manner and under the circumstances contemplated in Sec. 31 of the Corporation Code, which reads: Sec. 31. Directors or trustees who **willfully or knowingly vote for or assent to patently unlawful acts of the corporation or acquire any pecuniary interest in conflict** with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. We do not find anything in the testimony of one Crispin Balingit to indicate that Roxas-del Castillo made any misrepresentation respecting the payment of the bills in question. Balingit in fact testified that the submitted, but unpaid billings were still being evaluated. Further, in the said testimony, in no instance was bad faith imputed on Roxas-del Castillo.

8. CIVIL LAW; CONTRACTS; PETITIONER IN G.R. NO. 145873 COULD NOT PLAUSIBLY BE HELD LIABLE FOR BREACHES OF CONTRACT COMMITTED BY PETITIONER COMPANY NOR FOR THE ALLEGED WRONGDOINGS OF ITS GOVERNING BOARD OR CORPORATE OFFICERS OCCURING AFTER SHE SEVERED OFFICIAL TIES WITH THE HOTEL MANAGEMENT. — Not lost on the Court are some material dates. As it were, the controversy between the principal parties started in July 1992 when Roxas-del Castillo no longer sat in the ESHRI Board, a reality BF does not appear to dispute. In fine, she no longer had any participation in ESHRI's corporate affairs when what basically is the ESHRI-BF dispute erupted. Familiar and fundamental is the rule that contracts are binding only among parties to an agreement. Art. 1311 of the Civil Code is clear on this point: Article 1311. Contracts take effect only between the parties, their assigns and heirs, except in cases where the rights and obligations are not transmissible by their nature, or by stipulation or by provision of law. In the instant case, Roxas-del Castillo could not plausibly be held liable for breaches of contract committed by ESHRI nor for the alleged wrongdoings of its governing board or corporate officers occurring after she severed official ties with the hotel management. Given the foregoing perspective, the other issues raised by Roxas-del Castillo as to her liability for moral and exemplary damages and attorney's fees are now moot and academic. And her other arguments insofar they indirectly impact on the liability of ESHRI need not detain us any longer

for we have sufficiently passed upon those concerns in our review of G.R. No. 145842.

APPEARANCES OF COUNSEL

Quisumbing Torres for EDSA Shangri-la Hotel & Resort, Inc., *et al.*

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for C. Roxas-del Castillo.

Ponce Enrile Reyes and Manalastas for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Before us are these two (2) consolidated petitions for review under Rule 45 to nullify certain issuances of the Court of Appeals (CA).

In the first petition, docketed as **G.R. No. 145842**, petitioners Edsa Shangri-la Hotel and Resort, Inc. (ESHRI), Rufo B. Colayco, Rufino L. Samaniego, Kuok Khoon Chen, and Kuok Khoon Tsen assail the Decision[1] dated November 12, 1999 of the CA in CA-G.R. CV No. 57399, affirming the Decision[2] dated September 23, 1996 of the Regional Trial Court (RTC), Branch 162 in Pasig City in Civil Case No. 63435 that ordered them to pay jointly and severally respondent BF Corporation (BF) a sum of money with interests and damages. They also assail the CA Resolution dated October 25, 2000 which, apart from setting aside an earlier Resolution[3] of August 13, 1999 granting ESHRI's application for restitution and damages against bond, affirmed the aforesaid September 23, 1996 RTC Decision.

---

[1] *Rollo* (G.R. No. 145842), pp. 96-122. Penned by Associate Justice Omar U. Amin and concurred in by Associate Justices Bernardo P. Abesamis and Jose L. Sabio, Jr.

[2] *Id*. at 163-192.

[3] *Id*. at 450-454.

In the second petition, docketed as **G.R. No. 145873**, petitioner Cynthia Roxas-del Castillo also assails the aforementioned CA Decision of November 12, 1999 insofar at it adjudged her jointly and severally liable with ESHRI, *et al*. to pay the monetary award decreed in the RTC Decision.

Both petitions stemmed from a construction contract denominated as *Agreement for the Execution of Builder's Work for the EDSA Shangri-la Hotel Project*[4] that ESHRI and BF executed for the construction of the EDSA Shangri-la Hotel starting May 1, 1991. Among other things, the contract stipulated for the payment of the contract price on the basis of the work accomplished as described in the monthly progress billings. Under this arrangement, BF shall submit a monthly progress billing to ESHRI which would then re-measure the work accomplished and prepare a Progress Payment Certificate for that month's progress billing.[5]

In a memorandum-letter dated August 16, 1991 to BF, ESHRI laid out the collection procedure BF was to follow, to wit: (1) submission of the progress billing to ESHRI's Engineering Department; (2) following-up of the preparation of the Progress Payment Certificate with the Head of the Quantity Surveying Department; and (3) following-up of the release of the payment with one Evelyn San Pascual. BF adhered to the procedures agreed upon in all its billings for the period from May 1, 1991 to June 30, 1992, submitting for the purpose the required Builders Work Summary, the monthly progress billings, including an evaluation of the work in accordance with the Project Manager's Instructions (PMIs) and the detailed valuations contained in the Work Variation Orders (WVOs) for final re-measurement under the PMIs. BF said that the values of the WVOs were contained in the progress billings under the section "Change Orders."[6]

---

[4] *Id*. at 143-148.

[5] *Id*. at 97-98.

[6] *Id*. at 98-99.

From May 1, 1991 to June 30, 1992, BF submitted a total of 19 progress billings following the procedure agreed upon. Based on Progress Billing Nos. 1 to 13, ESHRI paid BF PhP 86,501,834.05.[7]

According to BF, however, ESHRI, for Progress Billing Nos. 14 to 19, did not re-measure the work done, did not prepare the Progress Payment Certificates, let alone remit payment for the inclusive periods covered. In this regard, BF claimed having been misled into working continuously on the project by ESHRI which gave the assurance about the Progress Payment Certificates already being processed.

After several futile attempts to collect the unpaid billings, BF filed, on July 26, 1993, before the RTC a suit for a sum of money and damages.

In its defense, ESHRI claimed having overpaid BF for Progress Billing Nos. 1 to 13 and, by way of counterclaim with damages, asked that BF be ordered to refund the excess payments. ESHRI also charged BF with incurring delay and turning up with inferior work accomplishment.

The RTC found for BF

On September 23, 1996, the RTC, on the main finding that BF, as plaintiff *a quo*, is entitled to the payment of its claim covered by Progress Billing Nos. 14 to 19 and to the retention money corresponding to Progress Billing Nos. 1 to 11, with interest in both instances, rendered judgment for BF. The *fallo* of the RTC Decision reads:

WHEREFORE, defendants [EHSRI], Ru[f]o B. Colayco, Rufino L. Samaniego, Cynthia del Castillo, Kuok Khoon Chen, and Kuok Khoon Tsen, are jointly and severally hereby ordered to:

1. Pay plaintiff the sum of P24,780,490.00 representing unpaid construction work accomplishments under plaintiff's Progress Billings Nos. 14-19;

2. Return to plaintiff the retention sum of ₱5,810,000.00;

[7] *Id*. at 100.

3. Pay legal interest on the amount of ₱24,780,490.80 representing the construction work accomplishments under Progress Billings Nos. 14-19 and on the amount of ₱5,810,000.00 representing the retention sum from date of demand until their full Payment;

4. Pay plaintiff ₱1,000,000.00 as moral damages, ₱1,000,000.00 as exemplary damages, ₱1,000,000.00 as attorney's fees, and cost of the suit.[8]

According to the RTC, ESHRI's refusal to pay BF's valid claims constituted evident bad faith entitling BF to moral damages and attorney's fees.

ESHRI subsequently moved for reconsideration, but the motion was denied by the RTC, prompting ESHRI to appeal to the CA in **CA-G.R. CV No. 57399**.

Pending the resolution of CA-G.R. CV No. 57399, the following events and/or incidents transpired:

(1) The trial court, by Order dated January 21, 1997, granted BF's motion for execution pending appeal. ESHRI assailed this order before the CA via a petition for *certiorari*, docketed as **CA-G.R. SP No. 43187**.[9] Meanwhile, the branch sheriff garnished from ESHRI's bank account in the Philippine National Bank (PNB) the amount of PhP 35 million.

(2) On March 7, 1997, the CA issued in CA-G.R. SP No. 43187 a writ of preliminary injunction enjoining the trial court from carrying out its January 21, 1997 Order upon ESHRI's posting of a PhP 1 million bond. In a supplemental resolution issued on the same day, the CA issued a writ of preliminary mandatory injunction directing the trial court judge and/or his branch sheriff acting under him (a) to lift all the garnishments and levy made under the enjoined order of execution pending appeal; (b) to immediately return the garnished deposits to PNB instead of delivering the same to ESHRI; and (c) if the garnished

---

[8] *Supra* note 2, at 192.

[9] *Rollo* (G.R. No. 145842), p. 101.

deposits have been delivered to BF, the latter shall return the same to ESHRI's deposit account.

(3) By a Decision dated June 30, 1997 in CA-G.R. SP No. 43187, the CA set aside the trial court's January 21, 1997 Order. The CA would later deny BF's motion for reconsideration.

(4) Aggrieved, BF filed before this Court a petition for review of the CA Decision, docketed as **G.R. No. 132655**.[10] On August 11, 1998, the Court affirmed the assailed decision of the CA with the modification that the recovery of ESHRI's garnished deposits shall be against BF's bond.[11]

We denied the motions for reconsideration of ESHRI and BF.

(5) Forthwith, ESHRI filed, and the CA by Resolution of August 13, 1999 granted, an application for restitution or damages against BF's bond. Consequently, BF and Stronghold Insurance Co., Inc., the bonding company, filed separate motions for reconsideration.

On November 12, 1999, in CA-G.R. CV No. 57399, the CA rendered a Decision resolving (1) the aforesaid motions of BF and its surety and (2) herein petitioners' appeal from the trial court's Decision dated September 23, 1996. This November 12, 1999 Decision, finding for BF and now assailed in these separate recourses, dispositively reads:

> WHEREFORE, premises considered, the decision appealed from is **AFFIRMED *in toto***. This Court's Resolution dated 13 August 1999 is reconsidered and set aside, and defendants-appellants' application for restitution is denied for lack of merit.
>
> SO ORDERED.[12]

The CA predicated its ruling on the interplay of two main reasons. *First*, the issues the parties raised in their respective

---

[10] *Id*. at 102.

[11] *Id*. at 377-386; *BF Corporation v. ESHRI*, G.R. No. 132655, August 11, 1998, 294 SCRA 109.

[12] *Supra* note 1, at 121.

briefs were, for the most part, factual and evidentiary. Thus, there is no reason to disturb the case disposition of the RTC, inclusive of its award of damages and attorney's fees and the reasons underpinning the award. *Second*, BF had sufficiently established its case by preponderance of evidence. Part of what it had sufficiently proven relates to ESHRI being remiss in its obligation to re-measure BF's later work accomplishments and pay the same. On the other hand, ESHRI had failed to prove the basis of its disclaimer from liability, such as its allegation on the defective work accomplished by BF.

Apropos ESHRI's entitlement to the remedy of restitution or reparation arising from the execution of the RTC Decision pending appeal, the CA held that such remedy may peremptorily be allowed only if the executed judgment is reversed, a situation not obtaining in this case.

Following the denial by the CA, per its Resolution[13] dated October 25, 2000, of their motion for reconsideration, petitioners are now before the Court, petitioner del Castillo opting, however, to file a separate recourse.

G.R. No. 145842

In G.R. No. 145842, petitioners ESHRI, *et al*. raise the following issues for our consideration:

I. Whether or not the [CA] committed grave abuse of discretion in disregarding issues of law raised by petitioners in their appeal [particularly in admitting in evidence photocopies of Progress Billing Nos. 14 to 19, PMIs and WVOs].

II. Whether or not the [CA] committed grave abuse of discretion in not holding respondent guilty of delay in the performance of its obligations and, hence, liable for liquidated damages [in view that respondent is guilty of delay and that its works were defective].

III. Whether or not the [CA] committed grave abuse of discretion in finding petitioners guilty of malice and evidence bad faith, and in awarding moral and exemplary damages and attorney's fees to respondent.

---

[13] *Rollo* (G.R. No. 145842), p. 124.

IV. Whether or not the [CA] erred in setting aside its Resolution dated August 13, 2000.[14]

The petition has no merit.

Prefatorily, it should be stressed that the second and third issues tendered relate to the correctness of the CA's factual determinations, specifically on whether or not BF was in delay and had come up with defective works, and whether or not petitioners were guilty of malice and bad faith. It is basic that in an appeal by *certiorari* under Rule 45, only questions of law may be presented by the parties and reviewed by the Court.[15] Just as basic is the rule that factual findings of the CA, affirmatory of that of the trial court, are final and conclusive on the Court and may not be reviewed on appeal, except for the most compelling of reasons, such as when: (1) the conclusion is grounded on speculations, surmises, or conjectures; (2) the inference is manifestly mistaken, absurd, or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) such findings are contrary to the admissions of both parties; and (7) the CA manifestly overlooked certain relevant evidence and undisputed facts, that, if properly considered, would justify a different conclusion.[16]

In our review of this case, we find that none of the above exceptions obtains. Accordingly, the factual findings of the trial court, as affirmed by the CA, that there was delay on the part of ESHRI, that there was no proof that BF's work was defective, and that petitioners were guilty of malice and bad faith, ought to be affirmed.

---

[14] *Id*. at 24-25.

[15] *Allied Banking Corporation v. Quezon City Government*, G.R. No. 154126, October 11, 2005, 472 SCRA 303, 316; *Bangko Sentral ng Pilipinas v. Santamaria*, G.R. No. 139885, January 13, 2003, 395 SCRA 84, 92.

[16] *Dungaran v. Koschnicke*, G.R. No. 161048, August 31, 2005, 468 SCRA 676, 685; *Larena v. Mapili*, G.R. No. 146341, August 7, 2003, 408 SCRA 484.

Admissibility of Photocopies of Progress Billing Nos. 14 to 19, PMIs and WVOs

Petitioners fault the CA, and necessarily the trial court, on the matter of the admission in evidence of the photocopies of Progress Billing Nos. 14 to 19 and the complementing PMIs and the WVOs. According to petitioners, BF, before being allowed to adduce in evidence the photocopies adverted to, ought to have laid the basis for the presentation of the photocopies as secondary evidence, conformably to the best evidence rule.

Respondent BF, on the other hand, avers having complied with the laying-the-basis requirement. Defending the action of the courts below in admitting into evidence the photocopies of the documents aforementioned, BF explained that it could not present the original of the documents since they were in the possession of ESHRI which refused to hand them over to BF despite requests.

We agree with BF. The only actual rule that the term "best evidence" denotes is the rule requiring that the original of a writing must, as a general proposition, be produced[17] and secondary evidence of its contents is not admissible except where the original cannot be had. Rule 130, Section 3 of the Rules of Court enunciates the best evidence rule:

> SEC. 3. *Original document must be produced; exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:
>
> (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
>
> **(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;** (Emphasis added.)

---

[17] *Consolidated Bank and Trust Corporation (SOLIDBANK) v. Del Monte Motor Works, Inc.*, G.R. No. 143338, July 29, 2005, 465 SCRA 117, 131; citing McCormick, *HANDBOOK OF THE LAW ON EVIDENC*E 409 (1954).

Complementing the above provision is Sec. 6 of Rule 130, which reads:

SEC. 6. *When original document is in adverse party's custody or control.* – If the document is in the custody or under control of the adverse party, he must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of loss.

Secondary evidence of the contents of a written instrument or document refers to evidence other than the original instrument or document itself.[18] A party may present secondary evidence of the contents of a writing not only when the original is lost or destroyed, but also when it is in the custody or under the control of the adverse party. In either instance, however, certain explanations must be given before a party can resort to secondary evidence.

In our view, the trial court correctly allowed the presentation of the photocopied documents in question as secondary evidence. Any suggestion that BF failed to lay the required basis for presenting the photocopies of Progress Billing Nos. 14 to 19 instead of their originals has to be dismissed. The stenographic notes of the following exchanges between Atty. Andres and Atty. Autea, counsel for BF and ESHRI, respectively, reveal that BF had complied with the requirements:

ATTY. ANDRES:

During the previous hearing of this case, your Honor, likewise, the witness testified that certain exhibits namely, the Progress Payment Certificates and the Progress Billings the originals of these documents were transmitted to ESHRI, all the originals are in the possession of ESHRI since these are internal documents and I am referring specifically to the Progress Payment Certificates. **We requested your Honor, that in order that plaintiff [BF] be allowed to present secondary original, that opposing counsel first be given opportunity to present the originals which are in their possession**. May we know if they have brought the originals and

[18] R.J. Francisco, *BASIC EVIDENCE* 283 (1991).

whether they will present the originals in court, Your Honor. (Emphasis added.)

ATTY. AUTEA:

We have already informed our client about the situation, your Honor, that it has been claimed by plaintiff that some of the originals are in their possession and our client assured that, they will try to check. Unfortunately, we have not heard from our client, Your Honor.

Four factual premises are readily deducible from the above exchanges, to wit: (1) the existence of the original documents which ESHRI had possession of; (2) a request was made on ESHRI to produce the documents; (3) ESHRI was afforded sufficient time to produce them; and (4) ESHRI was not inclined to produce them.

Clearly, the circumstances obtaining in this case fall under the exception under Sec. 3(b) of Rule 130. In other words, the conditions *sine qua non* for the presentation and reception of the photocopies of the original document as secondary evidence have been met. These are: (1) there is proof of the original document's execution or existence; (2) there is proof of the cause of the original document's unavailability; and (3) the offeror is in good faith.[19] While perhaps not on all fours because it involved a check, what the Court said in *Magdayao v. People*, is very much apt, thus:

x x x To warrant the admissibility of secondary evidence when the original of a writing is in the custody or control of the adverse party, Section 6 of Rule 130 provides that the adverse party must be given reasonable notice, that he fails or refuses to produce the same in court and that the offeror offers satisfactory proof of its existence.

x x x x x x x x x

The mere fact that the original of the writing is in the custody or control of the party against whom it is offered does not warrant the admission of secondary evidence. The offeror must prove that he has done all in his power to secure the best evidence by giving notice to the said party to produce the document. The notice may be in the

[19] RULES OF COURT, Rule 130, Sec. 5.

form of a motion for the production of the original or made in open court in the presence of the adverse party or *via* a *subpoena duces tecum*, provided that the party in custody of the original has sufficient time to produce the same. **When such party has the original of the writing and does not voluntarily offer to produce it or refuses to produce it, secondary evidence may be admitted.**[20] (Emphasis supplied.)

On the Restitution of the Garnished Funds

We now come to the propriety of the restitution of the garnished funds. As petitioners maintain, the CA effectively, but erroneously, prevented restitution of ESHRI's improperly garnished funds when it nullified its own August 13, 1999 Resolution in CA-G.R. SP No. 43187. In this regard, petitioners invite attention to the fact that the restitution of the funds was in accordance with this Court's final and already executory decision in G.R. No. 132655, implying that ESHRI should be restored to its own funds without awaiting the final outcome of the main case. For ease of reference, we reproduce what the appellate court pertinently wrote in its Resolution of August 13, 1999:

BASED ON THE FOREGOING, the Application (for Restitution/ Damages against Bond for Execution Pending Appeal) dated May 12, 1999 filed by [ESHRI] is **GRANTED**. Accordingly, the surety of [BF], STRONGHOLD Insurance Co., Inc., is **ORDERED** to **PAY** the sum of [PhP 35 million] to [ESHRI] under its SICI Bond. x x x In the event that the bond shall turn out to be insufficient or the surety (STRONGHOLD) cannot be made liable under its bond, [BF], being jointly and severally liable under the bond is **ORDERED** to **RETURN** the amount of [PhP 35 million] representing the garnished deposits of the bank account maintained by [ESHRI] with the [PNB] Shangri-la Plaza Branch, Mandaluyong City. Otherwise, this Court shall cause the implementation of the Writ of Execution dated April 24, 1998 issued in Civil Case No. 63435 against both [BF], and/or its surety, STRONGHOLD, in case they should fail to comply with these directives.

SO ORDERED.[21]

---

[20] G.R. No. 152881, August 17, 2004, 436 SCRA 677, 684-685.

[21] *Supra* note 3, at 453.

Petitioners' contention on the restitution angle has no merit, for, as may be recalled, the CA, simultaneously with the nullification and setting aside of its August 13, 1999 Resolution, affirmed, via its assailed November 12, 1999 Decision, the RTC Decision of September 23, 1996, the execution pending appeal of which spawned another dispute between the parties. And as may be recalled further, the appellate court nullified its August 13, 1999 Resolution on the basis of Sec. 5, Rule 39, which provides:

> Sec. 5. *Effect of reversal of executed judgment*. — Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances.

On the strength of the aforequoted provision, the appellate court correctly dismissed ESHRI's claim for restitution of its garnished deposits, the executed appealed RTC Decision in Civil Case No. 63435 having in fact been upheld *in toto*.

It is true that the Court's Decision of August 11, 1998 in G.R. No. 132655 recognized the validity of the issuance of the desired restitution order. It bears to emphasize, however, that the CA had since then decided CA-G.R. CV No. 57399, the main case, on the merits when it affirmed the underlying RTC Decision in Civil Case No. 63435. This CA Decision on the original and main case effectively rendered our decision on the incidental procedural matter on restitution moot and academic. Allowing restitution at this point would not serve any purpose, but only prolong an already protracted litigation.

G.R. No. 145873

Petitioner Roxas-del Castillo, in her separate petition, excepts from the CA Decision affirming, in its entirety, the RTC Decision holding her, with the other individual petitioners in G.R. No. 145842, who were members of the Board of Directors of ESHRI, jointly and severally liable with ESHRI for the judgment award. She presently contends:

I. THE [CA] ERRED IN NOT DECLARING THAT THE DECISION OF THE TRIAL COURT ADJUDGING PETITIONER PERSONALLY LIABLE TO RESPONDENT VOID FOR NOT STATING THE FACTUAL AND LEGAL BASIS FOR SUCH AWARD.

II. THE [CA] ERRED IN NOT RULING THAT AS FORMER DIRECTOR, PETITIONER CANNOT BE HELD PERSONALLY LIABLE FOR ANY ALLEGED BREACH OF A CONTRACT ENTERED INTO BY THE CORPORATION.

III. THE [CA] ERRED IN NOT RULING THAT RESPONDENT IS NOT ENTITLED TO AN AWARD OF MORAL DAMAGES.

IV. THE [CA] ERRED IN HOLDING PETITIONER PERSONALLY LIABLE TO RESPONDENT FOR EXEMPLARY DAMAGES.

V. THE [CA] ERRED IN NOT RULING THAT RESPONDENT IS NOT ENTITLED TO ANY AWARD OF ATTORNEY'S FEES.[22]

First off, Roxas-del Castillo submits that the RTC decision in question violated the requirements of due process and of Sec. 14, Article VII of the Constitution that states, "No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based."

Roxas-del Castillo's threshold posture is correct. Indeed, the RTC decision in question, as couched, does not provide the factual or legal basis for holding her personally liable under the premises. In fact, only in the dispositive portion of the decision did her solidary liability crop up. And save for her inclusion as party defendant in the underlying complaint, no reference is made in other pleadings thus filed as to her liability.

The Court notes that the appellate court, by its affirmatory ruling, effectively recognized the applicability of the doctrine on piercing the veil of the separate corporate identity. Under the circumstances of this case, we cannot allow such application. A corporation, upon coming to existence, is invested by law

---

[22] *Rollo* (G.R. No. 145873), p. 16.

with a personality separate and distinct from those of the persons composing it. Ownership by a single or a small group of stockholders of nearly all of the capital stock of the corporation is not, without more, sufficient to disregard the fiction of separate corporate personality.[23] Thus, obligations incurred by corporate officers, acting as corporate agents, are not theirs but direct accountabilities of the corporation they represent. Solidary liability on the part of corporate officers may at times attach, but only under exceptional circumstances, such as when they act with malice or in bad faith.[24] Also, in appropriate cases, the veil of corporate fiction shall be disregarded when the separate juridical personality of a corporation is abused or used to commit fraud and perpetrate a social injustice, or used as a vehicle to evade obligations.[25] In this case, no act of malice or like dishonest purpose is ascribed on petitioner Roxas-del Castillo as to warrant the lifting of the corporate veil.

The above conclusion would still hold even if petitioner Roxas-del Castillo, at the time ESHRI defaulted in paying BF's monthly progress bill, was still a director, for, before she could be held personally liable as corporate director, it must be shown that she acted in a manner and under the circumstances contemplated in Sec. 31 of the Corporation Code, which reads:

> Section 31. Directors or trustees who **willfully or knowingly vote for or assent to patently unlawful acts of the corporation or acquire any pecuniary interest in conflict** with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. (Emphasis ours.)

We do not find anything in the testimony of one Crispin Balingit to indicate that Roxas-del Castillo made any misrepresentation

---

[23] *Union Bank of the Philippines v. Ong*, G.R. No. 152347, June 21, 2006, 491 SCRA 581, 602.

[24] *Petron Corporation v. National Labor Relations Commission*, G.R. No. 154532, October 27, 2006, 505 SCRA 596, 613-614.

[25] *Enriquez Security Services, Inc. v. Cabotaje*, G.R. No. 147993, July 21, 2006, 496 SCRA 169, 175.

respecting the payment of the bills in question. Balingit, in fact, testified that the submitted but unpaid billings were still being evaluated. Further, in the said testimony, in no instance was bad faith imputed on Roxas-del Castillo.

Not lost on the Court are some material dates. As it were, the controversy between the principal parties started in July 1992 when Roxas-del Castillo no longer sat in the ESHRI Board, a reality BF does not appear to dispute. In fine, she no longer had any participation in ESHRI's corporate affairs when what basically is the ESHRI-BF dispute erupted. Familiar and fundamental is the rule that contracts are binding only among parties to an agreement. Art. 1311 of the Civil Code is clear on this point:

> Article 1311. Contracts take effect only between the parties, their assigns and heirs, except in cases where the rights and obligations are not transmissible by their nature, or by stipulation or by provision of law.

In the instant case, Roxas-del Castillo could not plausibly be held liable for breaches of contract committed by ESHRI nor for the alleged wrongdoings of its governing board or corporate officers occurring after she severed official ties with the hotel management.

Given the foregoing perspective, the other issues raised by Roxas-del Castillo as to her liability for moral and exemplary damages and attorney's fees are now moot and academic.

And her other arguments insofar they indirectly impact on the liability of ESHRI need not detain us any longer for we have sufficiently passed upon those concerns in our review of G.R. No. 145842.

WHEREFORE, the petition in G.R. No. 145842 is *DISMISSED*, while the petition in G.R. No. 145873 is *GRANTED*. Accordingly, the appealed Decision dated November 12, 1999 of the CA in CA-G.R. CV No. 57399 is *AFFIRMED* with *MODIFICATION* that the petitioner in G.R. No. 145873, Cynthia Roxas-del Castillo, is absolved from any liability decreed in the RTC Decision dated

September 23, 1996 in Civil Case No. 63435, as affirmed by the CA.

SO ORDERED.

Carpio Morales, Tinga, Reyes,[*] and *Brion, JJ.,* concur.

THIRD DIVISION

[G.R. No. 147559. June 27, 2008]

ARMED FORCES AND POLICE MUTUAL BENEFIT ASSOCIATION, INC., *petitioner, vs.* **INES BOLOS SANTIAGO,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE; THE NOTICE OF LEVY ON ATTACHMENT IN FAVOR OF PETITIONER MAY BE ANNOTATED ON TCT NO. PT-94919; IN INVOLUNTARY REGISTRATION SUCH AS AN ATTACHMENT, ENTRY THEREOF IN THE DAY BOOK IS A SUFFICIENT NOTICE TO ALL PERSONS OF SUCH ADVERSE CLAIM. — The notice of levy on attachment in favor of petitioner may be annotated on TCT No. PT-94912. *Levin v. Bass* provided the distinction between voluntary registration and involuntary registration. In ***voluntary registration*****,** such as a sale, mortgage, lease and the like, if the owner's duplicate certificate be not surrendered and presented or if no payment of registration fees be made within fifteen (15) days, entry in the day book of the deed of sale does not operate to convey and affect the land sold. In ***involuntary registration*****,** such as an attachment, levy upon execution*, lis pendens* and the like, entry thereof in

---

[*] Additional member as per April 16, 2008 Zero Backlog Raffle.

the day book is a sufficient notice to all persons of such adverse claim. The entry of the notice of levy on attachment in the primary entry book or day book of the Registry of Deeds on September 14, 1994 is sufficient notice to all persons, including the respondent, that the land is already subject to an attachment. The earlier registration of the notice of levy on attachment already binds the land insofar as third persons are concerned. The fact that the deed of absolute sale was dated February 24, 1994 is of no moment with regard to third persons.

2. ID.; ID.; ID.; PREFERENCE CREATED BY THE LEVY ON ATTACHMENT IS NOT DIMINISHED BY THE SUBSEQUENT REGISTRATION OF THE PRIOR SALE TO RESPONDENT; THE ATTACHMENT THAT WAS REGISTERED BEFORE THE SALE TAKES PRECEDENCE OVER THE SALE. — Under Sections 51 and 52 of the Property Registration Decree (P.D. 1529) provisions, the act of registration is the operative act to convey or affect the land insofar as third persons are concerned. Constructive notice is also created upon registration of every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land. In this case, the preference created by the levy on attachment is not diminished by the subsequent registration of the prior sale to respondent. The attachment that was registered before the sale takes precedence over the latter. Superiority and preference in rights are given to the registration of the levy on attachment; although the notice of attachment has not been noted on the certificate of title, its notation in the book of entry of the Register of Deeds produces all the effects which the law gives to its registration or inscription.

3. ID.; ID.; ID.; A DECLARATION FROM THE COURT THAT RESPONDENT WAS IN BAD FAITH IS NOT NECESSARY IN ORDER THAT THE NOTICE OF LEVY ON ATTACHMENT MAY BE ANNOTATED ON TCT NO. PT-94912. — Respondent cannot be considered an innocent purchaser for value. Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title. Such presumption is irrebuttable. He is charged with notice of every fact shown by the record and is presumed to know every fact shown by the record and to know every fact which an examination of the record would have

disclosed. This presumption cannot be overcome by proof of innocence or good faith. Otherwise, the very purpose and object of the law requiring a record would be destroyed. Such presumption cannot be defeated by proof of want of knowledge of what the record contains any more than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts which the public record contains is a rule of law. The rule must be absolute; any variation would lead to endless confusion and useless litigation. For these reasons, a declaration from the court that respondent was in bad faith is not necessary in order that the notice of levy on attachment may be annotated on TCT No. PT-94912.

4. ID.; ID.; ID.; FACT THAT THE NOTICE OF LEVY ON ATTACHMENT WAS NOT ANNOTATED SHOULD NOT PREJUDICE PETITIONER; AS LONG AS THE REQUISITES REQUIRED BY LAW IN ORDER TO EFFECT ATTACHMENT ARE COMPLIED WITH AND THE APPROPRIATE FEES ARE DULY PAID, ATTACHMENT IS DULY PERFECTED. — The fact that the notice of levy on attachment was not annotated on the original title on file in the Registry of Deeds, which resulted in its non-annotation on TCT No. PT-94912, should not prejudice petitioner. As long as the requisites required by law in order to effect attachment are complied with and the appropriate fees duly paid, attachment is duly perfected. The attachment already binds the land. This is because what remains to be done lies not within the petitioner's power to perform but is a duty incumbent solely on the Register of Deeds.

5. ID.; ID.; ID.; RESPONDENT'S REFUSAL TO SURRENDER THE OWNER'S DUPLICATE CERTIFICATE SO THAT THE ATTACHMENT LIEN MAY BE ANNOTATED NECESSITATED A COURT ORDER TO COMPEL THE SURRENDER OF THE TITLE. — The Administrator of the LRA did not commit a reversible error in referring to the court the propriety of annotating the notice of levy on attachment. Section 71 of PD 1529 is the controlling law on the matter, *viz.:* SEC. 71. *Surrender of certificate in involuntary dealings.* — If an attachment or other lien in the nature of involuntary dealing in registered land is registered, and the duplicate certificate is not presented at the time of registration, the

> Register of Deeds shall, within thirty-six hours thereafter, send notice by mail to the registered owner, stating that such paper has been registered, and requesting him to send or produce his duplicate certificate so that a memorandum of the attachment or other lien may be made thereon. *If the owner neglects or refuses to comply within a reasonable time, the Register of Deeds shall report the matter to the court, and it shall, after notice, enter an order to the owner, to produce his certificate at a time and place named therein, and may enforce the order by suitable process*. In this case, since respondent refuses to surrender the owner's duplicate certificate so that the attachment lien may be annotated, a court order is necessary in order to compel the respondent to surrender her title. As a rule, the functions of the Register of Deeds are generally regarded as ministerial and said officer has no power to pass upon the legality of an order issued by a court of justice.

APPEARANCES OF COUNSEL

Yulo Aliling Pascua and Zuniga Law Office for respondent.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated July 31, 2000 and the Resolution[2] dated March 15, 2001 of the Court of Appeals (CA).

The Facts of the Case

The antecedent facts, as culled by the CA from the findings of the Land Registration Authority (LRA), are as follows:

---

[1] Penned by Associate Justice Conrado M. Vasquez, Jr. (now Presiding Justice), with Associate Justices Mariano M. Umali and Eriberto U. Rosario, Jr., concurring; *rollo*, pp. 40-46.

[2] *Rollo*, p. 48.

This refers to a Notice of Levy on Attachment on Real Property dated September 12, 1994, issued in Civil Case No. Q-92-11198 entitled "*The Armed Forces of the Philippines Mutual Benefit Association, Inc., Plaintiff, vs. Eurotrust Capital Corporation, Elsa B. Reyes, Rene M. Reyes, Celedonio N. Reyes, Digna Blanca, Fernando C. Francisco, Ma. Cristina C. Cornista, EBR Realty Corporation and B.E. Ritz Mansion International Corporation, Defendants*, Regional Trial Court, Branch 216, Quezon City, levying all the rights, claims, shares, interests and participation of EBR Realty Corporation in the real property covered by Transfer Certificate of Title No. PT-79252.

On September 14, 1994, the Notice of Levy was presented for registration in the Registry of Deeds of Pasig City. The Notice was entered in the Primary Entry Book under Entry No. PT-1305. However, it was not annotated on TCT No. PT-79252 because the original copy of said title on file in the Registry of Deeds was not available at that time. Aniana Estremadura, the employee who examined the notice of levy, kept the said document in the meantime "hoping some later days said title may be found" as "at the time we were yet in turmoil or in disarray having just transferred from our old office."

On September 20, 1994 or six (6) days after the presentation of the Notice of Levy, a Deed of Absolute Sale dated February 24, [1994], executed by EBR Realty Corporation in favor of Ines B. Santiago involving the same parcel of land covered by TCT No. PT-97252 was presented for registration and entered under Entry No. PT-1653. The deed of sale was examined by the same employee who examined the notice of levy, but she failed to notice that the title subject of the sale was the same title which was the subject of the notice of levy earlier presented. Unaware of the previous presentation of the notice of levy, the Register of Deeds issued TCT No. PT-94912 in the name of vendee Ines B. Santiago on the basis of the deed of sale. It was only after the Register of Deeds had already acted on the said deed of sale that Aniana Estremadura informed him of the presentation of the notice of levy. (Ltr. dated October 24, 1994 of the Register of Deeds to Ms. Ines B. Santiago).

Nevertheless, when the Register of Deeds discovered the error he immediately sent a letter dated October 24, 1994 to Ms. Ines B. Santiago requesting her to surrender the documents, particularly the deed of sale and owner's duplicate of TCT No. PT-94912 so that he can take appropriate rectification or correction. Ms. Santiago

refused to surrender the documents and owner's duplicate of said title saying that "it was your office that caused this confusion so I do not see an iota of reason why I should be implicated in this kind of mess." This prompted the Register of Deeds to file a Manifestation dated November 11, 1995 in Civil Case No. Q-92-11198 informing the court of the foregoing circumstances and praying that the Register of Deeds be authorized to annotate on TCT No. PT-94912 the Notice of Levy on Attachment of Real Property.

Since the court has not yet issued any order on the matter, the Register of Deeds is now asking if he may proceed with the annotation of the Notice of Levy on the original copy of TCT No. PT-94912 or wait for the order of the court.[3]

On May 28, 1997, acting on the consulta by the Registry of Deeds of Pasig City on the propriety of annotating the notice of levy on attachment on Transfer Certificate of Title (TCT) No. PT-94912, the LRA issued a Resolution,[4] the *fallo* of which reads:

WHEREFORE, premises considered, this Authority is of the opinion and so holds that the subject Notice of Levy cannot be annotated on TCT No. PT-94912, except by order of the court.

SO ORDERED.[5]

Petitioner filed a motion for reconsideration. On October 12, 1998, the LRA issued an Order[6] denying the motion for reconsideration for lack of merit.

On appeal to the CA, petitioner submitted the following grounds in support of its contention that a court order is *not* necessary in order that the notice of levy on attachment may be annotated on TCT No. PT-94912: (1) the notice of levy on attachment in favor of petitioner was registered in the primary entry book before the deed of absolute sale in favor of respondent and

---

[3] *Id*. at 40-41.

[4] Penned by Administrator Reynaldo Y. Maulit; *rollo*, pp. 86-87.

[5] *Id*. at 87.

[6] Penned by Administrator Alfredo R. Enriquez; *rollo,* pp. 89-90.

such involuntary registration already binds the land subject of TCT No. PT-94912; (2) respondent is not an innocent purchaser for value because she had actual and constructive knowledge of the issuance of the notice of levy on attachment dated September 12, 1994; (3) the annotation of the notice of levy on attachment does not constitute an alteration, amendment or revocation of TCT No. PT-94912; and (4) the LRA decision requiring a court order before petitioner's attachment lien can be annotated on TCT No. PT-94912 is tantamount to penalizing petitioner for the irregularities committed by the Pasig Registry of Deeds.

On July 31, 2000, the CA dismissed the petition. The pertinent portions of the Decision read:

> Records of the case disclose that at the time the levy on attachment in issue was inscribed in the Primary Entry Book on September 14, 1994, the property covered by Transfer Certificate of Title No. PT-79252 in the name of ERB Realty Corporation had already been previously sold to private respondent Santiago on February 24, 1994. With this in mind, it cannot be said at once that respondent Santiago is not a buyer in good faith and for value. To assume this position is too preposterous, premature and dangerously unprocedural since at the time of such sale, the inscription has not been done as yet.
>
> Furthermore, Transfer Certificate of Title No. PT-94912 may undeniably be derived from Transfer Certificate of Title No. PT-79252, yet, to allow the inscription of the levy on attachment on TCT No. PT-94912 would be levying on a property not owned by anyone of the defendants in this (sic) main civil case. Albeit Ines Bolos Santiago is a sister of Elsa Bolos Santiago (a defendant in the civil case), the fact still remains that respondent Santiago is not one of the defendants in the suit.
>
> Upon the other hand, to allow the inscription of the controversial levy on attachment upon the title of respondent Santiago will be tantamount to prematurely declaring her as a buyer in bad faith of the property. Such controversy is substantially a judicial issue over which the Registry of Deed nor the Land Registration Authority has no jurisdiction. Verily, on a mere Consulta, the Land Registration Authority could not rule on such issue on whether or not a registered owner is a buyer in good faith or not. Only our ordinary courts have that exclusive jurisdictional prerogative to try and decide such

controversy. In fine, the question of whether or not the conveyance was made to defraud [the] creditor of the transferor should be left for determination of the proper court. There is much danger in giving this authority to the Register of Deeds without judicial intervention as there would be injustice in the suggested frustrations of a judicial victory for a party to the case. *(In re: Consulta of Vicente J. Francisco on behalf of Cabantug, 67 Phil. 222, Peña on Land Titles, supra, p. 112).*

In sum, We find no error in the challenged resolutions of the Land Registration Authority.

IN VIEW OF ALL THE FOREGOING, the instant petition for review is ordered DISMISSED. No pronouncement as to costs.

SO ORDERED.[7]

Petitioner filed a motion for reconsideration; however, the same was denied in a Resolution dated March 15, 2001. Hence, this petition.

The Issues to Be Resolved

I. Whether the notice of levy on attachment may be annotated on TCT No. PT-94912;

II. Whether a declaration from the court that respondent is a purchaser in bad faith is necessary before the notice of levy on attachment may be annotated on TCT No. PT-94912; and

III. Whether a court order is necessary in order that the notice of levy on attachment may be annotated on TCT No. PT-94912.

The Ruling of the Court

I

The notice of levy on attachment in favor of petitioner may be annotated on TCT No. PT-94912. *Levin v. Bass*[8] provided the distinction between voluntary registration and involuntary registration. In ***voluntary registration***, such as a sale, mortgage,

---

[7] *Rollo*, pp. 45-46.

[8] 91 Phil. 420 (1952); see also *Dr. Caviles, Jr. v. Bautista*, 377 Phil. 25 (1999); *Garcia v. Court of Appeals*, 184 Phil. 358 (1980).

lease and the like, if the owner's duplicate certificate be not surrendered and presented or if no payment of registration fees be made within fifteen (15) days, entry in the day book of the deed of sale does not operate to convey and affect the land sold. In ***involuntary registration***, such as an attachment, levy upon execution, *lis pendens* and the like, entry thereof in the day book is a sufficient notice to all persons of such adverse claim.[9]

The entry of the notice of levy on attachment in the primary entry book or day book of the Registry of Deeds on September 14, 1994 is sufficient notice to all persons, including the respondent, that the land is already subject to an attachment. The earlier registration of the notice of levy on attachment already binds the land insofar as third persons are concerned. The fact that the deed of absolute sale was dated February 24, 1994 is of no moment with regard to third persons.

Sections 51 and 52 of the Property Registration Decree (Presidential Decree [P.D.] 1529) provide:

SEC. 51. *Conveyance and other dealings by registered owner.* — An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Registry of Deeds to make registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies. (Emphasis supplied.)

SEC. 52. *Constructive notice upon registration.* — Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered,

---

[9] *Levin v. Bass, supra*, at 436-437.

filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

Under the aforesaid provisions, the act of registration is the operative act to convey or affect the land insofar as third persons are concerned.[10] Constructive notice is also created upon registration of every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land.

In this case, the preference created by the levy on attachment is not diminished by the subsequent registration of the prior sale to respondent. The attachment that was registered before the sale takes precedence over the latter.[11] Superiority and preference in rights are given to the registration of the levy on attachment; although the notice of attachment has not been noted on the certificate of title, its notation in the book of entry of the Register of Deeds produces all the effects which the law gives to its registration or inscription.

II

Respondent cannot be considered an innocent purchaser for value. Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title. Such presumption is irrebuttable. He is charged with notice of every fact shown by the record and is presumed to know every fact shown by the record and to know every fact which an examination of the record would have disclosed. This presumption cannot be overcome by proof of innocence or good faith. Otherwise, the very purpose and object of the law requiring a record would be destroyed. Such presumption cannot be defeated by proof of want of knowledge of what the record contains any more than one may be permitted to show that he was ignorant

---

[10] P.D. 1529, Sec. 51.

[11] *Du v. Stronghold Insurance Co., Inc.*, G.R. No. 156580, June 14, 2004, 432 SCRA 43; *Garcia v. Court of Appeals, supra* note 8; *Capistrano v. Philippine National Bank*, G.R. No. L-9628, August 30, 1957, 101 Phil. 1117; *Government of the Philippine Islands v. Aballe*, G.R. No. L-41342, November 28, 1934, 60 SCRA 986.

of the provisions of the law. The rule that all persons must take notice of the facts which the public record contains is a rule of law. The rule must be absolute; any variation would lead to endless confusion and useless litigation.[12] For these reasons, a declaration from the court that respondent was in bad faith is not necessary in order that the notice of levy on attachment may be annotated on TCT No. PT-94912.

The fact that the notice of levy on attachment was not annotated on the original title on file in the Registry of Deeds, which resulted in its non-annotation on TCT No. PT-94912, should not prejudice petitioner. As long as the requisites required by law in order to effect attachment are complied with and the appropriate fees duly paid, attachment is duly perfected. The attachment already binds the land. This is because what remains to be done lies not within the petitioner's power to perform but is a duty incumbent solely on the Register of Deeds.

III

The Administrator of the LRA did not commit a reversible error in referring to the court the propriety of annotating the notice of levy on attachment. Section 71 of PD 1529 is the controlling law on the matter, *viz*.:

SEC. 71. *Surrender of certificate in involuntary dealings*. — If an attachment or other lien in the nature of involuntary dealing in registered land is registered, and the duplicate certificate is not presented at the time of registration, the Register of Deeds shall, within thirty-six hours thereafter, send notice by mail to the registered owner, stating that such paper has been registered, and requesting him to send or produce his duplicate certificate so that a memorandum of the attachment or other lien may be made thereon. *If the owner neglects or refuses to comply within a reasonable time, the Register of Deeds shall report the matter to the court, and it shall, after notice, enter an order to the owner, to produce his certificate at a time and place named therein, and may enforce the order by suitable process.* (Emphasis supplied.)

---

[12] *Sumaya v. Intermediate Appellate Court*, G.R. Nos. 68843-44, September 2, 1991, 201 SCRA 178; *People v. Reyes*, G.R. Nos. 74226-27, July 27, 1989, 175 SCRA 597; *Gatioan v. Gaffud*, 137 Phil. 125 (1969).

In this case, since respondent refuses to surrender the owner's duplicate certificate so that the attachment lien may be annotated, a court order is necessary in order to compel the respondent to surrender her title. As a rule, the functions of the Register of Deeds are generally regarded as ministerial and said officer has no power to pass upon the legality of an order issued by a court of justice.[13]

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals in CA-G.R. SP No. 50923 is hereby *REVERSED AND SET ASIDE*. The Register of Deeds of Pasig City is hereby ordered to annotate in the original copy of Transfer Certificate of Title No. PT-97252 the notice of levy on attachment dated September 12, 1994, issued in Civil Case No. Q-92-11198. Respondent is ordered to surrender the owner's duplicate certificate of Transfer Certificate of Title No. PT-97252 for the proper annotation of the aforesaid notice of levy on attachment.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 153517. June 27, 2008]

AMBEE FOOD SERVICES, INC. and LAURO M. AMANTE, *petitioners, vs.* **COURT OF APPEALS and MYRTHLE B. MARZAN,** *respondents*.

---

[13] *Register of Deeds, Pasig, Rizal v. Heirs of Caiji, et al.*, 99 Phil. 25 (1956).

SYLLABUS

LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; APPROPRIATE RESOLUTION IN CASE AT BAR SHOULD BE TO ALLOW PRIVATE RESPONDENT TO RETURN TO WORK UNDER THE SAME TERMS AND CONDITIONS BUT WITHOUT BACKWAGES. — The record shows that private respondent was suspended pending investigation of the incident in question but was never dismissed. Rather, it was private respondent who refused to return to work when petitioners asked her to do so. The appropriate resolution of the situation should therefore be to allow private respondent to return to work under the same terms and conditions but without backwages since her suspension was valid and thereafter she refused to return to work.

APPEARANCES OF COUNSEL

Gerardo D. Rabanes for petitioners.
Lameyra Law Office for private respondent.

D E C I S I O N

AZCUNA, *J.*:

Assailed in this petition for review under Rule 45 of the Rules of Court are the November 29, 2001 Decision[1] and May 7, 2002 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 63377 reversing the September 29, 2000 Decision[3] of the National Labor Relations Commission (NLRC) which affirmed the May 15, 2000 Decision[4] of the Labor Arbiter. The CA found that private respondent was illegally dismissed.

---

[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Godardo A. Jacinto and Eloy R. Bello, Jr. concurring.

[2] *Rollo*, p. 26.

[3] Penned by Commissioner Ireneo B. Bernardo, with Commissioners Lourdes C. Javier and Tito F. Genilo concurring.

[4] Penned by Acting Executive Labor Arbiter Pedro C. Ramos.

On December 6, 1999, private respondent Myrthle B. Marzan (Marzan) filed before the NLRC a complaint for illegal suspension and illegal dismissal with prayer for damages against petitioners Ambee Food Services, Inc. (Ambee) and its officers, Lauro M. Amante, Mackey Dimaculangan and Lea P. Evasco.[5] The surrounding factual circumstances of Marzan's employment with Ambee as well as her dismissal therefrom were narrated in the affidavit attached to her Position Paper,[6] thus:

1. I was employed in Ambee Foods Services, Inc. (hereafter referred to as Ambee)[,] a franchise of JOLLIBEE operating in San Pedro, Laguna, from June 5, 1995 until I was unceremoniously dismissed therefrom last October 28, 1999[.]

2. Initially, I worked at Ambee as management trainee for six months, and thereafter, as shift/counter manager until I was dismissed. My latest salary was ₱13,500.00 per month. Moreover, in addition to the 13th month pay, I was also receiving mid-year bonus of ₱8,000.00, and a year-end bonus of ₱10,000.00, on the average.

3. As a counter manager, the counter crew members were under my supervision. On the other hand, those who were responsible or in control of the releasing of the food products such as rice and chicken joy were under the supervision of the Kitchen Manager and Products Comptroller.

4. On October 12, 1999, at about 8:00 p.m. to 8:30 p.m.[,] counter crew members obtained orders from customers for rice and chicken joy on a waiting condition, that is, that they had to wait for about ten minutes. It was because the counter crew members asked those in the kitchen and production [sections] the availability of rice and chicken joy, and they were assured that these food products would become available about ten minutes more. Unfortunately, ten minutes passed but the kitchen and production sections were able to prepare only the chicken joy, not the rice.

5. Consequently, the crew members, upon instruction, offered the customers bread/roll in lieu of rice. Many of them agreed,

[5] NLRC *records*, p. 1.

[6] *Id*. at 39-47.

and some complained. Of those who complained, one opted for the refund.

6. Meanwhile, one customer uttered some unsavory words before accepting our offer for bread/roll in place of rice. Still another customer inquired from me in a loud voice about his order. His loud voice instantaneously instilled a feeling of fear in me, and in response, I told him in a fearful and somewhat louder voice to just wait if I could have rice served on him. Such customer turned out later to be Rodolfo "Rudy" Garon. A copy of my report about such incident is attached hereto as Annexes "A" and "A-1".

7. The following day, Mackey Dimaculangan, the Area Manager, called me by phone, and told me that there was a customer complaining against me in the name of Melba Olivares, and Ms. Dimaculangan read to me the alleged letter-complaint of the alleged Melba Olivares. I replied that there was really a customer who complained, but not the way the letter-complaint [narrated], and the complainant was a man, not a woman.

8. After a week, the Manager/Director[,] Mr. Larry Amante (hereinafter referred to as Mr. Amante)[,] talked to me, and asked me [a] question about the complaint-letter. I was asked if there was indeed a complaint, and I said yes. While I was asked the said alleged letter-complaint, I was not actually given the chance to explain my side because I was practically made to give an answer "yes" or "no" only.

9. Thereafter, Ms. Dimaculangan and Mr. Amante talked to me again, and Mr. Amante told me that they had gathered information about the incident of October 12, 1999. He told me that because I anyway admitted such incident to have transpired already from my employment.

10. I [protested], and told him that there was no complainant in the name of Melba Olivares, so why should I be terminated. They admitted that there is really Melba Olivares, but they argued that I did [not] [deal] well with the [customer] because I did not allegedly entertain personally the latter.

11. Thereafter, I was informed that I would be suspended indefinitely. The following day, or on October 29, 1999, I still reported for work and therein I received the letter

suspending me indefinitely, asking me then to explain my side. Copy of the alleged incident report of alleged Melba Olivares is hereto attached as Annexes "B" and "B-1", and copy of the letter of indefinite suspension is hereto attached as Annex "B-2".

12. Accordingly, through my lawyer, I explained my side, copy of such written explanation submitted to Ambee is hereto attached as Annex "C".

13. On October 31, 1999, I learned from one of the crew members that one of them in the name of Jenny was spreading words that I should be terminated because, allegedly, I became discourteous to the customers. I confronted her, and told her that she could not hear what was happening in the counter. But as of the moment, I told her that the case at hand was mine, and should she want, I would include her in my case.

14. On November 10, 1999, I was summoned to the office, and was confronted by Mr. Amante, Ms. Dimaculangan and Lea Evasco, Assistant Manager. They showed and read to me the report of Lea Evasco on the incident of October 12, 1999 regarding the alleged complaint of Rodolfo "Rudy" Garon, copy of such report of Lea Evasco is hereto attached as Annexes "D" and "D-1". After that, I was informed that the penalty on me should have been suspension, but because I allegedly intimidated Jenny on October 31, 1999, my penalty then is termination.

15. Mr. Amante told me thereafter to go out of the room, and told me to go to Mr. Rodolfo Garon and [give] an apology; he told me to go to Shierra Armada, [accountant] of the Corporation, to get from her the address of Mr. Rodolfo Garon. He clarified to me, however, that he was not making any promise that my dismissal would be recalled. He told me that I would anyway be summoned again on the following day.

16. Accordingly, I went to Mr. Rodolfo Garon and after explaining my side, he made a letter addressed to the Managing Director of Ambee refuting the allegations of Lea Evasco, and explaining the latter's visit [to] him, copy of which is hereto attached as Annexes "E" and "E-1".

17. On November 12, 1999, after securing Mr. Amante's consent, I faxed to his residence the letter-complaint of Mr. Garon (Annex "E" hereto). Since then to date, no word came from Mr. Amante [and] neither from any of his top officers. I made follow-ups with Ms. Shierra Armada about the management's final decision after the explanation of Mr. Garon, but Ms. Shierra Armada's consistent reply was that the management had no decision yet on my case.

18. It appears from the facts above narrated, and the [evidence] hereto attached, particularly from the letter of Mr. Rodolfo Garon, that my termination was effected in bad faith. It was evident from such letter of Mr. Garon that the management of Ambee was really bent on securing all [evidence] it could muster in its attempt to find a justification against me, even to the extent of bribing Mr. Garon to side with it. The accusation against me that there was complaint in the name Melba Olivares, is not true, for such person is fictitious[.] The Brgy. Captain where the alleged Melba Olivares allegedly resides certifies to that effect. Copy of such certification is hereto attached as Annex "F".[7]

As expected, petitioners presented a contrasting account of facts, averring that:

1. Complainant started working with the respondent food store on June 5, 1995 as Shift Manager;

2. In the course [of] her said employment, she was not in good terms with her co-employees specially her subordinates who have various complaints, comments and unsavory remarks about her attitude in dealing with them, to wit:

   ANNEX "1" — Complaint, comment, remarks of crew member Mc-Dowell Cartaño saying that Ms. Marzan often shouted at him even for no valid reason in front of customers. He said she is unreasonable.

   ANNEX "2" — Complaint, comment, remarks of Jennie Vieve Odono saying that Ms. Marzan was always shouting at them at the counter

[7] *Id*. at 48-50.

in front of customers, cursing them even if no valid reasons. She described her as "*sobrang higpit.*"

ANNEX "3" — Complaint, comment, remarks of Jasmin B. Patricio saying that Ms. Marzan was rude. One time she was asking [for] a ketchup from Ms. Marzan[,] who[,] in turn[,] [threw] it [to] her — "*Pahagis ang bigay niya kaya nagtalsikan at tinamaan po ako sa mukha at balikat*" — in front of the customers. She described Ms. Marzan as always hot headed [and] ready to explode any moment even without cause.

ANNEX "4" — Complaint, comment, remarks of Marivic Anonuevo saying that Ms. Marzan would always shout and curse them even in front of customers and threatened [them] that for such violation they could be terminated. With that, they were often put to shame when she could have talked to them in private. And because Ms. Marzan was too strict all other employees were afraid of her.

ANNEX "5" — Complaint, comment, remarks of Aileen describing Ms. Marzan as too strict and all of them were afraid of her because [on] every little things done she would curse and shout at them[;]

3. On October 12, 1999 at about 7:30 [P.M.], a customer by the name of Mr. Rudy Garon, together with his wife, went to respondent food store and ordered "Chicken Joy with Rice" and they were told to wait for 15 minutes because the rice was still being cooked. However, said period [elapsed] and still there was no rice. ... The customer got angry and was complaining at the counter. Ms. Marzan … refused to talk to him and she was hiding in the kitchen. When the customer came to know that Ms. Marzan was the manager at that time, the customer [called] her outside to talk to him but Ms. Marzan refused to come out and face

him. The more the customer got angry. This incident was witnessed by many employees and some of them are as follows:

ANNEX "6" — Report of Lea Evasco, the Manager, narrating the following:

> "… at first the chicken joy was served after 10 minutes without rice, so he (the customer) went to the counter area to ask for it, and he was told that no rice was available so he was offered a roll (bread) and he agreed because he and his wife were already hungry. After 20 minutes of waiting for the roll he again went to the counter and asked for the manager on duty (Ms. Marzan). But the Manager did not want to go out, instead she [answered] the customer from the kitchen area. Their verbal exchange was loud because they were far from each other. As the customer got angry and [ashamed] because all [others] were looking at him, he asked for the refund…."

ANNEX "7" — Statement of Maureen Mangubos saying that the customer wanted to talk to Ms. Marzan but she refused to talk to him. The customer was angry why he was earlier offered a roll instead of a rice but still no roll came despite [the long wait]. The incident ended when [the money was refunded to the customer] despite the objection of Ms. Marzan.

ANNEX "8" — Statement of Michael A. Roque (Mikee) who said that the customer got angry at first when, after payment for one piece chicken joy with rice and after being told to wait for the rice for 30 minutes[,] no rice came[,] and [that] the more he became angry when, after being told that he [would] be given [a] roll instead, he

> [waited] for another 30 minutes and yet no roll came. The more the customer got angry when the manager, Ms. Marzan, refused to come out [of] the kitchen and talk to him as he demanded.
>
> ANNEX "9" — Statement of Teresita Curioso who said that the angry customer was shouting at Ms. Marzan to come out [of] the kitchen and talk to him but Ms. Marzan did not come out and refused to talk to him[;]

4. Because of what happened, the *(sic)* Ms. Marzan herself as manager issued an Incident Report, a copy of which is hereto attached as ANNEX "10", wherein she openly admitted the following:

   — that her action was definitely unbecoming for a Jollibee Manager;

   — she got rattled as there were so many complaints. Complainant Rudy Garon was the third person who complained about the lack of rice that time;

   — she also got rattled because she overlooked the rice availability[;]

5. Due to all the foregoing, she was issued a memorandum dated October 28, 1999 suspending her and requiring her to submit a written explanation about the incident, copy attached as ANNEX "11";

6. On October 31, 1999, complainant Ms. Marzan submitted a letter of protestation, ANNEX "12";

7. In a clarificatory meeting on November 10, 1999, complainant was present and she gave a statement, copy attached as ANNEX "13" wherein she said, among others:

   "I admit that [I] had a loud voice when I said,
   '*Sandali lang po titingnan ko lang kung may rice*[;]'"

8. Complainant was not terminated. Then on several occasions attempts by phone [calls] to talk to her about the case were refused, thus, settlement could not be effected. On one occasion that our accountant was able to talk [to] her she emphatically said that "I'll just see you in court[;]"

9. Finally, [the] management had to write her on February 20, 2000 requesting her to report for work[;]

10. That up to the present, and even by way of this pleading, respondents are telling complainant to go back to work to *(sic)* as they are willing to accept her back under the same terms and conditions. If she [would] not heed this manifestation, respondents [would] take it to mean that complainant is no longer interested in her employment and her name [would] be totally removed from the list of employees.[8]

In her Reply,[9] Marzan admitted that on March 3, 2000 she received a letter dated February 29, 2000 asking her to return to work. While sensing that such letter was merely a ploy of petitioners, she still gave it the benefit of the doubt when she reported for work on March 5, 2000. That time, she caused her name to be written in the logbook, punched her time card and had it signed by the manager, Marge Austria. It turned out, however, that Amante, the Managing Director who signed the letter, was nowhere to be found and that not even the managers knew that she would report back. Thus, she left the store.

Moreover, Marzan noted that during the initial stage of the case before the labor arbiter petitioners made no offer whatsoever to settle the controversy, hence, the filing of the parties' position papers was set. It was only when she moved for an extension of time to file the same that petitioners, through counsel, offered a separation pay (computed at one month pay for every year of service) without reinstatement. Also, prior to the rescheduled date set for the filing of the parties' position papers (on March 7, 2000), Marzan received the February 29, 2000 letter asking her to report back to work.

Petitioners countered in their Reply[10] that while Marzan reported for work on March 5, 2000, she punched in her time card at 11:27 A.M. and punched out at 1:01 P.M. Also, she did not

---

[8] *Id*. at 11-14.

[9] *Id.* at 65-70.

[10] *Id*. at 73-75.

come in on her usual working hours, was not in company uniform and did not do her assigned job. Since then, Marzan never went back to work. The affidavit of Evasco, the Assistant Store Manager, was shown to attest these allegations.[11]

On May 15, 2000, the complaint was dismissed for lack of merit. The labor arbiter ruled that the penalty of preventive suspension imposed on Marzan was not tantamount to, or considered as, illegal dismissal. It was held:

> In the case at bar, it has been amply shown that in the incident that happened on October 12, 1999, at the [Jollibee] outlet in San Pedro, Laguna, complainant has miserably failed to attend to the customers' need with utmost dispatch, courteousness, and respect, the prime and standard requirements to employees working in a fast food chain.
>
> Verily, complainant's [rude] character towards customer Rudy Garon, when, in a loud voice, she told him to wait for his rice for 30 minutes, and when no rice came and the customer complained, complainant offered a bread/roll and, still, notwithstanding another 30 minutes of waiting, no bread/roll has been offered, and when customer Rudy Garon wanted to talk to her, she refused, and instead hid herself in the kitchen, show a clear case of culpable incapacity on complainant's part to appropriately handle and/or control the situation highly expected to a Manager, especially so, or during the time, when there are many customers queuing for their orders.
>
> Significantly, the Memorandum dated October 28, 1999, suspending complainant after a proper investigation, and upon submitting her answer[,] is but a consequential action expected [of] the management. On this point, we find herein complainant to be not illegally dismissed but merely suspended because there was no illegal dismissal to speak of in the instant case[,] whether orally or in writing.
>
> The records indubitably show that there were several attempts to reach her by phone, to talk to her about the case, but she refused. There was even one occasion when [respondent Ambee's] accountant was able to talk to her but she emphatically said, "I'll just see you in court."

---

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

Parenthetically, up to the present, and even by way of respondents' pleadings, [respondents] were telling complainant to report back to work under the same terms and conditions yet complainant maintained her hard headedness.

Taking this into mind, we are convinced that complainant was indeed preventively suspended and not dismissed contrary to complainant's claim.

Surely, herein complainant's right to security of tenure does not give her the vested right as would deprive [respondent Ambee's] of its prerogative to conduct investigation and to impose the corresponding penalty and sanction reasonable under the obtaining circumstances. For so long as the same has been conducted in the exercise of management's prerogative to protect its business and does not involve a demotion in rank or diminution of salary and other privileges, herein complainant cannot allege that the act of the management constitutes illegal dismissal. Needless to stress, the employer is free to regulate all aspects of employment, including investigation and sanctions.

Additionally, the institution or filing of a case by herein complainant against the respondents did not operate to make the management's conduct, orders, instructions or judgments illegal or unenforceable to excuse continued non-compliance therewith, otherwise an absurd situation will result wherein an indolent employee would simply refuse to follow an order or instruction from the management through the more [expedient means] of instituting an action. To disregard or disobey the order of the respondents for a return to work on the pleaded theory that the sanction imposed is unreasonable [or] illegal would be disastrous to the discipline of an employee and disadvantageous to the interest of the employer in preserving a convenient working relationship with its employee since without it no meaningful progress is possible. Significantly, the deliberate disregard, disobedience, or utter defiance by complainant over the respondents' call for her report to work cannot be countenanced. This is not to say that complainant has no remedy against the rules or orders of the respondents which complainant may regard as unjust or illegal because she can object thereto or negotiate thereon. But until and unless the rules, orders, directive or instructions of [the] respondents are declared to be illegal or improper by competent authority, herein complainant cannot just ignore or disobey such order.

In fact, respondents' desire for complainant's return to work is such a noble act because notwithstanding the seriousness of complainant's offense aggravated by various complaints, comments, and unsavory remarks from her co-employees and subordinates about her attitude, she is still being accepted by the herein respondents with open hands.

Ironically, while it appears from the records that complainant has reported on March 5, 2000, and punched her time card at exactly 11:27 a.m., she [had] also punched out her time card at 1:01 p.m.; also, it appears from the records that she did not report on her usual working hours, not in proper uniform, and did not perform her assigned task. These incidents had been witnessed and testified to by Lea Evasco, the Asst. Store Manager, in her affidavit executed on March 8, 2000, hereto marked as Annex ["B".] Suffice it to state therefore that it was petulance for herein complainant to report for a while and thereafter to leave immediately as it can be viewed to be a sign of disrespect and wanton desire to cause insult and injury to herein respondents.

Anent the issue of reinstatement, certainly, we cannot grant the same, because there was no illegal dismissal at all. More so, the claim for backwages cannot prosper because her suspension cannot be construed as illegal dismissal.

Lastly, the claim for damages has no leg to stand on because her suspension has not been shown to be illegal much less attended by bad faith or fraud or can be constituted as an act oppressive to labor.[12]

On September 29, 2000, the NLRC resolved to affirm *in toto* the above ruling, finding the decision to be "in complete accord with the evidence on record and applicable law on the matter."[13] It denied Marzan's subsequent motion for reconsideration.[14]

The CA, however, differed in its view. On November 29, 2001, it primarily held that although Marzan's actuation is improper it cannot be considered as grave enough to constitute

---

[12] *Id*. at 94-97.

[13] *Id*. at 128-133.

[14] *Id*. at 159-160.

serious misconduct to warrant the ultimate penalty of dismissal, and that her indefinite suspension pending investigation is tantamount to illegal dismissal. Hence, the CA annulled and set aside the NLRC Decision and ordered Marzan's reinstatement, with payment of full backwages from the time her compensation was withheld up to the time of her actual reinstatement.[15] Both Marzan and petitioners separately moved for reconsideration of the Decision, with the former praying for its modification so as to include awards of moral and exemplary damages as well as attorney's fees. Nevertheless, both motions were denied.[16]

Petitioners ask this Court to resolve whether the CA committed grave abuse of discretion when it reversed, set aside and declared null and void the Decision of the labor arbiter and the NLRC, and found that private respondent was illegally dismissed and entitled to reinstatement and full backwages even if it was found that her actuation was a misconduct and, therefore, should be punished with a penalty corresponding to the offense committed.[17]

Petitioners argue that, consistent with *Ignacio v. Coca-Cola Bottlers Phils., Inc.*,[18] decisions of the labor arbiters as affirmed by the NLRC are entitled to respect if not finality and are considered binding on the appellate court. In this case, as the rulings of the labor arbiter and NLRC are strictly in accordance with the evidence presented and the applicable law, this Court should therefore sustain the same. They insist that Marzan was not terminated from employment but was merely suspended pending her administrative investigation as, in fact, there is no written or verbal communication to prove the alleged dismissal and that, up to now, petitioner Ambee is still awaiting Marzan's decision to report back to work under the same terms and conditions. Even so, petitioners maintain that the actuations of Marzan on October 12, 1999 evince a gross and serious misconduct constituting a valid cause for her dismissal. Granting that

---

[15] CA *rollo*, pp. 210-226.

[16] *Id*. at 254.

[17] *Rollo*, p. 193.

[18] 417 Phil. 747 (2001).

severance from employment is too severe a punishment, they submit that the penalty of reinstatement without backwages should instead be imposed.

Petitioners are correct. The record shows that private respondent was suspended pending investigation of the incident in question but was never dismissed. Rather, it was private respondent who refused to return to work when petitioners asked her to do so. The appropriate resolution of the situation should therefore be to allow private respondent to return to work under the same terms and conditions but without backwages since her suspension was valid and thereafter she refused to return to work.

WHEREFORE, the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 63377 dated November 29, 2001 and May 7, 2002 are *REVERSED and SET ASIDE* and the Decision of the National Labor Relations Commission dated September 29, 2000 is *REINSTATED* and private respondent is allowed to return to work under the same terms and conditions but without backwages.

No costs.

SO ORDERED.

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

EN BANC

[G.R. Nos. 156399-400. June 27, 2008]

VICTOR JOSE TAN UY, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, PEOPLE OF THE PHILIPPINES, SANDIGANBAYAN (*SPECIAL DIVISION*), CARLOS S. CAACBAY OF THE NATIONAL BUREAU OF INVESTIGATION, ROMEO T. CAPULONG, LEONARD DE VERA, AND DENNIS B. FUNA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* GRAVE ABUSE OF DISCRETION. — We clarify at the outset that the present petition is filed under Section 1, Rule 65 of the Revised Rules of Court whose scope of review is limited to the question: was the order by the tribunal, board or officer exercising judicial or quasi judicial functions rendered without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of or excess of jurisdiction? The "*grave abuse of discretion*" that the petitioner alleges in this case is defined by jurisprudence to be a "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or [an] exercise of power in an arbitrary and despotic manner by reason of passion or personal hostility, or an exercise of judgment so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act in a manner not at all in contemplation of law."

2. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; OBJECTIVE AND PURPOSE; ALTHOUGH ONLY A STATUTORY RIGHT, IT IS A COMPONENT OF DUE PROCESS IN ADMINISTERING CRIMINAL JUSTICE. — A preliminary investigation is held before an accused is placed on trial to secure the innocent against hasty, malicious, and oppressive prosecution; to protect him from an open and public accusation of a crime, as well as from the trouble, expenses, and anxiety of a public trial. It is also intended to protect the state from having to conduct useless and expensive trials. While

the right is statutory rather than constitutional, it is a component of due process in administering criminal justice. The right to have a preliminary investigation conducted before being bound for trial and before being exposed to the risk of incarceration and penalty is not a mere formal or technical right; it is a substantive right. To deny the accused's claim to a preliminary investigation is to deprive him of the full measure of his right to due process.

3. ID.; ID.; ID.; A PRELIMINARY INVESTIGATION IS SUBJECT TO THE REQUIREMENTS OF BOTH SUBSTANTIVE AND PROCEDURAL DUE PROCESS. — Thus, as in a court proceeding (albeit with appropriate adjustments because it is essentially still an administrative proceeding in which the prosecutor or investigating officer is a quasi-judicial officer by the nature of his functions), a preliminary investigation is subject to the requirements of both substantive and procedural due process. This view may be less strict in its formulation than what we held in *Cojuangco, Jr. v. PCGG, et al.* when we said: It must be undertaken in accordance with the procedure provided in Section 3, Rule 112 of the 1985 Rules of Criminal Procedure. This procedure is to be observed in order to assure that a person undergoing such preliminary investigation will be afforded due process. x x x Although such a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair. The officer conducting the same investigates or inquires into the facts concerning the commission of the crime with the end in view of determining whether or not an information may be prepared against the accused. Indeed, a preliminary investigation is in effect a realistic judicial appraisal of the merits of the case. Sufficient proof of the guilt of the accused must be adduced so that when the case is tried, the trial court may not be bound as a matter of law to order an acquittal. A preliminary investigation has then been called a judicial inquiry. It is a judicial proceeding. An act becomes judicial when there is opportunity to be heard and for the production and weighing of evidence, and a decision is rendered thereon, but we commonly recognize the need for the observance of due process. We likewise fully agree with *Cojuangco* in terms of the level of scrutiny that must be made — we do not expect the rigorous standards of a criminal trial, but *"[s]ufficient proof of the guilt of the accused must be adduced so that when the*

case is tried, the trial court may not be bound as a matter of law to order an acquittal."

4. ID.; ID.; ID.; ONLY BY CONFINING THE ADMINISTRATIVE TRIBUNAL TO THE EVIDENCE DISCLOSED TO THE PARTIES, CAN THE LATTER BE PROTECTED IN THEIR RIGHT TO KNOW AND MEET THE CASE AGAINST THEM. — In light of the due process requirement, the standards that *at the very least* assume great materiality and significance are those enunciated in the leading case of ***Ang Tibay v. Court of Industrial Relations***. This case instructively tells us — in defining the basic due process safeguards in administrative proceedings — that *the decision* (by an administrative body) *must be rendered on the evidence presented at the hearing, or at least contained in the record and* ***disclosed to the parties affected; only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them****; it should not, however, detract from the tribunal's duty to actively see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy.* Mindful of these considerations, we hold that the petitioner's right to due process has been violated.

5. ID.; ID.; ID.; REASONABLE OPPORTUNITY TO CONTROVERT EVIDENCE AND VENTILATE ONE'S CAUSE IN A PROCEEDING REQUIRES FULL KNOWLEDGE OF THE RELEVANT MATERIAL FACTS SPECIFIC TO THE PROCEEDING. — Unfortunately for the Ombudsman, the holding of the clarificatory hearing, in which Rodenas and the petitioner were the invitees, is replete with implications touching on the existence of probable cause at that stage of the proceedings. To be sure, the prosecutor (Ombudsman) cannot be faulted for calling the clarificatory hearing as it is within his authority to do so. As a rule, however, no clarificatory hearing is necessary if the evidence on record already shows the existence of probable cause; conversely, a clarificatory hearing is necessary to establish the probable cause that up to the time of the clarificatory hearing has not been shown. This implication becomes unavoidable for the present case, given the reason for the Sandiganbayan's order to conduct another preliminary investigation for the petitioner, and in light of the

evidence so far then presented which, as in the first preliminary investigation, did not link the petitioner to the assumed names or aliases appearing in the Information. Under the above circumstances, the respondent Ombudsman could only fall back on the simple response that *due process cannot be compartmentalized; the court proceedings participated in by the accused-movant* (the petitioner) *form part and parcel of such due process in the same manner that the further preliminary investigation is inseparable from the said court proceedings*. We do not however find this response sufficiently compelling to save the day for the respondent. That the petitioner may have actual prior knowledge of the *identification documents* from proceedings elsewhere is not a consideration sufficiently material to affect our conclusion. Reasonable opportunity to controvert evidence and ventilate one's cause in a proceeding requires full knowledge of the relevant and material facts ***specific*** to that proceeding. One cannot be expected to respond to collateral allegations or assertions made, or be bound by developments that transpired, in some other different although related proceedings, except perhaps under situations where facts are rendered conclusive by reason of judgments between the same parties — a situation that does not obtain in the present case. Otherwise, surprise — which is anathema to due process — may result together with the consequent loss of adequate opportunity to ventilate one's case and be heard. Following *Ang Tibay*, a decision in a proceeding must be rendered based on the evidence presented at the hearing ***(of the proceeding)***, or at least contained in the record ***(of the proceeding)*** and **disclosed to the parties affected** ***(during or at the proceeding)***.

6. ID.; ID.; ID.; BASIC DUE PROCESS REQUIRES THAT THE RIGHT TO KNOW AND TO MEET A CASE REQUIRES THAT A PERSON BE FULLY INFORMED OF THE PERTINENT AND MATERIAL FACTS UNIQUE TO THE INQUIRY TO WHICH HE IS CALLED AS A PARTY RESPONDENT; OMBUDSMAN'S FAILURE TO OBSERVE THE BASIC REQUIREMENT TAINTED ITS FINDINGS OF PROBABLE CAUSE WITH GRAVE ABUSE OF DISCRETION THAT EFFECTIVELY NULLIFIES THEM. — We cannot agree with the Ombudsman's position that the petitioner should controvert the *identification documents* because they already form part of the records of the preliminary

investigation, having been introduced in various incidents of Crim. Case No. 26558 then pending with the Sandiganbayan. The rule closest to a definition of the inter-relationship between records of a preliminary investigation and the criminal case to which it relates is **Section 8 (b), Rule 112 of the Revised Rules of Court** which provides that *the record of the preliminary investigation, whether conducted by a judge or a prosecutor, shall not form part of the record of the case; the court, on its own initiative or on motion of any party, may order the production of the record or any of its parts when necessary in the resolution of the case or any incident therein, or when it is introduced as an evidence in the case by the requesting party*. This rule, however, relates to the use of preliminary investigation records in the criminal case; no specific provision in the Rules exists regarding the reverse situation. We are thus guided in this regard by the basic due process requirement that the right to know and to meet a case requires that a person be fully informed of the pertinent and material facts *unique to the inquiry* to which he is called as a party respondent. Under this requirement, reasonable opportunity to contest evidence as critical as the *identification documents* should have been given the petitioner at the Sandiganbayan-ordered preliminary investigation as part of the facts he must controvert; *otherwise, there is nothing to controvert as the burden of evidence lies with the one who asserts that a probable cause exists.* The Ombudsman's failure in this regard tainted its findings of probable cause with grave abuse of discretion that effectively nullifies them. We cannot avoid this conclusion under the constitutional truism that *in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former*.

APPEARANCES OF COUNSEL

Benjamin C. Santos & Ofelia Calcetas-Santos Law Offices for petitioner.

D E C I S I O N

BRION, *J.*:

We resolve in this Decision the petition filed by petitioner Victor Jose Tan Uy (the "*petitioner*") under Rule 65 of the Revised Rules of Court to assail the interrelated Orders dated 13 September 2002[1] and 16 October 2002[2] of the respondent Office of the Ombudsman (the "*Ombudsman*") in **OMB-0-00-1720**[3] and **OMB-0-00-1756**[4] for grave abuse of discretion and/or lack or excess of jurisdiction.

THE ANTECEDENTS

The Ombudsman filed on 4 April 2001 with the Sandiganbayan an Information[5] charging former President Joseph Ejercito Estrada, together with Jose "Jinggoy" Estrada, Charlie "Atong" Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, ***Eleuterio Tan a.k.a. Eleuterio Ramos Tan or Mr. Uy***, Jane Doe a.k.a. Delia Rajas, John Does and Jane Does, with the crime of Plunder, defined and penalized under Republic Act (R.A.) No. 7080, as amended by Section 12 of R.A. No. 7659. The Ombudsman moved to amend the Information twice — initially,

---

[1] *Rollo*, pp. 97-102.

[2] *Id*., pp. 103-110.

[3] National Bureau of Investigation, Rep. by Atty. Carlos S. Caacbay *versus* Luis "Chavit" Singson, Deogracias B. Victor Savellano, Antonio A. Gundran, Carolyn M. Pilar, Erlita Q. Arce, Ernie A. Mendoza, Leonila Tadena, Estrella Mercurio, Dionisio Pizarro, Cornelio Almazan, Marina Atendido, Maricar Paz, Nuccio Saverio, Alma A. Alfaro, Eleuterio Tan or Eleuterio Ramos Tan, and Delia Rajas.

[4] Romeo T. Capulong, Leonardo de Vera and Dennis B. Funa *versus* Joseph Ejercito Estrada, Dr. Luisa "Loi" Ejercito, Jose "Jinggoy" Estrada, Charlie "Atong" Ang, Delia Rajas, Eleuterio Tan and Alma Alfaro.

[5] Apart from this Information, the Ombudsman filed two (2) others charging Former President Estrada with the crimes of *Illegal Use of Alias and Perjury*. These cases, which do not include the present petitioner either as Eleuterio Tan, Eleuterio Ramos Tan, or Mr. Uy, or Mr. Victor Jose Tan Uy, are irrelevant to the issues raised in the petition and are, therefore, not discussed here.

to introduce changes in the Information (including a change in the appellation of the accused *Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy* to **John Doe a.k.a. as Eleuterio Tan or Eleuterio Ramos Tan or Mr. Uy**), and thereafter, to include Jaime C. Dichaves as accused; the Sandiganbayan granted the motions.[6] The pertinent portions of the Amended Information[7] read:

That during the period from June, 1998 to January, 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, then a public officer, being then the president of the Republic of the Philippines, by himself and/or in connivance/conspiracy with his co-accused, who are members of his family, relatives by affinity or consanguinity, business associates, subordinates and/or other persons, by taking undue advantage of his official position, authority, relationship, connection or influence, did then and there willfully, unlawfully and criminally amass, accumulate and acquire by himself, directly or indirectly, ill-gotten wealth in the aggregate amount or total value of Four Billion Ninety-seven Million Eight Hundred Four Thousand One Hundred Seventy-three Pesos and Seventeen Centavos [₱4,097,804,173.17], more or less, thereby unjustly enriching himself or themselves at the expense and to the damage of the Pilipino (sic) people and the Republic of the Philippines, through any or a combination or a series of overt or criminal acts, or similar schemes or means, described as follows:

> (a) by receiving or collecting, directly or indirectly, on several instances, money in the aggregate amount of Five Hundred Forty-five Million Pesos (₱545,000,000.00), more or less, from illegal gambling in the form of gift, share, percentage, kickback or any form of pecuniary benefit, by himself and/or in connivance with co-accused Charlie 'Atong' Ang, Jose 'Jinggoy' Estrada, Yolanda T. Ricaforte and Edward Serapio and John Does and Jane Does, in consideration of toleration or protection of illegal gambling;
>
> (b) by diverting, receiving, misappropriating, converting OR misusing directly, or indirectly for his or their personal gain and benefit, public funds in the amount of ONE HUNDRED THIRTY MILLION PESOS (₱130,000,000.00), more or less,

---

[6] *Rollo*, pp. 160-164; Sandiganbayan Resolution dated 30 October 2001.

[7] *Ibid*.

representing a portion of the Two Hundred Million Pesos (₱200,000,000.00) tobacco excise tax share allocated for the Province of Ilocos Sur under R.A. No. 7171, **BY HIMSELF AND/OR in CONNIVANCE with co-accused Charlie 'Atong' Ang, Alma Alfaro, John Doe a.k.a. Eleuterio Tan or Eleuterio Ramos Tan or Mr. Uy, and Jane Doe a.k.a. Delia Rajas AND OTHER JOHN DOES AND JANE DOES**; *[underscores supplied]*

(c) by directing, ordering and compelling, for his personal gain and benefit, the Government Service Insurance System (GSIS) to purchase 351,878,000 shares of stocks, more or less, and the Social Security System (SSS) 329,855,000 shares of stocks, more or less, of the Belle Corporation in the amount of more or less One Billion One Hundred Two Million Nine Hundred Sixty-five Thousand Six Hundred Seven Pesos and Fifty Centavos (₱1,102,965,607.50) and more or less Seven Hundred Forty-four Million Six Hundred Twelve Thousand and Four Hundred Fifty Pesos (₱744,612,450.00), respectively or a total of more or less One Billion Eight Hundred Forty-seven Million Five Hundred Seventy-eight Thousand Fifty-seven Pesos and Fifty Centavos (₱1,847,578,057.50); and by collecting or receiving, directly or indirectly, by himself and/or in connivance with Jaime Dichaves, John Does and Jane Does, commissions or percentages by reason of said purchases of shares of stock in the amount of One Hundred Eighty-nine Million Seven Hundred Thousand Pesos (₱189,700,000.00) more or less, from the Belle Corporation which became part of the deposit in the Equitable-PCI Bank under the account name "Jose Velarde";

(d) by unjustly enriching himself from commissions, gifts, shares, percentages, kickbacks, or any form of pecuniary benefits, in connivance with Jaime C. Dichaves, John Does and Jane Does in the amount of more or less, Three Billion Two Hundred Thirty-three Million One Hundred Four Thousand One Hundred Seventy-three Pesos and Seventeen Centavos (₱3,233,104,173.17) and depositing the same under his account name "Jose Velarde" at the Equitable-PCI Bank.

CONTRARY TO LAW.

The case, which originated from **OMB-0-00-1720** (entitled *National Bureau of Investigation v. Luis "Chavit" Singson,*

et al.) and **OMB-0-00-1756** (entitled *Romeo T. Capulong, et al., v. Joseph Ejercito Estrada, et al.*), was docketed in the Sandiganbayan as Criminal (Crim.) Case No. 26558.

In the course of the proceedings, the Ombudsman filed before the Sandiganbayan an **Omnibus Motion dated 8 January 2002**[8] seeking, among others, the issuance of a warrant of arrest against Victor Jose Tan Uy *alias Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy*. The Ombudsman alleged that no warrant of arrest had been issued against the accused John Doe who was designated in the Information as *Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy*; and that, in order not to frustrate the ends of justice, a warrant of arrest should issue against him after he had been identified to be also using the name Victor Jose Tan Uy with address at 2041 M. J. Cuenco Avenue, Cebu City. Allegedly, a positive identification had been made through photographs, as early as *the Senate Impeachment Trial against former President Joseph Ejercito Estrada, that John Doe a.k.a. Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy and VICTOR JOSE TAN UY are one and the same person*.

To support this motion, the Ombudsman attached: (1) copies of the photographs identified at the Senate Impeachment Trial; and (2) the Sworn Statement of Ma. Caridad Manahan-Rodenas (the "*Rodenas Sworn Statement*") dated 26 June 2001 executed before Atty. Maria Oliva Elena A. Roxas of the Fact Finding and Intelligence Bureau of the Office of the Ombudsman ("*FFIB*"). [For purposes of this Decision, these are collectively referred to as the *"identification documents."*]

The Ombudsman further filed a **Manifestation and Motion dated 5 March 2002**[9] asking for the manual insertion in the

---

[8] *Id.*, pp. 137-149; The other grounds for the Omnibus Motion were the following: (1) the issuance of a warrant of arrest for accused Jaime Dichaves; (2) the arraignment pre-trial of accused Joseph Ejercito Estrada for Illegal Use of *Alias* in Criminal Case No. 26565 and for Perjury in Criminal Case No. 26905; and (3) the transfer of the accused Estradas to Fort Sto. Domingo, Sta. Rosa, Laguna.

[9] *Id.*, pp. 150-159.

Amended Information of the name VICTOR JOSE TAN UY; it relied on Section 7, Rule 110 of the Revised Rules of Criminal Procedure, which provides:

> **SEC. 7.** *Name of the accused.* — The complaint or information must state the name and surname of the accused or any appellation or nickname by which he has been or is known. If his name cannot be ascertained, he must be described under a fictitious name with a statement that his true name is unknown.
>
> If the true name of the accused is thereafter disclosed by him or appears in some other manner to the court, such true name shall be inserted in the complaint or information and record.

The petitioner's response was a **Petition to Conduct Preliminary Investigation**[10] **filed with the *Ombudsman***. The petitioner argued that: (1) he was not subjected to a preliminary investigation or to any previous inquiry to determine the existence of probable cause against him for the crime of plunder or any other offense, as: (a) he was not included as respondent in either of the two Ombudsman cases — bases of the criminal proceeding; (b) neither his name nor his address at No. 2041 M.J. Cuenco Avenue, Cebu City was mentioned at any stage of the preliminary investigation conducted in the criminal cases; (c) the preliminary investigation in the cases that led to the filing of Crim. Case No. 26558 was conducted without notice to him and without his participation; (d) he was not served any subpoena, whether at his address at No. 2041 M.J. Cuenco Avenue, Cebu City or at any other address, for the purpose of informing him of any complaint against him for plunder or any other offense and for the purpose of directing him to file his counter-affidavit; and (2) dictates of basic fairness and due process of law require that petitioner be given the opportunity to avail himself of the right to a preliminary investigation since the offense involved is non-bailable in character.

The petitioner additionally alleged that he filed a complaint with the Regional Trial Court of Cebu City docketed as CEB-25990 against a certain Eleuterio Tan for maligning him by

---

[10] *Id.*, pp. 112-126.

using his picture, address, and other personal circumstances without his consent or authority, which acts led to his alleged involvement in the tobacco excise tax scandal.[11] He also claimed that he personally visited then Senate President Aquilino Pimentel at the height of the impeachment trial to dispute his identification as Eleuterio Tan; he then expressed his willingness to testify before the Impeachment Court and subsequently wrote Senator Pimentel a letter about these concerns.[12] He claimed further that he submitted the signatures appearing on the signature cards supposedly signed by Eleuterio Tan and the two (2) company identification cards supposedly presented by the person who opened the Land Bank account for examination by a handwriting expert; the result of the handwriting examination disclosed that the signatures were not his.[13]

In a parallel **Manifestation and Motion**[14] **dated 11 April 2002 filed with the *Sandiganbayan***, the petitioner asked for the suspension of the criminal proceedings insofar as he is concerned; he likewise moved for a preliminary investigation.

The Ombudsman opposed[15] the petitioner's Manifestation and Motion with a refutation of the petitioner's various claims. Among others, it claimed that it served, in the preliminary investigation it conducted, the subpoena at the purported address of Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy at Bagbaguin, Valenzuela City as indicated in the complaint-affidavits. It posited that it was the petitioner's fault that his true name was not ascertained, the petitioner having made clever moves to make it difficult to identify him with his nefarious deeds. It also argued that the petitioner could not ask for any affirmative relief from the Sandiganbayan which had not acquired jurisdiction over the petitioner's person.

---

[11] *Id.,* p. 120.

[12] *Id.,* p. 121.

[13] *Id.*

[14] *Id.*, pp. 262-269.

[15] *Id.*, pp. 273-293.

The petitioner reiterated in his **Reply to Opposition**[16] (filed with the Sandiganbayan) the points he raised before the Ombudsman. He additionally stressed that: (1) the fundamental issue is whether or not a preliminary investigation was conducted with respect to him; as the records show, he was never subjected to any preliminary investigation; (2) he was never given by the prosecution the opportunity to prove in any preliminary investigation that he is not Eleuterio Tan; had he been given such opportunity, petitioner would have shown that he wasted no time and took immediate steps to establish his innocence shortly after the illegal use and submission of his photo and usurpation of his identity surfaced at the impeachment proceedings; (3) he timely invoked his right to a preliminary investigation, as motions or petitions for the conduct of preliminary investigation may be entertained by the Sandiganbayan even before the movant or petitioner is brought under its jurisdiction under the rule that any objection to a warrant of arrest or procedure in the acquisition by the court of jurisdiction over the person of the accused must be made before plea; (4) while the invalidity of the preliminary investigation does not affect the jurisdiction of the Sandiganbayan, it should however suspend the proceedings and remand the case for the holding of a proper preliminary investigation; and (5) a preliminary investigation is imperative because the offense involved is non-bailable.

The **Ombudsman** denied in an **Order dated 10 May 2002**[17] the petition for the conduct of a preliminary investigation. It rejected the petitioner's claims, reasoning out that the petitioner's requested preliminary investigation had long been terminated and the resulting case had already been filed with the Sandiganbayan in accordance with the Rules of Criminal Procedure; hence, the petitioner's remedy is to ventilate the issues with the Sandiganbayan.

The **Sandiganbayan**, on the other hand, granted in a **Resolution dated 19 June 2002**[18] the petitioner's motion and

[16] *Id*., pp. 294-358.

[17] *Id.*, pp. 366-368.

[18] *Id*., pp. 359-365.

directed the Ombudsman to conduct a preliminary investigation with respect to the petitioner. It also held in abeyance — until after the conclusion of this preliminary investigation — action on the Ombudsman's motion to amend the Information to insert the petitioner's name and to issue a warrant for his arrest.

In compliance with the Sandiganbayan Resolution, the Ombudsman issued an **Order**[19] requiring the petitioner to file his counter-affidavit, the affidavits of his witnesses, and other supporting documents. **Attached to the Ombudsman's Order were *the Complaint-Affidavit in OMB-0-00-1756 and the NBI Report in OMB-0-00-1720.*** The petitioner filed his counter-affidavit,[20] pertinent portions of which read:

2. With respect to the Complaint-Affidavit in **OMB-0001720**, it may be noted that the same was originally filed with the Department of Justice as **I.S. No. 2000-1829,** with the National Bureau of Investigation as complainant and the following as respondents, namely: (1) Luis 'Chavit' Singson, (2) Deogracias Victor B. Savellano, (3) Carolyn M. Pilar, (4) Antonio A. Gundran, (5) Dr. Ernie A. Mendoza II, Ph. D., (6) Leonila Tadena, (7) Estrella Mercurio, (8) Dionisia Pizarro, (9) Cornelio Almazan, (10) Erlita Q. Arce, (11) Maricar Paz, (12) Marina Atendido, (13) Nuccio Saverio, (14) Alma Aligato Alfaro, (15) Eleuterio Tan or Eleuterio Ramos Tan, and (16) Delia Rajas. (**I.S. No. 2000-1829** was thereafter referred to the Office of the Ombudsman as per the 1st indorsement of Secretary Artemio G. Tuquero dated 14 December 2000).

2.1. As may easily be gleaned from the documents served upon me with the 08 August 2002 Order, I am not among the respondents named or included in either **I.S. No. 2000-1829** or **OMB-0-00-1720**. Neither has there been any mention of my name in the Complaint-Letter dated 14 November 2000 of Carlos Caacbay, Deputy Director for Special Investigation Services or in any of its supporting documents.

2.2. Neither has any allegation been made in the Complaint-Letter dated 14 November 2000 of Carlos S. Caacbay, Deputy Director for Special Investigation Services, or in any of its supporting

---

[19] *Id.,* p. 370.

[20] *Id*., pp. 1050-1062.

documents that I have been identified as being among the named respondents therein.

2.3. Moreover, there has been no allegation linking me to any criminal act for any of the offenses charged or any other criminal offense.

3. With respect to the Complaint-Affidavit in **OMB-0-00-1756** filed by Romeo T. Capulong, Leonard de Vera and Dennis B. Funa, the only respondents named are: (1) (former) President Joseph E. Estrada, (2) (former) First Lady Luisa Estrada, (3) Jinggoy Estrada, (4) Charlie Ang, (5) Delia Rajas, (6) Eleuterio Tan, and (7) Alma Alfaro.

3.1. As may easily be gleaned from the documents served upon me with the 08 August 2002 Order, I am not among the respondents named or included in **OMB-0-00-1756**. Neither has there been any mention of my name in the Complaint-Affidavit dated 28 November 2000 or in any of its supporting documents marked Annexes 'A-1' to 'A-5' (consisting of 523 pages, more or less, of the transcripts of stenographic notes of Gov. Luis Singson's testimony before the Senate Blue Ribbon Committee and the Senate Committee on Justice) and Annex 'B' (the 25 September 2000 Affidavit of Gov. Luis Singson).

3.2 Neither has any allegation been made in the Complaint-Affidavit dated 28 November 2000 nor any of its supporting documents that I have been identified as being among the named respondents therein.

3.3. Moreover, there has been no allegation linking me to any criminal act for any of the offenses charged or any other criminal offense.

4. In view of the foregoing, it is submitted that the instant cases ought to be dismissed with respect to me, there being no factual allegation or basis in the instant cases to warrant any further action thereon. The instant cases should thus be dismissed outright for want of palpable merit.

The Ombudsman thereafter issued an order requiring the attendance of Rodenas and the petitioner in a clarificatory hearing.[21] The petitioner filed a **Manifestation and Motion**,[22]

[21] *Id.*, pp. 1063-1064.

[22] *Id.*, pp. 1065-1068.

arguing that considering the thrust of his counter-affidavit, there is no need for a hearing because there is nothing that would require clarification *as to matters stated in his counter-affidavit* and *there is also no point for a clarificatory hearing on the complaints-affidavits given the patent want of probable cause as against him*. The petitioner did not personally attend the clarificatory hearing. Rodenas did not also show up. The petitioner then filed a Motion to Resolve[23] the case.

At this point, the Ombudsman issued the first of the orders assailed in the present petition; it found probable cause to charge the petitioner before the Sandiganbayan. The basis for the finding runs:

> It has to be emphasized that **during the investigation conducted by the Fact-Finding and Intelligence Bureau (FFIB), this Office, and referred to on page 2 of the Resolution of the Sandiganbayan dated June 19, 2002, granting the motion for preliminary investigation of respondent Victor Jose Tan Uy, Ma. Caridad Manahan-Rodenas of the Land Bank of the Philippines identified the picture bearing the name Victor Jose Tan Uy as Eleuterio Tan who presented to her two identification cards (IDs), which were found to exactly match the picture of the said respondent with his LTO license**. **Verily, the identification made by Rodenas based on pertinent documents which respondent presented when he opened the account at Land Bank remains credible, and that Victor Jose Tan Uy was the same person who appeared and introduced himself as Eleuterio Tan or Eleuterio Ramos Tan to Ma. Caridad A. Manahan-Rodenas of the Land Bank, thereby establishing his true identity.** It is therefore, clear that the person mentioned in OMB-0-00-1720 and OMB-0-00-1756, during the preliminary investigation thereof, as Eleuterio Tan or Eleuterio Ramos Tan is no other than Victor Jose Tan Uy. *[underscoring supplied]*
>
> Further, a perusal of the allegations in respondent's counter-affidavit [sic] the same has not proffered any material evidence to contradict the allegations that Eleuterio Tan or Eleuterio Ramos Tan refers to Victor Jose Tan Uy as one and the same person. What are contained in the counter-affidavit are mere general denials without defenses on why respondent is distinct and different from Eleuterio

---

[23] *Id*., pp. 1069-1072.

Tan. In all likelihood, respondent used the name of Eleuterio Tan or Eleuterio Ramos Tan in making his transaction with Land Bank to hide his real identity. Notwithstanding the concealment, there were available pieces of evidence unearthing respondent's true identity thus, arriving to the firm conclusion that Eleuterio Tan or Eleuterio Ramos Tan is the same person as herein respondent Victor Jose Tan Uy.[24]

The petitioner moved to reconsider the Ombudsman's Order,[25] but the latter denied the motion in the second order assailed in this petition.[26] The second assailed order in part reads:

After an assiduous evaluation of the grounds and arguments raised by the movant in his motion, we find no cogent reason to disturb the resolution and order finding probable cause to indict respondent Victor Jose Tan Uy.

x x x x x x x x x

It has to be emphasized that the fact of identifying Victor Jose Tan Uy as one and the same person as Eleuterio Tan or Eleuterio Ramos Tan by Landbank employee, Ma. Caridad Rodenas, has already formed part of the preliminary investigation conducted by the Office of the Ombudsman. In the said preliminary investigation, Victor Jose Tan Uy was ordered to appear in a clarificatory conference to confront Rodenas. But Uy did not appear. Instead, his counsel submitted a manifestation to dispense with the clarificatory hearing and submit the case for resolution. The scheduled conference could have provided opportunity for Victor Jose Tan Uy to dispute the findings that Eleuterio Tan or Eleuterio Ramos Tan is one and the same person. Instead, per information and admission of counsel, accused Victor Jose Tan Uy was in the United States. As to the exact date of departure, counsel refused to divulge. The skill and cleverness of accused in playing hide and seek is putting a heavy toll in the proper administration of justice.

Further, Victor Jose Tan Uy did not submit any evidence, documentary or otherwise, that would lead the Office of the

---

[24] *Supra,* note 1.

[25] *Rollo*, pp. 1073-1087.

[26] *Supra,* note 2.

Ombudsman to believe that Victor Jose Tan Uy is different from Eleuterio Tan or Eleuterio Ramos Tan.

Moreover, previously before the Honorable Court, the accused-movant, through counsel, was already confronted with pieces of evidence. He was identified through an I.D. with computer-generated photograph marked as Exhibit "J" by previous prosecution witnesses: Jemis Singson, Atty. David Yap and Ilonor Madrid as the same person Victor Jose Tan Uy.

Due process cannot be compartmentalized. The court proceedings participated in by the accused-movant form part and parcel of such due process, in the same manner that the further preliminary investigation is inseparable from the said court proceedings. *[emphasis supplied]*

Finally, if only to highlight the redundant opportunity given to the accused-movant to controvert the pieces of evidence against him, in the hearing on the "Motion to Expunge and Opposition" last 9 October 2002, the accused-movant's counsel was directly confronted with the same ID that identified his client as the very same person using the pseudonym Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy. However, again the accused-movant through counsel literally refused to admit or deny if the person depicted in the I. D. is his client Victor Jose Tan Uy. This indicates the futility of pursuing another round of such repetitious opportunity to controvert the said evidence.

THE PETITION AND THE PARTIES' SUBMISSIONS

Faced with the Ombudsman's rulings, the petitioner filed the present petition based on grounds that are rehashes of the issues already ventilated below. For clarity, the petitioner alleged grave abuse of discretion in the Ombudsman's finding of probable cause on the grounds that:

(a) he was not among the respondents named or included in either **OMB-0-00-1720** or **OMB-0-00-1756**; neither has there been any mention of his name in the respective complaint-affidavits or in any of their supporting documents; neither has any allegation been made in the respective complaint-affidavits or in any of their supporting documents that he had been identified as being among the named respondents; and there has been no

allegation linking him to any criminal act for any of the offenses charged or any other criminal offense; and

(b) the Ombudsman relied on evidence and findings that were never part of the complaints-affidavits or their supporting documents served upon the petitioner and were never adduced or presented in the course of the preliminary investigation conducted with respect to the petitioner.

The petitioner's supporting arguments essentially center on the irregularity of the Sandiganbayan-ordered preliminary investigation and the worth and efficacy of the evidence the complainants presented with respect to his identification as Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy. He questions the regularity of the preliminary investigation for having been attended by shortcuts and for being a sham proceeding that violates his right to due process. Specifically, he claims that the duty of the Ombudsman is to determine the existence of probable cause based on the evidence presented, not to fill up the deficiencies of the complaint, nor to remedy its weaknesses. He objects to the use of the FFIB investigation results to support the finding of probable cause since these investigation results were never presented at the preliminary investigation of OMB-0-00-1720 and OMB-0-00-1756, and reliance thereon violates his due process rights. He adds that the FFIB was never a complainant heard in either of these cases. He emphasizes that the Rodenas sworn statement in the FFIB investigation identifying him as Eleuterio Tan is a mere scrap of paper that does not constitute evidence in the preliminary investigation since it was never presented therein, and that the burden of proving at the preliminary investigation that he is Eleuterio Tan rests with the complainants.

The Ombudsman counters all these with the position that the first preliminary investigation, conducted prior to the filing of the Sandiganbayan charges, was conducted fully in accordance with the rules and thus carried no infirmities. Specifically, the order for the petitioner to file his counter and supporting affidavits was regular because it was issued in his assumed names and

was sent to the addresses stated in the complaint as required by the procedural rules on preliminary investigations.

The respondent posits further that the issue of the validity of the first preliminary investigation with respect to the petitioner has been rendered academic by the subsequent reinvestigation that the Sandiganbayan ordered. At this subsequent investigation, the complaint-affidavits were duly furnished the petitioner who merely alleged general denials in the counter-affidavit he filed. The petitioner failed to attend the clarificatory hearing where he could have controverted the identification made by Rodenas in the FFIB investigation; he likewise had at least seven opportunities in the totality of the proceedings to controvert his identification as Eleuterio Tan,[27] but failed to avail himself of any of these opportunities. These opportunities were:

First, when he received copies of the *identification documents* attached to the Ombudman's Omnibus Motion (dated 8 January 2002) and Manifestation and Motion (dated 5 March 2002), he then filed his petition to conduct a preliminary investigation with the Ombudsman;

Second, when he filed his Manifestation and Motion (dated 11 April 2002) with the Sandiganbayan wherein he refused to directly controvert the identification issues, although he quoted the Ombudsman's previous motions;

Third, when the petitioner filed his "Reply to Opposition" to the Ombudsman's "Manifestation and Motion" with the Sandiganbayan, his averments therein were in the nature of denials that met head on the positive identification made by Rodenas; thus, the identification issues were joined and it then became the petitioner's duty to confront the evidence of identification;

Fourth, when the Sandiganbayan ordered the preliminary investigation, this proceeding presented an opportunity to confront the *identification documents,* but he did not;

---

[27] *Rollo*, pp. 1183-1190.

Fifth, when a clarificatory hearing was called during the Sandiganbayan-ordered preliminary investigation, the hearing presented another opportunity, but the petitioner's counsel filed a manifestation that his client did not wish to participate;

Sixth, when the petitioner filed his motion for reconsideration of the first assailed order in the present petition, he could have controverted the *identification documents* therein, but he did not; and

Seventh, at the hearing of an incident before the Sandiganbayan, when the petitioner's counsel was asked whether the man in the photograph shown him was his client, he refused to answer the question although he could have simply denied it.

The respondent Ombudsman further argues that fault can be imputed only to the petitioner who demands equity but has not come to Court with clean hands; through various machinations and by his own fault, he has avoided confronting the evidence of his identification. The Ombudsman stresses finally that its factual finding of the existence of probable cause against the petitioner has full basis in evidence and, being factual, should be accorded respect, if not finality.

OUR RULING

We find the petition impressed with merit.

We clarify at the outset that the present petition is filed under Section 1, Rule 65 of the Revised Rules of Court whose scope of review is limited to the question: was the order by the tribunal, board or officer exercising judicial or quasi judicial functions rendered without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of or excess of jurisdiction? The *"grave abuse of discretion"* that the petitioner alleges in this case is defined by jurisprudence to be a "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or [an] exercise of power in an arbitrary and despotic manner by reason of passion or personal hostility, or an exercise of judgment so patent and gross as to amount to an evasion of

a positive duty or to a virtual refusal to perform the duty enjoined, or to act in a manner not at all in contemplation of law."[28]

At the core of the present controversy is the regularity, in the context of accepted standards of due process, of the Ombudsman's conduct of the Sandiganbayan-ordered preliminary investigation. The petition must fail if the Ombudsman complied with the basic requirements of due process and the prevailing rules and jurisprudence on preliminary investigation.

A preliminary investigation is held before an accused is placed on trial to secure the innocent against hasty, malicious, and oppressive prosecution; to protect him from an open and public accusation of a crime, as well as from the trouble, expenses, and anxiety of a public trial. It is also intended to protect the state from having to conduct useless and expensive trials. While the right is statutory rather than constitutional, it is a component of due process in administering criminal justice. The right to have a preliminary investigation conducted before being bound for trial and before being exposed to the risk of incarceration and penalty is not a mere formal or technical right; it is a substantive right. To deny the accused's claim to a preliminary investigation is to deprive him of the full measure of his right to due process.[29]

Thus, as in a court proceeding (albeit with appropriate adjustments because it is essentially still an administrative proceeding in which the prosecutor or investigating officer is a quasi-judicial officer by the nature of his functions), a preliminary investigation is subject to the requirements of both substantive and procedural due process. This view may be less strict in its formulation than what we held in *Cojuangco, Jr. v. PCGG, et al.*[30] when we said:

---

[28] See: ***Lalican v. Vergara***, G.R. No. 108619, July 31, 1997, 276 SCRA 518; ***Intestate Estate of Carmen de Luna v. Intermediate Appellate Court***, G.R. No. 72424, February 13, 1989, 170 SCRA 246.

[29] ***Duterte v. Sandiganbayan***, G.R. No. 130191, April 27, 1998, 289 SCRA 721, 737-738.

[30] G.R. Nos. 92319-201, October 2, 1990, 190 SCRA 226.

It must be undertaken in accordance with the procedure provided in Section 3, Rule 112 of the 1985 Rules of Criminal Procedure. This procedure is to be observed in order to assure that a person undergoing such preliminary investigation will be afforded due process.

x x x x x x x x x

Although such a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair. The officer conducting the same investigates or inquires into the facts concerning the commission of the crime with the end in view of determining whether or not an information may be prepared against the accused. Indeed, a preliminary investigation is in effect a realistic judicial appraisal of the merits of the case. Sufficient proof of the guilt of the accused must be adduced so that when the case is tried, the trial court may not be bound as a matter of law to order an acquittal. A preliminary investigation has then been called a judicial inquiry. It is a judicial proceeding. An act becomes judicial when there is opportunity to be heard and for the production and weighing of evidence, and a decision is rendered thereon.[31]

but we commonly recognize the need for the observance of due process. We likewise fully agree with *Cojuangco* in terms of the level of scrutiny that must be made — we do not expect the rigorous standards of a criminal trial, but *"[s]ufficient proof of the guilt of the accused must be adduced so that when the case is tried, the trial court may not be bound as a matter of law to order an acquittal.*"

In light of the due process requirement, the standards that *at the very least* assume great materiality and significance are those enunciated in the leading case of ***Ang Tibay v. Court of Industrial Relations.***[32] This case instructively tells us — in defining the basic due process safeguards in administrative proceedings — that *the decision* (by an administrative body) *must be rendered on the evidence presented at the hearing, or at least contained in the record and* ***disclosed to the parties***

---

[31] *See also* ***Cruz v. People of the Philippines***, G.R. No. 110436, June 27, 1994, 233 SCRA 439, 449-450. (Boldface supplied)

[32] 69 Phil. 635 (1940).

affected; only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them; *it should not, however, detract from the tribunal's duty to actively see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy*.[33]

Mindful of these considerations, we hold that the petitioner's right to due process has been violated.

We firstly note that the question of the petitioner's entitlement to a preliminary investigation – apart from the earlier preliminary investigation conducted by the Ombudsman in **OMB-0-00-1720** and **OMB-0-00-1756** — has been fully settled by the Sandiganbayan Resolution of June 19, 2002. None of the parties questioned this ruling which, in its material points, provides:

1. The preliminary investigation conducted in OMB-0-00-1720 and OMB-0-00-1756 which led to the filing of the above-entitled case never mentioned the name of herein movant Jose Victor Tan Uy. Instead, the preliminary investigation involves one "Eleuterio Tan" a. k. a. "Eleuterio Ramos Tan" with address at Brgy. Bagbaguin, Valenzuela City, Metro Manila or on [sic] No. 20 Pilar St. Mandaluyong City. As declared by the prosecution itself, Barangay Chairman Jose S. Gregorio, Jr. of Brgy. Bagbaguin, Valenzuela, Metro Manila certified that "Eleuterio Tan" a.k.a. "Eleuterio Ramos Tan" is non-existent within the jurisdiction of their *barangay*. While the prosecution asserted that "Eleuterio Tan" and 'Eleuterio Ramos Tan' are the *aliases* of herein movant, we agree in the latter's observation that the one charged before the Office of the Ombudsman was "Eleuterio Tan" *alias* "Eleuterio Ramos Tan" which indicates that the real name of the person charged is "Eleuterio Tan", not an alias only and his *alias* is "Eleuterio Ramos Tan." *We find merit in the contention of the movant that there was no showing of any effort on the part of the Office of Ombudsman to determine whether the names "Eleuterio Tan" and "Eleuterio Ramos Tan" are mere aliases of an unidentified person.* Further, as aptly observed by the movant, *while 'Eleuterio Tan' has other [sic] address at No. 20 Pilar St. Mandaluyong City, there was no showing that subpoena*

[33] *Id.,* p. 642.

or copies of the complaints-affidavits were sent at the said address and no explanation was submitted by the prosecution for such omission. [italics supplied]

2. The claim of the prosecution that movant's address at No. 2041 M. J. Cuenco Avenue, Cebu City was not indicated because the said address was not yet discovered by the investigation panel during the preliminary investigation was rebutted by the movant. Movant was able to show that his address at Cebu City was made known during the hearing before the Impeachment Court on December 22, 2000. Yet, despite knowledge of the movant's address, no subpoena or copies of the complaints-affidavits had been served upon him at said address by the prosecution. *We understand the clamor of herein movant that while the prosecution did not give him the opportunity to present his side, it already formed a conclusion that he and "Eleuterio Tan" are one and the same person. [italics supplied]*

3. Movant, after learning from media reports that he was being identified as "Eleuterio Tan", immediately took steps to disprove the same, as follows:

a. On December 29, 2000, he filed a complaint before the RTC of Cebu City, entitled "*Victor Jose Tan Uy, v. Eleuterio Tan*," docketed as CEB-25990 x x x

b. Movant, through counsel, wrote a letter dated January 5, 2001 to Senate President Aquillino Pimentel, disputing the claim that he is "Eleuterio Tan" and expressed his willingness to testify at the Senate Impeachment Proceeding to clear his name as to the imputation that he is "Eleuterio Tan" (Annex "E", Reply)

c. Movant, through counsel, sent a letter dated January 8, 2001 to the Regional Chief, PNP Crime Laboratory, Cebu City, requesting for examination of the handwriting appearing on the signature cards as supposedly signed by Eleuterio Tan and on the two (2) identification cards (IDs) from two (2) different companies supposedly presented to the Land Bank of the Philippines by the person who opened the account (Annex "F", Reply). As shown in the Questioned Document Report of Romeo Varona, handwriting expert who conducted the examination, "the questioned signatures/handwritings of Mr. Jose [sic] Victor Jose Tan Uy appearing in the signature cards of Land Bank of the Philippines, ET Enterprises Inc., I. D. San Juan, Metro Manila

> and Solid Builders Center Mandaluyong City I. D. No. 19-0198 with their corresponding date marked "Q-1" and "Q-8" inclusive and the standard signatures/handwritings submitted for comparison marked "S-1" to "S-49" inclusive were written by two different persons" (Annex "G", Reply). Relative hereto, Mr. Varona executed an affidavit dated April 16, 2002 (Annex "B", Reply)."[34]

We quote this ruling as it contains the premises that justified the holding of the Sandiganbayan-ordered preliminary investigation specifically for the petitioner. To restate the Sandiganbayan reasoning in simple terms: the petitioner was never identified in the previous preliminary investigation to be the person identified by assumed names or *aliases* in the supporting complaint-affidavits; hence, a new preliminary investigation should be conducted to identify him as the person who, using the aliases Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy, opened and withdrew from the Landbank account in the course of a series of acts collectively constituting the crime of plunder.

The critical evidence linking the petitioner to the plunder case is his identification through the *identification documents*. This notwithstanding and quite inexplicably, the *identification documents* — despite the fatal infirmity the Sandiganbayan found in the first preliminary investigation — were once again not given to the petitioner in the subsequent Sandiganbayan-ordered preliminary investigation to inform him of his alleged links to the charges under the complaint-affidavits.[35]

How and why this happened was never satisfactorily explained in the parties' various submissions. Based on the records of what actually transpired at the Sandiganbayan-ordered preliminary investigation, we can glean the Ombudsman's intent to either confront and identify the petitioner through Ma. Caridad Manahan-Rodenas, or at least to introduce the *Rodenas sworn statement* and the *identification documents* into the preliminary investigation records through her own personal appearance. For these purposes, the Ombudsman specifically called the petitioner

---

[34] *Supra,* note 18.

[35] Memorandum of Petitioner, pp. 17-19, *rollo*, pp. 1534-1536.

and Rodenas to a **clarificatory hearing** that unfortunately did not result in either of these possibilities; the petitioner did not personally attend the hearing and Rodenas herself failed to show up. At the same time, the Ombudsman was forced, upon the insistence of the petitioner's counsel, to consider the inquiry submitted for resolution based on the records then existing.[36] Thus, the Ombudsman still failed to establish in the Sandiganbayan-ordered preliminary investigation the direct link between the individual identified by aliases and the petitioner.

Unfortunately for the Ombudsman, the holding of the clarificatory hearing, in which Rodenas and the petitioner were the invitees, is replete with implications touching on the existence of probable cause at that stage of the proceedings. To be sure, the prosecutor (Ombudsman) cannot be faulted for calling the clarificatory hearing as it is within his authority to do so.[37] As a rule, however, no clarificatory hearing is necessary if the evidence on record already shows the existence of probable cause; conversely, a clarificatory hearing is necessary to establish the probable cause that up to the time of the clarificatory hearing has not been shown. This implication becomes unavoidable for the present case, given the reason for the Sandiganbayan's order to conduct another preliminary investigation for the petitioner, and in light of the evidence so far then presented which, as in the first preliminary investigation, did not link the petitioner to the assumed names or aliases appearing in the Information.

Under the above circumstances, the respondent Ombudsman could only fall back on the simple response that *due process cannot be compartmentalized; the court proceedings participated in by the accused-movant* (the petitioner) *form part and parcel of such due process in the same manner that the further preliminary investigation is inseparable from the said court*

---

[36] See narration at pp. 10-11 hereof.

[37] Section 4 (f), Rule II of Administrative Order No. 7 (Rules of Procedure of the Office of the Ombudsman).

[38] *Supra*, note 2, Order dated 16 October 2002, quoted at pp. 11-12 of this Decision.

proceedings.[38] We do not however find this response sufficiently compelling to save the day for the respondent. That the petitioner may have actual prior knowledge of the *identification documents* from proceedings elsewhere is not a consideration sufficiently material to affect our conclusion. Reasonable opportunity to controvert evidence and ventilate one's cause in a proceeding requires full knowledge of the relevant and material facts ***specific*** to that proceeding. One cannot be expected to respond to collateral allegations or assertions made, or be bound by developments that transpired, in some other different although related proceedings, except perhaps under situations where facts are rendered conclusive by reason of judgments between the same parties[39] — a situation that does not obtain in the present case. Otherwise, surprise — which is anathema to due process — may result together with the consequent loss of adequate opportunity to ventilate one's case and be heard. Following ***Ang Tibay***, a decision in a proceeding must be rendered based on the evidence presented at the hearing (***of the proceeding***), or at least contained in the record (***of the proceeding***) and **disclosed to the parties affected** (***during or at the proceeding***).

Thus, we cannot agree with the Ombudsman's position that the petitioner should controvert the *identification documents* because they already form part of the records of the preliminary investigation, having been introduced in various incidents of Crim. Case No. 26558 then pending with the Sandiganbayan. The rule closest to a definition of the inter-relationship between records of a preliminary investigation and the criminal case to which it relates is **Section 8 (b), Rule 112 of the Revised Rules of Court** which provides that *the record of the preliminary investigation, whether conducted by a judge or a prosecutor, shall not form part of the record of the case; the court, on its own initiative or on motion of any party, may order the production of the record or any of its parts when necessary in*

---

[39] *Res judicata* under Rule 39, Section 47, pars. (a) and (b) of the Revised Rules of Court or conclusiveness of judgment under Section 47, par. (c) of the same Rule, under which the underlying facts are conclusive on the same parties.

the resolution of the case or any incident therein, or when it is introduced as an evidence in the case by the requesting party. This rule, however, relates to the use of preliminary investigation records in the criminal case; no specific provision in the Rules exists regarding the reverse situation. We are thus guided in this regard by the basic due process requirement that the right to know and to meet a case requires that a person be fully informed of the pertinent and material facts *unique to the inquiry* to which he is called as a party respondent. Under this requirement, reasonable opportunity to contest evidence as critical as the *identification documents* should have been given the petitioner at the Sandiganbayan-ordered preliminary investigation as part of the facts he must controvert; *otherwise, there is nothing to controvert as the burden of evidence lies with the one who asserts that a probable cause exists.* The Ombudsman's failure in this regard tainted its findings of probable cause with grave abuse of discretion that effectively nullifies them. We cannot avoid this conclusion under the constitutional truism that *in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former.*[40]

WHEREFORE, premises considered, we hereby *GRANT* the petition and accordingly *ANNUL* the Ombudsman's interrelated Orders dated 13 September 2002 and 16 October 2002 in **OMB-0-00-1720** and **OMB-0-00-1756**.

SO ORDERED.

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

Carpio, J., No part. He was co-complainant in a related case.

---

[40] *Allado v. Diokno*, G.R. No. 113630, May 5, 1994, 232 SCRA 192, 210

THIRD DIVISION

[G.R. No. 157206. June 27, 2008]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **SPOUSES PLACIDO ORILLA and CLARA DY ORILLA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; EXECUTION PENDING APPEAL; EXISTENCE OF "GOOD REASONS" IS WHAT CONFERS DISCRETIONARY POWER ON A COURT TO ISSUE WRIT OF EXECUTION PENDING APPEAL. — Execution of the judgment or final order pending appeal is discretionary. As an exception to the rule that only a final judgment may be executed, it must be strictly construed. Thus, execution pending appeal should not be granted routinely but only in extraordinary circumstances. The Rules of Court does not enumerate the circumstances which would justify the execution of the judgment or decision pending appeal. However, we have held that "good reasons" consist of compelling or superior circumstances demanding urgency which will outweigh the injury or damages suffered should the losing party secure a reversal of the judgment or final order. The existence of good reasons is what confers discretionary power on a court to issue a writ of execution pending appeal. These reasons must be stated in the order granting the same. Unless they are divulged, it would be difficult to determine whether judicial discretion has been properly exercised.

2. ID.; ID.; ID.; ID.; EXPROPRIATION OF PROPERTY UNDER RA 6657 PUTS THE LANDOWNER IN A SITUATION WHERE THE ODDS ARE AGAINST HIM AND HIS ONLY CONSOLATION IS THAT HE CAN NEGOTIATE FOR THE AMOUNT OF COMPENSATION TO BE PAID FOR THE PROPERTY TAKEN BY THE GOVERNMENT. — In this case, do good reasons exist to justify the grant by the SAC of the motion for execution pending appeal? The answer is a resounding YES. The expropriation of private property under R.A. 6657 is a revolutionary kind of expropriation, being a

means to obtain social justice by distributing land to the farmers, envisioning freedom from the bondage to the land they actually till. As an exercise of police power, it puts the landowner, not the government, in a situation where the odds are practically against him. He cannot resist it. His only consolation is that he can negotiate for the amount of compensation to be paid for the property taken by the government. As expected, the landowner will exercise this right to the hilt, subject to the limitation that he can only be entitled to "just compensation." Clearly therefore, by rejecting and disputing the valuation of the DAR, the landowner is merely exercising his right to seek just compensation.

3. ID.; ID.; ID.; ID.; "PROMPT PAYMENT" OF "JUST COMPENSATION" IS NOT SATISFIED BY THE MERE DEPOSIT OF WITH ANY ACCESSIBLE BANK OF THE PROVISIONAL COMPENSATION DETERMINED BY PETITIONER BANK AND THE DEPARTMENT OF AGRARIAN REFORM AND ITS SUBSEQUENT RELEASE TO THE LANDOWNER AFTER COMPLAINCE WITH THE LEGAL REQUIREMENT OF RA 6657. — In light of these circumstances, the SAC found that the valuation made by petitioner, and affirmed by the DAR, was unjustly way below the fair valuation of the landholding at the time of its taking by the DAR. The SAC, mindful also of the advanced age of respondents at the time of the presentation of evidence for the determination of just compensation, deemed it proper to grant their motion for execution pending appeal with the objective of ensuring "prompt payment" of just compensation. Contrary to the view of petitioner, "prompt payment" of just compensation is not satisfied by the mere deposit with any accessible bank of the provisional compensation determined by it or by the DAR, and its subsequent release to the landowner after compliance with the legal requirements set by R.A. 6657.

4. ID.; ID.; ID.; ID.; IT CANNOT BE SAID THAT THERE IS ALREADY A PROMPT PAYMENT OF JUST COMPENSATION WHEN THERE IS ONLY A PARTIAL PAYMENT THEREOF. — Constitutionally, "just compensation" is the sum equivalent to the market value of the property, broadly described as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition, or the fair value of the property as between the one who receives

and the one who desires to sell, it being fixed at the time of the actual taking by the government. Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. It has been repeatedly stressed by this Court that the true measure is not the taker's gain but the owner's loss. The word "just" is used to modify the meaning of the word "compensation" to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full, and ample. The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss. Put differently, while prompt payment of just compensation requires the immediate deposit and release to the landowner of the provisional compensation as determined by the DAR, it does not end there. Verily, it also encompasses the payment in full of the just compensation to the landholders as finally determined by the courts. Thus, it cannot be said that there is already prompt payment of just compensation when there is only a partial payment thereof, as in this case.

5. ID.; ID.; ID.; ID.; EVEN WITH THE PROCEDURAL FLAW IN THE AGRARIAN COURT'S GRANT OF EXECUTION WITHOUT A HEARING, THE INJURY THAT MAY BE SUFFERED BY RESPONDENTS IF EXECUTION PENDING APPEAL IS DENIED OUTWEIGHS THE DAMAGE THAT MAY BE SUFFERED BY PETITIONER IN THE GRANT THEREOF. — The SAC, aware of the protracted proceedings of the appeal of its November 20, 2000 Decision, but without imputing any dilatory tactics on the part of petitioner, thus deemed it proper, in its sound discretion, to grant the execution pending appeal. Moreover, the execution of the judgment of the SAC was conditioned on the posting of a bond by the respondents, despite pleas to reduce the same, in the amount of one-half of the just compensation determined by the said court or ₱739,511.50. To reiterate, good reasons for execution pending appeal consist of compelling or superior circumstances demanding urgency which will outweigh the injury or damages suffered should the losing party secure a

reversal of the judgment or final order. In the case at bar, even with the procedural flaw in the SAC's grant of execution without a hearing, the injury that may be suffered by respondents if execution pending appeal is denied indeed outweighs the damage that may be suffered by petitioner in the grant thereof. As correctly pointed out by respondents, the reversal of the November 20, 2000 SAC Decision, in the sense that petitioner will pay nothing at all to respondents, is an impossibility, considering the constitutional mandate that just compensation be paid for expropriated property. The posting of the required bond, to our mind, adequately insulates the petitioner against any injury it may suffer if the SAC determination of just compensation is reduced. Suffice it to say that, given the particular circumstances of this case, along with the considerable bond posted by respondents, the assailed SAC Order of December 21, 2000 and the Decision of the Court of Appeals dated July 29, 2002 are justified.

APPEARANCES OF COUNSEL

Gonzales Beramo & Associates for petitioner.
Hilario C. Baril for respondents.

D E C I S I O N

NACHURA, *J.*:

"Without doubt, justice is the supreme need of man. Man can endure without food for days, but if he is deprived even with the least injustice, he can be that violent to give up his life for it. History will tell us that many great nations had emerged in the past, yet they succumbed to downfall when their leaders had gone so immorally low that they could not anymore render justice to their people. In our times, we are witnesses to radical changes in our society rooted on alleged injustice. The only hope is in the courts as the last bulwark of democracy being the administrator of justice and the legitimate recourse of their grievances."[1]

[1] Comment of Hon. Venancio J. Amila, Presiding Judge of RTC, Branch 3, Tagbilaran City, as nominal party on the petition for *certiorari* and prohibition of Land Bank of the Philippines before the Court of Appeals; *rollo*, pp. 117-118.

The Facts

This is an appeal via a petition[2] for review on *certiorari* under Rule 45 of the Rules of Court of the Decision[3] of the Court of Appeals dated July 29, 2002 in CA-G.R. SP No. 63691 entitled *"Land Bank of the Philippines v. Hon. Venancio J. Amila, in his capacity as Presiding Judge, Regional Trial Court, Branch 3, Tagbilaran City, Spouses Placido Orilla and Clara Dy Orilla."* Said Decision affirmed the Order[4] dated December 21, 2000 of the Regional Trial Court (RTC), Branch 3, Tagbilaran City, sitting as a Special Agrarian Court (SAC) in Civil Case No. 6085.

Spouses Placido and Clara Orilla (respondents) were the owners of Lot No. 1, 11-12706, situated in Bohol, containing an area of 23.3416 hectares and covered by Transfer Certificate of Title No. 18401. In the latter part of November 1996, the Department of Agrarian Reform Provincial Agrarian Reform Office (DAR-PARO) of Bohol sent respondents a Notice of Land Valuation and Acquisition dated November 15, 1996 informing them of the compulsory acquisition of 21.1289 hectares of their landholdings pursuant to the Comprehensive Agrarian Reform Law (Republic Act [RA] 6657) for ₱371,154.99 as compensation based on the valuation made by the Land Bank of the Philippines (petitioner).

Respondents rejected the said valuation. Consequently, the Provincial Department of Agrarian Reform Adjudication Board (Provincial DARAB) conducted a summary hearing on the amount of just compensation. Thereafter, the Provincial DARAB affirmed the valuation made by the petitioner.

Unsatisfied, respondents filed an action for the determination of just compensation before the Regional Trial Court (as a Special Agrarian Court [SAC]) of Tagbilaran City. The case was docketed as Civil Case No. 6085 and was raffled to Branch 3.

---

[2] *Rollo,* pp. 21-54.

[3] *Id*. at 55-62.

[4] *Id*. at 101.

After trial on the merits, the SAC rendered a Decision[5] dated November 20, 2000, the dispositive portion of which reads —

> WHEREFORE, judgment is hereby rendered fixing the just compensation of the land of petitioner subject matter of the instant action at ₱7.00 per square meter, as only prayed for, which shall earn legal interest from the filing of the complaint until the same shall have been fully paid. Furthermore, respondents are hereby ordered to jointly and solidarily indemnify the petitioners their expenses for attorney's fee and contract fee in the conduct of the appraisal of the land by a duly licensed real estate appraiser Angelo G. Fajardo of which petitioner shall submit a bill of costs therefor for the approval of the Court.
>
> SO ORDERED.[6]

On December 11, 2000, petitioner filed a Notice of Appeal.[7] Subsequently, on December 15, 2000, respondents filed a Motion for Execution Pending Appeal[8] pursuant to Section 2, Rule 39 of the 1997 Rules of Civil Procedure and the consolidated cases of *"Landbank of the Philippines v. Court of Appeals, et al."*[9] and *"Department of Agrarian Reform v. Court of Appeals, et al."*[10] Respondents claimed that the total amount of ₱1,479,023.00 (equivalent to ₱7.00 per square meter for 21.1289 hectares), adjudged by the SAC as just compensation, could then be withdrawn under the authority of the aforementioned case.

Meanwhile, on December 18, 2000, the DAR filed its own Notice of Appeal[11] from the SAC Decision dated November 20, 2000. The DAR alleged in its Notice that it received a copy of the SAC Decision only on December 6, 2000.

---

[5] *Id*. at 85-90.

[6] *Id*. at 90.

[7] *Id*. at 91-92.

[8] *Id*. at 94-98.

[9] 327 Phil. 1047 (1996).

[10] 319 Phil. 246 (1995).

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

On December 21, 2000, the SAC issued an Order[12] granting the Motion for Execution Pending Appeal, the decretal portion of which reads —

> WHEREFORE, the herein motion is granted and the petitioners are hereby ordered to post bond equivalent to one-half of the amount due them by virtue of the decision in this case. The respondent Land Bank of the Philippines, is therefore, ordered to immediately deposit with any accessible bank, as may be designated by respondent DAR, in cash or in any governmental financial instrument the total amount due the petitioner-spouses as may be computed within the parameters of Sec. 18(1) of RA 6657. Furthermore, pursuant to the Supreme Court decisions in *"Landbank of the Philippines vs. Court of Appeals, et al." G.R. No. 118712, promulgated on October 6, 1995 and "Department of Agrarian Reform vs. Court of Appeals, et al.," G.R. No. 118745, promulgated on October 6, 1995*, the petitioners may withdraw the same for their use and benefit consequent to their right of ownership thereof.[13]

On December 25, 2000, respondents filed a Motion for Partial Reconsideration[14] of the amount of the bond to be posted, which was later denied in an Order[15] dated January 11, 2001.

Petitioner filed a Motion for Reconsideration[16] on December 27, 2000, which was likewise denied in an Order[17] dated December 29, 2000.

On March 13, 2001, petitioner filed with the Court of Appeals a special civil action[18] for *certiorari* and prohibition under Rule 65 of the Rules of Court with prayer for issuance of a temporary restraining order and/or preliminary injunction. It questioned the propriety of the SAC Order granting the execution pending

---

[12] *Id*. at 101.

[13] *Id*.

[14] *Id*. at 102-105.

[15] *Id*. at 110.

[16] *Id*. at 106-107.

[17] *Id*. at 108-109.

[18] *Id*. at 64-84.

appeal. Respondents and the presiding judge of the SAC, as nominal party, filed their respective comments[19] on the petition.

In its Decision dated July 29, 2002, the Court of Appeals dismissed the petition on the ground that the assailed SAC Order dated December 21, 2000 granting execution pending appeal was consistent with justice, fairness, and equity, as respondents had been deprived of the use and possession of their property pursuant to RA 6657 and are entitled to be immediately compensated with the amount as determined by the SAC under the principle of "prompt payment" of just compensation.

Petitioner filed a Motion for Reconsideration of the Court of Appeals Decision, but the same was denied in a Resolution dated February 5, 2003. Hence, this appeal.

Petitioner anchors its petition on the following grounds:

I. THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE RESPONDENTS WERE ENTITLED TO EXECUTION PENDING APPEAL OF THE COMPENSATION FIXED BY THE SAC BASED ON THE PRINCIPLE OF PROMPT PAYMENT OF JUST COMPENSATION, EVEN THOUGH THE PRINCIPLE OF PROMPT PAYMENT IS SATISFIED BY THE PAYMENT AND IMMEDIATE RELEASE OF THE PROVISIONAL COMPENSATION UNDER SECTION 16(E) OF RA 6657, UPON SUBMISSION OF THE LEGAL REQUIREMENTS, IN ACCORDANCE WITH THE RULING OF THIS HONORABLE COURT IN THE CASE OF "*LAND BANK OF THE PHILIPPINES V. COURT OF APPEALS, PEDRO L. YAP, ET AL.,*" *G.R. NO. 118712, OCTOBER 6, 1995 AND JULY 5, 1996*, AND NOT BY EXECUTION PENDING APPEAL OF THE COMPENSATION FIXED BY THE SAC.

II. THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THE SAC ORDER FOR EXECUTION PENDING APPEAL WHICH WAS ISSUED WITHOUT ANY GOOD REASON RECOGNIZED UNDER EXISTING JURISPRUDENCE AND PROPER HEARING

---

[19] *Id*. at 111-116, 117-118, respectively.

AND RECEPTION OF EVIDENCE IN VIOLATION OF SECTION 2(A), RULE 39 OF THE RULES OF COURT.

For its first ground, petitioner asserts that, according to our ruling in *Land Bank of the Philippines v. Court of Appeals*,[20] the principle of "prompt payment" of just compensation is already satisfied by the concurrence of two (2) conditions: (a) the deposits made by petitioner in any accessible bank, equivalent to the DAR/LBP valuation of the expropriated property as provisional compensation, must be in cash and bonds as expressly provided for by Section 16(e) of RA 6657, not merely earmarked or reserved in trust; and (b) the deposits must be immediately released to the landowner upon compliance with the legal requirements under Section 16[21] of RA 6657, even pending the final judicial determination of just compensation.

---

[20] *Supra* note 9.

[21] SEC. 16. *Procedure for Acquisition of Private Lands* — For purposes of acquisition of private lands, the following procedures shall be followed:

(a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and *barangay* hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.

(b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowners, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the LBP shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the Government and surrenders the Certificate of Title and other muniments of title.

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision.

Anent the second ground, petitioner argues that the good reasons cited by the SAC, as affirmed by the Court of Appeals, namely: "(1) that execution pending appeal would be in consonance with justice, fairness, and equity considering that the land had long been taken by the DAR; (2) that suspending the payment of compensation will prolong the agony that respondents have been suffering by reason of the deprivation of their property; and (3) that it would be good and helpful to the economy" are not valid reasons to justify the execution pending appeal, especially because the execution was granted without a hearing.

This appeal should be denied.

As the issues raised are interrelated, they shall be discussed jointly.

Execution of a judgment pending appeal is governed by Section 2(a) of Rule 39 of the Rules of Court, to wit:

SEC. 2. *Discretionary execution.* —

(a) *Execution of a judgment or a final order pending appeal.* — On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

x x x x x x x x x

The DAR shall decide the case within thirty (30) days after it is submitted for decision.

(e) Upon receipt by the landowner of the corresponding payment or in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in case or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to qualified beneficiaries.

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

As provided above, execution of the judgment or final order pending appeal is discretionary. As an exception to the rule that only a final judgment may be executed, it must be strictly construed. Thus, execution pending appeal should not be granted routinely but only in extraordinary circumstances.

The Rules of Court does not enumerate the circumstances which would justify the execution of the judgment or decision pending appeal. However, we have held that "good reasons" consist of compelling or superior circumstances demanding urgency which will outweigh the injury or damages suffered should the losing party secure a reversal of the judgment or final order. The existence of good reasons is what confers discretionary power on a court to issue a writ of execution pending appeal. These reasons must be stated in the order granting the same. Unless they are divulged, it would be difficult to determine whether judicial discretion has been properly exercised.[22]

In this case, do good reasons exist to justify the grant by the SAC of the motion for execution pending appeal? The answer is a resounding YES.

The expropriation of private property under RA 6657 is a revolutionary kind of expropriation,[23] being a means to obtain social justice by distributing land to the farmers, envisioning freedom from the bondage to the land they actually till. As an exercise of police power, it puts the landowner, not the government, in a situation where the odds are practically against him. He cannot resist it. His only consolation is that he can negotiate for the amount of compensation to be paid for the

---

[22] *Heirs of Macabangkit Sangkay v. National Power Corporation,* G.R. No. 141447, May 4, 2006, 489 SCRA 401, 417.

[23] *Confederation of Sugar Producers Association, Inc. v. Department of Agrarian Reform (DAR)*, G.R. No. 169514, March 30, 2007, 519 SCRA 582, 636; *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. Nos. 78742, 79310, 79744, 79777, July 14, 1989, 175 SCRA 343, 386.

property taken by the government. As expected, the landowner will exercise this right to the hilt, subject to the limitation that he can only be entitled to "just compensation." Clearly therefore, by rejecting and disputing the valuation of the DAR, the landowner is merely exercising his right to seek just compensation.[24]

In this case, petitioner valued the property of respondents at ₱371,154.99 for the compulsory acquisition of 21.1289 hectares of their landholdings. This amount respondents rejected. However, the same amount was affirmed by the DAR after the conduct of summary proceedings. Consequently, respondents brought the matter to the SAC for the determination of just compensation. After presentation of evidence from both parties, the SAC found the valuation of the LBP and the DAR too low and pegged the "just compensation" due the respondents at ₱7.00 per square meter, or a total of ₱1,479,023.00 for the 21.1289 hectares. In determining such value, the SAC noted the following circumstances:

1. the nearest point of the land is about 1.5 kilometers from Poblacion Ubay;
2. the total area of the land based on the sketch-map presented by the MARO is 23.3416 hectares.
3. the land is generally plain, sandy loam, without stones, rocks or [pebbles];
4. the land is adjoining the National Highway of Ubay-Trinidad, Bohol;
5. 11.4928 hectares of the land is devoted to planting rice, which portion is rain-fed and produces 60-80 cavans of rice per hectare with two (2) harvest seasons a year;
6. four (4) hectares is planted with 210 fruit-bearing coconut trees, which private respondents used to receive a share of ₱1,500.00 per harvest four (4) times a year;
7. five (5) hectares is cogonal but now most area is planted with cassava;

---

[24] *Land Bank of the Philippines v. Court of Appeals*, *supra* note 20, at 1053-1054.

8. the area is traversed with electricity providing electric power to some occupants;

9. across the National Highway, about 200 meters away from the landholding, is an irrigation canal of the National Irrigation Administration (NIA);

10. the Ubay Airport is about two (2) kilometers from the landholding;

11. fruit trees like mangoes and jackfruits were also planted on the property;

12. north of the landholding, about a kilometer away, is the seashore;

13. the market value of the land per Tax Declaration No. 45-002-00084 is ₱621,310.00 for the entire 23.2416 hectares but representing only 48% of the actual value of the property;

14. that the real estate appraiser Angelo Z. Fajardo appraised the land at ₱80,000.00 per hectare for the Riceland and ₱30,000.00 for all other portions thereof;

15. testimony of the representative from petitioner that the factors considered in the appraisal of land are the cost of acquisition of the land, the current value, its nature, its actual use and income, the sworn valuation of the owner, and the assessment by the government functionary concerned;

16. petitioner's contention that the main basis for the valuation it made was the very low price that the petitioners had paid for the land when they acquired it along with other parcels from the Development Bank of the Philippines in a foreclosure sale;

17. the testimony of the Municipal Agrarian Reform Officer for DAR that it was contemplated that the property be disposed to farmer-beneficiaries at a relatively higher price; and

18. the fact that Ubay town is a fast-growing municipality being a consistent recipient of government projects and facilities in view of its natural resources and favorable geographical location — Bohol Circumferential Road Improvement Project Phase I, the Leyte-Bohol Interconnection Project Phase I, the Ilaya Reservior Irrigation Project, the Metro San Pascual Rural and Waterworks System, the 250-hectare

> Central Visayas Coconut Seeds Production Center, the Philippine Carabao Center at the Ubay Stock Farm, and several other public and private business facilities.[25]

In light of these circumstances, the SAC found that the valuation made by petitioner, and affirmed by the DAR, was unjustly way below the fair valuation of the landholding at the time of its taking by the DAR. The SAC, mindful also of the advanced age of respondents at the time of the presentation of evidence for the determination of just compensation, deemed it proper to grant their motion for execution pending appeal with the objective of ensuring "prompt payment" of just compensation.

Contrary to the view of petitioner, "prompt payment" of just compensation is not satisfied by the mere deposit with any accessible bank of the provisional compensation determined by it or by the DAR, and its subsequent release to the landowner after compliance with the legal requirements set by RA 6657.

Constitutionally, "just compensation" is the sum equivalent to the market value of the property, broadly described as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition, or the fair value of the property as between the one who receives and the one who desires to sell, it being fixed at the time of the actual taking by the government.[26] Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. It has been repeatedly stressed by this Court that the true measure is not the taker's gain but the owner's loss. The word "just" is used to modify the meaning of the word "compensation" to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full, and ample.[27]

---

[25] Summary of circumstances per documentary and testimonial evidence presented by both parties; RTC Decision dated November 20, 2000; *rollo,* pp. 86-87.

[26] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, December 19, 2007, 541 SCRA 117, 142.

[27] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, February 6, 2007, 514 SCRA 537, 558.

The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.[28]

Put differently, while prompt payment of just compensation requires the immediate deposit and release to the landowner of the provisional compensation as determined by the DAR, it does not end there. Verily, it also encompasses the payment in full of the just compensation to the landholders as finally determined by the courts. Thus, it cannot be said that there is already prompt payment of just compensation when there is only a partial payment thereof, as in this case.

While this decision does not finally resolve the propriety of the determination of just compensation by the SAC in view of the separate appeal on the matter, we find no grave abuse of discretion on the part of the SAC judge in allowing execution pending appeal. The good reasons cited by the SAC — that it would be in consonance with justice, fairness, and equity, and that suspending payment will prolong the agony of respondents suffered due to the deprivation of their land — are eloquently elucidated in the Comment filed by SAC Judge Venancio J. Amila, as nominal party, on the petition for *certiorari* and prohibition of petitioner before the Court of Appeals, *viz.*:

> In addition to the Comment of private respondents, through counsel Hilario C. Baril, which the undersigned has just received a copy today, it is well to state here that respondent Placido Orilla is already an old man just as his wife. The appealed Decision will show that Orilla was already 71 years old at the time he testified in this case and the transcripts would further show that the money that he used in buying the DBP foreclosed property herein subject of compulsory acquisition by the DAR came from his retirement benefits evidently

---

[28] *Id.* at 557-558; *Land Bank of the Philippines v. Court of Appeals*, *supra* note 20.

thinking that his investment would afford him security and contentment in his old age. But, luckily or unluckily, the land was taken from him by the DAR at a price so low that he could not swallow, thus, he brought the issue to court. Yet, all along, the land has been under the enjoyment of farmer-beneficiaries without him yet being paid therefor. In the mind of the Court, if payment for the land would be delayed further, it would not be long that death would overtake him. What a misfortune to his long years of service to acquire that hard-earned savings only to be deprived therefrom at the time when he needed it most.[29]

The SAC, aware of the protracted proceedings of the appeal of its November 20, 2000 Decision, but without imputing any dilatory tactics on the part of petitioner, thus deemed it proper, in its sound discretion, to grant the execution pending appeal. Moreover, the execution of the judgment of the SAC was conditioned on the posting of a bond by the respondents, despite pleas to reduce the same, in the amount of one-half of the just compensation determined by the said court or ₱739,511.50.

To reiterate, good reasons for execution pending appeal consist of compelling or superior circumstances demanding urgency which will outweigh the injury or damages suffered should the losing party secure a reversal of the judgment or final order. In the case at bar, even with the procedural flaw in the SAC's grant of execution without a hearing, the injury that may be suffered by respondents if execution pending appeal is denied indeed outweighs the damage that may be suffered by petitioner in the grant thereof. As correctly pointed out by respondents, the reversal of the November 20, 2000 SAC Decision, in the sense that petitioner will pay nothing at all to respondents, is an impossibility, considering the constitutional mandate that just compensation be paid for expropriated property. The posting of the required bond, to our mind, adequately insulates the petitioner against any injury it may suffer if the SAC determination of just compensation is reduced.

Suffice it to say that, given the particular circumstances of this case, along with the considerable bond posted by respondents, the

[29] *Rollo*, p. 119.

assailed SAC Order of December 21, 2000 and the Decision of the Court of Appeals dated July 29, 2002 are justified.

WHEREFORE, the Decision of the Court of Appeals dated July 29, 2002 is *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 159404. June 27, 2008]

RIZZA LAO @ NERISSA LAPING, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA; ELEMENTS; ESTABLISHED BEYOND REASONABLE DOUBT IN CASE AT BAR. — After a thorough review of the evidence, the Court finds that the lower courts did not commit any error in convicting petitioner of the crime of Estafa as charged. To be convicted of Estafa under Article 315, paragraph 2 (a) of the Revised Penal Code, the following elements must be present: (1) that the accused made false pretenses or fraudulent representations as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (2) that such false pretenses or fraudulent representations were made prior to or simultaneous with the commission of the fraud; (3) that such false pretenses or fraudulent representations constitute the very cause which induced the offended party to part with his money or property; and (4) that as a result thereof, the offended party suffered damage.

2. ID.; ID.; ID.; FALSE PRETENSES AND FRAUDULENT MISREPRESENTATIONS; HUMAN NATURE DICTATES THAT AN EDUCATED AND INTELLIGENT MAN LIKE PRIVATE COMPLAINANT COULD NOT HAVE JUST SIMPLY PARTED WITH A LARGE SUM OF MONEY AND GIVE IT TO A COMPLETE STRANGER, WHOM HE HAD NOT EVEN MET AND WITH WHOM HE HAD SPOKEN ONLY BRIEFLY BY PHONE, WITHOUT THE COAXING OF A MORE TRUSTED ACQUAINTANCE LIKE THE ACCUSED. — As to the amount of US$20,000.00, petitioner claims that the money was sent to Acapulco in the United States in relation to a "brokerage business dealing with imported cars" that Juinio and Acapulco were setting up. She maintains that it was Juinio who sent the money to Acapulco. She alleges that she merely aided Juinio in sending the money *via* Western Union Money Transfer, through which a total of US$19,970.00 was sent. Later, Acapulco acknowledged receipt of the money through a Promissory Note she signed in August 1996. Petitioner claims that she merely helped Juinio remit the money to Acapulco, and that she never benefited from it. This was belied, however, by Juinio's testimony that petitioner was herself the one who asked him to invest the money, to which he agreed and for which he gave the money to petitioner. Juinio's testimony prevails over that of petitioner. The fact that petitioner herself sent the money to the United States after getting it from Juinio is proven by the remittance application form that she herself filled up. Human nature dictates that an educated and intelligent man like Juinio could not have just simply parted with a large sum of money and given it to a complete stranger like Acapulco, whom he had not even met, and with whom he had spoken only briefly by phone, without the coaxing of a more trusted acquaintance like petitioner. Juinio himself testified that he only spoke with Acapulco on petitioner's instructions, and only on few occasions.

3. ID.; ID.; ID.; INABILITY TO BENEFIT FROM THE MONEY OBTAINED FROM THE PRIVATE COMPLAINANT DOES NOT RELIEVE THE ACCUSED FROM CRIMINAL RESPONSIBILITY. — Petitioner's claim that she did not benefit from the US$20,000.00 she received from Juinio will not exonerate her. As this Court has previously held in cases of estafa falling under paragraph 2(a) of Article 315 of the Revised Penal Code, inability to benefit from the money obtained

from the private complainant does not relieve the accused of criminal responsibility. As early as 1910, it has been held that estafa committed by the accused for the purpose of benefiting a third party rather than himself does not relieve him of criminal responsibility. For these reasons, the fact that only Acapulco and not petitioner signed the promissory note for the US$20,000.00 will not exculpate petitioner. Petitioner failed to demonstrate why credence should not be given to the prosecution's explanation that petitioner did not sign the promissory note because she had already left the premises when the signing was done.

4. ID.; ID.; ID.; WHETHER OR NOT THE PURPOSE OF THE MONEY WAS ACCOMPLISHED IS IMMATERIAL. — Petitioner's explanation that the money was spent to rent the condominium unit where Mrs. Ramos stayed during her visit, and not to buy one, as Juinio alleged, led to her own perdition. Her explanation only validates Juinio's allegation that he parted with his money to gain Mrs. Ramos's favor, in the hope that he would get a government appointment, as represented by petitioner and Acapulco. Whether or not the purpose of the money was for the lease or purchase of a condominium unit is immaterial, as the inducement on Juinio was the same, which was the depiction by petitioner that Mrs. Ramos would help him get appointed in government.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE PROSECUTION VERSION OF THE EVENTS IS MORE BELIEVABLE AND MORE IN ACCORD WITH HUMAN EXPERIENCE, AS OPPOSED TO THE DEFENSE WHICH RELIES ON UNCORROBORATED DENIALS AND EXPLANATIONS THAT ARE HIGHLY IMPLAUSIBLE. — The Court sees no cogent reason to depart from the findings of facts of the lower courts. The principal prosecution witness, Juinio, gave a consistent, categorical, straightforward, spontaneous and frank testimony, which made him a credible witness. Portions of his testimony were also corroborated by other witnesses who were likewise spontaneous and straightforward in their narration. The Court has held that where the testimony of a witness is in conformity with knowledge and consistent with the experience of mankind, it deserves great evidentiary value. On the whole, the prosecution version of the events is more believable and more in accord with human

experience, as opposed to the defense which relies on uncorroborated denials and explanations that are highly implausible.

APPEARANCES OF COUNSEL

Ricardo J.M. Rivera Law 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 a reversal of the Decision[1] of the Court of Appeals (CA), Third Division dated January 24, 2003 affirming *in toto* the Decision of the Regional Trial Court (RTC) of Pasig City convicting petitioner in Criminal Case No. 112683 of the crime of Estafa and the CA Resolution[2] dated August 5, 2003 denying petitioner's Motion for Reconsideration.

The following are the factual antecedents:

On July 9, 1997, an Information[3] was filed against Rizza Lao a.k.a. Nerissa B. Laping (petitioner) and Ester Acapulco (Acapulco), accusing them of the crime of Estafa as defined in Article 315, paragraph 2(a) of the Revised Penal Code, committed as follows:

On or about and sometime in 1996, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, by means of false pretenses and fraudulent acts committed prior to and/or simultaneously

---

[1] Penned by Associate Justice Amelita G. Tolentino with the concurrence of Associate Justices Eubulo G. Verzola and Candido V. Rivera, *rollo*, pp. 19-27.

[2] Penned by Associate Justice Eubulo G. Verzola with the concurrence of Associate Justices Conrado M. Vasquez, Jr. and Eliezer R. de los Santos, *id*. at 28-29.

[3] *Rollo,* pp. 30-31.

with the commission of the fraud, with intent to gain and to defraud the herein complainant, Elmer A. Juinio, did then and there, willfully, unlawfully and feloniously defraud said complainant, as follows: accused represented to the complainant that they have the capability, power and influence to lobby with the Office of the President, Fidel V. Ramos, for the appointment of complainant as General Manager of the Laguna Lake Development Authority (LLDA) and that they are engaged in the business of brokerage and motor vehicle importation, thereby convincing the complainant to contribute the sums of ₱86,000.00 and [US]$20,000.00 as investment, but when the accused has received the said amounts of ₱86,000.00 and [US]$20,000.00, in defraudation of the complainant, the accused absconded and swindled the same to the damage, loss and prejudice of the complainant, and despite several demands made for the accused to return the aforesaid sums, the accused failed and refused to do so, to the damage, loss and prejudice of complainant in the said amounts of money.

Contrary to law.[4]

On November 21, 1997, petitioner was arraigned and pleaded not guilty.[5] Her co-accused Acapulco was not arrested and remains at large.

After trial, petitioner was convicted by the RTC of Pasig City, Branch 158, in a Decision[6] rendered on December 8, 2000, the dispositive portion of which reads:

WHEREFORE, accused Rizza Lao *alias* Nerissa Laping is found guilty of Estafa under Article 315 paragraph 2(a) of the Revised Penal Code and is sentenced to suffer in prison the penalty of 14 years, 8 months and one (1) day to 20 years of *reclusion temporal* together [with] all the accessory penalties as provided by law. She is also directed to indemnify Lily Juinio[7] the amount of ₱86,000.00

---

[4] *Id*. at 30.

[5] Records, p. 143.

[6] *Rollo,* pp. 32-37.

[7] According to the trial court's decision, Elmer Juinio died in the crash of Air Philippines Flight No. 2P-541 on April 19, 2000. Thus, he was substituted in the civil aspect of the case by his heirs, represented by his spouse Lily Juinio. *Id*. at 36.

and another [US]$19,970.00 or its equivalent in pesos based on the Bangko [S]entral ng Pilipinas guiding rate at the time of payment plus costs within ten (10) days from the promulgation of this Decision.

Since this Court did [not] acquire jurisdiction over the person of the other accused, Ester Acapulco, the case against her is in the meantime archived. It will be revived upon her arrest. Let a warrant of arrest be then issued against this accused.

SO ORDERED.[8]

The trial court made the following findings of facts in convicting petitioner.

It appears from the evidence that Lao and Juinio were introduced to each other in Parc Chateau Condominium by a mutual acquaintance. In one of their conversations, Juinio mentioned that he is applying for the position of the G.M. of the L.L.D.A. Lao mentioned to Juinio that she knew somebody who can help him get appointed to the position and that somebody is Mrs. Alfoncita Ramos (Mrs. Ramos) the stepmother of then President Fidel V. Ramos. Lao met Mrs. Ramos in the United States when she went there on vacation. Juinio expressed interest so that Lao asked him his resume, credentials and other papers to be sent to Mrs. Ramos through Lao's friend, Acapulco, who was residing in the United States. Lao later asked Juinio to make an application letter to President Ramos to be sent also to Mrs. Ramos through Acapulco. A few days later, Lao called him and asked Juinio to invest in a customs brokerage business that Lao and Acapulco will put up with Mrs. Ramos as one of the partners. Juinio readily agreed. Lao asked him ₱36,000.00 as his contribution and Juinio gave a check (Exhibit "A") for this amount.

On August 2, 1996, Lao again called Juinio and told him that Mrs. Ramos and Acapulco will be coming to the Philippines to discuss further their intended customs brokerage business and to follow up his application in Malacañang. Lao then asked him to invest in a motor vehicle importation business of Mrs. Ramos and Acapulco. Lao told Juinio that Mrs. Ramos and Acapulco need additional capitalization. Lao further told him that Mrs. Ramos and Acapulco needed US$20,000.00 as additional capital. Minutes later, Acapulco called Juinio in an overseas call and confirmed to him that she and

[8] *Rollo*, pp. 36-37.

Mrs. Ramos are coming to the Philippines to discuss their customs brokerage business and to follow up his application in Malacañang. Juinio agreed to contribute US$20,000.00 to the motor vehicle importation business and gave the amount to Lao. The latter together with Lao sent US$19,970.00 to Acapulco through the Western Union Money Transfer facility (Exhibit "B"). The remaining [US]$30.00 was returned to Juinio.

On August 13, 1996, Mrs. Ramos, Acapulco and Alfred Nebres arrived in the Philippines from the United States. Lao and Juinio fetched Mrs. Ramos and company from the airport and brought them to Parc Chateau Condominium. Lao proposed to Juinio that they buy the condominium unit where Mrs. Ramos will be staying. Juinio agreed. On that day he issued a check in the amount of ₱50,000.00 as his share of the earnest money to be paid to the owner of Unit 1713, Parc Chateau Condominium (Exhibits "C" and "D"; TSN, June 25, 1998, pp. 9-25).

When Juinio had the opportunity to talk with Mrs. Ramos, he asked her about the progress of his application with the LLDA. Mrs. Ramos expressed surprise and told him that she did not know anything about his application. As to his resume, credentials and other papers together with the application letter to then President Fidel V. Ramos, Mrs. Ramos repeated and told him that she did not know anything about them. As regard[s] the customs brokerage and the motor vehicle importation businesses, Mrs. Ramos denied that she is a partner in these business ventures and she knew nothing about them (TSN, July 16, 1998, pp. 11-12). Mrs. Ramos then directed Lao and Acapulco to return the money that Juinio invested in these business ventures. Lao and Acapulco promised to return Juinio's money within two weeks but failed and refused to return the amounts. Juinio then asked them something that he can rely on, a sort of a guarantee. The two executed a promissory note for the US$20,000.00 (Exhibit "E", inclusive).

Meanwhile, while Juinio is waiting for the return of his money on business ventures Mrs. Ramos knew nothing about, he investigated the alleged customs brokerage and car importation business and the purchase of Unit 1713 of the Parc Chateau [C]ondominium. He found out that the customs brokerage business and the car importation business were fictitious and non-existent. The office space supposed to be used for the customs brokerage business was rented under the name of the realty firm of and used by Lao. Juinio also discovered

that Lao used the ₱50,000.00 he contributed in the purchase under her name of another unit other than that which they had agreed upon. Juinio also found out that the accused uses the names Rizza Lao and Nerissa B. Laping and uses different signatures strokes for each name.

Juinio demanded from the two accused to return his money but despite the written demands sent by his lawyers (Exhibits "K" and "L") the accused failed and refused to return it.[9]

The trial court found proof beyond reasonable doubt that petitioner defrauded private complainant Elmer Juinio (Juinio) by fraudulently and falsely representing herself together with her co-accused, having the influence and capacity to get him appointed as General Manager of either the Laguna Lake Development Authority (LLDA) or the Public Estates Authority (PEA).[10] The RTC found that because of these fraudulent and false representations, Juinio was induced to contribute to or invest in imaginary, false and inexistent business ventures and transactions, causing him actual damage and prejudice in the amounts of ₱86,000.00 and US$19,970.00.[11]

Aggrieved by the decision of the trial court, petitioner appealed to the CA. In its Decision promulgated on January 24, 2003, the CA affirmed the RTC's decision *in toto*.[12] The motion for reconsideration filed by the petitioner was denied in a Resolution of the CA dated August 5, 2003.[13]

Hence, herein Petition anchored on the following ground:

The appealed Decision of the Court of Appeals was a "memorandum decision" which was not done in accordance with the rules. It should be struck down as a nullity and the case remanded back to the Court of Appeals so that it can be decided properly.[14]

---

[9] *Rollo*, pp. 33-34.

[10] *Id*. at 36.

[11] *Id*.

[12] *Id*. at 26.

[13] *Rollo*, pp. 28-29.

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

The petition has no merit.

Petitioner seeks the nullification of the CA's decision based on the sole ground that it was a "memorandum decision which was not done in accordance with the rules."[15] Herein petition makes no assignment of specific errors in the CA decision; instead, in its statement of facts, petitioner refers to defense evidence that contradicts the factual findings of the trial court. Petitioner claims that the CA's decision merely echoed or copied the trial court's findings, and the CA never made its own determination or examination of the case records.[16]

Although petitioner failed to allege the specific errors in the decision of the CA, the issues are readily discussed from the entirety of the petition. The petition's counter-narration of the facts disputes certain factual findings of the trial court.[17] Petitioner presents the same disputed points in her memorandum.[18] Also attached to the petition was the appellant's brief of petitioner, filed with the CA, which assigns the specific errors in the trial court's decision.[19] The Court holds that such is enough to discern the issues it must decide in the present petition, as this also follows the principle that an appeal in a criminal case throws the whole case wide open for review; and that the reviewing court can correct errors, though unassigned, that may be found in the appealed judgment.[20]

The Court does not agree that the CA decision must necessarily be annulled and the case remanded back to the CA on the ground that the CA decision was mostly a reiteration of the trial court's decision which cites no evidence on record to support its findings.

---

[15] *Id*. at 10.

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

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

[18] *Id*. at 123-128.

[19] *Id*. at 38-76.

[20] *People of the Philippines v. Court of Appeals,* 368 Phil. 169, 184-185 (1999); *People of the Philippines v. Feliciano*, 418 Phil. 88, 106 (2001); *People of the Philippines v. Lucero*, 407 Phil. 377, 388 (2001); *Ferrer v. People of the Philippines*, G.R. No. 143487, February 22, 2006, 483 SCRA 31, 54.

Jurisprudence dictates that remand of a case to a lower court does not follow if, in the interest of justice, the Supreme Court itself can resolve the dispute based on the records before it.[21] As a rule, remand is avoided in the following instances: (a) where the ends of justice would not be subserved by a remand; or (b) where public interest demands an early disposition of the case; or (c) where the trial court had already received all the evidence presented by both parties, and the Supreme Court is in a position, based upon said evidence, to decide the case on its merits.[22]

Considering that the instant controversy has already taken years to reach this Court, remand of the case to the CA is no longer the more expeditious and practical route to follow. Hence, the Court will decide the case based on the evidentiary record before it.

After a thorough review of the evidence, the Court finds that the lower courts did not commit any error in convicting petitioner of the crime of Estafa as charged.

To be convicted of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code, the following elements must be present:

(1) that the accused made false pretenses or fraudulent representations as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions;

(2) that such false pretenses or fraudulent representations were made prior to or simultaneous with the commission of the fraud;

---

[21] *Republic of the Philippines v. Central Surety and Insurance Company,* 134 Phil. 631, 640 (1968); *Regalario v. Northwest Finance Corporation*, 202 Phil. 366, 371 (1982); *Castro v. Court of Appeals*, 208 Phil. 691, 696 (1983); *Siguenza v. Court of Appeals*, G..R. No. L-44050, July 16, 1985, 137 SCRA 570, 576-577; *First Asian Transport and Shipping Agency Inc. v. Ople*, 226 Phil. 446, 453-454 (1986); *Segovia v. Republic of the Philippines*, G..R. No. L-46102, April 15, 1988, 160 SCRA 296, 300; *Ong Chiu Kwan v. Court of Appeals*, 399 Phil. 336, 340 (2000).

[22] *Gokongwei, Jr. v. Securities and Exchange Commission,* 178 Phil. 266, 292 (1979).

(3) that such false pretenses or fraudulent representations constitute the very cause which induced the offended party to part with his money or property; and

(4) that as a result thereof, the offended party suffered damage.[23]

Records show that the above elements were established beyond reasonable doubt by the prosecution in the instant case.

Private complainant Juinio testified as follows:

"x x x she [Rizza Lao] told me she knows someone in the government who could possibly help me and even suggested to seek the position of General Manager for Public Estate[s] Authority instead."[24]

"x x x that person is Mrs. Alfonsita [sic] Lucero Ramos, stepmother of Pres. Ramos who is a best friend of her friend Estrellita Acapulco whom she met in the United States."[25]

"x x x Rizza again called me over the phone and asked me if I want to invest in a brokerage business with Mrs. Ramos and Ester Acapulco and herself."[26]

"x x x I agreed. I have no choice because she promised she is going to help me get a government position."[27]

"x x x I gave her the ₱36,000.00 when she asked for it on June 25, 1996."[28]

"x x x That is a rental for an office space for our intended brokerage business."[29]

---

[23] *Gonzaludo v. People of the Philippines,* G.R. No. 150910, February 6, 2006, 481 SCRA 569, 577; *Fernandez v. People of the Philippines,* 395 Phil. 478, 489 (2000).

[24] TSN, June 25, 1998, p. 13.

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

[26] *Id*. at 16.

[27] *Id*.

[28] *Id*.

[29] *Id*. at 18.

"x x x She asked me if I want to invest on a vehicle importation business and she asked me for [US]$20,000.00 because according to her they need more capitalization and I'll get the money back within two weeks."[30]

"x x x I gave Rizza the [US]$20,000.00 as stated by Ester over the phone. x x x Rizza, after she sent it to Ester, she gave me a copy of the receipt from the mail box and receipt of my [US]$20,000.00."[31]

"x x x Rizza told me that she is [sic] planning to buy that Unit 1713 and asked me if I want to invest. x x x I agreed considering that Mrs. Ramos came all the way from the United States to Manila to discuss our brokerage business and the promise that my papers are already in Malacañang."[32]

"x x x I gave a check of ₱50,000.00. x x x. Normally, we put something over there to note what the expenditure is. It says right here at the left bottom of the check, advance payment for condominium unit Park [sic] Chateau of the unit 1713."[33]

"x x x I asked Mrs. Ramos what is the status of my application to the position I am trying to get from the government. x x x. She told me she doesn't know anything about my application. x x x. I asked her about the investment I did in her behalf. x x x. Well, she told me she doesn't know anything about the investment nor the appointment."[34]

"x x x She (Mrs. Ramos) directed Rizza and Ester to return my money."[35]

"x x x Rizza and Ester told Mrs. Ramos that they are going to return my money within two weeks. x x x. I confronted them two weeks after and they couldn't pay me."[36]

---

[30] *Id*. at 19.

[31] *Id*. at 20.

[32] *Id*. at 23-24.

[33] TSN, July 8, 1998, p. 4.

[34] TSN, July 16, 1998, p. 11.

[35] *Id*. at 12.

[36] *Id*.

In addition, it was also proven that petitioner asked Juinio to give her all his credentials, his application letter and letters of recommendation to be sent to Mrs. Alfonsita Ramos (Mrs. Ramos) in the United States.[37] Petitioner also was the one who informed Juinio that Acapulco and Mrs. Ramos were arriving from the United States to discuss the brokerage business and to follow up his appointment in Malacañang.[38] As regards the US$20,000.00, it was established that Juinio handed over the money to petitioner[39] after he was informed by the latter that Acapulco will call to confirm the request for the money and to talk about the brokerage and his application for a government position (application).[40] Minutes later, Acapulco indeed called and discussed those matters with Juinio.[41] After talking with Acapulco, Juinio handed the money to petitioner and accompanied her to the remittance center[42] where petitioner filled up the remittance form and sent the money to Acapulco.[43]

Juinio also testified about Rodolfo Lucero (Lucero), Mrs. Ramos's brother, who suspected petitioner and Acapulco of using his sister's name.[44] It was Lucero who advised him to verify with Mrs. Ramos the businesses that petitioner and Acapulco were supposed to be putting up, since Mrs. Ramos was being presented as a partner in these ventures.[45] When Juinio made the verification, Mrs. Ramos denied knowledge of his application or of any investment.[46] Mrs. Ramos then ordered petitioner and Acapulco to return his money.[47]

---

[37] TSN, June 25, 1998, p. 15.

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

[39] *Id*. at 21.

[40] *Id*. at 19.

[41] *Id*. at 19-20.

[42] The facility is called Mail Boxes Etc. which hosts a local branch of Western Union Money Transfer. See Exhibit "B", records, vol. 2, p. 143.

[43] TSN, June 25, 1998, pp. 21-22.

[44] TSN, July 16, 1998, p. 3.

[45] *Id*. at 5.

[46] *Id*. at 11.

[47] *Id*. at 12.

In his testimony, Lucero corroborated Juinio. Being the brother of Mrs. Ramos,[48] he confirmed that Mrs. Ramos was "irritated" by both petitioner and Acapulco because they were using her name, and because they got money from Juinio.[49]

Another prosecution witness, Alfred Nebres, who arrived with Mrs. Ramos from the United States,[50] testified that Juinio did inquire about the status of his application with Mrs. Ramos;[51] that upon Juinio's inquiry, however, Mrs. Ramos was surprised since she did not know of any application and her visit was for another business, and not for any government appointment;[52] that as a result, Juinio was embarrassed and disgusted;[53] that when he told Mrs. Ramos that he invested money in some businesses which Mrs. Ramos was supposed to be a part of, in order to enhance his chances over his application,[54] Mrs. Ramos reacted by turning to petitioner and Acapulco and asking them why they did things without her knowledge;[55] and that the reply of petitioner and Acapulco was to admit that they were "planning on putting up a business."[56]

Petitioner cites her sole testimony and various documentary exhibits which the lower courts allegedly failed to consider.

Petitioner testified that she first met Juinio in Parc Chateau Condominium, Ortigas, Pasig City in 1995.[57] Then, she met Estrellita a.k.a. Ester Acapulco for the first time in Las Vegas,

---

[48] TSN, October 14, 1999, p. 6.

[49] *Id*. at 12.

[50] TSN, August 19, 1999, p. 9.

[51] *Id*. at 19.

[52] *Id*.

[53] *Id*. at 19-20.

[54] *Id*. at 20.

[55] *Id*.

[56] *Id*.

[57] TSN, March 8, 2000, p. 7.

U.S.A. in May 1996.[58] Shortly thereafter, she met Acapulco again in Los Angeles, U.S.A., while the latter was in the company of Mrs. Ramos, the stepmother of then President Ramos.[59] When she told Juinio, who was then applying as General Manager of the LLDA, that she met Mrs. Ramos in the United States, Juinio got enthusiastic and asked her how he could contact either Acapulco or Mrs. Ramos.[60] So petitioner gave him the telephone number of Acapulco.[61] Juinio then proceeded to call Acapulco and sent his application letter to her, the copies of which she provided petitioner.[62]

Petitioner denies that the amounts of ₱36,000.00, US$20,000.00 and ₱50,000.00 that were shelled out by Juinio were in consideration for his appointment to the LLDA.[63]

Anent the amount of ₱36,000.00 — petitioner testified that the ₱36,000.00 that Juinio gave her was for the lease of a unit at Pelbel Building.[64] She was the one who signed the lease because Juinio himself could not sign due to "conflict of interest."[65] The office was supposed to be for the "planning and dealing" that Juinio needed to do to get appointed to another position, that of General Manager of PEA.[66] In leasing the space, petitioner claims she spent ₱36,000.00 of her own money, in addition to Juinio's ₱36,000.00, to pay the total amount of ₱72,000.00 in advance rental for six months.[67]

---

[58] *Id*. at 8.

[59] *Id*. at 9.

[60] *Id*. at 12, 21.

[61] *Id*. at 22.

[62] *Id*.

[63] *Id*. at 52.

[64] *Id*. at 28.

[65] *Id*. at 31.

[66] Exhibit "26" (Petitioner's Counter-Affidavit dated March 10, 1997), records, Vol. 2, pp. 263-266.

[67] TSN, March 8, 2000, p. 32.

An examination of the lease contract[68] reveals that contrary to the testimony of petitioner, only ₱36,000.00, and not ₱72,000.00, was paid when the contract was signed. Petitioner presented no receipts or other proof that another ₱36,000.00 was indeed paid as she claims. The fact remains, though, that the lease was executed only between the lessor Pelbel Manufacturing Corporation and the lessee Goldline Realty, the company of petitioner, a clear indication that petitioner executed the lease only for her own purposes. Her explanation that Juinio did not participate in the lease because of "conflict of interest" also fails to persuade. At that time, Juinio was not even a government official. Also, there is incredulity in her testimony that an actual physical office is needed just to lobby for a government appointment. Petitioner's own evidence shows that at that time, Juinio could not have even needed an office, as he had an existing office in Quezon City.[69]

As to the amount of US$20,000.00, petitioner claims that the money was sent to Acapulco in the United States in relation to a "brokerage business dealing with imported cars" that Juinio and Acapulco were setting up.[70] She maintains that it was Juinio who sent the money to Acapulco.[71] She alleges that she merely aided Juinio in sending the money *via* Western Union Money Transfer, through which a total of US$19,970.00 was sent.[72] Later, Acapulco acknowledged receipt of the money through a Promissory Note she signed in August 1996.[73] Petitioner claims that she merely helped Juinio remit the money to Acapulco, and that she never benefited from it. This was belied, however, by Juinio's testimony that petitioner was herself the one who asked him to invest the money, to which he agreed and for which he gave the money to petitioner.[74]

---

[68] Exhibit "5", records, Vol. 2, pp. 226-228.

[69] Exhibit "14", Elmer Juinio's resume, *id*. at 248.

[70] TSN, March 8, 2000, pp. 33, 36.

[71] *Id*. at 36.

[72] *Id*. at 37.

[73] *Id*. at 42; Exhibits "E" or "17", records, Vol. 2, p. 267.

[74] TSN, June 25, 1998, pp. 19-20.

Juinio's testimony prevails over that of petitioner. The fact that petitioner herself sent the money to the United States after getting it from Juinio is proven by the remittance application form[75] that she herself filled up. Human nature dictates that an educated and intelligent man like Juinio could not have just simply parted with a large sum of money and given it to a complete stranger like Acapulco, whom he had not even met, and with whom he had spoken only briefly by phone, without the coaxing of a more trusted acquaintance like petitioner. Juinio himself testified that he only spoke with Acapulco on petitioner's instructions,[76] and only on few occasions.[77]

Petitioner's claim that she did not benefit from the US$20,000.00 she received from Juinio will not exonerate her. As this Court has previously held in cases of estafa falling under paragraph 2(a) of Article 315 of the Revised Penal Code, inability to benefit from the money obtained from the private complainant does not relieve the accused of criminal responsibility.[78] As early as 1910, it has been held that estafa committed by the accused for the purpose of benefiting a third party rather than himself does not relieve him of criminal responsibility.[79] For these reasons, the fact that only Acapulco and not petitioner signed the promissory note for the US$20,000.00 will not exculpate petitioner. Petitioner failed to demonstrate why credence should not be given to the prosecution's explanation that petitioner did not sign the promissory note because she had already left the premises when the signing was done.[80]

Anent the amount of ₱50,000.00 — petitioner maintains that the money was Juinio's share in the rental of Unit 1713 of Parc Chateau Condominium, which served as accommodations for

---

[75] Exhibit "B", records, Vol. 2, pp. 143-144.

[76] TSN, March 11, 1999, p. 12.

[77] *Id*. at 7.

[78] *People of the Philippines v. Fajardo,* 399 Phil. 109, 127 (2000); *People of the Philippines v. Buli-e*, 452 Phil. 129, 152 (2003).

[79] *United States v. Umali,* 15 Phil. 33, 38 (1910).

[80] TSN, July 16, 1998, p. 15.

Mrs. Ramos and company during their stay in the country.[81] She herself signed the lease with the lessor.[82] The lease called for ₱105,000.00 or three months of advance rental.[83] She claims that the ₱50,000.00 given to her by Juinio was part of this rental, and was not for the purchase of a unit at Parc Chateau Condominium.[84]

Petitioner's explanation that the money was spent to rent the condominium unit where Mrs. Ramos stayed during her visit, and not to buy one, as Juinio alleged,[85] led to her own perdition. Her explanation only validates Juinio's allegation that he parted with his money to gain Mrs. Ramos's favor, in the hope that he would get a government appointment, as represented by petitioner and Acapulco. Whether or not the purpose of the money was for the lease or purchase of a condominium unit is immaterial, as the inducement on Juinio was the same, which was the depiction by petitioner that Mrs. Ramos would help him get appointed in government.

Thus, the Court sees no cogent reason to depart from the findings of facts of the lower courts. The principal prosecution witness, Juinio, gave a consistent, categorical, straightforward, spontaneous and frank testimony, which made him a credible witness.[86] Portions of his testimony were also corroborated by other witnesses who were likewise spontaneous and straightforward in their narration.

The Court has held that where the testimony of a witness is in conformity with knowledge and consistent with the experience of mankind, it deserves great evidentiary value.[87]

---

[81] TSN, March 8, 2000, p. 44.

[82] *Id*. at 45.

[83] *Id*. at 46.

[84] *Id*. at 50.

[85] *Id*. at 44.

[86] *People of the Philippines v. Noay,* 357 Phil. 295, 309 (1998).

[87] *People of the Philippines v. Delmo,* 439 Phil. 212, 247 (2002).

On the whole, the prosecution version of the events is more believable and more in accord with human experience, as opposed to the defense which relies on uncorroborated denials and explanations that are highly implausible.

Based on law and jurisprudence, the penalty imposed on petitioner by the trial court should be modified, based on previous rulings of the Court. Under the Revised Penal Code, the penalty for the estafa charged against petitioner is *prision correccional* maximum to *prision mayor* minimum; hence, the penalty next lower would be *prision correccional* minimum to medium. Applying the Indeterminate Sentence Law,[88] 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;[89] and because the amounts involved exceeded ₱22,000.00, an additional one (1) year imprisonment should be imposed for each additional ₱10,000.00, but the total should not exceed 20 years.

Hence, on petitioner should be imposed the penalty of imprisonment for four (4) years and two (2) months of *prision correccional,* as minimum, to 20 years of *reclusion temporal* as maximum, together with all the accessory penalties as provided by law.

WHEREFORE, the petition is *DENIED*. The Decision dated January 24, 2003 and Resolution dated August 5, 2003 of the Court of Appeals in CA-G.R. No. 24908 are *AFFIRMED*, with the sole modification that petitioner is sentenced to indeterminate penalty of imprisonment for four (4) years and two (2) months of *prision correccional,* as minimum, to 20 years of *reclusion temporal,* as maximum. All other aspects of the dispositive portion of the decision of the trial court stand.

---

[88] Act No. 4103, as amended.

[89] *People of the Philippines v. Gabres,* 335 Phil. 242, 257 (1997); *People of the Philippines v. Fajardo*, 399 Phil. 109, 128-129 (2000); *Jose v. People of the Philippines*, 479 Phil. 969, 986 (2004).

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 159550. June 27, 2008]

LUCIA CARLOS ALIÑO, substituted by her Surviving Heirs, Nicolas C. Aliño and Potenciano C. Aliño, *petitioners, vs.* **HEIRS OF ANGELICA A. LORENZO, namely: Servillano V. Lorenzo, Agerico Lorenzo, Virginia Servangelli L. Aspera, Ben Errol Aspera, Servillano A. Lorenzo, Jr., Servillano Santiago A. Lorenzo III, Ma. Angelica A. Lorenzo, Servillano II and Anthony A. Lorenzo, represented by Servillano V. Lorenzo, Sr. (father), and Atty. Armando Lauban, in his capacity as Register of Deeds for Cotabato City,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING ON THIS COURT; EXCEPTIONS; PRESENT IN CASE AT BAR. — The general rule is that in the exercise of the Supreme Court's power of review, the Court not being a trier of facts, does not normally embark on a re-examination of the evidence presented by the contending parties during the trial of the case considering that the finding of facts of the CA are conclusive and binding on the Court. This rule, however, has several well-recognized exceptions: **(1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurb 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 CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and **(11) when the CA manifestly overlooked certain facts not disputed by the parties, which, if properly considered, would justify a different conclusion**. Exceptions (1),(2),(4) and (11) are present in the instant case.

2. CIVIL LAW; CONTRACTS; SIMULATED CONTRACTS; THE APPARENT CONTRACT IS NOT REALLY DESIRED OR INTENDED TO PRODUCE LEGAL EFFECTS. — It is a cardinal rule in the interpretation of contracts that the intention of the parties shall be accorded primordial consideration. Such intention is determined from the express terms of their agreement, as well as their contemporaneous and subsequent acts. When the parties do not intend to be bound at all, the contracts is absolutely simulated; if the parties conceal their true agreement, then the contract is not really desired or intended to produce legal effects or in any way alter the juridical situation of the parties.

3. ID.; ID.; ID.; RESPONDENTS NEVER ATTEMPTED TO EXERCISE ANY ACT OF DOMINION OVER THE SUBJECT LOT. — In *Suntay v. Court of Appeals,* the Court held that the most protuberant index of simulation is the complete absence of an attempt in any manner on the part of the vendee to assert his rights of ownership over the disputed property. This pronouncement was reiterated in such cases as *Sps. Santiago v. Court of Appeals, Cruz v. Bancom Finance Corporation, Ramon v. Heirs of Honorio Ramos, Sr., Manila Banking Corporation v. Silverio,* and most recently in *Tating v. Marcella*. In the present case, the evidence clearly shows that Angelina or Servillano, Sr. did not attempt to exercise any act of dominion over the subject lot. From the time the sale was effected on April 2, 1979 up to the time of the institution

of the complaint on August 3, 1989, Angelina or Servillano, Sr. did not enter the subject lot and occupy the premises. When Servillano, Sr. transferred his residence, he did not even choose to utilize the subject lot. None of the respondent heirs also took possession of the subject lot. In contrast, Lucia was in actual possession of the property. She designated Vivian as caretaker of the subject lot in 1984. Vivian constructed a house on the subject lot and has been residing therein since then. It is well-settled that actual possession of land consists in the manifestation of acts of dominion over it of such a nature as those a party would naturally exercise over his own property. It is not necessary that the owner of a parcel of land should himself occupy the property as someone in his name may perform the act. In other words, the owner of real estate has possession, either when he himself is physically in occupation of the property, or when another person who recognizes his rights as owner is in such occupancy.

4. ID.; ID.; ID.; PAYMENT OF REALTY TAXES STRENGTHENS ONE'S *BONA FIDE* CLAIM OF ACQUISITION OF OWNERSHIP. — Lucia religiously paid the realty taxes on the subject lot from 1980 to 1987. While tax receipts and declarations of ownership for taxation purposes are not, in themselves, incontrovertible evidence of ownership, they constitute at least proof that the holder has a claim of title over the property, particularly when accompanied by proof of actual possession. They are good *indicia* of the possession in the concept of owner, for no one in his right mind would be paying taxes for property that is not in his actual or at least constructive possession. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's *bona fide* claim of acquisition of ownership.

5. ID.; ID.; ID.; SUBSEQUENT ACTS OF THE PARTIES BELIE THE INTENT TO BOUND BY THE DEED OF SALE. — Respondent heirs failed to present evidence that Angelica, during her lifetime, paid the realty taxes on the subject lot. They presented only two tax receipts showing that Servillano, Sr. belatedly paid taxes due on the subject lot for the years

1980-1981 and part of year 1982 on September 8, 1989, or about a month after the institution of the complaint on August 3, 1989, a clear indication that payment was made as an afterthought to give the semblance of truth to their claim. Thus, the subsequent acts of the parties belie the intent to be bound by the deed of sale.

6. CIVIL LAW; PRESCRIPTION; IF A PERSON CLAIMING TO BE THE OWNER OF THE PROPERTY IS IN ACTUAL POSSESSION THEREOF, THE RIGHT TO SEEK RECONVEYANCE, WHICH IN EFFECT SEEKS TO QUIET TITLE TO THE PROPERTY, DOES NOT PRESCRIBE; CASE AT BAR. — The lower courts fault Lucia for allegedly not taking concrete steps to recover the subject lot, demanding its return only after 10 years from the registration of the title. They, however, failed to consider that Lucia was in actual possession of the property. It is well-settled that an action for reconveyance prescribes in 10 years, the reckoning point of which is the date of registration of the deed or the date of issuance of the certificate of title over the property. In an action for reconveyance, the decree of registration is highly regarded as incontrovertible. What is sought instead is the transfer of the property or its title, which has been erroneously or wrongfully registered in another person's name, to its rightful or legal owner or to one who has a better right. However, in a number of cases in the past, the Court has consistently ruled that if the person claiming to be the owner of the property is in actual possession thereof, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe. The reason for this is that one who is in actual possession of a piece of land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right. The reason being, that his undisturbed possession gives him the continuing right to seek the aid of a court of equity to ascertain the nature of the adverse claim of a third party and its effect on his title, which right can be claimed only by one who is in possession. Thus, considering that Lucia continuously possessed the subject lot, her right to institute a suit to clear the cloud over her title cannot be barred by the statute of limitations.

APPEARANCES OF COUNSEL

Nicolas C. Aliño for himself and for petitioners.
Servillano Santiago A. Lorenzo III for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated February 21, 2003 of the Court of Appeals (CA) in CA-G.R. CV No. 44857 which affirmed the Decision dated October 28, 1993 of the Regional Trial Court (RTC), Branch 13, Cotabato City dismissing the complaint in Civil Case No. 2823, and the CA Resolution[2] dated August 20, 2003 which denied petitioners' Motion for Reconsideration.

The present case arose from a controversy involving a 1,745-square meter parcel of land known as Lot 183-A-1-B-3-A of Subdivision Plan Psd-12-001000, located at Sinsuat Avenue, Rosary Heights, Cotabato City. The subject lot was registered in the name of petitioner Lucia Carlos Aliño (Lucia) under Transfer Certificate of Title (TCT) No. T-15443 issued by the Registry of Deeds of the City of Cotabato.

On April 2, 1979, Angelica A. Lorenzo (Angelica), Lucia's daughter, bought the subject lot for ₱10,000.00 under a Deed of Absolute Sale.[3] Consequently, TCT No. T-15443 was canceled and TCT No. T-15500[4] was issued in Angelica's name. The subject lot was declared for taxation purposes in Angelica's name under Tax Declaration No. 14136.[5]

---

[1] Penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Perlita J. Tria Tirona and Edgardo F. Sundiam, CA *rollo*, p. 90.

[2] *Id*. at 140.

[3] Exhibit "I", records, p. 175.

[4] Exhibit "J", *id*. at 177.

[5] Exhibit "A", *id*. at 166.

In the meantime, Lucia continued to pay, under her name, the real estate taxes due on the subject lot from 1980 to 1987.[6] Sometime in 1984, Lucia designated Vivian Losaria (Vivian) as caretaker of the subject lot.[7] Vivian built a 100-square meter house on the subject lot and resided thereon.[8] She took care of the fruit-bearing trees on the subject lot and delivered the fruits thereof to Lucia every harvest season.[9] She also notified tenants of the two adjacent properties owned by Lucia when their rent was due.[10]

On October 3, 1985, Angelica died, leaving private respondents, as surviving heirs, her husband, Servillano, Sr. and their eight children, namely: Servillano, Leila Lorenzo-Gepte, Agerico, Servillano II, Virginia Servangelli Lorenzo-Aspera, Servillano III, Ma. Angelica and Anthony. Two and a half years later, or on May 31, 1988, Angelica's heirs executed an Extra-Judicial Settlement of her estate.[11] The subject lot was adjudicated to Servillano III, Ma. Angelica and Anthony, then all minors. As a result, TCT No. T-15500 was canceled and TCT No. T-24417[12] was issued in the name of the three minors.

Meanwhile, on January 31, 1989, Lucia executed a document entitled Authority to Look for a Buyer[13] authorizing Felixberto Bautista to look for a buyer for her lots in Rosary Heights. Subsequently, in Proposal to Sell Real Property[14] dated February 1, 1989, Lucia offered to sell to the Central Bank of the Philippines

---

[6] Exhibits "B" to "H", *id*. at 168-174. TSN, Testimony of Francisco Gepte, May 8, 1990, pp. 9-20.

[7] TSN, Testimony of Vivian Losaria, March 20, 1990, p. 7.

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

[9] *Id*. at 4-5, 11, 20-21, 23.

[10] *Id*. at 23-24.

[11] Exhibit "M", records, p. 181.

[12] Exhibit "9", *id*. at 16.

[13] Exhibit "2", *id*. at 45.

[14] Exhibit "3", *id*. at 44.

(CBP) her lots in Rosary Heights, including the subject lot, as registered in Angelica's name.

On April 12, 1989, Lucia wrote a letter to Servillano, Sr. demanding the return of the subject lot.[15] When Servillano, Sr. refused to accede to Lucia's demand, Lucia filed on August 3, 1989 a Complaint[16] against the heirs of Angelica[17] for the declaration of nullity of the Deed of Absolute Sale dated April 2, 1979, annulment of the extra-judicial settlement and partition of estate and reconveyance of land title with damages. She alleged that the sale of the subject lot was simulated, intended to merely accommodate the housing loan application of Angelica.

In their Answer,[18] the heirs of Angelica denied Lucia's allegations, contending that the subject lot was acquired for valuable consideration.

Following trial on the merits, the RTC rendered a Decision[19] on October 28, 1993, dismissing the complaint and ordering Lucia to pay the heirs of Angelica ₱30,000.00 as attorney's fees. It held that the sale was not simulated because Lucia recognized Angelica's ownership of the subject lot when she paid the taxes for the same, gave written offers to sell her properties, along with Angelica's property, to the CBP, and issued an Authority to Look for a Buyer indicating Angelica's children as owners of the subject lot; that Lucia did not take concrete steps to recover the subject lot for 10 years until she demanded from Servillano, Sr. its return.

Dissatisfied, Lucia appealed. On February 21, 2003, the CA rendered a Decision[20] adopting the findings of the RTC that Lucia recognized Angelica's ownership of the subject lot by her payment of the real property taxes and the written offers to

---

[15] Exhibit "L", *id*. at 180.

[16] *Id*. at 1.

[17] Excluding Leila Lorenzo-Gepte as defendant.

[18] *Id*. at 37.

[19] *Id*. at 319.

[20] CA *rollo*, p. 90.

sell and authority to look for a buyer. It also emphasized that the deed of sale was a notarized document and enjoyed the presumption of regularity which Lucia failed to overcome. It, however, deleted the award for attorney's fees.

Since Lucia died[21] during the pendency of the appeal, she was substituted by her surviving heirs, Nicolas and Potenciano.[22] In a Resolution[23] dated August 20, 2003, the CA denied their Motion for Reconsideration.[24]

Hence, the present petition. Potenciano died[25] during the pendency of the present petition and he was substituted by his wife, Rosita Pinto Aliño.[26]

The core issue posed before the Court is whether or not the Deed of Absolute Sale dated April 2, 1979 executed by Lucia in favor of Angelica is valid and binding upon the parties.

Petitioners contend that the sale was simulated, considering the complete absence of any attempt on the part of Angelica or Servillano, Sr. to assert dominical rights over the subject property, even as Lucia remained in continuous, open and adverse possession of the subject lot and continued to pay the real property taxes due thereon. They also point to the gross disproportion between the purchase price and the market value of the property, the non-payment of the consideration, and sale having been made in Angelica's name only as other indications of simulation.

Respondent heirs, on the other hand, submit that the sale was not simulated because Lucia's subsequent acts affirmed the genuineness of the sale. They also contend that Lucia did not take any concrete steps to recover the subject lot.

The Court finds for the petitioners.

---

[21] *Id*. at 132.

[22] *Id*. at 129.

[23] *Id*. at 140.

[24] *Id*. at 100.

[25] *Rollo*, p. 417.

[26] *Id*. at 550.

The general rule is that in the exercise of the Supreme Court's power of review, the Court not being a trier of facts, does not normally embark on a re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court.[27] This rule, however, has several well-recognized exceptions: **(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 CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and **(11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion**.[28] Exceptions (1), (2), (4) and (11) are present in the instant case.

It is a cardinal rule in the interpretation of contracts that the intention of the parties shall be accorded primordial consideration.[29] Such intention is determined from the express terms of their

---

[27] *Chua v. Soriano,* G.R. No. 150066, April 13, 2007, 521 SCRA 68, 77; *Heirs of Dicman v. Cariño*, G.R. No. 146459, June 8, 2006, 490 SCRA 240, 261; *Bank of the Philippine Islands v. Sarmiento*, G.R. No. 146021, March 10, 2006, 484 SCRA 261, 267-268.

[28] *Chua v. Soriano, supra* note 27, at 77-78; *Heirs of Dicman v. Cariño*, *supra* note 27, at 261-262; *Bank of the Philippine Islands v. Sarmiento*, *supra* note 27, at 268.

[29] *Valerio v. Refresca,* G.R. No. 163687, March 28, 2006, 485 SCRA 494, 501*; Ramos v. Heirs of Honorio Ramos, Sr.*, 431 Phil. 337, 345 (2002).

agreement,[30] as well as their contemporaneous and subsequent acts.[31] When the parties do not intend to be bound at all, the contract is absolutely simulated; if the parties conceal their true agreement, then the contract is relatively simulated.[32] Characteristic of simulation is that the apparent contract is not really desired or intended to produce legal effects or in any way alter the juridical situation of the parties.[33]

In *Suntay v. Court of Appeals*,[34] the Court held that the most protuberant index of simulation is the complete absence of an attempt in any manner on the part of the vendee to assert his rights of ownership over the disputed property. This pronouncement was reiterated in such cases as *Sps. Santiago v. Court of Appeals*,[35] *Cruz v. Bancom Finance Corporation,*[36] *Ramos v. Heirs of Honorio Ramos, Sr.*,[37] *Manila Banking Corporation v. Silverio*,[38] and most recently in *Tating v. Marcella.*[39]

---

[30] CIVIL CODE, Art. 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.

If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

[31] CIVIL CODE, Art. 1371. In order to judge the intention of the contracting parties. Their contemporaneous and subsequent acts shall be principally considered.

[32] CIVIL CODE, Article 1345. Simulation of a contract may be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement.

[33] *Valerio v. Refresca, supra* note 29, at 500; *Loyola v. Court of Appeals,* 383 Phil. 171, 182 (2000); *Tongoy v. Court of Appeals*, 208 Phil. 95, 113 (1983); *Vda. De Rodriguez v. Rodriguez*, 127 Phil. 294, 301 (1967).

[34] 321 Phil. 809, 831-832 (1995).

[35] 343 Phil. 612, 620-621 (1997).

[36] 429 Phil. 225, 235-236 (2002).

[37] *Supra* note 29, at 347.

[38] G.R. No. 132887, August 11, 2005, 466 SCRA 438, 452.

[39] G.R. No. 155208, March 27, 2007, 519 SCRA 79, 87.

In the present case, the evidence clearly shows that Angelica or Servillano, Sr. did not attempt to exercise any act of dominion over the subject lot. From the time the sale was effected on April 2, 1979 up to the time of the institution of the complaint on August 3, 1989,[40] Angelica or Servillano, Sr. did not enter the subject lot and occupy the premises. When Servillano, Sr. transferred his residence, he did not even choose to utilize the subject lot.[41] None of the respondent heirs also took possession of the subject lot.

In contrast, Lucia was in actual possession of the property. She designated Vivian as caretaker of the subject lot in 1984.[42] Vivian constructed a house on the subject lot and has been residing therein since then.[43] It is well-settled that actual possession of land consists in the manifestation of acts of dominion over it of such a nature as those a party would naturally exercise over his own property.[44] It is not necessary that the owner of a parcel of land should himself occupy the property as someone in his name may perform the act. In other words, the owner of real estate has possession, either when he himself is physically in occupation of the property, or when another person who recognizes his rights as owner is in such occupancy.[45]

Furthermore, Lucia religiously paid the realty taxes on the subject lot from 1980 to 1987.[46] While tax receipts and declarations of ownership for taxation purposes are not, in themselves, incontrovertible evidence of ownership, they constitute at least

---

[40] Records, p. 1.

[41] TSN, Testimony of Leila Lorenzo-Gepte, March 12, 1990, p. 15.

[42] TSN, Testimony of Vivian Losaria, March 20, 1990, p. 7.

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

[44] *Reyes v. Court of Appeals,* 374 Phil. 236, 242-243 (1999); *Ramos v. Director of Lands*, 39 Phil. 175, 178 (1918).

[45] *Reyes v. Court of Appeals, supra* note 44, at 243; *Repide v. Astuar*, 2 Phil. 757, 762 (1902).

[46] Exhibits "B" to "H", records, pp. 168-174; TSN, Testimony of Francisco Gepte, May 8, 1990, pp. 9-20.

proof that the holder has a claim of title over the property,[47] particularly when accompanied by proof of actual possession.[48] They are good *indicia* of the possession in the concept of owner, for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession.[49] The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government.[50] Such an act strengthens one's *bona fide* claim of acquisition of ownership.[51]

On the other hand, respondent heirs failed to present evidence that Angelica, during her lifetime, paid the realty taxes on the subject lot. They presented only two tax receipts showing that Servillano, Sr. belatedly paid taxes due on the subject lot for the years 1980-1981 and part of year 1982 on September 8, 1989,[52] or about a month after the institution of the complaint on August 3, 1989,[53] a clear indication that payment was made as an afterthought to give the semblance of truth to their claim.

Thus, the subsequent acts of the parties belie the intent to be bound by the deed of sale.

---

[47] *Tating v. Marcella, supra* note 39, at 89; *Heirs of Miguel Franco v. Court of Appeals*, 463 Phil. 417, 433 (2003).

[48] *Republic of the Philippines v. Candy Maker, Inc.*, G.R. No. 163766, June 22, 2006, 492 SCRA 272, 296; *Republic of the Philippines v. Court of Appeals*, 216 Phil. 500, 508-509 (1984).

[49] *Republic v. Tri-Plus Corporation*, G.R. No. 150000, September 26, 2006, 503 SCRA 91, 103-104; *Republic v. Enriquez*, G.R. No. 160990, September 11, 2006, 501 SCRA 436, 449.

[50] *Tating v. Marcella, supra* note 47, at 89-90; *Calicdan v. Cendaña*, 466 Phil. 894, 904 (2004).

[51] *Tating v. Marcella, supra* note 47, at 90; *Calicdan v. Cendaña, supra* note 50.

[52] Exhibits "6-A" and "6-B", records, pp. 235-236.

[53] *Supra* note 40.

The lower courts fault Lucia for allegedly not taking concrete steps to recover the subject lot, demanding its return only after 10 years from the registration of the title. They, however, failed to consider that Lucia was in actual possession of the property.

It is well-settled that an action for reconveyance prescribes in 10 years, the reckoning point of which is the date of registration of the deed or the date of issuance of the certificate of title over the property. In an action for reconveyance, the decree of registration is highly regarded as incontrovertible. What is sought instead is the transfer of the property or its title, which has been erroneously or wrongfully registered in another person's name, to its rightful or legal owner or to one who has a better right.[54]

However, in a number of cases in the past, the Court has consistently ruled that if the person claiming to be the owner of the property is in actual possession thereof, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe.[55] The reason for this is that one who is in actual possession of a piece of land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right.[56] The reason being, that his undisturbed possession gives him the continuing right to seek the aid of a court of equity to ascertain the nature of the adverse claim of a third party and its effect on his title, which right can be claimed only by one who is in possession.[57] Thus, considering that Lucia continuously possessed the subject

---

[54] *Leyson v. Bontuyan,* G.R. No. 156357, February 18, 2005, 452 SCRA 94, 113; *Heirs of Pomposa Saludares v. Court of Appeals*, 464 Phil. 958, 966 (2004).

[55] *Aznar Brothers Realty Company v. Aying*, G.R. No. 144773, May 16, 2005, 458 SCRA 496, 510; *Heirs of Jose Olviga v. Court of Appeals*, G.R. No. 104813, October 21, 1993, 227 SCRA 330, 335.

[56] *Delfin v. Billones*, G.R. No. 146550, March 17, 2006, 485 SCRA 38, 50; *Cuizon v. Remoto*, G.R. No. 143027, October 11, 2005, 472 SCRA 274, 287.

[57] *Delfin v. Billones*, *supra* note 56; *Arlegui v. Court of Appeals*, 428 Phil. 381, 398 (2002).

lot, her right to institute a suit to clear the cloud over her title cannot be barred by the statute of limitations.

Having resolved the core issue on the validity of the deed of sale, the Court sees no need to further discuss the remaining matters raised in the petition. Suffice it to state that the concept of inadequacy or non-payment of price is irreconcilable with the concept of simulation. If there exists an actual consideration for transfer evidenced by the alleged act of sale, no matter how inadequate it be, the transaction could not be a "simulated sale."[58] As to filial relationship, *i.e.,* the sale was effected in the name of the daughter only, the same, by itself, cannot be considered an indication of simulation, absent an indication of the absence of intent to be bound by the contract,[59] which in the present case was shown by subsequent acts of the parties.

WHEREFORE, the present petition is *GRANTED*. The Decision dated February 21, 2003 and Resolution dated August 20, 2003 of the Court of Appeals in CA-G.R. CV No. 44857 are *REVERSED and SET ASIDE*. The Deed of Absolute Sale dated April 2, 1979 is declared *NULL and VOID ab initio*. Accordingly, respondent heirs are ordered to reconvey the subject lot to petitioners within fifteen (15) days after the Decision becomes final and executory, failing in which, the Clerk of Court is ordered to execute the Deed of Reconveyance in favor of the petitioners. The respondent Register of Deeds shall cancel TCT No. T-24417 upon presentation of said Deed of Reconveyance and issue a Transfer Certificate of Title in the name of petitioners.

Costs against private respondents.

SO ORDERED.

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

---

[58] *Loyola v. Court of Appeals, supra* note 33, at 186. See also *Bravo-Guerrero v. Bravo,* G.R. No. 152658, July 29, 2005, 465 SCRA 244, 261; *Sps. Buenaventura v. Court of Appeals*, 461 Phil. 761, 772 (2003).

[59] See *Suntay v. Court of Appeals, supra* note 34; *Ramos v. Heirs of Honorio Ramos, Sr.*, *supra* note 29, at 347.

THIRD DIVISION

[G.R. No. 160795. June 27, 2008]

CORINTHIAN GARDENS ASSOCIATION, INC., *petitioner, vs.* **SPOUSES REYNALDO and MARIA LUISA TANJANGCO, and SPOUSES FRANK and TERESITA CUASO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; RIGHT TO INJUNCTIVE RELIEF HAD NOT BEEN CLEARLY AND UNMISTAKABLY DEMONSTRATED; NO PROOF OF MATERIAL AND SUBSTANTIAL INVASION OF RIGHT TO WARRANT INJUNCTION; CASE AT BAR. — The denial was based on sound legal principles. It is axiomatic that to be entitled to the injunctive writ, one must show that there exists a right to be protected which is directly threatened by the act sought to be enjoined. Furthermore, there must be a showing that the invasion of the right is material and substantial, that the right of complainant is clear and unmistakable, and that there is an urgent and paramount necessity for the writ to issue in order to prevent serious damage. In the Cuasos' case, their right to injunctive relief had not been clearly and unmistakably demonstrated. They failed to show proof that there is material and substantial invasion of their right to warrant the issuance of an injunctive writ. Indeed, the enforcement of the writ of execution, which would demolish the Cuasos' perimeter fence, is manifestly prejudicial to their interest. However, they possess no clear and unmistakable legal right that merits protection through the writ of preliminary injunction. Their right to maintain the said fence had been declared inferior to the Tanjangcos' right to the demolition of the fence, after the CA judgment had become final and executory as to the Cuasos.

2. ID.; ID.; ID.; AN INJUNCTION TO STAY A FINAL AND EXECUTORY DECISION IS UNAVAILING EXCEPT ONLY AFTER A SHOWING THAT FACTS AND CIRCUMSTANCES EXIST WHICH WOULD RENDER EXECUTION UNJUST AND INEQUITABLE, OR THAT A CHANGE IN THE

SITUATION OF THE PARTIES OCCURRED; NO SUCH EXEMPTION EXISTS IN CASE AT BAR. — It bears stressing that the Cuasos failed to appeal the ruling of the CA. This failure to contest the CA decision before this Court was fatal to their cause. It had the effect of an admission that they indeed acted in bad faith, as they accepted the CA ruling. The decision of the CA, therefore, became binding and final as to them. As a matter of fact, the CA already issued a partial entry of judgment against the Cuasos. An injunction to stay a final and executory decision is unavailing except only after a showing that facts and circumstances exist which would render execution unjust or inequitable, or that a change in the situation of the parties occurred. Here, no such exception exists as shown by the facts earlier narrated.

3. ID.; ID.; ID.; A PARTY WHO DOES NOT APPEAL IS NOT ENTITLED TO AN AFFIRMATIVE RELIEF. — This Court cannot grant to the Cuasos any affirmative relief as they did not file a petition questioning the CA ruling. Consequently, the Decision of the CA holding that the Cuasos acted in bad faith and that the perimeter fence may now be demolished cannot be put in issue by the Cuasos. It is a fundamental principle that a party who does not appeal, or file a petition for *certiorari*, is not entitled to any affirmative relief. An appellee who is not an appellant may assign errors in his brief where his purpose is to maintain the judgment, but he cannot seek modification or reversal of the judgment or claim affirmative relief unless he has also appealed. This applies to C.B. Paraz and Engr. De Dios who likewise failed to assail the aforementioned CA Decision.

4. CIVIL LAW; QUASI-DELICT; WHEN AN ACT CONSIDERED NEGLIGENT; TEST TO DETERMINE EXISTENCE OF NEGLIGENCE IN A PARTICULAR CASE. — A negligent act is an inadvertent act; it may be merely carelessly done from a lack of ordinary prudence and may be one which creates a situation involving an unreasonable risk to another because of the expectable action of the other, a third person, an animal, or a force of nature. A negligent act is one from which an ordinary prudent person in the actor's position, in the same or similar circumstances, would foresee such an appreciable risk of harm to others as to cause him not to do the act or to do it in a more careful manner. The test to determine the existence

of negligence in a particular case may be stated as follows: Did the defendant in committing the alleged negligent act use that reasonable care and caution which an ordinary person would have used in the same situation? If not, then he is guilty of negligence. The law, in effect, adopts the standard supplied by the imaginary conduct of the discreet *paterfamilias* in Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in a man of ordinary intelligence and prudence, and determines liability according to that standard. By this test, we find Corinthian negligent.

5. ID.; ID.; PETITIONER FAILED TO EXERCISE REQUISITE DILIGENCE IN INSURING THAT THE HOMEOWNERS ABIDE BY ITS MANUAL OF RULES AND REGULATIONS, THEREBY RESULTING IN THE ENCROACHMENT ON THE PROPERTY OF ONE OF ITS HOMEOWNERS. — While the issue of Corinthian's alleged negligence is factual in character, a review by this Court is proper because the CA's factual findings differ from those of the RTC's. Thus, after a meticulous review of the evidence on record, we hold that the CA committed no reversible error when it deviated from the findings of fact of the RTC. The CA's findings and conclusions are substantiated by the evidence on record and are more in accord with law and reason. Indeed, it is clear that Corinthian failed to exercise the requisite diligence in insuring that the Cuasos abide by its Manual of Rules and Regulations, thereby resulting in the encroachment on the Tanjangcos' property.

6. ID.; ID.; ID.; PETITIONER'S FAILURE TO PREVENT THE ENCROACHMENT OF THE PERIMETER WALL OF ONE OF ITS HOMEOWNER'S PROPERTY, DESPITE THE INSPECTION CONDUCTED, CONSTITUTES NEGLIGENCE AND, AT THE VERY LEAST, CONTRIBUTED TO THE INJURY SUFFERED BY THE HOMEOWNERS WHOSE PROPERTY WAS ENCROACHED. — By its Manual of Rules and Regulations, it is reasonable to assume that Corinthian, through its representative, in the approval of building plans, and in the conduct of periodic inspections of on-going construction projects within the subdivision, is responsible in insuring compliance with the approved plans, inclusive of the construction of perimeter walls, which in this case is the

subject of dispute between the Tanjangcos and the Cuasos. It is not just or equitable to relieve Corinthian of any liability when, by its very own rules, it imposes its authority over all its members to the end that "no new construction can be started unless the plans are approved by the Association and the appropriate cash bond and pre-construction fees are paid." Moreover, Corinthian can impose sanctions for violating these rules. Thus, the proposition that the inspection is merely a "table inspection" and, therefore, should exempt Corinthian from liability, is unacceptable. After all, if the supposed inspection is merely a "table inspection" and the approval granted to every member is a mere formality, then the purpose of the rules would be defeated. Compliance therewith would not be mandatory, and sanctions imposed for violations could be disregarded. Corinthian's *imprimatur* on the construction of the Cuasos' perimeter wall over the property of the Tanjangcos assured the Cuasos that everything was in order. In sum, Corinthian's failure to prevent the encroachment of the Cuasos' perimeter wall into Tanjangcos' property — despite the inspection conducted — constitutes negligence and, at the very least, contributed to the injury suffered by the Tanjangcos.

7. ID.; ID.; ID.; REASONABLE AMOUNT OF RENT COULD BE DETERMINED NOT BY JUDICIAL NOTICE, BUT BY SUPPORTING EVIDENCE. — Mere judicial notice is inadequate, because evidence is required for a court to determine the proper rental value. But contrary to Corinthian's arguments, both the RTC and the CA found that indeed rent was due the Tanjangcos because they were deprived of possession and use of their property. This uniform factual finding of the RTC and the CA was based on the evidence presented below. Moreover, in *Spouses Catungal v. Hao,* we considered the increase in the award of rentals as reasonable given the particular circumstances of each case. We noted therein that the respondent denied the petitioners the benefits, including rightful possession, of their property for almost a decade. Similarly, in the instant case, the Tanjangcos were deprived of possession and use of their property for more than two decades through no fault of their own. Thus, we find no cogent reason to disturb the monthly rental fixed by the CA.

APPEARANCES OF COUNSEL

Ongkiko Kalaw Manhit & Acorda Law Office for petitioner.
Feria Feria Lao' Tantoco for Sps. Tanjangco.
Ponce Enrile Reyes & Manalastas for Sps. Cuaso.

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 January 31, 2003 in CA-G.R. CV No. 43217, which reversed and set aside the Decision[3] of the Regional Trial Court (RTC) of Quezon City, dated March 30, 1993.

The Antecedents:

Respondents-spouses Reynaldo and Maria Luisa Tanjangco (the Tanjangcos) own Lots 68 and 69 covered by Transfer Certificates of Title (TCT) No. 242245[4] and 282961[5] respectively, located at Corinthian Gardens Subdivision, Quezon City, which is managed by petitioner Corinthian Gardens Association, Inc. (Corinthian). On the other hand, respondents-spouses Frank and Teresita Cuaso (the Cuasos) own Lot 65 which is adjacent to the Tanjangcos' lots.

Before the Cuasos constructed their house on Lot 65, a relocation survey was necessary. As Geodetic Engineer Democrito De Dios (Engr. De Dios), operating under the business name

---

[1] *Rollo,* pp. 8-53.

[2] Penned by Associate Justice Renato C. Dacudao (now retired), with Associate Justices Eugenio S. Labitoria (now retired) and Danilo B. Pine (now retired), concurring; *id*. at 56-108.

[3] Particularly docketed as Civil Case No. Q-89-2706; *id*. at 172-199.

[4] *Rollo*, pp. 148-149.

[5] *Id*. at 150.

D.M. De Dios Realty and Surveying, conducted all the previous surveys for the subdivision's developer, Corinthian referred Engr. De Dios to the Cuasos. Before, during and after the construction of the said house, Corinthian conducted periodic ocular inspections in order to determine compliance with the approved plans pursuant to the Manual of Rules and Regulations of Corinthian.[6] Unfortunately, after the Cuasos constructed their house employing the services of C.B. Paraz & Construction Co., Inc. (C.B. Paraz) as builder, their perimeter fence encroached on the Tanjangcos' Lot 69 by 87 square meters.

No amicable settlement was reached between the parties. Thus, the Tanjangcos demanded that the Cuasos demolish the perimeter fence but the latter failed and refused, prompting the Tanjangcos to file with the RTC a suit against the Cuasos for Recovery of Possession with Damages.[7]

Eventually, the Cuasos filed a Third-Party Complaint[8] against Corinthian, C.B. Paraz and Engr. De Dios. The Cuasos ascribed negligence to C.B. Paraz for its failure to ascertain the proper specifications of their house, and to Engr. De Dios for his failure to undertake an accurate relocation survey, thereby, exposing them to litigation. The Cuasos also faulted Corinthian for approving their relocation survey and building plans without verifying their accuracy and in making representations as to Engr. De Dios' integrity and competence. The Cuasos alleged that had Corinthian exercised diligence in performing its duty, they would not have been involved in a boundary dispute with the Tanjangcos. Thus, the Cuasos opined that Corinthian should also be held answerable for any damages that they might incur as a result of such construction.

On March 30, 1993, the RTC rendered a Decision in favor of the Tanjangcos. It ruled that the Cuasos' perimeter wall encroached on the land of the Tanjangos by 87 square meters. It, however, ruled that the Cuasos were builders in good faith,

---

[6] *Id*. at 119-139.

[7] *Id*. at 143-147.

[8] *Id*. at 153-164.

and gave the Tanjangcos the option to sell and the Cuasos the option to buy the encroaching portion of the land, at a price to be agreed upon by the parties within sixty (60) days from receipt of the said Decision. In the event that the Cuasos were unable and unwilling to purchase the said portion, the perimeter wall should be demolished at the latter's expense. The RTC also ordered the Cuasos to pay monthly rentals of ₱2,000.00 commencing from the time of the filing of the complaint. The RTC likewise held that C.B. Paraz was grossly negligent in not taking into account the correct boundaries of Cuasos' lot when it constructed the house. It, thus, ordered C.B. Paraz to pay moral and exemplary damages as well as attorney's fees to the Tanjangcos and the Cuasos. The third-party complaint against Corinthian and Engr. De Dios, on the other hand, was dismissed for lack of cause of action.

The Tanjangcos filed a Motion for Reconsideration[9] of the said RTC Decision which the RTC, however, denied in its Order[10] dated June 28, 1993.

Dissatisfied with the RTC ruling, the Tanjangcos, the Cuasos, and C.B. Paraz all appealed to the CA.

On appeal, the CA reversed and set aside the RTC Decision. It held that the Cuasos acted in bad faith in land-grabbing the 87 square meter-portion of Lot 69 as of April 5, 1989. Correlatively, the CA allowed the Tanjangcos to exercise the rights granted under Articles 449, 450, 451 and 549 of the New Civil Code, which include the right to demand the demolition of the offending perimeter wall after reimbursing the Cuasos the necessary expenses for the preservation of the encroached area. The Cuasos were ordered to pay monthly rentals of ₱10,000.00 for the use, enjoyment and occupancy of the lot from 1989 up to the time they vacate the property considering the location and category of the same. They were, likewise, ordered to pay the Tanjangcos ₱100,000.00, as moral damages,

---

[9] *Id*. at 200-207.

[10] *Id*. at 208.

₱50,000.00 as exemplary damages, and ₱150,000.00 as attorney's fees. The CA also imposed six percent (6%) interest per annum on all the awards. The Cuasos' appeal against the Tanjangcos, on the other hand, was dismissed for lack of merit. On the third-party complaints, Corinthian, C.B. Paraz and Engr. De Dios were all found negligent in performing their respective duties and so they were ordered to contribute five percent (5%) each, or a total of fifteen percent (15%) to all judgment sums and amounts that the Cuasos shall eventually pay under the decision, also with interest of six percent (6%) per annum.

Only Corinthian filed a Motion for Reconsideration[11] of the CA Decision within the 15-day reglementary period. No motion for reconsideration was filed by the Cuasos, C.B. Paraz and/or Engr. De Dios.

About six (6) months later, or on August 12, 2003, the Cuasos filed a Comment/Manifestation[12] praying that they be allowed to adopt Corinthian's Motion for Reconsideration.

In its Resolution[13] dated November 14, 2003, the CA denied Corinthian's Motion for Reconsideration.

Hence, Corinthian filed the instant Petition for Review on *Certiorari* assailing the CA Decision and Resolution, and impleading the Cuasos as one of the respondents being the third-party plaintiffs in the RTC.

This Court gave due course to Corinthian's petition and required the parties to submit their respective memorandum.[14] In compliance, the Cuasos submitted their Memorandum[15] and Supplement to Memorandum,[16] which were both noted by this

---

[11] *Id.* at 209-216.

[12] *Id.* at 225-227.

[13] *Id.* at 110-115.

[14] Resolution dated September 15, 2004; *id.* at 308.

[15] *Rollo,* pp. 310-325.

[16] *Id.* at 419-433.

Court in its Resolutions dated January 10, 2005[17] and February 2, 2005,[18] respectively.

In the meantime, the Tanjangcos moved for partial entry of judgment of the CA Decision which was granted by the CA in its Resolution[19] dated May 26, 2006, directing the issuance of an Entry of Judgment and a Certification that its Decision dated January 31, 2003 has become final and executory with respect to the Cuasos, C.B. Paraz and Engr. De Dios for their failure to file an appeal assailing the said Decision before this Court.

The Tanjangcos then moved for the execution of the judgment against the Cuasos, specifically the demolition of the perimeter fence,[20] which was also granted by the RTC in its Order[21] dated December 18, 2006.

Other than the filing of an Opposition[22] and a Motion for Reconsideration[23] before the RTC, the Cuasos prayed for the issuance of a temporary restraining order (TRO) and/or preliminary injunction before this Court to enjoin the demolition of the perimeter fence. They averred that the premature demolition of the alleged encroaching perimeter wall and other improvements will cause grave and irreparable damage to them, because what is sought to be demolished is part of their residence. They claimed that no amount of money will compensate for the damage they stand to suffer should any demolition subsequently prove to be wrongful. They argued that before any execution can be carried out, it is necessary to first determine whether or not Corinthian was negligent in approving the building plan and whether or not

---

[17] *Id.* at 450.

[18] *Id.* at 452.

[19] Penned by Associate Justice Renato C. Dacudao (now retired), with Associate Justices Celia C. Librea-Leagogo and Mariflor Punzalan-Castillo, concurring; *id.* at 457-460.

[20] Motion for Execution dated July 10, 2006; *id.* at 493-501.

[21] *Rollo*, pp. 509-511.

[22] *Id.* at 502-508.

[23] *Id.* at 517-529.

it acted in good faith in doing so. Such determination, according to the Cuasos, will in turn determine whether or not they were in good faith in constructing the house.[24]

The Tanjangcos opposed the Cuasos' application for TRO. They countered that the only pending matter with this Court is the appeal by Corinthian; hence, the implementation of the January 31, 2003 Decision of the CA against the Cuasos will not preempt the outcome of the said pending incidents. Also, any action taken by this Court on Corinthian's petition would not benefit the Cuasos for they did not appeal the adverse decision against them. Accordingly, they cannot obtain affirmative relief from this Court by reason or on account of the appeal taken by Corinthian. The appeal, they added, is personal to Corinthian. Finally, they argued that the Cuasos are now estopped from questioning the enforcement of the CA Decision since they issued a manager's check to pay the money judgment.[25]

In this Court's Resolution dated July 18, 2007, we denied the Cuasos' application for TRO and/or writ of preliminary injunction for lack of merit.

The denial was based on sound legal principles. It is axiomatic that to be entitled to the injunctive writ, one must show that there exists a right to be protected which is directly threatened by the act sought to be enjoined. Furthermore, there must be a showing that the invasion of the right is material and substantial, that the right of complainant is clear and unmistakable, and that there is an urgent and paramount necessity for the writ to issue in order to prevent serious damage.[26]

In the Cuasos' case, their right to injunctive relief had not been clearly and unmistakably demonstrated. They failed to show proof that there is material and substantial invasion of

---

[24] Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction dated May 4, 2007; *id*. at 465-491.

[25] Opposition dated May 17, 2007; *id*. at 556-574.

[26] *Almeida v. Court of Appeals*, G.R. No. 159124, January 17, 2005, 448 SCRA 681, 694.

their right to warrant the issuance of an injunctive writ. Indeed, the enforcement of the writ of execution, which would demolish the Cuasos' perimeter fence, is manifestly prejudicial to their interest. However, they possess no clear and unmistakable legal right that merits protection through the writ of preliminary injunction.[27] Their right to maintain the said fence had been declared inferior to the Tanjangcos' right to the demolition of the fence, after the CA judgment had become final and executory as to the Cuasos.

It bears stressing that the Cuasos failed to appeal the ruling of the CA. This failure to contest the CA decision before this Court was fatal to their cause. It had the effect of an admission that they indeed acted in bad faith, as they accepted the CA ruling. The decision of the CA, therefore, became binding and final as to them.[28] As a matter of fact, the CA already issued a partial entry of judgment against the Cuasos.

An injunction to stay a final and executory decision is unavailing except only after a showing that facts and circumstances exist which would render execution unjust or inequitable, or that a change in the situation of the parties occurred. Here, no such exception exists as shown by the facts earlier narrated.[29]

While it is true that this Court noted the Memorandum and Supplemental Memorandum filed by the Cuasos, such notation

---

[27] *Philippine School of Business Administration-Quezon City v. Tolentino-Genilo*, G.R. No. 159277, December 21, 2004, 447 SCRA 442, 448.

[28] In *GSIS v. Court of Appeals*, 368 Phil. 36, 50 (1999), citing *Firestone Tire and Rubber Company of the Philippines v. Tempongko*, 27 SCRA 418, 424 (1969) and *Singapore Airlines Limited v. Court of Appeals*, 243 SCRA 143, 148 (1995), this Court held: The decision of the trial court as affirmed by the Court of Appeals not having been appealed by the insurer (MIGC) of the Toyota Tamaraw, the same is now final as far as that entity is concerned, and may not be modified by this Court. Failure of any parties to appeal the judgment as against him makes such judgment final and executory. By the same token, an appeal by one party from such judgment does not inure to the benefit of the other party who had not appealed nor can it be deemed to be an appeal of such other party from the judgment against him.

[29] *Philippine Sinter Corporation v. Cagayan Electric Power and Light Co., Inc.*, 431 Phil. 324, 333 (2002).

was made only insofar as Corinthian made them respondents in this petition. This Court cannot grant to the Cuasos any affirmative relief as they did not file a petition questioning the CA ruling. Consequently, the Decision of the CA holding that the Cuasos acted in bad faith and that the perimeter fence may now be demolished cannot be put in issue by the Cuasos. It is a fundamental principle that a party who does not appeal, or file a petition for *certiorari*, is not entitled to any affirmative relief.[30] An appellee who is not an appellant may assign errors in his brief where his purpose is to maintain the judgment, but he cannot seek modification or reversal of the judgment or claim affirmative relief unless he has also appealed.[31] This applies to C.B. Paraz and Engr. De Dios who likewise failed to assail the aforementioned CA Decision.

With this matter put to rest, we now go to the main issues raised by Corinthian, the sole petitioner in this case, to wit:

a) Whether or not there is legal basis for the Court of Appeals to hold petitioner Corinthian Gardens Association, Inc. liable to pay 5% of the judgment money to Sps. Tanjangco on account of the encroachment made by Sps. Cuaso[; and]

b) Whether or not the Court of Appeals has legal basis to increase unilaterally and without proof the amount prayed for in the Complaint, *i.e.*, ₱2,000.00, as reasonable compensation for the use and enjoyment of the portion of the lot encroached upon, to ₱10,000.00.[32]

Corinthian claims that the approval of the building plan of the Cuasos was not tainted with negligence as it did not approve the survey relocation plan but merely the architectural, structural and sanitary plans for Cuasos' house; that the purpose of the said approval is not to ensure that the house to be erected on a particular lot is constructed within its boundaries but only to

---

[30] *Alauya, Jr. v. COMELEC*, 443 Phil. 893, 907 (2003).

[31] *Acebedo Optical Company, Inc. v. Court of Appeals*, 385 Phil. 956, 976 (2000).

[32] Corinthian's Memorandum dated December 6, 2004, *rollo*, pp. 384-385.

ensure compliance with the Manual of Rules and Regulations; that while Corinthian conducts actual site inspections, the inspection and approval of the building plans are limited to "table inspection" only; that the survey relocation plan was never submitted for Corinthian's approval; that the acceptance of the builder's bond did not make Corinthian automatically liable for the encroachment and for damages; and that Corinthian approved the building plan with the good faith and due diligence required under the circumstances. It, thus, concludes that it cannot be held liable to pay five percent (5%) of the money judgment to the Tanjangcos on account of the encroachment made by the Cuasos. Likewise, it finds no legal basis for the CA to unilaterally increase the amount of the adjudged rent from ₱2,000.00 to ₱10,000.00 which was not prayed for by the Tanjangcos in their complaint and in the absence of evidence adduced by the parties.[33]

On the other hand, the Tanjangcos stand by the ruling of the CA and opine that Corinthian was negligent in approving the building plan of the Cuasos. They submit that Corinthian's claim that it merely conducts "table inspections" of buildings further bolsters their argument that Corinthian was negligent in conveniently and unilaterally restricting and limiting the coverage of its approval, contrary to its own Manual of Rules and Regulations; that the acceptance of a builder's bond does not automatically make Corinthian liable but the same affirms the fact that a homeowner can hold it liable for the consequences of the approval of a building plan; and that Corinthian, by regularly demanding and accepting membership dues, must be wary of its responsibility to protect the rights and interests of its members. Lastly, the Tanjangcos contend that a court can take judicial notice of the general increase in the rentals of real estate, as in this case, where the CA considered the value of their lot in the "posh-and-swank" Corinthian Gardens Subdivision and the fact that they were deprived of it for almost two decades. The Tanjangcos pray that this Court sustain the ruling of the CA.[34]

---

[33] *Id.* at 363-407.

[34] Tanjangcos' Memorandum dated November 29, 2004; *id.* at 331-361.

The instant case is obviously one for tort, as governed by Article 2176 of the Civil Code, which provides:

> ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

In every tort case filed under this provision, plaintiff has to prove by a preponderance of evidence: (1) the damages suffered by the plaintiff; (2) the fault or negligence of the defendant or some other person for whose act he must respond; and (3) the connection of cause and effect between the fault or negligence and the damages incurred.[35]

Undeniably, the perimeter fence of the Cuasos encroached on Lot 69 owned by the Tanjangcos by 87 square meters as duly found by both the RTC and the CA in accordance with the evidence on record. As a result, the Tanjangcos suffered damage in having been deprived of the use of that portion of their lot encroached upon. Thus, the primordial issue to be resolved in this case is whether Corinthian was negligent under the circumstances and, if so, whether such negligence contributed to the injury suffered by the Tanjangcos.

A negligent act is an inadvertent act; it may be merely carelessly done from a lack of ordinary prudence and may be one which creates a situation involving an unreasonable risk to another because of the expectable action of the other, a third person, an animal, or a force of nature. A negligent act is one from which an ordinary prudent person in the actor's position, in the same or similar circumstances, would foresee such an appreciable risk of harm to others as to cause him not to do the act or to do it in a more careful manner.[36]

---

[35] *Child Learning Center, Inc. v. Tagorio*, G.R. No. 150920, November 25, 2005, 476 SCRA 236, 242.

[36] *Capili v. Cardaña*, G.R. No. 157906, November 2, 2006, 506 SCRA 569, 575, citing 65 C.J.S. §1(14), p. 462.

The test to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in committing the alleged negligent act use that reasonable care and caution which an ordinary person would have used in the same situation? If not, then he is guilty of negligence. The law, in effect, adopts the standard supplied by the imaginary conduct of the discreet *paterfamilias* in Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in a man of ordinary intelligence and prudence, and determines liability according to that standard.[37]

By this test, we find Corinthian negligent.

While the issue of Corinthian's alleged negligence is factual in character,[38] a review by this Court is proper because the CA's factual findings differ from those of the RTC's.[39] Thus, after a meticulous review of the evidence on record, we hold that the CA committed no reversible error when it deviated from the findings of fact of the RTC. The CA's findings and conclusions are substantiated by the evidence on record and are more in accord with law and reason. Indeed, it is clear that Corinthian failed to exercise the requisite diligence in insuring that the Cuasos abide by its Manual of Rules and Regulations, thereby resulting in the encroachment on the Tanjangcos' property.

We agree with the CA when it aptly held:

> Corinthian cannot and should not be allowed to justify or excuse its negligence by claiming that its approval of the Cuasos' building plans was only limited to a so-called "table inspection"; and not actual site measurement. To accept some such postulate is to put a premium on negligence. Corinthian was not organized solely for

---

[37] *Fernando v. Court of Appeals*, G.R. No. 92087, May 8, 1992, 208 SCRA 714, 718, citing *Picart v. Smith*, 37 Phil. 809, 813 (1992).

[38] *Pestaño v. Sumayang*, 400 Phil. 740, 749 (2000).

[39] *Manila Electric Company v. Court of Appeals*, 413 Phil. 338, 354 (2001).

the defendants Cuasos. It is also the subdivision of the plaintiffs-spouses Tanjangcos — and of all others who have their dwelling units or abodes therein. Pertinently, its Manual of Rules and Regulations stipulates in Section 3 thereof (under the heading Construction), thus:

> **A.** ***Rules and Regulations***
>
> No new construction can be started **unless the building plans are approved by the Association** and the appropriate Builder's cash bond and pre-construction fees are paid. The Association will not allow the entry of construction materials and process identification cards for workers if the above conditions are not complied with. Likewise, all renovations, repairs, additions and improvements to a finished house except electrical wiring, will have to be approved by the Association. Water service connection of a homeowner who undertakes construction work without prior approval of the Association will be cut-off in addition to the sanctions previously mentioned.

It goes without saying that this Manual of Rules and Regulations applies to all — or it does not apply at all. To borrow a popular expression, what is sauce for the gander is sauce for the goose — or ought to be. To put it matter-of-factly and bluntly, thus, its so-called "table inspection" approval of the Cuasos' building plans is no less of an approval, as approvals come and go. And since it is an approval tainted with negligence, the necessary and inevitable consequences which law and justice attach to such negligence must, as a matter of law and justice, also necessarily attach to Corinthian.

And then again third party defendant-appellee Corinthian Garden required the posting of a builder's cash bond (Exh. 5-Corinthian) from the defendants-appellants Cuasos and the third-party defendant C.B. Paraz Construction to secure the performance of their undertaking. Surely, Corinthian does not imply that while it may take the benefits from the Builder's cash bond, it may, Pilate-like, wash its hands of any responsibility or liability that would or might arise from the construction or building of the structure for which the cash bond was in the first place posted. That is not only unjust and immoral, but downright unchristian and iniquitous.

Under the same parity of reasoning, the payment by the appellants-Cuasos to the appellee Corinthian of pre-construction and membership fees in the Association must necessarily entail the creation of certain obligations on the part of Corinthian. For duties and responsibilities

always go hand in hand with rights and privileges. That is the law of life — and that is the law of every civilized society. It is an axiom of equity that he who receives the benefits must share the burdens.[40]

By its Manual of Rules and Regulations, it is reasonable to assume that Corinthian, through its representative, in the approval of building plans, and in the conduct of periodic inspections of on-going construction projects within the subdivision, is responsible in insuring compliance with the approved plans, inclusive of the construction of perimeter walls, which in this case is the subject of dispute between the Tanjangcos and the Cuasos.[41] It is not just or equitable to relieve Corinthian of any liability when, by its very own rules, it imposes its authority over all its members to the end that "no new construction can be started unless the plans are approved by the Association and the appropriate cash bond and pre-construction fees are paid." Moreover, Corinthian can impose sanctions for violating these rules. Thus, the proposition that the inspection is merely a "table inspection" and, therefore, should exempt Corinthian from liability, is unacceptable. After all, if the supposed inspection is merely a "table inspection" and the approval granted to every member is a mere formality, then the purpose of the rules would be defeated. Compliance therewith would not be mandatory, and

---

[40] *Rollo*, pp. 104-105 (Citations omitted).

[41] Art. IV, Section 3(d) of Corinthian's Manual of Rules and Regulations provides:

All on-going construction shall be subject to inspection of the Association's representative for the purpose of determining compliance to the approved plans. It shall be considered a violation if the contractor/lot owner does not permit entry of the Association representative doing inspection works. Such violation will be subject to the sanctions available to the Association such as (a) denial of entry of construction materials (b) renovation of ID's of construction workers and (c) cutting-off of water service. The schedule of inspection shall be as follows:

A. For original construction

x x x x x x x x x

2. **When the perimeter walls are being constructed.**

x x x x x x x x x

sanctions imposed for violations could be disregarded. Corinthian's *imprimatur* on the construction of the Cuasos' perimeter wall over the property of the Tanjangcos assured the Cuasos that everything was in order.

In sum, Corinthian's failure to prevent the encroachment of the Cuasos' perimeter wall into Tanjangcos' property — despite the inspection conducted — constitutes negligence and, at the very least, contributed to the injury suffered by the Tanjangcos.

On the second issue, our ruling in *Spouses Badillo v. Tayag*[42] is instructive:

> Citing *Sia v. Court of Appeals* [272 SCRA 141, May 5, 1997], petitioners argue that the MTC may take judicial notice of the reasonable rental or the general price increase of land in order to determine the amount of rent that may be awarded to them. In that case, however, this Court relied on the CA's factual findings, which were based on the evidence presented before the trial court. In determining reasonable rent, the RTC therein took account of the following factors: 1) the realty assessment of the land, 2) the increase in realty taxes, and 3) the prevailing rate of rentals in the vicinity. Clearly, the trial court relied, not on mere judicial notice, but on the evidence presented before it.
>
> Indeed, courts may fix the reasonable amount of rent for the use and occupation of a disputed property. However, petitioners herein erred in assuming that courts, in determining the amount of rent, could simply rely on their own appreciation of land values without considering any evidence. As we have said earlier, a court may fix the reasonable amount of rent, but it must still base its action on the evidence adduced by the parties.
>
> In *Herrera v. Bollos* [G.R. No. 138258, January 18, 2002], the trial court awarded rent to the defendants in a forcible entry case. Reversing the RTC, this Court declared that the reasonable amount of rent could be determined not by mere judicial notice, but by supporting evidence:
>
> > x x x A court cannot take judicial notice of a factual matter in controversy. The court may take judicial notice of matters of

---

[42] 448 Phil. 606, 623 (2003).

> public knowledge, or which are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. Before taking such judicial notice, the court must "allow the parties to be heard thereon." Hence, there can be no judicial notice on the rental value of the premises in question without supporting evidence.

Truly, mere judicial notice is inadequate, because evidence is required for a court to determine the proper rental value. But contrary to Corinthian's arguments, both the RTC and the CA found that indeed rent was due the Tanjangcos because they were deprived of possession and use of their property. This uniform factual finding of the RTC and the CA was based on the evidence presented below. Moreover, in *Spouses Catungal v. Hao*,[43] we considered the increase in the award of rentals as reasonable given the particular circumstances of each case. We noted therein that the respondent denied the petitioners the benefits, including rightful possession, of their property for almost a decade.

Similarly, in the instant case, the Tanjangcos were deprived of possession and use of their property for more than two decades through no fault of their own. Thus, we find no cogent reason to disturb the monthly rental fixed by the CA.

All told, the CA committed no reversible error.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

---

[43] 407 Phil. 309, 323 (2001).

THIRD DIVISION

[G.R. No. 160898. June 27, 2008]

DAVID SIA TIO and ROBERT SIA TIO, *petitioners, vs.* **LORENZO ABAYATA, TEODULO ABAYATA, FELICIANO ABAYATA MIRANDO, AUREA ABAYATA GODINEZ, DOLORES ABAYATA PULVERA, CASILDA ABAYATA BOOC, RAFAELA ABAYATA BAGANO, JEREMIAS ABAYATA and the HEIRS OF ELENA ABAYATA MANATAD, namely: ALVIN, JESELA, ELENITA, CHONA and SUZETTE represented in this instance by their father ANTONIO MANATAD,** *respondents.*[*]

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; CONTENTS OF PETITION; PETITION SHALL STATE THE FULL NAMES OF THE APPEALING PARTY AS THE PETITIONER AND THE ADVERSE PARTY AS RESPONDENT. — The Court notes a formal defect in the petition in that spouses Lasola and the Rural Bank were not impleaded as parties to the present petition; rather, they were merely mentioned in the title as defendants-appellants, their designation in the appeal before the CA. Under Section 4 (a), Rule 45 of the Rules of Court, it is required that the petition shall state the full names of the appealing party as the petitioner **and the adverse party as the respondent**, without impleading the lower courts or judges thereof either as petitioners or respondents. The Lasolas and the Rural Bank are undoubtedly adverse parties, specially since petitioners have a cross-claim against them; and one of the issues, including their arguments, raised in their petition involves said parties. The result of such failure, fundamentally, will be that said parties cannot be compelled to abide by and comply with the Court's Decision,

[*] Benajamin A. Lasola, Jr., Columbina Montesclaros Lasola and the Community Rural Bank of Tabogon (Cebu), Inc., defendants-appellants in the Court of Appeals, were not included as parties in the present petition.

as it will not be binding on them. No man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by any judgment rendered by the court.

2. ID.; ID.; QUESTIONS OF FACT ARE NOT APPROPRIATE IN A PETITION FOR REVIEW, EXCEPT WHEN THE JUDGMENT IS BASED ON A MISAPPREHENSION OF FACTS; CASE AT BAR. — As a general rule, the question of whether or not a person is a purchaser in good faith is a factual matter that will not be delved into by this Court, since only questions of law may be raised in petitions for review. The rule, however, admits of certain exceptions, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; **(4) when the judgment is based on a misapprehension of facts**; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and **(11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion**. In the present case, a review of the records shows that both the RTC and the CA not only misapprehended but also overlooked relevant facts which warrant a reversal of their respective Decisions and a dismissal of Civil Case No. 2230-L.

3. CIVIL LAW; SPECIAL CONTRACTS; SALES; OWNERSHIP OF THE SUBJECT PROPERTY HAS ALREADY BEEN LEGITIMATELY TRANSFERRED TO PETITIONERS WHO ARE INNOCENT PURCHASERS FOR VALUE AND IN GOOD FAITH. — An equitable mortgage has been defined as one which although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as

security for a debt, and contains nothing impossible or contrary to law. The mortgagor retains ownership over the property but subject to foreclosure and sale at public auction upon failure of the mortgagor to pay his obligation. The Court notes, however, that there is a dearth of evidence in Civil Case No. 2230-L that will prove that respondents, or their predecessor-in-interest, Celedonio Abayata (Celedonio), redeemed the property in the amount and within the period provided by the RTC in Civil Case No. 620-L. Respondents even failed to allege in their complaint in Civil Case No. 2230-L that they were able to pay off their monetary obligation to Lasola. It was patently erroneous for the RTC to categorically rule that Celedonio retained title to the property and respondents became owners thereof by succession in the absence of any allegation or evidence that will establish that Celedonio or respondents were able to redeem the property within 30 days from the time the judgment in Civil Case No. 620-L became final and executory. Such failure on respondents' part is fatal, as they failed to lay the basis for their right to file Civil Case No. 2230-L. Even assuming that, indeed, they are the rightful owners of the subject property at the time of the filing of Civil Case No. 2230-L, the Court finds that ownership of the property has already been legitimately transferred to petitioners who are innocent purchasers for value and in good faith.

4. ID.; ID.; ID.; DEFENDANT RURAL BANK IS A MORTGAGEE IN BAD FAITH; THE BANK DID NOT EXERCISE THE DUE DILIGENCE REQUIRED OF BANKING AND FINANCIAL INSTITUTIONS BEFORE ENTERING INTO A MORTGAGE CONTRACT. — The Rural Bank is a mortgagee in bad faith. Records confirm that the Rural Bank did not exercise the due diligence required of banking and financial institutions before entering into the mortgage contract with Lasola. As a banking institution, it is expected to exercise due diligence before entering into a mortgage contract. The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations. Moreover, it did not appeal the CA Decision dated May 15, 2003 and Resolution dated October 6, 2003, which affirmed the RTC Decision dated November 29, 1996. Thus, for all intents and purposes, the RTC's finding that the Rural Bank was a mortgagee in bad faith is final and binding upon it.

5. ID.; ID.; ID.; THE DOCTRINE THAT A FRAUDULENT TITLE MAY BE THE ROOT OF A VALID TITLE IN THE NAME OF AN INNOCENT BUYER FOR VALUE AND IN GOOD FAITH APPLIES TO PETITIONERS. — The subject property was acquired by the Rural Bank in a foreclosure proceeding as the highest bidder for which a Certificate of Sale and "Definite Deed of Sale" were issued by the Sheriff in its favor; and was subsequently sold by the Rural Bank to petitioners who, as borne out by evidence, are purchasers in good faith. The doctrine that a fraudulent title may be the root of a valid title in the name of an innocent buyer for value and in good faith applies to petitioners. A purchaser in good faith is one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price for the same at the time of such purchase or before he has notice of the claim of another person. The sources of notice are the title, the recordings on the title and the land itself.

6. ID.; ID.; ID.; WHERE THE LAND SOLD IS IN THE POSSESSION OF A PERSON OTHER THAN THE VENDOR, THE PURCHASER MUST GO BEYOND THE CERTIFICATE OF TITLE AND MAKE INQUIRIES CONCERNING THE ACTUAL POSSESSOR. — The rule has always been that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property. Where there is nothing in the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore further than what the Torrens Title upon its face indicates in quest for any hidden defects or inchoate right that may subsequently defeat his right thereto. **However, where the land sold is in the possession of a person other than the vendor, the purchaser must go beyond the certificate of title and make inquiries concerning the actual possessor**. A buyer of real property which is in possession of another must be wary and investigate the rights of the latter. Otherwise, without such inquiry, the buyer cannot be said to be in good faith and cannot have any right over the property.

7. ID.; ID.; ID.; PETITIONERS WERE WITHOUT ACTUAL NOTICE OF RESPONDENTS' CLAIM OF OWNERSHIP

OVER THE PROPERTY, AND WHICH CLAIM WAS NOT DISCOVERABLE BY THEM AFTER EXAMINING THE TITLE, THE ANNOTATIONS ON THE TITLE, AND AN OBSERVATION OF THE PROPERTY, THEN THEY ARE ENTITLED TO A GOOD FAITH STATUS. — Petitioners bought the property in 1989 from the Rural Bank. While at the time of the sale, title to the property still remained in the name of Lasola, the Rural Bank had documents showing that it bought the property in a valid foreclosure proceeding. Notices of extra-judicial sale were published. An auction sale was held with the Rural Bank as the lone and highest bidder. A Certificate of Sale was issued by the Deputy Provincial Sheriff in favor of the Rural Bank. After the lapse of the one-year redemption period, a Definite Deed of Sale was executed by the RTC-Cebu Sheriff in favor of the Rural Bank. The Certificate of Sale and the Definite Deed of Sale, including the Real Estate Mortgage between Lasola and the Rural Bank, were inscribed on Lasola's title. What's more, petitioners even went beyond the Rural Bank's documents and together with a Rural Bank representative, inspected the property. When confronted with the presence of houses on the property, they were led to believe by the Rural Bank's representative that the occupants were merely squatters whose occupation was being tolerated by the Rural Bank. It should be emphasized that the prudence required of petitioners is not that of a person with training in law, but rather that of an average man who "weighs facts and circumstances without resorting to the calibration of our technical rules of evidence of which his knowledge is nil." Rather, he relies on the calculus of common sense of which all reasonable men have an abundance. And, "by law and jurisprudence, a mistake upon a doubtful or difficult question of law may properly be the basis of good faith." Thus, since petitioners were without actual notice of respondents' claim of ownership over the property, and which claim was not discoverable by them after examining the title, the annotations on the title, and an observation of the property, then they are entitled to a good faith status.

8. ID.; ID.; ID.; RESPONDENTS ARE GUILTY OF LACHES. — Respondents have only themselves to blame. They are guilty of laches. As early as the filing of Civil Case No. 620-L some time in 1982, they were well aware that the property was already titled in Lasola's name. From that date, up to the time the RTC rendered its Decision in 1986, they did not do anything to

protect their rights over the property. *First,* they did not cause an inscription of a notice of *lis pendens* on Lasola's title. Without a notice of *lis pendens,* a third party who acquires the property after relying only on the certificate of title is a purchaser in good faith. Against such third party, the supposed rights of a litigant cannot prevail, because the former is not bound by the property owner's undertakings not annotated in the transfer certificate of title. *Second,* respondents likewise did not cause an inscription of the subsequent RTC Decision on Lasola's title showing that they were given the right to redeem the property within 30 days from finality of the Decision dated November 26, 1986. Had they done so, petitioners would have been forewarned of the cloud of doubt hovering over Lasola's claim of ownership, and any transfer of the property to an innocent third person for value would have been avoided and the claim of the real owner preserved. *Vigilantibus sed non dormientibus jura subveniunt*. The law aids the vigilant, not those who slumber on their rights.

9. ID.; ID.; ID.; MERE INADEQUACY OF PRICE IS NOT *IPSO FACTO* A BADGE OF LACK OF GOOD FAITH. — Mere inadequacy of price is not *ipso facto* a badge of lack of good faith. To be so, the price must be grossly inadequate or shocking to the conscience such that the mind revolts against it and such that a reasonable man would neither directly nor indirectly be likely to consent to it. While there is an apparent wide disparity in the value of the subject property between 1989 and 1990, undisputed attendant circumstances show the reasonableness of the purchase price of the sale between Lasola and the Rural Bank. It must be stressed that the property was mortgaged by Lasola to the Rural Bank for ₱100,000.00. It was bought by the Rural Bank at the extra-judicial sale at ₱108,185.34. Also, the Certificate Authorizing Registration issued by the Bureau of Internal Revenue to petitioners shows that the prevailing fair market value of the property in 1989 was ₱85,260.00. All these show that the price in the amount of ₱150,000.00 paid by petitioners for the purchase of the property was within reasonable bounds.

10. ID.; DAMAGES; PETITIONERS ARE NOT ENTITLED TO MORAL AND EXEMPLARY DAMAGES AND EVEN ATTORNEY'S FEES; REASONS; CASE AT BAR. — Petitioners are not entitled to damages they prayed for in their

counterclaim and cross-claim filed before the RTC. In order that moral damages may be awarded, there must be proof of moral suffering, mental anguish, fright and the like. While petitioners alleged in their Answer with counterclaim and cross-claim that they suffered mental anguish, serious anxiety and sleepless nights, they failed to prove them during the trial. There is nothing in their testimonies that will support their claim for damages. In fact, petitioner Robert Tio's testimony was not even offered by counsel for such purpose. It should be stressed that mere allegations do not suffice; they must be substantiated by clear and convincing proof. Petitioners' prayer for exemplary damages cannot be sustained under Article 2234 of the Civil Code. Petitioners failed to show that they are entitled to moral damages. They likewise failed to plead and prove that they are entitled to temperate or compensatory damages. Also, petitioners are not entitled to attorney's fees and litigation expenses as the right to litigate should bear no premium. In the same vein, the Court likewise denies petitioners' claim for damages against respondents since it has not been shown that the filing of the complaint before the RTC was imbued with bad faith.

APPEARANCES OF COUNSEL

Delfin V. Nacua for petitioners.
Florido & Largo Law Office for respondents.
Sitoy Go Go & Associates for Community Rural Bank of Tabogon, Inc.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Assailed in the present Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the Decision[1] dated May 6, 2003 and Resolution[2] dated October 8, 2003, rendered by

[1] Penned by Associate Justice B.A. Adefuin-Dela Cruz, with Associate Justices Jose L. Sabio, Jr. and Hakim S. Abdulwahid, concurring, *rollo*, p. 30.

[2] *Id*. at 54.

the Court of Appeals (CA) in CA-G.R. CV No. 56665, dismissing the appeal of David Sia Tio and Robert Sia Tio (petitioners) and affirming the Decision dated November 29, 1996 of Regional Trial Court (RTC) of Lapu-Lapu City, Branch 54, in Civil Case No. 2230-L.

Civil Case No. 2230-L is an action for annulment of mortgage, mortgage sale, a subsequent sale and certificates of title, filed by the successors-in-interest of Celedonio Abayata (respondents) with the RTC on March 12, 1990. It was respondents' contention that they are the absolute owners of the property in dispute, a 1,868-square meter parcel of land located in Lapu-Lapu City, Cebu, by virtue of a final Decision dated November 26, 1986, rendered by the RTC of Lapu-Lapu City, Branch 27, in Civil Case No. 620-L.[3] Respondents alleged that through machinations, defendant Benjamin Lasola (Lasola) was able to register the property in his name under Transfer Certificate of Title (TCT) No. 11428 and mortgage it to secure a loan from the Commercial Rural Bank of Tabogon (Cebu), Inc. (Rural Bank). In turn, the Rural Bank foreclosed the mortgage and sold the property to petitioners who registered the property under TCT No. 20006.

Petitioners and the Rural Bank filed their respective Answers claiming that they were innocent purchasers for value and in good faith. Defendant Lasola and his wife were declared in default.[4]

On November 29, 1996, the RTC rendered its Decision in favor of respondents. The dispositive portion of the RTC Decision reads:

> WHEREFORE, premises considered, the Court renders judgment for the plaintiffs [respondents] and against the defendants [petitioners together with Lasola and Rural Bank] and hereby:
>
> a) Declares Transfer Certificate of Title No. 11428 in the name of defendant Benjamin S. Lasola, Jr. as null and void;

---

[3] Records, pp. 9-23.

[4] *Rollo*, p. 119.

b) Declares the real estate mortgage entered by defendants Lasolas and Community Rural Bank of Tabogon (Cebu), Inc. as null and void;

c) Declares the subsequent auction sale and and the certificate of sale, as well as the definite deed of sale, as null and void;

d) Declares the Deed of Sale dated May 30, 1989 (Exhibit "10") in favor of defendants Tios as null and void;

e) Declares Transfer Certificate of Title No. 20006 in the names of defendants David Sia Tio and Robert Sia Tio as null and void;

f) Declares the plaintiffs as the absolute owners of Lot No. 1, the property subject of this controversy, and orders the Register of Deeds of Lapu-lapu City to issue a new certificate of title in their names;

g) Orders the defendants to pay plaintiffs jointly and severally the sums of ₱20,000.00 as moral damages and ₱20,000.00 as attorney's fees;

h) Orders the defendants to pay the costs of this suit;

i) Dismisses all counterclaims for lack of merit.

SO ORDERED.[5]

The petitioners and the Rural Bank appealed to the CA. In the assailed Decision dated May 6, 2003, the CA dismissed the appeals, to wit:

WHEREFORE, premises considered, the assailed decision dated November 29, 1996 is hereby AFFIRMED *in toto*, and the present appeals are hereby DISMISSED for lack of merit.

SO ORDERED.[6]

Petitioners filed a motion for reconsideration but it was denied by the CA in its Resolution dated October 8, 2003.

Hence, the present petition on the following grounds:

---

[5] Records, p. 282.

[6] CA *rollo*, p. 207.

1. That with grave abuse of discretion amounting to excess of jurisdiction, the lower court grossly erred: that even granting arguendo that defendant Benjammin (sic) Lasola and defendant-appellant Community Rural Bank of Tabogon (Cebu) Inc., acted in good faith in not disclosing to the petitioners the existence of civil case No. 620-L, RTC-Lapu Lapu City, Branch 27, decided on November 26, 1986, and/or annotating the notice of *lis pendens*, the lower court did not declare that the plaintiffs, the Abayatas now respondents were also Equally Guilty of BAD FAITH in not complying with the mandate of Sec. 14, Rule 13, Rules of Court and Section 78, PD 1529, thus said plaintiffs and defendants defeated the laudable purpose of the said laws;

2. That with grave abuse of discretion the lower court did not apply the second part of Sec. 1 Art. III, Constitution which mandates equal protection of law to all persons.

3. That with grave abuse of discretion, the lower court wittingly or unwittingly, failed to award to the petitioners, the amount of damages stated in the counter claim and cross-claim, considering that the cross-defendants Rural Bank of Tabogon (Cebu) Inc., and defendant Benjamin Lasola as well as the plaintiffs/respondents were all guilty of Bad faith;

4. That with grave abuse of discretion, the lower court erred in not dismissing outright this case by reason of prescription, pursuant to Art. 1391 Civil Code and/or laches;

5. That with grave abuse of discretion, the lower court erred in concluding that the ₱100,000.00 loan of Benjamin Lasola from the Bank with a collateral allegedly worth of ₱800,000.00 excites suspicion, hence, both defendants-appellants were guilty of Bad faith.[7]

As a preliminary matter, the Court notes a formal defect in the petition in that spouses Lasola and the Rural Bank were not impleaded as parties to the present petition; rather, they were merely mentioned in the title as defendants-appellants, their designation in the appeal before the CA. Under Section 4(a), Rule 45 of the Rules of Court, it is required that the petition shall state the full names of the appealing party as the petitioner **and the adverse party as the respondent**, without impleading the lower courts or judges thereof either as petitioners or

[7] *Rollo*, pp. 20-21.

respondents. The Lasolas and the Rural Bank are undoubtedly adverse parties, specially since petitioners have a cross-claim against them;[8] and one of the issues, including their arguments, raised in their petition involves said parties.[9] The result of such failure, fundamentally, will be that said parties cannot be compelled to abide by and comply with the Court's Decision, as it will not be binding on them. No man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by any judgment rendered by the court.[10]

Nonetheless, the Court may disregard such flaw[11] since no prejudice will be caused to said parties, as they were original parties before the RTC;[12] and the Rural Bank, which was furnished all the pleadings and resolutions in this petition, even filed its own Comment[13] and Memorandum[14] before the Court.

The principal issue in this case is whether petitioners are innocent purchasers for value and in good faith.

As a general rule, the question of whether or not a person is a purchaser in good faith is a factual matter that will not be delved into by this Court, since only questions of law may be raised in petitions for review.[15] The rule, however, admits of certain exceptions, to wit:

(1) when the findings are grounded entirely on speculation, surmises or conjectures;

---

[8] Records, pp. 32-33.

[9] *Rollo*, p. 13.

[10] *Civil Service Commission v. Sebastian*, G.R. No. 161733, October 11, 2005, 472 SCRA 364, 375.

[11] *Asia Traders Insurance Corporation v. Court of Appeals*, 467 Phil. 531, 536 (2004).

[12] The Lasola spouses were declared in default before the RTC, records, p. 90.

[13] *Rollo*, pp. 81-85.

[14] *Id.* at 105-130.

[15] *Chua v. Soriano*, G.R. No. 150066, April 13, 2007, 521 SCRA 68, 77.

(2) when the inference made is manifestly mistaken, absurd or impossible;

(3) when there is grave abuse of discretion;

(**4) when the judgment is based on a misapprehension of facts;**

(5) when the findings of fact are conflicting;

(6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;

(7) when the findings are contrary to the trial court;

(8) when the findings are conclusions without citation of specific evidence on which they are based;

(9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;

(10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and

(11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[16] (Emphasis supplied)

In the present case, a review of the records shows that both the RTC and the CA not only misapprehended but also overlooked relevant facts which warrant a reversal of their respective Decisions and a dismissal of Civil Case No. 2230-L.

To begin with, in claiming ownership over the property, respondents chiefly relied on the Decision dated November 26, 1986, rendered by the RTC of Lapu-Lapu City, Branch 27, in Civil Case No. 620-L, which was an action for the recovery of property and ownership filed by Lasola against them. In Civil Case No. 620-L, Lasola posited that he is the owner of the property and is entitled to its possession by virtue of the Deed of Sale executed between him and the respondents' predecessor-

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

in-interest, Celedonio Abayata. In the RTC Decision dated November 26, 1986, the sale between Lasola and Abayata was pronounced as one of equitable mortgage. The dispositive portion of said Decision reads:

> WHEREFORE, judgment is hereby rendered in favor of the defendants [respondents] and against the plaintiff [Lasola] **declaring the deed of sale Exhibit I, an equitable mortgage and allowing the defendants to redeem the property for ₱27,440.00 within thirty (30) days from the date this judgment becomes final and executory. Failure on the part of the defendants to redeem the property within the period specified above, the property in question is hereby ordered sold at public auction** in order to realize the sum of ₱27,440.00 payable to the plaintiff as redemption price and the legal expenditures in connection thereto. Whatever proceeds thereof is hereby ordered turned over to the defendants. Without pronouncement as to costs.
>
> SO ORDERED.[17] (Emphasis supplied)

Based on said Decision, respondents filed Civil Case No. 2230-L, the progenitor of the present petition against the petitioners, Lasola and the Rural Bank.

An equitable mortgage has been defined as one which although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, and contains nothing impossible or contrary to law.[18] The mortgagor retains ownership over the property but subject to foreclosure and sale at public auction upon failure of the mortgagor to pay his obligation.[19]

The Court notes, however, that there is a dearth of evidence in Civil Case No. 2230-L that will prove that respondents, or their predecessor-in-interest, Celedonio Abayata (Celedonio),

---

[17] Records, p. 23.

[18] *Lumayag v. Heirs of Jacinto Nemeño*, G.R. No. 162112, July 3, 2007, 526 SCRA 315, 325.

[19] *Roberts v. Papio*, G.R. No. 166714, February 9, 2007, 515 SCRA 346, 368.

redeemed the property in the amount and within the period provided by the RTC in Civil Case No. 620-L. Respondents even failed to allege in their complaint in Civil Case No. 2230-L that they were able to pay off their monetary obligation to Lasola. It was patently erroneous for the RTC to categorically rule that Celedonio retained title to the property and respondents became owners thereof by succession in the absence of any allegation or evidence that will establish that Celedonio or respondents were able to redeem the property within 30 days from the time the judgment in Civil Case No. 620-L became final and executory.[20] Such failure on respondents' part is fatal, as they failed to lay the basis for their right to file Civil Case No. 2230-L.

Even assuming that, indeed, they are the rightful owners of the subject property at the time of the filing of Civil Case No. 2230-L, the Court finds that ownership of the property has already been legitimately transferred to petitioners who are innocent purchasers for value and in good faith.

Ineluctably, the Rural Bank is a mortgagee in bad faith. Records confirm that the Rural Bank did not exercise the due diligence required of banking and financial institutions before entering into the mortgage contract with Lasola. As aptly found by the RTC:

> [D]efendant Rural Bank was not a mortgagee in good faith because of its failure to examine more closely the title of the mortgagors despite the first-hand knowledge that other persons, and not the would-be mortgagors, were in possession of the property. The very fact that the lot was not in the possession of the Lasolas should have put the defendant bank on guard and prompted it to make a more thorough inquiry into the ownership of the lot. x x x the defendant Rural Bank relied on the representation of Banjamin Lasola that the residents on the lot were squatters. There is no showing that it inquired from the residents themselves as to who the real owners were, something it would have done if it were reasonably diligent and prudent in verifying the true ownership of the lot. Instead, as testified to by Mrs. Lechido, the bank relied merely on the declarations of Benjamin

[20] *Supra* note 17.

Lasola and one resident on the lot that the houses were built and occupied by squatters. x x x[21]

As a banking institution, it is expected to exercise due diligence before entering into a mortgage contract. The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations.[22]

Moreover, it did not appeal the CA Decision dated May 15, 2003 and Resolution dated October 6, 2003, which affirmed the RTC Decision dated November 29, 1996. Thus, for all intents and purposes, the RTC's finding that the Rural Bank was a mortgagee in bad faith is final and binding upon it.[23]

The subject property was acquired by the Rural Bank in a foreclosure proceeding as the highest bidder for which a Certificate of Sale and "Definite Deed of Sale" were issued by the Sheriff in its favor; and was subsequently sold by the Rural Bank to petitioners who, as borne out by evidence, are purchasers in good faith.

The doctrine that a fraudulent title may be the root of a valid title in the name of an innocent buyer for value and in good faith[24] applies to petitioners.

A purchaser in good faith is one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price for the same at the time of such purchase or before he has notice of the claim of another person.[25] The sources of notice are the title, the recordings on the title and the land itself.

---

[21] Records, pp. 278-279.

[22] *Bank of Commerce v. San Pablo, Jr.*, G.R. No. 167848, April 27, 2007, 522 SCRA 713, 728.

[23] *Rural Bank of Sta. Maria, Pangasinan v. Court of Appeals*, 373 Phil. 27, 45 (1999).

[24] *Republic of the Philippines v. Agunoy, Sr.*, G.R. No. 155394, February 17, 2005, 451 SCRA 735, 738.

[25] *Cruz v. Court of Appeals*, 346 Phil. 506, 512 (1997).

The rule has always been that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property. Where there is nothing in the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore further than what the Torrens Title upon its face indicates in quest for any hidden defects or inchoate right that may subsequently defeat his right thereto.[26] **However, where the land sold is in the possession of a person other than the vendor, the purchaser must go beyond the certificate of title and make inquiries concerning the actual possessor.** A buyer of real property which is in possession of another must be wary and investigate the rights of the latter. Otherwise, without such inquiry, the buyer cannot be said to be in good faith and cannot have any right over the property.[27]

Petitioners bought the property in 1989 from the Rural Bank. While at the time of the sale, title to the property still remained in the name of Lasola, the Rural Bank had documents showing that it bought the property in a valid foreclosure proceeding. Notices of extra-judicial sale were published.[28] An auction sale was held with the Rural Bank as the lone and highest bidder.[29] A Certificate of Sale was issued by the Deputy Provincial Sheriff in favor of the Rural Bank.[30] After the lapse of the one-year redemption period, a Definite Deed of Sale was executed by the RTC-Cebu Sheriff in favor of the Rural Bank.[31] The Certificate of Sale and the Definite Deed of Sale, including the Real Estate Mortgage between Lasola and the Rural Bank, were inscribed

---

[26] *Chua v. Soriano, supra* note 15, at 79.

[27] *Philippine National Bank v. Heirs of Estanislao Militar*, G.R. No. 164801, June 30, 2006, 494 SCRA 308, 315.

[28] Records, pp. 165-166.

[29] *Id.* at 167.

[30] *Id.*

[31] *Id.* at 168.

on Lasola's title.[32] What's more, petitioners even went beyond the Rural Bank's documents and together with a Rural Bank representative, inspected the property. When confronted with the presence of houses on the property, they were led to believe by the Rural Bank's representative that the occupants were merely squatters whose occupation was being tolerated by the Rural Bank.[33]

It should be emphasized that the prudence required of petitioners is not that of a person with training in law, but rather that of an average man who "weighs facts and circumstances without resorting to the calibration of our technical rules of evidence of which his knowledge is nil." Rather, he relies on the calculus of common sense of which all reasonable men have an abundance. And, "by law and jurisprudence, a mistake upon a doubtful or difficult question of law may properly be the basis of good faith."[34]

Thus, since petitioners were without actual notice of respondents' claim of ownership over the property, and which claim was not discoverable by them after examining the title, the annotations on the title, and an observation of the property, then they are entitled to a good faith status.

Besides, respondents have only themselves to blame. They are guilty of laches. As early as the filing of Civil Case No. 620-L some time in 1982,[35] they were well aware that the property was already titled in Lasola's name.[36] From that date, up to the time the RTC rendered its Decision in 1986, they did not do anything to protect their rights over the property. *First*, they did not cause an inscription of a notice of *lis pendens* on Lasola's title. Without a notice of *lis pendens*, a third party who acquires

---

[32] *Id.* at 159-160.

[33] TSN, October 26, 1994, pp. 4-5.

[34] *Philippine National Bank v. Heirs of Estanislao Militar, supra* note 27, at 316-317.

[35] TSN, July 24, 1995, pp. 4-5.

[36] Records, p. 3.

the property after relying only on the certificate of title is a purchaser in good faith. Against such third party, the supposed rights of a litigant cannot prevail, because the former is not bound by the property owner's undertakings not annotated in the transfer certificate of title.[37] *Second*, respondents likewise did not cause an inscription of the subsequent RTC Decision on Lasola's title showing that they were given the right to redeem the property within 30 days from finality of the Decision dated November 26, 1986. Had they done so, petitioners would have been forewarned of the cloud of doubt hovering over Lasola's claim of ownership, and any transfer of the property to an innocent third person for value would have been avoided and the claim of the real owner preserved.[38] *Vigilantibus sed non dormientibus jura subveniunt.* The law aids the vigilant, not those who slumber on their rights.[39]

The RTC and the CA make much ado of the fact that petitioners bought the 1,686-square meter property in 1989 only at ₱150,000.00 or ₱88.96 per square meter, while the Bureau of Internal Revenue's zonal valuation thereof in 1990 was between ₱850.00 and ₱1,000.00 per square meter.[40] This argument however, is specious.

Mere inadequacy of price is not *ipso facto* a badge of lack of good faith. To be so, the price must be grossly inadequate or shocking to the conscience such that the mind revolts against it and such that a reasonable man would neither directly nor indirectly be likely to consent to it.[41] While there is an apparent wide disparity in the value of the subject property between 1989 and 1990, undisputed attendant circumstances show the reasonableness of the purchase price of the sale between Lasola

---

[37] *Heirs of Eugenio Lopez, Sr. v. Enriquez*, G.R. No. 146262, January 21, 2005, 449 SCRA 173, 186-187.

[38] *Id.* at 190.

[39] *Id.* at 195.

[40] See RTC Decision, p. 15.

[41] *Acabal v. Acabal*, G.R. No. 148376, March 31, 2005, 454 SCRA 555, 573.

and the Rural Bank. It must be stressed that the property was mortgaged by Lasola to the Rural Bank for ₱100,000.00. It was bought by the Rural Bank at the extra-judicial sale at ₱108,185.34. Also, the Certificate Authorizing Registration issued by the Bureau of Internal Revenue to petitioners shows that the prevailing fair market value of the property in 1989 was ₱85,260.00.[42] All these show that the price in the amount of ₱150,000.00 paid by petitioners for the purchase of the property was within reasonable bounds.

Finally, petitioners are not entitled to damages they prayed for in their counterclaim and cross-claim filed before the RTC. In order that moral damages may be awarded, there must be proof of moral suffering, mental anguish, fright and the like. While petitioners alleged in their Answer with counterclaim and cross-claim that they suffered mental anguish, serious anxiety and sleepless nights, they failed to prove them during the trial. There is nothing in their testimonies that will support their claim for damages. In fact, petitioner Robert Tio's testimony was not even offered by counsel for such purpose.[43] It should be stressed that mere allegations do not suffice; they must be substantiated by clear and convincing proof.[44]

Petitioners' prayer for exemplary damages cannot be sustained under Article 2234 of the Civil Code, to wit:

> Article 2234. When the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether of not exemplary damages would be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.

---

[42] Records, p. 174.

[43] TSN, January 23, 1996, pp. 3-4.

[44] *Mahinay v. Velasquez, Jr.*, 464 Phil. 146, 149 (2004).

Petitioners failed to show that they are entitled to moral damages. They likewise failed to plead and prove that they are entitled to temperate or compensatory damages.

Also, petitioners are not entitled to attorney's fees and litigation expenses as the right to litigate should bear no premium.[45] In the same vein, the Court likewise denies petitioners' claim for damages against respondents since it has not been shown that the filing of the complaint before the RTC was imbued with bad faith.[46]

WHEREFORE, the petition is *GRANTED*. The Decision dated May 6, 2003 and Resolution dated October 8, 2003, rendered by the Court of Appeals in CA-G.R. CV No. 56665 are *REVERSED and SET ASIDE* and Civil Case No. 2230-L is *DISMISSED*.

Petitioners' counterclaim against respondents and cross-claim against the Commercial Rural Bank of Tabogon (Cebu), Inc. are *DENIED* for lack of merit.

SO ORDERED.

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

---

[45] *Republic of the Philippines v. Lorenzo Shipping Corporation*, G.R. No. 153563, February 7, 2005, 450 SCRA 550, 558.

[46] *Industrial Insurance Company, Inc. v. Bondad*, 386 Phil. 923, 934 (2000).

THIRD DIVISION

[G.R. No. 161539. June 27, 2008]

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC., *petitioner, vs.* **FGU INSURANCE CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; LIMITED ONLY TO QUESTIONS OF LAW; EXCEPTIONS TO THE RULE; NOT APPLICABLE IN CASE AT BAR. — The rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on *certiorari.* This rule, however, is not ironclad and admits certain exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. In the present case, there is nothing on record which will show that it falls within the exceptions. Hence, the petition must be denied.

2. MERCANTILE LAW; MARINE INSURANCE; EXTENT OF PETITIONER'S LIABILITY SHOULD COVER THE ACTUAL VALUE OF THE LOST SHIPMENT AND NOT THE ₱3,500.00 LIMIT PER PACKAGE UNDER PHILIPPINE PORTS AUTHORITY ADMINISTRATIVE ORDER NO. 10-81 (PPA AO-1081); BY ITS OWN ACT OF NOT CHARGING THE CORRESPONDING ARRASTRE FEES BASED ON THE VALUE OF THE SHIPMENT AFTER

IT CAME TO KNOW OF SUCH DECLARED VALUE FROM THE MARINE INSURANCE POLICY, PETITIONER CANNOT ESCAPE LIABILITY FOR THE ACTUAL VALUE OF THE SHIPMENT. — It must be emphasized that a marine risk note is not an insurance policy. It is only an acknowledgment or declaration of the insurer confirming the specific shipment covered by its marine open policy, the evaluation of the cargo and the chargeable premium. It is the marine open policy which is the main insurance contract. In other words, the marine open policy is the blanket insurance to be undertaken by FGU on all goods to be shipped by RAGC during the existence of the contract, while the marine risk note specifies the particular goods/shipment insured by FGU on that specific transaction, including the sum insured, the shipment particulars as well as the premium paid for such shipment. In any event, as it stands, it is evident that even prior to the cancellation by FGU of Marine Open Policy No. MOP-12763 on June 10, 1994, it had already undertaken to insure the shipment of the 400 kgs. of silver nitrate, specially since RAGC had already paid the premium on the insurance of said shipment.

3. ID.; ID.; A MARINE RISK NOTE IS NOT AN INSURANCE POLICY; IT IS ONLY AN ACKNOWLEDGMENT OR DECLARATION OF THE INSURER CONFIRMING THE SPECIFIC SHIPMENT COVERED BY THE MARINE OPEN POLICY WHICH IS THE MAIN INSURANCE CONTRACT. — Jurisprudence has it that the marine insurance policy needs to be presented in evidence before the trial court or even belatedly before the appellate court. In *Malayan Insurance Co., Inc. v. Regis Brokerage Corp*., the Court stated that the presentation of the marine insurance policy was necessary, as the issues raised therein arose from the very existence of an insurance contract between Malayan Insurance and its consignee, ABB Koppel, even prior to the loss of the shipment. In *Wallem Philippines Shipping, Inc. v. Prudential Guarantee and Assurance, Inc*., the Court ruled that the insurance contract must be presented in evidence in order to determine the extent of the coverage. This was also the ruling of the Court in *Home Insurance Corporation v. Court of Appeals.*

4. ID.; ID.; THE MARINE INSURANCE POLICY SHOULD BE PRESENTED IN EVIDENCE BEFORE THE TRIAL COURT OR EVEN BELATEDLY BEFORE THE APPELLATE

COURT; EXCEPTIONS TO THE RULE; APPLICABLE IN CASE AT BAR. — As in every general rule, there are admitted exceptions. In *Delsan Transport Lines, Inc. v. Court of Appeals,* the Court stated that the presentation of the insurance policy was not fatal because the loss of the cargo undoubtedly occurred while on board the petitioner's vessel, unlike in *Home Insurance* in which the cargo passed through several stages with different parties and it could not be determined when the damage to the cargo occurred, such that the insurer should be liable for it. As in *Delsan,* there is no doubt that the loss of the cargo in the present case occurred while in petitioner's custody. Moreover, there is no issue as regards the provisions of Marine Open Policy No. MOP-12763, such that the presentation of the contract itself is necessary for perusal, not to mention that its existence was already admitted by petitioner in open court. And even though it was not offered in evidence, it still can be considered by the court as long as they have been properly identified by testimony duly recorded and they have themselves been incorporated in the records of the case.

5. ID.; ID.; THE COURT OF APPEALS DID NOT COMMIT ANY ERROR IN ITS IMPOSITION OF A 12% INTEREST ON PETITIONER'S ADJUDGED LIABILITY. — Petitioner questions the imposition of a 12% interest rate, instead of 6%, on its adjudged liability. The ruling in *Prudential Guarantee and Assurance Inc. v. Trans-Asia Shipping Lines, Inc.,* to wit: This Court in *Eastern Shipping Lines, Inc. v. Court of Appeals,* inscribed the rule of thumb in the application of interest to be imposed on obligations, regardless of their source. *Eastern* emphasized beyond cavil that when the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, regardless of whether the obligation involves a loan or forbearance of money, 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. We find application of the rule in the case at bar proper, thus, a rate of 12% per annum from the finality of judgment until the full satisfaction thereof must be imposed on the total amount of liability adjudged to PRUDENTIAL. It is clear that **the interim period from the finality of judgment until the satisfaction of the same is deemed equivalent to a forbearance of credit, hence, the imposition of the**

aforesaid interest. is instructive. The CA did not commit any error in applying the same.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioner.
Dollete Blanco Ejercito & Associates for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

In a Decision dated July 1, 1999 in Civil Case No. 95-73532, the Regional Trial Court (RTC) of Manila, Branch 30, ordered International Container Terminal Services, Inc. (petitioner) to pay FGU Insurance Corporation (respondent) the following sums: (1) ₱1,875,068.88 with 12% interest per annum from January 3, 1995 until fully paid; (2) ₱50,000.00 as attorney's fees; and (3) ₱10,000.00 as litigation expenses.[1]

Petitioner's liability arose from a lost shipment of "14 Cardboards 400 kgs. of Silver Nitrate 63.53 FCT Analytically Pure (purity 99.98 PCT)," shipped by Hapag-Lloyd AG through the vessel Hannover Express from Hamburg, Germany on July 10, 1994, with Manila, Philippines as the port of discharge, and Republic Asahi Glass Corporation (RAGC) as consignee. Said shipment was insured by FGU Insurance Corporation (FGU). When RAGC's customs broker, Desma Cargo Handlers, Inc., was claiming the shipment, petitioner, which was the arrastre contractor, could not find it in its storage area. At the behest of petitioner, the National Bureau of Investigation (NBI) conducted an investigation. The AAREMA Marine and Cargo Surveyors, Inc. also conducted an inquiry. Both found that the shipment was lost while in the custody and responsibility of petitioner.

As insurer, FGU paid RAGC the amount of ₱1,835,068.88 on January 3, 1995.[2] In turn, FGU sought reimbursement from

[1] Records, p. 480.

[2] Records, p. 18.

petitioner, but the latter refused. This constrained FGU to file with the RTC of Manila Civil Case No. 95-73532 for a sum of money.

After trial, the RTC rendered its Decision dated July 1, 1999 finding petitioner liable.

Petitioner appealed to the Court of Appeals (CA), which, in the assailed Decision[3] dated October 22, 2003, affirmed the RTC Decision. Petitioner filed a motion for reconsideration which the CA denied in its Resolution dated January 8, 2004.[4]

Hence, the present petition for review on *certiorari* under Rule 45 of the Rules of Court, with the following assignment of errors:

1. THE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO APPLY THE LIMITATION OF LIABILITY OF ₱3,5000 PER PACKAGE WHICH LIMITS PETITIONER'S LIABILITY, IF ANY, TO A TOTAL OF ONLY ₱49,000.00 PURSUANT TO PPA ADMINISTRATIVE ORDER NO. 10-81.

2. THE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING THE MARINE OPEN POLICY DESPITE THE FACT THAT THE SAME WAS NO LONGER IN FORCE AT THE TIME THE SHIPMENT WAS LOADED ON BOARD THE CARRYING VESSEL.

3. THE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO DISMISS THE COMPLAINT ON THE GROUND OF RESPONDENT'S FAILURE TO OFFER THE INSURANCE POLICY IN EVIDENCE PURSUANT TO THIS HONORABLE COURT'S DECISION IN *HOME INSURANCE CORPORATION VS. COURT OF APPEALS* (225 SCRA 411) *AND THE FAIRLY RECENT DECISION IN WALLEM PHILIPPINES SHIPPING, INC. AND SEACOAST MARITIME CORP. VS. PRUDENTIAL GUARANTEE AND ASSURANCE, INC. AND COURT OF APPEALS*, G.R. NO. 152158, 07 FEBRUARY 2003.

---

[3] Penned by Associate Justice Roberto A. Barrios, with the concurrence of Associate Justices Juan Q. Enriquez, Jr. and Arsenio J. Magpale, CA *rollo*, pp. 186-195.

[4] *Id.* at 232-233.

4. ASSUMING *ARGUENDO* THAT PETITIONER IS LIABLE, THE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE AWARD OF 12% INTEREST DESPITE THE FACT THAT THE OBLIGATION PURPORTEDLY BREACHED DOES NOT CONSTITUTE A LOAN OF FORBEARANCE OF MONEY AND DESPITE THE CLEAR GUIDELINES SET FORTH BY THIS HONORABLE COURT IN *EASTERN SHIPPING LINES, INC. VS. COURT OF APPEALS* (234 SCRA 78).[5]

The rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on *certiorari*. This rule, however, is not ironclad and admits certain exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[6] In the present case, there is nothing on record which will show that it falls within the exceptions. Hence, the petition must be denied.

Petitioner posits that its liability for the lost shipment should be limited to ₱3,500.00 per package as provided in Philippine Ports Authority Administrative Order No. 10-81 (PPA AO 10-81), under Article VI, Section 6.01 of which provides:

Section 6.01. Responsibility and Liability for Losses and Damages; Exceptions — The CONTRACTOR shall at its own expense handle

---

[5] *Rollo*, p. 35.

[6] *Philippine Charter Insurance Corporation v. Unknown Owner of the Vessel M/V "National Honor,"* G.R. No. 161833, July 8, 2005, 463 SCRA 202, 215.

all merchandise in all work undertaken by it hereunder deligently [sic] and in a skillful, workman-like and efficient manner; that the CONTRACTOR shall be solely responsible as an independent CONTRACTOR, and hereby agrees to accept liability and to promptly pay to the shipping company consignees, consignors or other interested party or parties for the loss, damage, or non-delivery of cargoes to the extent of the actual invoice value of each package which in no case shall be more than THREE THOUSAND FIVE HUNDRED PESOS (₱3,500.00) (for import cargo) x x x for each package **unless the value of the cargo importation is otherwise specified or manifested or communicated in writing together with the declared bill of lading value and supported by a certified packing list to the CONTRACTOR by the interested party or parties before the discharge x x x of the goods,** as well as all damage that may be suffered on account of loss, damage, or destruction of any merchandise while in custody or under the control of the CONTRACTOR in any pier, shed, warehouse facility or other designated place under the supervision of the AUTHORITY x x x.[7] (Emphasis supplied)

The CA summarily ruled that PPA AO 10-81 is not applicable to this case without laying out the reasons therefor.

PPA AO 10-81 is the management contract between by the Philippine Ports Authority and the cargo handling services providers. In *Summa Insurance Corporation v. Court of Appeals*,[8] the Court ruled that:

In the performance of its job, an arrastre operator is bound by the management contract it had executed with the Bureau of Customs. However, a management contract, which is a sort of a stipulation *pour autrui* within the meaning of Article 1311 of the Civil Code, is also binding on a consignee because it is incorporated in the gate pass and delivery receipt which must be presented by the consignee before delivery can be effected to it. The insurer, as successor-in-interest of the consignee, is likewise bound by the management contract. Indeed, upon taking delivery of the cargo, a consignee (and necessarily its successor-in-interest) tacitly accepts the provisions of the management contract, including those which are intended to

[7] Records, pp. 440-442.

[8] 323 Phil. 214 (1996).

limit the liability of one of the contracting parties, the arrastre operator.

However, a consignee who does not avail of the services of the arrastre operator is not bound by the management contract. Such an exception to the rule does not obtain here as the consignee did in fact accept delivery of the cargo from the arrastre operator.[9]

While it appears in the present case that the RAGC availed itself of petitioner's services and therefore, PPA AO 10-81 should apply, the Court finds that the extent of petitioner's liability should cover the actual value of the lost shipment and not the ₱3,500.00 limit per package as provided in said Order.

It is borne by the records that when Desma Cargo Handlers was negotiating for the discharge of the shipment, it presented Hapag-Lloyd's Bill of Lading,[10] Degussa's Commercial Invoice, which indicates that value of the shipment, including seafreight charges, was DM94.960,00 (CFR Manila);[11] and Degussa's Packing List, which likewise notes that the value of the shipment was DM94.960,00.[12] It is highly unlikely that petitioner was not made aware of the actual value of the shipment, since it had to examine the pertinent documents for stripping purposes and, later on, for the discharge of the shipment to the consignee or its representative. In fact, the NBI Report dated September 26, 1994 on the investigation conducted by it regarding the loss of the shipment shows that petitioner's Admeasurer Rosco Esquibal was shown the Bill of Lading by Desma Brokerage's representative, Rey Villanueva.[13] Esquibal also stated that another representative of Desma Brokerage, Joey Laurente, went to their office and furnished him a copy of the "processed papers of the fourteen cartons of Asahi Glass cargoes."[14]

---

[9] *Id*. at 223-224.

[10] Records, p. 361.

[11] *Id*. at 362-364.

[12] *Id*. at 365-367.

[13] *Id*. at 343-344.

[14] *Id*. at 344.

By its own act of not charging the corresponding arrastre fees based on the value of the shipment after it came to know of such declared value from the marine insurance policy, petitioner cannot escape liability for the actual value of the shipment. The value of the merchandise or shipment may be declared or stated not only in the bill of lading or shipping manifest, but also in other documents required by law before the shipment is cleared from the piers.[15]

Petitioner insists that Marine Open Policy No. MOP-12763 under which the shipment was insured was no longer in force at the time it was loaded on board the Hannover Express on June 10, 1994, as provided in the Endorsement portion of the policy, which states: "IT IS HEREBY DECLARED AND AGREED that effective June 10, 1994, this policy is deemed CANCELLED."[16] FGU, on the other hand, insists that it was under Marine Risk Note No. 9798, which was executed on May 26, 1994, that said shipment was covered.

It must be emphasized that a marine risk note is not an insurance policy. It is only an acknowledgment or declaration of the insurer confirming the specific shipment covered by its marine open policy, the evaluation of the cargo and the chargeable premium.[17] It is the marine open policy which is the main insurance contract. In other words, the marine open policy is the blanket insurance to be undertaken by FGU on all goods to be shipped by RAGC during the existence of the contract, while the marine risk note specifies the particular goods/shipment insured by FGU on that specific transaction, including the sum insured, the shipment particulars as well as the premium paid for such shipment. In any event, as it stands, it is evident that even prior to the cancellation by FGU of Marine Open Policy No. MOP-12763 on June 10, 1994, it had already undertaken to insure the shipment

---

[15] *Villaruel v. Manila Port Service,* 131 Phil. 438, 444-445 (1968).

[16] Records, p. 395.

[17] *Aboitiz Shipping Corporation v. Philippine American General Insurance Co.*, G.R. No. 77530, October 5, 1989, 178 SCRA 357, 360-361.

of the 400 kgs. of silver nitrate, specially since RAGC had already paid the premium on the insurance of said shipment.

Indeed, jurisprudence has it that the marine insurance policy needs to be presented in evidence before the trial court or even belatedly before the appellate court. In *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.*,[18] the Court stated that the presentation of the marine insurance policy was necessary, as the issues raised therein arose from the very existence of an insurance contract between Malayan Insurance and its consignee, ABB Koppel, even prior to the loss of the shipment. In *Wallem Philippines Shipping, Inc. v. Prudential Guarantee and Assurance, Inc.*,[19] the Court ruled that the insurance contract must be presented in evidence in order to determine the extent of the coverage. This was also the ruling of the Court in *Home Insurance Corporation v. Court of Appeals*.[20]

However, as in every general rule, there are admitted exceptions. In *Delsan Transport Lines, Inc. v. Court of Appeals*,[21] the Court stated that the presentation of the insurance policy was not fatal because the loss of the cargo undoubtedly occurred while on board the petitioner's vessel, unlike in *Home Insurance* in which the cargo passed through several stages with different parties and it could not be determined when the damage to the cargo occurred, such that the insurer should be liable for it.

As in *Delsan*, there is no doubt that the loss of the cargo in the present case occurred while in petitioner's custody. Moreover, there is no issue as regards the provisions of Marine Open Policy No. MOP-12763, such that the presentation of the contract itself is necessary for perusal, not to mention that its existence was already admitted by petitioner in open court.[22] And even though it was not offered in evidence, it still can be considered

---

[18] G.R. No. 172156, November 23, 2007, 538 SCRA 681, 688.

[19] 445 Phil. 136, 153 (2003).

[20] G.R. No. 109293, August 18, 1993, 225 SCRA 411, 416.

[21] 420 Phil. 824, 835 (2001).

[22] See CA Decision, *supra* note 3, at 192.

by the court as long as they have been properly identified by testimony duly recorded and they have themselves been incorporated in the records of the case.[23]

Finally, petitioner questions the imposition of a 12% interest rate, instead of 6%, on its adjudged liability. The ruling in *Prudential Guarantee and Assurance Inc. v. Trans-Asia Shipping Lines, Inc.*,[24] to wit:

> This Court in *Eastern Shipping Lines, Inc. v. Court of Appeals*, inscribed the rule of thumb in the application of interest to be imposed on obligations, regardless of their source. *Eastern* emphasized beyond cavil that when the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, regardless of whether the obligation involves a loan or forbearance of money, 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.
>
> We find application of the rule in the case at bar proper, thus, a rate of 12% per annum from the finality of judgment until the full satisfaction thereof must be imposed on the total amount of liability adjudged to PRUDENTIAL. It is clear that **the interim period from the finality of judgment until the satisfaction of the same is deemed equivalent to a forbearance of credit, hence, the imposition of the aforesaid interest**.[25] (Emphasis supplied)

is instructive. The CA did not commit any error in applying the same.

The Court notes, however, an apparent clerical error made in the dispositive portion of the RTC Decision. While it appears that FGU paid RAGC the amount of **₱1,835,068.88**, as shown in the Subrogation Receipt,[26] as prayed for in its Complaint,[27]

---

[23] *People of the Philippines v. Libnao*, 443 Phil. 506, 519 (2003); *Mato v. Court of Appeals*, 320 Phil. 344, 349 (1995).

[24] G.R. No. 151890, June 20, 2006, 491 SCRA 411.

[25] *Id.* at 448-450.

[26] Records, p. 18.

[27] *Id.* at 5.

the RTC awarded the sum of **₱1,875,068.88**. Thus, a necessary modification should be made on this score.

WHEREFORE, the petition is *DENIED*. The Decision dated October 22, 2003 and Resolution dated January 8, 2004 of the Court of Appeals are *AFFIRMED*, with the modification that the award in the RTC Decision dated July 1, 1999 should be **₱1,835,068.88** instead of **₱1,875,068.88**.

Costs against petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 162411. June 27, 2008]

NASIPIT INTEGRATED ARRASTRE AND STEVEDORING SERVICES, INC. (NIASSI), represented by RAMON M. CALO, *petitioner, vs.* **NASIPIT EMPLOYEES LABOR UNION (NELU)-ALU-TUCP, represented by DONELL P. DAGANI,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; WAGES; WAGE ORDER NO. RXIII-02 (WO RXIII-02) ISSUED BY THE REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD OF CARAGA REGION (WAGE BOARD) AND ITS IMPLEMENTING RULES AND REGULATIONS (IRR's) APPLIES ONLY TO MINIMUM WAGE EARNERS; NECESSARY EXCLUDED ARE THOSE RECEIVING A WAGE RATE HIGHER THAN THE

PRESCRIBED MINIMUM WAGE. — It is abundantly clear from the abovequoted provisions of WO RXIII-02 and its IRR that only minimum wage earners are entitled to the prescribed wage increase. *Expressio unius est exclusio alterius.* The express mention of one person, thing, act, or consequence excludes all others. The beneficent, operative provision of WO RXIII-02 is specific enough to cover only minimum wage earners. Necessarily excluded are those receiving rates above the prescribed minimum wage. The only situation when employees receiving a wage rate higher than that prescribed by the WO RXIII-02 may still benefit from the order is, as indicated in Sec. 1 (c) of the IRRs, through the correction of wage distortions.

2. ID.; ID.; ID.; IT WOULD BE HIGHLY IRREGULAR FOR THE WAGE BOARD TO ISSUE AN ACROSS-THE-BOARD WAGE INCREASE, ITS MANDATE BEING LIMITED TO DETERMINING AND FIXING THE MINIMUM WAGE RATES WITHIN ITS AREA OF CONCERN AND TO ISSUE THE CORRESPONDING WAGE ORDERS AND IMPLEMENTING RULES. — It would be highly irregular for the Wage Board to issue an across-the-board wage increase, its mandate being limited to determining and fixing the minimum wage rates within its area of concern, in this case the Caraga Region, and to issue the corresponding wage orders and implementing rules. In *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission*, the Court elucidated on the authority of the Regional Tripartite Wages and Productivity Board, thus: R.A. No. 6727 declared it a policy of the State to rationalize the fixing of minimum wages and to promote productivity improvement and gain-sharing measures to ensure a decent standard of living for the workers and their families; to guarantee the rights of labor to its just share in the fruits of production; to enhance employment generation in the countryside through industrial dispersal; and to allow business and industry reasonable returns on investment, expansion and growth. In line with its declared policy, R.A. No. 6727 created the NWPC, vested with the power to prescribe rules and guidelines for the determination of appropriate minimum wage and productivity measures at the regional, provincial or industry levels; and authorized the RTWPB to determine and fix the minimum wage rates applicable in their respective regions, provinces, or industries therein and issue

the corresponding wage orders, subject to the guidelines issued by the NWPC. Pursuant to its wage fixing authority, the RTWPB may issue wage orders which set the daily minimum wage rates, based on the standards or criteria set by Article 124 of the Labor Code.

3. ID.; ID.; ID.; IT WOULD BE AN *ULTRA VIRES* AND UNREASONABLE ACT FOR THE WAGE BOARD TO PRESCRIBE A WAGE INCREASE CUTTING ACROSS ALL LEVELS OF EMPLOYMENT AND WAGE BRACKETS. — The Court held that a RTWPB commits *ultra vires* and unreasonable act when, instead of setting a minimum wage rate, it prescribes a wage increase cutting across all levels of employment and wage brackets: In the present case, the RTWPB did not determine or fix the minimum wage rate by the "floor-wage method" or the "salary-ceiling method" in issuing the Wage Order. The RTWPB did not set a wage level nor a range to which a wage adjustment or increase shall be added. Instead, it granted an across-the-board wage increase of ₱15.00 to all employees and workers of Region 2. In doing so, the RTWPB exceeded its authority by extending the coverage of the Wage Orders to wage earners receiving more than the prevailing minimum wage rate, without a denominated salary ceiling. As correctly pointed out by the OSG, the Wage Order granted additional benefits not contemplated by R.A. No. 6727.

4. ID.; ID.; ID.; ONLY EMPLOYEES RECEIVING SALARIES BELOW THE PRESCRIBE MINIMUM WAGE ARE ENTITLED TO THE WAGE INCREASE SET FORTH UNDER WO RXIII-02, WITHOUT PREJUDICE TO THE GRANT OF INCREASE TO CORRECT WAGE DISTORTIONS CONSEQUENT TO THE IMPLEMENTATION OF SUCH WAGE ORDER. — Only employees receiving salaries below the prescribed minimum wage are entitled to the wage increase set forth under WO RXIII-02, without prejudice, of course, to the grant of increase to correct wage distortions consequent to the implementation of such wage order. Considering that NIASSI's employees are undisputedly already receiving a wage rate higher than that prescribed by the wage order, NIASSI is not legally obliged to grant them wage increase.

5. ID.; ID.; ID.; IT IS NOT ALWAYS POSSIBLE TO RESOLVE EVERY DISPUTE TO FURTHER THE CAUSE OF LABOR;

JUSTICE IS GRANTED TO THE DESERVING AND DISPENSED IN THE LIGHT OF ESTABLISHED FACTS AND THE APPLICABLE LAW AND DOCTRINE. — Petitioner's reliance on the CBA provision and on the flawed arbitrator's case disposition is really misplaced. Consider that in his decision, Chavez, after admitting that NIASSI's employees were receiving a wage rate higher than the prescribed minimum wage, proceeded to fault NIASSI for not presenting evidence to show that the overage or excess resulted from general wage increases granted by the company itself within one year from the effectivity of the CBA in 1997. By simplistically utilizing the adage "doubt is resolved in labor," instead of relying on the case records and the evidence adduced, the voluntary arbitrator extended the coverage of WO RXIII-02 to include those who, by the terms of the order, are not supposed to receive the benefit. If only the voluntary arbitrator was circumspect enough to consider the facts on hand, he would have seen that the CBA provision on non-creditability finds no application in the present case, because creditability is not the real issue in this case. And neither is the interpretation of the CBA provision. The real issue in this case, as discussed above, is the coverage and application of WO RXIII-02. While it behooves the Court to accord protection to the working class, tilting the balance of justice in its favor whenever appropriate, it is not possible to resolve every dispute to further the cause of labor. In every case, justice is to be granted to the deserving and dispensed in the light of established facts and the applicable law and doctrine, as here.

APPEARANCES OF COUNSEL

Reserva Filoteo Law Office for petitioner.
Seno Mendoza and Associates for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

This petition for review[1] under Rule 45 seeks to nullify and set aside the Decision[2] dated September 30, 2003 and Resolution[3] dated January 9, 2004, both issued by the Court of Appeals (CA) in CA-G.R. SP No. 70435 which dismissed petitioner Nasipit Integrated Arrastre & Stevedoring Services, Inc.'s (NIASSI's) petition for review of the Decision[4] dated February 22, 2002 rendered by Voluntary Arbitrator Jesus G. Chavez in VA Case No. 0925-XIII-08-003-01A.

The records yield the following facts:

NIASSI is a domestic corporation with office at Talisay, Nasipit, Agusan del Norte. Respondent Nasipit Employees Labor Union (Union) was — and may still be — the collective bargaining agent of the rank-and-file employees of NIASSI and is a local chapter of the Associated Labor Union.

The dispute started when, in October 1999, the Regional Tripartite Wages and Productivity Board (Wage Board) of Caraga Region in Northeastern Mindanao issued Wage Order No. (WO) RXIII-02 which granted an additional PhP12 per day cost of living allowance to the minimum wage earners in that region. Owing allegedly to NIASSI's failure to implement the wage order, the Union filed a complaint before the Department of Labor and Employment (DOLE) Caraga Regional Office for the inspection of NIASSI's records and the enforcement of WO RXIII-02. A DOLE inspection team was accordingly dispatched to NIASSI. In its reports dated May 30, 2000 and November 28, 2000, the inspection team stated that WO RXIII-

---

[1] *Rollo*, pp. 7-28.

[2] *Id*. at 32-41. Penned by Associate Justice Juan Q. Enriquez and concurred in by Associate Justices Bienvenido L. Reyes and Edgardo F. Sundiam.

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

[4] *Id* at 69-72.

02 was not applicable to NIASSI's employees since they were already receiving a wage rate higher than the prescribed minimum wage.

Upon motion by the Union, the DOLE Regional Director indorsed the case to the National Labor Relations Commission (NLRC) Regional Arbitration Branch for further hearing. On May 18, 2001, Executive Labor Arbiter Rogelio P. Legaspi, in turn, referred the case to the National Conciliation and Mediation Board (NCMB) for voluntary arbitration.

The case was, accordingly, referred to the NCMB which docketed the same as VA Case No. 0925-XIII-08-003-01A.

On February 22, 2002, Voluntary Arbitrator Jesus G. Chavez rendered a decision granting the Union's prayer for the implementation of WO RXIII-02 on the rationale that WO RXIII-02 did not specifically prohibit the grant of wage increase to employees earning above the minimum wage. On the contrary, Chavez said, the wage order specifically enumerated those who are outside its coverage, but did not include in the enumeration those earning above the minimum wage. He also held that the Collective Bargaining Agreement (CBA) between NIASSI and the Union provides that wage increases granted by the company within one year from CBA signing shall not be creditable to future legally mandated wage increases. The voluntary arbitrator further held that NIASSI would not incur any damage from the implementation of WO RXIII-02 since NIASSI's petition to increase the tariff rates for all cargoes — to counter the financial burden of implementing WO RXIII-02 — had been granted and had been in effect since February 16, 2000.

Following the denial of its motion for reconsideration, NIASSI filed with the CA a petition for review under Rule 43 of the Rules of Court to nullify the February 22, 2002 Decision of Chavez. The petition was docketed as CA-G.R. SP. No. 70435.

By a decision dated September 30, 2003, the CA found the decision of the voluntary arbitrator and the premises holding it together to be in order and, accordingly, dismissed NIASSI's petition for review.

NIASSI is now before the Court via this Petition for Review on *Certiorari*, ascribing to the CA the commission of several errors all which resolve themselves into the question of whether or not WO RXIII-02 applies or covers NIASSI's employees.

The Court's Ruling

In gist, NIASSI argues that its employees enjoy a daily wage level higher than the minimum wage mandated by the subject wage order; thus, the wage order is not applicable. Corollary to this argument, NIASSI contends that the Wage Board did not envision a wage order with an "across-the-board" wage increase effect; thus, it could be made to apply only to minimum wage earners. As a final point, NIASSI states that, since WO RXIII-02 is not applicable, the issue respecting the interpretation of the NIASSI-Union CBA provision on wage crediting finds no application either.

As a counterpoint, the Union maintains that Section 2, Article XIX of the CBA clearly mandates the implementation of WO RXIII-02 to cover all NIASSI's employees. While admitting that the new wage rates specifically finds application only to minimum wage earners, the Union would nonetheless argue that WO RXIII-02, as couched, does not specifically prohibit the grant of wage increase to employees already receiving wages over the prescribed minimum wage.

The petition is impressed with merit.

The main issue in this case is whether WO RXIII-02 may be made to apply and cover Nasipit's employees who, at the time of the issuance and effectivity of the wage order, were already receiving a wage rate higher than the prevailing minimum wage.

The pertinent portion of WO RXIII-02 provides, as follows:

Section 1. COVERAGE. The rates prescribed under this Wage Order shall apply to **minimum wage earners** in the private sector regardless of their position designation or status and irrespective of the method by which their wages are paid.

Not covered by the provisions of this Order are household or domestic helpers and persons employed in the personal service of another, including family drivers. (Emphasis supplied.)

The provision of the wage order's Implementing Rules and Regulations (IRR)[5] pertinent to the instant issue reads, as follows:

RULE II
NEW MINIMUM WAGE RATES

Section 1. COVERAGE

a. The minimum wage rates prescribed under the Order shall apply to the **minimum wage earners** in the private sector regardless of their position, designation or status and irrespective of the method by which their wages are paid.

b. Not covered by the provision of the Order are household or domestic helpers or persons employed in the personal service of another including family drivers.

c. Workers and employees who, prior to the effectivity of the Order were receiving a basic wage rate per day or its monthly equivalent of more than those prescribed under the Order, may receive wage increases **through the correction of wage distortions** in accordance with Section 1, Rule IV of this Rules. (Emphasis supplied.)

It is abundantly clear from the above quoted provisions of WO RXIII-02 and its IRR that only minimum wage earners are entitled to the prescribed wage increase. *Expressio unius est exclusio alterius*.[6] The express mention of one person, thing, act, or consequence excludes all others. The beneficent, operative provision of WO RXIII-02 is specific enough to cover only minimum wage earners. Necessarily excluded are those receiving rates above the prescribed minimum wage. The only situation when employees receiving a wage rate higher than that prescribed by the WO RXIII-02 may still benefit from the order is, as indicated in Sec. 1 (c) of the IRRs, through the correction of wage distortions.

---

[5] *Id.* at 94-104.

[6] *Commissioner of Customs v. Court of Tax Appeals*, G.R. Nos. L-48886-88, July 21, 1993, 224 SCRA 665, 669-670.

In any case, it would be highly irregular for the Wage Board to issue an across-the-board wage increase, its mandate being limited to determining and fixing the minimum wage rates within its area of concern, in this case the Caraga Region, and to issue the corresponding wage orders and implementing rules. In *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission*, the Court elucidated on the authority of the Regional Tripartite Wages and Productivity Board, thus:

> R.A. No. 6727 declared it a policy of the State to rationalize the fixing of minimum wages and to promote productivity improvement and gain-sharing measures to ensure a decent standard of living for the workers and their families; to guarantee the rights of labor to its just share in the fruits of production; to enhance employment generation in the countryside through industrial dispersal; and to allow business and industry reasonable returns on investment, expansion and growth.
>
> In line with its declared policy, R.A. No. 6727 created the NWPC, vested with the power to prescribe rules and guidelines for the determination of appropriate minimum wage and productivity measures at the regional, provincial or industry levels; and authorized the RTWPB to determine and fix the minimum wage rates applicable in their respective regions, provinces, or industries therein and issue the corresponding wage orders, subject to the guidelines issued by the NWPC. Pursuant to its wage fixing authority, the RTWPB may issue wage orders which set the daily minimum wage rates, based on the standards or criteria set by Article 124 of the Labor Code.[7]

In the same case, the Court held that a RTWPB commits *ultra vires* and unreasonable act when, instead of setting a minimum wage rate, it prescribes a wage increase cutting across all levels of employment and wage brackets:

> In the present case, the RTWPB did not determine or fix the minimum wage rate by the "floor-wage method" or the "salary-ceiling method" in issuing the Wage Order. The RTWPB did not set a wage level nor a range to which a wage adjustment or increase shall be added. Instead, it granted an across-the-board wage increase of ₱15.00

---

[7] G.R. No. 144322, February 6, 2007, 514 SCRA 346, 361-363.

to all employees and workers of Region 2. In doing so, the RTWPB exceeded its authority by extending the coverage of the Wage Orders to wage earners receiving more than the prevailing minimum wage rate, without a denominated salary ceiling. As correctly pointed out by the OSG, the Wage Order granted additional benefits not contemplated by R.A. No. 6727.[8]

Clearly then, only employees receiving salaries below the prescribed minimum wage are entitled to the wage increase set forth under WO RXIII-02, without prejudice, of course, to the grant of increase to correct wage distortions consequent to the implementation of such wage order. Considering that NIASSI's employees are undisputedly already receiving a wage rate higher than that prescribed by the wage order, NIASSI is not legally obliged to grant them wage increase.[9]

The Union, in a bid to bolster its case for wage increase for its members under NIASSI's employ, invokes its CBA with the company and invites attention to Chavez's favorable ruling. The pertinent CBA provision reads:

Article XIX, Section 2.

All general wage increases granted by the company after one (1) year from the signing of this CBA shall not be creditable to any future wage increases mandated by any wage legislation and/or issuance of the Regional Wage Board.

Chavez's decision, on the other hand, pertinently states:

It is likewise undisputed that complainant members are receiving more than the minimum wage. Although, as mentioned earlier, the Notice of Inspection Report was not attached to respondent's Position Paper, complainant did not rebut respondent's contention that the complainant members receive more than the minimum wage. However, there is no evidence that the overage results from wage increases granted by the company within one (1) year from the signing of the CBA. Doubt is resolved in favor of labor. Therefore, the overage

[8] *Id.* at 364.

[9] See *Pag-Asa Steel Works, Inc. vs. CA*, G.R. No. 166647, March 31, 2006, 486 SCRA 475.

could not be credited to the ₱12.00 COLA mandated by Wage Order No. 2 pursuant to the aforequoted CBA provision.

x x x x x x x x x

Moreover, Wage Order No. 2 does not expressly prohibit the granting of ₱12.00 COLA to those receiving more than the minimum wage. It only says under Section 2 thereof that all "minimum wage earners in the private sector in Caraga Region shall receive a Cost of Living Allowance (COLA) in the amount of TWELVE PESOS (₱12.00) per day upon the effectivity of this Wage Order." On the other hand, Section 1 of the same Wage Order positively enumerates those not covered: "household or domestic helpers and persons employed in the personal service of another, including family drivers. If Wage Order No. 2, therefore, meant to exclude those receiving more than the minimum wage, then it would have specifically provided so.[10]

Petitioner's reliance on the abovequoted CBA provision and on the flawed arbitrator's case disposition is really misplaced. Consider that in his decision, Chavez, after admitting that NIASSI's employees were receiving a wage rate higher than the prescribed minimum wage, proceeded to fault NIASSI for not presenting evidence to show that the overage or excess resulted from general wage increases granted by the company itself within one year from the effectivity of the CBA in 1997. By simplistically utilizing the adage "doubt is resolved in labor," instead of relying on the case records and the evidence adduced, the voluntary arbitrator extended the coverage of WO RXIII-02 to include those who, by the terms of the order, are not supposed to receive the benefit. If only the voluntary arbitrator was circumspect enough to consider the facts on hand, he would have seen that the CBA provision on non-creditability finds no application in the present case, because creditability is not the real issue in this case. And neither is the interpretation of the CBA provision. The real issue in this case, as discussed above, is the coverage and application of WO RXIII-02.

While it behooves the Court to accord protection to the working class, tilting the balance of justice in its favor whenever appropriate,

---

[10] *Rollo,* pp. 70-71.

it is not possible to resolve every dispute to further the cause of labor. In every case, justice is to be granted to the deserving and dispensed in the light of established facts and the applicable law and doctrine,[11] as here.

WHEREFORE, premises considered, the Decision of the CA dated September 30, 2003 and its Resolution of January 9, 2004 in CA-G.R. SP No. 70435, affirming the Decision dated February 22, 2002 of Voluntary Arbitrator Jesus G. Chavez in VA Case No. 0925-XIII-08-003-01A, are hereby *REVERSED* and *SET ASIDE*.

The Union's complaint for the enforcement of Wage Order No. RXIII-02 is, accordingly, *DISMISSED* for lack of merit.

SO ORDERED.

Carpio Morales (Acting Chairperson), Tinga, Chico-Nazario,[*] and *Brion, JJ.,* concur.

EN BANC

[G.R. No. 163175. June 27, 2008]

CITY OF MAKATI, JEJOMAR BINAY and ERNESTO S. MERCADO, *petitioners, vs.* **MUNICIPALITY (NOW CITY) OF TAGUIG, METROPOLITAN MANILA, THE EXECUTIVE SECRETARY, BASES CONVERSION AND DEVELOPMENT AUTHORITY, FORT BONIFACIO DEVELOPMENT CORPORATION, REGISTER OF DEEDS VICENTE A. GARCIA and THE LAND MANAGEMENT BUREAU DIRECTOR,** *respondents.*

---

[11] *Norkis Free and Independent Workers Union v. Norkis Trading Company, Inc.,* G.R. No. 157098, June 30, 2005, 462 SCRA 485, 497.

[*] Additional member as per April 28, 2008 raffle.

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; GROUNDS; *LITIS PENDENTIA*; PRESENT IN CASE AT BAR. — *Litis pendentia* is a Latin term which literally means "a pending suit." It is variously referred to in some decisions as *lis pendens* and *auter action pendant*. While it is normally connected with the control which the court has over a property involved in a suit during the continuance proceedings, it is interposed more as a ground for the dismissal of a civil action pending in court. *Litis pendentia* as a ground for the dismissal of a civil action refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. For *litis pendentia* to be invoked, the concurrence of the following requisites is necessary: (a) identity of parties or at least such as represent the same interest in both actions; (b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other. In this case, the first requisite, identity of parties or at least such as represent the same interest in both actions, is present. The Court of Appeals correctly ruled that the fact that there is no absolute identity of parties in both cases will not preclude the application of the rule of *litis pendentia,* since only substantial and not absolute identity of parties is required for *litis pendentia* to lie. Except for Antonio Sinchioco, who joined the action as citizen and taxpayer, the other petitioners in Civil Case No. 96-554 have a community of interest with the City of Makati. The second requisite, identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts, is also present. A review of the records would show that the reliefs sought by both parties are actually the same. Although petitioners insist that what they seek is a nullification of Special Patent Nos. 3595 and 3596 and that the issue boils down to whether or not then President Ramos committed grave abuse of discretion in issuing Special Patent Nos. 3595 and 3596, what petitioners wish to nullify is not Special Patent Nos. 3595 and 3596, but the wordings therein that the property is located in the Municipality of Taguig. To do so would entail going into the issue of boundaries of Makati

and Taguig, which is the issue in Civil Case No. 63896. Likewise present is the third requisite that the identity of the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other.

APPEARANCES OF COUNSEL

Belo Gozon Elma Parel Asuncion & Lucila for petitioners.
Delfin R. Lopes for Land Management Bureau.
Estelito P. Mendoza & Orlando A. Santiago for FBDC.

D E C I S I O N

QUISUMBING, *J.*:

This is a petition for review on *certiorari* of the Decision[1] dated June 6, 2003 and Resolution[2] dated March 26, 2004 of the Court of Appeals in CA-G.R. SP No. 54692 affirming the September 25, 1998 Order[3] of the Regional Trial Court (RTC) of Makati, Branch 141, dismissing petitioners' petition for prohibition with a prayer for temporary restraining order and/or preliminary injunction.

The facts are as follows:

On March 13, 1992, then President Corazon C. Aquino approved Republic Act No. 7227[4] creating the Bases Conversion and Development Authority (BCDA). Section 4 (a) of Rep. Act No. 7227 provides that one of the purposes of the BCDA is "to

[1] *Rollo*, pp. 9-24. Penned by Associate Justice Ruben T. Reyes (now a member of this Court), with Associate Justices Elvi John S. Asuncion and Lucas P. Bersamin concurring.

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

[3] Records, Vol. III, pp. 769-773. Penned by Judge Manuel D. Victorio.

[4] AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THIS PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES, approved on March 13, 1992.

own, hold and/or administer the military reservations of John Hay Air Station, Wallace Air Station, O'Donnell Transmitter Station, San Miguel Naval Communications Station, Mt. Sta. Rita Station (Hermosa, Bataan) and those portions of Metro Manila military camps which may be transferred to it by the President."

On December 8, 1992, pursuant to Section 4 (a) of Rep. Act No. 7227, then President Fidel V. Ramos issued Executive Order No. 40[5] placing under the administration of the BCDA portions of Fort Bonifacio which are identified and described in Plans Swo-00-001265[6] and Swo-00-001266.[7] Per Plans Swo-00-001265 and Swo-00-001266, said portions of Fort Bonifacio are located in the Municipality of Taguig, Metro Manila.

On November 22, 1993, the Municipality of Taguig (Taguig) filed in the RTC of Pasig City, Branch 153, an action for judicial confirmation of its territory and boundary limits against the Municipality (now City) of Makati (Makati), Teofisto P. Guingona in his capacity as Executive Secretary, Angel Alcala in his capacity as Secretary of the Department of Environment and Natural Resources, and Abelardo Palad, Jr. in his capacity as Director of the Land Management Bureau. The complaint was docketed as Civil Case No. 63896.[8]

In its complaint, Taguig prayed for the declaration of the unconstitutionality and nullity of Presidential Proclamations Nos. 2475 and 518,[9] which transferred to the City of Makati certain

---

[5] IMPLEMENTING THE PROVISIONS OF REPUBLIC ACT NO. 7227 AUTHORIZING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY (BCDA) TO RAISE FUNDS THROUGH THE SALE OF METRO MANILA MILITARY CAMPS TRANSFERRED TO BCDA TO FORM PART OF ITS CAPITALIZATION AND TO BE USED FOR THE PURPOSES STATED IN SAID ACT, dated December 8, 1992.

[6] *Rollo*, pp. 286-289.

[7] *Id*. at 290-300.

[8] *Id*. at 84-96.

[9] EXCLUDING FROM THE OPERATION OF PROCLAMATION NO. 423 DATED JULY 12, 1957 WHICH ESTABLISHED THE MILITARY RESERVATION KNOWN AS "FORT WILLIAM MCKINLEY" (NOW FORT

parts of Fort Bonifacio that were allegedly within the boundary of the Municipality of Taguig, despite the absence of authority on the part of the President and without the benefit of a plebiscite as required by applicable provisions of the Constitution. Taguig likewise sought a temporary restraining order and writ of preliminary injunction to restrain Secretary Alcala and Director Palad, Jr. from disposing of the lots covered by Proclamation No. 518, and to restrain the Municipality (now City) of Makati from exercising jurisdiction over, making improvements on, or otherwise treating as part of its territory: (1) the area of 74 hectares that was uninhabited or otherwise consisted of farmlands or wide open spaces before the issuance of Proclamation No. 2475 in 1986; and, (2) the remaining portion of Parcel 4, Psu-2031, and a part of Parcel 3, Psu-2031 which together constitute the "Inner Fort" or military camp proper of Fort Bonifacio. The Municipality of Taguig also prayed that after due hearing, the injunction be made final and permanent and that judgment be rendered confirming the Fort Bonifacio military reservation, which consists of Parcels 3 and 4, Psu-2031, to be part of the Municipality of Taguig.[10]

On January 20, 1995, then President Ramos issued Special Patent No. 3595[11] conveying to the BCDA "the tracts of land of the public domain situated in Barangay Fort Bonifacio, Municipality of Taguig, Metro Manila, identified and more particularly described as Lot Nos. 1 to 4 and 6, Swo-00-001265,

---

ANDRES BONIFACIO) SITUATED IN THE MUNICIPALITIES OF PASIG, TAGUIG, PATEROS AND PARAÑAQUE, PROVINCE OF RIZAL AND PASAY CITY (NOW METROPOLITAN MANILA) AS AMENDED BY PROCLAMATION NO. 2475 DATED JANUARY 7, 1986, CERTAIN PORTIONS OF LAND EMBRACED THEREIN KNOWN AS BARANGAYS CEMBO, SOUTH CEMBO, WEST REMBO, EAST REMBO, COMEMBO, PEMBO AND PITOGO, SITUATED IN THE MUNICIPALITY OF MAKATI, METROPOLITAN MANILA AND DECLARING THE SAME OPEN FOR DISPOSITION UNDER THE PROVISIONS OF REPUBLIC ACT NO. 274, AND REPUBLIC ACT NO. 730 IN RELATION TO THE PROVISIONS OF THE PUBLIC LAND ACT, AS AMENDED, done on January 31, 1990.

[10] *Rollo*, pp. 94-95.

[11] *Id*. at 143-144.

containing an area of 877,318 square meters, and Lot Nos. 1 to 23 and 25, Swo-00-001266, containing an area of 2,344,300 square meters."

On February 7, 1995, then President Ramos issued Special Patent No. 3596[12] canceling Special Patent No. 3595 and granting to the Fort Bonifacio Development Corporation (FBDC) "the tracts of land of the public domain situated in Barangay Fort Bonifacio, Municipality of Taguig, Metro Manila, identified and more particularly described as Lot Nos. 1, 2 and 6, Swo-00-001265, containing an area of 673,979 square meters, and Lot Nos. 17, 21, 22 and 23, Swo-00-001266, containing an area of 1,497,837 square meters."

On February 10, 1995, Original Certificate of Title (OCT) No. SP-001 covering the tracts of land mentioned in Special Patent No. 3596 was issued to FBDC.[13]

On April 18, 1996, the City of Makati, together with its mayor, vice mayor, members of its city council, the congressional representative for the first district of Makati, the Barangay Captains of Barangays Post Proper Northside and Post Proper Southside and a concerned citizen, filed a petition for prohibition and *mandamus* (with prayer for temporary restraining order and/or preliminary injunction) against the respondents herein before the RTC of Makati, Branch 141. The case was docketed as Civil Case No. 96-554.[14]

In its complaint, the City of Makati, *et al*. prayed that a temporary restraining order be issued directing the Municipality of Taguig to cease and desist from requiring and accepting payment of real estate taxes and other taxes or fees on lands located in Fort Bonifacio or Barangays Post Proper Northside and Post Proper Southside; from requiring business permits and licenses; and from imposing on, collecting and accepting permit/license fees from the residents of said Barangays or Fort Bonifacio. The City of Makati, *et al.* likewise prayed that the

[12] *Id*. at 145-146.

[13] *Id*. at 162-169.

[14] Records, Vol. I, pp. 6-47.

BCDA and FBDC be directed to cease and desist from paying to the Municipality of Taguig realty taxes and other municipal taxes and permit/license fees in connection with or for the tracts of land granted to them or either of them under Special Patent No. 3596 dated February 7, 1995, and respondent Register of Deeds to cease and desist from further acting on OCT No. SP-001.

On May 23, 1996, the Municipality of Taguig moved to dismiss Civil Case No. 96-554 on the grounds that the RTC-Makati has no jurisdiction over the nature of the action; there is another action pending between the same parties for the same cause; the petition violates the rule on forum shopping, the petition states no cause of action; and the venue is improperly laid.[15]

FBDC also filed a motion to dismiss on May 24, 1996, citing as bases thereof that petitioners have no cause of action against FBDC; the RTC has no jurisdiction over the petition; the petition is not the appropriate remedy for the annulment of Special Patent No. 3596 and Original Certificate of Title No. SP-001; there is another action pending between the same parties for the same cause; and the petition constitutes a violation of Administrative Circular No. 04-94 of the Supreme Court.[16] BCDA likewise filed a motion to dismiss on the grounds that the petition does not state a cause of action against it, and that BCDA was improperly impleaded as respondent in the case.[17]

On September 25, 1998, the RTC of Makati City, Branch 141, issued an Order dismissing Civil Case No. 96-554. The RTC-Makati held:

x x x x x x x x x

After a careful evaluation and study of the arguments adduced by both parties, this Court finds and so holds that this case must be dismissed on at least two grounds, namely: *litis penden[t]ia* and violation of the anti[-]forum shopping circular.

---

[15] Records, Vol. II, pp. 444-459.

[16] *Id*. at 467-484.

[17] Records, Vol. III, pp. 642-645.

Undisputedly, Civil Case No. 63896 earlier filed with and still pending before the Pasig RTC involved the tracts of land covered by Special Patent No. 3596 and O.C.T. No. SP-001. In said case, respondent Taguig sought to recover them or that the same be declared within its territorial jurisdiction. . . .

x x x x x x x x x

All the foregoing requisites of *litis penden[t]ia* are herein obtaining. While it may [be] true that of 20 petitioners in this case only the City of Makati is a party to Civil Case No. 63896, the 19 others represent the same interest as petitioner City of Makati over the disputed tracts of land. The fact that the position of the parties was [reversed], the plaintiff in the first case being the defendants in the second case and *vice versa* does not negate identity of parties for the purpose of *litis penden[t]ia*. In both cases[,] the factual issue is the location of the subject tracts of land, and the resolution of the first case, that is, the Pasig case, would constitute *res judicata* to the instant case.

x x x x x x x x x

It being that *litis penden[t]ia* is herein obtaining, petitioners have violated Administrative Circular No. 09-94 of the Supreme Court, prohibiting forum shopping. . . .

The Court finds no merit in the other grounds interposed by the movants. There is no need to discuss them in view of the foregoing ruling.

WHEREFORE, let this [case] be dismissed without pronouncement as to costs.

SO ORDERED.[18]

On June 6, 2003, the Court of Appeals affirmed the RTC-Makati ruling. The Court of Appeals held:

The requisites of *litis pendentia* having concurred, petitioners-appellants clearly violated the rule on forum-shopping when they filed Civil Case No. 96-554. The established rule is that forum-shopping exists where the elements of *litis pendentia* are present.

With this finding and conclusion, We see no necessity to dwell on the other issues raised in this appeal. It suffices to recapitulate that

[18] Records, Vol. III, pp. 771-772.

the Makati Regional Trial Court was right in dismissing the duplicitous suit lodged before it due to *litis pendentia* and forum-shopping.

WHEREFORE, the appealed Order is hereby **AFFIRMED**.

SO ORDERED.[19]

Hence, this petition.

Petitioners raise the following issues:

I.

WHETHER OR NOT PETITIONERS VIOLATED THE RULES ON FORUM SHOPPING[;]

II.

WHETHER OR NOT THERE IS *LITIS PENDENTIA* BETWEEN THE MAKATI CITY RTC PETITION AND THE TAGUIG CITY RTC CASE[;]

III.

THE COURT OF APPEALS COMMITTED GRAVE ERROR IN DECIDING THE APPEAL *A QUO* ONLY ON THE ISSUES OF *LITIS PENDENTIA* AND FORUM SHOPPING[.][20]

Simply put, in this petition the issues are: (1) Is *litis pendentia* present? and (2) Did petitioners violate the rules on forum shopping?

Petitioners, in their Memorandum,[21] argue that they did not violate the rules on forum shopping since there is no identity of parties, no identity of rights or causes of action asserted, and no identity of reliefs sought between those in Civil Case No. 96-554 and Civil Case No. 63896. They argue that Civil Case No. 96-554 is a petition for prohibition and *mandamus* with prayer for a temporary restraining order raising the issue of whether or not then President Ramos committed grave abuse of discretion in issuing Special Patent No. 3596; and whether or not OCT No. SP-001 in favor of BCDA is null and void, whereas Civil Case No. 63896 is a complaint filed by the

---

[19] *Rollo,* p. 23.

[20] *Id*. at 698.

[21] *Id*. at 685-744.

Municipality of Taguig for judicial confirmation of its boundaries. Petitioners argue that if the validity of Special Patent No. 3596 and OCT No. SP-001 is not addressed, a situation may arise wherein the boundaries of the Municipality of Taguig as determined by the RTC-Pasig City case will clash with Special Patent No. 3596 and OCT No. SP-001 declaring certain areas of Fort Bonifacio to be within the Municipality of Taguig. Petitioners argue that Civil Case No. 63896 and Civil Case No. 96-554 do not seek the same relief, such that a judgment in one will constitute *res judicata* in the other and *vice versa*. Since there can be no forum shopping in this case, petitioners argue that the requirements of *litis pendentia* are not met.

On the other hand, respondent Municipality of Taguig, in its Memorandum,[22] maintain that the Court of Appeals did not err in dismissing the appeal of petitioners on the grounds of *litis pendentia* and forum shopping. The FBDC, in its Memorandum,[23] reiterate that the Makati case was properly dismissed on the ground of *litis pendentia*, that it was filed in violation of the rule against forum shopping, and that the dismissal of the Makati case insofar as it concerns FBDC should be upheld on the ground of lack of cause of action. As to petitioners' argument that former President Ramos gravely abused his discretion in issuing Special Patent No. 3596, this issue was properly ignored by the Court of Appeals because said matters were not taken up below and therefore cannot be raised for the first time on appeal.

As to the first issue, *litis pendentia* is a Latin term which literally means "a pending suit." It is variously referred to in some decisions as *lis pendens* and *auter action pendant*. While it is normally connected with the control which the court has over a property involved in a suit during the continuance proceedings, it is interposed more as a ground for the dismissal of a civil action pending in court.[24]

---

[22] *Id*. at 664-684.

[23] *Id*. at 510-556.

[24] *Agilent Technologies Singapore (Pte.) Ltd. v. Integrated Silicon Technology Philippines Corporation*, G.R. No. 154618, April 14, 2004, 427 SCRA 593, 601.

Litis pendentia as a ground for the dismissal of a civil action refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. For *litis pendentia* to be invoked, the concurrence of the following requisites is necessary:

(a) identity of parties or at least such as represent the same interest in both actions;

(b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and

(c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other.[25]

In this case, the first requisite, identity of parties or at least such as represent the same interest in both actions, is present. The Court of Appeals correctly ruled that the fact that there is no absolute identity of parties in both cases will not preclude the application of the rule of *litis pendentia*, since only substantial and not absolute identity of parties is required for *litis pendentia* to lie. Except for Antonio Sinchioco, who joined the action as citizen and taxpayer, the other petitioners in Civil Case No. 96-554 have a community of interest with the City of Makati.

The second requisite, identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts, is also present.

A review of the records would show that the reliefs sought by both parties are actually the same. Although petitioners insist that what they seek is a nullification of Special Patent Nos. 3595 and 3596 and that the issue boils down to whether or not then President Ramos committed grave abuse of discretion in issuing Special Patent Nos. 3595 and 3596, what petitioners wish to nullify is not Special Patent Nos. 3595 and 3596, but the wordings therein that the property is located in the Municipality of Taguig. To do so would entail going into the issue of boundaries

---

[25] *Id*.

of Makati and Taguig, which is the issue in Civil Case No. 63896.

Likewise present is the third requisite that the identity of the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other.

WHEREFORE, the petition is *DENIED* for lack of merit. The Decision and Resolution dated June 6, 2003 and March 26, 2004, respectively, of the Court of Appeals in CA-G.R. SP No. 54692 are *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Carpio, Corona, Azcuna, Chico-Nazario, Velasco, Jr., Leonardo-de Castro, and *Brion, JJ.,* concur.

Tinga, J., no part. counsel for a party was former partner. Close relation to a party.

Reyes, J., no part, per footnote 1.

Austria-Martinez, Carpio Morales, Nachura, JJ., on official leave.

THIRD DIVISION

[G.R. No. 166261. June 27, 2008]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **ASTRID V. CORRALES,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; RULES ON EMPLOYEES COMPENSATION; WHEN IS AN AILMENT CONSIDERED

COMPENSABLE. — An ailment is considered compensable under any of the grounds specified in Section 1, Rule III of the Amended Rules on Employees' Compensation, to wit: Section 1. *Grounds*. (a) For the injury and the resulting disability or death to be compensable, the injury must be the result of accident arising out of and in the course of the employment. (ECC Resolution No. 2799, July 25, 1984). (b) For the sickness and the resulting disability or death to be compensable, ***the sickness must be the result of an occupational disease listed under Annex "A" of these Rules with the conditions set therein satisfied,*** otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions. (c) Only injury or sickness that occurred on or after January 1, 1975 and the resulting disability or death shall be compensable under these Rules. The occupational diseases referred to in Section 1 (b) above are those listed in Annex "A" to the Amended Rules on Employees' Compensation, provided that the nature of employment of the claimant is as described therein.

2. ID.; ID.; RESPONDENT'S CONGENITAL HEART DISEASE (CHD) FALL UNDER THE CATEGORY OF WORK-RELATED DISEASES LISTED AS "18. CARDIOVASCULAR DISEASES" IN ANNEX "A" OF THE AMENDED RULES ON EMPLOYEES' COMPENSATION; "CARDIOVASCULAR DISEASES" MEAN ALL DISEASES OF THE CARDIOVASCULAR SYSTEM, WITHOUT QUALIFICATION AS TO NATURE, ORIGIN OR TYPE. — Cardiovascular diseases are disorders that affect the normal ability of the heart (cardio) and the blood vessels (vascular) to function. Citing Braunwald's *Heart Disease: A Textbook of Cardiovascular Medicine* (8th ed., 2007) in their official website, the U.S. National Library of Medicine and National Institutes of Health equate cardiovascular diseases to heart diseases and identify congenital heart disease or CHD as among the various forms thereof. It is significant that Annex "A" employs the term "cardiovascular diseases" not only in its generic form but also in its ***plural*** sense. It is axiomatic in statutory construction that when a term is used in its plural sense, it is to be interpreted to encompass any and all related meanings of the term. Thus, "cardiovascular diseases" must mean all diseases of the cardiovascular system, without qualification as to nature, origin or type. The CA, therefore, did not err when it held that respondent's CHD fell under the category of work-related

diseases listed as "18. Cardiovascular diseases" in Annex "A" of the Amended Rules on Employees' Compensation.

3. ID.; ID.; ELEMENTS OF DISABILITY ACQUIRED UNDER THE THIRD CONDITION OF CARDIOVASCULAR DISEASES NEED NOT BE ESTABLISHED BY DIRECT AND CLEAR EVIDENCE BUT BY MERE SUBSTANTIAL EVIDENCE; THE YARDSTICK IN EMPLOYEES' COMPENSATION CASES IS MERE PROBABILITY AND NOT CERTAINTY AND WHATEVER DOUBT A CONTRARY MEDICAL OPINION MAY ENGENDER SHOULD BE INTERPRETED IN FAVOR OF THE EMPLOYEES FOR WHOM SOCIAL LEGISLATION, LIKE P.D. 626, ARE ENACTED. — As a general rule, disability arising from an occupational disease listed in Annex "A" is considered compensable without need of further proof of causal relation between the disease and the claimant's work. However, disability arising from a work-related disease which was added to Annex "A" by virtue of ECC Resolution No. 432 is considered compensable only upon evidence that said work-related disease manifested itself under specific conditions. With respect to a cardiovascular disease such as CHD, these conditions are: List of Occupational and Compensable Diseases x x x 18. Cardiovascular ***diseases***. x x x ***Any*** of the following conditions 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 insult 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**. Disability acquired under the third condition is compensable if the following elements obtain: first, before being subjected to strain at work, the persons afflicted was asymptomatic or presented no subjective evidence of the disease; second, the latter experienced the signs and symptoms of the disease when subjected to stress at work; and third, the signs and symptoms of the disease persisted. It is sufficient that the foregoing elements be established, not

by direct and clear evidence, but by mere substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Thus, for as long as some factual basis exists from which it can be drawn that the disease afflicted the claimant under the third condition, the disability ought to be considered compensable. More importantly, once there is substantial evidence of the existence of such condition, the same cannot be diminished even by medical opinion to the contrary. The yardstick in employees' compensation cases is mere probability, not certainty; thus, whatever doubt such contrary medical opinion may engender should be interpreted in favor of the employees for whom social legislations, like P.D. No. 626, are enacted.

4. ID.; ID.; THE CLINICAL ABSTRACT WHICH WAS NOT DISPUTED SUBSTANTIALLY ESTABLISHED THE FACT THAT, WHILE RESPONDENT PREVIOUSLY HAD CHD, SHE WAS ASYMPTOMATIC, AND SUFFERED THE SIGNS AND SYMPTOMS THEREOF IN 2000 OR TWO YEARS AFTER HER PROMOTION TO CLERK III IN 1998. — One evidence which respondent presented to prove the causal relationship required under item 18 of Annex "A" between her CHD and her work in the COA was the Clinical Abstract issued on June 13, 2002 by the PHC. Petitioner did not dispute the aforecited clinical abstract. The significance of the Clinical Abstract is that it states that respondent "apparently ***had*** Congenital Heart Disease but asymptomatic" and that it was only two years prior to her admission in 2002 that she started to experience the symptoms of CHD. This tallies with the claim of respondent — which petitioner does not refute — that while respondent was hospitalized for a suspected heart ailment in 1972, from then on, she did not suffer any symptom of the disease until she was hospitalized in 2002. The same Clinical Abstract confirms respondent's assertion that it was in 2000, or within the short span of two years from her promotion in 1998 to Clerk III, that she began to experience the signs and symptoms of CHD, such as easy fatigability and shortness of breath, which signs and symptoms persisted until she was finally hospitalized in 2002. In sum, the Clinical Abstract substantially established the fact that, while respondent previously had CHD, she was asymptomatic, and suffered the signs and symptoms thereof only in 2000 or two years after her promotion to Clerk III in 1998.

5. ID.; ID.; THE DUTIES WHICH RESPONDENT HAS BEEN OFFICIALLY PERFORMING SINCE HER PROMOTION IN 1998 TO CLERK III ARE UNDOUBTEDLY MORE STRESSFUL AND, IF NOT PHYSICALLY STRAINING. — The admission of the Certification into evidence and its application by the CA were therefore proper, especially since technical rules of evidence need not be strictly applied to employees' compensation cases. A cursory examination of the certification and the job description reveals that, by their sheer number and peculiar nature, the duties which respondent has been officially performing since her promotion in 1998 to Clerk III in the Procurement Division of COA are undoubtedly more stressful, if not physically straining. Unlike the purely clerical work undertaken by a generic Clerk III in COA, the actual duties assigned to respondent as Clerk III in the COA Procurement Division involve mostly field work, such as the physical inventory of properties, the canvass of goods and materials and the procurement thereof. Moreover, these duties are radically different from those normally undertaken by a messenger and process server, which were the positions respondent held for eleven (11) years prior to her ailment. Thus, it is more than reasonable to believe that respondent experienced the signs and symptoms of CHD shortly after her promotion to Clerk III in 1998, at which time she began to be constantly subjected to more stress concomitant to the performance of her duties as Clerk III.

6. ID.; ID.; RESPONDENT SUBSTANTIALLY ESTABLISHED THE COMPENSABILITY OF HER DISABILITY. — The evidence of respondent provides a real and substantial basis for any reasonable man to conclude that she was afflicted with CHD under the third condition of item 18 of Annex "A". The Court agrees with the CA in its assessment that respondent substantially established the compensability of her disability. Petitioner would insist, however, that, based on medical literature, CHD is of genetic origin and, therefore, cannot result from any form of employment. In *Employees' Compensation Commission v. Court of Appeals,* the Court noted medical findings that genetic factors may contribute to the development of *ureterolithiasis,* yet it declared the disease work-related under the factual circumstances of said case. So, too, in *Government Service Insurance System v. Palma,* in which *thyroid cancer*, a disease that can be traced to family history,

was declared work-related under the factual circumstances of the case. On CHD, in particular, the U.S. National Library of Medicine and National Institutes of Health report that "no known cause can be identified for most congenital heart defects," for it remains under investigation and research. Moreover, the two agencies report that there have been cases in which CHD did not cause any problem and even allowed the afflicted person to have a normal lifespan. Some instance of CHD even healed over time. Medical literature, therefore, does not completely rule out the real possibility that while a "suspected" heart ailment may have afflicted respondent in 1972, it healed over the course of almost 30 years but was "aroused" or "set off" when she was subjected to a radical change in her duties at work following her promotion in 1998. In fine, notwithstanding medical opinion on the genetic origin of a disease, if there is some real and substantial evidence that the disease is work-related as well, especially under the conditions described in Annex "A", then the disability arising from such disease is compensable. All told, the CA did not err in reversing the ECC and awarding respondent disability compensation under P.D. No. 626.

APPEARANCES OF COUNSEL

Chief Legal Counsel (GSIS) for petitioner.
Jaime F. Viloria and *Elmer R. Viloria* for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the August 23, 2004 Decision[1] of the Court of Appeals (CA), which reversed and set aside the January 29, 2004 Decision[2] of the Employees' Compensation Commission (ECC) and September 11, 2002

[1] Penned by Associate Justice Rodrigo V. Cosico and concurred in by Associate Justices Danilo B. Pine and Arcangelita Romilla Lontok; *rollo*, p. 38.

[2] *Id*. at 46.

Decision[3] of the Government Service Insurance System ([GSIS] petitioner) denying the claim of Astrid V. Corrales (respondent) for disability benefits under Presidential Decree (P.D.) No. 626;[4] and the October 29, 2004 CA Resolution,[5] denying petitioner's motion for reconsideration.

The relevant facts are culled from the records.

Respondent is employed with the Commission on Audit (COA), initially as Messenger upon her appointment on April 4, 1989, then as Junior Process Server on September 8, 1994, and eventually as Clerk III after her promotion on May 28, 1998.[6]

On May 15, 2002, respondent was confined at the Philippine Heart Center (PHC) due to "Congenital Heart Disease [CHD], ASD, predominantly L-R Shunt with QpQs of 1.6:1, severe PHPN Functional Class III."[7] She underwent surgery and was discharged on June 5, 2002.[8]

Respondent filed with petitioner a claim under P.D. No. 626 for disability benefits in the amount of ₱493,682.24, representing the cost of her hospitalization.[9] Petitioner denied the claim on the ground that respondent's disability was non-compensable, for it arose from an "ailment that is not considered an occupational disease as contemplated under the aforementioned law."[10]

Respondent sought reconsideration of the denial of her claim,[11] and petitioner elevated the matter as an appeal to the ECC.

---

[3] *Id*. at 52.

[4] Further Amending Certain Articles of Presidential Decree No. 442 Entitled "Labor Code of the Philippines" effective January 1, 1975.

[5] CA *rollo*, p. 229.

[6] *Id*. at 119.

[7] Medical Certificate, *id*. at 110.

[8] *Id*.

[9] *Id*. at 121-123.

[10] GSIS Decision, *rollo*, p. 52.

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

In a Decision dated January 29, 2004, the ECC held:

> Appellant [herein respondent] is a diagnosed case of Congenital Heart Disease, an ailment not listed as an occupational disease. As evidenced by records, she had been afflicted of this ailment since her childhood days, years earlier before she entered the government service. Her ailment therefore is in the nature of a pre-existing ailment. Its aggravation does not fall within the coverage of PD 626, as amended.
>
> Further, medical studies revealed that such disorder is genetic in origin caused by faulty embryogenesis during the gestational weeks of a fetus within the mother's womb. The said ailment therefore is in no way caused by any form of employment. It is a non-work connected ailment and neither causal relationship nor increased risk can be established between appellant's work and this ailment.
>
> WHEREFORE, the assailed decision is hereby AFFIRMED and the instant case DISMISSED and SET ASIDE for want of merit.
>
> SO ORDERED.[12]

Unable to accept the findings of the ECC, respondent appealed to the CA on the argument that CHD is a form of cardiovascular disease which is considered as an occupational disease under item "18. Cardiovascular diseases x x x" in the List of Occupational and Compensable Diseases (Annex "A") attached to the Amended Rules on Employees' Compensation, implementing P.D. No. 626.[13]

The CA granted the appeal in its August 23, 2004 Decision, thus:

> The ECC itself explained that based on "medical studies," petitioner's [herein respondent's] ailment refers to abnormalities of the heart or great vessel, that are present from birth, (See ECC Decision, p. 105, *Rollo*), which lends credence to [respondent's] claim that congenital heart disease is a form of cardiovascular disease. **Cardiovascular disease is a generic term that encompasses all diseases of the heart and its great vessels. Thus, there should be no doubt that petitioner's congenital heart disease should**

---

[12] *Rollo*, pp. 47-49.

[13] Petition for Review, CA *rollo*, p. 96.

be considered a cardiovascular ailment, which is included in the list of compensable diseases in the Implementing Rules of the ECC, without need of further proof of causal relation or aggravation by her work. This is in furtherance of the social justice policy of the Constitution, which upholds the liberality of the state in the interpretation and applicability of laws in favor of the working man, (*Santos v. Employees' Compensation Commission*, 221 SCRA 182 [1993]).

Thus, as held in *Salmone v. Employee's Compensation Commission*, (341 SCRA 150 [20001]):

x x x x x x x x x

Furthermore, the fact that petitioner's [herein respondent's] ailment is congenital in nature places the government on notice that when [it] employed petitioner [herein respondent] after the legally required medical examination, she was already afflicted with her ailment, and it would be the height of hypocrisy and injustice for the government to admit petitioner [herein respondent] as part of its work force only to deny later her compensation benefits allegedly on the ground that her illness had pre-existed her employment.[14]

WHEREFORE, premises considered, the instant petition is hereby GRANTED, and the decisions of the Employees' Compensation Commission and Government Service Insurance System are hereby SET ASIDE. In lieu thereof, the respondent [herein petitioner] GSIS is hereby ordered to pay the petitioner [herein respondent] her full disability benefits as provided for under Presidential Decree No. 626, as amended. (Emphasis added)

SO ORDERED.[15]

Petitioner filed a motion for reconsideration, questioning the CA for applying a presumption of compensability and aggravation, which is no longer allowed under P.D. No. 626.[16] The CA denied the motion for reconsideration in its October 29, 2004 Resolution, reiterating that respondent's claim was valid because

---

[14] CA Decision, *rollo*, pp. 41-42.

[15] *Id.* at 41-42.

[16] CA *rollo*, p. 208.

CHD, being a form of cardiovascular disease, was listed under item 18 of Annex "A" as an occupational disease.[17]

Petitioner appealed to this Court on the following issues:

1. Whether or not the Honorable Court of Appeals committed error of judgment by reversing the decision of the Employees' Compensation Commission denying the claim for disability benefits under P.D. No. 626, as amended, of respondent Astrid V. Corrales;

2. Whether or not the ailment "Congenital Heart Disease," suffered by respondent Astrid V. Corrales is compensable under PD 626, as amended.[18]

To resolve the issues, the Court must address two underlying questions:

First, does the category of occupational diseases listed as "18. Cardiovascular diseases x x x" in Annex "A" include congenital forms of cardiovascular diseases such as CHD?

Second, do the nature and origin of CHD preclude the possibility that it may also be work-related?

Petitioner posits that, by its nature, CHD can neither be an occupational disease nor a work-related one. Citing Robbins, *Pathologic Basis of Disease,*[19] which defines CHD as a "general term used to describe abnormalities of the heart or great vessels that are present from birth, a disorder that is genetic in origin caused by faulty embryogenesis during the gestational weeks of a fetus within the mother's womb,"[20] petitioner emphasizes that being genetic in origin, CHD cannot be considered a natural incident of any particular form of occupation. Furthermore, although CHD usually manifests itself late in a person's life, it actually afflicts the latter even before birth; hence, it is a pre-

---

[17] *Id*. at 229.

[18] Petition, *rollo*, p. 20.

[19] 6th edition, p. 591.

[20] Memorandum for Petitioner, *rollo*, p. 100.

existing condition that cannot possibly arise during the course of any form of employment.[21] In respondent's case, she admitted to having suffered from a heart ailment in 1972, which only goes to prove that her condition was pre-existing.[22]

Respondent counters by citing Stewart M. Brooks, *Basic Science and the Human Body — Anatomy and Physiology*[23] which "enumerates cardiovascular diseases as ostheroclerosis [sic], coronary heart disease, cardiac arrythmias, rheumatic heart disease, **congenital heart disease**, congestive heart failure, among others."[24] Thus, she contends, CHD is a form of cardiovascular disease, and comes under the category of occupational diseases listed in Annex "A" as "18. Cardiovascular diseases." She further argues that as Annex "A" employed the term "cardiovascular diseases" in its generic sense, without reference to any particular form or nature of cardiovascular disease, then it follows that, applying established rules of statutory construction, it is to be interpreted to encompass the whole range of cardiovascular disease, including CHD.[25]

Respondent emphasizes that even if CHD is a pre-existing condition, it can still be proven to be work-related under subparagraph (c), item 18 of Annex "A" which provides that a pre-existing cardiovascular disease may still be considered work-related if it is shown that the afflicted "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."[26]

Respondent claims that her CHD is work-related for it occurred approximately two years after her promotion to Clerk III, which entailed her assumption of responsibilities, more numerous and

---

[21] *Id* at 102.

[22] Petition, *id*. at 25.

[23] pp. 193-200.

[24] Memorandum for Respondent, *rollo*, pp. 117-118.

[25] *Id*. at 118.

[26] *Id*. at 119-120.

strenuous than those cited by the ECC,[27] such as the physical inventory of properties, canvass of requisitioned supplies, materials, equipment and services, procurement of urgently needed supplies, materials and equipment, and reconciliation of property inventory balances with accounting ledger balances.[28] Her expanded functions involved mostly field work that were physically rigorous and straining, for "be it under the scorching sun or drenching rain, she [would shuttle] from one business establishment to another to canvass for the lowest price[d] items, equipment or materials" and "[conduct] inventory of office equipment, of any size or [build], and [in] various locations."[29] In fact, respondent revealed, it was during one instance of such field work that she first detected that something was wrong with her health.[30]

Respondent asserts that prior to her promotion, she was asymptomatic. Though she admits that sometime in 1972 she "was hospitalized for suspected heart ailment,"[31] respondent clarifies that for almost 30 years thereafter, said ailment remained dormant and did not bother her at all: in fact, during that period, she was healthy enough to finish her education, get married and be employed. Thus, when, barely two years after she was assigned heavier responsibilities concomitant to her promotion, she first experienced a deterioration of her health, which condition was diagnosed as CHD in 2002, said ailment could only be due to the physical strain and mental stress she underwent daily at work.[32]

The petition lacks merit.

An ailment is considered compensable under any of the grounds specified in Section 1, Rule III of the Amended Rules on Employees' Compensation, to wit:

---

[27] Petition, CA *rollo*, p. 97.

[28] Certification, *id*. at 112.

[29] *Supra* note 27.

[30] Memorandum for Respondent, *rollo*, pp. 120-121. See also Petition, CA *rollo*, p. 97.

[31] Petition, CA *rollo*, p. 94.

[32] *Supra* note 27.

Section 1. *Grounds*. (a) For the injury and the resulting disability or death to be compensable, the injury must be the result of accident arising out of and in the course of the employment. (ECC Resolution No. 2799, July 25, 1984).

(b) For the sickness and the resulting disability or death to be compensable***, the sickness must be the result of an occupational disease listed under Annex "A" of these Rules with the conditions set therein satisfied,*** otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions.

(c) Only injury or sickness that occurred on or after January 1, 1975 and the resulting disability or death shall be compensable under these Rules. (Emphasis added)

The occupational diseases referred to in Section 1(b) above are those listed in Annex "A" to the Amended Rules on Employees' Compensation, provided that the nature of employment of the claimant is as described therein.

Pursuant to its authority under Article 191[33] and Article 192,[34] Book V of the Labor Code, as amended by P.D. No. 626, the ECC, by Resolution No. 432, dated July 20, 1977, added to Annex "A" of the Amended Rules on Employees' Compensation certain categories of diseases which, though not considered occupational diseases in the strict sense, are nonetheless treated as work-related. One category is item "18. Cardiovascular diseases."[35]

[33] Art. 191. Temporary total disability. (a) ***Under such regulations as the Commission may approve***, any employee under this Title who sustains an injury or contracts sickness resulting in temporary total disability shall for each day of such a disability or fraction thereof be paid by the System an income benefit equivalent to ninety percent of his average daily salary credit, subject to the following conditions: x x x.

[34] Art. 192. Permanent total disability. (a) ***Under such regulations as the Commission may approve,*** any employee under this Title who contracts sickness or sustains an injury resulting in his permanent total disability shall, for each month until his death, be paid by the System during such a disability, an amount equivalent to the monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with youngest and without substitution x x x.

[35] *Government Service Insurance System v. Villareal*, G.R. No. 170743, April 12, 2007, 520 SCRA 741, 744; *Viernes v. Government Service Insurance System* G.R. No. 141171, September 26, 2001.

Cardiovascular diseases are disorders that affect the normal ability of the heart (cardio) and the blood vessels (vascular) to function.[36] Citing Braunwald's *Heart Disease: A Textbook of Cardiovascular Medicine* (8th ed., 2007) in their official website, the U.S. National Library of Medicine and National Institutes of Health[37] equate cardiovascular diseases to heart diseases and identify congenital heart disease or CHD as among the various forms thereof.[38]

It is significant that Annex "A" employs the term "cardiovascular diseases" not only in its generic form but also in its ***plural*** sense. It is axiomatic in statutory construction that when a term is used in its plural sense, it is to be interpreted to encompass any and all related meanings of the term.[39] Thus, "cardiovascular diseases" must mean all diseases of the cardiovascular system, without qualification as to nature, origin or type.

The CA, therefore, did not err when it held that respondent's CHD fell under the category of work-related diseases listed as "18. Cardiovascular diseases" in Annex "A" of the Amended Rules on Employees' Compensation.

It being settled that respondent's CHD is listed in Annex "A" as an occupational disease, the next question is whether her ailment was acquired under any of the conditions set forth in Annex "A" so as to be considered compensable.

---

[36] See Dorland's Medical Dictionary, 24th Edition, p. 255.

[37] *http://www.nlm.nih.gov/medlineplus/ency/article/000147.htm*; accessed through *http:// www. doh.gov.ph* on April 28, 2008.

[38] Also included in the enumeration of cardiovascular or heart diseases are: alcoholic cardiomyopathy, aortic regurgitation, aortic stenosis, arrhythmias, cardiogenic shock, congenital heart disease, coronary artery disease (CAD), dilated cardiomyopathy, endocarditis, heart attack (myocardial infarction), heart failure, heart tumor, idiopathic cardiomyopathy, ischemic cardiomyopathy, acute mitral regurgitation, chronic mitral regurgitation, mitral stenosis, mitral valve prolapse, peripartum cardiomyopathy, pulmonary stenosis, stable angina, unstable angina, and tricuspid regurgitation.

[39] *Metropolitan Stevedore Co. v. Rambo* (94-820), 515 U.S. 291 (1995); see also *Gatchalian v. Commission on Elections*, 146 Phil. 435, 442-443 (1970).

As a general rule, disability arising from an occupational disease listed in Annex "A" is considered compensable without need of further proof of causal relation between the disease and the claimant's work.[40] However, disability arising from a work-related disease which was added to Annex "A" by virtue of ECC Resolution No. 432 is considered compensable only upon evidence that said work-related disease manifested itself under specific conditions.

With respect to a cardiovascular disease such as CHD, these conditions are:

> List of Occupational and Compensable Diseases
>
> x x x x x x x x x
>
> 18. Cardiovascular ***diseases.*** ** ***Any*** of the following conditions
>
> 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 insult 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**. (Emphasis supplied)

Disability acquired under the third condition is compensable if the following elements obtain: first, before being subjected to strain at work, the persons afflicted was asymptomatic or presented no subjective evidence of the disease;[41] second, the latter experienced

---

[40] *Government Service Insurance System v. Baul*, G.R. No. 166556, July 31, 2006, 497 SCRA 397, 404; *Salmone v. Employees' Compensation Commission*, 395 Phil. 341, 347 (2000).

[41] *Leviste v. Social Security System (Solid Mills, Inc.)*, G.R. No. 159060, November 28, 2007, 539 SCRA 120, 128, citing Websters *Third New International Dictionary*, 1981 edition.

the signs and symptoms of the disease when subjected to stress at work; and third, the signs and symptoms of the disease persisted.[42]

It is sufficient that the foregoing elements be established, not by direct and clear evidence, but by mere substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Thus, for as long as some factual basis exists from which it can be drawn that the disease afflicted the claimant under the third condition, the disability ought to be considered compensable.[43] More importantly, once there is substantial evidence of the existence of such condition, the same cannot be diminished even by medical opinion to the contrary.[44] The yardstick in employees' compensation cases is mere probability, not certainty; thus, whatever doubt such contrary medical opinion may engender should be interpreted in favor of the employees for whom social legislations, like P.D. No. 626, are enacted.[45]

One evidence which respondent presented to prove the causal relationship required under item 18 of Annex "A" between her CHD and her work in the COA was the Clinical Abstract issued on June 13, 2002 by the PHC, summarizing her medical history, thus:

> Chief Complaints: Easy fatigability.
>
> ***Apparently had Congenital Heart Disease but asymptomatic***. No consult done.

---

[42] *Rañises v. Employees' Compensation Commission*, G.R. No. 141709, August 16, 2005, 467 SCRA 71, 75; *Leviste v. Social Security System (Solid Mills, Inc.)*, *supra* note 41, at 129.

[43] *Government Service Insurance System v. Baul*, *supra* note 40, at 403-404.

[44] *Government Service Insurance System v. Cuanang*, G.R. No. 158846, June 3, 2004, 430 SCRA 639, 646.

[45] *Government Service Insurance System v. Valenciano*, G.R. No. 168821, April 10, 2006, 487 SCRA 109, 117-118, citing *Jacang v. Employees' Compensation Commission*, G.R. No. 151893, October 20, 2005, 473 SCRA 520, 531; *Salmone v. Employees' Compensation Commission*, 395 Phil. 341, 347 (2000); *Salalima v. Employees' Compensation Commission*, G.R. No. 146360, May 20, 2004, 428 SCRA 715, 723.

> Brief Clinical History:
> ***2 years PTA***[46] ***started to have easy fatigability w/ shortness of breath***. Consult done, given Imdur. Vastarel. Diagnosed to have CHD, advised operation but refused.
> ***1 month PTA – recurrence of above signs & symptoms w/ apparent orthopnea***. 2DED done showed ASD, advised operation hence this admission.[47] (Emphasis added)

Petitioner did not dispute the aforecited clinical abstract.

The significance of the Clinical Abstract is that it states that respondent "apparently ***had*** Congenital Heart Disease but asymptomatic" and that it was only two years prior to her admission in 2002 that she started to experience the symptoms of CHD. This tallies with the claim of respondent — which petitioner does not refute[48] — that while respondent was hospitalized for a suspected heart ailment in 1972, from then on, she did not suffer any symptom of the disease until she was hospitalized in 2002.[49]

The same Clinical Abstract confirms respondent's assertion that it was in 2000, or within the short span of two years from her promotion in 1998 to Clerk III, that she began to experience the signs and symptoms of CHD, such as easy fatigability and shortness of breath, which signs and symptoms persisted until she was finally hospitalized in 2002.

In sum, the Clinical Abstract substantially established the fact that, while respondent previously had CHD, she was asymptomatic, and suffered the signs and symptoms thereof only in 2000 or two years after her promotion to Clerk III in 1998.

The ECC, in its January 29, 2004 Decision, enumerated respondent's duties, as follows:

1) Assist[s] the administrative staff in all clerical matters;

---

[46] "Prior to admission"

[47] CA *rollo*, p. 114.

[48] See Petition, *rollo*, p. 25.

[49] Petition, CA *rollo*, p. 94.

2) Type[s] [or] encode[s] letters, memoranda, endorsement and other office reports;
3) Record[s]/log[s] incoming and outgoing official papers and mail matters;
4) Maintain[s] a systematic filing system for office files and records;
5) Supervise[s] the messengers in the delivery of correspondences, memoranda, endorsements and office reports; and
6) Perform[s] other related tasks.[50]

based on an undated and unsigned Job Description for all COA personnel holding the position of Clerk III, but without specification as to their particular office assignment.[51]

However, the ECC failed to consider the specific duties of respondent as Clerk III assigned to the Procurement Division of the COA, to wit:

1) Conducts annual physical inventory of property and prepares the necessary inventory reports thereof.

2) Conducts canvass of requisitioned supplies, materials, equipment and services.

3) Procures urgently needed supplies, materials & equipment.

4) Prepares monthly report on supplies and materials issued.

5) Maintains and updates stock cards for all supplies and materials, equipment Ledger cards (ELCS) for fixed and other property records.

6) Reconciles property inventory balances with accounting ledger balances.

7) Prepares Purchase Orders (Pos)/Job Orders (JOs), Acceptance Reports & Waste Materials.

8) Prepares Requisition and Issue Vouchers (RIVs) for Supplies & Materials for the general use of the Commission.

9) Assists in the preparation and updating of property reports/ records.

---

[50] ECC Decision, *id*. at 106.

[51] Job Description, *id*. at 113.

10) Types/encodes letters, memoranda, endorsements and other report of the office.[52]

per Certification of the Chief of the Procurement Division, General Services, of the COA.

Although the Certification was submitted by respondent only in 2003, during the pendency of her petition before the CA, the same is not disputed by petitioner. Moreover, the ECC should have taken notice of the specific job description of respondent as Clerk III of the Procurement Division of COA, instead of having merely relied on the general description of a Clerk III in COA.

The admission of the Certification into evidence and its application by the CA were therefore proper, especially since technical rules of evidence need not be strictly applied to employees' compensation cases.[53]

A cursory examination of the certification and the job description reveals that, by their sheer number and peculiar nature, the duties which respondent has been officially performing since her promotion in 1998 to Clerk III in the Procurement Division of COA are undoubtedly more stressful, if not physically straining. Unlike the purely clerical work undertaken by a generic Clerk III in COA, the actual duties assigned to respondent as Clerk III in the COA Procurement Division involve mostly field work, such as the physical inventory of properties, the canvass of goods and materials and the procurement thereof. Moreover, these duties are radically different from those normally undertaken by a messenger and process server, which were the positions respondent held for eleven (11) years prior to her ailment. Thus, it is more than reasonable to believe that respondent experienced the signs and symptoms of CHD shortly after her promotion to Clerk III in 1998, at which time she began to be

---

[52] Certification, *id*. at 19.

[53] *Government Service Insurance System v. Baul*, *supra* note 40, at 404-405; *Government Service Insurance System v. Palma*, G.R. No. 167572, July 27, 2007, 528 SCRA 386, 394.

constantly subjected to more stress concomitant to the performance of her duties as Clerk III.

Clearly, the evidence of respondent provides a real and substantial basis for any reasonable man to conclude that she was afflicted with CHD under the third condition of item 18 of Annex "A". The Court agrees with the CA in its assessment that respondent substantially established the compensability of her disability.

Petitioner would insist, however, that, based on medical literature, CHD is of genetic origin and, therefore, cannot result from any form of employment.

In *Employees' Compensation Commission v. Court of Appeals*,[54] the Court noted medical findings that genetic factors may contribute to the development of *ureterolithiasis*, yet it declared the disease work-related under the factual circumstances of said case. So, too, in *Government Service Insurance System v. Palma,*[55] in which *thyroid cancer*, a disease that can be traced to family history, was declared work-related under the factual circumstances of the case.

On CHD, in particular, the U.S. National Library of Medicine and National Institutes of Health report that "no known cause can be identified for most congenital heart defects," for it remains under investigation and research.[56] Moreover, the two agencies report that there have been cases in which CHD did not cause any problem and even allowed the afflicted person to have a normal lifespan. Some instance of CHD even healed over time.[57] Medical literature, therefore, does not completely rule out the real possibility that while a "suspected" heart ailment may have afflicted respondent in 1972, it healed over the course of almost

---

[54] 332 Phil. 278 (1996).

[55] *Supra* note 53.

[56] *http://www.nlm.nih.gov/medlineplus/ency/article/000147.htm*; accessed through *http:// www.doh.gov.ph* on April 28, 2008.

[57] *Id*.

30 years but was "aroused" or "set off" when she was subjected to a radical change in her duties at work following her promotion in 1998.

In fine, notwithstanding medical opinion on the genetic origin of a disease, if there is some real and substantial evidence that the disease is work-related as well, especially under the conditions described in Annex "A", then the disability arising from such disease is compensable.[58]

All told, the CA did not err in reversing the ECC and awarding respondent disability compensation under P.D. No. 626.

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

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 166662. June 27, 2008]

AUTOCORP GROUP and PETER Y. RODRIGUEZ, *petitioners, vs.* **INTRA STRATA ASSURANCE CORPORATION and BUREAU OF CUSTOMS,** *respondents.*

SYLLABUS

1. CIVIL LAW; GUARANTY; ABSENCE OF ACTUAL FORFEITURE OF THE SUBJECT BONDS ARE

---

[58] See *Seagull Ship Management and Transport, Inc. v. National Labor Relations Commission*, 388 Phil. 906, 914 (2000).

COMPLETELY IRRELEVANT TO THE CASE AT BAR; THE INDEMNITY AGREEMENTS GIVE RESPONDENTS THE RIGHT TO RECOVER FROM PETITIONERS THE FACE VALUE OF THE SUBJECT BONDS PLUS ATTORNEY'S FEES AT THE TIME RESPONDENT BECAME LIABLE ON THE SAID BONDS TO THE BUREAU OF CUSTOMS, REGARDLESS OF WHETHER THE BUREAU HAD ACTUALLY FORFEITED THE BONDS, DEMANDED PAYMENT THEREOF AND/OR RECEIVED SUCH PAYMENT. — The subject bonds, Instrata Bonds No. 5770 and No. 7154, became due and demandable upon the failure of petitioner Autocorp Group to comply with a condition set forth in its undertaking with the BOC, specifically to re-export the imported vehicles within the period of six months from their date of entry. Since it issued the subject bonds, ISAC then also became liable to the BOC. At this point, the Indemnity Agreements already give ISAC the right to proceed against petitioners *via* court action or otherwise. The Indemnity Agreements, therefore, give ISAC the right to recover from petitioners the face value of the subject bonds plus attorney's fees at the time ISAC becomes liable on the said bonds to the BOC, regardless of whether the BOC had actually forfeited the bonds, demanded payment thereof and/or received such payment. It must be pointed out that the Indemnity Agreements explicitly provide that petitioners shall be liable to indemnify ISAC "whether or not payment has actually been made by the [ISAC]" and ISAC may proceed against petitioners by court action or otherwise "even prior to making payment to the [BOC] which may hereafter be done by [ISAC]." Even when the BOC already admitted that it not only made a demand upon ISAC for the payment of the bond but even filed a complaint against ISAC for such payment, such *demand* and *complaint* are not necessary to hold petitioners liable to ISAC for the amount of such bonds. Petitioners' attempts to prove that there was no actual forfeiture of the subject bonds are completely irrelevant to the case at bar.

2. ID.; ID.; A GUARANTOR MAY PROCEED AGAINST THE PRINCIPAL DEBTOR THE MOMENT THE DEBT BECOMES DUE AND DEMANDABLE. — It is worthy to note that petitioners did not impugn the validity of the stipulation in the Indemnity Agreements allowing ISAC to proceed against petitioners the moment the subject bonds become due and

demandable, even prior to actual forfeiture or payment thereof. Even if they did so, the Court would be constrained to uphold the validity of such a stipulation for it is but a slightly expanded contractual expression of Article 2071 of the Civil Code which provides, *inter alia,* that the guarantor may proceed against the principal debtor the moment the debt becomes due and demandable.

3. ID.; ID.; JUDICIAL OR EXTRAJUDICIAL DEMAND IS NOT REQUIRED BEFORE AN OBLIGATION BECOMES DUE AND DEMANDABLE. — Petitioners also invoke the alleged lack of demand on the part of ISAC on petitioners as regards Instrata Bond No. 5770 before it instituted Civil Case No. 95-1584. Even if proven true, such a fact does not carry much weight considering that demand, whether judicial or extrajudicial, is not required before an obligation becomes due and demandable. A demand is only necessary in order to put an obligor in a due and demandable obligation in delay, which in turn is for the purpose of making the obligor liable for interests or damages for the period of delay. Thus, unless stipulated otherwise, an extrajudicial demand is not required before a judicial demand, *i.e.*, filing a civil case for collection, can be resorted to.

4. ID.; ID.; THE PROVISIONS ON THE CIVIL CODE ON GUARANTEE, OTHER THAN THE BENEFIT OF EXCUSSION, ARE APPLICABLE AND AVAILABLE TO A SURETY. — The Court of Appeals concluded that since petitioner Rodriguez was a surety, Article 2079 of the Civil Code does not apply. The appellate court further noted that both petitioners authorized ISAC to consent to the granting of an extension of the subject bonds. The Court of Appeals committed a slight error on this point. The provisions of the Civil Code on Guarantee, other than the benefit of excussion, are applicable and available to the surety. The Court finds no reason why the provisions of Article 2079 would not apply to a surety. This, however, would not cause a reversal of the Decision of the Court of Appeals. The Court of Appeals was correct that even granting *arguendo* that there was a modification as to the effectivity of the bonds, petitioners would still not be absolved from liability since they had authorized ISAC to consent to the granting of any extension, modification, alteration and/or renewal of the subject bonds, as expressly set out in

the Indemnity Agreements. The provision in the Indemnity Agreements clearly authorized ISAC to consent to the granting of any extension, modification, alteration and/or renewal of the subject bonds. There is nothing illegal in such a provision. In *Philippine American General Insurance Co., Inc. v. Mutuc,* the Court held that an agreement whereby the sureties bound themselves to be liable in case of an extension or renewal of the bond, without the necessity of executing another indemnity agreement for the purpose and without the necessity of being notified of such extension or renewal, is valid; and that there is nothing in it that militates against the law, good customs, good morals, public order or public policy.

5. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; MISJOINDER AND NON-JOINDER OF PARTIES; MISJOINDER OF PARTIES DOES NOT WARRANT THE DISMISSAL OF AN ACTION. — The misjoinder of parties does not warrant the dismissal of the action. Section 11, Rule 3 of the Rules of Court explicitly states: SEC. 11. *Misjoinder and non-joinder of parties.* — **Neither misjoinder nor non-joinder of parties is ground for dismissal of an action.** Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately. Consequently, the purported misjoinder of the BOC as a party cannot result in the dismissal of Civil Case No. 95-1584. If indeed the BOC was improperly impleaded as a party in Civil Case No. 95-1584, at most, it **may** be dropped by order of the court, on motion of any party or on its own initiative, at any stage of the action and on such terms as are just.

6. ID.; ID.; ID.; NECESSARY PARTY; THE BUREAU OF CUSTOMS IS A NECESSARY PARTY IN CASE AT BAR. — ISAC alleged in its Complaint that the BOC is being joined as a necessary party in Civil Case No. 95-1584. A necessary party is defined in Section 8, Rule 3 of the Rules of Court as follows: SEC. 8. *Necessary party.* — A necessary party is one who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action. The subject matter of Civil Case

No. 95-1584 is the liability of Autocorp Group to the BOC, which ISAC is also bound to pay as the guarantor who issued the bonds therefor. Clearly, there would be no complete settlement of the subject matter of the case at bar — the liability of Autocorp Group to the BOC — should Autocorp Group be merely ordered to pay its obligations with the BOC to ISAC. BOC is, therefore, a necessary party in the case at bar, and should not be dropped as a party to the present case.

7. ID.; ID.; ID.; THE IRREGULARITY IN THE INCLUSION OF THE BUREAU OF CUSTOMS AS A PARTY TO CIVIL CASE NO. 95-1584 WILL NOT IN ANY WAY AFFECT THE DISPOSITION OF SAID CASE. — It can only be conceded that there was an irregularity in the manner the BOC was joined as a necessary party in Civil Case No. 95-1584. As the BOC, through the Solicitor General, was not the one who initiated Civil Case No. 95-1584, and neither was its consent obtained for the filing of the same, it may be considered an unwilling co-plaintiff of ISAC in said action. The proper way to implead the BOC as a necessary party to Civil Case No. 95-1584 should have been in accordance with Section 10, Rule 3 of the Rules of Court, *viz.:* SEC. 10. *Unwilling co-plaintiff.* — If the consent of any party who should be joined as plaintiff can not be obtained, he may be made a defendant and the reason therefor shall be stated in the complaint. Nonetheless, the irregularity in the inclusion of the BOC as a party to Civil Case No. 95-1584 would not in any way affect the disposition thereof. As the Court already found that the BOC is a necessary party to Civil Case No. 95-1584, it would be a graver injustice to drop it as a party.

8. ID.; ID.; ID.; ARGUMENT THAT THE INCLUSION OF THE BUREAU OF CUSTOMS AS PARTY TO THE CASE WILL DEPRIVE PETITIONERS' OF THEIR PERSONAL DEFENSES AGAINST THE BUREAU IS UTTERLY BASELESS; REASONS. — Petitioners' argument that the inclusion of the BOC as a party to this case would deprive them of their personal defenses against the BOC is utterly baseless. *First*, as ruled by the Court of Appeals, petitioners' defenses against the BOC are completely available against ISAC, since the right of the latter to seek indemnity from petitioner depends on the right of the BOC to proceed against the bonds. The Court, however, deems it essential to qualify that ISAC's

right to seek indemnity from petitioners does not constitute subrogation under the Civil Code, considering that there has been no payment yet by ISAC to the BOC. There are indeed cases in the aforementioned Article 2071 of the Civil Code wherein the guarantor or surety, even before having paid, may proceed against the principal debtor, but in all these cases, Article 2071 of the Civil Code merely grants the guarantor or surety an action "to obtain release from the guaranty, or to demand a security that shall protect him from any proceedings by the creditor and from the danger of insolvency of the debtor." The benefit of subrogation, an extinctive subjective novation by a change of creditor, which "transfers to the person subrogated, the credit and all the rights thereto appertaining, either against the debtor or against third persons," is granted by the Article 2067 of the Civil Code only to the "guarantor (or surety) who pays." ISAC cannot be said to have stepped into the shoes of the BOC, because the BOC still retains said rights until it is paid. ISAC's right to file Civil Case No. 95-1584 is based on the express provision of the Indemnity Agreements making petitioners liable to ISAC at the very moment ISAC's bonds become due and demandable for the liability of Autocorp Group to the BOC, without need for actual payment by ISAC to the BOC. But it is still correct to say that all the defenses available to petitioners against the BOC can likewise be invoked against ISAC because the latter's contractual right to proceed against petitioners only arises when the Autocorp Group becomes liable to the BOC for non-compliance with its undertakings. Indeed, the arguments and evidence petitioners can present against the BOC to prove that Autocorp Group's liability to the BOC is not yet due and demandable would also establish that petitioners' liability to ISAC under the Indemnity Agreements has not yet arisen. *Second*, making the BOC a necessary party to Civil Case No. 95-1584 actually allows petitioners to simultaneously invoke its defenses against both the BOC and ISAC. Instead of depriving petitioners of their personal defenses against the BOC, Civil Case No. 95-1584 actually gave them the opportunity to kill two birds with one stone: to disprove its liability to the BOC and, thus, negate its liability to ISAC.

APPEARANCES OF COUNSEL

Sam Norman G. Fuentes for petitioners.
Conrado Ayuyao & Associates for Intra Strata Assurance Corp.
Christopher S. Dy Buco for Bureau of Customs.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* from the Decision[1] of the Court of Appeals dated 30 June 2004 in CA-G.R. CV No. 62564 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Makati City, Branch 150 in Civil Case No. 95-1584 dated 16 September 1998.

The factual and procedural antecedents of this case are as follows:

On 19 August 1990, petitioner Autocorp Group, represented by its President, petitioner Peter Y. Rodriguez, secured an ordinary re-export bond, Instrata Bond No. 5770, from private respondent Intra Strata Assurance Corporation (ISAC) in favor of public respondent Bureau of Customs (BOC), in the amount of ₱327,040.00, to guarantee the re-export of one unit of Hyundai Excel 4-door 1.5 LS and/or to pay the taxes and duties thereon.

On 21 December 1990, petitioners obtained another ordinary re-export bond, Instrata Bond No. 7154, from ISAC in favor of the BOC, in the amount of ₱447,671.00, which was eventually increased to ₱707,609.00 per Bond Endorsement No. BE-0912/91 dated 10 January 1991, to guarantee the re-export of one unit of Hyundai Sonata 2.4 GLS and/or to pay the taxes and duties thereon.

---

[1] Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Salvador J. Valdez, Jr. and Aurora Santiago-Lagman, concurring; *rollo,* pp. 36-45.

[2] CA *rollo,* pp. 31-34.

Petitioners executed and signed two Indemnity Agreements with identical stipulations in favor of ISAC, agreeing to act as surety of the subject bonds. Petitioner Rodriguez signed the Indemnity Agreements both as President of the Autocorp Group and in his personal capacity. Petitioners thus agreed to the following provisions:

INDEMNITY: — The undersigned agree at all times to jointly and severally indemnify the COMPANY and keep it indemnified and hold and save it harmless from and against any and all damages, losses, costs, stamps, taxes, penalties, charges and expenses of whatsoever kind and nature including counsel or attorney's fee which the COMPANY shall or may at any time sustain or incur in consequence of having become surety upon the bond herein above referred to or any extension, renewal, substitution or alteration thereof, made at the instance of the undersigned or any of them, or any other bond executed on behalf of the undersigned or any of them, and to pay; reimburse and make good to the COMPANY, its successors and assigns, alls (sic) sums and amounts of money which it or its representatives shall pay or cause to be paid, or become liable to pay on accounts of the undersigned or any of them, of whatsoever kind and nature, including 25% of the amount involved in the litigation or other matters growing out of or connected therewith, for and as attorney's fees, but in no case less than ₱300.00 and which shall be payable whether or not the case be extrajudicially settled, it being understood that demand made upon anyone of the undersigned herein is admitted as demand made on all of the signatories hereof. It is hereby further agreed that in case of any extension or renewal of the bond, we equally bind ourselves to the COMPANY under the same terms and conditions as therein provided without the necessity of executing another indemnity agreement for the purpose and that we may be granted under this indemnity agreement.

MATURITY OF OUR OBLIGATIONS AS CONTRACTED HEREWITH AND ACCRUAL OF ACTION: — Notwithstanding of (sic) the next preceding paragraph where the obligation involves a liquidated amount for the payment of which the COMPANY has become legally liable under the terms of the obligation and its suretyship undertaking, or by the demand of the obligee or otherwise and the latter has merely allowed the COMPANY's aforesaid liability irrespective of whether or not payment has actually been made by the COMPANY, the COMPANY for the protection of its interest

may forthwith proceed against the undersigned or either of them by court action or otherwise to enforce payment, even prior to making payment to the obligee which may hereafter be done by the COMPANY.

INTEREST IN CASE OF DELAY: — In the event of delay in payment of the said sum or sums by the undersigned they will pay interest at the rate of 12% per annum or same, which interest, if not paid, will be liquidated and accumulated to the capital quarterly, and shall earn the same interest as the capital; all this without prejudice to the COMPANY's right to demand judicially or extrajudicially the full payment of its claims.

INCONTESTABILITY OF PAYMENT MADE BY THE COMPANY: — Any payment or disbursement made by the COMPANY on account of the above-mentioned Bond, its renewals, extensions or substitutions, replacement or novation in the belief either that the COMPANY was obligated to make such payment or that said payment was necessary in order to avoid greater losses or obligations for which the COMPANY might be liable by virtue of the terms of the above-mentioned Bond, its renewal, extensions or substitutions, shall be final and will not be disputed by the undersigned, who bind themselves to jointly and severally indemnify the COMPANY of any such payments, as stated in the preceding clauses:

WAIVER OF VENUE OF ACTION: — We hereby agree that any question which may arise between the COMPANY and the undersigned by reason of this document and which has to be submitted for decision to a court of justice shall be brought before the court of competent jurisdiction in Makati, Rizal, waiving for this purpose any other venue.

WAIVER: — The undersigned hereby waive all the rights[,] privileges and benefits that they have or may have under Articles 2077, 2078, 2079, 2080 and 2081, of the Civil Code of the Philippines.

The undersigned, by this instrument, grant a special power of attorney in favor of all or any of the other undersigned so that any of the undersigned may represent all the others in all transactions related to this Bond, its renewals, extensions, or any other agreements in connection with this Counter-Guaranty, without the necessity of the knowledge or consent of the others who hereby promise to accept as valid each and every act done or executed by any of the attorney's-in-fact by virtue of the special power of attorney.

OUR LIABILITY HEREUNDER: — It shall not be necessary for the COMPANY to bring suit against the principal upon his default

or to exhaust the property of the principal, but the liability hereunder of the undersigned indemnitors shall be jointly and severally, a primary one, the same as that of the principal, and shall be exigible immediately upon the occurrence of such default.

CANCELLATION OF BOND BY THE COMPANY: — The COMPANY may at any time cancel the above-mentioned Bond, its renewals, extensions or substitutions, subject to any liability which might have accrued prior to the date of cancellation refunding the proportionate amount of the premium unearned on the date of cancellation.

RENEWALS, ALTERATIONS AND SUBSTITUTIONS: — The undersigned hereby empower and authorize the COMPANY to grant or consent to the granting of any extension, continuation, increase, modification, change, alteration and/or renewal of the original bond herein referred to, and to execute or consent to the execution of any substitution for said Bond with the same or different, conditions and parties, and the undersigned hereby hold themselves jointly and severally liable to the COMPANY for the original Bond herein above-mentioned or for any extension, continuation, increase, modification, change, alteration, renewal or substitution thereof without the necessary of any new indemnity agreement being executed until the full amount including principal, interest, premiums, costs, and other expenses due to the COMPANY thereunder is fully paid up.

SEVERABILITY OF PROVISIONS: — It is hereby agreed that should any provision or provisions of this agreement be declared by competent public authority to be invalid or otherwise unenforceable, all remaining provisions herein contained shall remain in full force and effect.

NOTIFICATION: — The undersigned hereby accept due notice of that the COMPANY has accepted this guaranty, executed by the undersigned in favor of the COMPANY.[3]

In sum, ISAC issued the subject bonds to guarantee compliance by petitioners with their undertaking with the BOC to re-export the imported vehicles within the given period and pay the taxes and/or duties due thereon. In turn, petitioners agreed, as surety, to indemnify ISAC for the liability the latter may incur on the said bonds.

[3] Records, p. 9.

Petitioner Autocorp Group failed to re-export the items guaranteed by the bonds and/or liquidate the entries or cancel the bonds, and pay the taxes and duties pertaining to the said items despite repeated demands made by the BOC, as well as by ISAC. By reason thereof, the BOC considered the two bonds, with a total face value of ₱1,034,649.00, forfeited.

Failing to secure from petitioners the payment of the face value of the two bonds, despite several demands sent to each of them as surety under the Indemnity Agreements, ISAC filed with the RTC on 24 October 1995 an action against petitioners to recover the sum of ₱1,034,649.00, plus 25% thereof or ₱258,662.25 as attorney's fees. ISAC impleaded the BOC "as a necessary party plaintiff in order that the reward of money or judgment shall be adjudged unto the said necessary plaintiff."[4] The case was docketed as Civil Case No. 95-1584.

Petitioners filed a Motion to Dismiss on 11 December 1995 on the grounds that (1) the Complaint states no cause of action; and (2) the BOC is an improper party.

The RTC, in an Order[5] dated 27 February 1996, denied petitioners' Motion to Dismiss. Petitioners thus filed their Answer to the Complaint, claiming that they sought permission from the BOC for an extension of time to re-export the items covered by the bonds; that the BOC has yet to issue an assessment for petitioners' alleged default; and that the claim of ISAC for payment is premature as the subject bonds are not yet due and demandable.

During the pre-trial conference, petitioners admitted the genuineness and due execution of Instrata Bonds No. 5770 and No. 7154, but specifically denied those of the corresponding Indemnity Agreements. The parties agreed to limit the issue to "whether or not these bonds are now due and demandable."

On 16 September 1998, the RTC rendered its Decision ordering petitioners to pay ISAC and/or the BOC the face value of the

---

[4] *Id.* at 1.

[5] *Id.* at 23.

subject bonds in the total amount of ₱1,034,649.00, and to pay ISAC ₱258,662.25 as attorney's fees, thus:

> WHEREFORE, judgment is hereby rendered in favor of the [herein private respondent ISAC] and as against the [herein petitioners] who are ordered to pay the [private respondent] Intra Strata Assurance Corporation and/or the Bureau of Customs the amount of ₱1,034,649.00 which is the equivalent amount of the subject bonds as well as to pay the plaintiff corporation the sum of ₱258,662.25 as and for attorney's fees.[6]

Petitioners' Motion for Reconsideration was denied by the RTC in a Resolution dated 15 January 1999.[7]

Petitioners appealed to the Court of Appeals. On 30 June 2004, the Court of Appeals rendered its Decision affirming the RTC Decision, only modifying the amount of the attorney's fees awarded:

> WHEREFORE, the appealed 16 September 1998 Decision is MODIFIED to reduce the award of attorney's fees to One Hundred Three Thousand Four Hundred Sixty Four Pesos & Ninety Centavos (₱103,464.90). The rest is affirmed *in toto*. Costs against [herein petitioners].[8]

In a Resolution dated 5 January 2005, the Court of Appeals refused to reconsider its Decision.

Petitioners thus filed the instant Petition for Review on *Certiorari*, assigning the following errors allegedly committed by the Court of Appeals:

> I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RENDERING JUDGMENT AGAINST PETITIONERS BASED ON A PREMATURE ACTION AND/OR RULING IN FAVOR OF RESPONDENTS WHO HAVE NO CAUSE OF ACTION AGAINST PETITIONERS.

---

[6] CA *rollo*, p. 34.

[7] Records, p. 246.

[8] *Rollo*, p. 45.

II. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF BRANCH 150, REGIONAL TRIAL COURT OF MAKATI CITY BASED ON MISAPPREHENSION OF FACTS, UNSUPPORTED BY EVIDENCE ON RECORD & CONTRARY TO LAW.

III. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT GIVING MERIT TO THE ISSUE RAISED BY PETITIONERS THAT THE BUREAU OF CUSTOMS IS IMPROPERLY IMPLEADED BY INTRA STRATA.

IV. THE HONORABLE COURT OF APPEALS GRAVELY ERRED [IN] AFFIRMING THE PORTION OF THE DECISION HOLDING PETITIONER PETER Y. RODRIGUEZ AS JOINTLY LIABLE WHEN AMENDMENTS WERE INTRODUCED, WITHOUT HIS CONSENT AND APPROVAL.[9]

The present Petition is without merit.

Absence of actual forfeiture of the subject bonds

Petitioners contend that their obligation to ISAC is not yet due and demandable. They cannot be made liable by ISAC in the absence of an actual forfeiture of the subject bonds by the BOC and/or an explicit pronouncement by the same bureau that ISAC is already liable on the said bonds. In this case, there is yet no actual forfeiture of the bonds, but merely a recommendation of forfeiture, for no writ of execution has been issued against such bonds.[10] Hence, Civil Case No. 95-1584 was prematurely filed by ISAC. Petitioners further argue that:

> Secondly, it bears emphasis that as borne by the records, not only is there no writ of forfeiture against Surety Bond No. 7154, *there is likewise no evidence adduced on record to prove that respondent Intra Strata has made legal demand against Surety Bond No. 5770* neither is there a showing that respondent BOC initiated a demand or issued notice for its forfeiture and/or confiscation.[11]

[9] *Id*. at 142.

[10] Petitioners' Memorandum, *rollo*, pp. 143-144.

[11] *Id*. at 146.

The Court of Appeals, in its assailed Decision, already directly addressed petitioners' arguments by ruling that an actual forfeiture of the subject bonds is **not necessary** for petitioners to be liable thereon to ISAC as surety under the Indemnity Agreements.

According to the relevant provision of the Indemnity Agreements executed between petitioner and ISAC, which reads:

> [W]here the obligation involves a liquidated amount for the payment of which [ISAC] has become legally liable under the terms of the obligation and its suretyship undertaking or by the demand of the [BOC] or otherwise and the latter has merely allowed the [ISAC's] aforesaid liability, irrespective of whether or not payment has actually been made by the [ISAC], the [ISAC] for the protection of its interest may forthwith proceed against [petitioners Autocorp Group and Rodriguez] or either of them by court action or otherwise to enforce payment, even prior to making payment to the [BOC] which may hereafter be done by [ISAC][,][12]

petitioners' obligation to indemnify ISAC became due and demandable the moment the bonds issued by ISAC became answerable for petitioners' non-compliance with its undertaking with the BOC. Stated differently, petitioners became liable to indemnify ISAC at the same time the bonds issued by ISAC were placed at the risk of forfeiture by the BOC for non-compliance by petitioners with its undertaking.

The subject bonds, Instrata Bonds No. 5770 and No. 7154, became due and demandable upon the failure of petitioner Autocorp Group to comply with a condition set forth in its undertaking with the BOC, specifically to re-export the imported vehicles within the period of six months from their date of entry. Since it issued the subject bonds, ISAC then also became liable to the BOC. At this point, the Indemnity Agreements already give ISAC the right to proceed against petitioners *via* court action or otherwise.

The Indemnity Agreements, therefore, give ISAC the right to recover from petitioners the face value of the subject bonds

---

[12] Records, p. 9.

plus attorney's fees at the time ISAC becomes liable on the said bonds to the BOC, regardless of whether the BOC had actually forfeited the bonds, demanded payment thereof and/or received such payment. It must be pointed out that the Indemnity Agreements explicitly provide that petitioners shall be liable to indemnify ISAC "whether or not payment has actually been made by the [ISAC]" and ISAC may proceed against petitioners by court action or otherwise "even prior to making payment to the [BOC] which may hereafter be done by [ISAC]."

Even when the BOC already admitted that it not only made a demand upon ISAC for the payment of the bond but even filed a complaint against ISAC for such payment,[13] such *demand* and *complaint* are not necessary to hold petitioners liable to ISAC for the amount of such bonds. Petitioners' attempts to prove that there was no actual forfeiture of the subject bonds are completely irrelevant to the case at bar.

It is worthy to note that petitioners did not impugn the validity of the stipulation in the Indemnity Agreements allowing ISAC to proceed against petitioners the moment the subject bonds become due and demandable, even prior to actual forfeiture or payment thereof. Even if they did so, the Court would be constrained to uphold the validity of such a stipulation for it is but a slightly expanded contractual expression of Article 2071 of the Civil Code which provides, *inter alia*, that the guarantor may proceed against the principal debtor the moment the debt becomes due and demandable. Article 2071 of the Civil Code provides:

Art. 2071. **The guarantor, even before having paid, may proceed against the principal debtor:**

(1) When he is sued for the payment;

(2) In case of insolvency of the principal debtor;

(3) When the debtor has bound himself to relieve him from the guaranty within a specified period, and this period has expired;

(4) When the debt has become demandable, by reason of the expiration of the period for payment;

[13] *Rollo*, p. 185.

(5) After the lapse of ten years, when the principal obligation has no fixed period for its maturity, unless it be of such nature that it cannot be extinguished except within a period longer than ten years;

(6) If there are reasonable grounds to fear that the principal debtor intends to abscond;

(7) If the principal debtor is in imminent danger of becoming insolvent.

In all these cases, the action of the guarantor is to obtain release from the guaranty, or to demand a security that shall protect him from any proceedings by the creditor and from the danger of insolvency of the debtor. (Emphases ours.)

Petitioners also invoke the alleged lack of demand on the part of ISAC on petitioners as regards Instrata Bond No. 5770 before it instituted Civil Case No. 95-1584. Even if proven true, such a fact does not carry much weight considering that demand, whether judicial or extrajudicial, is not required before an obligation becomes due and demandable. A demand is only necessary in order to put an obligor in a due and demandable obligation in delay,[14] which in turn is for the purpose of making the obligor liable for interests or damages for the period of delay.[15]

---

[14] Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation. However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declare; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

[15] Article 1170 of the Civil Code provides:

Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

Thus, unless stipulated otherwise, an extrajudicial demand is not required before a judicial demand, *i.e.*, filing a civil case for collection, can be resorted to.

Inclusion of the Bureau of Customs as a party to the case

ISAC included the BOC "as a necessary party plaintiff in order that the reward of money or judgment shall be adjudged unto the said necessary plaintiff."[16]

Petitioners assail this inclusion of the BOC as a party in Civil Case No. 95-1584 on the ground that it was not properly represented by the Solicitor General. Petitioners also contend that the inclusion of the BOC as a party in Civil Case No. 95-1584 "is highly improper and should not be countenanced as the net result would be tantamount to collusion between Intra Strata and the Bureau of Customs which would deny and deprive petitioners their personal defenses against the BOC."[17]

In its assailed Decision, the Court of Appeals did not find merit in petitioners' arguments on the matter, holding that when the BOC forfeited the subject bonds issued by ISAC, subrogation took place so that whatever right the BOC had against petitioners were eventually transferred to ISAC. As ISAC merely steps into the shoes of the BOC, whatever defenses petitioners may have against the BOC would still be available against ISAC.

The Court likewise cannot sustain petitioners' position.

The misjoinder of parties does not warrant the dismissal of the action. Section 11, Rule 3 of the Rules of Court explicitly states:

SEC. 11. *Misjoinder and non-joinder of parties*.— **Neither misjoinder nor non-joinder of parties is ground for dismissal of an action.** Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.

---

[16] Records, p. 1.

[17] Petitioners' Memorandum, *rollo*, p. 148.

Consequently, the purported misjoinder of the BOC as a party cannot result in the dismissal of Civil Case No. 95-1584. If indeed the BOC was improperly impleaded as a party in Civil Case No. 95-1584, at most, it **may** be dropped by order of the court, on motion of any party or on its own initiative, at any stage of the action and on such terms as are just.

Should the BOC then be dropped as a party to Civil Case No. 95-1584?

ISAC alleged in its Complaint[18] that the BOC is being joined as a necessary party in Civil Case No. 95-1584.

A necessary party is defined in Section 8, Rule 3 of the Rules of Court as follows:

> SEC. 8. *Necessary party*. — A necessary party is one who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action.

The subject matter of Civil Case No. 95-1584 is the liability of Autocorp Group to the BOC, which ISAC is also bound to pay as the guarantor who issued the bonds therefor. Clearly, there would be no complete settlement of the subject matter of the case at bar — the liability of Autocorp Group to the BOC — should Autocorp Group be merely ordered to pay its obligations with the BOC to ISAC. BOC is, therefore, a necessary party in the case at bar, and should not be dropped as a party to the present case.

It can only be conceded that there was an irregularity in the manner the BOC was joined as a necessary party in Civil Case No. 95-1584. As the BOC, through the Solicitor General, was not the one who initiated Civil Case No. 95-1584, and neither was its consent obtained for the filing of the same, it may be considered an unwilling co-plaintiff of ISAC in said action. The proper way to implead the BOC as a necessary party to Civil Case No. 95-1584 should have been in accordance with Section 10, Rule 3 of the Rules of Court, *viz*:

---

[18] Records, pp. 1-7.

SEC. 10. *Unwilling co-plaintiff.*— If the consent of any party who should be joined as plaintiff can not be obtained, he may be made a defendant and the reason therefor shall be stated in the complaint.

Nonetheless, the irregularity in the inclusion of the BOC as a party to Civil Case No. 95-1584 would not in any way affect the disposition thereof. As the Court already found that the BOC is a necessary party to Civil Case No. 95-1584, it would be a graver injustice to drop it as a party.

Petitioners' argument that the inclusion of the BOC as a party to this case would deprive them of their personal defenses against the BOC is utterly baseless.

First, as ruled by the Court of Appeals, petitioners' defenses against the BOC are completely available against ISAC, since the right of the latter to seek indemnity from petitioner depends on the right of the BOC to proceed against the bonds.

The Court, however, deems it essential to qualify that ISAC's right to seek indemnity from petitioners does not constitute subrogation under the Civil Code, considering that there has been no payment yet by ISAC to the BOC. There are indeed cases in the aforementioned Article 2071 of the Civil Code wherein the guarantor or surety, even before having paid, may proceed against the principal debtor, but in all these cases, Article 2071 of the Civil Code merely grants the guarantor or surety an action "to obtain release from the guaranty, or to demand a security that shall protect him from any proceedings by the creditor and from the danger of insolvency of the debtor." The benefit of subrogation, an extinctive subjective novation by a change of creditor, which "transfers to the person subrogated, the credit and all the rights thereto appertaining, either against the debtor or against third persons,"[19] is granted by the Article

---

[19] Civil Code, Article 1303 provides:

Art. 1303. Subrogation transfers to the persons subrogated the credit with all the rights thereto appertaining, either against the debtor or against third person, be they guarantors or possessors of mortgages, subject to stipulation in a conventional subrogation.

2067 of the Civil Code only to the "guarantor (or surety) who pays."[20]

ISAC cannot be said to have stepped into the shoes of the BOC, because the BOC still retains said rights until it is paid. ISAC's right to file Civil Case No. 95-1584 is based on the express provision of the Indemnity Agreements making petitioners liable to ISAC at the very moment ISAC's bonds become due and demandable for the liability of Autocorp Group to the BOC, without need for actual payment by ISAC to the BOC. But it is still correct to say that all the defenses available to petitioners against the BOC can likewise be invoked against ISAC because the latter's contractual right to proceed against petitioners only arises when the Autocorp Group becomes liable to the BOC for non-compliance with its undertakings. Indeed, the arguments and evidence petitioners can present against the BOC to prove that Autocorp Group's liability to the BOC is not yet due and demandable would also establish that petitioners' liability to ISAC under the Indemnity Agreements has not yet arisen.

Second, making the BOC a necessary party to Civil Case No. 95-1584 actually allows petitioners to simultaneously invoke its defenses against both the BOC and ISAC. Instead of depriving petitioners of their personal defenses against the BOC, Civil Case No. 95-1584 actually gave them the opportunity to kill two birds with one stone: to disprove its liability to the BOC and, thus, negate its liability to ISAC.

Liability of petitioner Rodriguez

Petitioner Rodriguez posits that he is merely a guarantor, and that his liability arises only when the person with whom he guarantees the credit, Autocorp Group in this case, fails to pay the obligation. Petitioner Rodriguez invokes Article 2079 of the Civil Code on Extinguishment of Guaranty, which states:

Art. 2079. An extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty. The

[20] Civil Code, Article 2067 provides:

Art. 2067. The guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor.

mere failure on the part of the creditor to demand payment after the debt has become due does not of itself constitute any extension of time referred to herein.

Petitioner Rodriguez argues that there was an amendment as to the effectivity of the bonds, and this constitutes a modification of the agreement without his consent, thereby exonerating him from any liability.

We must take note at this point that petitioners have not presented any evidence of this alleged amendment as to the effectivity of the bonds.[21] Be that as it may, even if there was indeed such an amendment, such would not cause the exoneration of petitioner Rodriguez from liability on the bonds.

The Court of Appeals, in its assailed Decision, held that the use of the term *guarantee* in a contract does not *ipso facto* mean that the contract is one of guaranty. It thus ruled that both petitioners assumed liability as a regular party and obligated themselves as original promissors, *i.e.*, sureties, as shown in the following provisions of the Indemnity Agreement:

INDEMNITY: — The undersigned **[Autocorp Group and Rodriguez] agree at all times to jointly and severally indemnify** the COMPANY **[ISAC]** and keep it indemnified and hold and save it harmless from and against any and all damages, losses, costs, stamps, taxes, penalties, charges and expenses of whatsoever kind and nature including counsel or attorney's fee which the COMPANY [ISAC] shall or may at any time sustain or incur in consequence of having become surety upon the bond herein above referred to x x x

x x x x x x x x x

OUR LIABILITY HEREUNDER: — It shall not be necessary for the COMPANY [ISAC] to bring suit against the principal [Autocorp Group] upon his default or to exhaust the property of the principal [Autocorp Group], **but the liability hereunder of the undersigned indemnitors [Rodriguez] shall be jointly and severally, a primary one, the same as that of the principal [Autocorp Group], and shall be exigible immediately upon the occurrence of such default.** (Emphases supplied.)

---

[21] *Id.* at 212.

The Court of Appeals concluded that since petitioner Rodriguez was a surety, Article 2079 of the Civil Code does not apply. The appellate court further noted that both petitioners authorized ISAC to consent to the granting of an extension of the subject bonds.

The Court of Appeals committed a slight error on this point. The provisions of the Civil Code on Guarantee, other than the benefit of excussion, are applicable and available to the surety.[22] The Court finds no reason why the provisions of Article 2079 would not apply to a surety.

This, however, would not cause a reversal of the Decision of the Court of Appeals. The Court of Appeals was correct that even granting *arguendo* that there was a modification as to the effectivity of the bonds, petitioners would still not be absolved from liability since they had authorized ISAC to consent to the granting of any extension, modification, alteration and/or renewal of the subject bonds, as expressly set out in the Indemnity Agreements:

> RENEWALS, ALTERATIONS AND SUBSTITUTIONS: — **The undersigned [Autocorp Group and Rodriguez] hereby empower and authorize the COMPANY [ISAC] to grant or consent to the granting of any extension, continuation, increase, modification, change, alteration and/or renewal of the original bond herein referred to**, and to execute or consent to the execution of any substitution for said Bond with the same or different, conditions and parties, **and the undersigned [Autocorp Group and Rodriguez] hereby hold themselves jointly and severally liable to the COMPANY [ISAC] for the original Bond herein above-mentioned or for any extension, continuation, increase, modification, change, alteration, renewal or substitution thereof without the necessary of any new indemnity agreement being executed** until the full amount including principal, interest, premiums, costs, and other expenses due to the COMPANY [ISAC] thereunder is fully paid up.[23] (Emphases supplied.)

---

[22] *Manila Surety and Fidelity Co., Inc. v. Batu Corporation and Company*, 101 Phil. 494, 501 (1957).

[23] Records, p. 9.

The foregoing provision in the Indemnity Agreements clearly authorized ISAC to consent to the granting of any extension, modification, alteration and/or renewal of the subject bonds.

There is nothing illegal in such a provision. In *Philippine American General Insurance Co., Inc. v. Mutuc*,[24] the Court held that an agreement whereby the sureties bound themselves to be liable in case of an extension or renewal of the bond, without the necessity of executing another indemnity agreement for the purpose and without the necessity of being notified of such extension or renewal, is valid; and that there is nothing in it that militates against the law, good customs, good morals, public order or public policy.

WHEREFORE, the instant Petition for Review on *Certiorari* is *DENIED*. The Decision of the Court of Appeals dated 30 June 2004 in CA-G.R. CV No. 62564 which affirmed with modification the Decision of the Regional Trial Court of Makati City, in Civil Case No. 95-1584 dated 16 September 1998 is **AFFIRMED** *in toto*. Costs against petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 167523. June 27, 2008]

NILDA V. NAVALES, *petitioner, vs.* **REYNALDO NAVALES,** *respondent*.*

---

[24] 158 Phil. 699 (1974).

* The Court of Appeals having been included as a co-respondent, is deleted from the title pursuant to Section 4, Rule 45 of the Rules of Court.

SYLLABUS

1. CIVIL LAW; FAMILY CODE; ANNULMENT OR DECLARATION OF ABSOLUTE NULLITY OF MARRIAGE; MANDATES THE ACTIVE PARTICIPATION OF THE PUBLIC PROSECUTOR OR THE OFFICE OF THE SOLICITOR GENERAL TO ENSURE THAT THE INTEREST OF THE STATE IS REPRESENTED AND PROTECTED IN THE PROCEEDINGS BY PREVENTING COLLUSION BETWEEN THE PARTIES OR THE FABRICATION OR SUPPRESSION OF EVIDENCE. — Preliminarily, let it be stressed that it is the policy of our Constitution to protect and strengthen the family as the basic autonomous social institution, and marriage as the foundation of the family. The Constitution decrees marriage as legally inviolable and protects it from dissolution at the whim of the parties. The Family Code under Article 48 therefore requires courts to order the prosecuting attorney or fiscal assigned, in cases of annulment or declaration of absolute nullity of marriage, to appear on behalf of the State in order to take steps to prevent collusion between the parties and to take care that the evidence is not fabricated or suppressed. Indeed, only the active participation of the Public Prosecutor or the Office of the Solicitor General (OSG) will ensure that the interest of the State is represented and protected in proceedings for annulment and declarations of nullity of marriage by preventing collusion between the parties, or the fabrication or suppression of evidence. While the guidelines in *Molina* requiring the OSG to issue a certification on whether or not it is agreeing or objecting to the petition for annulment has been dispensed with by A.M. No. 02-11-10-SC or the Rule on the Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, still, Article 48 mandates the appearance and active participation of the State through the fiscal or the prosecuting attorney.

2. ID.; ID.; ID.; THE COURT FOUND THE STATE'S PARTICIPATION IN CASE AT BAR TO BE WANTING. — In this case, contrary to the assertion of the RTC that the OSG actively participated in the case through the Office of the City Prosecutor, records show that the State's participation consists only of the Report dated November 29, 1999 by Assistant City Prosecutor Gabriel L. Trocio, Jr. stating that

no collusion exists between the parties; the OSG's Opposition to the petition for declaration of nullity of marriage dated June 2, 2000; and the cross-examination conducted by Prosecutor Trocio on Reynaldo and his witness Abales. There were no other pleadings, motions, or position papers filed by the Public Prosecutor or OSG; and no controverting evidence presented by them before the judgment was rendered. Considering the interest sought to be protected by the aforestated rules, the Court finds the State's participation in this case to be wanting.

3. ID.; ID.; ID.; TOTALITY OF EVIDENCE PRESENTED IS INSUFFICIENT TO SUSTAIN A FINDING THAT PETITIONER IS PSYCHOLOGICALLY INCAPACITATED. — But even on the merits, the Court finds that the totality of evidence presented by Reynaldo, contrary to its appreciation by the RTC and the CA, is insufficient to sustain a finding that Nilda is psychologically incapacitated. Generally, factual findings of trial courts, when affirmed by the CA, are binding on this Court. Such principle however is not absolute, such as when the findings of the appellate court go beyond the issues of the case; run contrary to the admissions of the parties; fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; or when there is a misappreciation of facts. Such is the case at bar. *Psychological incapacity*, in order to be a ground for the nullity of marriage under Article 36 of the Family Code, refers to a serious psychological illness afflicting a party even before the celebration of marriage. It is a malady that is so grave and permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume. As all people may have certain quirks and idiosyncrasies, or isolated traits associated with certain personality disorders, there is hardly any doubt that the intention of the law has been to confine the meaning of psychological incapacity to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. In *Santos v. Court of Appeals,* the Court held that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. In *Republic of the Philippines v. Molina*, the Court further set forth guidelines in the interpretation and application of Article 36 of the Family Code.

4. ID.; ID.; ID.; ALLEGED ACTS BY THEMSELVES ARE INSUFFICIENT TO ESTABLISH A PSYCHOLOGICAL OR MENTAL DEFECT THAT IS SERIOUS, INCURABLE OR GRAVE AS CONTEMPLATED BY ARTICLE 36 OF THE FAMILY CODE. — The instances alleged by Reynaldo*, i.e.,* the occasion when Nilda chose to ride home with another man instead of him, that he saw Nilda being kissed by another man while in a car, and that Nilda allowed other men to touch her body, if true, would understandably hurt and embarrass him. Still, these acts by themselves are insufficient to establish a psychological or mental defect that is serious, incurable or grave as contemplated by Article 36 of the Family Code. Article 36 contemplates downright incapacity or inability to take cognizance of and to assume basic marital obligations. Mere "difficulty," "refusal" or "neglect" in the performance of marital obligations or "ill will" on the part of the spouse is different from "incapacity" rooted on some debilitating psychological condition or illness. Indeed, irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility, and the like, do not by themselves warrant a finding of psychological incapacity under Article 36, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage and not due to some psychological illness that is contemplated by said rule.

5. ID.; ID.; ID.; ARTICLE 36 SHOULD NOT BE EQUATED WITH LEGAL SEPARATION. — As admitted by Reynaldo, his marriage with Nilda was not all that bad; in fact, it went well in the first year of their marriage. As in other cases, an admission of a good and harmonious relationship during the early part of the marriage weakens the assertion of psychological defect existing at the time of the celebration of the marriage which deprived the party of the ability to assume the essential duties of marriage and its concomitant responsibilities. In determining the import of "psychological incapacity" under Article 36, the same must be read in conjunction with, although to be taken as distinct from, Articles 35, 37, 38 and 41 of the Family Code that would likewise, but for different reasons, render the marriage void *ab initio*; or Article 45 that would make the marriage merely voidable; or Article 55 that could justify a petition for legal separation. These various circumstances are not applied so indiscriminately as if the law were indifferent on the matter. Indeed, Article 36 should not be equated with

legal separation, in which the grounds need not be rooted in psychological incapacity but on physical violence, moral pressure, moral corruption, civil interdiction, drug addiction, habitual alcoholism, sexual infidelity, abandonment and the like.

6. ID.; ID.; ID.; PSYCHOLOGICAL REPORT PRESENTED IS INSUFFICIENT TO ESTABLISH PETITIONER'S INCAPACITY; THE CONCLUSIONS DRAWN BY THE REPORT ARE VAGUE, SWEEPING AND LACK SUFFICIENT FACTUAL BASES. — The Court finds that the psychological report presented in this case is insufficient to establish Nilda's psychological incapacity. In her report, Vatanagul concluded that Nilda is a nymphomaniac, an emotionally immature individual, has a borderline personality, has strong sexual urges which are incurable, has complete denial of her actual role as a wife, has a very weak conscience or superego, emotionally immature, a social deviant, not a good wife as seen in her infidelity on several occasions, an alcoholic, suffers from anti-social personality disorder, fails to conform to social norms, deceitful, impulsive, irritable and aggresive, irresponsible and vain. She further defined "nymphomia" as a psychiatric disorder that involves a disturbance in motor behavior as shown by her sexual relationship with various men other than her husband. The report failed to specify, however, the names of the men Nilda had sexual relationship with or the circumstances surrounding the same. As pointed out by Nilda, there is not even a single proof that she was ever involved in an illicit relationship with a man other than her husband. Vatanagul claims, during her testimony, that in coming out with the report, she interviewed not only Reynaldo but also Jojo Caballes, Dorothy and Lesley who were Reynaldo's sister-in-law and sister, respectively, a certain Marvin and a certain Susan. Vatanagul however, did not specify the identities of these persons, which information were supplied by whom, and how they came upon their respective informations. Indeed, the conclusions drawn by the report are vague, sweeping and lack sufficient factual bases. As the report lacked specificity, it failed to show the root cause of Nilda's psychological incapacity; and failed to demonstrate that there was a "natal or supervening disabling factor" or an "adverse integral element" in Nilda's character that effectively incapacitated her from accepting, and thereby complying with, the essential marital obligations,

and that her psychological or mental malady existed even before the marriage. Hence, the Court cannot give weight to said assessment. The standards used by the Court in assessing the sufficiency of psychological reports may be deemed very strict, but that is only proper in view of the principle that any doubt should be resolved in favor of the validity of the marriage and the indissolubility of the marital vinculum.

7. ID.; ID.; ID.; WHILE THE PARTIES' MARRIAGE FAILED AND APPEARS TO BE WITHOUT HOPE OF RECONCILIATION, THE REMEDY, HOWEVER, IS NOT TO HAVE IT DECLARED VOID *AB INITIO* ON THE GROUND OF PSYCHOLOGICAL INCAPACITY; A MARRIAGE, NO MATTER HOW UNSATISFACTORY, IS NOT A NULL AND VOID MARRIAGE. — Reynaldo also claims that Nilda does not want to get pregnant which allegation was upheld by the trial court. A review of the records shows, however, that apart from the testimony of Reynaldo, no other proof was presented to support such claim. Mere allegation and nothing more is insufficient to support such proposition. As petitioner before the trial court, it devolves upon Reynaldo to discharge the burden of establishing the grounds that would justify the nullification of the marriage. While Reynaldo and Nilda's marriage failed and appears to be without hope of reconciliation, the remedy, however, is not always to have it declared void *ab initio* on the ground of psychological incapacity. A marriage, no matter how unsatisfactory, is not a null and void marriage. And this Court, even as the highest one, can only apply the letter and spirit of the law, no matter how harsh it may be.

APPEARANCES OF COUNSEL

Aquilino C. Felicitas, Jr. for petitioner.
Fermin O. Poloyapoy for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 76624 promulgated on February 16, 2005 which affirmed the Judgment[2] of the Regional Trial Court (RTC) Branch 59 of Toledo City, in Civil Case No. T-799 dated January 2, 2002, declaring the nullity of the marriage of Reynaldo and Nilda Navales on the ground of psychological incapacity.

The facts are as follows:

Reynaldo Navales (Reynaldo) and Nilda Navales (Nilda) met in 1986 in a local bar where Nilda worked as a waitress. The two became lovers and Nilda quit her job, managed a boarding house owned by her uncle and studied Health Aide financed by Reynaldo. Upon learning that Nilda's uncle was prodding her to marry an American, Reynaldo, not wanting to lose her, asked her to marry him. This, despite his knowledge that Nilda was writing her penpals and was asking money from them and that she had an illegitimate son by a man whose identity she did not reveal to him.[3] The two got married on December 29, 1988, before the Municipal Trial Court Judge of San Fernando, Cebu.[4]

Reynaldo claims that during the first year of their marriage, their relationship went well. Problems arose, however, when Nilda started selling RTWs and cosmetics, since she could no longer take care of him and attend to household chores.[5] Things worsened when she started working as an aerobics instructor at the YMCA, where, according to Reynaldo, Nilda's flirtatiousness and promiscuity recurred. She wore tight-fitting outfits, allowed

---

[1] Penned by Associate Justice Arsenio J. Magpale and concurred in by Associate Justices Sesinando E. Villon and Vicente L. Yap, *rollo*, pp. 28-35.

[2] Judge Gaudioso D. Villarin, records, pp. 359-372.

[3] *Rollo*, p. 29 (CA Decision); records, p. 363 (RTC Decision).

[4] *Id*.; records, p. 249.

[5] Records, p. 364 (RTC Decision).

male clients to touch her body, and introduced herself as single. Reynaldo received phone calls from different men looking for Nilda. There was also a time when Nilda chose to ride with another man instead of Reynaldo; and another when Nilda went home late, riding in the car of the man who kissed her. Reynaldo also claims that Nilda refused to have a child with him, as it would destroy her figure.[6] On June 18, 1992, Reynaldo left Nilda and never reconciled with her again.[7]

On August 30, 1999, Reynaldo filed a Petition for Declaration of Absolute Nullity of Marriage and Damages before the RTC, Toledo City, Cebu, docketed as Civil Case No. T-799 claiming that his marriage with Nilda did not cure Nilda's flirtatiousness and sexual promiscuity, and that her behavior indicates her lack of understanding and appreciation of the meaning of marriage, rendering the same void under Article 36 of the Family Code.[8]

Reynaldo testified in support of his petition and presented telephone directories showing that Nilda used her maiden name "Bacon" instead of "Navales."[9] Reynaldo also presented Josefino Ramos, who testified that he was with Reynaldo when Reynaldo first met Nilda at the bar called "Appetizer," and that he (Ramos) himself was attracted to Nilda since she was sexy, beautiful, and jolly to talk with. [10] Reynaldo also presented Violeta Abales, his cousin, who testified that she was a vendor at the YMCA where Nilda worked and was known by her maiden name; that she knows Nilda is sexy and wears tight fitting clothes; that her companions are mostly males and she flirts with them; and that there was one time that Reynaldo fetched Nilda at YMCA but Nilda went with another man, which angered Reynaldo.[11]

---

[6] *Rollo*, pp. 29-30 (CA Decision).

[7] Records, p. 364 (RTC Decision).

[8] Records, pp. 1, 3.

[9] Exhibit "B", machine copy of page 13 of the telephone directory for the year 1993-1994, records, p. 250; Exhibit "C", machine copy of page 15 of the telephone directory for the year 1994-1995, *id*. at 251.

[10] TSN, October 17, 2000, pp. 6-8; records, pp. 520-522.

[11] TSN, February 12, 2001, pp. 6-9; *id*. at 510-513.

Finally, Reynaldo presented Leticia Vatanagul, a Clinical Psychologist and Social Worker who drafted a Psychological Assessment of Marriage dated March 28, 2001.[12] In said Assessment, Vatanagul concluded that Nilda is a nymphomaniac, who has a borderline personality, a social deviant, an alcoholic, and suffering from anti-social personality disorder, among others, which illnesses are incurable and are the causes of Nilda's psychological incapacity to perform her marital role as wife to Reynaldo.[13]

Nilda, for her part, claims that Reynaldo knew that she had a child before she met him, yet Reynaldo continued courting her; thus, their eventual marriage.[14] She claims that it was actually Reynaldo who was linked with several women, who went home very late, kept his earnings for himself, and subjected her to physical harm whenever she called his attention to his vices. She worked at the YMCA to cope with the needs of life, and she taught only female students. Reynaldo abandoned her for other women, the latest of whom was Liberty Lim whom she charged, together with Reynaldo, with concubinage.[15] Nilda presented a certification from the YMCA dated October 17, 2001 stating that she was an aerobics instructress for a program that was exclusively for ladies,[16] as well as a statement of accounts from PLDT showing that she used her married name, Nilda B. Navales.[17]

On January 2, 2002, the RTC rendered its Decision disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered in the above-entitled case declaring defendant Nilda B. Navales as psychologically incapacitated to fulfill her marital obligations with

---

[12] TSN, March 28, 2001, pp. 2, 8; *id*. at 475, 254-263.

[13] *Id*. at 260-263.

[14] *Id*. at 13.

[15] Records, pp. 12-13; see also *rollo*, p. 30 (CA Decision).

[16] Exhibit "2", records, p. 343.

[17] Exhibits "3", "4", "5", "6", "7", "8" and "9", *id*. at 344-350.

plaintiff Reynaldo V. Navales and further declaring their marriage contracted on December 29, 1988, before the Municipal Judge of the Municipal Trial Court of San Fernando, Cebu, as null and void.[18]

The RTC held that:

> x x x From the testimonies and evidences x x x adduced, it was clearly established that the defendant had no full understanding of [the] effects of marriage and had no appreciation of [the] consequences of marriage as shown by her x x x act of concealing her marital status by using her maiden name "Nilda T. Bacon," augmenting her pretense of being still single through the telephone directories; by her refusal to accompany with [sic] her husband despite of the latter's insistence, but rather opted to ride other man's jeep, whose name her husband did not even know; by her act of allowing a man other than her husband to touch her legs even in her husband's presence; by allowing another man to kiss her even in the full view of her husband; by preferring to loss [sic] her husband rather than losing her job as aerobic instructress and on top of all, by refusing to bear a child fathered by her husband because it will destroy her figure, is a clear indication of the herein defendant's psychological incapacity.[19]

Nilda filed a Motion for Reconsideration, which the RTC denied on April 10, 2002.[20]

The CA dismissed Nilda's appeal, ruling that the RTC correctly held that Nilda concealed her marital status, as shown by the telephone listings in which Nilda used her maiden name; that nymphomania, the condition which the expert said Nilda was afflicted with, was a ground for psychological incapacity; and that the RTC correctly gave weight to the four pieces of testimonial evidence presented by Reynaldo *vis-a-vis* the lone testimony of Nilda.[21]

Nilda now comes before the Court alleging that:

---

[18] Records, p. 372.

[19] *Id*. at 370-371.

[20] *Id*. at 400-402; 423.

[21] *Rollo*, pp. 32-34.

I

The petitioner is not psychologically incapacitated to comply [with] her marital obligations as a wife.

II

Psychological incapacity, if ever existing, of the wife is NOT PERMAMENT or INCURABLE and was NEVER EXISTING AT THE TIME OF THE CELEBRATION OF MARRIAGE.

III

The petitioner is not a nymphomaniac.

IV

The effort of herein petitioner into the case shows that she is consciously and nobly preserving and continue to believe that marriage is inviolable rather [sic].

V

The guidelines of Molina case in the application of Article 36 of the New Family Code has not been strictly complied with.[22]

Nilda claims that she did not fail in her duty to observe mutual love, respect and fidelity; that she never had any illicit relationship with any man; that no case for inchastity was initiated by Reynaldo against her, and that it was actually Reynaldo who had a pending case for concubinage.[23] She questions the lower courts' finding that she is a nymphomaniac, since she was never interviewed by the expert witness to verify the truth of Reynaldo's allegations. There is also not a single evidence to show that she had sexual intercourse with a man other than her husband while they were still living together.[24]

Nilda also avers that the guidelines in *Republic of the Phillippines. v. Molina*[25] were not complied with. The RTC

---

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

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

[24] *Id*. at 20.

[25] 335 Phil. 664 (1997).

resolved the doubt on her motive for using her maiden name in the telephone directory in favor of the dissolution of the marriage instead of its preservation. The expert opinion was given weight, even though it was baseless to establish that petitioner had psychological incapacity to comply with her marital obligations as a wife; and that, assuming that such incapacity existed, it was already existing at the time of the marriage; and that such incapacity was incurable and grave enough to bring about the disability of the wife to assume the essential obligations of marriage.[26]

Reynaldo, for his part, argues that while the petition is captioned as one under Rule 45, it is actually a petition for *certiorari* under Rule 65, since it impleads the CA as respondent and alleges that the CA acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of or excess of jurisdiction.[27] Reynaldo also claims that the issues raised by Nilda necessarily require a review of the factual findings of the lower courts, which matters have already been decided and passed upon, and factual findings of the courts *a quo* are binding on this Court; that only questions of law may be raised before this Court; that the RTC, in reaching its decision, complied with the requirements of *Molina;* that the Solicitor General was represented by the City Prosecutor of Toledo City; and that Reynaldo discharged the burden of proof to show the nullity of his marriage to Nilda.

Reynaldo further averred that he testified on his behalf; presented corroborating witnesses, one of whom is an expert clinical psychologist, as well as documentary evidence in support of his cause of action; that *Molina* did not require that the psychologist examine the person to be declared psychologically incapacitated; that Nilda did not rebut the psychologist's findings and did not present her own expert to disprove the findings of Vatanagul; that Nilda's psychological incapacity, caused by nymphomania, was duly proven to have been existing prior to

---

[26] *Rollo*, pp. 21-23.

[27] *Id*. at 45.

and at the time of her marriage to Reynaldo and to have become manifest during her marriage, based on the testimonies of Reynaldo and his witnesses; and that such incapacity was proven to be incurable, as shown by the report of Vatanagul.[28]

Nilda filed a Reply, and both parties filed their respective memoranda reiterating their arguments.[29]

Simply stated, the issue posed before the Court is whether the marriage between Reynaldo and Nilda is null and void on the ground of Nilda's psychological incapacity.

The answer, contrary to the findings of the RTC and the CA, is in the negative.

Preliminarily, let it be stressed that it is the policy of our Constitution to protect and strengthen the family as the basic autonomous social institution, and marriage as the foundation of the family.[30] The Constitution decrees marriage as legally inviolable and protects it from dissolution at the whim of the parties.[31] The Family Code under Article 48[32] therefore requires courts to order the prosecuting attorney or fiscal assigned, in cases of annulment or declaration of absolute nullity of marriage, to appear on behalf of the State in order to take steps to prevent collusion between the parties and to take care that the evidence is not fabricated or suppressed. Indeed, only the active participation of the Public Prosecutor or the Office of the Solicitor

---

[28] *Rollo*, pp. 46-50.

[29] *Id*. at 58-60; 66-95; 98-110.

[30] *Republic of the Philippines v. Cuison-Melgar*, G.R. No. 139676, March 31, 2006, 486 SCRA 177, 184-185.

[31] *Perez-Ferraris v. Ferraris*, G.R. No. 162368, July 17, 2006, 495 SCRA 396, 403.

[32] Art. 48. In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care the evidence is not fabricated or suppressed.

In the cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment.

General (OSG) will ensure that the interest of the State is represented and protected in proceedings for annulment and declarations of nullity of marriage by preventing collusion between the parties, or the fabrication or suppression of evidence.[33]

While the guidelines in *Molina* requiring the OSG to issue a certification on whether or not it is agreeing or objecting to the petition for annulment has been dispensed with by A.M. No. 02-11-10-SC or the Rule on the Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages,[34] still, Article 48 mandates the appearance and active participation of the State through the fiscal or the prosecuting attorney.[35]

In this case, contrary to the assertion of the RTC that the OSG actively participated in the case through the Office of the City Prosecutor, records show that the State's participation consists only of the Report dated November 29, 1999 by Assistant City Prosecutor Gabriel L. Trocio, Jr. stating that no collusion exists between the parties;[36] the OSG's Opposition to the petition for declaration of nullity of marriage dated June 2, 2000;[37] and the cross-examination conducted by Prosecutor Trocio on Reynaldo[38] and his witness Abales.[39] There were no other pleadings, motions, or position papers filed by the Public Prosecutor or OSG; and no controverting evidence presented by them before the judgment was rendered. Considering the interest sought to be protected by the aforestated rules, the Court finds the State's participation in this case to be wanting.[40]

---

[33] *Republic of the Philippines v. Cuison-Melgar, supra*, note 30, at 187-188.

[34] Took effect on March 15, 2003; see also *Antonio v. Reyes*, G.R. No. 155800, March 10, 2006, 484 SCRA 353, 375; *Carating-Siayngco v. Siayngco*, G.R. No. 158896, October 27, 2004, 441 SCRA 422, 435.

[35] *Antonio v. Reyes, supra* note 34.

[36] Records, pp. 40-41.

[37] *Id*. at 109-110.

[38] *Id*. at 527-537.

[39] *Id*. at 498-503.

[40] See *Republic of the Philippines v. Cuison-Melgar*, *supra* note 30, at 187.

But even on the merits, the Court finds that the totality of evidence presented by Reynaldo, contrary to its appreciation by the RTC and the CA, is insufficient to sustain a finding that Nilda is psychologically incapacitated.

Generally, factual findings of trial courts, when affirmed by the CA, are binding on this Court. Such principle however is not absolute, such as when the findings of the appellate court go beyond the issues of the case; run contrary to the admissions of the parties; fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; or when there is a misappreciation of facts.[41] Such is the case at bar.

Psychological incapacity, in order to be a ground for the nullity of marriage under Article 36[42] of the Family Code, refers to a serious psychological illness afflicting a party even before the celebration of marriage. It is a malady that is so grave and permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume. As all people may have certain quirks and idiosyncrasies, or isolated traits associated with certain personality disorders, there is hardly any doubt that the intention of the law has been to confine the meaning of psychological incapacity to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.[43]

In *Santos v. Court of Appeals*,[44] the Court held that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability.[45] In *Republic of*

---

[41] *Perez-Ferraris v. Ferraris*, *supra* note 31, at 400.

[42] Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

[43] *Perez-Ferraris v. Ferraris*, *supra* note 31, at 400-401.

[44] 310 Phil. 21 (1995).

[45] *Id*. at 39. See also *Republic of the Philippines v. Iyoy*, G.R. No. 152577, September 21, 2005, 470 SCRA 508, 521; *Republic of the Philippines v. Cuison-Melgar*, *supra* note 30, at 188.

the Philippines v. Molina,[46] the Court further set forth guidelines in the interpretation and application of Article 36 of the Family Code, thus:

1. The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. x x x

2. The *root cause* of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestation and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known that obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

3. The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

4. Such incapacity must also be shown to be medically or clinically permanent or *incurable.* Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. x x x.

[46] *Supra* note 25.

5. Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as *root* causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

6. The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

7. Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. x x x.[47]

In this case, Reynaldo and his witnesses sought to establish that Nilda was a flirt before the marriage, which flirtatiousness recurred when she started working as an aerobics instructress. The instances alleged by Reynaldo, *i.e.*, the occasion when Nilda chose to ride home with another man instead of him, that he saw Nilda being kissed by another man while in a car, and that Nilda allowed other men to touch her body, if true, would understandably hurt and embarrass him. Still, these acts by themselves are insufficient to establish a psychological or mental defect that is serious, incurable or grave as contemplated by Article 36 of the Family Code.

Article 36 contemplates downright incapacity or inability to take cognizance of and to assume basic marital obligations.[48]

---

[47] *Id*. at 676-678.

[48] *Republic of the Philippines v. Iyoy*, *supra* note 45, at 525.

Mere "difficulty," "refusal" or "neglect" in the performance of marital obligations or "ill will" on the part of the spouse is different from "incapacity" rooted on some debilitating psychological condition or illness.[49] Indeed, irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility, and the like, do not by themselves warrant a finding of psychological incapacity under Article 36, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage and not due to some psychological illness that is contemplated by said rule. [50]

As admitted by Reynaldo, his marriage with Nilda was not all that bad; in fact, it went well in the first year of their marriage. As in other cases, an admission of a good and harmonious relationship during the early part of the marriage weakens the assertion of psychological defect existing at the time of the celebration of the marriage which deprived the party of the ability to assume the essential duties of marriage and its concomitant responsibilities. [51]

In determining the import of "psychological incapacity" under Article 36, the same must be read in conjunction with, although to be taken as distinct from, Articles 35,[52] 37,[53] 38[54] and 41[55] of the Family Code that would likewise, but for different reasons, render the marriage void *ab initio;* or Article 45 that would

---

[49] *Perez-Ferraris v. Ferraris, supra* note 31, at 402*; Republic of the Philippines v. Court of Appeals and Molina, supra* note 25, at 674; *Republic of the Philippines v. Iyoy*, *supra* note 45, at 525; *Navarro, Jr. v. Cecilio-Navarro*, G.R. No. 162049, April 13, 2007, 521 SCRA 121, 129.

[50] *Republic of the Philippines v. Iyoy*, *supra* note 45, at 525.

[51] See *Perez-Ferraris v. Ferraris*, *supra* note 31, at 401; *Republic of the Philippines v. Cuison-Melgar, supra* note 30, at 190; *Navarro v. Cecilio-Navarro*, *supra* note 49.

[52] Art. 35. (Marriages that are void from the beginning).

[53] Art. 37. (Marriages that are incestuous and void from the beginning).

[54] Art. 38. (Marriages that are void from the beginning for reasons of public policy)

[55] Art. 41. (Void subsequent marriage, unless spouse presumptively dead)

make the marriage merely voidable; or Article 55 that could justify a petition for legal separation.[56] These various circumstances are not applied so indiscriminately as if the law were indifferent on the matter.[57] Indeed, Article 36 should not be equated with legal separation, in which the grounds need not be rooted in psychological incapacity but on physical violence, moral pressure, moral corruption, civil interdiction, drug addiction, habitual alcoholism, sexual infidelity, abandonment and the like.[58]

Reynaldo presented telephone directories in which Nilda used her maiden name "Bacon" to prove that Nilda represented herself as single. As noted by the CA, however, the telephone listings presented by Reynaldo were for the years 1993 to 1995,[59] after Reynaldo admittedly left Nilda on June 18, 1992. Apart from Reynaldo and Abalales's testimony, therefore, Reynaldo has no proof that Nilda represented herself as single while they were still living together. The Court cannot agree with the RTC, therefore, that said telephone listings show that Nilda represented herself to be single, which in turn manifests her lack of understanding of the consequences of marriage.

Reynaldo also presented Clinical Psychologist Vatanagul to bolster his claim that Nilda is psychologically incapacitated. While it is true that the Court relies heavily on psychological experts for its understanding of the human personality,[60] and that there is no requirement that the defendant spouse be personally examined by a physician or psychologist before the nullity of marriage based on psychological incapacity may be declared,[61] still, the root cause of the psychological incapacity must be identified as a psychological illness, its incapacitating nature

---

[56] *Perez-Ferraris v. Ferraris*, *supra*, note 31, at 405.

[57] *Id*.

[58] *Id*.; *Republic of the Philippines v. Cuison-Melgar*, *supra* note 30, at 193-194.

[59] *Rollo*, p. 32 (CA Decision).

[60] *Perez-Ferraris v. Ferraris*, *supra* note 31, at 401.

[61] *Marcos v. Marcos*, 397 Phil. 840, 850 (2000).

fully explained,[62] and said incapacity established by the totality of the evidence presented during trial.[63]

The Court finds that the psychological report presented in this case is insufficient to establish Nilda's psychological incapacity. In her report, Vatanagul concluded that Nilda is a nymphomaniac, an emotionally immature individual, has a borderline personality, has strong sexual urges which are incurable, has complete denial of her actual role as a wife, has a very weak conscience or superego, emotionally immature, a social deviant, not a good wife as seen in her infidelity on several occasions, an alcoholic, suffers from anti-social personality disorder, fails to conform to social norms, deceitful, impulsive, irritable and aggresive, irresponsible and vain.[64] She further defined "nymphomia" as a psychiatric disorder that involves a disturbance in motor behavior as shown by her sexual relationship with various men other than her husband.[65]

The report failed to specify, however, the names of the men Nilda had sexual relationship with or the circumstances surrounding the same. As pointed out by Nilda, there is not even a single proof that she was ever involved in an illicit relationship with a man other than her husband. Vatanagul claims, during her testimony, that in coming out with the report, she interviewed not only Reynaldo but also Jojo Caballes, Dorothy and Lesley who were Reynaldo's sister-in-law and sister, respectively, a certain Marvin and a certain Susan.[66] Vatanagul however, did not specify the identities of these persons, which information were supplied by whom, and how they came upon their respective informations. Indeed, the conclusions drawn by the report are vague, sweeping and lack sufficient factual bases. As the report lacked specificity, it failed to show the root cause of Nilda's

---

[62] *Perez-Ferraris v. Ferraris*, *supra* note 31, at 401.

[63] *Marcos v. Marcos*, *supra* note 61; see also *Republic of the Philippines v. Cuison-Melgar*, *supra* note 30, at190.

[64] Records, pp. 260-263.

[65] *Id*. at 260.

[66] TSN, June 27, 2001, pp. 5-6, 14; records, pp. 459-460, 468.

psychological incapacity; and failed to demonstrate that there was a "natal or supervening disabling factor" or an "adverse integral element" in Nilda's character that effectively incapacitated her from accepting, and thereby complying with, the essential marital obligations, and that her psychological or mental malady existed even before the marriage.[67] Hence, the Court cannot give weight to said assessment.

The standards used by the Court in assessing the sufficiency of psychological reports may be deemed very strict, but that is only proper in view of the principle that any doubt should be resolved in favor of the validity of the marriage and the indissolubility of the marital vinculum.[68]

Reynaldo also claims that Nilda does not want to get pregnant which allegation was upheld by the trial court. A review of the records shows, however, that apart from the testimony of Reynaldo, no other proof was presented to support such claim. Mere allegation and nothing more is insufficient to support such proposition. As petitioner before the trial court, it devolves upon Reynaldo to discharge the burden of establishing the grounds that would justify the nullification of the marriage.[69]

While Reynaldo and Nilda's marriage failed and appears to be without hope of reconciliation, the remedy, however, is not always to have it declared void *ab initio* on the ground of psychological incapacity. A marriage, no matter how unsatisfactory, is not a null and void marriage.[70] And this Court, even as the highest one, can only apply the letter and spirit of the law, no matter how harsh it may be.[71]

WHEREFORE, the petition is *GRANTED*. The assailed Decision of the Court of Appeals in CA-G.R. CV No. 76624 promulgated on February 16, 2005 and the Decision dated January

---

[67] See *Perez-Ferraris v. Ferraris*, *supra* note 31, at 402.

[68] *Id*.

[69] *Id*.

[70] *Id*. at 403.

[71] *Republic of the Philippines v. Cuison-Melgar*, *supra* note 30, at 195.

2, 2002 of the Regional Trial Court, Branch 59 of Toledo City, in Civil Case No. T-799 are *REVERSED* and *SET ASIDE*. The petition for declaration of absolute nullity of marriage and damages, docketed as Civil Case No. T-799, is *DISMISSED*.

Costs against respondent.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 168799. June 27, 2008]

EUHILDA C. TABUADA, *petitioner, vs.* **HON. J. CEDRICK O. RUIZ, as Presiding Judge of the Regional Trial Court, Branch 39, Iloilo City, ERLINDA CALALIMAN-LEDESMA and YOLANDA CALALIMAN-TAGRIZA,** *respondent.*

SYLLABUS

1. CIVIL LAW; COMPROMISES; WHILE A COMPROMISE AGREEMENT OR AMICABLE SETTLEMENT IS STRONGLY ENCOURAGED, THE FAILURE TO CONSUMMATE ONE DOES NOT WARRANT ANY PROCEDURAL SANCTION, MUCH LESS PROVIDE AN AUTHORITY FOR THE COURT TO JETTISON THE CASE. — While a compromise agreement or an amicable settlement is very strongly encouraged, the failure to consummate one does not warrant any procedural sanction, much less provide an authority for the court to jettison the case. Sp. Proc. No. 5198 should not have been terminated or dismissed by the trial court on account of the mere failure of the parties to submit

the promised amicable settlement and/or the *Motion for Judgment Based On An Amicable Settlement.* Given the non-contentious nature of special proceedings (which do not depend on the will of an actor, but on a state or condition of things or persons not entirely within the control of the parties interested), its dismissal should be ordered only in the extreme case where the termination of the proceeding is the sole remedy consistent with equity and justice, but not as a penalty for neglect of the parties therein.

2. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; THE THIRD CLAUSE OF SECTION 3, RULE 13 OF THE RULES OF COURT, WHICH AUTHORIZES THE *MOTU PROPIO* DISMISSAL OF A CASE IF THE PLAINTIFF FAILS TO COMPLY WITH THE RULES OR ANY ORDER OF THE COURT, CANNOT BE USED TO JUSTIFY THE CONVENIENT, THOUGH ERRONEOUS, TERMINATION OF THE PROCEEDINGS IN CASE AT BAR. — The third clause of Section 3, Rule 17, which authorizes the *motu propio* dismissal of a case if the plaintiff fails to comply with the rules or any *order* of the court, cannot even be used to justify the convenient, though erroneous, termination of the proceedings herein. An examination of the December 6, 2004 Order readily reveals that the trial court neither required the submission of the amicable settlement or the aforesaid *Motion for Judgment,* nor warned the parties that should they fail to submit the compromise within the given period, their case would be dismissed. Hence, it cannot be categorized as an *order* requiring compliance to the extent that its defiance becomes an affront to the court and the rules. And even if it were worded in coercive language, the parties cannot be forced to comply, for, as aforesaid, they are only strongly encouraged, but are not obligated, to consummate a compromise. An order requiring submission of an amicable settlement does not find support in our jurisprudence and is premised on an erroneous interpretation and application of the law and rules.

3. ID.; ID.; ID.; INCONSIDERATE DISMISSAL NEITHER CONSTITUTE A PANACEA NOR A SOLUTION TO THE CONGESTION OF COURT DOCKETS. — The Court notes that inconsiderate dismissals neither constitute a panacea nor a solution to the congestion of court dockets. While they lend a deceptive aura of efficiency to records of individual judges,

they merely postpone the ultimate reckoning between the parties. In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of the cases before the court.

APPEARANCES OF COUNSEL

Raul M. Retiro for petitioner.
Franklin J. Andrada for private respondents.

D E C I S I O N

NACHURA, *J.*:

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner assails the March 2, 2005 Order[1] of the Regional Trial Court (RTC) of Iloilo City, Branch 39 in Special Proceedings (Sp. Proc.) No. 5198 and the May 20, 2005 Resolution[2] of the trial court denying the motion for the reconsideration of the challenged order.

The very simple issue raised for our resolution in this case surfaced when the parties in Sp. Proc. No. 5198 (the proceedings for the settlement of the intestate estate of the late Jose and Paciencia Calaliman) manifested to the RTC their desire to amicably settle the case. In light of the said manifestation, the trial court issued the following Order[3] on December 6, 2004:

In view of the strong manifestation of the parties herein and their respective counsel that they will be able to raise (sic) an amicable settlement, finally, on or before 25 December 2004, the Court will no longer be setting the pending incidents for hearing as the parties and their counsel have assured this Court that they are going to submit a "Motion for Judgment Based On An Amicable Settlement" on or before 25 December 2004.

---

[1] *Rollo*, pp. 57-58.

[2] *Id*. at 70.

[3] *Id*. at 56.

Atty. Honorato Sayno Jr., Atty. Gregorio Rubias and Atty. Raul Retiro are notified in open court.

Serve a copy of this Order to Atty. Rean Sy.

SO ORDERED.[4]

The RTC, however, on March 2, 2005, invoking Section 3,[5] Rule 17, of the Rules of Court, terminated the proceedings on account of the parties' failure to submit the amicable settlement and to comply with the afore-quoted December 6, 2004 Order. The trial court, in the challenged order of even date, likewise denied all the motions filed by the parties.[6]

Petitioner, the administratrix of the estate, and private respondents separately moved for the reconsideration of the

---

[4] *Id*.

[5] Sec. 3. *Dismissal due to fault of plaintiff*. — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

[6] The pertinent portions of the March 2, 2005 Order reads:

x x x x x x x x x

To date, however, the herein parties and/or their counsel have egregiously failed to abide by the aforequoted (sic) Order of the Court to the monumental detriment of the Court's avowed goal of rendering justice with dispatch. Ineluctably, with this actuation of the parties and/or their counsel, the Court is of the gnawing impression that they have completely lost interest in the prosecution of the motions extant and/or may have already settled their differences extrajudicially which is, of course, salutary.

In view of this, and in line with the provisions of Section 3, Rule 17 of the Revised Rules of Court, the pendant motions should now be disposed of by the Court with finality.

WHEREFORE, premises duly considered, the instant motions and all their corollary and concomitant ramifications are all hereby DENIED WITH FINALITY and the proceedings in re TERMINATED.

SO ORDERED. (*Supra* note 1).

March 2, 2005 Order arguing, among others, that the termination of the case was premature, there being yet no payment of the debts and distribution of the estate, and that they had already prepared all the necessary papers for the amicable settlement.[7] Despite the said pleas for reconsideration, the trial court remained firm in its position to terminate the proceedings; hence, in the assailed May 20, 2005 Resolution,[8] it affirmed its earlier order. Dissatisfied, petitioner scuttles to this Court via Rule 45.[9]

The petition is granted.

While a compromise agreement or an amicable settlement is very strongly encouraged, the failure to consummate one does not warrant any procedural sanction, much less provide an authority for the court to jettison the case.[10] Sp. Proc. No. 5198 should not have been terminated or dismissed by the trial court on account of the mere failure of the parties to submit the promised amicable settlement and/or the *Motion for Judgment Based On An Amicable Settlement*. Given the non-contentious nature of special proceedings[11] (which do not depend on the will of an actor, but on a state or condition of things or persons not entirely within the control of the parties interested), its dismissal should be ordered only in the extreme case where the termination of the proceeding is the sole remedy consistent with equity and justice, but not as a penalty for neglect of the parties therein.[12]

The third clause of Section 3, Rule 17, which authorizes the *motu proprio* dismissal of a case if the plaintiff fails to comply

---

[7] *Rollo*, pp. 59-69.

[8] *Id*. at 70.

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

[10] *Rizal Commercial Banking Corporation v. Magwin Marketing Corporation*, 450 Phil. 720, 738 (2003), citing *Goldloop Properties, Inc. v. Court of Appeals*, 212 SCRA 498, 506 (1992).

[11] Section 3(c), Rule 1 of the Rules of Court defines special proceeding as "a remedy by which a party seeks to establish a status, a right, or a particular fact"; see *Vda. de Manalo v. Court of Appeals*, 402 Phil. 152, 165 (2001).

[12] *Dayo v. Dayo*, 95 Phil. 703, 707 (1954).

with the rules or any *order* of the court,[13] cannot even be used to justify the convenient, though erroneous, termination of the proceedings herein. An examination of the December 6, 2004 Order[14] readily reveals that the trial court neither required the submission of the amicable settlement or the aforesaid *Motion for Judgment*, nor warned the parties that should they fail to submit the compromise within the given period, their case would be dismissed.[15] Hence, it cannot be categorized as an *order* requiring compliance to the extent that its defiance becomes an affront to the court and the rules. And even if it were worded in coercive language, the parties cannot be forced to comply, for, as aforesaid, they are only strongly encouraged, but are not obligated, to consummate a compromise. An order requiring submission of an amicable settlement does not find support in our jurisprudence and is premised on an erroneous interpretation and application of the law and rules.

Lastly, the Court notes that inconsiderate dismissals neither constitute a panacea nor a solution to the congestion of court dockets. While they lend a deceptive aura of efficiency to records of individual judges, they merely postpone the ultimate reckoning between the parties. In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of the cases before the court.[16]

WHEREFORE, premises considered, the petition for review on *certiorari* is *GRANTED*. The March 2, 2005 Order and the May 20, 2005 Resolution of the Regional Trial Court of Iloilo City, Branch 39 in Sp. Proc. No. 5198 are *REVERSED* and *SET ASIDE*. The case is *REMANDED* to the court of origin for further proceedings.

---

[13] *Supra* note 5.

[14] *Rollo*, p. 56.

[15] *Goldloop Properties, Inc. v. Court of Appeals*, *supra* note 10.

[16] *Rizal Commercial Banking Corporation v. Magwin Marketing Corporation, supra* note 10, at 742-743.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 173876. June 27, 2008]

VALCESAR ESTIOCA *y* MACAMAY, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT THEREON. — After carefully reviewing the evidence on record and applying the foregoing parameters to this case, we find no cogent reason to overturn the factual finding of the RTC that Nico's testimony is credible. As an eyewitness to the incident, Nico positively identified petitioner, Bacus, Boniao and Handoc as those who robbed the OCCS of an electric fan, television and karaoke on the morning of 28 July 2001. His direct account of how petitioner, Bacus, Boniao and Handoc helped one another in robbing the OCCS is candid and convincing.

2. ID.; ID.; ID.; TESTIMONY; WHEN INCONSISTENCIES THEREOF ARE INCONSEQUENTIAL. — The alleged inconsistency between the affidavit of Nico and his court testimony is inconsequential. Inconsistencies between the sworn statement or affidavit and direct testimony given in open court do not necessarily discredit the witness since an affidavit, being taken *ex parte*, is oftentimes incomplete and is generally regarded as inferior to the testimony of the witness in open court. Judicial notice can be taken of the fact that testimonies given during trial are much more exact and elaborate than those

stated in sworn statements, usually being incomplete and inaccurate for a variety of reasons, at times because of partial and innocent suggestions or for want of specific inquiries. Additionally, an extrajudicial statement or affidavit is generally not prepared by the affiant himself but by another who uses his own language in writing the affiant's statement; hence, omissions and misunderstandings by the writer are not infrequent. Indeed, the prosecution witnesses' direct and categorical declarations on the witness stand are superior to their extrajudicial statements.

3. CRIMINAL LAW; PENALTIES; PENALTY FOR ROBBERY WITH USE OF FORCE, DISCUSSED AND APPLIED. — Article 299, subdivision (a), number (2), paragraph 4 of the Revised Penal Code provides that the penalty for robbery with use of force upon things where the value of the property taken exceeds ₱250.00 and the offender does not carry arms, as in this case, is *prision mayor*. Since no aggravating or mitigating circumstance was alleged and proven in this case, the penalty becomes *prision mayor* in its medium period in accordance with Article 64, paragraph 1 of the Revised Penal Code. Applying the Indeterminate Sentence Law, the range of the penalty now is *prision correccional* in any of its periods as minimum to *prision mayor* medium as its maximum. Thus, the RTC and the Court of Appeals were correct in imposing on petitioner, Bacus and Handoc, a prison term of four years, two months, and one day of *prision correccional* as minimum, to eight years and one day of *prision mayor* as maximum, because it is within the aforesaid range of penalty.

4. ID.; ID.; ID.; PENALTY FOR ROBBERY WITH USE OF FORCE WHEN THE OFFFENDER IS 14-YEARS OLD, DISCUSSED AND APPLIED. — With regard to Boniao, who was a minor (14 years old) at the time he committed the robbery, Article 68, paragraph 1 of the Revised Penal Code instructs that the penalty imposable on him, which is *prision mayor,* shall be lowered by two degrees. The RTC, therefore, acted accordingly in sentencing him to four months of *arresto mayor*. Nonetheless, as correctly ruled by the Court of Appeals, Boniao, who was barely 14 years of age at the time he committed the crime, should be exempt from criminal liability and should be released to the custody of his parents or guardian pursuant to Sections 6 and 20 of Republic Act No. 9344, otherwise known as *The*

Juvenile Justice and Welfare Act of 2006. Although the crime was committed on 28 July **2001** and Republic Act No. 9344 took effect only on 20 May **2006**, the said law should be given retroactive effect in favor of Boniao who was not shown to be a habitual criminal. This is based on Article 22 of the Revised Penal Code. However, as Boniao's civil liability is not extinguished pursuant to the second paragraph of Section 6, Republic Act No. 9344, Boniao should be held jointly liable with petitioner, Bacus, and Handoc for the payment of civil liability in the amount of ₱15,000.00 representing the stolen items.

APPEARANCES OF COUNSEL

Anonat Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

In this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court,[1] petitioner Valcesar Estioca *y* Macamay prays for the reversal of the Decision[2] of the Court of Appeals in CA-G.R. CR No. 00036 dated 30 June 2006, affirming with modification the Decision[3] and Order[4] dated 5 April 2004 and 17 August 2004, respectively, of the Ozamiz City Regional Trial Court (RTC), Branch 35, in Criminal Case No. 3054, finding him guilty of robbery under Article 299, subdivision (a), number (2) of the Revised Penal Code.

Culled from the records are the following facts:

---

[1] *Rollo*, pp. 27-37.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Teresita Dy-Liacco Flores and Sixto C. Marella, Jr., concurring; *rollo*, pp. 10-23.

[3] *Rollo,* pp. 58-63.

[4] *Id*. at 64-66.

On 31 July 2001, an Information[5] was filed before the RTC charging petitioner, Marksale Bacus (Bacus), Kevin Boniao (Boniao) and Emiliano Handoc (Handoc) with robbery, thus:

That on July 28, 2001, at about 8:00 o'clock in the morning, in the City of Ozamiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain, did then and there helping one another, willfully, unlawfully, and feloniously break, destroy, and destroyed the padlock of the main door of the classroom of MS. SELINA M. PANAL and once inside, the accused took, stole and carried away the following:

A. One (1) Panasonic Colored TV 14 worth ₱6,000.00;

B. One (1) Sharp Karaoke Tower Single Player color black worth ₱6,000.00; and

C. One (1) 3D Rota Aire Stand Fan color brown worth ₱3,000.00;

belonging to the Ozamiz City Central School represented herein by MS. SELINA M. PANAL, all valued at ₱15,000.00, to the damage and prejudice of the said school thereof, in the aforementioned sum of ₱15,000.00, Philippine Currency.

When arraigned on separate dates with the assistance of their counsels *de oficio*, petitioner, Bacus, Boniao and Handoc pleaded "Not guilty" to the charge.[6] Thereafter, trial on the merits ensued.

The prosecution presented as witnesses Nico Alforque (Nico) and Mrs. Celina M. Panal (Mrs. Panal). Their testimonies, woven together, bear the following:

On 28 July 2001 (Saturday), at about 8:00 in the morning, Nico, then eleven years old and a Grade VI student of Ozamiz City Central School (OCCS), and his cousin, Mark Alforque (Mark), went to the OCCS and cleaned the classroom of a teacher named Mrs. Myrna Pactolin (Mrs. Pactolin). They received ₱30.00 each from Mrs. Pactolin for the chore. Afterwards, Mark went home while Nico stayed inside the OCCS because

---

[5] Records, pp. 1-2.

[6] *Id*. at 32, 33, 40, 41, 49 & 50.

Mrs. Pactolin requested him to get some *"waya-waya"* and *"dapna"* inside the OCCS's canal to be used as fish food.[7]

While catching *waya-waya* and *dapna* inside the OCCS's canal, Nico saw petitioner and Bacus enter the OCCS's premises by climbing over the OCCS's gate. Petitioner and Bacus then proceeded to the classroom of another teacher, Mrs. Panal, which was located near the OCCS's canal. Thereupon, petitioner and Bacus destroyed the padlock of the classroom's door using an iron bar and entered therein. Subsequently, petitioner and Bacus walked out of the classroom carrying a television, a karaoke and an electric fan, and thereafter brought them to the school gate. They went over the gate with the items and handed them over to Boniao and Handoc who were positioned just outside the OCCS's gate. The items were placed inside a tricycle. After petitioner, Bacus and Boniao boarded the tricycle, Handoc drove the same and they sped away.[8]

On the following day, 29 July 2001, Mrs. Panal went to the OCCS for a dance practice with her students. She proceeded to her classroom and discovered that it was forcibly opened, and that the karaoke, television and electric fan therein were missing. She immediately reported the incident to the police. The OCCS principal informed her that Nico witnessed the incident. Thereafter, petitioner, Bacus, Boniao and Handoc were charged with robbery.[9]

The prosecution also submitted object evidence to buttress the testimonies of its witnesses, to wit: (1) a T-shaped slightly curved iron bar, which is 10 mm. by 12 inches in size, used in destroying the padlock of Mrs. Panal's classroom and marked as Exhibit A; and (2) a Yeti brand, colored yellow, padlock used in Mrs. Panal's classroom, marked as Exhibit B.

For its part, the defense presented the testimonies of petitioner, Bacus, Rolly Agapay (Agapay), Boniao and Handoc to refute

---

[7] TSN, 8 February 2002, pp. 2-3.

[8] *Id*. at 3-6.

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

the foregoing accusations. Petitioner and his co-accused denied any involvement in the incident and interposed the defense of alibi.

Petitioner Estioca testified that on 28 July 2001, he cleaned his house located at Laurel Street, Ozamiz City, from 8:00 in the morning up to 10:00 in the morning. After cleaning the house, he ate lunch and rested. At around 3:00 in the afternoon of the same day, he went to the house of his neighbor/friend, Junjun Ho (Junjun), to help the latter in cleaning his houseyard. However, Junjun's father arrived, and since the father and son had to discuss important things, he decided to go home which was about past 3:00 in the afternoon. Upon arriving home, his aunt, Myrna Macamay, told him that some people had gone to the house looking for him. Later, two unidentified persons, accompanied by Boniao, came to his house and brought him to the City Hall Police Station for investigation as regards the incident.[10]

During the interrogation inside the police station, a certain Michael approached him and inquired as to where he sold the television stolen from the OCCS. He told Michael not to accuse him of stealing as it is not a good joke. Michael called Bacus and Boniao who were then standing nearby, and the two pointed to him as the one who sold the television. Afterwards, one of the police officers therein told him to approach a certain Colonel Bation who was also inside the police station. Upon approaching Colonel Bation, the latter punched him in the stomach causing him to kneel down in pain. Colonel Bation asked him where he sold the television but he told him he had nothing to do with it. Colonel Bation took a whip and smacked him with it several times on the body. An emergency hospital worker named Dennis Fuentes, who was also present, stripped him naked and burned his scrotum, chest and palm with lighter, cigarette butts and matchsticks. Thereafter, he was jailed.[11]

---

[10] TSN, 13 February 2002, pp. 3-11.

[11] *Id*. at 11-18.

Bacus, a resident of Barangay Lam-an, Ozamiz City, declared that on the night of 27 July 2001, he slept at the guardhouse of the Ozamiz City National High School (OCNHS) which is located in front of the OCCS. On the following day, 28 July 2001, at about 7:00 in the morning, he woke up and helped his mother in selling bananas beside their house which is situated in front of the OCNHS. At about 11:00 in the morning of the same day, while on his way to Barangay Tinago, Ozamiz City, to buy chicken feed, a certain Michael Panal and an unidentified companion blocked his path and asked him if he was the one who robbed the OCCS. He told the two that he had nothing to do with the incident. The two then brought him to the nearby seashore where they were met by a group of persons headed by a certain Maning. Thereupon, they tortured and beat him for refusing to admit involvement in the incident. Subsequently, he was taken to the Ozamiz City Hall for investigation.[12]

Agapay, an OCNHS working student and a resident of the said school, narrated that he knows Bacus because the latter resided in a house located just in front of the OCNHS; that he and Bacus usually slept at the guardhouse of the OCNHS; that on the night of 27 July 2001, he and Bacus slept at the guardhouse of the OCNHS; and that Bacus woke up on the following day, 28 July 2001, at about 8:30 in the morning.[13]

Boniao, 14 years old and resident of Barangay Tinago, Ozamiz City, testified that on 28 July 2001, at 8:00 in the morning, he cleaned his parents' house and thereafter watched television. On 30 July 2001, at 7:00 in the morning, he and Bacus went to the OCCS to pick up plastic bottles scattered therein. After gathering some plastic bottles, he and Bacus left the OCCS. While on their way home, a certain Leoncio apprehended him and brought him to his parents' house. Upon arriving home, his mother beat him and forbade him to go out of the house. Subsequently, several persons went to his parents' house and arrested him. He was taken to a nearby port where he was

---

[12] TSN, 28 February 2002, pp. 3-11.

[13] TSN, 13 February 2002, pp. 20-24.

asked to identify the persons involved in the robbery of the OCCS. When he could not say anything about the incident, he was brought to the City Hall Police Station where he was jailed.[14]

Handoc, a pedicab driver residing at Barangay Tinago, Ozamiz City, stated that he helped his brother-in-law in quarrying gravel at Panay-ay Diot, Clarin, Misamis Occidental, on the whole morning of 28 July 2001; that he went back to Barangay Tinago, Ozamiz City, at about 4:00 in the afternoon of 28 July 2001; that Tomas Medina, the former *barangay* captain, arrested him and took him to the City Hall; that police officers in the City Hall inquired as to where he sold the television stolen from the OCCS but he replied that he had nothing to do with it; that he was repeatedly beaten by police officers for denying any involvement in the incident; and that he was detained at the City Hall Jail.[15]

After trial, the RTC rendered a Decision on 5 April 2004 convicting petitioner, Bacus, Boniao and Handoc of robbery under Article 299, subdivision (a), number (2), paragraph 4 of the Revised Penal Code. The trial court imposed on petitioner, Bacus and Handoc an indeterminate penalty ranging from six years and one day of *prision mayor* as minimum, to fourteen years, eight months and one day of *reclusion temporal* as maximum. Since Boniao was a minor (14 years old) when he participated in the heist, he was sentenced to a lower prison term of six months of *arresto mayor* as minimum to four years and two months of *prision correccional* as maximum. They were also ordered to pay ₱15,000.00 as civil liability. Nonetheless, the sentence meted out to Boniao was suspended and his commitment to the Department of Social Welfare and Development (DSWD) was ordered pursuant to Presidential Decree No. 603.[16] The dispositive portion of the decision reads:

---

[14] TSN, 28 February 2002, pp. 19-24.

[15] TSN, 8 May 2003, pp. 2-8.

[16] Article 192 thereof; otherwise known as "The Child and Youth Welfare Code" approved on 10 December 1974.

WHEREFORE, finding accused Valcesar Estioca *y* Macamay *alias* "Bango," Marksale Bacus *alias* "Macoy," Emeliano Handoc *y* Bullares *alias* "Eming" and minor Kevin Boniao guilty beyond reasonable doubt of the crime of robbery defined and penalized under Article 299, subsection (a), paragraph 2 of the Revised Penal Code and upon applying Art. 64, paragraph 1 of the Revised Penal Code and Indeterminate Sentence Law and Privileged Mitigating Circumstance of two (2) degrees lower than that prescribed for by law (Art. 68, par. 1) unto Kevin Boniao, a minor, who was 14 years old at the time of the commission of the crime, this court hereby sentences them (a) Valcesar Estioca, Marksale Bacus, Emeliano Handoc to suffer the indeterminate penalty ranging from six (6) years and one (1) day of *Prision Mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *Reclusion Temporal* as maximum and (b) Kevin Boniao (minor) to suffer the penalty of six (6) months of *Arresto Mayor* as minimum to four (4) years and two (2) months of *Prision Correccional* as maximum and all of the accused to suffer the accessory penalty provided for by law, to indemnify the civil liability of ₱15,000.00 and to pay the costs.

With respect to Kevin Boniao, the sentence imposed upon him is hereby suspended pursuant to PD 603 as amended and he is therefore committed to the Department of Social Welfare and Development (DSWD) for reformation, otherwise if he is incorrigible, then the sentence shall be imposed upon him by the court. The DSWD is hereby ordered to have close surveillance and supervision upon him and to constantly observe the development of his behavior and to submit to the court a report/recommendation on the matter as prescribed for by law.

The Order of this court dated August 20, 2001 is hereby cancelled and revoked.

The accused are entitled 4/5 of the time they were placed under preventive imprisonment.

The cash bond in the amount of ₱24,000 posted by accused Valcesar Estioca is hereby cancelled and the same is ordered released and returned to the bondsman concerned.[17]

Petitioner, Bacus, Boniao and Handoc filed a Motion for Reconsideration of the RTC Decision arguing that there was no

[17] *Rollo*, pp. 62-63.

conspiracy among them and that the penalty imposed was erroneous.[18] On 17 August 2004, the RTC issued an Order partially granting the motion.[19] The trial court lowered the penalty imposed on them but affirmed its earlier finding of conspiracy and conviction. It also ordered the DSWD to release and turn over Boniao to his parents. It concluded:

> WHEREFORE, as herein modified, the imposable indeterminate penalty meted to accused Valcesar Estioca, Marksale Bacus and Emeliano Handoc being guilty beyond reasonable doubt of the crime of Robbery, defined and penalized under paragraph 4 of Art. 299 of the Revised Penal Code upon applying Indeterminate Sentence Law with paragraph 1 of Art. 64, Revised Penal Code, ranges from four (4) years, two (2) months and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum with accessory penalty provided for by law; and for minor accused Kevin Boniao, the penalty of four (4) months of *arresto mayor* upon applying the privileged mitigating circumstance in Art. 68, paragraph 1 of the Revised Penal Code with Art. 64, paragraph 1 of the same Code. All of the accused shall indemnify jointly the civil liability of ₱15,000.00 and to pay the costs.
>
> As aforestated, minor accuser Kevin Boniao is hereby ordered released from DSWD and returned to the custody of his parents.[20]

Unsatisfied, petitioner appealed the RTC Decision and Order before the Court of Appeals.[21] Bacus, Boniao and Handoc did not appeal their conviction anymore. On 30 June 2006, the Court of Appeals promulgated its Decision affirming with modification the RTC Decision and Order. The appellate court held that Boniao is exempt from criminal liability but his civil liability remains pursuant to Republic Act No. 9344 otherwise known as *The Juvenile Justice and Welfare Act of 2006*, thus:

> On a final note, considering that it is axiomatic that an appeal opens the entire case for review and considering further that any

---

[18] Records, pp. 168-170.

[19] *Id*. at 174-176.

[20] *Rollo*, p. 66.

[21] CA *rollo*, pp. 11-17.

decision rendered in the appeal does not bind those who did not appeal except if beneficial to them, We hold that herein accused Kevin Boniao should be acquitted and his criminal liability extinguished pursuant to Republic Act No. 9344, otherwise known as the Juvenile Justice and Welfare Act of 2006, which took effect on May 22, 2006. The pertinent provision thereof provides, thus:

> "Sec. 6. Minimum Age of Criminal Responsibility. — A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to Section 20 of this Act.
>
> x x x x x x x x x
>
> The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws."

WHEREFORE, premises foregoing, the appeal is hereby DISMISSED and the assailed Decision and the August 17, 2004 Order are hereby AFFIRMED subject to the modification that accused KEVIN BONIAO is hereby ACQUITTED of the crime charged pursuant to Section 6 of R.A. No. 9344, without prejudice to his civil liability.[22]

On 21 August 2006, petitioner filed the instant petition on the following grounds:

I.

WHETHER OR NOT UNDER THE FACTS AND CIRCUMSTANCES OF THE ALLEGED ROBBERY WHICH HAPPENED ON BROAD DAY LIGHT AND IN THE PRESENCE OF ALLEGED TWO (2) EYEWITNESSES UNDER HUMAN EXPERIENCE CAN POSSIBLY BE PERPETUATED BY THE ACCUSED;

II.

WHETHER OR NOT ALLEGED LONE WITNESS NICO ALFORQUE COULD HAVE POSSIBLY WITNESS[ED] THE ALLEGED ROBBERY INCIDENT.[23]

---

[22] *Rollo*, pp. 22-23.

[23] Records, pp. 31-32.

Simply put, the Court is called upon to determine whether the testimony of Nico is credible given the surrounding circumstances of the incident.

Petitioner maintains that the testimony of Nico regarding the fact that the robbery was committed in broad daylight (8:00 in the morning) and in full view of Nico is against human nature. He asserts that no person would dare commit robbery in broad daylight and in the presence of other people because they would be easily identified.[24]

Petitioner further claims that it was impossible for Nico to see petitioner and Bacus destroy the door of Mrs. Panal's classroom because, according to Nico's own Affidavit, Nico was inside the classroom of Mrs. Pactolin during the incident. He insists that the walls of Mrs. Pactolin's classroom prevented Nico from witnessing the incident.[25]

In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following well-settled principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.[26]

After carefully reviewing the evidence on record and applying the foregoing parameters to this case, we find no cogent reason to overturn the factual finding of the RTC that Nico's testimony is credible. As an eyewitness to the incident, Nico positively identified petitioner, Bacus, Boniao and Handoc as those who

---

[24] *Id*. at 31-32.

[25] *Id*. at 32-34.

[26] *People v. Galido*, G.R. Nos. 148689-92, 30 March 2004, 426 SCRA 502, 513.

robbed the OCCS of an electric fan, television and karaoke on the morning of 28 July 2001. His direct account of how petitioner, Bacus, Boniao and Handoc helped one another in robbing the OCCS is candid and convincing, thus:

Q: Now, on July 28, 2001 at about 8:00 o'clock in the morning, could you be kind enough to tell us where were you at that time?

A: We were cleaning the room of the school, sir.

Q: What particular school are you referring to?

A: At Ozamis Central School, sir.

Q: Would you be able to tell us the name of the teacher of that particular classroom you were cleaning?

A: The classroom of Mrs. Pactolin, sir.

Q: Why did you clean the classroom of Mrs. Pactolin, were you being paid?

A: Yes sir.

Q: How much?

A: ₱30.00 sir.

Q: Were you alone in cleaning the classroom of Mts. Pactolin at that time?

A: We were two sir.

Q: Would you be kind enough to tell this honorable court who was your companion at that time?

A: My cousin Mark Alforque sir.

Q: Now, after cleaning the classroom of Mrs. Pactolin together with Mark Alforque, what did you do next?

A: My cousin went home and I was left in the classroom because I was requested by my teacher to get fish food.

Q: What fish food are you talking about Mr. Witness?

A: Wayawaya and Dapna sir.

Q: While getting the fishfood for your teacher, did you observed (sic) anything unusual that happened?

A: Yes, sir.

Q: Would you be kind enough to tell this Court now what did you observed (sic) that time when you were getting the fishfood?

A: I saw somebody climbed the gate sir.

x x x x x x x x x

Q: Where were you at that time Mr. Nico Alforque?

A: I was inside the school sir.

Q: What particular place are you referring?

A: Near the canal sir.

Q: And would you be able to tell us also how far were you when you saw these persons climbing the gate?

A: I was a little bit farther sir.

Q: After you saw the two persons climbing the gate, what happened after that?

A: I saw that the padlock was opened.

Q: What particular padlock are you referring to?

A: I saw a padlock made of iron.

Q: And what particular classroom or place were these persons you saw that they were opening the padlock?

A: The classroom of Mrs. Celina Panal sir.

Q: Who is this Mrs. Celina Panal?

A: A teacher sir.

Q: Would you be able to tell us whose classroom these persons you saw opening the padlock?

A: The classroom of Mrs. Panal sir.

Q: Would you be able to tell us how did they opened (sic) the classroom of Mrs. Celina Panal?

A: The room was opened with the used (sic) of an iron bar sir.

Q: I am showing to you this iron bar, what relation has this iron bar to the one you said a while ago?

A: That is the one used by the persons to open the classroom sir.

TO COURT:

We would like to request your honor that this iron bar be marked as our Exh. "A".

COURT:

Mark it.

TO WITNESS:

Q: And what about the padlock, would you be able to identify the padlock that was used (sic) by these persons?

A: Yes sir.

Q: I am showing to you this padlock, would you kindly tell this Court what relation this padlock to the one you stated a while ago?

A: That is the padlock used (sic) by them sir.

TO COURT:

For identification purposes your honor, May I respectfully request that this padlock be marked as Exh. "B".

COURT:

Mark it.

TO WITNESS:

Q: Now Mr. Nico Alforque, you said that there were two persons who opened the classroom of Mrs. Celina Panal, would you kindly identify these persons if you can see them now in court?

A: Yes sir.

Q: Would you kindly point to them if they are now here in court?

The witness is pointing to a person whom when asked of his name declared that he is Valcesar Estioca.

A: And would you kindly tell us also the companion of Valcesar Estioca?

The witness is pointing to a person whose name is Marksale Bacus.

Q: These are the persons who destroyed the padlock of the classroom of Mrs. Celina Panal?

A: Yes sir.

Q: After destroying the padlock Mr. Nico Alforque, what did you observed?

A: I saw that they brought out the colored TV, the Karaoke and the Electric Fan.

Q: You said that these persons after destroying the padlock, took the colored TV, the Karaoke and the Electric Fan, where did they go?

A: After taking these things, they went out of the classroom sir.

Q: And after going out of the classroom where did they go?

A: They went to the gate sir.

Q: And at the gate, what did you observed (sic) if any?

A: I saw that there was another person sir.

Q: And what was this person doing at the gate?

A: They passed on the things through the person at the gate sir.

Q: To whom did these persons passed these things at the gate?

The witness is pointing to a man whose name is Kevin Boniao.

Q: What else did you observed (sic) at the gate?

A: I saw that there is another person.

Q: Who was that person?

The witness is pointing to accused Emeliano Handoc.

Q: And what was Emeliano Handoc doing at the gate Mr. Nico Alforque?

A: He was waiting at the gate sir.

Q: Now after you saw these persons, what were the two accused doing at the gate when they passed the things to Kevin Boniao?

A: They were riding the tricycle sir.

Q: Could you be able to tell us who was driving the tricycle?

The witness is pointing to Emeliano Handoc.

Q: And after seeing these persons what did you observed (sic) after that?

A: I did not see anything because I went away sir.

Q: You mean to say that all those persons went away when you went away?

A: Yes sir.

Q: They went together, is that what you mean?

A: Yes sir.

Q: Are they walking or riding?

A: They were riding in a tricycle sir.

COURT:

Q: Whose tricycle?

The witness is pointing to Emeliano Handoc.[27]

Mrs. Panal corroborated the foregoing testimony of Nico on relevant points.[28]

The foregoing testimonies are consistent with the object evidence submitted by the prosecution. The RTC and the Court of Appeals found the testimonies of Nico and Mrs. Panal to be truthful and unequivocal and, as such, prevailed over the denial and alibi of petitioner and his cohorts. Both courts also found no ill motive on the part of Nico and Mrs. Panal.

---

[27] TSN, 8 February 2002, pp. 2-6.

[28] *Id*.

It is not incredible or against human nature for petitioner and his companions to have committed the robbery in broad daylight and in full view of Nico. There is no standard behavior of criminals before, during and after the commission of a crime.[29] Some may be so bold and daring in committing a crime in broad daylight and in full view of other persons. Others may be so cunning such that they commit crime in the darkness of the night to avoid detection and arrest by peace officers.[30]

In *People v. Toledo, Sr.*,[31] we sustained the credibility of the eyewitness and upheld the conviction of the accused for homicide despite the circumstances existing at the crime scene — broad daylight, full view of many persons inside the school compound, and presence of inhabited houses. It was also ruled that crimes may be committed in broad daylight and that criminals are not expected to be logical or to act normally in executing their felonious designs because committing a crime itself is not logical or reasonable, *viz*:

> Appellant [accused] also asserts that the testimony of Ronnie [eyewitness] was inherently improbable. He insists that the **circumstances existing at the crime scene — broad daylight, full view of many persons inside the school compound, presence of inhabited houses** around the *purok* — were such that a crime could not be committed.
>
> For a number of reasons, we find no merit in this contention. First, appellant's premise that there were many persons in the school compound is not supported by the evidence on record. Second**, crimes are known to have been committed in broad daylight within the vicinity of inhabited houses**. Third, **although it would be illogical and unreasonable for normal persons in full control of their faculties to commit a crime under such circumstances, the same does not hold true for all, especially those under the grip of criminal impulses. We cannot expect the mind of such persons to work within the parameters of what is normal, logical**

---

[29] *People v. Garcia*, 447 Phil. 244, 260 (2003); *People v. Cortezano*, 425 Phil. 696, 708 (2002).

[30] *id*.

[31] 409 Phil. 746 (2001).

or reasonable, as the commission of a crime is not normal, logical or reasonable. Hence, the circumstances present in this case do not rule out appellant's commission of the crime.[32]

Besides, as aptly observed by the Office of the Solicitor General,[33] it is not improbable for petitioner and his cohorts to have committed the robbery as narrated by Nico because it happened on a Saturday, a non-school day in the OCCS. Apparently, petitioner and his companions expected that none or only few persons would go to the OCCS on said date.

A perusal of the transcript of stenographic notes shows that Nico was in a canal located inside the OCCS catching *waya-waya* and *dapna* when he saw the incident, and was not inside the enclosed classroom of Mrs. Pactolin as alleged by petitioner.[34] Nico declared that he clearly saw the incident and that nothing blocked his vision.[35] Nico remained steadfast and consistent in his foregoing testimony even on cross examination, thus:

Q: From the place where you were gathering fishfood at that time you cannot clearly see the room of Mrs. Panal, am I right?

A: **I can see it clearly** sir.

Q: You have not seen what were those persons doing inside the room of Mrs. Panal?

A: **I saw them** sir.

Q: You saw them taking away the Colored TV, Karaoke and the Electric Fan?

A: Yes sir.

Q: Who among them took with him the TV?

---

[32] *Id*. at 757.

[33] Solicitor-General Antonio Eduardo B. Nachura (now a member of this Court) signed the Comment for respondent. (*Rollo*, pp. 88-89.)

[34] TSN, 8 February 2002, pp. 3-4.

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

The witness is pointing to Valcesar Estioca.

Q: Aside from the TV he also carry away with him the Electric Fan and Karaoke?

A: It was his companion sir.

x x x x x x x x x

Q: Now at the gate you saw how many persons aside from that two who entered the room of Mrs. Panal?

A: I saw three persons sir.

Q: Was these three persons outside the gate or inside the gate?

A: They were inside the gate sir.

Q: And that was the time you saw the TV, Karaoke and Electric Fan turned over to those persons at the gate?

A: Yes sir.

Q: After that, those three persons left the place?

A: Yes sir.

Q: What about those two persons you saw entering the room of Mrs. Panal where did they go?

A: They went out sir.[36]

The alleged inconsistency between the affidavit of Nico and his court testimony is inconsequential. Inconsistencies between the sworn statement or affidavit and direct testimony given in open court do not necessarily discredit the witness since an affidavit, being taken *ex parte*, is oftentimes incomplete and is generally regarded as inferior to the testimony of the witness in open court. Judicial notice can be taken of the fact that testimonies given during trial are much more exact and elaborate than those stated in sworn statements, usually being incomplete and inaccurate for a variety of reasons, at times because of partial and innocent suggestions or for want of specific inquiries. Additionally, an extrajudicial statement or affidavit is generally not prepared by the affiant himself but by another who uses his own language

[36] TSN, 8 February 2002, pp. 9-11.

in writing the affiant's statement; hence, omissions and misunderstandings by the writer are not infrequent. Indeed, the prosecution witnesses' direct and categorical declarations on the witness stand are superior to their extrajudicial statements.[37]

Since we find no error in the factual finding of the RTC, as affirmed by the Court of Appeals, that the testimony of eyewitness Nico is credible, then the judgment of conviction against petitioner, Bacus, Boniao, and Handoc should be affirmed. The positive and credible testimony of a lone eyewitness, such as Nico, is sufficient to support a conviction.[38]

We shall now determine the propriety of the penalties imposed on petitioner, Bacus, Boniao and Handoc.

Article 299, subdivision (a), number (2), paragraph 4 of the Revised Penal Code provides that the penalty for robbery with use of force upon things where the value of the property taken exceeds ₱250.00 and the offender does not carry arms, as in this case, is *prision mayor*. Since no aggravating or mitigating circumstance was alleged and proven in this case, the penalty becomes *prision mayor* in its medium period in accordance with Article 64, paragraph 1 of the Revised Penal Code. Applying the Indeterminate Sentence Law, the range of the penalty now is *prision correccional* in any of its periods as minimum to *prision mayor* medium as its maximum. Thus, the RTC and the Court of Appeals were correct in imposing on petitioner, Bacus and Handoc, a prison term of four years, two months, and one day of *prision correccional* as minimum, to eight years and one day of *prision mayor* as maximum, because it is within the aforesaid range of penalty.

With regard to Boniao, who was a minor (14 years old) at the time he committed the robbery, Article 68, paragraph 1 of the Revised Penal Code instructs that the penalty imposable on him, which is *prision mayor,* shall be lowered by two degrees.

---

[37] *People v. Astudillo*, 449 Phil. 778, 791 (2003).

[38] *Ocampo v. People*, G.R. No. 163705, 30 July 2007, 528 SCRA 547, 557-558.

The RTC, therefore, acted accordingly in sentencing him to four months of *arresto mayor*.

Nonetheless, as correctly ruled by the Court of Appeals, Boniao, who was barely 14 years of age at the time he committed the crime, should be exempt from criminal liability and should be released to the custody of his parents or guardian pursuant to Sections 6 and 20 of Republic Act No. 9344, otherwise known as *The Juvenile Justice and Welfare Act of 2006*, to wit:

SEC. 6. *Minimum Age of Criminal Responsibility*. — A child **fifteen years of age or under** at the time of the commission of the offense shall be **exempt from criminal liability**. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

x x x x x x x x x

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

Sec. 20. *Children Below the Age of Criminal Responsibility*. — If it has been determined that the child taken into custody is fifteen (15) years old or below, the authority which will have an initial contact with the child has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child's nearest relative. Said authority shall give notice to the local social welfare and development officer who will determine the appropriate programs in consultation with the child and to the person having custody over the child. If the parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following: a duly registered nongovernmental or religious organization; a barangay official or a member of the Barangay Council for the Protection of Children (BCPC); a local social welfare and development officer; or, when and where appropriate, the DSWD. If the child referred to herein has been found by the Local Social Welfare and Development Office to be abandoned, neglected or abused by his parents, or in the event that the parents will not comply with the prevention program, the proper petition for involuntary commitment shall be filed by the DSWD or the Local Social Welfare and Development Office pursuant to Presidential Decree No. 603, otherwise known as "The Child and Youth Welfare Code."

Although the crime was committed on 28 July **2001** and Republic Act No. 9344 took effect only on 20 May **2006**, the said law should be given retroactive effect in favor of Boniao who was not shown to be a habitual criminal.[39] This is based on Article 22 of the Revised Penal Code which provides:

> *Retroactive effect of penal laws*. — Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

However, as Boniao's civil liability is not extinguished pursuant to the second paragraph of Section 6, Republic Act No. 9344, Boniao should be held jointly liable with petitioner, Bacus, and Handoc for the payment of civil liability in the amount of ₱15,000.00 representing the stolen items.

WHEREFORE, in view of the foregoing, the petition is hereby *DENIED*. The Decision of the Court of Appeals dated 30 June 2006 in CA-G.R. CR No. 00036 is *AFFIRMED in toto*. Costs against petitioner.

SO ORDERED.

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

---

[39] *People v. Quiachon*, G.R. No. 170236, 31 August 2006, 500 SCRA 704, 718; *Santos v. People*, 443 Phil. 618, 635 (2003).

THIRD DIVISION

[G.R. No. 174205. June 27, 2008]

GONZALO A. ARANETA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 7610 (OTHERWISE KNOWN AS "SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT"); ARTICLE VI, SECTION 10 THEREOF CONSTRUED IN RELATION TO THE REVISED PENAL CODE AND THE CHILD AND YOUTH WELFARE CODE (P.D. NO. 603). — Republic Act No. 7610 is a measure geared towards the implementation of a national comprehensive program for the survival of the most vulnerable members of the population, the Filipino children, in keeping with the Constitutional mandate under Article XV, Section 3, paragraph 2, that "**The State shall defend the right of the children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development**." This piece of legislation supplies the inadequacies of existing laws treating crimes committed against children, namely, the Revised Penal Code and Presidential Decree No. 603 or the Child and Youth Welfare Code. As a statute that provides for a mechanism for strong deterrence against the commission of child abuse and exploitation, the law has stiffer penalties for their commission, and a means by which child traffickers could easily be prosecuted and penalized. Also, the definition of child abuse is expanded to encompass not only those specific acts of child abuse under existing laws but includes also "other acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child's development." Article VI of the statute enumerates the "other acts of abuse." Paragraph (a) of Section 10 thereof. As gleaned from the foregoing, the provision punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts, *i.e.*, (a) child abuse, (b) child cruelty, (c) child exploitation and (d) being responsible for conditions

prejudicial to the child's development. The Rules and Regulations of the questioned statute distinctly and separately defined child abuse, cruelty and exploitation just to show that these three acts are different from one another and from the act prejudicial to the child's development. Contrary to petitioner's assertion, an accused can be prosecuted and be convicted under Section 10(a), Article VI of Republic Act No. 7610 if he commits any of the four acts therein. The prosecution need not prove that the acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts.

2. ID.; ID.; ID.; RULE IN STATUTORY CONSTRUCTION, APPLIED. — Moreover, it is a rule in statutory construction that the word "or" is a disjunctive term signifying dissociation and independence of one thing from other things enumerated. It should, as a rule, be construed in the sense which it ordinarily implies. Hence, the use of "or" in Section 10(a) of Republic Act No. 7610 before the phrase **"be responsible for other conditions prejudicial to the child's development"** supposes that there are four punishable acts therein. First, the act of child abuse; second, child cruelty; third, child exploitation; and fourth, being responsible for conditions prejudicial to the child's development. The fourth penalized act cannot be interpreted, as petitioner suggests, as a qualifying condition for the three other acts, because an analysis of the entire context of the questioned provision does not warrant such construal.

3. ID.; ID.; ID.; WHAT CONSTITUTES "CHILD ABUSE"; CASE AT BAR. — The evidence of the prosecution proved that petitioner, despite the victim's protestation, relentlessly followed the latter from the waiting shed to her boarding house and even to the room where she stayed. He forcibly embraced her and threatened to kill her if she would not accept his love for her. Indeed, such devious act must have shattered her self-esteem and womanhood and virtually debased, degraded or demeaned her intrinsic worth and dignity. As a young and helpless lass at that time, being away from her parents, the victim must have felt desecrated and sexually transgressed, especially considering the fact that the incident took place before the very eyes of her two younger, innocent sisters. Petitioner who was old enough to be the victim's grandfather, did not only

traumatize and gravely threaten the normal development of such innocent girl; he was also betraying the trust that young girls place in the adult members of the community who are expected to guide and nurture the well-being of these fragile members of the society. Undoubtedly, such insensible act of petitioner constitutes child abuse.

4. ID.; ID.; VIOLATION OF R.A. 7610 ENTITLES THE VICTIM TO AN AWARD OF ₱50,000.00 AS MORAL DAMAGES. — As to the award of damages, the victim is entitled to moral damages, having suffered undue embarrassment when petitioner forcibly hugged her and threatened to kill her if she would not accept petitioner's love. There is no hard-and-fast rule in the determination of what would be a fair amount of moral damages, since each case must be governed by its own peculiar facts. The yardstick should be that it is not palpably and scandalously excessive. The Court finds that the award of moral damages in the amount of ₱50,000.00 is reasonable under the facts obtaining in this case.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT THEREON. — These factual findings of the RTC, which were affirmed by the Court of Appeals are entitled to respect and are not to be disturbed on appeal, unless some facts or circumstances of weight and substance, having been overlooked or misinterpreted, might materially affect the disposition of the case. The assessment by the trial court of the credibility of a witness is entitled to great weight. It is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. In the case under consideration, we find that the trial court did not overlook, misapprehend, or misapply any fact of value for us to overturn the said findings.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CHICO-NAZARIO, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court assails the Decision[1] of the Court of Appeals dated 15 February 2005, which affirmed the Decision[2] of the Regional Trial Court (RTC) of Dumaguete City, Branch 41, finding petitioner Gonzalo Araneta *y* Alabastro guilty of violating Section 10(a), Article VI of Republic Act No. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," as amended.

On 12 October 1999, petitioner was charged before the RTC with violation of Section 10(a), Article VI of Republic Act No. 7610, allegedly committed as follows:

> That on April 10, 1998, at about 11:00 o'clock in the morning, at Barangay Poblacion, District III, Dauin, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the said Gonzalo Araneta *y* Alabastro, with intent to abuse, harass and degrade 17-year-old offended party AAA,[3] and gratify the sexual desire of said accused, the latter, did, then and there willfully, unlawfully and feloniously, by means of force and intimidation, hold and embrace said AAA, after trespassing with violence into the room of the dwelling occupied by said offended party, all against the latter's will and consent.[4]

When arraigned on 15 November 1999, petitioner pleaded not guilty. Thereafter, trial ensued.

---

[1] Penned by Associate Justice Arsenio J. Magpale with Associate Justices Sesinando E. Villon and Vicente L. Yap, concurring; *rollo,* pp. 73-79.

[2] Penned by Judge Araceli S. Alafriz. *Id.* at 37-39.

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

People v. Cabalquinto, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

[4] Records, p. 1.

At the trial, the prosecution presented the following witnesses: (1) the victim herself, AAA, who testified on matters that occurred prior, during and after her abuse; (2) BBB, AAA's 12-year-old sister, whose testimony corroborated that of the victim; (3) CCC, AAA's mother who testified on the fact that the victim was a minor during the alleged commission of the crime.

As culled from the combined testimonies of the prosecution witnesses, the prosecution was able to establish that at the time of the commission of the crime, AAA was 17 years old, having been born on 28 March 1981, in Batohon Daco, Dauin, Negros Oriental.[5] Because she was then studying at Dauin Municipal High School located at Poblacion, District III, Dauin, AAA left her birthplace to live near her school. She stayed at the house of a certain DDD as a boarder.

At around 10:00 o'clock in the morning of 10 April 1998, while AAA and her two younger sisters, BBB and EEE were sitting on a bench at the waiting shed located near her boarding house, petitioner approached her. Petitioner, who had been incessantly courting AAA from the time she was still 13 years old, again expressed his feelings for her and asked her to accept his love and even insisted that she must accept him because he had a job.[6] She did not like what she heard from petitioner and tried to hit him with a broom but the latter was able to dodge the strike.[7] She and her two sisters dashed to the boarding house which was five meters away and went inside the room. When they were about to close the door, the petitioner, who was following them, forced himself inside. The three tried to bar petitioner from entering the room by pushing the door to his direction. Their efforts, however, proved futile as petitioner was able to enter.[8] There petitioner embraced AAA, who struggled to extricate herself from his hold. AAA then shouted for help. Meanwhile, petitioner continued hugging her and tried to threaten

---

[5] Exhibit "A", *Id*. at 63.

[6] TSN, 15 February 2000, p. 4.

[7] *Id*.

[8] *Id*. at 5.

her with these words: "*Ug dili ko nimo sugton, patyon tike. Akong ipakita nimo unsa ko ka buang*"[9] (If you will not accept my love I will kill you. I will show you how bad I can be). BBB, tried to pull petitioner away from her sister AAA, but to no avail.[10] Andrew Tubilag, who was also residing in the same house, arrived and pulled petitioner away from AAA.[11] AAA closed the door of the room and there she cried. She then went to the police station to report the incident.[12]

The petitioner, on the other hand, denied the charge. He alone took the stand. Petitioner narrated that he met AAA and her younger sisters at the waiting shed, but he denied having embraced or kissed the victim.[13] He said he only spoke to her and told her that he loved her. Although he admitted that he followed AAA and her sisters when they went to the boarding house, it was because AAA beckoned him to follow her.[14] When he was inside the room, he again told her of his feelings but he was merely told by her to wait until she finished her studies.[15] He further said that he had been courting and visiting AAA since she was 12 or 13 years old.[16]

On 27 February 2001, the RTC rendered a decision totally disregarding petitioner's bare denials and flimsy assertions. In convicting petitioner of the crime charged, it held that petitioner's act of forcibly embracing the victim against her will wrought injury on the latter's honor and constituted child abuse as defined under Section 10(a), Article VI of Republic Act No. 7610. It further ruminated that if the mentioned statute considers as child abuse a man's mere keeping or having in his company a

---

[9] *Id*. at 6.

[10] TSN, 29 February 2000, p. 5.

[11] TSN, 15 February 2000, p. 6.

[12] *Id*.

[13] TSN, 6 February 2001, pp. 3-4.

[14] *Id*. at 5.

[15] *Id*. at 6.

[16] *Id*.

minor, twelve years or under or ten years or more his junior, in any public place, all the more would the unwanted embrace of a minor fall under the purview of child abuse.

The decretal portion of the RTC decision reads:

> WHEREFORE, the Court finds accused Gonzalo Araneta *y* Alabastro guilty beyond reasonable doubt of Violation of Section 10(a) of Republic Act No. 7610 and hereby sentences him to suffer the penalty of *prision mayor* in its minimum period, to pay the offended party PhP50,000.00 as moral damages without subsidiary imprisonment in case of insolvency, and to pay the costs.[17]

Dissatisfied with the ruling of the RTC, petitioner elevated the case to the Court of Appeals. Petitioner claimed that the RTC gravely erred in convicting him of child abuse despite failure of the prosecution to establish the elements necessary to constitute the crime charged. Section 10(a) provide: "**Any person who shall commit any other acts of abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period**"; and Section 3(b)(2) defines child abuse in this manner: "**Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being**." From these provisions, petitioner concludes that an act or word can only be punishable if such be prejudicial to the child's development so as to debase, degrade or demean the intrinsic worth and dignity of a child as a human being. In other words, petitioner was of the opinion that an accused can only be successfully convicted of child abuse under Section 10(a) if it is proved that the victim's development had been prejudiced. Thus, according to petitioner, absent proof of such prejudice, which is an essential element in the crime charged, petitioner cannot be found guilty of child abuse under the subject provision.

---

[17] Records, p. 257.

The Office of the Solicitor General (OSG), on the other hand, believes that the questioned acts of petitioner fall within the definition of child abuse. According to the OSG, when paragraph (a) of Section 10 of Republic Act No. 7610 states: "**Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other condition prejudicial to the child's development x x x,**" it contemplates two classes of "other acts" of child abuse, *i.e.*, (1) other acts of child abuse, cruelty, and exploitation; and (2) other conditions prejudicial to the child's development. It argues that unlike the second kind of child abuse, the first class does not require that the act be prejudicial to the child's development.

In a decision dated 15 February 2005, the Court of Appeals concurred in the opinion of the OSG. It affirmed *in toto* the decision of the RTC, *viz*:

> WHEREFORE, the instant appeal is DENIED and accordingly, the assailed Decision is AFFIRMED *in toto*.[18]

Petitioner filed a motion for reconsideration dated 14 March 2005, which was denied by the Court of Appeals in its 10 August 2006 Resolution.

Hence, the instant petition.

The petition is devoid of merit.

Republic Act No. 7610 is a measure geared towards the implementation of a national comprehensive program for the survival of the most vulnerable members of the population, the Filipino children, in keeping with the Constitutional mandate under Article XV, Section 3, paragraph 2, that **"The State shall defend the right of the children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development."**[19] This piece of legislation supplies the inadequacies of existing laws treating

---

[18] *Rollo*, p. 79.

[19] Record of the Senate, Vol. II, No. 58, p. 793.

crimes committed against children, namely, the Revised Penal Code and Presidential Decree No. 603 or the Child and Youth Welfare Code.[20] As a statute that provides for a mechanism for strong deterrence against the commission of child abuse and exploitation, the law has stiffer penalties for their commission, and a means by which child traffickers could easily be prosecuted and penalized.[21] Also, the definition of child abuse is expanded to encompass not only those specific acts of child abuse under existing laws but includes also "other acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child's development."

Article VI of the statute enumerates the "other acts of abuse." Paragraph (a) of Section 10 thereof states:

> Article VI
> OTHER ACTS OF ABUSE
>
> SEC. 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. —
>
> (a) Any person who shall commit **any other acts of abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development** including those covered by Article Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period. (Emphasis supplied.)

As gleaned from the foregoing, the provision punishes not only those enumerated under Article 59[22] of Presidential Decree

---

[20] *Id*.

[21] *Id*.

[22] Article 59. Crimes. — Criminal liability shall attach to any parent who:

(1) Conceals or abandons the child with intent to make such child lose his civil status.
(2) Abandons the child under such circumstances as to deprive him of the love, care and protection he needs.
(3) Sells or abandons the child to another person for valuable consideration.
(4) Neglects the child by not giving him the education which the family's station in life and financial conditions permit.

No. 603, but also four distinct acts, *i.e.*, (a) child abuse, (b) child cruelty, (c) child exploitation and (d) being responsible for conditions prejudicial to the child's development. The Rules and Regulations of the questioned statute distinctly and separately defined child abuse, cruelty and exploitation just to show that these three acts are different from one another and from the act prejudicial to the child's development. Contrary to petitioner's assertion, an accused can be prosecuted and be convicted under Section 10(a), Article VI of Republic Act No. 7610 if he commits any of the four acts therein. The prosecution need not prove that the acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts.

Moreover, it is a rule in statutory construction that the word "or" is a disjunctive term signifying dissociation and independence of one thing from other things enumerated.[23] It should, as a

---

(5) Fails or refuses, without justifiable grounds, to enroll the child as required by Article 72.

(6) Causes, abates, or permits the truancy of the child from the school where he is enrolled. "Truancy" as here used means absence without cause for more than twenty schooldays, not necessarily consecutive.

It shall be the duty of the teacher in charge to report to the parents the absences of the child the moment these exceed five schooldays.

(7) Improperly exploits the child by using him, directly or indirectly, such as for purposes of begging and other acts which are inimical to his interest and welfare.

(8) Inflicts cruel and unusual punishment upon the child or deliberately subjects him to indignitions and other excessive chastisement that embarrass or humiliate him.

(9) Causes or encourages the child to lead an immoral or dissolute life.

(10) Permits the child to possess, handle or carry a deadly weapon, regardless of its ownership.

(11) Allows or requires the child to drive without a license or with a license which the parent knows to have been illegally procured. If the motor vehicle driven by the child belongs to the parent, it shall be presumed that he permitted or ordered the child to drive.

"Parents" as here used shall include the guardian and the head of the institution or foster home which has custody of the child.

[23] *Pimentel v. Commission on Elections*, 352 Phil. 424, 434 (1998).

rule, be construed in the sense which it ordinarily implies. Hence, the use of "or" in Section 10(a) of Republic Act No. 7610 before the phrase "**be responsible for other conditions prejudicial to the child's development**" supposes that there are four punishable acts therein. First, the act of child abuse; second, child cruelty; third, child exploitation; and fourth, being responsible for conditions prejudicial to the child's development. The fourth penalized act cannot be interpreted, as petitioner suggests, as a qualifying condition for the three other acts, because an analysis of the entire context of the questioned provision does not warrant such construal.

The subject statute defines children as persons below eighteen (18) years of age; or those over that age but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.[24] It is undisputed that the victim, under said law, was still a child during the incident.

Subsection (b), Section 3, Article I of Republic Act No. 7610, states:

> (b) "**Child abuse**" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:
>
> (1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
>
> **(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;**
>
> (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
>
> (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

The evidence of the prosecution proved that petitioner, despite the victim's protestation, relentlessly followed the latter from

[24] Article I, Section 3(a) of Republic Act No. 7610.

the waiting shed to her boarding house and even to the room where she stayed. He forcibly embraced her and threatened to kill her if she would not accept his love for her. Indeed, such devious act must have shattered her self-esteem and womanhood and virtually debased, degraded or demeaned her intrinsic worth and dignity. As a young and helpless lass at that time, being away from her parents, the victim must have felt desecrated and sexually transgressed, especially considering the fact that the incident took place before the very eyes of her two younger, innocent sisters. Petitioner who was old enough to be the victim's grandfather, did not only traumatize and gravely threaten the normal development of such innocent girl; he was also betraying the trust that young girls place in the adult members of the community who are expected to guide and nurture the well-being of these fragile members of the society. Undoubtedly, such insensible act of petitioner constitutes child abuse. As the RTC aptly observed:

> It bears stressing that the mere keeping or having in a man's companion a minor, twelve (12) years or under or who is ten (10) years or more his junior in any public or private place already constitutes child abuse under Section 10(b) of the same Act. Under such rationale, an unwanted embrace on a minor would all the more constitute child abuse.[25]

This factual findings of the RTC, which were affirmed by the Court of Appeals are entitled to respect and are not to be disturbed on appeal, unless some facts or circumstances of weight and substance, having been overlooked or misinterpreted, might materially affect the disposition of the case.[26] The assessment by the trial court of the credibility of a witness is entitled to great weight. It is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. In the case under consideration, we find that the trial court did not overlook, misapprehend, or misapply any fact of value for us to overturn the said findings.

---

[25] Records, p. 257.

[26] *People v. Piedad*, 441 Phil. 818, 838-839 (2002).

The RTC imposed upon petitioner the penalty of *prision mayor* in its minimum period. The penalty is in order, pursuant to Section 10(a), Article VI of Republic Act No. 7610.

As to the award of damages, the victim is entitled to moral damages, having suffered undue embarrassment when petitioner forcibly hugged her and threatened to kill her if she would not accept petitioner's love. There is no hard-and-fast rule in the determination of what would be a fair amount of moral damages, since each case must be governed by its own peculiar facts.[27] The yardstick should be that it is not palpably and scandalously excessive.[28] The Court finds that the award of moral damages in the amount of ₱50,000.00 is reasonable under the facts obtaining in this case.

WHEREFORE, the 15 February 2005 Decision of the Court of Appeals in CA-G.R. CR No. 25168, which affirmed *in toto* the Decision of the Dumaguete City Regional Trial Court, Branch 41 in Criminal Case No. 14246 finding Gonzalo A. Araneta guilty of violating Section 10(a), Article VI of Republic Act No. 7610 and sentencing him to suffer the penalty of *prision mayor* in its minimum period and awarding to the victim moral damages in the amount of ₱50,000.00 as moral damages, is *AFFIRMED in toto*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Austria-Martinez,* and *Reyes, JJ.,* concur.

---

[27] *Cagungun v. Planters Development Bank*, G.R. No. 158674, 17 October 2005, 473 SCRA 259, 273.

[28] *Spouses Saguid v. Security Finance, Inc.*, G.R. No. 159467, 9 December 2005, 477 SCRA 255, 275-276.

[*] Justice Antonio T. Carpio was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 26 February 2008.

EN BANC

[G.R. No. 174929. June 27, 2008]

ENGR. RANULFO C. FELICIANO, *petitioner, vs.* **NESTOR P. VILLASIN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DISMISSAL; FAILURE TO IMPLEAD PUBLIC RESPONDENT AS NOMINAL PARTY, SUFFICIENT GROUND FOR DISMISSAL. — Worthy to note is the failure of Feliciano to implead herein the RTC, the tribunal that rendered the assailed Orders, as a nominal party (public respondent) in the instant Petition for *Certiorari*. One of the requisites of an independent civil action for *Certiorari* is that it must be **directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions**. Feliciano failed to comply with said requirement and this failure is sufficient to dismiss this Petition. Under Rule 65 of the Rules of Court, failure to comply with any of the aforesaid requirements for filing an independent civil action for *Certiorari* is sufficient ground for the dismissal of the petition. This rule accords sufficient discretion to the court hearing the special civil action whether or not to dismiss the petition outright for failure to comply with said requirement.

2. ID.; ID.; ID.; REQUISITES. — In a petition for *certiorari* under Section 1, Rule 65 of the Rules of Court, the following essential requisites must be present, to wit: (1) the writ is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.

3. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, DEFINED; SHOWING THEREOF, NECESSARY. — *Grave abuse of discretion* implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other

words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. A petition for *certiorari* under Rule 65 of the Rules of Court will prosper only if there is a showing of grave abuse of discretion or an act without or in excess of jurisdiction on the part of respondent tribunal. In the absence of such a showing, there is no reason for this Court to annul the decision of the respondent tribunal or to substitute it with its own judgment, for the simple reason that it is not the office of a petition for *Certiorari* to inquire into the correctness of the assailed decision.

4. ID.; ID.; *QUO WARRANTO*; NATURE AND REQUIREMENTS. — It is well-established that *Quo Warranto* proceedings determine the right of a person to the use or exercise of a franchise or an office and to oust the holder from its enjoyment, if the latter's claim is not well-founded, or if he has forfeited his right to enjoy the privilege. In the instance in which the Petition for *Quo Warranto* is filed by an individual in his own name, he must be able to prove that he is entitled to the controverted public office, position, or franchise; otherwise, the holder of the same has a right to the undisturbed possession thereof. In actions for *Quo Warranto* to determine title to a public office, the complaint, to be sufficient in form, must show that the plaintiff is entitled to the office. In *Garcia v. Perez*, this Court ruled that the person instituting *Quo Warranto* proceedings on his own behalf, under Section 5, Rule 66 of the Rules of Court, must aver and be able to show that he is entitled to the office in dispute. Without such averment or evidence of such right, **the action may be dismissed at any stage**.

5. ID.; ID.; ID.; CLEAR LEGAL RIGHT, NOT A CASE OF; CASE AT BAR. — Due to the recent turn of events, Feliciano lost any legal standing to pursue *via Quo Warranto* proceedings his claim to the position of GM of LMWD considering this Court's *En Banc* Resolutions dated 6 June 2006 and 22 August 2006 in G.R. No. 172141 which denied with finality his Petition for Review on *Certiorari* of the Court of Appeals Decision dated 16 September 2005 and Resolution dated 31 March 2006 in CA-G.R. SP No. 00489 upholding the legality of CSC

Resolution No. 050307. To recall, CSC Resolution No. 050307 treated Feliciano as a *de facto* officer with regard to his acts as GM of LMWD; and declared him to be a usurper of or an intruder to the said position beginning 6 February 2001, and thus ordered him to vacate the same. Considering that entry of judgment was already made in G.R. No. 172141 as of 14 November 2006, there is therefore no more obstacle to the appointment by the LMWD Board of Directors of Villasin as the new GM of LMWD.

6. ID.; ID.; ID.; AN ACTION FOR *QUO WARRANTO* MAY BE DISMISSED AT ANY STAGE. — The Court emphasizes that an action for *Quo Warranto* may be dismissed at any stage when it becomes apparent that the plaintiff is not entitled to the disputed pubic office, position or franchise. Hence, the RTC is not compelled to still proceed with the trial when it is already apparent on the face of the Petition for *Quo Warranto* that it is insufficient. The RTC may already dismiss said petition at this point.

7. POLITICAL LAW; CIVIL SERVICE; OFFICERS AND EMPLOYEES OF WATER DISTRICTS ARE NOW COVERED BY THE CIVIL SERVICE RULES AND REGULATIONS; RELEVANT LAWS AND JURISPRUDENCE, CITED. — To determine whether personnel of the LMWD, particularly the GM, are subject to CSC Rules and Regulations, we must delve into the pertinent laws affecting the management and policy-making functions of the LMWD. The provisions of Presidential Decree No. 198 read: Chapter VI. Officers and Employees. **Section 23.** *Additional Officers.* — At the first meeting of the board, or as soon thereafter as practicable, the board shall appoint, by a majority vote, a *general manager*, an auditor, and an attorney, and shall define their duties and fix their compensation. Said officers shall serve at the pleasure of the board. x x x **Section 25**. ***Exemption from Civil Service.*** — The district and its employees, being engaged in a proprietary function, are hereby exempt from the provisions of the Civil Service Law. x x x. On 15 August 1975, Presidential Decree No. 768 amended Section 23 of Presidential Decree No. 198 to read: SEC. 23. *The General Manager*. — At the first meeting of the board, or as soon thereafter as practicable, the board shall appoint, by a majority vote, a general manager and shall define his duties

and fix his compensation. Said officer shall serve at the pleasure of the board. On 11 June 1978, Presidential Decree No. 1479 amended Presidential Decree No. 198, as amended by Presidential Decree No. 768, removing Section 25 of the latter, which had exempted the district and its employees from the coverage of the Civil Service. Thus, with such amendment, officers and employees of water districts were put under the mantle of Civil Service Rules and Regulations. On 2 April 2004, Republic Act No. 9286 further amended Section 23 of Presidential Decree No. 198, to read: Sec. 23. *The General Manager*. — At the first meeting of the Board, or as soon thereafter as practicable, the Board shall appoint, by a majority vote, a general manager and shall define his duties and fix his compensation. **Said officer shall not be removed from office, except for cause and after due process.** From the foregoing, as early as the issuance of Presidential Decree No. 1479 on 11 June 1978, it is clear that the LMWD GM is covered by Civil Service Rules and Regulations. As we have held in *Tanjay Water District v. Gabaton*, *Davao City Water District v. Civil Service Commission*, and *Hagonoy Water District v. National Labor Relations Commission,* water districts are government instrumentalities whose officers and employees belong to the civil service. These rulings are in consonance with the provisions of Article IX-B, Section 2 of the Constitution, whose provisions read: The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters. The position of General Manager being unequivocally part of the personnel of the water district whose officers and employees are covered under the civil service, an appointment thereto requires the attestation of the CSC for it to be valid.

8. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; ELEMENTS THEREOF, ESTABLISHED. — This Court cannot ignore the fact that petitioner Feliciano violated the rule on **forum shopping** in his quest for a favorable opinion on his cause of action. Forum shopping exists when a party repetitively avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by, some other court. The following elements of forum shopping have been

established: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same set of facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

9. ID.; ID.; ID.; CRITERIA TO DETERMINE WHETHER FORUM SHOPPING EXISTS OR NOT; CASE AT BAR. — What is pivotal to consider in determining whether forum shopping exists or not is the vexation caused to courts and the parties-litigants by a party who asks appellate courts and/or administrative entities to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different courts upon the same issues. Feliciano has evidently trifled with the courts and abused their processes in improperly instituting several cases and filing multiple petitions, cases or proceedings, and splitting causes of action — all of which focused on the legality of his termination as LMWD GM. While a party may avail himself of the remedies prescribed by the Rules of Court for the myriad reliefs from the court, such party is not free to resort to them simultaneously or at his pleasure or caprice.

10. ID.; ID.; ID.; *RAISON D' ETRE* FOR THE PROSCRIPTION AGAINST FORUM SHOPPING, REITERATED. — This Court reiterates the *raison d'etre* for the proscription against forum shopping. The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions — unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several fora until a favorable result is reached.

APPEARANCES OF COUNSEL

Opinion & Opinion Law Offices for petitioner.
Alberto N. Hidalgo for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court assailing the following: (1) the Order[1] dated 28 July 2006 of Branch 6 of the Regional Trial Court (RTC) of Tacloban City, Leyte, dismissing petitioner Ranulfo C. Feliciano's Petition for *Quo Warranto* against respondent Nestor P. Villasin in Civil Case No. 2006-03-29; and (2) the Order[2] dated 8 September 2006 of the same court denying petitioner's Motion for Reconsideration.

The following are the antecedent facts of this case:

Petitioner Feliciano was appointed General Manager (GM) of Leyte Metropolitan Water District (LMWD) on 11 June 1975 by the LMWD Board of Directors through Resolution No. 14, Series of 1975.[3]

On 6 March 1990, the Local Water Utilities Administration (LWUA) took over the management and policy-making functions of LMWD owing to LMWD's default on the payment of its obligations to LWUA. Said move was made pursuant to Presidential Decree No. 198, otherwise known as THE PROVINCIAL WATER UTILITIES ACT OF 1973,[4] issued

---

[1] Penned by Presiding Judge Santos T. Gil; *rollo,* pp. 24-28.

[2] *Rollo,* pp. 29-31.

[3] Wherefore, be it resolved, as it is hereby resolved, to appoint Engr. Ranulfo C. Feliciano as General Manager of the Leyte Metropolitan Water District as the rate of One Thousand Six Hundred Thirty-One Pesos (₱1,631.00) per month effective June 11, 1975;

x x x x x x x x x

Approved this 11th day of June 1975, 1975 at Tacloban City. (*Rollo,* p. 50.)

[4] The full title of which is: DECLARING A NATIONAL POLICY FAVORING LOCAL OPERATION AND CONTROL OF WATER SYSTEMS; AUTHORIZING THE FORMATION OF LOCAL WATER DISTRICTS AND PROVIDING FOR THE GOVERNMENT AND ADMINISTRATION OF SUCH DISTRICTS; CHARTERING A NATIONAL ADMINISTRATION TO FACILITATE IMPROVEMENT OF LOCAL WATER UTILITIES; GRANTING

on 25 May 1973. The LWUA appointed an Interim General Manager and Chairman of the Board of Directors, as well as its members.

After the LWUA took over the management and policy-making functions of the LMWD in March 1990, Engineer (Engr.) Cayo U. Emnas was appointed as take-over General Manager. Emnas thereafter filed administrative charges against Feliciano for Grave Misconduct, Dishonesty and Conduct Unbecoming an LMWD Official, docketed as Administrative Case No. LMWD-OGCC-01-01.[5] Feliciano was accused of authorizing payment of his backwages amounting to ₱134,721.64, for the period 6 March 1990 up to 23 October 1990, although he did not report for work during said period.

The Office of the Government Corporate Counsel (OGCC) handled the investigation of the charges against Feliciano. In a Resolution dated 16 September 1991, the OGCC found Feliciano guilty as charged and recommended the penalty of dismissal. Pertinent portions of the OGCC Resolution reads:

> The action of respondent in authorizing, causing and receiving the aforesaid disbursement of ₱134,721.64 in payment obstensibly of his backwages for the period starting 6 March 1990 up to and until 23 October 1990, knowing that during the said period he did not report for work nor rendered service to LMWD as testified to by complainants witnesses, is not only irregular but unlawful. Worse, respondent being the General Manager, necessarily had taken advantage of his position and abused the confidence reposed in his office in the perpetration of the said rank dishonesty. As a consequence thereof, LMWD was defrauded and suffered damage in the sum of ₱134,721.64.
>
> Accordingly, undersigned finds respondent Ranulfo C. Feliciano guilty, as charged, of GRAVE MISCONDUCT, DISHONESTY, AND CONDUCT UNBECOMING OF AN LMWD OFFICIAL.

SAID ADMINISTRATION SUCH POWERS AS ARE NECESSARY TO OPTIMIZE PUBLIC SERVICE FROM WATER UTILITY OPERATIONS, AND FOR OTHER PURPOSES.

[5] *Rollo,* p. 84.

In view of the grave nature of the offense committed by respondent, the large sum which LMWD has been defrauded of, and the existence of aggravating circumstances occasioned by respondent's taking undue advantage of his position and abusing the confidence of his office, undersigned recommends the imposition of the penalty of DISMISSAL on respondent.[6]

On 11 November 1991, the Interim LMWD Board of Directors approved *in toto* the findings of the OGCC including its recommendation to dismiss Feliciano.[7]

On 1 October 1993, the Civil Service Commission (CSC) issued Memorandum Circular No. 41, Series of 1993, directing Board Chairpersons and GMs of water districts to submit personnel appointments for approval by the CSC.

On 20 July 1998, the take-over of the management and operations of the LMWD by the LWUA was lifted by the LWUA Board of Trustees in its Resolution No. 138, Series of 1998.[8]

On 25 September 1998, the new regular LMWD Board of Directors unanimously approved Resolution No. 98-002 ordering Feliciano to re-assume[9] the post he had vacated as GM of LMWD. The position was accepted by Feliciano on 27 September 1998.[10]

As GM, Feliciano appointed Edgar R. Nedruda, Milagros A. Majadillas and Edgar B. Ortega as Division Manager, Quality Control Assurance Officer and Plant Equipment Operator E, respectively, at the LMWD.[11] In compliance with CSC Memorandum Circular No. 41, Series of 1993, Feliciano submitted the same to the CSC Regional Office (CSCRO) for approval. The CSCRO, however, disapproved Feliciano's LMWD personnel appointments in its Order issued on 8 June 1999 since GM

---

[6] *Id*. at 58.

[7] LMWD Resolution No. 18, Series of 1991.

[8] *Rollo,* p. 51.

[9] *Id*. at 51.

[10] *Id*. at 51-52.

[11] *Id*. at 53.

Feliciano did not possess the required CSC-approved appointment pursuant to CSC Memorandum Circular No. 41, S. 1993.[12] Feliciano appealed the Order to the CSC.

On 8 September 2000, the CSC through its Chairperson Corazon Alma G. de Leon, issued **CSC Resolution No. 002107** denying Feliciano's appeal of his disapproved LMWD personnel appointments on the ground that he was only a *de facto* officer.[13] It found that Feliciano had no authority to make appointments since he himself lacked the required CSC-approved appointment pursuant to CSC Memorandum Circular No. 40, Series of 1998, and Memorandum Circular No. 41, Series of 1993.[14] The CSC thus resolved:

> WHEREFORE, the Order issued by the Civil Service Commission (CSCRO) Regional Office No. VIII, Palo, Leyte, disapproving the appointments of Nedruda, Majadillas and Ortega on the ground that Ranulfo Feliciano lacks the authority to appoint, is hereby affirmed.
>
> Accordingly, the Human Resource Management Officer/Personnel Officer of the Leyte Metro Water District (LMWD) may **re-submit the appointment of Ranulfo Feliciano** to the position of General Manager of the LMWD, to the CSC Leyte Field Office for attestation.
>
> Feliciano may likewise **re-appoint Nedruda, Majadillas and Ortega** to the same positions. (Emphases ours.)

Feliciano filed a Motion for Reconsideration citing as main argument the fact that the LMWD was not a government-owned and controlled corporation, but a special type of non-stock, non-profit private corporation imbued with public interest, and therefore, not covered by the civil service rules.

The CSC denied Feliciano's Motion for Reconsideration in its **Resolution No. 010218**, issued on 22 January 2001, which reiterated that Feliciano's argument on the private character of water districts had long been put to rest in *Davao City Water District v. Civil Service Commission,* which declared water

---

[12] *Id*. at 53.

[13] *Id*. at 53-56.

[14] *Id*. at 53-56.

districts to be government-owned or controlled corporations with original charter, falling under the jurisdiction of the CSC and Commission on Audit (COA).

Not satisfied, Feliciano appealed CSC Resolutions No. 002107 and 010218 to the Court of Appeals via Petition for *Certiorari*. The case was docketed as CA-G.R. No. 63325. On 1 September 2005, the Court of Appeals in Cebu City, through Associate Justice Ramon M. Bato, Jr., denied the petition.[15] Feliciano filed a Motion for Reconsideration but the same was denied per Resolution dated 15 August 2006.[16] Feliciano thereafter appealed to this Court on 15 August 2006 *via* petition for review on *certiorari* in G.R. No. 174178. In an *en banc* Decision issued on 17 October 2006, this Court denied the petition for its failure to sufficiently show that the CSC committed any reversible error in issuing the challenged decision and resolution. Feliciano's Motion for Reconsideration thereof was denied on 23 January 2007.

On 12 January 2005, the CSC issued a Memorandum directing its Regional Director (for Region 8) Rodolfo Encajonado (RD Encajonado) to submit an update on the status of Feliciano's appointment as GM of LMWD.

In his Memorandum submitted to the CSC on 14 January 2005, RD Encajonado reported that the LMWD Board of Directors had not yet submitted the required appointment of Feliciano as GM of LMWD for attestation, as required by CSC Resolutions No. 002107 and No. 010218. On account thereof, the CSC, through its Chairperson Karina Constantino-David, issued on 28 February 2005 **CSC Resolution No. 050307**, declaring Feliciano to be a mere *de facto* officer of LMWD and ordering him to vacate the position of GM, to wit:

---

[15] Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Arsenio J. Magpale and Pampio A. Abarientos, concurring; CA *rollo*, pp. 547-556.

[16] Penned by Associate Justice Pampio A. Abarientos with Executive Justice Arsenio J. Magpale and Associate Justice Romeo F. Barza, concurring; CA *rollo,* p. 574.

With the promulgation on September 13, 1991 of the above-mentioned Supreme Court decision,[17] the issuance on October 1, 1993 of the aforestated CSC Memorandum Circular, and the adoption on January 22, 2001 of CSC Resolution No. 01-2018 denying Feliciano's motion for reconsideration, Feliciano is under legal obligation to comply by submitting his appointment to the Commission for attestation/approval. This, he did not do. He instead stubbornly maintained his personal stand that water districts are private corporations, not government-owned or controlled corporations with original charter. For all legal intents and purposes, effective upon his receipt on February 6, 2001 of CSC Resolution No. 01-0218 denying his motion for reconsideration, Feliciano is a mere usurper or intruder who has no right or title whatsoever to the position/office of General Manager. His further occupancy of the position after said date holds him criminally liable for usurpation of authority.

x x x x x x x x x

WHEREFORE, the Commission resolves as follows:

1. Between June 8, 1999 (the date when the Civil Service Commission Regional Office No. VIII issued an Order disapproving the appointments of Edgar R. Nedruda, Milagros A. Majadillas and Edgar B. Ortega on the ground that Ranulfo C. Feliciano does not possess a CSC-approved appointment) and February 6, 2001 (the date when Feliciano received a copy of CSC Resolution No. 01-0218 denying his motion for reconsideration and affirming CSC Resolution No. 00-2107), Feliciano shall be treated as a *de facto* officer whose acts are valid and binding only as regards innocent third persons. Insofar as Feliciano himself is concerned, his acts are void, hence, he is not entitled to the emoluments of the office. Regarding the three (3) issued appointments, the same are all void, since Feliciano has no authority to issue the same.

2. Starting February 6, 2001, Feliciano is a mere usurper or intruder without any right or title to the office/position of General Manager of the Leyte Metropolitan Water District (LMWD). His further occupancy of the position of General

---

[17] *Davao City Water District v. Civil Service Commission*, G.R. Nos. 95237-38, 13 September 1991, 201 SCRA 593.

> Manager after February 6, 2001 holds him criminally liable for usurpation of authority. Effective upon receipt of this Resolution, he is ordered to vacate the position of LMWD General Manager.[18]

On 22 March 2005, Feliciano again sought recourse at the Court of Appeals where he filed a Petition for *Certiorari* and Prohibition with application for Temporary Restraining Order (TRO) and Writ of Injunction, seeking to enjoin the implementation of CSC Resolution No. 050307, Series of 2005. The case was docketed as **CA-G.R. SP No. 00489**.[19]

On 30 March 2005, while CA-G.R. SP No. 00489 was still pending with the Court of Appeals, with no injunction having been issued by the appellate court, the LMWD Board of Directors declared the GM position occupied by Feliciano vacant by virtue of LMWD Resolution No. 050307.[20]

The Court of Appeals subsequently issued on 12 April 2005 a Resolution in CA-G.R. SP No. 00489 granting a TRO effective for sixty days. After the lapse of the TRO, the LMWD Board of Directors appointed Villasin as the new GM of LMWD on 14 June 2005. On 16 September 2005, the Court of Appeals dismissed CA-G.R. SP No. 00489 which reached this Court *via* petition for review in G.R. No. 172141. This was eventually denied by this Court and entry of judgment was made on 14 November 2006. On 28 December 2005, the LMWD Board of Directors unanimously approved LMWD Resolution No. 05-145 certifying that Villasin was the GM of LMWD pursuant to the provisions of Presidential Decree No. 198 and the CSC Rules and Regulations.

On 28 March 2006, Feliciano thus filed with the RTC a Petition for *Quo Warranto* against Villasin under Rule 66 of the 1997 Rules of Civil Procedure, docketed as **Civil Case No. 2006-03-29**.

---

[18] CSC Resolution No. 05037; *rollo*, pp. 57-64.

[19] CA *rollo*, pp. 2-34.

[20] Two board members were present out of the 3 working board members at that time; the board is composed of five directors. (*Rollo,* pp. 70-71.)

Feliciano asked the RTC to restore him to his position as GM of LMWD, and to remove Villasin therefrom. In particular, he prayed for the following in his Petition for *Quo Warranto*:

> 1. To order [Villasin] to vacate the Office of General Manager of LMWD and for [Feliciano] to be seated to such office;
> 2. To mandate [Villasin] to pay the salaries and other emoluments of [Feliciano] which as of this date amounts to more than One Million Two Hundred Thousand Pesos (₱1,200,000.00);
> 3. To direct [Villasin] to pay [Feliciano] attorney's fees comprised of Two Hundred Thousand Pesos (₱200,000.00) as acceptance fees and Five Thousand Pesos (₱5,000.00) appearance per hearing;
> 4. To command [Villasin] to pay the cost of herein Petition for *Quo Warranto*.
>
> [Feliciano] also prays for such other reliefs as may be necessary under the circumstances.[21]

Citing the Court's ruling in *Villaluz v. Zaldivar,*[22] Feliciano argued that since the LWUA had no power to remove a GM appointed by a regular Board of Directors, it should follow then that an interim Board of Directors neither had the power to discipline or remove a regular GM of LMWD.

Villasin countered by filing a Comment/Answer with Motion to Dismiss the Petition for *Quo Warranto*, on the following grounds:

> (a) Forum shopping;
> (b) Feliciano is disqualified from government service due to his dismissal from office on 11 November 1991;
> (c) Petitioner's claim that LMWD is a private entity defeats his petition since *quo warranto* is a remedy of a person claiming a public office;

---

[21] Complaint for *Quo Warranto*; *rollo,* pp. 32-49.

[22] 122 Phil. 1091 (1965).

(d) *Quo warranto* case was filed more than a year from the time the cause of action arose or beyond the reglementary period;

(e) The Court of Appeals had already denied his petition for Review on *Certiorari* on CSC Resolution No. 050307.

A hearing with notice to the parties was set for 2 June 2006 but Feliciano failed to attend the same. [23] The RTC then ordered Civil Case No. 2006-03-29 submitted for Resolution.

On 28 July 2006, the RTC issued an Order dismissing Feliciano's Petition for *Quo Warranto*, finding that:

> The scope of the remedy of *quo warranto* instituted by an individual is that he, the petitioner, has prior right to the position or office held by the respondent. Where there is no legal ground or where the fundamental basis of the petition is none or destroyed, it becomes unnecessary to pass upon the right of the respondent.
>
> x x x x x x x x x
>
> WHEREFORE, in view of the aforegoing (sic), for lack of cause of action amounting to want of jurisdiction, this petition shall be, as it is hereby ordered, dismissed.[24]

Feliciano filed his Motion for Reconsideration alleging that the Order issued by the RTC was conjectural, presumptuous and specious. However, the Motion for Reconsideration was denied by the RTC in an Order dated 8 September 2006. According to the RTC, the *Quo Warranto* Petition was prematurely filed considering that Feliciano's Petition for Review on *Certiorari* with the Court of Appeals, involving CSC Resolutions No. 002107 and No. 010218, was still pending with the Court of Appeals. Hence, the issue of whether Feliciano is holding the GM position in a *de facto* or a *de jure* capacity is yet to be resolved. The RTC therefore decreed:

> WHEREFORE, with prematurity in the institution of the present petition as duly admitted by herein petitioner-movant coupled with the fact that the rest of the arguments raised in the motion have

---

[23] Feliciano received the notice on the day of the scheduled hearing.

[24] *Rollo*, pp. 24-28.

already been considered and rejected by this court in the order dated, July 28, 2006, the motion for reconsideration is hereby denied.[25]

On 14 October 2006, Feliciano went directly to this Court *via* the instant Petition for *Certiorari* under Rule 65 of the Revised Rules of Court, raising the following arguments:

I.

RESPONDENT COURT HAS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION AS ITS DISMISSAL OF THE PETITION IS SO WHIMSICAL, CAPRICIOUS AND ARBITRARY AMOUNTING THEREFORE TO A PATENT AND GROSS EVASION OF A POSITIVE DUTY OR VIRTUAL REFUSAL TO PERFORM JUDICIAL DUTY.

II.

RESPONDENT COURT HAS COMMITTED GRAVE ABUSE OF DISCRETION AS ITS DISMISSAL OF THE PETITION, BASED ON GROUNDS NOT SOUGHT AND PRAYED FOR IN THE MOTION TO DISMISS, CONSTITUTES A DENIAL OF DUE PROCESS.

As hereinbefore stated, **CA-G.R. SP No. 00489**, Feliciano's Petition for *Certiorari* and Prohibition seeking to enjoin the implementation of CSC Resolution No. 050307, was dismissed by the Court of Appeals in a Decision dated 16 September 2005. Feliciano appealed said Court of Appeals Decision before this Court through a Petition for Review on *Certiorari*, docketed as **G.R. No. 172141**. This Court, however, in an *En Banc* Resolution dated 6 June 2006, ruled to:

> b) DENY the petition for failure thereof to sufficiently show that the Court of Appeals committed any reversible error in issuing the challenged decision and resolution as to warrant the exercise by this Court of its discretionary appellate jurisdiction.[26]

The Court *En Banc* denied with finality Feliciano's Motion for Reconsideration on 22 August 2006, and entry of judgment was made in G.R. No. 172141 on 14 November 2006.

---

[25] *Rollo*, p. 31.

[26] *En Banc* Resolution of this Court; Entry of Judgment dated 14 November 2006; *rollo* of G.R. No. 172141, p. 374.

In the instant Petition, which actually arose from the appointment by the LMWD Board of Directors of Villasin as the new GM of LMWD after the CSC ordered Feliciano to vacate the same in its Resolution No. 050307, Feliciano prays that this Court set aside and declare null and void the Orders dated 28 July 2006 and 8 September 2006 of the RTC dismissing his Petition for *Quo Warranto* in Civil Case No. 2006-03-29.

Petitioner raises several issues in this Petition, which all boil down to the sole question of whether the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing Feliciano's Petition for *Quo Warranto*.

Worthy to note is the failure of Feliciano to implead herein the RTC, the tribunal that rendered the assailed Orders, as a nominal party (public respondent) in the instant Petition for *Certiorari*. One of the requisites of an independent civil action for *Certiorari* is that it must be **directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions**. Feliciano failed to comply with said requirement and this failure is sufficient to dismiss this Petition.

Under Rule 65 of the Rules of Court, failure to comply with any of the aforesaid requirements for filing an independent civil action for *Certiorari* is sufficient ground for the dismissal of the petition. This rule accords sufficient discretion to the court hearing the special civil action whether or not to dismiss the petition outright for failure to comply with said requirement.

Evidently, the function of this Court is merely to check whether the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing Feliciano's Petition for *Quo Warranto* before it.

In a petition for *certiorari* under Section 1, Rule 65 of the Rules of Court, the following essential requisites must be present, to wit: (1) the writ is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any

plain, speedy, and adequate remedy in the ordinary course of law.[27]

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility,[28] and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[29]

A petition for *certiorari* under Rule 65 of the Rules of Court will prosper only if there is a showing of grave abuse of discretion or an act without or in excess of jurisdiction on the part of respondent tribunal. In the absence of such a showing, there is no reason for this Court to annul the decision of the respondent tribunal or to substitute it with its own judgment, for the simple reason that it is not the office of a petition for *Certiorari* to inquire into the correctness of the assailed decision.

Nonetheless, even as this Court delves into the merits of the present Petition, it still must fail.

Feliciano's Petition for *Quo Warranto* centers on his alleged right as the one legally entitled to occupy the position of GM of LMWD. He presented two main issues therein:

(1) Whether or not the LMWD Board of Directors, through Resolution No. 05-037, legally and validly ousted him; and

---

[27] *Metro Drug Distribution, Inc. v. Metro Drug Corporation Employees Association-Federation of Free Workers*, G.R. No. 142666, 26 September 2005, 471 SCRA 45, 56; *Suntay v. Cojuangco-Suntay*, 360 Phil. 932, 939 (1998); *Cuison v. Court of Appeals*, 351 Phil. 1089, 1102 (1998); *Sanchez v. Court of Appeals*, 345 Phil. 155, 179 (1997); *Cochingyan, Jr. v. Cloribel*, 167 Phil. 106, 131 (1977).

[28] *Coca-Cola Bottlers, Philippines, Inc. v. Daniel*, G.R. No. 156893, 21 June 2005, 460 SCRA 494, 504, citing *Vda. de Daffon v. Court of Appeals*, 436 Phil. 233, 242 (2002); *Duero v. Court of Appeals*, 424 Phil. 12, 20 (2002); *De Baron v. Court of Appeals*, 420 Phil. 474, 482 (2001).

[29] *Cuison v. Court of Appeals, supra* note 27.

(2) Whether or not the LMWD Board of Directors legally and validly appointed Villasin.

Contending that his appointment as GM on 11 June 1975 by the LMWD Board of Directors and subsequent assumption of office bestowed on him a legal right to the said position, Feliciano argues that Republic Act No. 9286,[30] which further amended Presidential Decree No. 198, and was approved on 2 April 2004, vested him with security of tenure. Feliciano adds that the Interim LMWD Board of Directors, in fact, had no power to dismiss him when he was dismissed on 11 November 1991.

It is well-established that *Quo Warranto* proceedings determine the right of a person to the use or exercise of a franchise or an office and to oust the holder from its enjoyment, if the latter's claim is not well-founded, or if he has forfeited his right to enjoy the privilege. According to the Rules of Procedure:

> The action may be commenced for the Government by the Solicitor General or the fiscal against a person who **usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise**; a public officer whose acts constitute a ground for the forfeiture of his office; or against an association which acts as a corporation without being legally incorporated or without lawful authority to so act.[31]
>
> The action may also be instituted by **an individual in his own name** who claims to be entitled to the public office or position usurped or unlawfully held or exercised by another.[32] (Emphasis supplied.)

The possible outcome of a Petition for *Quo Warranto* can be any of the following:

If the court finds for the respondent, the judgment should simply state that the respondent is entitled to the office. If, however, the

---

[30] AN ACT FURTHER AMENDING PRESIDENTIAL DECREE NO. 198, OTHERWISE KNOWN AS THE "PROVINCIAL WATER UTILITIES ACT OF 1973," AS AMENDED.

[31] RULES OF COURT, Rule 66, Section 1.

[32] *Id*., Section 5.

court finds for the petitioner and declares the respondent guilty of usurping, intruding into, or unlawfully holding or exercising the office, judgment may be rendered as follows:

> "Sec. 10. *Judgment where usurpation found*. — When the defendant is found guilty of usurping, intruding into, or unlawfully holding or exercising an office, position, right, privilege, or franchise, judgment shall be rendered that such defendant be ousted and altogether excluded therefrom, and that the plaintiff or relator, as the case may be, recover his costs. Such further judgment may be rendered determining the respective rights in and to the office, position, right, privilege, or franchise of all the parties to the action as justice requires."

If it is found that the respondent or defendant is usurping or intruding into the office, or unlawfully holding the same, the court may order:

(1) The ouster and exclusion of the defendant from office;

(2) The recovery of costs by plaintiff or relator;

(3) The determination of the respective rights in and to the office, position, right, privilege or franchise of all the parties to the action as justice requires.[33]

In the instance in which the Petition for *Quo Warranto* is filed by an individual in his own name, he must be able to prove that he is entitled to the controverted public office, position, or franchise; otherwise, the holder of the same has a right to the undisturbed possession thereof. In actions for *Quo Warranto* to determine title to a public office, the complaint, to be sufficient in form, must show that the plaintiff is entitled to the office.[34] In *Garcia v. Perez*,[35] this Court ruled that the person instituting *Quo Warranto* proceedings on his own behalf, under Section 5, Rule 66 of the Rules of Court, must aver and be able to show that he is entitled to the office in dispute. Without such averment or evidence of such right, **the action may be dismissed at any stage**.[36]

---

[33] *Mendoza v. Allas*, 362 Phil. 238, 244-245 (1999).

[34] *Luna v. Rodriguez*, 36 Phil. 401, 403 (1917).

[35] G.R. No. L-28184, 11 September 1980, 99 SCRA 628.

[36] *Id*.

Due to the recent turn of events, Feliciano lost any legal standing to pursue *via Quo Warranto* proceedings his claim to the position of GM of LMWD considering this Court's *En Banc* Resolutions dated 6 June 2006 and 22 August 2006 in G.R. No. 172141 which denied with finality his Petition for Review on *Certiorari* of the Court of Appeals Decision dated 16 September 2005 and Resolution dated 31 March 2006 in CA-G.R. SP No. 00489 upholding the legality of CSC Resolution No. 050307. To recall, CSC Resolution No. 050307 treated Feliciano as a *de facto* officer with regard to his acts as GM of LMWD; and declared him to be a usurper of or an intruder to the said position beginning 6 February 2001, and thus ordered him to vacate the same.

Considering that entry of judgment was already made in G.R. No. 172141 as of 14 November 2006, there is therefore no more obstacle to the appointment by the LMWD Board of Directors of Villasin as the new GM of LMWD.

Feliciano imputes grave abuse of discretion on the part of the RTC for allegedly failing to afford him due process, since his Petition for *Quo Warranto* was dismissed based on its face and without having been heard. In granting Villasin's Motion to Dismiss the Petition for *Quo Warranto*, the RTC ratiocinated:

> Inferred, in the year 1999, petitioner herein already knew that his appointment as General Manager of LMWD was placed in doubt and declared ineffective. So his acts as such since then were void. Petitioner, in fact was ordered by the Civil Service Commission to vacate the position of LMWD General Manager since he assumed the position without completed appointment (*General Manager, Philippine Ports Authority, et al. vs. Julieta Monserat*, 381 SCRA 200.)
>
> x x x As of the moment, without the CSC approved appointment, he is, the law points, a *de facto* officer. He held the position of General Manager of LMWD without the completed appointment. Over this, but for the creed petitioner avows, the court believes that while the necessary intent is there, the sporting idea of fair play, is not sufficient for the petition to succeed. Petitioner surely is a *de facto* officer.[37]

[37] *Rollo,* pp. 26-27.

The Court emphasizes that an action for *Quo Warranto* may be dismissed at any stage when it becomes apparent that the plaintiff is not entitled to the disputed pubic office, position or franchise.[38] Hence, the RTC is not compelled to still proceed with the trial when it is already apparent on the face of the Petition for *Quo Warranto* that it is insufficient. The RTC may already dismiss said petition at this point.

Feliciano presents as an alternative argument the fact that as GM of LMWD, he is not part of the personnel of the water district, arguing that his appointment does not need CSC attestation. He explains that:

> [E]ven granting that the CSC can declare him a *de facto* officer and usurper, the same has already prescribed, since as early as September 8, 2000 in its Resolution No. 002107 or four (4) years before its Resolution No. 050307, it has already known about petitioner being a *de facto* officer, that being the GM of LMWD, he is not part of the personnel of LMWD, thus, his appointment is not subject to attestation under CSC Resolution No. 41, S. 1993 x x x.[39]

We find his argument untenable.

To determine whether personnel of the LMWD, particularly the GM, are subject to CSC Rules and Regulations, we must delve into the pertinent laws affecting the management and policy-making functions of the LMWD.

The provisions of Presidential Decree No. 198 read:

> Chapter VI
> Officers and Employees
>
> **Section 23.** *Additional Officers.* — At the first meeting of the board, or as soon thereafter as practicable, the board shall appoint, by a majority vote, a *general manager*, an auditor, and an attorney, and shall define their duties and fix their compensation. Said officers shall serve at the pleasure of the board.
>
> x x x x x x x x x

[38] *Garcia v. Perez*, *supra* note 35.

[39] *Rollo,* p. 13.

Section 25. ***Exemption from Civil Service.*** — The district and its employees, being engaged in a proprietary function, are hereby exempt from the provisions of the Civil Service Law. x x x.

On 15 August 1975, Presidential Decree No. 768 amended Section 23 of Presidential Decree No. 198 to read:

SEC. 23. *The General Manager*. — At the first meeting of the board, or as soon thereafter as practicable, the board shall appoint, by a majority vote, a general manager and shall define his duties and fix his compensation. Said officer shall serve at the pleasure of the board.

On 11 June 1978, Presidential Decree No. 1479[40] amended Presidential Decree No. 198, as amended by Presidential Decree No. 768, removing Section 25 of the latter, which had exempted the district and its employees from the coverage of the Civil Service. Thus, with such amendment, officers and employees of water districts were put under the mantle of Civil Service Rules and Regulations.

On 2 April 2004, Republic Act No. 9286 further amended Section 23 of Presidential Decree No. 198, to read:

Sec. 23. *The General Manager*. — At the first meeting of the Board, or as soon thereafter as practicable, the Board shall appoint, by a majority vote, a general manager and shall define his duties and fix his compensation. **Said officer shall not be removed from office, except for cause and after due process.**

From the foregoing, as early as the issuance of Presidential Decree No. 1479 on 11 June 1978, it is clear that the LMWD GM is covered by Civil Service Rules and Regulations.

As we have held in *Tanjay Water District v. Gabaton*,[41] *Davao City Water District v. Civil Service Commission*,[42] and

---

[40] FURTHER AMENDING PRESIDENTIAL DECREE NO. 198, OTHERWISE KNOWN AS "THE PROVINCIAL WATER UTILITIES ACT OF 1973," AS AMENDED.

[41] G.R. No. 63742, 17 April 1989, 172 SCRA 253.

[42] *Supra* note 17.

Hagonoy Water District v. National Labor Relations Commission,[43] water districts are government instrumentalities[44] whose officers and employees belong to the civil service. These rulings are in consonance with the provisions of Article IX-B, Section 2 of the Constitution, whose provisions read:

> The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

The position of General Manager being unequivocally part of the personnel of the water district whose officers and employees are covered under the civil service, an appointment thereto requires the attestation of the CSC for it to be valid.

Moreover, this Court cannot ignore the fact that petitioner Feliciano violated the rule on **forum shopping**[45] in his quest for a favorable opinion on his cause of action.

Forum shopping exists when a party repetitively avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by, some other court.[46]

---

[43] G.R. No. 81490, 31 August 1988, 165 SCRA 272.

[44] With original charter.

[45] Rules of Court, Rule 7.

[46] *Chemphil Export & Import Corporation v. Court of Appeals*, G.R. Nos. 112438-39, 12 December 1995, 251 SCRA 257, 291-292; *Hongkong and Shanghai Banking Corporation Limited v. Catalan,* G.R. Nos. 159590-91, 18 October 2004, 440 SCRA 498, 513; *Garcia v. Sandiganbayan,* G.R. No. 165835, 22 June 2005, 460 SCRA 600, 637-638; *Guaranteed Hotels, Inc. v. Baltao*, G.R. No. 164338, 17 January 2005, 448 SCRA 738, 744; *San Juan v. Arambulo, Sr.,* G.R. No. 143217, 14 December 2005, 477 SCRA 725, 728; *Navarro Vda. de Taroma v. Taroma,* G.R. No. 160214, 16 December 2005, 478 SCRA 336, 345-346; *Maricalum Mining Corporation v. Brion*, G.R. Nos. 157696-97, 9 February 2006, 482 SCRA 87, 105-106; *Philippine Airlines Employees Savings and Loan Association, Inc. v. Philippine Airlines, Inc.*, G.R. No. 161110, 30 March 2006, 485 SCRA 632, 646; *Lim v. Vianzon*, G.R. No. 137187, 3 August 2006, 497 SCRA 482, 494; *Huibonhoa*

The following elements of forum shopping have been established:

(a) identity of parties, or at least such parties as represent the same interests in both actions;

(b) identity of rights asserted and relief prayed for, the relief being founded on the same set of facts; and

(c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[47]

The prohibition on forum shopping is embodied in Rule 7 of the Rules of Court, which provides, *viz*:

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

---

v. Concepcion, G.R. No. 153785, 3 August 2006, 497 SCRA 562, 569; *Santos v. Parañaque Kings Enterprises, Inc.*, G.R. No. 153562, 23 October 2006, 505 SCRA 48, 53.

[47] *Mondragon Leisure and Resorts Corporation v. United Coconut Planters Bank*, G.R. No. 154187, 14 April 2004, 427 SCRA 585, 590; *Ao-As v. Court of Appeals*, G.R. No. 128464, 20 June 2006, 491 SCRA 339, 353.

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.

What is pivotal to consider in determining whether forum shopping exists or not is the vexation caused to courts and the parties-litigants by a party who asks appellate courts and/or administrative entities to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different courts upon the same issues.[48]

Feliciano has evidently trifled with the courts and abused their processes in improperly instituting several cases and filing multiple petitions, cases or proceedings, and splitting causes of action – all of which focused on the legality of his termination as LMWD GM. While a party may avail himself of the remedies prescribed by the Rules of Court for the myriad reliefs from the court, such party is not free to resort to them simultaneously or at his pleasure or caprice.

It is pertinent to note that at the time Feliciano filed G.R. No. 174929 on 14 October 2006, the legality of his termination as LMWD GM has, in fact, been resolved with finality with the entry of judgment in G.R. No. 172141. To recall, this Court *En Banc* denied G.R. No. 172141 and affirmed CA-G.R. SP No. 00489 which upheld CSC Resolution No. 050307. With the denial of G.R. No. 172141, the validity of CSC Resolution No. 050307 declaring Feliciano to be a *de facto* officer from 8 June 1999 to 6 February 2001, and a mere usurper thereafter, has been laid to rest.

Feliciano, however, insisted on pursuing this petition for *certiorari*, being fully aware of the finality of G.R. No. 172141 and the consequences resulting therefrom.

---

[48] *Tagaro v. Garcia,* G.R. No. 158568, 17 November 2004, 442 SCRA 562, 571-572; *Municipality of Taguig v. Court of Appeals*, G.R. No. 142619, 13 September 2005, 469 SCRA 588, 595.

This Court reiterates the *raison d'etre* for the proscription against forum shopping. The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions – unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several fora until a favorable result is reached.[49]

IN ALL, we find that the RTC committed no grave abuse of discretion in dismissing Feliciano's Petition for *Quo Warranto*.

WHEREFORE, premises considered, this Petition for *Certiorari* is *DISMISSED*, and the Orders dated 8 July 2006 and 8 September 2006 issued by Branch 6 of the Regional Trial Court in Tacloban, Leyte, in Civil Case No. 2006-03-29, dismissing petitioner Ranulfo C. Feliciano's Petition for *Quo Warranto,* are hereby *AFFIRMED*.

Feliciano and his counsel are hereby *REPRIMANDED* for *FORUM SHOPPING*, with a *WARNING* that a repetition of the same or similar act will be dealt with more severely. Costs against petitioner.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Velasco, Jr., Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

Nachura, J., took no part.

---

[49] *Guevara v. BPI Securities Corporation*, G.R. No. 159786, 15 August 2006, 498 SCRA 613, 637-638; *Guaranteed Hotels, Inc. v. Baltao, supra* note 46*; San Juan v. Arambulo, Sr., supra* note 46.

THIRD DIVISION

[G.R. No. 178236. June 27, 2008]

OLIGARIO SALAS, *petitioner, vs.* **ABOITIZ ONE, INC., and SABIN ABOITIZ,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYER AND EMPLOYEE; DISMISSAL OF EMPLOYEE; GROSS NEGLECT OF DUTY, NOT A CASE OF. — Undoubtedly, it was Salas' duty, as material controller, to monitor and maintain the availability and supply of *Quickbox* needed by Aboitiz in its day-to-day operations, and on June 4, 2003, Aboitiz had run out of *Large Quickbox*. However, records show that Salas made a requisition for *Quickbox* as early as May 21, 2003; that he made several follow-ups with Eric Saclamitao regarding the request; and that he even talked to the supplier to facilitate the immediate delivery of the *Quickbox*. It cannot be gainsaid that Salas exerted efforts to avoid a stock out of *Quickbox*. Accordingly, he cannot be held liable for gross negligence. If there is anything that Salas can be faulted for, it is his failure to promptly inform his immediate supervisor, Mr. Ed Dumago, of the non-delivery of the requisitioned items. Nevertheless, such failure did not amount to gross neglect of duty or to willful breach of trust, which would justify his dismissal from service.

2. ID.; ID.; ID.; WILLFUL BREACH OF TRUST AS A GROUND FOR DISMISSAL, NOT ESTABLISHED. — The CA also justified Salas' dismissal on ground of willful breach of trust. It lent credence to Aboitiz's posture that Salas was a warehouseman holding a position of trust and confidence, and that he tampered with the *bin card to cover up [his] negligence and [to] mislead the investigating team*. Salas as material controller was tasked with monitoring and maintaining the availability and supply of *Quickbox*. There appears nothing to suggest that Salas' position was a highly or even primarily confidential position, so that he can be removed for loss of trust and confidence by the employer. Besides, as we review the records before us, we do not see any semblance of willful breach of trust on the part of Salas. It is true that there was erasure

or alteration on the bin card. Aboitiz, however, failed to demonstrate that it was done to cover up Salas' alleged negligence. Other than the bin card and Aboitiz's barefaced assertion, no other evidence was offered to prove the alleged cover-up. Neither was there any showing that Salas attempted to mislead the investigating team. The CA, therefore, erred in adopting Aboitiz's unsubstantiated assertion to justify Salas' dismissal.

3. ID.; ID.; ID.; WILLFUL BREACH OF TRUST AS A GROUND FOR DISMISSAL, DISCUSSED. — Indeed, an employer has the right, under the law, to dismiss an employee based on fraud or willful breach of the trust bestowed upon him by his employer or the latter's authorized representative. However, the loss of trust must be based not on ordinary breach but, in the language of Article 282(c) of the Labor Code, on willful breach. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify an earlier action taken in bad faith or a subterfuge for causes which are improper, illegal or unjustified. It has never been intended to afford an occasion for abuse because of its subjective nature. There must, therefore, be an actual breach of duty committed by the employee which must be established by substantial evidence.

4. ID.; ID.; ID.; PAST OFFENSES NOT RELATED TO EMPLOYEE'S LATEST INFRACTION CANNOT BE USED AS ADDED JUSTIFICATION FOR DISMISSAL. — Aboitiz's reliance on the past offenses of Salas for his eventual dismissal is likewise unavailing. The correct rule has always been that such previous offenses may be used as valid justification for dismissal from work only if the infractions are related to the subsequent offense upon which the basis of termination is decreed. While it is true that Salas had been suspended on June 1, 2000 for *failure to meet the security requirements of the company*, and then on July 20, 2001 for his *failure to assist in the loading at the fuel depot,* these offenses are not related

to Salas' latest infraction, hence, cannot be used as added justification for the dismissal.

5. ID.; ID.; ID.; WHEN THE EMPLOYEE WAS NOT ENTIRELY FAULTLESS, AWARD OF BACKWAGES IS RECKONED FROM THE DATE OF THE NLRC'S PROMULGATION OF THE DECISION. — We limit the award of backwages because we find that Salas was not entirely faultless. As earlier adverted to, Salas failed to promptly inform his immediate superior of the non-delivery of the requisitioned items. Had Salas promptly informed Ed Dumago of the non-delivery, the incident complained of would have been avoided. Although such negligence would not justify Salas' termination from employment in view of the stringent condition imposed by the Labor Code on termination of employment due to gross and habitual neglect, the same cannot be condoned, much less tolerated. In *PLDT v. National Labor Relations Commission*, this Court sustained the award of backwages in favor of an employee who was found not to be entirely faultless, but only from the date of the NLRC's promulgation of the decision.

APPEARANCES OF COUNSEL

Cesar F. Maravilla, Jr. for petitioner.
Ulysses T. Sevilla for respondents.

D E C I S I O N

NACHURA, *J.*:

Petitioner Oligario Salas (Salas) appeals by *certiorari* the January 31, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 93947 and CA-G.R. SP No. 94145, and its June 13, 2007 Resolution[2] denying his motion for reconsideration.

Salas was hired as assistant utility man by respondent Aboitiz One, Inc. (Aboitiz) on May 11, 1993, and was initially assigned

[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison, concurring; *rollo*, pp. 37-49.

[2] *Id*. at 52-53.

at the Maintenance Department-Manila Office. He rose from the ranks and became material controller on February 22, 2000 under the Materials Management & Operations Team. As material controller, Salas was tasked with monitoring and maintaining the availability and supply of *Quickbox* needed by Aboitiz in its day-to-day operations.

On June 4, 2003, Salas had run out of *Large Quickbox,* hampering Aboitiz's business operation. The following day, June 5, 2003, Aboitiz wrote Salas a memorandum requiring the latter to explain in writing within seventy-two (72) hours why he should not be disciplinarily dealt with for his (i) *failure to monitor the stock level of Large Quickbox which led to inventory stock out*; and (ii) *failure to report to [his] immediate superior the Large Quickbox problem when the stock level was already critical, when the Large Quickbox level was near stock out, and the stock level had a stock out*.[3]

On June 10, 2003, an administrative hearing was conducted to give Salas ample opportunity to explain his side. Salas' explanation, however, was not convincing because on July 2, 2003, Aboitiz sent him a decision notice[4] which reads:

Dear Mr. Salas:

In connection with the administrative investigation conducted on June 10, 2003 related to your alleged gross negligence of duties and responsibilities, the following are the findings during the said investigation:

1. Although you repeatedly made follow-up to the [supplier], you failed to elevate the critical situation to the attention of your leaders resulting to the stock out of a critical stock;

2. Your case was aggravated by your tampering of the Bin Card by changing the date of stock from May 31 to June 2, 2003 to cover up your negligence and mislead the investigating team;

3. The stock out incident had a negative impact to the company in terms of revenue and goodwill to clients.

---

[3] *Rollo,* p. 80.

[4] *Id*. at 81.

Your position as Warehouseman is vested with trust and confidence by the company for the reason that you are in-charge of safekeeping and monitoring of the company's operational supplies and ensuring that these are available anytime.

In consideration of the results of the investigation you are hereby terminated from the company for loss of trust and confidence effective July 15, 2003.

Accordingly, you are hereby directed to report to the Human Resource Office for your final clearance of money and property accountabilities, and obligations.

For your information and compliance.

Sincerely yours

(Signed)
PAUL HAMO
Team Leader, Purchasing
Aboitiz One, Inc.

Salas thereafter sent a letter to Mr. Hamoy requesting reconsideration of the management's decision stating:

Sir,

I would like to appeal for humanitarian reason on the decision of the management terminating me from service.

1. I would like to ask if I could avail of the early retirement plan since I was able to work for the company for 10 years, it is very hard for me that I be terminated after working for that long years in A1, the money I will get from retirement plan will be use[d] for my family expenses for at least a couple of months until I got a new job, pls. spare my family.

2. If you can't grant #1 appeal can you please allow me to tender my resignation instead of being terminated by the company;

3. If I can stay up to July 31, 2003, so I can have enough time to look for another job and I can earn enough money to support my family [for] at least another month in our everyday expenses.

thanks, ohlee salas.[5]

---

[5] *Id*. at 123-124.

Mr. Hamoy replied via electronic mail (e-mail) denying Salas' request to avail himself of the retirement plan or tender his resignation. He reasoned that the company's table of discipline provides the penalty of dismissal for the offenses he committed. Salas was, however, granted an extension of one (1) month or until August 15, 2003 to work with the company, if he so desired.[6]

Claiming termination without cause, Salas filed with the Labor Arbiter a complaint against Aboitiz and its president Sabin Aboitiz for illegal dismissal with prayer for reinstatement, and for payment of full backwages, moral and exemplary damages, as well as attorney's fees.

Aboitiz responded that there was valid termination. It asserted that Salas was dismissed for just cause and with due process. It claimed Salas willfully breached his duty when Aboitiz ran out of *Large Quickbox*, justifying the termination of his employment.[7]

On February 19, 2004, the Labor Arbiter rendered a Decision[8] sustaining the validity of Salas' dismissal. The Arbiter agreed with Aboitiz that Salas had been remiss in his duty as material controller when he ran out of *Large Quickbox* on June 4, 2003. The Arbiter further declared that Aboitiz was justified in imposing the ultimate penalty of dismissal, considering Salas' previous infractions.

On appeal, the National Labor Relations Commission (NLRC) reversed the Labor Arbiter. But noting that Salas was not entirely faultless, the NLRC denied his prayer for backwages, and ordered the payment of separation pay instead of reinstatement. The NLRC ratiocinated, thus:

> Under the Labor Code, gross negligence is a valid ground for an employer to terminate an employee. Gross negligence characterized by want of even slight care acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and

---

[6] *Id*. at 123.

[7] *Id*. at 84-98.

[8] *Id*. at 161-166.

intentionally with a conscious indifference to consequence insofar as other persons may be affected (*Tres Reyes vs. Maxim's Tea House*, 398 SCRA 288). It is for this reason that We disagree with the finding of the Labor Arbiter that [Salas] is guilty of gross negligence because [Salas] did his duty to make proper requisition in advance. If there is anyone to blame for failure to deliver to the requisitioner [Salas], the requisitioned items, it should be the purchasing officer who should have made the corresponding explanation, and to bear the consequences if his explanation is implausible. If ever [Salas] failed to follow-up, it does not follow that he is remiss in his duty, as the duty to deliver the requisitioned items is already on the purchasing officer. Moreover, [Salas] explained during the hearing that he made follow-ups. What puzzles Us is, why did not the management require the Circle Team and the Purchasing Officer to explain. Such omission, to Our mind, indicates discrimination against [Salas].

Past infractions of the same nature can be used to evaluate the sufficiency of the last offense for termination of employment. Considering that We see no gross negligence on [Salas] for which his employment was terminated, consideration of past infractions become immaterial. Moreover, with his ten years of service in the company, he was charged twice, about the alleged sale of used eight units of air conditioner and refusal to assist in the loading at the fuel depot of refueler truck, for which he was penalized by suspension x x x. These past offenses are not of the same nature as the alleged gross negligence that prompted [Aboitiz] to dismiss [Salas] and, therefore, cannot be used as additional justification with the last offense.

However, We find [Salas] guilty of negligence, not because the quick box ran out of stock as of 02 June 2003 but because he failed to monitor and properly document, the stocks in his custody. As he admitted during the administrative hearing, there were those which are even missing. Worst, he tampered the records to show that the stock on 31 May 2003 is for 02 June 2003. While there is no intention to defraud the company, that indicates an act that deserve (sic) disciplinary sanction.

Dismissal is too harsh a penalty for his negligence and act of tampering. This is especially true because he readily admitted the same during the administrative hearing. Considering his length of service, and adhering to the compassionate justice observed in labor cases, deletion of backwages, but with reinstatement, is sufficient penalty. Nonetheless, it appears that strained relations has (sic) already set between the parties that precludes harmonious working

relationship. In such case, jurisprudence has laid out the solution by ordering payment of separation pay at one (1) month for every year of service in lieu of reinstatement.

The alleged failure of [Salas] to account for alleged unused accountable forms in the amount of ₱57,850.00 cannot be used as justification for [Salas'] dismissal. This charge came out after Salas' dismissal for which [Salas] was not surely given an opportunity to be heard. Additionally, [no] substantial evidence was presented to establish such charge by mere certification of Pablo Osit (sic). How Mr. Osit arrived at such figure is not even explained.[9]

Aboitiz filed a motion for reconsideration, while Salas sought partial reconsideration of the decision, both of which were denied by the NLRC on January 24, 2006.

Salas and Aboitiz thereupon filed their respective petitions for *certiorari* with the Court of Appeals (CA), docketed as CA-G.R. SP No. 93947 and CA-G.R. SP No. 94145, respectively. Salas questioned the denial of his prayer for backwages and other monetary benefits, and the order directing payment of separation pay instead of reinstatement. Upon the other hand, Aboitiz faulted the NLRC for not sustaining the validity of Salas' dismissal.

By decision of January 31, 2007, the CA, which priorly consolidated the petitions of both parties, sustained Salas' dismissal. Reversing the NLRC, it held that:

[**t**]**hree valid grounds attended the dismissal of Salas:** (1) **Serious misconduct** under Art. 282 (a), Labor Code, for his tamper(ing) the records to show that the stock on 31 May 2003 is for 02 June 2003" even if he is to be considered as an ordinary employee; (2) **Gross and habitual neglect** under Art. 282 (b), Labor Code, as the NLRC no less admits that "for the nth time" Salas repeatedly "demonstrated laxity in the performance of his duty"; and (3) **willful breach** by Salas **of the trust reposed on him by Aboitiz**, under Art. 282 (c) of the Labor Code, because as "**warehouseman**", and therefore a confidential employee, Salas concededly tampered company records to hide his gross and habitual neglect [of duty] and worse, unauthorizedly sold the company's eight units of used

[9] *Id*. at 58-60.

airconditioners. There, thus, is no basis here for an award of reinstatement and full backwages under Art. 279 of the Labor Code, nor of any financial assistance due to strained relation between the parties.[10]

The CA disposed, thus:

WHEREFORE, the petition of Aboitiz One, Inc. is **GRANTED**. The NLRC's decision dated September 21, 2005 and resolution dated January 24, 2006, are **SET ASIDE** and the complaint below is **DISMISSED** for being without merit.

SO ORDERED.[11]

Salas filed a motion for reconsideration, but the CA denied it on June 13, 2007.

Aggrieved by the resolutions of the CA, Salas comes to this Court positing that:

THE HON. COURT OF APPEALS SERIOUSLY ERRED IN LAW AND COMMITTED MISAPPREHENSION OF FACTS IN REVERSING THE NLRC DECISION INSTEAD OF MODIFYING IT TO INCLUDE BACKWAGES ON MERE GROUND OF A SINGLE AND SIMPLE NEGLIGENCE WHICH IS NOT A GROUND FOR DISMISSAL. SIMILARLY, THIS CANNOT BE THE BASIS OF DISMISSAL ON GROUND OF LOSS OF TRUST AND CONFIDENCE.[12]

The Court shall deal first with the procedural issue.

Commenting on the petition, Aboitiz argues that the petition suffers from procedural infirmities which warrant its dismissal. It asserts that no duplicate original or certified true copy of the assailed decision and resolution, and material portions of the record were appended to the petition. It also alleged that the petition did not indicate the material dates to show that it was filed on time. Finally, it argues that the certification of non-forum shopping is defective.

---

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

[11] *Id*. at 49.

[12] *Id*. at 14.

Contrary to Aboitiz's assertion, the petition substantially complies with the requirements set forth by the Rules of Court. Salas submitted a duplicate original of the assailed Decision[13] and Resolution[14] of the CA, as well as copies of the material portions of the record referred to in the petition.[15]

Likewise, he indicated in his petition the material dates showing that the petition was filed on time. He alleged that he received the assailed CA Decision on February 9, 2007 and filed a motion for reconsideration on February 19, 2007, which was denied by the CA in its June 13, 2007 Resolution. The Resolution denying his motion for reconsideration was received on June 15, 2007.[16]

There is also no dispute that Salas had complied with the requirement of the rules on the certification of non-forum shopping. Salas certifies that he did not commence any case based on similar cause of action before any Court, quasi-judicial body or tribunal. He also averred that:

> [t]here is no pending case similar to this case before the Supreme Court, the Court of Appeals (or any of its Division) quasi-judicial bodies or any tribunal, and should I thereafter learn, that the same or similar action or claim has been filed or is pending, I shall report that fact within five (5) days therefrom to this Hon. Court of Appeals wherein this initiatory pleading has been filed pursuant to Section 5, Rule 7 paragraph (c) of the Revised Rules of Court.[17]

Obviously, Salas committed a typographical error in stating "*this Hon. Court of Appeals*" instead of "this Honorable Court *where this initiatory pleading (petition) has been filed*." This innocuous oversight did not render the certification defective, and thus, would not warrant the outright dismissal of the petition.

Besides, it has been our consistent holding that the ends of justice are better served when cases are determined on the merits

---

[13] *Id*. at 37-49.

[14] *Id*. at 52-53.

[15] *Id*. at 54-216.

[16] *Id*. at 13.

[17] *Id*. at 32.

— after all, parties are given full opportunity to ventilate their causes and defenses — rather than on technicality or some procedural imperfections.[18] Aboitiz's plea for the outright dismissal of the petition cannot, therefore, be sustained.

Having resolved the procedural issue, we proceed to the merits of the case.

As stated in the decision notice,[19] Salas was terminated for neglect of duty and willful breach of trust. Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. To warrant removal from service, the negligence should not merely be *gross,* but also *habitual*.[20]

Undoubtedly, it was Salas' duty, as material controller, to monitor and maintain the availability and supply of *Quickbox* needed by Aboitiz in its day-to-day operations, and on June 4, 2003, Aboitiz had run out of *Large Quickbox*. However, records show that Salas made a requisition for *Quickbox* as early as May 21, 2003; that he made several follow-ups with Eric Saclamitao regarding the request; and that he even talked to the supplier to facilitate the immediate delivery of the *Quickbox*.[21] It cannot be gainsaid that Salas exerted efforts to avoid a stock out of *Quickbox*. Accordingly, he cannot be held liable for gross negligence.

If there is anything that Salas can be faulted for, it is his failure to promptly inform his immediate supervisor, Mr. Ed Dumago, of the non-delivery of the requisitioned items. Nevertheless, such failure did not amount to gross neglect of duty or to willful breach of trust, which would justify his dismissal from service.

---

[18] *Torres v. Specialized Packaging Development Corporation,* G.R. No. 149634, July 6, 2004, 433 SCRA 455.

[19] *Rollo,* p. 81.

[20] *Phil. Aeolus Automotive United Corp. v. National Labor Relations Commission*, 387 Phil. 250, 263 (2000).

[21] *Rollo*, pp. 114-121.

The CA also justified Salas' dismissal on ground of willful breach of trust. It lent credence to Aboitiz's posture that Salas was a warehouseman holding a position of trust and confidence, and that he tampered with the *bin card to cover up [his] negligence and [to] mislead the investigating team*.

We disagree.

A position of trust and confidence was explained in *Panday v. NLRC,*[22] *viz.*:

> The case of *Lepanto Consolidated Mining Co. v. Court of Appeals* 1 SCRA 1251 (1961), provides us with a definition of a "position of trust and confidence." It is one where a person is "entrusted with confidence on delicate matters," or with the custody, handling, or care and protection of the employer's property.
>
> A few examples were given by the Court in the case of *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission and Imelda Salazar*, G.R. No. 82511, March 3, 1992, to illustrate the principle:
>
> > x x x where the employee is a Vice-President for Marketing and as such, enjoys the full trust and confidence of top management (*Asiaworld Publishing House, Inc. v. Ople*, 152 SCRA 219 [1987]); or is the Officer-In-Charge of the extension office of the bank where he works (*Citytrust Finance Corp. v. NLRC,* 157 SCRA 87 [1988]); or is an organizer of a union who was in a position to sabotage the union's efforts to organize the workers in commercial and industrial establishments (*Bautista v. Inciong*, 158 SCRA 665 [1988]); or is a warehouseman of a non-profit organization whose primary purpose is to facilitate and maximize voluntary gifts by foreign individuals and organizations to the Philippines (*Esmalin v. NLRC*, 177 SCRA 537 [1989]); or is a manager of its Energy Equipment Sales (*Maglutac v. NLRC*, 189 SCRA 767 [1990]).
>
> In fact, the classification of a Credit and Collection Supervisor by management as managerial/supervisory was sustained by this Court in the case of *Tabacalera Insurance Co. v. National Labor Relations Commission*, 152 SCRA 667 [1987]. The

[22] G.R. No. 67664, May 20, 1992, 209 SCRA 122, 125-126.

> reasons for a similar ruling apply to the position of branch accountant which the petitioner was then holding.

Evidently, Salas as material controller was tasked with monitoring and maintaining the availability and supply of *Quickbox*. There appears nothing to suggest that Salas' position was a highly or even primarily confidential position, so that he can be removed for loss of trust and confidence by the employer.

Notably, in *Manila Memorial Park Cemetery, Inc. v. Panado,*[23] we held that:

> [T]he term "trust and confidence" is restricted to managerial employees or those who are vested with powers or prerogatives to lay down and execute management policies and/or to hire transfer, suspend, lay-off, recall, discharge, assign or discipline employees or to effectively recommend such managerial actions.

Besides, as we review the records before us, we do not see any semblance of willful breach of trust on the part of Salas. It is true that there was erasure or alteration on the bin card. Aboitiz, however, failed to demonstrate that it was done to cover up Salas' alleged negligence. Other than the bin card and Aboitiz's barefaced assertion, no other evidence was offered to prove the alleged cover-up. Neither was there any showing that Salas attempted to mislead the investigating team. The CA, therefore, erred in adopting Aboitiz's unsubstantiated assertion to justify Salas' dismissal.

Indeed, an employer has the right, under the law, to dismiss an employee based on fraud or willful breach of the trust bestowed upon him by his employer or the latter's authorized representative. However, the loss of trust must be based not on ordinary breach but, in the language of Article 282(c) of the Labor Code, on willful breach. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion;

---

[23] G.R. No. 167118, June 15, 2006, 490 SCRA 751, 769.

otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify an earlier action taken in bad faith or a subterfuge for causes which are improper, illegal or unjustified. It has never been intended to afford an occasion for abuse because of its subjective nature. There must, therefore, be an actual breach of duty committed by the employee which must be established by substantial evidence.[24] In this case, Aboitiz utterly failed to establish the requirements prescribed by law and jurisprudence for a valid dismissal on the ground of breach of trust and confidence.

Neither can Aboitiz validate Salas' dismissal on the ground of serious misconduct for his alleged failure to account for unused accountable forms amounting to ₱57,850.00.

As aptly found by the NLRC, the charge came only after Salas' dismissal. We also note that the subject accountable forms were issued to Salas in 2001. Inexplicably, this alleged infraction was never included as ground in the notice of termination. It was only on November 23, 2003 or three (3) months after the filing of the complaint for illegal dismissal that Aboitiz asserted that Salas failed to account for these unused accountable forms amounting to ₱57,850.00. It is clear that such assertion of serious misconduct was a mere afterthought to justify the illegal dismissal.

Similarly, before the Labor Arbiter, NLRC, and CA, Aboitiz's arguments zeroed in on Salas' alleged neglect of duty and breach of trust. It was, therefore, error for the CA to include serious misconduct, which had never been raised in the proceedings below, as ground to sustain the legality of Salas' dismissal.

The CA also cited another infraction allegedly committed by Salas as additional ground for his dismissal. It declared that Salas *unauthorizedly sold the company's eight units of used air-conditioners*. Yet, we note that Salas had never been charged or suspended for this alleged unauthorized sale of used air-conditioners during his employment with Aboitiz. The infraction

[24] *Manila Memorial Park Cemetery, Inc. v. Panado, id*. at 767-768.

for which Salas had been penalized by suspension of five (5) days was his *failure to meet the security requirements of the company*.[25] Accordingly, there is no basis for the CA to include unauthorized sale of used air-conditioners as ground to sustain Salas' dismissal.

Aboitiz's reliance on the past offenses of Salas for his eventual dismissal is likewise unavailing. The correct rule has always been that such previous offenses may be used as valid justification for dismissal from work only if the infractions are related to the subsequent offense upon which the basis of termination is decreed.[26] While it is true that Salas had been suspended on June 1, 2000 for *failure to meet the security requirements of the company*,[27] and then on July 20, 2001 for his *failure to assist in the loading at the fuel depot,*[28] these offenses are not related to Salas' latest infraction, hence, cannot be used as added justification for the dismissal.

Furthermore, Salas had already suffered the corresponding penalties for these prior infractions. Thus, to consider these offenses as justification for his dismissal would be penalizing Salas twice for the same offense. As the Court ruled in *Pepsi-Cola Distributors of the Philippines, Inc. v. National Labor Relations Commission*,[29] and recently in *Coca-Cola Bottlers, Philippines, Inc. v. Kapisanan ng Malayang Manggagawa sa Coca Cola-FFW*:[30]

> Moreover, private respondent was already penalized with suspensions in some of the infractions imputed to him in this case, like sleeping while on route rides, incomplete accomplishment of sales report and his failure to achieve sales commitments. He cannot again be penalized for those misconduct. The foregoing acts cannot be added

---

[25] *Rollo*, p. 109.

[26] *La Carlota Planters Association, Inc. v. National Labor Relations Commission*, 358 Phil. 732, 739 (1998).

[27] *Rollo,* p. 109.

[28] *Id*. at 112.

[29] 338 Phil. 773, 782 (1997).

[30] G.R. No. 148205, February 28, 2005, 452 SCRA 480, 503.

to support the imposition of the ultimate penalty of dismissal which must be based on clear and not on ambiguous and ambivalent ground.

Undoubtedly, no just cause exists to warrant Salas' dismissal. Consequently, he is entitled to reinstatement to his former position without loss of seniority rights, and to payment of backwages.[31]

However, we limit the award of backwages because we find that Salas was not entirely faultless. As earlier adverted to, Salas failed to promptly inform his immediate superior of the non-delivery of the requisitioned items. Had Salas promptly informed Ed Dumago of the non-delivery, the incident complained of would have been avoided. Although such negligence would not justify Salas' termination from employment in view of the stringent condition imposed by the Labor Code on termination of employment due to gross and habitual neglect, the same cannot be condoned, much less tolerated.

In *PLDT v. National Labor Relations Commission*,[32] this Court sustained the award of backwages in favor of an employee who was found not to be entirely faultless, but only from the date of the NLRC's promulgation of the decision.

WHEREFORE, the petition is *GRANTED*. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 93947 and CA-G.R. SP No. 94145, are *REVERSED* and *SET ASIDE*. Aboitiz One, Inc. is ordered to *REINSTATE* Oligario Salas to his former position without loss of seniority rights, with payment of backwages computed from September 21, 2005, up to the time of reinstatement.

No pronouncement as to costs.

SO ORDERED.

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

---

[31] Labor Code, Art. 279.

[32] 362 Phil. 352 (1999).

THIRD DIVISION

[G.R. No. 178540. June 27, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ALEJANDRO SORILA, JR.** ***y*** **SUPIDA and JOSE BALAUSA** ***y*** **CANTOR,** *appellants*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; POSITIVE AND CATEGORICAL ASSERTIONS OF A WITNESS PREVAIL OVER NEGATIVE AND SELF-SERVING EVIDENCE. — Positive and categorical assertions of a witness prevail over bare denial, which is a negative and self-serving evidence. It cannot be given greater weight than the testimony of credible witnesses who testified on affirmative matters. Between the positive declarations of the prosecution witnesses and the negative statements of the accused, the former deserve more credence. To merit credibility, denial must be buttressed by strong evidence of non-culpability, which is lacking in the instant case. Furthermore, settled is the rule that when there is no evidence to show any dubious reason or improper motive why the prosecution witnesses should testify falsely against the accused or implicate him in a serious offense, their testimonies deserve full faith and credit.

2. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS. — Article 294 (1) of the Revised Penal Code classifies robbery with homicide as a crime against property with the following elements: 1) the taking of personal property with the use of violence or intimidation against persons; 2) personal property thus taken belongs to another; 3) the taking is characterized by intent to gain or *animus lucrandi*; and 4) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in its generic sense, was committed. The intent to rob must precede the taking of human life. So long as the intention of the felons was 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. It is likewise not necessary to identify who among

the conspirators inflicted the fatal wound on the victim. 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. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; TESTIMONY OF A SINGLE WITNESS IS SUFFICIENT FOR CONVICTION; RELEVANT RULINGS, CITED. — The testimony of a single eyewitness, if found to be positive and credible by the trial court, is sufficient to support a conviction, especially when it bears the earmarks of truth and sincerity and was delivered spontaneously, naturally and in a straightforward manner. Indeed, the testimony of a single witness when found sufficient needs no corroboration, save only where the law expressly prescribes a minimum number of witnesses. Errorless testimonies can hardly be expected especially when a witness is recounting the details of a harrowing experience. As long as the mass of testimony jibes on material points, the slight clashing of statements dilute neither the witnesses' credibility nor the veracity of their testimonies. Such inconsistencies on minor details would even enhance credibility as these discrepancies indicate that the responses are honest and unrehearsed." The Court has consistently ruled that the alleged inconsistencies between the testimony of a witness in open court and his sworn statement before the investigators are not fatal defects to justify the reversal of a judgment of conviction.

4. ID.; ID.; AFFIDAVITS, PROBATIVE VALUE OF. — Affidavits taken *ex parte* are considered incomplete and often inaccurate – they are the products of sometimes partial suggestions, at other times of want of suggestions and inquiries, without the aid of which witnesses may be unable to recall the connected circumstances necessary for accurate recollection. Extrajudicial statements like affidavits are generally not prepared by the affiant himself but by another who uses his own language in writing the affiant's statement, hence, omissions and misunderstandings by the writer are not infrequent. It is of judicial knowledge that sworn statements are almost incomplete, often inaccurate and generally inferior to the testimony of a witness in open court. Thus, whenever there is an inconsistency between an affidavit and the testimony of a witness, the testimony commands greater weight.

5. CIVIL LAW; DAMAGES; KINDS OF DAMAGES THAT MAY BE AWARDED WHEN DEATH OCCURS DUE TO A CRIME. — Every person criminally liable for a felony is also civilly liable. When death occurs due to a crime, the following damages may be awarded: 1) civil indemnity *ex delicto* for the death of the victim; 2) actual or compensatory damages; 3) moral damages; 4) exemplary damages and 5) temperate damages. In cases of murder and homicide, civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00 are awarded automatically. Indeed, such awards are mandatory without need of allegation and proof other than the death of the victim owing to the fact of the commission of murder or homicide. To be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable to the injured party. Thus, the actual damages of ₱98,698.00 awarded to the heirs of Restituto Marikit should be sustained as the same is duly supported by receipts. Such being the case, the award of temperate damages became superfluous and was correctly deleted by the Court of Appeals.

APPEARANCES OF COUNSEL

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

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Alejandro Sorila, Jr., Jose Balausa and Antonio Quimno were charged with the complex crime of Robbery with Homicide in an Information[1] which reads:

On or about October 12, 2001, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together with four unidentified male persons whose true identities and present whereabouts are still unknown, and all of them mutually helping and aiding one another, with intent to gain

[1] CA *rollo*, pp. 6-8.

and by means of force, violence or intimidation, did then and there willfully, unlawfully and feloniously take, steal and divest the following to wit:

a) cash money amounting to ₱250,000.00 belonging to Canscor Construction and Development Incorporation, represented by Engr. Armando Baler *y* Almario;

b) one (1) Citizen gold automatic watch valued at ₱2,500.00 belonging to Nelia Panaga;

c) one (1) Nokia 5110 cellphone valued at ₱4,500.00 belonging to Nelia Panaga;

d) one (1) 14k gold bracelet valued at ₱1,200.00 belonging to Nelia Panaga;

e) cash money amounting to ₱50.00 belonging to Clara Bisnar *y* Calasara;

f) one (1) Nokia 3210 cellphone valued at ₱6,900.00 belonging to Clara Bisnar *y* Calasara;

g) one (1) 18k gold ring with *brilliantitos* valued at ₱15,000.00 belonging to Clara Bisnar *y* Calasara;

h) one (1) 18k wedding ring valued at ₱5,000.00 belonging to Clara Bisnar *y* Calasara; and

i) one (1) Nokia 5110 cellphone valued at ₱4,500.00 belonging to Evelyn Tario;

to the damage and prejudice of the above-mentioned owners in their respective amounts, in the total amount of ₱289,650.00; that on the occasion of the aforesaid robbery, accused, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence and shot one Restituto Mariquit, thereby inflicting upon said Restituto Mariquit gunshot wounds on his head, which directly caused his death.

Contrary to law.

The three accused pleaded "not guilty." Thereafter, trial on the merits ensued. The facts as correctly summarized by the trial court:

Record shows that on October 12, 2001 at around 6:30 o'clock in the evening, about four men entered the office of Canscor Construction and Development Incorporation (Canscor), located at No. 29 Evangelista St., Santolan, Pasig City, and declared a hold up. At least two robbers remained outside to serve as look-outs. At that time, five Canscor employees, namely, Clara Bisnar, Evelyn Tario, Nelia Panaga, Marlene Avellaneda and Engineer Bong dela Rosa, were inside the office preparing the pay envelopes of the employees. Clara was then reviewing the vouchers and signing checks when one of the hold-uppers, who was holding a gun and a grenade, positioned himself beside her and ordered her: "*Ilabas mo ang pera*." That man, whom she identified in open Court, turned out to be Accused Alejandro Sorila. The four men left after about five minutes, taking with them their loot consisting of cash and personal belongings.

Shortly after they gathered and locked themselves inside a room, the five employees heard gunshots outside the Canscor office. One Restituto Mariquit, Jr. was hit by a bullet and died.

Prosecution witness, Andres Saludsod, who, himself, was a complainant relative to the carnapping of his Tamaraw FX in the morning of October 12, 2001, identified Sorila as the same person who boarded his carnapped vehicle in Angono, Rizal and testified that the same vehicle was used to transport the robbers to Canscor and as a get-away vehicle.

Even under gruelling cross-examination, Clara was steadfast in her asseveration that she was so positioned that she was able to see clearly the face of Sorila and the gun and the grenade he was holding. She further testified that Sorila took her cell phone, wristwatch and two rings, amounting to ₱34,000.00 and 50.00 cash. As regards Accused Jose Balausa and Antonio Quimno, she testified that she did not know the former, while the latter left the Canscor office at 5:30 p.m., and that the next time she saw him again was the night after the hold-up.

Nelia Panaga testified that she was facing the entrance of their office and was categorical in stating that she saw Sorila enter. However, while she testified on what she witnessed happened inside the Canscor office, she admitted that she could not identify the other malefactors who held them up. She testified, though, that the robbers were able to cart away company money in the amount of ₱260,000.00 and her wrist watch and bracelet with a total value of ₱7,000.00. Upon the

other hand, Evelyn Tario testified that her cell phone, valued at ₱4,000.00, was taken by the thieves.

Jaime Fiatos, a member of the Barangay Security Force (BSF) of Santolan, Pasig City, testified that on October 12, 2001 at about 6:30 p.m., he was inside the *Barangay* office when he heard Restituto Mariquit, Jr. shout, "hold-up." He looked through the door and saw a shooting incident. Then, he transferred to a place near a window from where he saw two male persons, one big and one small, firing guns towards the direction of Canscor. The big one, whom he identified in open Court, turned out to be Accused Jose Balausa. According to Fiatos, the exchange of gunfire lasted about a minute and then he saw Balausa board an FX Tamaraw. Shortly thereafter, he saw Accused Quimno being arrested and brought by his companion. He further testified that Sorila was inside a pay loader when he was arrested; that prior to the shooting incident, he saw Balausa standing outside of Canscor as a look-out and that the next time he saw him, he was firing a gun; that at the time he saw Balausa and another man standing outside of Canscor, there was light about five meters away from where Balausa and his companion were.

The defense of Sorila was that on October 12, 2001 at around 11:00 a.m., he was in the house of his aunt at Brgy. San Antonio, Angono, Rizal. According to him, he decided to go home at around 7:00 p.m. hitching a ride with his cousin, Marvin Supida, in a Tamaraw FX which was enroute to a house of a certain Antonio Tubio in Pasig City. When they reached Pasig, he was advised to alight [from] the FX and to get a ride to Marikina. But before taking a ride to Marikina, he went to a store to buy a cigarette. At that precise moment, he heard gunshots so he hid at the back of a passenger jeep. When it was already peaceful, three policemen approached him and he was ordered to lie face down. He was handcuffed and brought to a police mobile car and then to the Pasig detention cell.

As for Balausa, he claimed that on October 12, 2001, he was at their family eatery establishment from 10:00 A.M. to 6:00 P.M. and when they closed it at 7:30 P.M., he and his wife went straight home, watched T.V. and fell asleep. At about 1:00 A.M. the following day, they were awakened by a commotion and Jose was still sleeping in their room when he was grabbed, carried and handcuffed by gun-wielding men.[2]

---

[2] *Id*. at 87-89.

On August 4, 2004, the Regional Trial Court of Pasig City, Branch 163, rendered a Decision,[3] the dispositive portion of which reads:

> WHEREFORE, Accused ALEJANDRO SORILA JR. *y* SUPIDA and JOSE BALAUSA *y* CANTOR are hereby found GUILTY beyond reasonable doubt of the crime of Robbery with Homicide and, there being no aggravating circumstance alleged in the Information and no mitigating circumstance, are hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay the costs.
>
> On the civil liability of the two accused, they are ordered to pay the legal heirs of the victim, Restituto Mariquit, Jr., actual damages in the amount of ₱98,968.00, moral damages in the sum of ₱50,000.00, civil indemnity for the death of Restituto [Mariquit], Jr. also for ₱50,000.00 and temperate damages in the amount of ₱25,000.00; to pay Canscor Construction and Development Incorporation, Nelia Panaga, Clara Bisnar and Evelyn Tario actual damages in the respective sums of ₱250,000.00, ₱7,000.00, ₱26,950.00 and ₱4,000.00, respectively, all with interest thereon at the legal rate of 6% per annum from this date until fully paid.
>
> Accused ANTONIO QUIMNO *y* SASOTONA is ACQUITTED on [the] ground of reasonable doubt.
>
> SO ORDERED.[4]

On appeal, the Court of Appeals affirmed the judgment of the trial court but deleted the award of temperate damages, thus:

> WHEREFORE, with the MODIFICATION that the award of ₱25,000.00 for temperate damages is DELETED, the challenged Decision of the Regional Trial Court of Pasig City, Branch 163, finding appellants Alejandro Sorila, Jr. and Jose Balausa GUILTY of the crime of robbery with homicide in Criminal Case No. 121877 is hereby AFFIRMED in all other respects.
>
> SO ORDERED.[5]

---

[3] *Id*. at 86-90; penned by Judge Leili Suarez Acebo.

[4] *Id*. at 89-90.

[5] *Id*. at 13.

Hence, this appeal.

Appellant Sorila insists that the prosecution witnesses erred in identifying him as one of the malefactors. He claims that they were susceptible to any suggestion or influence because they were in a state of shock. Consequently, when they learned that a particular person was arrested, there were more chances that they would identify the person arrested as the perpetrator of the crime.

The contention lacks merit.

Factual findings of the trial courts, including their assessment of the witness' credibility are entitled to great weight and respect by the Supreme Court particularly when the Court of Appeals affirmed such findings.[6] The Court will not alter the findings of the trial court on the credibility of witnesses because of its unique opportunity to observe the manner and demeanor of witnesses while testifying.[7] We find no cogent reason to depart from this rule.

Although the employees of Canscor Construction and Development Corporation were taken by surprise when the robbery took place, they were able to get a good look at the robbers who went inside the office. The most natural reaction of victims of violence is to strive to see the looks and faces of the malefactors and to observe the manner in which the crime was committed.[8] Most often, the face and body movements of the assailants create a lasting impression on the victims' minds which cannot be easily erased from their memory.[9] In fact, experience dictates that precisely because of the startling acts of violence committed in their presence, eyewitnesses can recall with a high degree of

---

[6] *People v. Aguila*, G.R. No. 171017, December 10, 2006, 510 SCRA 642, 661.

[7] *Comilang v. Burcena*, G.R. No. 146853, February 13, 2006, 482 SCRA 342, 352.

[8] *People v. Oco*, 458 Phil. 815, 844 (2003).

[9] *People v. Balonzo,* G.R. No. 176153, September 21, 2007, 533 SCRA 760, 773.

reliability the identities of the criminals and how at any given time, the crime has been committed by them.[10] Witnesses need not know the names of the malefactors as long as they recognize their faces.[11] What is imperative is that the witnesses are positive as to the perpetrators' physical identification from the witnesses' own personal knowledge, as is obtaining in this case.[12]

Prosecution witness Clara Bisnar testified on direct examination, to wit:

Q Do you recall of an unusual incident that happened at about that time, 6:30 on October 12, 2001?
A Yes, Ma'am.

Q What was that untoward incident?
A At that time, I was reviewing vouchers and signing checks when I saw somebody saying, *"Ilabas mo ang pera."*

Q ***How far were you when you heard this*** *"Ilabas mo ang pera"*?
A ***Very near***.

PROSEC. LEONARDO:

Q *How near? About an arm's length?*
A *Yes, Ma'am.*

Q And were you able to recognize from where did that voice come from?
A Yes, Ma'am.

Q Was that a male or female?
A A male.

Q And upon hearing those words, what happened after that?
A I stopped working and turned at my left side.

Q Why did you turn to your left side?

---

[10] *People v. Gallego*, 453 Phil. 825, 846 (2003); *People v. Caraang*, 463 Phil. 715, 744 (2003).

[11] *People v. Togahan*, G.R. No. 174064, June 8, 2007, 524 SCRA 557, 571.

[12] *Id*.

A Because I heard a voice coming from my left side and because my place is near the side (*dulo*).

Q To whom were those words, *"Ilabas mo ang pera,"* directed to?
A I don't know to whom it was directed to because we were four at that time. We were just near each other.

Q And what was the response of that person to whom the words, *"Ilabas mo ang pera,"* was directed to?
A None, Ma'am.

Q There was no response?
A There was no response and then I turned my head when I saw the person beside me.

PROSEC. LEONARDO:

Q ***Who was that person beside you?***
A ***The hold-upper. He was holding a gun and a grenade.***

Q And after that happened?
A Then, he asked me to give him the money. He asked me, *"Ilabas mo ang pera."* He said those words to me and then, I said, I don't have the money.

Q And after that what happened?
A He pulled out the cord of my telephone and dropped it to the floor and then my calculator.

Q And after that what happened?
A Then, after that, he asked me to open my drawer.

Q Did you open your drawer?
A Yes, Ma'am, and then he left.

Q And after that happened?
A After that, he asked me to get the plastic bag beside me and then he checked if the money was there.

Q What money is that?
A The payroll.

Q Was there a payroll during that time?
A We were preparing the pay envelopes.

Q What about the money to be placed in the pay envelopes, where was it on October 12, 2001?

A It was with the cashier, Nelia Panaga.[13]

x x x x x x x x x

Q ***If that person who was holding a gun and a grenade is inside the court room, will you be able to recognize him?***
A ***Yes, Ma'am.***

Q ***Would you kindly point to that person?***
A (***Witness pointed to a person seated on a bench wearing a yellow T-shirt, whom when asked by the Court what his name is, gave his name as Alejandro Sorila***).

COURT:

Q ***This Sorila whom you just pointed at, what was he holding?***
A ***A gun and a grenade, Your Honor.***[14]

x x x x x x x x x

Q When the robbery was taking place, the four hold-uppers were there?
A Yes, Ma'am.

Q ***And only one of them is present in Court?***
A ***Yes, Ma'am.***

Q ***The one whom you identified as the one holding a gun and a grenade?***
A ***Yes, Ma'am***.[15] (Emphasis and italics supplied)

During cross-examination, despite repeated attempts by defense counsel to impeach her credibility or to throw her off track, Bisnar was unwavering in her testimony, to wit:

ATTY. LIM: (CROSS-EXAMINATION)

Q Ms. Witness, at the time you heard somebody said, *"Ilabas mo ang pera*," up to the time that these persons left, how long a time would that be, more or less?
A About five (5) minutes.

---

[13] TSN, January 15, 2002, pp. 4-7.

[14] *Id*. at 8.

[15] *Id*. at 13.

Q This is the first time that you experienced that kind of situation, being robbed and being threatened to be killed?
A For myself, yes.

Q And naturally you were shocked when you saw somebody pointing a gun and announcing a hold-up, and in fact, holding a hand grenade threatening to blast everybody including themselves?
A Yes, sir.

ATTY. LIM:

Q And instinctively because of that fear, you hide for cover, isn't it, because this hold-upper pointed the gun right at your face and even showed you the grenade?
A (Witness demonstrated how the hold-upper positioned himself).

Q So, the right hand was holding the gun and the left hand was holding the grenade which is above his shoulder?
A Yes, Sir.

Q *While the gun was leveled at your face?*
A *The gun was not leveled on my face because he was beside me and there was a cubicle divider.*

Q *Isn't it that you reacted normally by preserving yourself in this dangerous situation by raising your hands and lying on the floor?*
A *No, I did not because my space was so crowded* (*masikip*).

Q *What you do is that you went out of your seat and positioned yourself inside the table in order to hide from the possible volley of gunfire or the blasting of the grenade?*
A *No. I cannot move because the hold-upper was on my way out. The space was so little.*

ATTY. LIM:

Q And according to you, there is a divider?
A Yes, sir.

Q And that divider reaches up to the ceiling?
A No, sir.

Q Up to what extent was the divider?
A About four (4) feet.

Q ***But definitely, while seating on the table of yours, you could not see who was in front of you or what was happening in front of you?***

A ***I saw what was happening in front of me because he was just beside me. He was very near to me.***

Q ***Because of that divider, you did not see what was in front of you in that sitting position?***

A ***No, Sir. The divider was outside, the hold-upper was between my table and the divider and the hold-upper was inside***.[16]

x x x x x x x x x

Q *In your affidavit, you stated that Alejandro was only holding a gun, isn't it? You did not mention anything about a grenade*?

A *Yes, Sir. I was still shocked at that time, that is why I was not able to tell them about the grenade.*

Q *So correct me if I am wrong, you were shocked up to the time you made your statement on October 13, 2001 or precisely the day after?*

A *I was merely nervous.*

ATTY. LIM:

Q Was it not the statement you used a while ago that you were shocked at that time, you told the police that there was only a gun and that there was no grenade, that is why you omitted saying that there was a grenade held by Alejandro Sorila?

A I just knew then that there was a gun, then after that, a grenade.

Q No, my question is: Wasn't that your statement just one question ago that you were shocked that was the term you used, that is why you omitted to tell them that there was a hand grenade, isn't it?

A Yes, sir.

Q So, it is clear that even if they are there, the alleged hold-upping, you were still in a state of shock that is why you omitted the fact that Alejandro Sorila was holding a grenade and it persisted up to the second day?

A I forgot to mention that fact.

---

[16] *Id*. at 14-16.

Q You were still shocked up to the second day, that is why you forgot to tell them?
A Yes, Sir.[17]

x x x x x x x x x

ATTY. LIM:

Q Could you tell us, when this person who was holding a grenade and a gun went beside you, did he tell you anything other than you heard somebody said, *"Ilabas mo ang pera?"*
A He also said *"Ilabas mo ang pera."*

Q And nothing more?
A And then he opened the drawer then he looked at the plastic beside me.

Q He said nothing more, nothing less?
A He said, "This is a hold-up, *huwag kayo kikilos ng masama."*

Q Did he say, *"Kung hindi, papatayin kita?"*
A He said that, Sir.

Q Isn't it that in this statement, you also said, regarding the participation of the other person, that the other three persons with Sorila, according to you, were the ones who got the personal money and other items which were allegedly taken from you and your other officemates?
A There was another man.

Q In other words, these here persons, aside from the accused, you really never saw them took (*sic*) the items and the money?
A The second man who approached me just took my personal belongings.

ATTY. LIM:

Q So, there was another person whom you really saw?
A Yes, sir.

Q So, it is not accurate to say in this statement that you saw another one?
A I also saw one man who took my belongings and then the other man pointing a gun at me, and then, I don't see the others who took the money from the cashier.

---

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

Q Precisely, in other words, your answer to question No. 9 of the statement is not accurate, because according to this, you saw four persons taking the money away and the personal items away, what you really saw was only, according to you, Sorila and the other person?
A I only saw two.

Q That is why this is not a correct statement?
A Yes, sir.

x x x x x x x x x

Q Could you tell us whose writing is this beside the answer?
A I wrote that, Sir.

Q How about the other side?
A Mine also, Sir.

Q You are the one who corrected this?
A Yes, sir.

ATTY. LIM:

No further questions, Your Honor.[18] (Emphasis and italics supplied)

Nelia Panaga, who was preparing the company payroll at the time, likewise identified Sorila as one of the robbers who entered the Canscor premises and divested her of personal belongings:

Q Do you remember of any unusual incident that happened during the time while you were in your office with Visnar and Tario, and other employees?
A I did not notice anything except when the holduppers arrived.

Q How many persons arrived which you described as hold uppers?
A They were four when they entered the cubicle.

Q Why did you say they were hold uppers?
A They were carrying guns.

x x x x x x x x x

Q The person who took that money which was on top of the table, the ₱260,000.00 if he is inside the courtroom, will you be able to point to him?

[18] *Id.* at 21-23.

A He is not here, Ma'am.

x x x x x x x x x

Q How about the other holduppers, would you recognize them?
A Only two of them, the first one who entered and the other who stood in front of me.

Q ***The person who stood in front of you is inside the courtroom?***
A ***Yes, Ma'am.***

Q ***Could you kindly point to that person?***
A ***Yes, Ma'am.***

INTERPRETER:

WITNESS POINTING TO A PERSON WEARING A LIGHT YELLOW T-SHIRT, SEATED ON THE RIGHT SIDE OF THE BENCH, WHO, WHEN ASKED BY THE COURT, STOOD UP AND GAVE HIS NAME AS ALEJANDRO SORILA.

Q ***What was he doing at the time when the money was being taken by the other person?***
A ***He is also one of those who got the money.***

Q ***What was the personal items that were taken by Sorila?***
A ***From me, he took a wristwatch, cellphone and bracelet.***

Q These were the only items which were taken from you?
A Yes, Ma'am.[19] (Emphasis and italics supplied)

Panaga remained steadfast and unyielding on cross examination:

Q Did Alejandro Sorila, the accused that you pointed awhile ago took anything from the table where the money was allegedly located?
A No, he is not the one.

Q He did not take anything?
A None, sir.

Q The truth of the matter [is], he was the [one] who stood away from you that is why you could not really see what he was doing is it not?
A Yes, sir.

[19] TSN, January 29, 2002, pp. 9-11.

Q *The truth of the matter Mr. (sic) Witness, is because of the incident was so fast considering that it was done, more or less, 3 minutes considering that you were allegedly in a state of shock and according to you, you obeyed this person who ordered you, by looking down and not minding what is happening within the immediate vicinity, you really could not see that it was Alejandro Sorila who was one of those persons who entered the premises?*

A *Because they entered the cubicle, I saw them first.* ***The two persons who entered the cubicle, one of them is Alejandro Sorila. When they took the money, he is one of them. I tried to look on my side and in front and I saw him, so I can identify him.***

Q Where did Alejandro Sorila positioned (*sic*) himself immediately after they entered the premises?

A When they came inside the cubicle it was so fast. They took the money and went away.

Q So you do not know where Alejandro Sorila was positioned immediately after, according to you, you saw him with another person [who] entered the premises?

A Yes, Sir.

Q You do not know his whereabout[s]?

A All I know [is] he went to Clara Bisnar after he entered.[20] (Emphasis and italics supplied)

Positive and categorical assertions of a witness prevail over bare denial,[21] which is a negative and self-serving evidence. It cannot be given greater weight than the testimony of credible witnesses who testified on affirmative matters. Between the positive declarations of the prosecution witnesses and the negative statements of the accused, the former deserve more credence."[22] To merit credibility, denial must be buttressed by strong evidence of non-culpability,[23] which is lacking in the instant case.

[20] *Id*. at 19-20.

[21] *People v. Ruales*, 457 Phil. 161, 173 (2003); *People v. Corral*, 446 Phil. 652, 665 (2003).

[22] *People v. Malicsi*, G.R. No. 175833, January 29, 2008.

[23] *People v. Alfon*, 447 Phil. 138, 147 (2003).

Furthermore, settled is the rule that when there is no evidence to show any dubious reason or improper motive why the prosecution witnesses should testify falsely against the accused or implicate him in a serious offense, their testimonies deserve full faith and credit.[24]

There is no merit in appellant Balausa's claim that they cannot be convicted of robbery with homicide because no proof was presented on the matter surrounding the death of the victim and the identities of the persons who shot him; and that since the crime of homicide had not been proven, it cannot be complexed with robbery.

Article 294 (1) of the Revised Penal Code[25] classifies robbery with homicide as a crime against property[26] with the following elements: 1) the taking of personal property with the use of violence or intimidation against persons; 2) personal property thus taken belongs to another; 3) the taking is characterized by intent to gain or *animus lucrandi*; and 4) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in its generic sense, was committed.[27] The intent to rob must precede the taking of human life.[28] So long as the intention of the felons was to rob, the killing may occur before, during or after the robbery.[29] 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

---

[24] *People v. Degamo*, 450 Phil. 159, 175 (2003); *People v.Caritativo*, 451 Phil. 741, 762 (2003).

[25] Article 294. *Robbery with violence against or intimidation of persons. – Penalties.* – Any person guilty of robbery with the use of violence or intimidation of any person shall suffer:

1. The penalty of from *reclusion perpetua* to death, when by reason or occasion of the robbery, the crime of homicide shall have been committed.

[26] *People v. Solamillo*, 452 Phil. 261, 275 (2003).

[27] *People v. Lara*, G.R. No. 171449, October 23, 2006, 505 SCRA 137, 153.

[28] *Id*.

[29] *People v. Escote,* 448 Phil. 749, 783-784 (2003).

are killed. It is likewise not necessary to identify who among the conspirators inflicted the fatal wound on the victim.[30] 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.[31]

Balausa's attempt to impeach the credibility of prosecution witness Jaime Fiatos with regard to the latter's identification of him as one of the perpetrators of the crime is to no avail.

Balausa points out that in Fiatos' Affidavit,[32] the latter stated that Balausa acted as a lookout, while in open court, the latter declared that appellant traded gunfire with the *barangay* security forces; that in his *Sinumpaang Salaysay*,[33] Fiatos described Balausa as big and tall who sported a moustache but when he was arrested less than 24 hours after the crime was committed, and even during trial, Balausa sported black, not white, hair; that Ramil Agcaoili, a member of the *barangay* security force, categorically testified that he did not see Fiatos inside the *barangay* hall during the incident; that Agcaoili's testimony was corroborated by Romeo Santiago, another *barangay* security force member; that both Agcaoili and Santiago declared that Fiatos was outside and in front of the *barangay* hall when the shooting started; and that Andres Saludsod, Jr., whose Tamaraw FX was commandeered by the robbers in the morning of October 12, 2001 testified that he did not see Balausa on that fateful day.

Concededly, in his affidavit[34] taken at the police station on October 13, 2001, Fiatos said that Balausa was merely a lookout. A careful reading of the sworn statement, however, discloses that he also averred therein that Balausa was holding a 'short' gun:

---

[30] *People v. Lozada,* 454 Phil. 241, 254 (2003).

[31] *People v. Cabbab, Jr.*, G.R. No. 173479, July 12, 2007, 527 SCRA 589, 604.

[32] Records, pp. 10-11.

[33] *Id*. at 349-350.

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

19. *t:* *Alam mo ba naman kung papaano napunta si Jose sa police Pasig?*
    s: *Ang alam ko ay nag-palo-ap ang Pasig Police at sabi nila ay nahuli nga siya (Jose) matapos ituro ni Alejandro.*

20. *t:* ***Nung makita mo si Jose sa lugar ng pinangyarihan, ano ang hawak niya?***
    s: ***Maiksing baril po, kulay itim***.[35] (Emphasis and italics supplied)

In his *Sinumpaang Salaysay*,[36] Fiatos declared that he saw Balausa and the other man acting as lookout also firing at the responding barangay security forces when they were fleeing the Canscor premises:

> 4.0 *Kitang-kita rin ng dalawang mata ko si JOSE BALAUSA at ang kanyang kasama na nagpapaputok ng kanilang baril habang nakatayo sa nasabing lugar sa kahabaan ng Evangelista St. Nakadirekta ang mga putok ng baril nina JOSE BALAUSA sa iba pang kasapi ng barangay "Security Force" habang lumalabas ang mga kasamahan nitong nang-holdap mula sa opisina ng CANSCOR. Napagmasdan ko nang mabuti si JOSE BALAUSA at ang kasama nito habang pinapuputukan nila ng baril ang mga papalapit na sina Numeriano Ramos (a.k.a. Boy Melencio) at Restituto Marikit, parehong empleyado ng Santolan, Barangay Hall. Sa kasawiang-palad ay tinamaan ng bala si mula sa baril nina JOSE BALAUSA si Restituto Marikit na isang barangay utility man. Si Restituto Marikit ay nagtamo ng tama sa kanyang ulo at paa na naging sanhi ng pagkamatay nito makalipas ang ilang araw*.[37]

From the foregoing averments, it is clear that Balausa initially served as a lookout but eventually engaged at the shoot out with the responding *barangay* security forces.[38] This is consistent with his testimonial declarations which remained straightforward

---

[35] *Id*. at 11.

[36] *Id*. at 349.

[37] *Id*.

[38] TSN, September 17, 2002, pp. 5-9.

despite attempts by defense counsel to mislead him and impeach his credibility on cross-examination, thus:

Q Whom did you see, you said there was [a] shooting incident, whom did you see?
A Balausa and a small guy.

Q What was Balausa doing and the other guy?
A I saw him firing a gun, holding the gun with his arm stretch[ed] and I saw the muzzle of the gun lighting.

Q And this was from a distance of about 25 to 30 meters, is that correct?
A Up to that *ipil-ipil* tree, sir. (Witness pointing to a distance up to the *ipil-ipil* tree).

Q And the light was about 15 meters away from you?
A Yes, sir.

Q So, you were saying that Balausa was firing a gun?
A Yes, sir.

Q Is that the statement you gave to the police?
A Yes, sir.

Q And he was firing a gun?
A Yes, sir.

Q Now in question No. 7 the answer, it says here,
S: x x x *at ito namang si Jose ay nakita ko siya sa labas ng Canscor na kasama pa ang isang lalaki at look out naman.*

T: 8 *Paano mo nasabing look out itong si Jose?*

S: *Dahil sa nung habang nakikipagbarilan ang mga kasama nilang holdaper sa mga security force ay nakita kong tumatakbo mula sa kanyang kinatatayuan niya sa labas ng Canscor ay pumasok sa FX na get away nila"*

did you make that statement?
A Yes, sir.

Q ***So, in other words, you are saying that he was only a look out?***
A ***At first I did not see him firing [the] gun but later on he was already firing.***

Q ***But you said when you peeped at the window you saw two guys and one is Balausa who was firing a gun, the first time you saw them, is that correct?***
A ***Yes, sir.***

Q ***So, this now, which now is correct, this one or the earlier statement you made?***
A ***They are the same, sir.***

Q ***No difference at all?***
A ***None.***

Q ***You are confused now, whether he was a look out or fired a gun?***
A ***The first time I saw him he was standing up but the second time I saw him he was firing a gun.***

Q ***Are you sure that he really fired a gun?***
A ***Yes, sir.***

Q Again I will refer to your statement, in question No. 20, you said earlier that you are positive that Balausa fired a gun, is that correct?
A Yes, sir.

Q In question No. 20, which I read:

T 20 *Nung Makita mo si Jose sa lugar ng pinangyarihan, ano ang hawak niya?*
A: *Maiksing baril po, kulay itim.*

T 21 *Gaano ka ba kalayo sa kaniya noon?*
A: *Malapit lang halos mmga sampung dipa lang po.*

T 22 *Nakita mo ba kung pumutok din siya?*
A: *Hindi ko na nakita dahil kumubli na kami kasi nung maghagis ng granada ang isa nilang kasama.*

did you make that statement?
A Yes, sir.[39] (Emphasis and italics supplied)

The issues of whether Balausa acted as a look out; or whether he fired the gun while acting as a look out; or whether he was inside or outside the barangay hall when the shooting started,

[39] *Id.* at 25-28.

refer to minor details which hardly affect the established fact that he was *present* and *participated* in the commission of the crime and was *positively identified* by Fiatos.

Unpersuasive too is Balausa's proffered arguments on the issue of the color of his hair and moustache. This alleged inconsistency with regard to Balausa's hair color is more apparent than real considering that his hair was *not entirely black* because *there were very visible white strands* interspersed with his black hair.[40] Furthermore, if hair can be dyed in one (1) hour or less, it would take an even shorter period of time to shave a moustache.

An examination of the picture[41] taken the day after the robbery shows that Fiatos' physical description of Balausa as being big and tall is, likewise, accurate because appellant is indeed heftier and taller compared to his co-accused. Andres Saludsod, Jr.'s failure to identify Balausa as one of the felons who commandeered his Tamaraw FX does not negate the fact that Fiatos was able to identify Balausa. It should be pointed out that Saludsod was forced to wear sunglasses with covered lenses to prevent him from identifying the other malefactors who seized his vehicle.[42] The other witnesses who identified appellant Sorila, notably Clara Bisnar and Nelia Panaga, were *inside* the Canscor office and held at gunpoint by Sorila and his companions who barged into the premises, while Balausa and the other smaller man remained *outside* the premises. They, thus, could not have identified Balausa.

The testimony of a single eyewitness, if found to be positive and credible by the trial court, is sufficient to support a conviction,[43] especially when it bears the earmarks of truth and sincerity and was delivered spontaneously, naturally and in a straightforward manner.[44] Indeed, the testimony of a single witness when found sufficient needs no corroboration, save only where the law

---

[40] *Id*. at 29-30.

[41] Exhibit Q and Q-1; Record, p. 280.

[42] TSN, December 18, 2001, pp. 7, 14, 23.

[43] *Nerpio v. People*, G.R. No. 155153, July 24, 2007, 528 SCRA 93, 102.

[44] *People v. Galano*, 384 Phil. 206, 216 (2000).

expressly prescribes a minimum number of witnesses.[45] Errorless testimonies can hardly be expected especially when a witness is recounting the details of a harrowing experience. As long as the mass of testimony jibes on material points, the slight clashing of statements dilute neither the witnesses' credibility nor the veracity of their testimonies. Such inconsistencies on minor details would even enhance credibility as these discrepancies indicate that the responses are honest and unrehearsed.[46] The Court has consistently ruled that the alleged inconsistencies between the testimony of a witness in open court and his sworn statement before the investigators are not fatal defects to justify the reversal of a judgment of conviction.[47]

Moreover, affidavits taken *ex parte* are considered incomplete and often inaccurate — they are the products of sometimes partial suggestions, at other times of want of suggestions and inquiries, without the aid of which witnesses may be unable to recall the connected circumstances necessary for accurate recollection.[48] Extrajudicial statements like affidavits are generally not prepared by the affiant himself but by another who uses his own language in writing the affiant's statement, hence, omissions and misunderstandings by the writer are not infrequent.[49] It is of judicial knowledge that sworn statements are almost incomplete, often inaccurate and generally inferior to the testimony of a witness in open court.[50] Thus, whenever there is an inconsistency between an affidavit and the testimony of a witness, the testimony commands greater weight.[51]

---

[45] *Ocampo v. People*, G.R. No. 163705, July 30, 2007, 528 SCRA 547, 558.

[46] *People v. Alabado*, G.R. No. 176267, September 3, 2007, 532 SCRA 189, 208.

[47] *People v. Beltran*, G.R. No. 168051, September 27, 2006, 503 SCRA 715, 729.

[48] *Maturillas v. People*, G.R. No. 163217, April 18, 2006, 487 SCRA 273, 302-303.

[49] *People v. Astudillo*, 449 Phil. 778, 790-791 (2003).

[50] *Leyson v. Lawa*, G.R. No. 150756, October 11, 2006, 504 SCRA 147, 161.

[51] *People v. Dela Cruz*, 446 Phil. 549, 571 (2003).

With regard to amounts taken by the robbers from Canscor and its employees, Balausa insists there is no proof that the sum taken from Canscor was ₱250,000.00. He points out that while the information alleged that the amount of money taken was ₱250,000.00, Clara Bisnar testified that what was taken was ₱344,144.00 while Nelia Panaga averred that the sum taken by the robbers was ₱260,000.00. In the case of Bisnar, the trial court made a finding that the total value of money and valuables taken from her was ₱26,950.00 as alleged in the information but she testified that the total value personally taken from her was ₱34,000.00.

These alleged discrepancies are unconvincing because the prosecution was able to prove that appellants and their cohorts divested Canscor of ₱260,000.00 representing its payroll money. Nelia Panaga, cashier of Canscor, averred that the ₱260,000.00 payroll money was on top of her table when it was seized by the robbers.[52] The seemingly contradictory testimony of Clara Bisnar, Canscor Vice-President for Finance,[53] that the money taken was ₱344,144.00[54] can be reconciled with the account of Panaga that at the time of the robbery, the available funds was indeed ₱344,144.00[55] consisting of the payroll money amounting to ₱260,000.00 taken on top her table, but there was ₱80,000.00 on the left side of her table inside a box and another ₱4,000.00 inside the drawer.[56]

Every person criminally liable for a felony is also civilly liable.[57] When death occurs due to a crime, the following damages may be awarded: 1) civil indemnity *ex delicto* for the death of the victim; 2) actual or compensatory damages; 3) moral damages;

---

[52] TSN, January 29, 2002, p. 10.

[53] TSN, January 15, 2002, p. 3.

[54] *Id*. at 7.

[55] TSN, January 29, 2002, p. 10.

[56] *Id*.

[57] *People v. Abesamis*, G.R. No. 140985, August 28, 2007, 531 SCRA 300.

4) exemplary damages and 5) temperate damages.[58] In cases of murder and homicide, civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00 are awarded automatically.[59] Indeed, such awards are mandatory without need of allegation and proof other than the death of the victim[60] owing to the fact of the commission of murder or homicide.[61]

To be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable to the injured party.[62] Thus, the actual damages of ₱98,698.00 awarded to the heirs of Restituto Marikit should be sustained as the same is duly supported by receipts.[63] Such being the case, the award of temperate damages became superfluous and was correctly deleted by the Court of Appeals.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated October 12, 2006 affirming with modification the Decision of the Regional Trial Court of Pasig City, Branch 163, finding appellants guilty of robbery with homicide and sentencing them to suffer the penalty of *reclusion perpetua*, is *AFFIRMED*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

---

[58] *People v. Ducabo*, G.R. No. 175594, September 28, 2007, 534 SCRA 458, 476.

[59] *People v. Mondigo*, G.R. No. 167954, January 31, 2008.

[60] *People v. Bajar*, 460 Phil. 683, 700 (2003).

[61] *Razon v. People*, G.R. No. 158053, June 21, 2007, 525 SCRA 284, 303.

[62] *Martinez v. Court of Appeals*, G.R. No. 168827, April 13, 2007, 521 SCRA 176, 205.

[63] Exhibits K to K-29; Record, p. 214.

THIRD DIVISION

[G.R. No. 178876. June 27, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALFREDO CONCEPCION *y* CLEMENTE and HENRY CONCEPCION *y* CLEMENTE,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); FAILURE TO SUBMIT IN EVIDENCE THE PHYSICAL INVENTORY OF THE SEIZED DRUGS AND PHOTOGRAPHS, NOT FATAL TO THE PROSECUTION. — After going over the evidence on record, we find that there, indeed, was a buy-bust operation involving appellants. The prosecution's failure to submit in evidence the required physical inventory of the seized drugs and the photograph pursuant to Section 21, Article II of Republic Act No. 9165 will not exonerate appellants. Non-compliance with said section is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. In the instant case, we find the integrity of the drugs seized intact. The chain of custody of the drugs subject matter of the case was shown not to have been broken. After seizure of the drugs from appellants' possession, P02 Sistemio and PO2 Arojada marked them with their initials and turned them over to SPO1 Lopez who, on the same day, sent these plastic sachets containing white crystalline substance to PNP Provincial Crime Laboratory Office 3, Bulacan Provincial Office, Camp Alejo Santos, Malolos, Bulacan, for laboratory examination to determine the presence of dangerous drugs. After a qualitative examination conducted on the specimens, Police Inspector Nellson C. Sta. Maria, Forensic Chemical Officer, concluded that the white crystalline substance was positive for methylamphetamine hydrochloride (*shabu*), a dangerous drug. There can be no doubt that the drugs seized from appellants were the same ones examined in the crime

laboratory. This statement is bolstered by the defense's admission of the existence, due execution and genuineness of the request for laboratory examination, the Chemistry Report and specimens submitted.

2. ID.; ID.; ELEMENTS OF THE CRIME OF ILLEGAL SALE OF PROHIBITED DRUGS, ESTABLISHED. — Jurisprudence has firmly entrenched the following as elements in the crime of illegal sale of prohibited drugs: (1) the accused sold and delivered a prohibited drug to another, and (2) he knew that what he had sold and delivered was a dangerous drug. These two elements were clearly established in this case. The records show that appellants sold and delivered the *shabu* to the PDEA agent posing as a poseur-buyer. The plastic sachets containing white crystalline substance, which were seized and were found positive for methylamphetamine hydrochloride (*shabu*), a dangerous drug, were identified and offered in evidence. There is also no question that appellants knew that what they were selling and delivering was *shabu*, a dangerous drug.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF THE MEMBERS OF THE BUY-BUST TEAM AS TO THE CONDUCT OF THE OPERATION GIVEN FULL FAITH AND CREDENCE. — In this jurisdiction, the conduct of a buy-bust operation is a common and accepted mode of apprehending those involved in the illegal sale of prohibited or regulated drugs. It has been proven to be an effective way of unveiling the identities of drug dealers and of luring them out of obscurity. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the operation deserve full faith and credit.

4. ID.; ID.; ID.; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT THEREON. — After reviewing the evidence on record, we find the testimonies of the poseur-buyer and his back-up, as well as the dangerous drug seized from appellants, more than sufficient to prove the crime charged. Considering that this Court has access only to the cold and impersonal records of the proceedings, it generally relies upon the assessment of the trial court, which had the distinct advantage of observing the conduct and demeanor of the witnesses during trial. It is a fundamental rule that findings

of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals. Finding no reason to deviate from the findings of both the trial court and the Court of Appeals, we uphold their findings.

5. ID.; ID.; MULTIPLE EVIDENCE; ABSENCE OF A PRIOR SURVEILLANCE DOES NOT AFFECT THE LEGALITY OF THE BUY-BUST OPERATION. — Settled is the rule that the absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation. There is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. A prior surveillance, much less a lengthy one, is not necessary especially where the police operatives are accompanied by their informant during the entrapment. Flexibility is a trait of good police work. In the instant case, the entrapment or buy-bust operation was conducted without the necessity of any prior surveillance because the confidential informant, who was previously tasked by the buy-bust team leader to order dangerous drugs from appellant Alfredo Concepcion, accompanied the team to the person who was peddling the dangerous drugs.

6. ID.; ID.; ID.; FAILURE TO RECORD THE MARKED MONEY USED IN A BUY-BUST OPERATION, NOT MATERIAL. — The failure of the PDEA operatives to record the boodle money will not render the buy-bust operation illegal. The recording of marked money used in a buy-bust operation is not one of the elements for the prosecution of sale of illegal drugs. The recording or non-recording thereof in an official record will not necessarily lead to an acquittal as long as the sale of the prohibited drug is adequately proven. In the case at bar, PO2 Sistemio, the poseur buyer and PO2 Arojado testified as to how the *shabu* subject of the case was seized from appellants. Settled is the rule that in the prosecution for the sale of dangerous

drugs, the absence of marked money does not create a hiatus in the evidence for the prosecution as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court. Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation. What is material to a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. The prosecution duly established both in this case.

7. ID.; CRIMINAL PROCEDURE; INFORMATION; ACCUSED CANNOT BE CONVICTED OF POSSESSION OF DANGEROUS DRUGS, THOUGH PROVED, WITHOUT BEING PROPERLY CHARGED THEREFOR. — An examination of the information reveals that appellants were charged with selling, trading, delivering, giving away, dispatching in transit and transporting dangerous drugs consisting of three (3) heat-sealed transparent plastic sachets weighing 5.080 grams, 4.446 grams and 4.362 grams, respectively. However, from the testimonies of the prosecution witnesses, only two sachets were sold and delivered to the poseur-buyer. The third sachet was not sold or delivered but was found by PO2 Arojado in the glove compartment of the Hyundai van. From the foregoing, it is thus clear that appellants could have been charged with possession of dangerous drugs on account of the third sachet. This was not done. They cannot be convicted of possession of dangerous drugs, though proved, without being properly charged therefor. The error on the part of the public prosecutor notwithstanding, the appellants are still guilty, as charged in the information, of selling and delivering the two sachets to the poseur-buyer.

8. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); THE LAW PUNISHES NOT ONLY THE SALE BUT ALSO THE MERE ACT OF DELIVERY OF PROHIBITED DRUGS. — It must be emphasized that appellants were charged with selling, trading, delivering, giving away, dispatching in transit and transporting dangerous drugs under Section 5, Article II of Republic Act No. 9165. The charge was not limited to selling. Said section punishes not only the sale but also the mere act of delivery of prohibited drugs after the offer to buy by the entrapping officer

has been accepted by the seller. In the distribution of prohibited drugs, the payment of any consideration is immaterial. The mere act of distributing the prohibited drugs to others is in itself a punishable offense. In the case at bar, the *shabu* was delivered to the poseur-buyer after appellants agreed on the price of the contraband.

9. ID.; ID.; MERE SALE OF ANY DANGEROUS DRUGS IS PUNISHABLE BY LIFE IMPRISONMENT REGARDLESS OF ITS QUANTITY AND PURITY. — Under Section 5, Article II of Republic Act No. 9165, the sale of any dangerous drug, regardless of its quantity and purity, is punishable by life imprisonment to death and a fine of ₱500,000.00 to ₱10,000,000.00. The statute, in prescribing the range of penalties imposable, does not concern itself with the amount of dangerous drug sold by an accused. With the effectivity, however, of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been proscribed. As a consequence, the penalty to be meted to appellants shall only be life imprisonment and fine. The penalty imposed by the court *a quo* being in accordance with law, and which the appellate court upheld, this Court similarly sustains the same.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CHICO-NAZARIO, *J.*:

On appeal before Us is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 01808 dated 18 May 2007 which affirmed *in toto* the decision dated 13 December 2005[2] of the

[1] Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag, concurring. CA *rollo*, pp. 157-178.

[2] Records, pp. 368-380.

Regional Trial Court (RTC) of Malolos, Bulacan, Branch 78, convicting accused-appellants Alfredo Concepcion *y* Clemente and Henry Concepcion *y* Clemente of Violation of Section 5,[3] Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Appellants, together with Hegino dela Cruz, were charged before the RTC of Malolos, Bulacan, with Violation of Section 5, Article II of Republic Act No. 9165 under the following information:

> That on or about the 27th day of November, 2002, in the municipality of Sta. Maria, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, in conspiracy with one another, did then and there wilfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drugs consisting of three (3) heat-sealed transparent plastic sachets weighing 5.080 grams, 4.446 grams and 4.362 grams, respectively.[4]

When arraigned, appellants and accused Dela Cruz pleaded not guilty to the crime charged.[5]

The prosecution presented two witnesses: Police Officer (PO2) Peter Sistemio[6] and PO2 Arlan Arojado,[7] both regular members of the Philippine National Police (PNP) and assigned with the Philippine Drug Enforcement Agency (PDEA), Regional Office No. 3, Bulacan Provincial Office, Barangay Saluysoy, Meycauayan, Bulacan.

---

[3] Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

[4] Records, p. 2.

[5] Appellants were arraigned on 12 December 2002 while accused Dela Cruz was arraigned on 3 April 2003. Records, pp. 29 and 67.

[6] TSN, 27 February 2003, 3 April 2003, 7 July 2003 and 1 September 2003.

[7] TSN, 1 December 2003, 15 December 2003 and 15 March 2004.

The version of the prosecution is as follows:

Sometime in the afternoon of 26 November 2002, a confidential informant reported to Senior Police Officer (SPO)1 Buenaventura R. Lopez at the PDEA, Regional Office No. 3, Bulacan Provincial Office, Barangay Saluysoy, Meycauayan, Bulacan, that an *alias* Totoy was engaged in selling drugs, particularly *shabu*, in Barangay Guyong, Sta. Maria, Bulacan. SPO1 Lopez instructed the confidential agent to set a drug deal with *alias* Totoy and order ten (10) grams of *shabu*. The confidential informant returned and confirmed that the delivery of the 10 grams of *shabu* would be made in Barangay Guyong at 2:00 a.m. of 27 November 2002. A buy-bust operation was planned and a team formed. The team was composed of SPO1 Lopez as team leader; PO2 Sistemio as the poseur-buyer; and PO2 Arojado, PO2 Navarette and PO2 Kho as back-up operatives.

The team, together with the confidential informant, proceeded to Barangay Guyong and arrived thereat at 1:15 a.m. of 27 November 2002. PO2 Sistemio and the confidential informant alighted from their vehicle and proceeded to a waiting shed along the highway. The rest of the team positioned themselves ten to twenty meters away in their parked vehicles. At around 2:00 a.m. a violet Hyundai van with plate number XAM-592 arrived with appellants and accused Dela Cruz on board. Dela Cruz was driving, while appellant Alfredo Concepcion, a.k.a. Totoy, was seated beside him and appellant Henry was at the back. The confidential informant introduced PO2 Sistemio to Totoy who asked the latter how much *shabu* he would buy. PO2 Sistemio replied he would buy two plastic packs of *shabu* equivalent to ten grams. Totoy answered that each pack was worth ₱6,000.00 and got two plastic packs from the van's compartment and gave them to PO2 Sistemio. Appellant Henry Concepcion said, "*Mura pa yan, direkta kasi kami*."[8] PO2 Sistemio also heard someone say, "*Magandang klase yang stuff na yan*."[9] After receiving the two plastic packs, PO2 Sistemio

---

[8] TSN, 27 February 2003, p. 10.

[9] *Id*. at 11.

lit a cigarette, the pre-arranged signal for the other members of the buy-bust team to approach and arrest the culprits. The boodle money that PO2 Sistemio had with him was no longer given to Totoy.

Upon seeing PO2 Sistemio light a cigarette, the other team members blocked the vehicle. PO2 Arojado was ordered by PO2 Sistemio to search the van's glove compartment where the former recovered a medium-sized plastic sachet. Appellants and accused Dela Cruz were apprehended and brought to the PDEA office. The two plastic sachets[10] given by appellant Alfredo Concepcion to PO2 Sistemio, and the other one[11] recovered in the glove compartment, were marked with the initials "P.S. A," "P.S. A-1" and "A.G.A.," respectively. On the same day, per request[12] of SPO1 Lopez, these plastic sachets containing white crystalline substance were sent to the PNP Provincial Crime Laboratory Office 3, Bulacan Provincial Office, Camp Alejo Santos, Malolos, Bulacan, for laboratory examination to determine the presence of dangerous drugs. After a qualitative examination was conducted on the specimens, Police Inspector Nellson C. Sta. Maria, Forensic Chemical Officer, issued Chemistry Report No. D-700-2002 with a conclusion that said specimens contained methylamphetamine hydrochloride (*shabu*), a dangerous drug.[13]

The testimony of SPO1 Buenaventura Lopez was dispensed with due to the admission by the defense that his testimony would merely corroborate the testimony of PO2 Arojado, and that the alleged buy-bust operation was coordinated through cellular phone, but the same was not duly recorded before Barangays Guyong and Poblacion per certifications issued by the Barangay Captains of said *barangays*.[14] With the defense's

---

[10] Exhs. B and B-1.

[11] Exh. B-2.

[12] Exh. A; records, p. 365.

[13] Exh. C; *id*. at 366.

[14] Records, p. 134.

admission of the existence, due execution and genuineness of the request for laboratory examination, the Chemistry Report and specimens submitted, the testimony of Police Inspector Nellson C. Sta. Maria was also dispensed with.

After the prosecution formally offered its evidence,[15] appellants and accused Dela Cruz, with leave of court, filed their respective demurrers to evidence,[16] which the trial court denied on 1 March 2005 for lack of merit.[17]

The defense presented three witnesses: (1) appellant Alfredo Concepcion; (2) Julieta dela Rosa, appellant Alfredo's spouse and appellant Henry's sister-in-law; and (3) accused Hegino dela Cruz.

Appellant Alfredo Concepcion disclosed that appellant Henry Concepcion is his brother and accused Hegino dela Cruz is his brother's friend. He narrated that at around 8:00 to 9:00 p.m. of 26 November 2002, he was in his house at RG Nicolas, Poblacion, Sta. Maria, Bulacan, when he, together with appellant Henry Concepcion, Hegino dela Cruz, Armando Cabral and Leopoldo Igueza, was arrested by elements of the PDEA. They were about to rest when they were arrested and handcuffed. PDEA operatives, whom he later came to know when the instant case was filed, entered his house and stayed for more or less thirty minutes. They were loaded into the vehicle of accused Hegino dela Cruz. His wife and the wife of appellant Henry were present when he was arrested. They were then brought to the PDEA headquarters and were told that they had *shabu*.

Appellant Alfredo Concepcion said he had no knowledge about the police officers' allegation that he and his co-accused sold *shabu* to a poseur-buyer in Barangay Guyong, Sta. Maria, Bulacan. At the time of the supposed sale of *shabu*, he claims they were already at the PDEA headquarters. He denied he had *shabu* and that the police officers recovered nothing from his house.

---

[15] *Id*. at 141.

[16] *Id*. at 294-301, 311-318.

[17] *Id*. at 336.

He was informed by his wife that a cell phone was missing in their house when the latter went to the PDEA headquarters. Appellant Alfredo added that upon his instruction, his wife reported his alleged arrest in his home before the Office of the Punong Barangay of Barangays Guyong and Poblacion.[18]

Julieta dela Rosa testified that between 8:00 p.m. and 9:00 p.m. of 26 November 2002, she was inside her house together with her brother-in-law (appellant Henry) and sister-in-law. Her husband, appellant Alfredo Concepcion, was outside with his friends (Armando Cabral and Leopoldo Abreza[19]) waiting for the vehicle of her other brother-in-law (Roberto Concepcion) which vehicle Alfredo would use in accompanying his friends to Manila. While she was watching television inside her house, she heard a commotion outside and when she opened a window, she saw her husband, accused Hegino dela Cruz, Armando and Leopoldo already handcuffed and being loaded into a van owned by accused Hegino. She went out and asked the person who handcuffed her husband the reason for this. She learned that the person who handcuffed her husband was a member of the PDEA. She was told to go inside the house and not to make any noise. She went inside to call her sister-in-law and when she went out again, her husband and all the others were no longer there.

Julieta followed them to the office of the PDEA in Saluysoy St., Meycauayan, Bulacan. SPO1 Buenaventura Lopez told her that a case was filed against her husband because they recovered something from him which she said was not true. Thereafter, she went home and proceeded to the *barangay* hall of Poblacion to report that her husband and his companions were arrested without anything being recovered from them.[20] She then went to the police station of Sta. Maria, Bulacan, to check if the PDEA coordinated with them. She claims a certification[21] was

---

[18] Exhibits 1 and 2; records, pp. 355-356.

[19] Also referred to as Igueza.

[20] Exh. 2; records, p. 356.

[21] Exh. 4; *id*. at 358.

issued showing that there was no coordination made by PDEA. In connection with the instant case, she and her sister-in-law, Anna Juan, who is the wife of appellant Henry Concepcion, executed a sworn statement.[22] Lastly, she explained she did not know what happened outside where her husband and his friends were apprehended.

Next to take the stand for the defense was accused Hegino dela Cruz who testified that in the late afternoon of 26 November 2002, he was in his house at Lalakhan, Sta. Maria, Bulacan. While resting, someone informed him that appellant Henry Concepcion called and was renting his Hyundai van with plate number XAM-592 registered in his wife's name. He then proceeded to the house of Henry at RG Nicolas St. (formerly Calderon), Sta. Maria, Bulacan, and arrived thereat before 8:00 p.m. He parked the van in front of Henry's house. While seated at the driver's seat, he talked with Henry who told him, "*Luluwas kami*." Henry was standing beside the van while Alfredo Concepcion was seated at the side with two companions. While he was conversing with Henry, a vehicle suddenly arrived. One of its passengers told him to alight and face the van, while the other passengers went to the house of Alfredo Concepcion. He was frisked and was arrested without being informed of the reason therefor. He, together with appellants Concepcion, was brought to Saluysoy St., Meycauayan, Bulacan. In going to said place, they rode his van, which was driven by a PDEA member. Upon reaching the place, he called his family and came to know that the PDEA was filing a drug case against him and was told that there was *shabu* in the compartment of the van. He denied he had illegal drugs and that he was the only one using the van. Prior to the incident, he had not been charged with any offense in any other court.

On 13 December 2005, the trial court rendered its decision convicting appellants Alfredo and Henry Concepcion with, but acquitting accused Hegino dela Cruz of, the crime charged. The decretal portion of the decision reads:

---

[22] Exh. 5; *id*. at 359.

WHEREFORE, the foregoing considered, this Court finds accused Alfredo Concepcion *y* Clemente and Henry Concepcion *y* Clemente **GUILTY beyond reasonable doubt** of the offense of Violation of Section 5, Article II of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and hereby sentences **EACH** of them to suffer the penalty of **LIFE IMPRISONMENT AND A FINE OF ₱500,000.00**.

Accused Hegino dela Cruz is hereby **ACQUITTED** of the offense charged for insufficiency of evidence. Accordingly, the Jail Warden of the Bulacan Provincial Jail is hereby **DIRECTED** to release accused Hegino dela Cruz from detention unless he is being held for some other lawful cause.

In the service of their sentence, accused Alfredo Concepcion and Henry Concepcion who are detention prisoners shall be credited with the entire period of their preventive imprisonment.

The drugs subject matter of this case is hereby forfeited in favor of the government. The Branch Clerk of Court is hereby directed to turn over the same to the Dangerous Drugs Board for proper disposal thereof.[23]

In convicting the brothers Concepcion, the trial court gave credence to the testimonies of P02 Sistemio and PO2 Arojada when they positively identified appellant Alfredo Concepcion as the one from whom they bought and got the sachets of *shabu*. Also from their testimonies, the trial court found that appellant Henry Concepcion conspired with appellant Alfredo in trading the dangerous drugs for which they were charged. Appellant Henry's statement "*Mura pa yan, direkta kasi kami*" when he tried to persuade the poseur-buyer to accept the price of the drugs when the buy-bust transaction was taking place, convinced the trial court of his participation in the offense. The trial court further applied in favor of the PDEA agents the presumption of regularity in the performance of official duty. As regards accused Dela Cruz, the trial court was not convinced of his guilt. It explained that mere presence in the scene of the crime was not sufficient to convict in light of PO2 Sistemio's statement that

---

[23] Records, pp. 379-380.

he was not certain if it was accused dela Cruz who uttered "*Magandang klase yang stuff na yan*."

On 15 December 2005, appellants Alfredo and Henry Concepcion filed a Notice of Appeal.[24] In an Order dated 3 January 2006, the trial court approved the notice of appeal and directed the Branch Clerk of Court to immediately transmit the entire records of the case to the Court of Appeals pursuant to Administrative Circular No. 20-2005.[25]

In its decision dated 18 May 2007, the Court of Appeals totally agreed with the trial court. It disposed of the case as follows:

> WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The appealed Decision dated December 13, 2005 of the Regional Trial Court of Malolos City, Bulacan, Branch 78 in Criminal Case No. 3328-M-2002 is hereby AFFIRMED and UPHELD.
>
> With costs against the accused-appellants.[26]

On 31 May 2007, appellants Alfredo and Henry Concepcion filed a Notice of Appeal with manifestation were terminating the legal services of their private counsel and praying that they be represented by the Public Attorney's Office (PAO).[27] On 15 June 2007, the Court of Appeals gave due course to the Notice of Appeal and ordered the forwarding of the records of the case to the Supreme Court. The appellate court appointed the PAO to represent the appellants.[28]

With the elevation of the records to the Court and the acceptance of the appeal, the parties were required to file their respective supplemental briefs, if they so desired, within thirty days from notice.[29] The parties manifested that they were not

---

[24] *Id*. at 382.

[25] *Id*. at 384.

[26] CA *rollo,* p. 177.

[27] *Id*. at 181-182.

[28] *Id*. at 183.

[29] *Rollo*, p. 26.

filing supplemental briefs, arguing that the relevant issues of the case had been discussed in their respective briefs filed before the Court of Appeals.

Accused-appellants make the following assignment of errors:

A

THE HONORABLE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT THE PROSECUTION WAS NOT ABLE TO ESTABLISH THE GUILT OF THE ACCUSED-APPELLANTS BEYOND REASONABLE DOUBT.

B

THE HONORABLE TRIAL COURT PATENTLY ERRED IN DEVIATING FROM THE ESTABLISHED RULE THAT THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY BY POLICE OFFICERS SHOULD NOT BY ITSELF PREVAIL OVER THE PRESUMPTION OF INNOCENCE AND THE CONSTITUTIONALLY PROTECTED RIGHTS OF THE ACCUSED-APPELLANTS.

C

THE HONORABLE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANTS NOT ON THE BASIS OF THE STRENGTH OF THE PROSECUTION'S EVIDENCE BUT RATHER ON THE WEAKNESS OF THE EVIDENCE FOR THE DEFENSE.

D

THE HONORABLE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT THERE ARE SITUATIONS WHERE AN ACCUSED CAN HAVE NO OTHER DEFENSE BUT A DENIAL OF COMPLICITY IN THE OFFENSE CHARGED, AS THAT COULD BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH.[30]

Appellants argue that the alleged buy-bust operation was not satisfactorily proven and was of doubtful legitimacy because of the failure of the prosecution to present and offer in evidence

[30] CA *rollo*, pp. 56-57.

the physical inventory and the photograph of the evidence confiscated as required by Section 21,[31] Article II of Republic Act No. 9165, and that said operation was not coordinated with the PDEA.

After going over the evidence on record, we find that there, indeed, was a buy-bust operation involving appellants. The prosecution's failure to submit in evidence the required physical inventory of the seized drugs and the photograph pursuant to Section 21, Article II of Republic Act No. 9165 will not exonerate appellants. Non-compliance with said section is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[32] In the instant case, we find the integrity of the drugs seized intact. The chain of custody of the drugs subject matter of the case was shown not to have been broken. After seizure of the drugs from appellants' possession, P02 Sistemio and PO2 Arojada marked them with their initials and turned them over to SPO1 Lopez who, on the same day, sent these plastic sachets containing white crystalline substance to PNP Provincial Crime Laboratory Office 3, Bulacan

---

[31] SEC. 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.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending 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.

[32] *People v. Del Monte*, G.R. No. 179940, 23 April 2008.

Provincial Office, Camp Alejo Santos, Malolos, Bulacan, for laboratory examination to determine the presence of dangerous drugs. After a qualitative examination conducted on the specimens, Police Inspector Nellson C. Sta. Maria, Forensic Chemical Officer, concluded that the white crystalline substance was positive for methylamphetamine hydrochloride (*shabu*), a dangerous drug. There can be no doubt that the drugs seized from appellants were the same ones examined in the crime laboratory. This statement is bolstered by the defense's admission of the existence, due execution and genuineness of the request for laboratory examination, the Chemistry Report and specimens submitted. We agree with the Court of Appeals when it said:

> While it is true that counsel for appellants, during the cross-examination of PO2 Sistemio, questioned the latter on non-compliance with Sec. 21 of R.A. No. 9165 regarding the immediate physical inventory and photographing of the seized dangerous drug, there is no showing that the integrity and evidentiary value of the confiscated *shabu* from appellants at the time of the buy-bust had not been properly preserved by the apprehending team. PO2 Sistemio explained that the seized substance contained in three properly marked plastic sachets were sent for chemical analysis to the PNP Crime Laboratory at Camp Alejo Santos in Malolos City, Bulacan. Significantly, such an objection was not reiterated by the appellants in their Demurrer to Evidence which was focused merely on the alleged inconsistencies in the narration of the details of the buy-bust by prosecution witnesses PO2 Sistemio and PO2 Arojado, as well as non-presentation of the marked boodle money which supposedly disproves the sale.[33]

Appellants' argument that the buy-bust operation was not coordinated with the PDEA is specious. From the testimonies of the defense witnesses, it is clear that they all know that the buy-bust operation was conducted by the elements of the PDEA. It is thus nonsensical for the defense to argue that the operation was not coordinated with the PDEA if it was the PDEA itself that conducted the entrapment. Moreover, said argument is belied by the defense's admission that the PDEA coordinated with

---

[33] CA *rollo,* p. 176.

Barangays Guyong and Poblacion *via* cellphone regarding the conduct of the buy-bust operation.

Appellants' contention that they were not apprised of their constitutional rights upon their arrest cannot lead to their acquittal. The arresting officers' alleged failure to inform them of their Miranda rights or the nature of their arrest should have been raised before arraignment. It is too late in the day for appellants to raise these alleged illegalities after a valid information has been filed, the accused arraigned, trial commenced and completed, and a judgment of conviction rendered.[34]

Appellants claim that the PDEA, aside from its supposed non-compliance with Republic Act No. 9165, failed to prove and execute certain matters that would show that a proper buy-bust operation was conducted. The alleged requirements for a proper buy-bust which the PDEA did not undertake include the following: (1) the prosecution failed to offer proof that appellants were known drug traffickers; (2) no surveillance was done to verify appellants' illicit activities; (3) the serial numbers of the boodle money were not jotted down in the log/blotter book during the planning and execution of the buy-bust operation; and (4) the boodle money prepared was grossly inadequate (₱6,000.00) for the price of two plastic packs of *shabu* equivalent to 10 grams, as one pack commands a price of ₱6,000.00, which fact was known by the entrapping officers. The absence of all these, appellants say, shows that they are innocent of the charge.

We find their claim untenable. In this jurisdiction, the conduct of a buy-bust operation is a common and accepted mode of apprehending those involved in the illegal sale of prohibited or regulated drugs. It has been proven to be an effective way of unveiling the identities of drug dealers and of luring them out of obscurity.[35] Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any

---

[34] *People v. Yang*, 467 Phil. 492, 509 (2004).

[35] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 552.

improper motive or were not properly performing their duty, their testimonies on the operation deserve full faith and credit.[36]

Jurisprudence has firmly entrenched the following as elements in the crime of illegal sale of prohibited drugs: (1) the accused sold and delivered a prohibited drug to another, and (2) he knew that what he had sold and delivered was a dangerous drug.[37] These two elements were clearly established in this case. The records show that appellants sold and delivered the *shabu* to the PDEA agent posing as a poseur-buyer. The plastic sachets containing white crystalline substance, which were seized and were found positive for methylamphetamine hydrochloride (*shabu*), a dangerous drug, were identified and offered in evidence. There is also no question that appellants knew that what they were selling and delivering was *shabu*, a dangerous drug.

After reviewing the evidence on record, we find the testimonies of the poseur-buyer and his back-up, as well as the dangerous drug seized from appellants, more than sufficient to prove the crime charged. Considering that this Court has access only to the cold and impersonal records of the proceedings, it generally relies upon the assessment of the trial court, which had the distinct advantage of observing the conduct and demeanor of the witnesses during trial. It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses having heard their testimonies and observed their deportment and manner of testifying during the trial.[38]

---

[36] *People v. Del Mundo*, G.R. No. 169141, 6 December 2006, 510 SCRA 554, 565-566.

[37] *People v. Pacis*, 434 Phil. 148, 159 (2002).

[38] *People v. Julian-Fernandez*, 423 Phil. 895, 910 (2001).

The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[39] Finding no reason to deviate from the findings of both the trial court and the Court of Appeals, we uphold their findings.

Appellants' assertion that the prosecution should have offered proof showing that they are drug traffickers and are notorious in the drug trade as proof of a proper buy-bust operation, is without basis. This Court does not know of any law or jurisprudence that requires such evidence before it can be held that there was a legal buy-bust operation.

Appellants likewise insist that surveillance should have been conducted to verify their illicit activities.

We do not agree. Settled is the rule that the absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation. There is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers.[40] A prior surveillance, much less a lengthy one, is not necessary especially where the police operatives are accompanied by their informant during the entrapment.[41] Flexibility is a trait of good police work.[42] In the instant case, the entrapment or buy-bust operation was conducted without the necessity of any prior surveillance because the confidential informant, who was previously tasked by the buy-bust team leader to order dangerous drugs from appellant Alfredo Concepcion, accompanied the team to the person who was peddling the dangerous drugs.

The failure of the PDEA operatives to record the boodle money will not render the buy-bust operation illegal. The recording of marked money used in a buy-bust operation is not one of

---

[39] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 547.

[40] *People v. Li Yin Chu*, 467 Phil. 582, 597 (2004).

[41] *People v. Gonzales*, 430 Phil. 504, 514 (2002).

[42] *People v. Cadley*, 469 Phil. 515, 525 (2004).

the elements for the prosecution of sale of illegal drugs. The recording or non-recording thereof in an official record will not necessarily lead to an acquittal as long as the sale of the prohibited drug is adequately proven.[43] In the case at bar, PO2 Sistemio, the poseur buyer and PO2 Arojado testified as to how the *shabu* subject of the case was seized from appellants. Settled is the rule that in the prosecution for the sale of dangerous drugs, the absence of marked money does not create a hiatus in the evidence for the prosecution as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court. Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation.[44] What is material to a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.[45] The prosecution duly established both in this case.

Appellants claim that the boodle money prepared by the buy-bust team was grossly insufficient. We find such claim baseless. The Court, after examining the transcript of stenographic notes containing the testimonies of the prosecution witnesses, did not find the exact amount of boodle money that was prepared. What is clear, though, is the fact that the boodle money was not given to appellant Alfredo Concepcion because of the apprehension that followed after the poseur-buyer signaled that the transaction had already been consummated.

Appellants' argument that the poseur-buyer was not able to strike a deal or a sale because one of the elements of the crime charged was wanting — payment by the poseur-buyer for the thing sold or receipt of the marked money by the seller of the dangerous drugs — is erroneous. As abovementioned, the transaction between the poseur-buyer and appellants was already consummated. There is no rule of law which requires that in

---

[43] *People v. Suson*, G.R. No. 152848, 12 July 2006, 494 SCRA 691, 705.

[44] *People v. Astudillo*, 440 Phil. 203, 224 (2002).

[45] *People v. Chen Tiz Chang*, 382 Phil. 669, 684 (2000).

buy-bust operations there must be a simultaneous exchange of the marked money and the prohibited drug between the poseur-buyer and the pusher.[46]

It must be emphasized that appellants were charged with selling, trading, delivering, giving away, dispatching in transit and transporting dangerous drugs under Section 5, Article II of Republic Act No. 9165. The charge was not limited to selling. Said section punishes not only the sale but also the mere act of delivery of prohibited drugs after the offer to buy by the entrapping officer has been accepted by the seller. In the distribution of prohibited drugs, the payment of any consideration is immaterial. The mere act of distributing the prohibited drugs to others is in itself a punishable offense.[47] In the case at bar, the *shabu* was delivered to the poseur-buyer after appellants agreed on the price of the contraband.

PO2 Sistemio, the poseur-buyer, failed to give the boodle money to appellant Alfredo as payment for the *shabu*. However, he satisfactorily explained why he was not able to do so. He testified that there was boodle money with him during the operation to pay for the sale of the drugs, but he was unable to utilize the same because he immediately performed the pre-arranged signal alerting the rest of the buy-bust team that he had received the drugs.

Appellants deny the existence of the buy-bust operation and cry frame-up.

We are not swayed. In the case at bar, the evidence clearly shows that appellants were involved in the buy-bust operation. Having been caught *in flagrante delicto*, appellants Alfredo and Henry's participation cannot be doubted. Against the positive testimonies of the prosecution witnesses, appellants' plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail.[48] Frame-up, like alibi,

---

[46] *People v. Cadley*, *supra* note 42.

[47] *People v. Rodriguez*, 429 Phil. 359, 370 (2002).

[48] *People v. Sy*, G.R. No. 171397, 27 September 2006, 503 SCRA 772, 783.

is generally viewed with caution by this Court, because it is easy to contrive and difficult to disprove. Moreover, it is a common and standard line of defense in prosecutions of violations of the Dangerous Drugs Act.[49] For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner.[50]

We uphold the presumption of regularity in the performance of official duties. The presumption remains because the defense failed to present clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive. The presumption was not overcome as there was no evidence showing that PO2 Sistemio and PO2 Arojado were impelled by improper motive.

The testimony of defense witness Julieta dela Rosa does not convince us. As the wife of appellant Alfredo and sister-in-law of appellant Henry, we find her not to be credible. Her testimony is suspect and unsubstantiated. In her direct testimony, she said her husband, appellant Alfredo, was outside their house with his friends.[51] However, such statement was belied by Alfredo himself who said he was inside his house when he was allegedly arrested by members of the PDEA. Such inconsistency as to where appellant Alfredo was when the alleged unlawful arrest was made, further diminishes the credibility of the defense witnesses.

Undeniably, appellants are guilty of sale and delivery of *shabu*, a dangerous drug. It was duly established that there was a conspiracy between them to sell and deliver dangerous drugs.

An examination of the information reveals that appellants were charged with selling, trading, delivering, giving away, dispatching in transit and transporting dangerous drugs consisting of three (3) heat-sealed transparent plastic sachets weighing

---

[49] *People v. Eugenio*, 443 Phil. 411, 419 (2003).

[50] *People v. Zheng Bai Hui*, 393 Phil. 68, 138 (2000).

[51] TSN, 19 July 2005, p. 6.

5.080 grams, 4.446 grams and 4.362 grams, respectively. However, from the testimonies of the prosecution witnesses, only two sachets[52] were sold and delivered to the poseur-buyer. The third sachet[53] was not sold or delivered but was found by PO2 Arojado in the glove compartment of the Hyundai van.

From the foregoing, it is thus clear that appellants could have been charged with possession of dangerous drugs[54] on account of the third sachet. This was not done. They cannot be convicted of possession of dangerous drugs, though proved, without being properly charged therefor. The error on the part of the public prosecutor notwithstanding, the appellants are still guilty, as charged in the information, of selling and delivering the two sachets to the poseur-buyer.

We now go to the penalty to be imposed.

The court *a quo* imposed on each of the appellants the penalty of life imprisonment and a fine of ₱500,000.00 which the Court of Appeals sustained.

Under Section 5, Article II of Republic Act No. 9165, the sale of any dangerous drug, regardless of its quantity and purity, is punishable by life imprisonment to death and a fine of ₱500,000.00 to ₱10,000,000.00.[55] The statute, in prescribing the range of penalties imposable, does not concern itself with the amount of dangerous drug sold by an accused.[56] With the

---

[52] Exhs. B and B-1.

[53] Exh. B-2.

[54] Section 11, Article II of Republic Act No. 9165.

[55] SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. — 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 sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[56] *People v. Quiaoit, Jr.*, G.R. No. 175222, 27 July 2007, 528 SCRA 474, 489.

effectivity, however, of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been proscribed. As a consequence, the penalty to be meted to appellants shall only be life imprisonment and fine. The penalty imposed by the court *a quo* being in accordance with law, and which the appellate court upheld, this Court similarly sustains the same.

WHEREFORE, premises considered, the instant appeal is *DENIED*. The Decision of the Court of Appeals in in CA-G.R. CR-H.C. No. 01808 dated 18 May 2007 which affirmed *in toto* the Decision of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 78, convicting appellants Alfredo Concepcion *y* Clemente and Henry Concepcion *y* Clemente of violation of Section 5, Article II of Republic Act No. 9165, is hereby *AFFIRMED*. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 179712. June 27, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EFREN MAGLENTE *y* CERVANTES,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF A YOUNG GIRL GIVEN FULL CREDIT. — When the offended party is a young and immature girl

testifying against a parent, courts are inclined to lend credence to her version of what transpired. Youth and immaturity are given full weight and credit. Incestuous rape is not an ordinary crime that can be easily invented because of its heavy psychological toll. It is unlikely that a young woman of tender years would be willing to concoct a story which would subject her to a lifetime of gossip and scandal among neighbors and friends and even condemn her father to death. Undergoing all of the humiliating and invasive procedures for the case — the initial police interrogation, the medical examination, the formal charge, the public trial and the cross-examination — proves to be the litmus test for truth, especially when endured by a minor who gives her consistent and unwavering testimony on the details of her ordeal. Despite the serious anguish she suffered in relating her traumatic experience, private complainant gave her testimony in a categorical, straightforward, spontaneous and candid manner and was considered by the trial court to be worthy of belief. It is a matter of judicial cognizance that the tears that were spontaneously shed by a rape victim during her testimony are an indication of credibility.

2. ID.; ID.; ID.; MINOR INACCURANCIES ON THE TESTIMONY DO NOT AFFECT THE CREDIBILITY OF A WITNESS. — After examining the records, this Court finds that nowhere in the private complainant's testimony and her Sworn Statement before the police officers did she attribute her pregnancy to her last rape on 13 July 2002, the incident for which appellant is charged. Nonetheless, even assuming that she had made such statement, her pregnancy could have been caused by an earlier rape as this would be consistent with her testimony that she had been abused since she was nine years old until she was fourteen years old. Given her immaturity, she is not expected to possess the knowledge which will allow her to identify which rape had caused her pregnancy. Settled is the rule that the date of the occurrence of the rape is not an essential element of the commission of rape. Inconsistencies and discrepancies in details which are irrelevant to the elements of the crime are not grounds for acquittal. As long as the inaccuracies concern only minor matters, the same do not affect the credibility of witnesses. Truth-telling witnesses are not always expected to give error-free testimonies considering the lapse of time and treachery

of human memory. Inaccuracies may even suggest that the witnesses are telling the truth and have not been rehearsed.

3. ID.; ID.; ID.; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT THEREON. — Ultimately, the resolution of the case hinges on the credibility of the victim's testimony —the determination of which is a matter best undertaken by the trial judge, who has the advantage of having observed, firsthand, the demeanor of the witnesses on the stand, and, therefore, is in a better position to form an accurate impression and conclusion. Absent any showing that certain facts of value have clearly been overlooked, which if considered could affect the result of the case, or that the trial court's findings are clearly arbitrary, the conclusions reached by the court of origin must be respected and the judgment rendered affirmed. There is no compelling reason to doubt the veracity of and deviate from the findings of the trial court. The findings of a trial court, when affirmed by the Court of Appeals are accorded with great weight. Thus, the same should be deemed conclusive and binding on this Court.

4. ID.; ID.; ID.; LACK OF ILL MOTIVE TO FALSELY TESTIFY, PRESENT. — Appellant claims that the reason he was falsely implicated for the rape of his daughter is simply because his in-laws disliked him. He attributes the aloofness of his in-laws to his inability to find work. There is nothing novel in the dubious defense that familial discord and influence caused the private complainant to file a case for rape against her own father. The claimed ill motives of the appellant's in-laws were not even established by the testimony of impartial witnesses. That such a motive drove his in-laws to cause private complainant to accuse him falsely of rape is speculative and unsubstantiated. Where the charges against the appellant involve a heinous offense, a minor disagreement, even if true, does not amount to a sufficient justification for dragging a young girl's honor to a merciless public scrutiny that a rape trial brings in its wake. Absent any showing, or even an allegation, of any improper motive on the part of the victim to falsely testify against or implicate the accused in the commission of the crime, the logical conclusion is that no such improper motive exists, and that the testimony is worthy of full faith and credence. In the present case, appellant testified that although he and the private

complainant never shared a close relationship, no disagreements or quarrels had come between them.

5. ID.; ID.; ID.; DELAY IN REPORTING RAPE, IRRELEVANT. — Appellant's argument that the delay in reporting rape incidents runs contrary to human experience is erroneous. In similar cases, this Court has consistently held that delay in reporting an incident of rape is not necessarily an indication that the charge is fabricated. Delay could be attributed to the private complainant's tender age and the appellant's threats. Indeed, a rape victim's actions are oftentimes influenced by fear, rather than reason. In incestuous rape, this fear is magnified because the victim usually lives under the same roof as the perpetrator or is at any rate subject to his dominance because of their blood relationship. Furthermore, it is entirely possible for a rape victim to go through what psychologists describe as a "state of denial" which is a way of coping with the overwhelming emotional stress of an extremely shocking event. While in that state of denial, the victim refuses either to accept reality or to allow the occurrence to "sink in." The offender should not be allowed to take advantage of these horrific consequences that render a victim unnaturally silent for periods of time and use them in his defense.

6. ID.; ID.; DEFENSE OF DENIAL; DENIAL IS AN INHERENTLY WEAK DEFENSE. — The bare denial proffered by appellant cannot outweigh the positive and consistent testimony of complainant. Denial, when unsubstantiated by clear and convincing evidence, as in this case is negative and self-serving evidence, which deserves no greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters. Denial is an inherently weak defense, which becomes even weaker in the face of positive identification by the victim of the appellant as the violator of her honor. The prosecution, with testimonial and medical evidence, effectively discharged its burden of proving appellant's guilt beyond reasonable doubt.

7. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES OF MINORITY AND FATHER-DAUGHTER RELATIONSHIP, PROVEN. — The concurrence of the minority of the private complainant and her relationship to appellant, as alleged in the Information, was sufficiently shown by the prosecution. The Certificate of Live Birth, marked as Exhibit "E" adequately

proved that the private complainant was 14 years old on 13 July 2002, when the last rape occurred. The prosecution also established the father-daughter relationship between appellant and private complainant. Moreover, the relationship between appellant and private complainant is admitted by the appellant. Therefore, the aforementioned qualifying circumstances justify the imposition of the death penalty, in accordance with Article 266-B of the Revised Penal Code, as amended. However, the enactment of Republic Act No. 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines" prohibited the imposition of Death Penalty. The proper penalty to be imposed on appellant in this case is provided under Section 2, paragraph (a) of said law which prescribes that the penalty of *reclusion perpetua* be imposed when the law violated makes use of the nomenclatures of penalties under the Revised Penal Code.

8. ID.; RAPE; CIVIL INDEMNITY IS MANDATORY UPON THE FINDING OF RAPE; DAMAGES THAT MAY BE AWARDED. — Civil indemnity is mandatory upon the finding of the fact of rape. If the crime of rape is committed or effectively qualified by any of the circumstances under which death penalty is authorized by law, the indemnity for the victim shall be ₱75,000.00. Moral damages may additionally be awarded in the amount of ₱75,000.00, as well as exemplary damages of ₱25,000.00.

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 Efren Maglente *y* Cervantes assails the Decision[1] of the Court of Appeals dated 27 June 2007 in CA-G.R. CR-HC

[1] Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso, concurring; *Rollo*, pp. 2-16.

No. 02181, affirming the Decision[2] dated 5 September 2005 of Branch 76 of the Regional Trial Court (RTC) of San Mateo, Rizal, in Criminal Case No. 6295. The RTC found appellant guilty beyond reasonable doubt for the rape of his fourteen-year old daughter.

On 29 July 2002, an Information[3] was filed before the RTC charging appellant with Rape under paragraph 1 of Article 266-A, in relation to number 1 of paragraph 6 of Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8369.[4] The information against him reads:

That on or about the 13th day of July 2002, in the Municipality of Rodriguez, Province of Rizal, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, being the parent/ biological father of AAA[5] (victim) exercising and taking advantage

---

[2] Penned by Presiding Judge Josephine Zarate-Fernandez; CA *rollo*, pp. 11-20.

[3] Records, p. 1.

[4] Article 266-A. Rape; *When And How Committed.* — Rape is committed:

1) By a man who have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;
b) When the offended party is deprived of reason or otherwise unconscious;
c) By means of fraudulent machination or grave abuse of authority; and
d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

Article 266-B. *Penalty*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

"The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

"l) 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;

[5] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* (G.R. No. 167693, 19 September 2006, 502 SCRA 419), wherein this Court resolved to withhold the real name of the victim survivor and to use

of his moral authority, ascendancy and influence over the said victim and by means of violence and intimidation, with lewd intent to cause or gratify his sexual desire, abuse and maltreat complainant AAA, a minor, 14 years of age, with attendant, aggravating circumstances of Treachery, Abuse of Superior Strength, Nighttime, Craft and Abuse of Confidence, did then and there willfully, unlawfully and feloniously have carnal knowledge of the said complainant against her will and without her consent which debases, degrades or demeans the intrinsic worth and dignity of said child as a human being.

On 5 September 2002, appellant, with the assistance of counsel *de oficio*, was arraigned and pleaded "Not guilty." Thereafter, pre-trial conference was held, and trial ensued accordingly.[6]

Evidence for the prosecution consisted of the testimonies of private complainant, her aunt CCC and a medico-legal officer, Police Senior Inspector Ruby Grace Sabino.[7]

Private complainant testified that the appellant, her biological father, had subjected her to sexual abuse as early as 1997, when she was still nine years old, until 13 July 2002, when she reached 14 years of age. She attested that she kept silent about her father's abuse as he was constantly threatening her not to tell anyone. She narrated that the last rape occurred on 13 July 2002.

---

fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA", "BBB", "CCC", and so on. Addresses shall appear as "XXX" as in "No. xxx Street, xxx District, City of xxx."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*; Sec. 44 of Republic Act No 9262, otherwise known as *Anti-Violence Against Women and Their Children Act of 2004*; and Sec. 40 of A.M. No. 04-10-11-SC, known as *Rule on Violence Against Women and Their Children* effective 15 November 2004.

[6] CA *rollo*, pp. 12-13.

[7] *Id*. at 102.

While she was sleeping in their house in XXX St., XXX, XXX City, the accused lay by her side and removed all her clothing. Thereafter, he placed himself on top of her body and inserted his penis into her vagina. For twenty minutes, her father raped her and, all the while, touched her private parts. As a result of her father's molestation, she became pregnant and delivered a baby boy on 1 October 2002, which she gave up for adoption. On cross-examination, private complainant testified that she was willing to have her baby undergo DNA testing but its whereabouts was unknown to her.[8]

CCC testified that private complainant is her niece and the daughter of appellant and BBB, the witness' sister. She confronted her niece about the gossip she had heard about the latter's pregnancy, after her suspicions were confirmed by private complainant's weight gain and other physical changes indicating pregnancy. Private complainant burst into tears and confided in her that she was impregnated by appellant. The witness then assisted private complainant in filing a complaint against her brother-in-law.[9]

Medico-Legal Officer Police Senior Inspector Ruby Grace Sabino, who conducted a forensic chemical interview with private complainant on 19 July 2002, testified that private complainant divulged to her that she was sexually abused by her father when she was in Grade IV and had since done so, the last of which occurred in the evening sometime in July 2002. After the witness examined private complainant, the results showed that she was pregnant. Senior Police Inspector Sabino also observed a total absence of hymenal tissue and injuries at 4:00, 5:00 and 6:00. She presented a document entitled Clock Face as Reference (Exhibit J), which states that: "In general, any irregularities such as lacerations, tears, abrasions that are found on the posterior hymen — between 3 and 9 o'clock, the bottom half of the clock — are more suspicious. Because of the biomechanics of fingering and vaginal penetration, injuries between 3 and 9 are

---

[8] TSN, 7 March 2003, pp. 2-9.

[9] TSN, 19 December 2002, pp. 2-7.

more specific for abuse than other injuries."[10] According to her, the absence of hymenal tissue and the lacerations may have been caused by the entry of a penis into the private complainant's genitals. Both the disclosures of the victim and the physical findings indicate that sexual abuse took place sometime in July 2002. After the examination, witness issued a provisional Medico-Legal Report (Exhibit K) followed by an official report, designated as Medico-Legal Report No. 0267-07-19-02 (Exhibit D.)[11]

Prosecution filed its Formal Offer of Evidence.[12] The Sworn Statements of the private complainant and her aunt CCC were marked as Exhibits "A" and "B". The private complainant's Certificate of Live Birth was also marked as Exhibit "E" to prove her minority and the father-daughter relationship between the appellant and private complainant.

On the part of the defense, only the appellant testified. The appellant admitted that private complainant is his daughter, but denied that he molested her. He claimed that before he was detained, he did not even know that private complainant was pregnant, much less who impregnated her. He maintained that he seldom stayed in their house, where he and his children resided with other members of his wife's family, since he often went out to look for a job. He also averred that his relationship with his in-laws was strained because of their opinion that he is lazy. On cross-examination, he admitted that while he did not have a close relationship with the private complainant, they had no previous quarrel.[13]

In a Decision dated 5 September 2005, the RTC decreed that the accused was guilty without reasonable doubt. The RTC gave full credence to the testimony of the private complainant. It recognized that at her early age, private complainant could easily mistake the date that her father had last raped her to be

---

[10] Records, p. 111.

[11] TSN, 17 October 2002, pp. 2-10.

[12] Records, pp. 94-96.

[13] TSN, 1 July 2004, pp. 3-7.

the date she conceived, resulting in the unwanted pregnancy and the birth of her child. Moreover, such miscalculation is not seriously incongruent to her narration that her father had been raping her since she was nine years old. The trial court further noted that private complainant's testimony was corroborated by the findings of the examining physician. On the other hand, the RTC remained unconvinced by the appellant's barefaced denial and his failure to ascribe any ill motive on the part of the private complainant in filing the rape case against him. The qualifying circumstances, *i.e.*, the minority of the private complainant and the parent-daughter relationship between the appellant and private complainant, were adequately proved. Hence, the RTC imposed the single indivisible penalty of death and ordered the appellant to indemnify the private complainant for moral damages in the amount of ₱50,000.00, indemnity *ex delicto* in the amount of ₱50,000.00, and the costs of suit.[14] According to the dispositive part of the Decision dated 5 September 2005:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused EFREN MAGLENTE *Y* CERVANTES **GUILTY BEYOND REASONABLE DOUBT** of the crime of **RAPE** as defined and penalized under Art. 266-A par. 1 in relation to Art. 266-B 6th par. No.1 of the Revised Penal Code, as amended in further relation to R.A. 8367 and sentencing him to suffer the penalty of DEATH and to indemnify the private complainant AAA in the amount of ₱50,000.00 as indemnity *ex-delicto* in addition to the amount of ₱50,000.00 as moral damages and to pay the costs.
>
> Let the records of this case be forwarded to the Court of Appeals for automatic review.
>
> Accused Efren Maglente *y* Cervantes is hereby ordered to be committed to the Bureau of Corrections, Muntinlupa City for service of sentence.[15]

The appellant filed an appeal before the Court of Appeals docketed as CA-G.R. CR-HC No. 02181.[16]

---

[14] CA *rollo*, pp. 15-20.

[15] *Id*. at 19-20.

[16] *Rollo*, pp. 2-16.

The Court of Appeals affirmed the findings of the trial court that the appellant was guilty beyond reasonable doubt. It pronounced that the private complainant's testimony and her demeanor during her testimony demonstrated the truth of her statements. Private complainant's delay in reporting the alleged abuse was attributed by the appellate court to the sense of helplessness and fear engendered by the perpetrator's close relationship to the victim. Furthermore, it ruled that the DNA test of the private complainant's child is not indispensable to the prosecution for rape, especially since the private complainant no longer knew the whereabouts of her child. However, in view of the effectivity of Republic Act No. 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines,"[17] it amended the penalty imposed by the RTC to *reclusion perpetua*. It also modified the damages awarded by the trial court by increasing the award for civil indemnity to ₱75,000.00, and moral damages to ₱75,000.00; and adding an award of exemplary damages in the amount of ₱25,000.00 due to the qualifying circumstance of minority and relationship.[18] In the Decision dated 27 June 2007, the *fallo* reads:

> WHEREFORE, the decision of the trial court in Crim. Case No. 6295 is hereby **AFFIRMED with MODIFICATION**. Efren Maglente *y* Cervantes is sentenced to ***reclusion perpetua*** with no possibility of parole. Appellant is further **ORDERED** to indemnify AAA in the amount of ₱75,000 as civil indemnity, ₱75,000 as moral damages and ₱25,000 as exemplary damages.[19]

Hence, the present petition where the appellant reiterates the sole assignment of error, to wit:

---

[17] Section 2 of Republic Act No. 9346, effective on 24 June 2006, states that:

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.

[18] CA *rollo,* pp. 108-114.

[19] *Rollo,* p. 16.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME OF RAPE.

After carefully examining the records of this case, this Court finds that this appeal must be denied.

In the crime of rape, the credibility of the private complainant's testimony is determinative of the outcome of rape cases for the reason that when an alleged victim of rape says that she was violated, she says in effect all that is necessary to show that rape has been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[20]

In the present case, private complainant categorically testified that she was raped by her own father. She recounted her horrible and traumatic ordeal in the following manner:

Q: Miss Witness, could you please tell us where you were sometime July 13, 2002, at past 12:00 midnight?
A: I was in our house, sir.

Q: What is the address of your house?
A: XXX St., XXX, XXX, sir.

Q: Tell us, what was your present condition then on July 13, 2002?
A: None, sir.

Q: What do you mean by none?
A: I was just sleeping then, sir.

Q: While you were sleeping did you continue to sleep up to the following morning of that date?
A: No, sir.

Q: What made you awakened?
A: He lay beside me, sir.

Q: You were referring to whom?
A: To my father, sir.

---

[20] *People v. Hermosa*, 452 Phil. 404, 411 (2003); *People v. Rosario*, 455 Phil. 876, 886 (2003); *People v. Umayam*, 450 Phil. 543, 560 (2003).

Q: When he lay beside you what caused you to wake up?
A: He was undressing me, sir.

Q: What were you wearing then?
A: I cannot remember anymore but it was a T-shirt and shorts, sir.

Q: And what did he remove?
A: All, sir.

Q: After removing all your clothes what did he do next, if any?
A: He went on top of me, sir.

Q: Was he clothed when he went on top of you?
A: No, sir.

Q: When he went on top of you what else did he do, if any?
A: He inserted his penis into my vagina, sir.

Q: And what did you do?
A: I got mad, sir.

Q: Thereafter what did he do after inserting his penis into your private part?
A: He returned beside my sister, sir.

Q: How long did that take place, the insertion of his penis into your vagina?
A: It took long, sir.

Q: In terms of minutes, how many minutes?
A: About twenty (20) minutes, sir.

Q: In that span of twenty (20) minutes what was he doing?
A: He inserted his penis into my vagina, sir.

Q: After inserting his penis what else did he do, if he did anything?
A: He touched my private parts, sir.

Q: How many rooms does your house have?
A: Two (2), sir.

Q: At that time how old were you, July 13, 2002?
A: Fourteen (14), sir.

Q: You said that it took twenty (20) minutes and after that where did he go to?
A: He returned beside my sister and slept again, sir.

PROS. GONZALES:

May we make it of record that the witness is crying.

Q: Is July 13, 2002 the first time that your father did this to you?
A: No, sir.

Q: When was the first time that he did it to you, if you could remember?
A: Since 1997, sir.[21]

When the offended party is a young and immature girl testifying against a parent, courts are inclined to lend credence to her version of what transpired.[22] Youth and immaturity are given full weight and credit.[23] Incestuous rape is not an ordinary crime that can be easily invented because of its heavy psychological toll.[24] It is unlikely that a young woman of tender years would be willing to concoct a story which would subject her to a lifetime of gossip and scandal among neighbors and friends and even condemn her father to death.[25]

Undergoing all of the humiliating and invasive procedures for the case — the initial police interrogation, the medical examination, the formal charge, the public trial and the cross-examination — proves to be the litmus test for truth, especially when endured by a minor who gives her consistent and unwavering testimony on the details of her ordeal.[26] Despite the serious anguish she suffered in relating her traumatic experience, private complainant gave her testimony in a categorical, straightforward, spontaneous and candid manner and was considered by the trial court to be worthy of belief. It is a matter of judicial cognizance

---

[21] TSN, 7 March 2003, pp. 3-4.

[22] *People v. Servano*, 454 Phil. 256, 271-272 (2003); *People v. Rosario*, *supra* note 20 at 886; *People v. Umayam*, *supra* note 20 at 560.

[23] *People v. Alfaro*, 458 Phil. 942, 957 (2003).

[24] *People v. Santos*, 418 Phil. 299, 308 (2001).

[25] *People v. Mascariñas*, 432 Phil. 96, 102 (2002); *People v. Tundag*, 396 Phil. 873, 882 (2000); *People v. Acala*, 366 Phil. 797, 814 (1999).

[26] *People v. Quilatan*, 395 Phil. 444, 450 (2000).

that the tears that were spontaneously shed by a rape victim during her testimony are an indication of credibility.[27]

Appellant contends that the private complainant's narration was too sweeping and bereft of details. In assessing the testimony of the private complainant, it would be unfair to apply the standards used for adults. It should be viewed as a narration of a minor who barely understands sex and sexuality.[28]

Notwithstanding the absence of any reference to violence or intimidation employed upon private complainant in the latter's testimony, this Court is convinced that the appellant is nevertheless guilty as charged. When a father commits the odious crime of rape against his own daughter, his moral ascendancy or influence over the latter substitutes for violence and intimidation. The absence of violence or offer of resistance would not affect the outcome of the case because the overpowering and overbearing moral influence of the father over his daughter takes the place of violence and offer of resistance required in rape cases committed by an accused who did not have blood relationship with the victim.[29]

On cross-examination, private complainant's testimony simply, but sufficiently, expresses how her intense fear of the accused motivated her actions:

Q: You did not make any attempt to stop that by way of telling your parent or auntie or your teachers?
A: No, sir.

Q: Why?
A: I was afraid of him, sir.

Q: You were in school, you were away from him, what made you afraid of him?
A: Because he told me not to tell it to anybody, sir.[30]

---

[27] *People v. Servano*, *supra* note 22 at 272 (2003); *People v. Quilatan*, *id*. at 451.

[28] *People v. Umayam*, *supra* note 20 at 561.

[29] *People v. Ortoa*, G.R. No. 176266, 8 August 2007, 529 SCRA 536, 550-551.

[30] TSN, 7 March 2003, p. 8.

Appellant mistakenly argues that every charge of rape from the time private complainant alleged that appellant started raping her when she was still nine years old until 13 July 2002 when she was fourteen years old is a distinct and separate crime, which needs to be proved. Such argument is misplaced since the appellant was charged in the Information only with the rape which occurred on 13 July 2002, not the previous rapes that occurred before that date. Private complainant's testimony on that particular incident was found sufficient by the trial court, and was corroborated by the findings of the medico-legal officer. Thereafter, appellant was convicted of the rape which occurred on 13 July 2002, and not of the rapes that occurred before that time.

Appellant insists on assailing the petitioner's testimony by minutely examining circumstances surrounding her pregnancy. He points out that the alleged rape on 13 July 2002 did not cause her pregnancy, since she was already six months pregnant at that time. Moreover, appellant claims that while he was willing to undergo a DNA test, private complainant had concealed the whereabouts of the child.

It is clear from the testimony of the private complainant that she was willing to have her child undergo the DNA examination, but that she no longer knew of its whereabouts, to wit:

> Q. Madam Witness, the reason why we are asking for the whereabouts of your child is for the purpose of having an examination of your child and of the accused thru a test because if it be proven that the child's and your father's blood have the same nature and character and it will yield the same result it will be for your favor, that is why we are asking the whereabouts of your child for the conduct of DNA test.
>
> A. I want my child to undergo a DNA test but I really don't know the whereabouts of my child, sir.[31]

It should also be noted that during the pre-trial on 25 September 2002, appellant had not mentioned anything about a DNA test.

---

[31] *Id*. at 6.

Soon thereafter, on 1 October 2002, the child was born. Still, the subject of the DNA test was not brought up by the appellant. It was only after six months had elapsed since the child was born and was already adopted by strangers, that the appellant began to ask private complainant about the child's whereabouts. The records fail to show that the appellant had employed any of the court processes available to him to compel private complainant to reveal the identity of the person who had arranged the adoption, and thereby trace the whereabouts of the child. After the lack of interest consistently shown by the appellant to locate the child, he cannot now be allowed to impute any reluctance to conduct the DNA test to the private complainant.

Be that as it may, even if the DNA test were conducted and it established that appellant had not fathered the private complainant's child, it would still be inconclusive to prove that appellant was not guilty of having raped private complainant on 13 July 2002. Appellant cannot obtain an acquittal based on the circumstances of private complainant's pregnancy. Impregnation is not an element of rape. Even the proof that the child was fathered by another man does not show that the appellant is not guilty. For the conviction of an accused, the pregnancy of the victim is not required to be proved, since it is sufficient that the prosecution establish beyond reasonable doubt, as it had in this case, that the accused had forced sexual relations with the victim.[32]

After examining the records, this Court finds that nowhere in the private complainant's testimony and her Sworn Statement before the police officers did she attribute her pregnancy to her last rape on 13 July 2002, the incident for which appellant is charged. Nonetheless, even assuming that she had made such statement, her pregnancy could have been caused by an earlier rape as this would be consistent with her testimony that she had been abused since she was nine years old until she was fourteen years old. Given her immaturity, she is not expected to possess the knowledge which will allow her to identify which rape had caused her pregnancy.

---

[32] *People v. Malapo*, G.R. No. 123115, 25 August 1998, 294 SCRA 579, 588.

Settled is the rule that the date of the occurrence of the rape is not an essential element of the commission of rape.[33] Inconsistencies and discrepancies in details which are irrelevant to the elements of the crime are not grounds for acquittal.[34] As long as the inaccuracies concern only minor matters, the same do not affect the credibility of witnesses. Truth-telling witnesses are not always expected to give error-free testimonies considering the lapse of time and treachery of human memory. Inaccuracies may even suggest that the witnesses are telling the truth and have not been rehearsed.[35]

In *People v. Acala*,[36] the Court held that the fact that the victim was confused when she executed her first sworn affidavit and forgot the dates of commission of the other rapes should not be taken against her since it would be unfair to judge the action of a child who had undergone traumatic experiences by the norms of behavior expected of mature individuals under either the same or normal circumstances. The effects of the fear and intimidation instilled in the minds of victims of incestuous rapes cannot be tested by any hard and fast rule, so that they must be viewed in the light of the victim's perception and judgment not only at the time of the commission of the crime, but also at the time immediately after.

Appellant claims that the reason he was falsely implicated for the rape of his daughter is simply because his in-laws disliked him. He attributes the aloofness of his in-laws to his inability to find work. There is nothing novel in the dubious defense that familial discord and influence caused the private complainant to file a case for rape against her own father.[37] The claimed ill motives of the appellant's in-laws were not even established by the testimony of impartial witnesses. That such a motive drove

---

[33] *People v. Quilatan*, *supra* note 26 at 452-453.

[34] *People v. Maglente*, 366 Phil. 221, 244 (1999).

[35] *People v. Quilatan*, *supra* note 26 at 451.

[36] *Supra* note 25 at 810-811.

[37] *People v. Ortoa*, *supra* note 29 at 551; *People v. Torres*, 418 Phil. 694, 711-712 (2001).

his in-laws to cause private complainant to accuse him falsely of rape is speculative and unsubstantiated. Where the charges against the appellant involve a heinous offense, a minor disagreement, even if true, does not amount to a sufficient justification for dragging a young girl's honor to a merciless public scrutiny that a rape trial brings in its wake.[38]

Absent any showing, or even an allegation, of any improper motive on the part of the victim to falsely testify against or implicate the accused in the commission of the crime, the logical conclusion is that no such improper motive exists, and that the testimony is worthy of full faith and credence.[39] In the present case, appellant testified that although he and the private complainant never shared a close relationship, no disagreements or quarrels had come between them.

Ultimately, the resolution of the case hinges on the credibility of the victim's testimony — the determination of which is a matter best undertaken by the trial judge, who has the advantage of having observed, firsthand, the demeanor of the witnesses on the stand, and, therefore, is in a better position to form an accurate impression and conclusion. Absent any showing that certain facts of value have clearly been overlooked, which if considered could affect the result of the case, or that the trial court's findings are clearly arbitrary, the conclusions reached by the court of origin must be respected and the judgment rendered affirmed.[40]

The trial court assessed the testimony of private complainant thus:

> The victim's brief but candid and straightforward narration of how she was raped by her father bears the earmarks of credibility. Her testimony though simple, remained consistent and firm in her denunciation of the accused, her very own father, who habitually raped her in a span of many years. Her poor recollection of some

---

[38] *People v. Hermosa*, *supra* note 20 at 411.

[39] *People v. Umayam*, *supra* note 20 at 566.

[40] *People v. Tundag*, *supra* note 25 at 882-883; *People v. Maglente*, *supra* note 34 at 235-236; *People v. Ortoa*, *supra* note 29 at 546; *People v. Torres*, *supra* note 37 at 706.

minor particulars may even be due to her conscious attempt to erase all memories of her dreadful experiences in the hands of her father. It is possible that she was already resigned to just suffer in silence. It is only due to an unhidden truth (pregnancy) that she was forced to reveal the history of sexual abuse committed on her by her father.[41]

There is no compelling reason to doubt the veracity of and deviate from the findings of the trial court. The findings of a trial court, when affirmed by the Court of Appeals are accorded with great weight.[42] Thus, the same should be deemed conclusive and binding on this Court.

Furthermore, private complainant's testimony was corroborated by Senior Police Inspector Sabino whose medico-legal examination confirmed that there were lacerations in her posterior hymen at 4:00, 5:00, and 6:00, which the repeated act of forced sex causes.

Appellant's argument that the delay in reporting rape incidents runs contrary to human experience is erroneous. In similar cases,[43] this Court has consistently held that delay in reporting an incident of rape is not necessarily an indication that the charge is fabricated. Delay could be attributed to the private complainant's tender age and the appellant's threats. Indeed, a rape victim's actions are oftentimes influenced by fear, rather than reason. In incestuous rape, this fear is magnified because the victim usually lives under the same roof as the perpetrator or is at any rate subject to his dominance because of their blood relationship.[44] Furthermore, it is entirely possible for a rape victim to go through what psychologists describe as a "state of denial" which is a way of coping with the overwhelming emotional stress of an extremely shocking event. While in that state of denial, the

---

[41] CA *rollo*, p. 16.

[42] *Aclon v. Court of Appeals,* 436 Phil. 219, 230 (2002); *American President Lines, Ltd. v. Court of Appeals*, 391 Phil. 473, 478 (2000); *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1167-1168 (1997).

[43] *People v. Ortoa*, *supra* note 29 at 553-554; *People v. Santos*, *supra* note 24 at 307; *People v. Torres*, *supra* note 37 at 712; *People v. Ocampo*, G.R. Nos. 90247, 13 February 1992, 206 SCRA 223, 232.

[44] *People v. Alfaro*, *supra* note 23 at 961.

victim refuses either to accept reality or to allow the occurrence to "sink in." The offender should not be allowed to take advantage of these horrific consequences that render a victim unnaturally silent for periods of time and use them in his defense.[45]

In her Sworn Statement dated 20 July 2002, given before police officers, private complainant narrates that:

> T- *Bakit ngayon mo lamang naisipang magreklamo*?
>
> S- *Sa dahilang ako po ay natakot sa kanya at isa pa ay sinasabihan po niya ako na wag daw po akong magsusumbong dahil mabibitay daw po siya at magiging kaawa-awa daw po kaming magkapatid pag siya ay nawala, marami pa daw po siyang pangarap sa akin at papatayin daw niya si nanay*.[46]

The bare denial proffered by appellant cannot outweigh the positive and consistent testimony of complainant. Denial, when unsubstantiated by clear and convincing evidence, as in this case is negative and self-serving evidence, which deserves no greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters.[47] Denial is an inherently weak defense, which becomes even weaker in the face of positive identification by the victim of the appellant as the violator of her honor.[48] The prosecution, with testimonial and medical evidence, effectively discharged its burden of proving appellant's guilt beyond reasonable doubt.

The concurrence of the minority of the private complainant and her relationship to appellant, as alleged in the Information, was sufficiently shown by the prosecution. The Certificate of Live Birth, marked as Exhibit "E" adequately proved that the private complainant was 14 years old on 13 July 2002, when the last rape occurred. The prosecution also established the father-daughter relationship between appellant and private

---

[45] *People v. Servano*, *supra* note 22 at 282.

[46] CA *rollo*, p. 97.

[47] *People v. Quilatan*, *supra* note 26 at 450-451.

[48] *People v. Tundag*, *supra* note 25 at 882-883; *People v. Maglente*, *supra* note 34 at 253; *People v. Acala*, *supra* note 25 at 814-815.

complainant. Moreover, the relationship between appellant and private complainant is admitted by the appellant. Therefore, the aforementioned qualifying circumstances justify the imposition of the death penalty, in accordance with Article 266-B of the Revised Penal Code, as amended.

However, the enactment of Republic Act No. 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines" prohibited the imposition of Death Penalty. The proper penalty to be imposed on appellant in this case is provided under Section 2, paragraph (a) of said law which prescribes that the penalty of *reclusion perpetua* be imposed when the law violated makes use of the nomenclatures of penalties under the Revised Penal Code.

Civil indemnity is mandatory upon the finding of the fact of rape. If the crime of rape is committed or effectively qualified by any of the circumstances under which death penalty is authorized by law, the indemnity for the victim shall be ₱75,000.00.[49] Moral damages may additionally be awarded in the amount of ₱75,000.00,[50] as well as exemplary damages of ₱25,000.00.[51]

WHEREFORE, the instant appeal is *DENIED*. The Decision of the Court of Appeals dated 27 June 2007 in CA-GR. CR-H.C. No. 02181 is *AFFIRMED in toto*. Appellant Efren Maglente *y* Cervantes is found *GUILTY BEYOND REASONABLE DOUBT* of qualified rape. He is sentenced to suffer the penalty of *reclusion perpetua* and he is ordered to pay AAA the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages. No costs.

SO ORDERED.

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

---

[49] *People v. Quilatan*, *supra* note 26 at 454; *People v. Ortoa*, *supra* note 29 at 555-556; *People v. Escano*, 427 Phil. 162, 198 (2002).

[50] *People v. Ortoa*, *supra* note 29 at 556; *People v. Soriano*, 436 Phil. 719, 756 (2002).

[51] *People v. Ortoa*, *id*.; *People v. Montemayor*, 444 Phil. 169, 190 (2003).

EN BANC

[G.R. No. 179817. June 27, 2008]

ANTONIO F. TRILLANES IV, *petitioner, vs.* **HON. OSCAR PIMENTEL, SR., IN HIS CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT-BRANCH 148, MAKATI CITY; GEN. HERMOGENES ESPERON, VICE ADM. ROGELIO I. CALUNSAG, M/GEN. BENJAMIN DOLORFINO, and LT. COL. LUCIARDO OBEÑA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; RIGHT TO BAIL; CONSTITUTIONAL PROVISION ON RIGHT TO BAIL EQUALLY APPLIES TO RAPE AND *COUP D' ETAT* CASES. — The distinctions cited by petitioner were not elemental in the pronouncement in *Jalosjos* that election to Congress is not a reasonable classification in criminal law enforcement as the functions and duties of the office are not substantial distinctions which lift one from the class of prisoners interrupted in their freedom and restricted in liberty of movement. It cannot be gainsaid that a person charged with a crime is taken into custody for purposes of the administration of justice. No less than the Constitution provides: All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required. The Rules also state that no person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal action. That the cited provisions apply equally to rape and *coup d'etat* cases, both being punishable by *reclusion perpetua,* is beyond cavil. Within the class of offenses covered by the stated range of imposable

penalties, there is clearly no distinction as to the political complexion of or moral turpitude involved in the crime charged.

2. ID.; ID.; ID.; ID.; ID.; WHEN EVIDENCE OF GUILT IS STRONG, DENIAL OF THE RIGHT TO BAIL IS REGARDLESS OF THE STAGE OF THE CRIMINAL ACTION; CASE AT BAR.— In the present case, it is uncontroverted that petitioner's application for bail and for release on recognizance was denied. The determination that the evidence of guilt is strong, whether ascertained in a hearing of an application for bail or imported from a trial court's judgment of conviction, justifies the detention of an accused as a valid curtailment of his right to provisional liberty. This accentuates the proviso that the denial of the right to bail in such cases is "regardless of the stage of the criminal action." Such justification for confinement with its underlying rationale of public self-defense applies equally to detention prisoners like petitioner or convicted prisoners-appellants like Jalosjos.

3. ID.; ID.; ID.; ID.; ID.; ID.; REASON FOR THE RULE; RELEVANT RULINGS, CITED. — As the Court observed in *Alejano v. Cabuay*, it is impractical to draw a line between convicted prisoners and pre-trial detainees for the purpose of maintaining jail security; and while pre-trial detainees do not forfeit their constitutional rights upon confinement, the fact of their detention makes their rights more limited than those of the public. The Court was more emphatic in *People v. Hon. Maceda*: As a matter of law, when a person indicted for an offense is arrested, he is deemed placed under the custody of the law. He is placed in actual restraint of liberty in jail so that he may be bound to answer for the commission of the offense. He must be detained in jail during the pendency of the case against him, unless he is authorized by the court to be released on bail or on recognizance. Let it be stressed that all prisoners whether under preventive detention or serving final sentence can not practice their profession nor engage in any business or occupation, or hold office, elective or appointive, while in detention. This is a necessary consequence of arrest and detention. These inherent limitations, however, must be taken into account only to the extent that confinement restrains the power of locomotion or actual physical movement. It bears noting that in *Jalosjos*, which was decided *en banc* one month

after *Maceda*, the Court recognized that the accused could somehow accomplish legislative results.

4. ID.; ID.; ID.; ID.; ID.; THE CASE OF *MONTANO V. OCAMPO* DOES NOT APPLY. — Petitioner cannot find solace in *Montano v. Ocampo* to buttress his plea for leeway because unlike petitioner, the therein petitioner, then Senator Justiniano Montano, who was charged with multiple murder and multiple frustrated murder, was able to rebut the strong evidence for the prosecution. *Notatu dignum* is this Court's pronouncement therein that "if denial of bail is authorized in capital cases, it is only on the theory that the proof being strong, the defendant would flee, if he has the opportunity, rather than face the verdict of the jury." At the time Montano was indicted, when only capital offenses were non-bailable where evidence of guilt is strong, the Court noted the obvious reason that "one who faces a probable death sentence has a particularly strong temptation to flee." Petitioner's petition for bail having earlier been denied, he cannot rely on *Montano* to reiterate his requests which are akin to bailing him out.

5. ID.; ID.; ID.; ID.; PRESUMPTION OF INNOCENCE DOES NOT CARRY WITH IT THE FULL ENJOYMENT OF CIVIL AND POLITICAL RIGHTS. — The trial court thus correctly concluded that the presumption of innocence does not carry with it the full enjoyment of civil and political rights. Petitioner is similarly situated with Jalosjos with respect to the application of the presumption of innocence during the period material to the resolution of their respective motions. The Court in *Jalosjos* did not mention that the presumption of innocence no longer operates in favor of the accused pending the review on appeal of the judgment of conviction. The rule stands that until a promulgation of final conviction is made, the constitutional mandate of presumption of innocence prevails.

6. ID.; ID.; ID.; ID.; ELECTION TO PUBLIC OFFICE DOES NOT OBLITERATE A CRIMINAL CHARGE. — Petitioner's contention hinges on the doctrine in administrative law that "a public official can not be removed for **administrative** misconduct committed during a **prior** term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor." The assertion is unavailing. The case against petitioner is not administrative in nature. And there is no "prior

term" to speak of. In a plethora of cases, the Court categorically held that the doctrine of condonation does not apply to criminal cases. Election, or more precisely, re-election to office, does not obliterate a criminal charge. Petitioner's electoral victory only signifies pertinently that when the voters elected him to the Senate, "they did so with full awareness of the limitations on his freedom of action [and] x x x with the knowledge that he could achieve only such legislative results which he could accomplish within the confines of prison."

7. ID.; ID.; ID.; ID.; DISALLOWING AN ACCUSED WHO WAS ELECTED TO THE SENATE TO PERFORM CERTAIN FUNCTIONS DOES NOT AMOUNT TO DISENFRANCHISEMENT OF VOTERS; REASON THEREFOR AS HELD IN THE CASE OF *JALOSLOS,* REITERATED. — In once more debunking the disenfranchisement argument, it is opportune to wipe out the lingering misimpression that the call of duty conferred by the voice of the people is louder than the litany of lawful restraints articulated in the Constitution and echoed by jurisprudence. The apparent discord may be harmonized by the overarching tenet that the mandate of the people yields to the Constitution which the people themselves ordained to govern all under the rule of law. The performance of legitimate and even essential duties by public officers has never been an excuse to free a person validly in prison. The duties imposed by the "mandate of the people" are multifarious. The accused-appellant asserts that the duty to legislate ranks highest in the hierarchy of government. The accused-appellant is only one of 250 members of the House of Representatives, not to mention the 24 members of the Senate, charged with the duties of legislation. Congress continues to function well in the physical absence of one or a few of its members. x x x Never has the call of a particular duty lifted a prisoner into a different classification from those others who are validly restrained by law.

8. ID.; ID.; ID.; DENIAL OF ACCUSED'S PLEA FOR LIBERAL TREATMENT ACCORDED TO OTHER DETENTION PRISONERS DOES NOT CONSTITUTE VIOLATION OF EQUAL PROTECTION CLAUSE; REASON. — *Lastly*, petitioner pleads for the same liberal treatment accorded certain detention prisoners who have also been charged with non-bailable offenses, like former President Joseph Estrada and

former Governor Nur Misuari who were allowed to attend "social functions." Finding no rhyme and reason in the denial of the more serious request to perform the duties of a Senator, petitioner harps on an alleged violation of the equal protection clause. In arguing against maintaining double standards in the treatment of detention prisoners, petitioner expressly admits that he intentionally did not seek preferential treatment in the form of being placed under Senate custody or house arrest, yet he at the same time, gripes about the granting of house arrest to others. Emergency or compelling temporary leaves from imprisonment are allowed to all prisoners, at the discretion of the authorities or upon court orders. That this discretion was gravely abused, petitioner failed to establish. In fact, the trial court previously allowed petitioner to register as a voter in December 2006, file his certificate of candidacy in February 2007, cast his vote on May 14, 2007, be proclaimed as senator-elect, and take his oath of office on June 29, 2007. In a seeming attempt to bind or twist the hands of the trial court lest it be accused of taking a complete turn-around, petitioner largely banks on these prior grants to him and insists on unending concessions and blanket authorizations. Petitioner's position fails. On the generality and permanence of his requests alone, petitioner's case fails to compare with the species of allowable leaves. *Jaloslos* succinctly expounds: x x x Allowing accused-appellant to attend congressional sessions and committee meetings for five (5) days or more in a week will virtually make him a free man with all the privileges appurtenant to his position. Such an aberrant situation not only elevates accused-appellant's status to that of a special class, it also would be a mockery of the purposes of the correction system.

APPEARANCES OF COUNSEL

The Law Firm of Chan Robles and Associates for petitioner.

D E C I S I O N

CARPIO MORALES, *J.*:

At the wee hours of July 27, 2003, a group of more than 300 heavily armed soldiers led by junior officers of the Armed Forces

of the Philippines (AFP) stormed into the Oakwood Premier Apartments in Makati City and publicly demanded the resignation of the President and key national officials.

Later in the day, President Gloria Macapagal Arroyo issued Proclamation No. 427 and General Order No. 4 declaring a state of rebellion and calling out the Armed Forces to suppress the rebellion.[1] A series of negotiations quelled the teeming tension and eventually resolved the impasse with the surrender of the militant soldiers that evening.

In the aftermath of this eventful episode dubbed as the "Oakwood Incident," petitioner Antonio F. Trillanes IV was charged, along with his comrades, with *coup d'etat* defined under Article 134-A of the Revised Penal Code before the Regional Trial Court (RTC) of Makati. The case was docketed as Criminal Case No. 03-2784, "*People v. Capt. Milo D. Maestrecampo, et al.*"

Close to four years later, petitioner, who has remained in detention,[2] threw his hat in the political arena and won a seat in the Senate with a six-year term commencing at noon on June 30, 2007.[3]

Before the commencement of his term or on June 22, 2007, petitioner filed with the RTC, Makati City, Branch 148, an "Omnibus Motion for Leave of Court to be Allowed to Attend Senate Sessions and Related Requests"[4] (Omnibus Motion). Among his requests were:

---

[1] The validity of both issuances was decided by the Court in *SANLAKAS v. Executive Secretary Reyes*, 466 Phil. 482 (2004), notwithstanding the petitions' mootness occasioned by Proclamation No. 435 (August 1, 2003) that lifted the declaration of the state of rebellion. It ruled that the declaration of a state of rebellion is an utter superfluity devoid of any legal significance.

[2] Petitioner had been detained at the Marine Brig, Marine Barracks Manila, Fort Bonifacio, Taguig City since June 13, 2006. Prior thereto, he was detained at the ISAFP Detention Cell; *rollo*, pp. 8, 278.

[3] Garnering 11,189,671 votes, petitioner was proclaimed the 11th Senator-Elect in the May 2007 Elections by Resolution No. NBC 07-28 of June 15, 2007; *rollo*, pp. 8, 33, 58-59; CONSTITUTION, Art. VI, Sec. 4.

[4] *Rollo*, pp. 61-65.

(a) To be allowed to go to the Senate to attend all official functions of the Senate (whether at the Senate or elsewhere) particularly when the Senate is in session, and to attend the regular and plenary sessions of the Senate, committee hearings, committee meetings, consultations, investigations and hearings in aid of legislation, caucuses, staff meetings, *etc*., which are normally held at the Senate of the Philippines located at the GSIS Financial Center, Pasay City (usually from Mondays to Thursdays from 8:00 a.m. to 7:00 p.m.);

(b) To be allowed to set up a working area at his place of detention at the Marine Brig, Marine Barracks Manila, Fort Bonifacio, Taguig City, with a personal desktop computer and the appropriate communications equipment (*i.e.*, a telephone line and internet access) in order that he may be able to work there when there are no sessions, meetings or hearings at the Senate or when the Senate is not in session. The costs of setting up the said working area and the related equipment and utility costs can be charged against the budget/ allocation of the Office of the accused from the Senate;

(c) To be allowed to receive members of his staff at the said working area at his place of detention at the Marine Brig, Marine Barracks Manila, Fort Bonifacio, Taguig City, at reasonable times of the day particularly during working days for purposes of meetings, briefings, consultations and/or coordination, so that the latter may be able to assists (sic) him in the performance and discharge of his duties as a Senator of the Republic;

(d) To be allowed to give interviews and to air his comments, reactions and/or opinions to the press or the media regarding the important issues affecting the country and the public while at the Senate or elsewhere in the performance of his duties as Senator to help shape public policy and in the light of the important role of the Senate in maintaining the system of checks and balance between the three (3) co-equal branches of Government;

(e) With prior notice to the Honorable Court and to the accused and his custodians, to be allowed to receive, on Tuesdays and Fridays, reporters and other members of the media who may wish to interview him and/or to get his comments, reactions and/or opinion at his place of confinement at the

Marine Brig, Marine Barracks Manila, Fort Bonifacio, Taguig City, particularly when there are no sessions, meetings or hearings at the Senate or when the Senate is not in session; and

(f) To be allowed to attend the organizational meeting and election of officers of the Senate and related activities scheduled in the morning (9:00 or 10:00 a.m.) of 23 July 2007 at the Senate of the Philippines located at the GSIS Financial Center, Pasay City.[5]

By Order of July 25, 2007,[6] the trial court denied all the requests in the Omnibus Motion. Petitioner moved for reconsideration in which he waived his requests in paragraphs (b), (c) and (f) to thus trim them down to three.[7] The trial court just the same denied the motion by Order of September 18, 2007.[8]

Hence, the present petition for *certiorari* to set aside the two Orders of the trial court, and for *prohibition* and *mandamus* to (i) enjoin respondents from banning the Senate staff, resource persons and guests from meeting with him or transacting business with him in his capacity as Senator; and (ii) direct respondents to allow him access to the Senate staff, resource persons and guests and permit him to attend all sessions and official functions of the Senate. Petitioner preliminarily prayed for the maintenance

[5] *Id*. at 62-64. For items (d) and (e), petitioner further manifested that he is willing to abide by the restrictions previously imposed by the trial court when it previously granted him access to media, to wit: (a) that he will not make any comments relating to the merits of the instant case or otherwise make statements tending to prejudge or affect the outcome of the case (*i.e.*, *sub judice* statements); and (b) that he will not make any libelous statements or seditious remarks against the Government.

[6] *Id*. at 89-99.

[7] *Id*. at 114-115. Petitioner reiterated only his requests in paragraphs (a), (d), (e) with the additional concession that "the Senate Sgt-at-Arms or his duly authorized representative (with adequate Security) be authorized to pick up and transport herein accused from his place of detention at the Marine Brig, Marine Barracks Manila, Fort Bonifacio, Taguig City, to the Senate and back every time he needs to attend the official functions of the Senate when the Senate is in regular session[.]"

[8] *Id*. at 137-147.

of the *status quo ante* of having been able hitherto to convene his staff, resource persons and guests[9] at the Marine Brig.

Impleaded as co-respondents of Judge Oscar Pimentel, Sr. are AFP Chief of Staff, Gen. Hermogenes Esperon (Esperon); Philippine Navy's Flag Officer-in-Command, Vice Admiral Rogelio Calunsag; Philippine Marines' Commandant, Major Gen. Benjamin Dolorfino; and Marine Barracks Manila Commanding Officer, Lt. Col. Luciardo Obeña (Obeña).

Petitioner later manifested, in his Reply of February 26, 2008, that he has, since November 30, 2007, been in the custody of the Philippine National Police (PNP) Custodial Center following the foiled take-over of the Manila Peninsula Hotel[10] the day before or on November 29, 2007.

Such change in circumstances thus dictates the discontinuation of the action as against the above-named military officers-respondents. The issues raised in relation to them had ceased to present a justiciable controversy, so that a determination thereof would be without practical value and use. Meanwhile, against those not made parties to the case, petitioner cannot ask for reliefs from this Court.[11] Petitioner did not, by way of substitution, implead the police officers currently exercising custodial responsibility over him; and he did not satisfactorily show that they have adopted or continued the assailed actions of the former custodians.[12]

---

[9] *Id*. at. 14-15. Petitioner alleges that several government officials and private individuals met with him at the Marine Brig from July 2, 2007 to September 26, 2007. The initial organizational meeting of the Senate Committee on the Civil Service and Government Reorganization, of which he is the Chairperson, was held inside the Marine Brig on September 20, 2007. On September 27, 2007, however, petitioner's staff, resource persons and guests were refused entry, causing the cancellation of the meeting.

[10] *Id*. at 297.

[11] Cf. *Allied Banking Corporation v. Court of Appeals*, G.R. No. 56279, February 9, 1993, 218 SCRA 578; *Matuguina Integrated Wood Products, Inc. v. CA*, 331 Phil. 795 (1996) following the legal axiom that no person shall be affected by proceedings to which he is a stranger.

[12] *Vide* RULES OF COURT, Rule 3, Sec. 17 which also accords the party or officer to be affected a reasonable notice and an opportunity to be heard;

Petitioner reiterates the following grounds which mirror those previously raised in his Motion for Reconsideration filed with the trial court:

I.

THE JURISPRUDENCE CITED BY THE HONORABLE COURT *A QUO* IS CLEARLY INAPPLICABLE TO THE INSTANT CASE BECAUSE OF THE FOLLOWING REASONS:

A.

UNLIKE IN THIS CASE, THE ACCUSED IN THE JALOSJOS CASE WAS ALREADY CONVICTED AT THE TIME HE FILED HIS MOTION. IN THE INSTANT CASE, ACCUSED/ PETITIONER HAS NOT BEEN CONVICTED AND, THEREFORE, STILL ENJOYS THE PRESUMPTION OF INNOCENCE;

B.

THE ACCUSED IN THE JALOJOS (SIC) CASE WAS CHARGED WITH TWO (2) COUNTS OF STATUTORY RAPE AND SIX (6) COUNTS OF ACTS OF LASCIVIOUSNESS, CRIMES INVOLVING MORAL TURPITUDE. HEREIN ACCUSED/PETITIONER IS CHARGED WITH THE OFFENSE OF "*COUP D'ETAT,*" A CHARGE WHICH IS COMMONLY REGARDED AS A POLITICAL OFFENSE;

C.

THE ACCUSED IN THE JALOSJOS CASE ATTEMPTED TO FLEE PRIOR TO BEING ARRESTED. THE ACCUSED/ PETITIONER VOLUNTARILY SURRENDERED TO THE AUTHORITIES AND AGREED TO TAKE RESPONSIBILITY FOR HIS ACTS AT OAKWOOD;

II.

GEN. ESPERON DID NOT OVERRULE THE RECOMMENDATION OF THE MARINE BRIG'S COMMANDING OFFICER TO ALLOW PETITIONER TO ATTEND THE SENATE SESSIONS;

Heirs of Mayor Nemencio Galvez v. CA, 325 Phil. 1028 (1996); *Rodriguez v. Jardin*, G.R. No. 141834, July 30, 2007, 528 SCRA 516.

III.

ACCUSED/PETITIONER SUBMITS THAT THE FACT THAT THE PEOPLE, IN THEIR SOVEREIGN CAPACITY, ELECTED HIM TO THE POSITION OF SENATOR OF THE REPUBLIC PROVIDES THE PROPER LEGAL JUSTIFICATION TO ALLOW HIM TO WORK AND SERVE HIS MANDATE AS A SENATOR;

- AND -

IV.

MOREOVER, THERE ARE ENOUGH PRECEDENTS TO ALLOW LIBERAL TREATMENT OF DETENTION PRISONERS WHO ARE HELD WITHOUT BAIL AS IN THE CASE OF FORMER PRESIDENT JOSEPH "ERAP" ESTRADA AND FORMER ARMM GOV. NUR MISUARI.[13]

The petition is bereft of merit.

In attempting to strike a distinction between his case and that of Jalosjos, petitioner chiefly points out that former Rep. Romeo Jalosjos (Jalosjos) was already convicted, albeit his conviction was pending appeal, when he filed a motion similar to petitioner's Omnibus Motion, whereas he (petitioner) is a mere detention prisoner. He asserts that he continues to enjoy civil and political rights since the presumption of innocence is still in his favor.

Further, petitioner illustrates that Jalosjos was charged with crimes involving moral turpitude, *i.e.*, two counts of statutory rape and six counts of acts of lasciviousness, whereas he is indicted for *coup d'etat* which is regarded as a "political offense."

Furthermore, petitioner justifies in his favor the presence of noble causes in expressing legitimate grievances against the rampant and institutionalized practice of graft and corruption in the AFP.

In sum, petitioner's *first* ground posits that there is a world of difference between his case and that of Jalosjos respecting the type of offense involved, the stage of filing of the motion,

---

[13] *Rollo*, pp. 22-24.

and other circumstances which demonstrate the inapplicability of *Jalosjos*.[14]

A plain reading of *Jalosjos* suggests otherwise, however.

The distinctions cited by petitioner were not elemental in the pronouncement in *Jalosjos* that election to Congress is not a reasonable classification in criminal law enforcement as the functions and duties of the office are not substantial distinctions which lift one from the class of prisoners interrupted in their freedom and restricted in liberty of movement.[15]

It cannot be gainsaid that a person charged with a crime is taken into custody for purposes of the administration of justice. No less than the Constitution provides:

> All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required.[16] (Underscoring supplied)

The Rules also state that no person charged with a capital offense,[17] or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal action.[18]

That the cited provisions apply equally to rape and *coup d'etat* cases, both being punishable by *reclusion perpetua,*[19] is beyond cavil. Within the class of offenses covered by the

---

[14] 381 Phil. 690 (2000).

[15] *Vide People v. Jalosjos*, *supra* at 707.

[16] Art. III, Sec. 13.

[17] Defined in the RULES OF COURT, Rule 114, Sec. 6; *vide* REPUBLIC ACT NO. 7659 (1993); but cf. Republic Act No. 9346 (2006).

[18] RULES OF COURT, Rule 114, Sec. 7.

[19] *Vide* REVISED PENAL CODE, Arts. 266-B & 135.

stated range of imposable penalties, there is clearly no distinction as to the political complexion of or moral turpitude involved in the crime charged.

In the present case, it is uncontroverted that petitioner's application for bail and for release on recognizance was denied.[20] The determination that the evidence of guilt is strong, whether ascertained in a hearing of an application for bail[21] or imported from a trial court's judgment of conviction,[22] justifies the detention of an accused as a valid curtailment of his right to provisional liberty. This accentuates the proviso that the denial of the right to bail in such cases is "regardless of the stage of the criminal action." Such justification for confinement with its underlying rationale of public self-defense[23] applies equally to detention prisoners like petitioner or convicted prisoners-appellants like Jalosjos.

As the Court observed in *Alejano v. Cabuay*,[24] it is impractical to draw a line between convicted prisoners and pre-trial detainees for the purpose of maintaining jail security; and while pre-trial detainees do not forfeit their constitutional rights upon confinement, the fact of their detention makes their rights more limited than those of the public.

The Court was more emphatic in *People v. Hon. Maceda*:[25]

As a matter of law, when a person indicted for an offense is arrested, he is deemed placed under the custody of the law. He is placed in

[20] *Rollo*, pp. 86, 257 citing the RTC Orders of July 24, 2004 and June 13, 2006, respectively.

[21] RULES OF COURT, Rule 114, Sec. 8; *vide Estrada v. Sandiganbayan*, 427 Phil. 820, 864 (2002); *People v. Manes*, 362 Phil. 569, 576 (1999).

[22] SC ADMINISTRATIVE CIRCULAR No. 2-92 (January 20, 1992); *People v. Divina*, G.R. Nos. 93808-09, April 7, 1993, 221 SCRA 209, 223; *People v. Fortes*, G.R. No. 90643, June 25, 1993, 223 SCRA 619, 625-626; *Padilla v. CA*, 328 Phil. 1266, 1269-1270 (1996); *People v. Gomez*, 381 Phil. 870 (2000).

[23] *People v. Jalosjos*, *supra* at 703, which states the rationale that society must protect itself.

[24] G.R. No. 160792, August 25, 2005, 468 SCRA 188, 212.

[25] 380 Phil. 1 (2000).

actual restraint of liberty in jail so that he may be bound to answer for the commission of the offense. He must be detained in jail during the pendency of the case against him, unless he is authorized by the court to be released on bail or on recognizance. Let it be stressed that all prisoners whether under preventive detention or serving final sentence can not practice their profession nor engage in any business or occupation, or hold office, elective or appointive, while in detention. This is a necessary consequence of arrest and detention.[26] (Underscoring supplied)

These inherent limitations, however, must be taken into account only to the extent that confinement restrains the power of locomotion or actual physical movement. It bears noting that in *Jalosjos*, which was decided *en banc* one month after *Maceda*, the Court recognized that the accused could somehow accomplish legislative results.[27]

The trial court thus correctly concluded that the presumption of innocence does not carry with it the full enjoyment of civil and political rights.

Petitioner is similarly situated with Jalosjos with respect to the application of the presumption of innocence during the period material to the resolution of their respective motions. The Court in *Jalosjos* did not mention that the presumption of innocence no longer operates in favor of the accused pending the review on appeal of the judgment of conviction. The rule stands that until a promulgation of final conviction is made, the constitutional mandate of presumption of innocence prevails.[28]

In addition to the inherent restraints, the Court notes that petitioner neither denied nor disputed his agreeing to a consensus with the prosecution that media access to him should cease after his proclamation by the Commission on Elections.[29]

---

[26] *People v. Hon. Maceda*, 380 Phil. 1, 5 (2000).

[27] *People v. Jalosjos*, *supra* at 706, even while remarking that the accused should not even have been allowed by the prison authorities to perform certain acts in discharge of his mandate.

[28] *Mangubat v. Sandiganbayan*, 227 Phil. 642 (1986).

[29] *Rollo*, pp. 68, 91.

Petitioner goes on to allege that unlike Jalosjos who attempted to evade trial, he is not a flight risk since he voluntarily surrendered to the proper authorities and such can be proven by the numerous times he was allowed to travel outside his place of detention.

Subsequent events reveal the contrary, however. The assailed Orders augured well when on November 29, 2007 petitioner went past security detail for some reason and proceeded from the courtroom to a posh hotel to issue certain statements. The account, dubbed this time as the "Manila Pen Incident," [30] proves that petitioner's argument bites the dust. The risk that he would escape ceased to be neither remote nor nil as, in fact, the cause for foreboding became real.

Moreover, circumstances indicating probability of flight find relevance as a factor in ascertaining the reasonable amount of bail and in canceling a discretionary grant of bail.[31] In cases involving non-bailable offenses, what is controlling is the determination of whether the evidence of guilt is strong. Once it is established that it is so, bail shall be denied as it is neither a matter of right nor of discretion.[32]

Petitioner cannot find solace in *Montano v. Ocampo*[33] to buttress his plea for leeway because unlike petitioner, the therein petitioner, then Senator Justiniano Montano, who was charged with multiple murder and multiple frustrated murder,[34] was able

---

[30] *Supra* note 10.

[31] *Vide* Rules of Court, Rule 114, Secs. 5, 8.

[32] *Obosa v. Court of Appeals*, 334 Phil. 253, 271 (1997). In exceptional cases, the court may consider serious illness or an ailment of such gravity that his continued confinement will endanger his life or permanently impair his health. [*De la Rama v. People's Court*, 77 Phil. 461 (1946) cited in *Borinaga v. Tamin*, A.M. No. RTJ-93-936, September 10, 1993, 226 SCRA 206, 213; *vide People v. Fitzgerald*, G.R. No. 149723, October 27, 2006, 505 SCRA 573, 585-586].

[33] No. L-6352, January 29, 1953, 49 O.G. No. 5 (May 1953), 1855.

[34] Notably, at that time, "*reclusion temporal* in its maximum period to death" was the imposable penalty for murder under Article 248 of the Revised Penal Code prior to REPUBLIC ACT NO. 7659 (1993) which, *inter alia*, increased the penalty.

to rebut the strong evidence for the prosecution. *Notatu dignum* is this Court's pronouncement therein that "if denial of bail is authorized in capital cases, it is only on the theory that the proof being strong, the defendant would flee, if he has the opportunity, rather than face the verdict of the jury."[35] At the time Montano was indicted, when only capital offenses were non-bailable where evidence of guilt is strong,[36] the Court noted the obvious reason that "one who faces a probable death sentence has a particularly strong temptation to flee."[37] Petitioner's petition for bail having earlier been denied, he cannot rely on *Montano* to reiterate his requests which are akin to bailing him out.

Second, petitioner posits that, contrary to the trial court's findings, Esperon did not overrule Obeña's recommendation to allow him to attend Senate sessions. Petitioner cites the Comment[38] of Obeña that he interposed no objection to such request but recommended that he be transported by the Senate Sergeant-at-Arms with adequate Senate security. And petitioner faults the trial court for deeming that Esperon, despite professing non-obstruction to the performance of petitioner's duties, flatly rejected all his requests, when what Esperon only disallowed was the setting up of a political office inside a military installation owing to AFP's apolitical nature.[39]

---

[35] *Supra* note 33.

[36] *Vide* RULES ON CRIMINAL PROCEDURE (1940), Rule 110, Sec. 6; RULES ON CRIMINAL PROCEDURE (1964), Rule 114, Sec. 6.

[37] *Bravo, Jr. v. Borja*, No. 65228, February 18, 1985, 134 SCRA 466, 472; *vide Obosa v. Court of Appeals,* supra at 268-269 citing *De la Camara v. Enage*, 41 SCRA 1, 6-7 (1971). It must be understood, however, that the standard of strong evidence of guilt is markedly higher than the standard of probable cause sufficient to initiate criminal cases. (*Vide Cabrera v. Marcelo*, G.R. Nos. 157419-20, December 13, 2004, 446 SCRA 207, 217).

[38] *Rollo*, pp. 71-74. Obeña rejected, however, his request to set up a working area at his place of detention, citing space and security reasons, but stated that other areas within the Marine Barracks Manila can be considered as an immediate and temporary working area.

[39] *Id*. at 31-32.

The effective management of the detention facility has been recognized as a valid objective that may justify the imposition of conditions and restrictions of pre-trial detention.[40] The officer with custodial responsibility over a detainee may undertake such reasonable measures as may be necessary to secure the safety and prevent the escape of the detainee.[41] Nevertheless, while the comments of the detention officers provide guidance on security concerns, they are not binding on the trial court in the same manner that pleadings are not impositions upon a court.

Third, petitioner posits that his election provides the legal justification to allow him to serve his mandate, after the people, in their sovereign capacity, elected him as Senator. He argues that denying his Omnibus Motion is tantamount to removing him from office, depriving the people of proper representation, denying the people's will, repudiating the people's choice, and overruling the mandate of the people.

Petitioner's contention hinges on the doctrine in administrative law that "a public official can not be removed for **administrative** misconduct committed during a **prior** term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor."[42]

The assertion is unavailing. The case against petitioner is not administrative in nature. And there is no "prior term" to speak of. In a plethora of cases,[43] the Court categorically held that the doctrine of condonation does not apply to criminal cases.

---

[40] *Alejano v. Cabuay*, *supra* at 206.

[41] REPUBLIC ACT NO. 7438 (1992) or "An Act Defining Certain Rights of the Person Arrested, Detained or Under Custodial Investigation, as well as the Duties of the Arresting, Detaining, and Investigating Officers and Providing Penalties for Violations Thereof," Sec. 4, last par.

[42] *Aguinaldo v. Santos*, G.R. No. 94115, August 21, 1992, 212 SCRA 768, 773; *Salalima v. Guingona*, 326 Phil. 847, 919-920 (1996).

[43] *Aguinaldo v. Santos, supra* at 773-774; *People v. Jalosjos*, *supra* at 703; *Cabrera v. Marcelo*, *supra* at 21-6-217; *People v. Toledano*, 387 Phil. 957 (2000).

Election, or more precisely, re-election to office, does not obliterate a criminal charge. Petitioner's electoral victory only signifies pertinently that when the voters elected him to the Senate, "they did so with full awareness of the limitations on his freedom of action [and] x x x with the knowledge that he could achieve only such legislative results which he could accomplish within the confines of prison."[44]

In once more debunking the disenfranchisement argument,[45] it is opportune to wipe out the lingering misimpression that the call of duty conferred by the voice of the people is louder than the litany of lawful restraints articulated in the Constitution and echoed by jurisprudence. The apparent discord may be harmonized by the overarching tenet that the mandate of the people yields to the Constitution which the people themselves ordained to govern all under the rule of law.

> The performance of legitimate and even essential duties by public officers has never been an excuse to free a person validly in prison. The duties imposed by the "mandate of the people" are multifarious. The accused-appellant asserts that the duty to legislate ranks highest in the hierarchy of government. The accused-appellant is only one of 250 members of the House of Representatives, not to mention the 24 members of the Senate, charged with the duties of legislation. Congress continues to function well in the physical absence of one or a few of its members. x x x Never has the call of a particular duty lifted a prisoner into a different classification from those others who are validly restrained by law.[46] (Underscoring supplied)

Lastly, petitioner pleads for the same liberal treatment accorded certain detention prisoners who have also been charged with non-bailable offenses, like former President Joseph Estrada and former Governor Nur Misuari who were allowed to attend "social functions." Finding no rhyme and reason in the denial of the more serious request to perform the duties of a Senator, petitioner harps on an alleged violation of the equal protection clause.

---

[44] *People v. Jalosjos*, *supra* at 706.

[45] *People v. Jalosjos*, *supra*; cf. *Government of the United States of America v. Puruganan*, 438 Phil. 417, 456-458 (2002).

[46] *People v. Jalosjos*, *supra* at 707.

In arguing against maintaining double standards in the treatment of detention prisoners, petitioner expressly admits that he intentionally did not seek preferential treatment in the form of being placed under Senate custody or house arrest,[47] yet he at the same time, gripes about the granting of house arrest to others.

Emergency or compelling temporary leaves from imprisonment are allowed to all prisoners, at the discretion of the authorities or upon court orders.[48] That this discretion was gravely abused, petitioner failed to establish. In fact, the trial court previously allowed petitioner to register as a voter in December 2006, file his certificate of candidacy in February 2007, cast his vote on May 14, 2007, be proclaimed as senator-elect, and take his oath of office[49] on June 29, 2007. In a seeming attempt to bind or twist the hands of the trial court lest it be accused of taking a complete turn-around,[50] petitioner largely banks on these prior grants to him and insists on unending concessions and blanket authorizations.

Petitioner's position fails. On the generality and permanence of his requests alone, petitioner's case fails to compare with the species of allowable leaves. *Jaloslos* succinctly expounds:

> x x x Allowing accused-appellant to attend congressional sessions and committee meetings for five (5) days or more in a week will virtually make him a free man with all the privileges appurtenant to his position. Such an aberrant situation not only elevates accused-appellant's status to that of a special class, it also would be a mockery of the purposes of the correction system.[51]

WHEREFORE, the petition is *DISMISSED*.

---

[47] *Rollo*, pp. 75-76.

[48] *People v. Jalosjos*, *supra* at 704.

[49] *Rollo*, p. 60; before Barangay Chairman Ruben Gatchalian of Barangay 169, Deparo, Caloocan City.

[50] *Id.* at 34-35.

[51] *People v. Jalosjos*, *supra* at 704.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 180884. June 27, 2008]

EMERLINDA S. TALENTO, in her capacity as the Provincial Treasurer of the Province of Bataan, *petitioner, vs.* **HON. REMIGIO M. ESCALADA, JR., Presiding Judge of the Regional Trial Court of Bataan, Branch 3, and PETRON CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* PROPER REMEDY, NOT A CASE OF. — Thus, petitioner resorted to the erroneous remedy when she filed a petition for *certiorari* under Rule 65, when the proper mode should have been a petition for review on *certiorari* under Rule 45. Moreover, under Section 2, Rule 45 of the same Rules, the period to file a petition for review is 15 days from notice of the order appealed from. In the instant case, petitioner received the questioned order of the trial court on November 6, 2007, hence, she had only up to November 21, 2007 to file the petition. However, the same was filed only on January 4, 2008, or 43 days late. Consequently, petitioner's failure to file an appeal within the reglementary period rendered the order of the trial court final and executory. The perfection of an appeal in the manner and within the period prescribed by law is mandatory. Failure to conform to the rules regarding appeal will render the judgment final and executory and beyond the power of the

Court's review. Jurisprudence mandates that when a decision becomes final and executory, it becomes valid and binding upon the parties and their successors in interest. Such decision or order can no longer be disturbed or reopened no matter how erroneous it may have been. Petitioner's resort to a petition under Rule 65 is obviously a ploy to make up for the loss of the right to file an appeal *via* a petition under Rule 45. However, a special civil action under Rule 65 can not cure petitioner's failure to timely file a petition for review on *certiorari* under Rule 45 of the Rules of Court. Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45, especially if such loss or lapse was occasioned by one's own neglect or error in the choice of remedies.

2. ID.; ID.; ID.; A MOTION FOR RECONSIDERATION IS A CONDITION *SINE QUA NON* FOR THE FILING OF A PETITION FOR *CERTIORARI*; PURPOSE. — We note that no motion for reconsideration of the November 5, 2007 order of the trial court was filed prior to the filing of the instant petition. The settled rule is that a motion for reconsideration is a *sine qua non* condition for the filing of a petition for *certiorari*. The purpose is to grant the public respondent an opportunity to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. Petitioner's failure to file a motion for reconsideration deprived the trial court of the opportunity to rectify an error unwittingly committed or to vindicate itself of an act unfairly imputed. Besides, a motion for reconsideration under the present circumstances is the plain, speedy and adequate remedy to the adverse judgment of the trial court.

3. ID.; ID.; ID.; WHEN FILING OF A PETITION FOR *CERTIORARI* CONSIDERED AS BLATANT DISREGARD OF THE RULE ON HIERARCHY OF COURTS. — Petitioner also blatantly disregarded the rule on hierarchy of courts. Although the Supreme Court, Regional Trial Courts, and the Court of Appeals have concurrent jurisdiction to issue writs of *certiorari,* prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum. Recourse should have been made first with the Court of Appeals and not directly to this Court. True, litigation is not a game of

technicalities. It is equally true, however, that every case must be presented in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. The failure therefore of petitioner to comply with the settled procedural rules justifies the dismissal of the present petition.

4. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; REQUISITES, PRESENT. — The requisites for the issuance of a writ of preliminary injunction are: (1) the existence of a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage. The urgency and paramount necessity for the issuance of a writ of injunction becomes relevant in the instant case considering that what is being enjoined is the sale by public auction of the properties of Petron amounting to at least ₱1.7 billion and which properties are vital to its business operations. If at all, the repercussions and far-reaching implications of the sale of these properties on the operations of Petron merit the issuance of a writ of preliminary injunction in its favor.

5. TAXATION; GENERAL PRINCIPLES; TAXES ARE THE LIFEBLOOD OF THE GOVERNMENT AND COLLECTION THEREOF CANNOT BE SUSPENDED BY AN APPEAL; EXCEPTION; CASE AT BAR. — We are not unaware of the doctrine that taxes are the lifeblood of the government, without which it can not properly perform its functions; and that appeal shall not suspend the collection of realty taxes. However, there is an exception to the foregoing rule, *i.e.*, where the taxpayer has shown a clear and unmistakable right to refuse or to hold in abeyance the payment of taxes. In the instant case, we note that respondent contested the revised assessment on the following grounds: that the subject assessment pertained to properties that have been previously declared; that the assessment covered periods of more than 10 years which is not allowed under the LGC; that the fair market value or replacement cost used by petitioner included items which should be properly excluded; that prompt payment of discounts were not considered in determining the fair market value; and that the subject assessment should take effect a year after or on January 1, 2008. To our mind, the resolution of these issues would have a direct bearing on the assessment made by petitioner.

Hence, it is necessary that the issues must first be passed upon before the properties of respondent is sold in public auction.

6. ID.; ID.; ID.; ID.; FOR COLLECTION OF TAX TO BE SUSPENDED BY AN APPEAL, POSTING OF BOND EQUIVALENT TO THE AMOUNT OF THE ASSESSMENT DUE, REQUIRED. — In addition to the fact that the issues raised by the respondent would have a direct impact on the validity of the assessment made by the petitioner, we also note that respondent has posted a surety bond equivalent to the amount of the assessment due.

7. ID.; ID.; ID.; ID.; COLLECTION OF TAX MAY ALSO BE SUSPENDED WHEN IT WILL JEOPARDIZE THE INTEREST OF THE GOVERNMENT OR THE TAXPAYER. — Corollarily, Section 11 of Republic Act No. 9282, which amended Republic Act No. 1125 (The Law Creating the Court of Tax Appeals) provides: Section 11. Who may Appeal; Mode of Appeal; Effect of Appeal; — x x x No appeal taken to the Court of Appeals from the Collector of Internal Revenue x x x shall suspend the payment, levy, distraint, and/or sale of any property for the satisfaction of his tax liability as provided by existing law. **Provided, however, That when in the opinion of the Court** the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

APPEARANCES OF COUNSEL

Aurelio C. Angeles, Jr. for petitioner.

Belo Gozon Elma Parel Asuncion & Lucila for private respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

The instant petition for *certiorari* under Rule 65 of the Rules of Court assails the November 5, 2007 Order[1] of the Regional Trial Court of Bataan, Branch 3, in Civil Case No. 8801, granting the petition for the issuance of a writ of preliminary injunction filed by private respondent Petron Corporation (Petron) thereby enjoining petitioner Emerlinda S. Talento, Provincial Treasurer of Bataan, and her representatives from proceeding with the public auction of Petron's machineries and pieces of equipment during the pendency of the latter's appeal from the revised assessment of its properties.

The facts of the case are as follows:

On June 18, 2007, Petron received from the Provincial Assessor's Office of Bataan a notice of revised assessment over its machineries and pieces of equipment in Lamao, Limay, Bataan. Petron was given a period of 60 days within which to file an appeal with the Local Board of Assessment Appeals (LBAA).[2] Based on said revised assessment, petitioner Provincial Treasurer of Bataan issued a notice informing Petron that as of June 30, 2007, its total liability is ₱1,731,025,403.06,[3] representing deficiency real property tax due from 1994 up to the first and second quarters of 2007.

On August 17, 2007, Petron filed a petition[4] with the LBAA (docketed as LBAA Case No. 2007-01) contesting the revised assessment on the grounds that the subject assessment pertained to properties that have been previously declared; and that the assessment covered periods of more than 10 years which is not allowed under the Local Government Code (LGC). According to Petron, the possible valid assessment pursuant to Section

[1] *Rollo*, pp. 49-63. Penned by Judge Remigio M. Escalada, Jr.

[2] *Id*. at 203-204.

[3] *Id*. at 205-226.

[4] *Id*. at 228-250.

222 of the LGC could only be for the years 1997 to 2006. Petron further contended that the fair market value or replacement cost used by petitioner included items which should be properly excluded; that prompt payment of discounts were not considered in determining the fair market value; and that the subject assessment should take effect a year after or on January 1, 2008. In the same petition, Petron sought the approval of a surety bond in the amount of ₱1,286,057,899.54.[5]

On August 22, 2007, Petron received from petitioner a final notice of delinquent real property tax with a warning that the subject properties would be levied and auctioned should Petron fail to settle the revised assessment due.[6]

Consequently, Petron sent a letter[7] to petitioner stating that in view of the pendency of its appeal[8] with the LBAA, any action by the Treasurer's Office on the subject properties would be premature. However, petitioner replied that only Petron's payment under protest shall bar the collection of the realty taxes due,[9] pursuant to Sections 231 and 252 of the LGC.

With the issuance of a Warrant of Levy[10] against its machineries and pieces of equipment, Petron filed on September 24, 2007, an urgent motion to lift the final notice of delinquent real property tax and warrant of levy with the LBAA. It argued that the issuance of the notice and warrant is premature because an appeal has been filed with the LBAA, where it posted a surety bond in the amount of ₱1,286,057,899.54.[11]

---

[5] *Id*. at 248 and 254-255.

[6] *Id*. at 265.

[7] *Id*. at 288-289. Dated September 12, 2007.

[8] Incidentally, Petron's appeal in LBAA Case No. 2007-01 was dismissed on December 10, 2007 on the ground of forum shopping (*Rollo*, pp. 436-440). On January 17, 2008, Petron appealed to the Central Board of Assessment Appeals. (*Rollo*, p. 468)

[9] *Id*. at 291-292.

[10] *Id*. at 339-340.

[11] *Id*. at 293-297.

On October 3, 2007, Petron received a notice of sale of its properties scheduled on October 17, 2007.[12] Consequently, on October 8, 2007, Petron withdrew its motion to lift the final notice of delinquent real property tax and warrant of levy with the LBAA.[13] **On even date, Petron filed with the Regional Trial Court of Bataan the instant case (docketed as Civil Case No. 8801) for prohibition with prayer for the issuance of a temporary restraining order (TRO) and preliminary injunction**.[14]

On October 15, 2007, the trial court issued a TRO for 20 days enjoining petitioner from proceeding with the public auction of Petron's properties.[15] Petitioner thereafter filed an urgent motion for the immediate dissolution of the TRO, followed by a motion to dismiss Petron's petition for prohibition.

On November 5, 2007, the trial court issued the assailed Order granting Petron's petition for issuance of writ of preliminary injunction, subject to Petron's posting of a ₱444,967,503.52 bond in addition to its previously posted surety bond of ₱1,286,057,899.54, to complete the total amount equivalent to the revised assessment of ₱1,731,025,403.06. The trial court held that in scheduling the sale of the properties despite the pendency of Petron's appeal and posting of the surety bond with the LBAA, petitioner deprived Petron of the right to appeal. The dispositive portion thereof, reads:

> WHEREFORE, the writ of preliminary injunction prayed for by plaintiff is hereby GRANTED and ISSUED, enjoining defendant Treasurer, her agents, representatives, or anybody acting in her behalf from proceeding with the scheduled public auction of plaintiff's real properties, or any disposition thereof, pending the determination of the merits of the main action, to be effective upon posting by plaintiff to the Court of an injunction bond in the amount of Four Hundred Forty Four Million Nine Hundred Sixty Seven Thousand

---

[12] *Id*. at 348.

[13] *Id*. at 349-351.

[14] The Complaint was subsequently amended. (*Rollo*, pp. 64-80)

[15] *Rollo*, pp. 352-361.

Five Hundred Three and 52/100 Pesos (₱444,967,503.52) and the approval thereof by the Court.

Defendant's Urgent Motion for the Immediate Dissolution of the Temporary Restraining Order dated October 23, 2007 is hereby DENIED.

SO ORDERED.[16]

From the said Order of the trial court, petitioner went directly to this Court via the instant petition for *certiorari* under Rule 65 of the Rules of Court.

The question posed in this petition, *i.e.*, whether the collection of taxes may be suspended by reason of the filing of an appeal and posting of a surety bond, is undoubtedly a pure question of law. Section 2(c) of Rule 41 of the Rules of Court provides:

SEC. 2. Modes of Appeal. —

(c) Appeal by *certiorari*. — In all cases when only questions of law are raised or involved, the appeal shall be to the Supreme Court by **petition for review on *certiorari* under Rule 45.** (Emphasis supplied)

Thus, petitioner resorted to the erroneous remedy when she filed a petition for *certiorari* under Rule 65, when the proper mode should have been a petition for review on *certiorari* under Rule 45. Moreover, under Section 2, Rule 45 of the same Rules, the period to file a petition for review is 15 days from notice of the order appealed from. In the instant case, petitioner received the questioned order of the trial court on November 6, 2007, hence, she had only up to November 21, 2007 to file the petition. However, the same was filed only on January 4, 2008, or 43 days late. Consequently, petitioner's failure to file an appeal within the reglementary period rendered the order of the trial court final and executory.

The perfection of an appeal in the manner and within the period prescribed by law is mandatory. Failure to conform to the rules regarding appeal will render the judgment final and

[16] *Id*. at 63.

executory and beyond the power of the Court's review. Jurisprudence mandates that when a decision becomes final and executory, it becomes valid and binding upon the parties and their successors in interest. Such decision or order can no longer be disturbed or reopened no matter how erroneous it may have been.[17]

Petitioner's resort to a petition under Rule 65 is obviously a play to make up for the loss of the right to file an appeal *via* a petition under Rule 45. However, a special civil action under Rule 65 can not cure petitioner's failure to timely file a petition for review on *certiorari* under Rule 45 of the Rules of Court. Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45, especially if such loss or lapse was occasioned by one's own neglect or error in the choice of remedies.[18]

Moreover, even if we assume that a petition under Rule 65 is the proper remedy, the petition is still dismissible.

We note that no motion for reconsideration of the November 5, 2007 order of the trial court was filed prior to the filing of the instant petition. The settled rule is that a motion for reconsideration is a *sine qua non* condition for the filing of a petition for *certiorari*. The purpose is to grant the public respondent an opportunity to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. Petitioner's failure to file a motion for reconsideration deprived the trial court of the opportunity to rectify an error unwittingly committed or to vindicate itself of an act unfairly imputed. Besides, a motion for reconsideration under the present circumstances is the plain, speedy and adequate remedy to the adverse judgment of the trial court.[19]

---

[17] *Lapu-Lapu Development and Housing Corporation v. Group Management Corporation*, G.R. No. 141407, September 9, 2002, 388 SCRA 493, 506-507.

[18] *Chua v. Santos*, G.R. No. 132467, October 18, 2004, 440 SCRA 365, 374.

[19] *Serra v. Heirs of Primitivo Hernaez*, G.R. No. 142913, August 9, 2005, 466 SCRA 120, 127.

Petitioner also blatantly disregarded the rule on hierarchy of courts. Although the Supreme Court, Regional Trial Courts, and the Court of Appeals have concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum. Recourse should have been made first with the Court of Appeals and not directly to this Court.[20]

True, litigation is not a game of technicalities. It is equally true, however, that every case must be presented in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.[21] The failure therefore of petitioner to comply with the settled procedural rules justifies the dismissal of the present petition.

Finally, we find that the trial court correctly granted respondent's petition for issuance of a writ of preliminary injunction. Section 3, Rule 58, of the Rules of Court, provides:

SEC. 3. Grounds for issuance of preliminary injunction. — A preliminary injunction may be granted by the court 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 acts complained of, or in 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, or agency or a person is doing, threatening, or 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.

---

[20] *Zamboanga Barter Goods Retailers Association, Inc. v. Lobregat*, G.R. No. 145466, July 7, 2004, 433 SCRA 624, 628-629.

[21] *Mindanao Savings and Loan Association, Inc. v. Vda. De Flores*, G.R. No. 142022, September 7, 2005, 469 SCRA 416, 423.

The requisites for the issuance of a writ of preliminary injunction are: (1) the existence of a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage.[22]

The urgency and paramount necessity for the issuance of a writ of injunction becomes relevant in the instant case considering that what is being enjoined is the sale by public auction of the properties of Petron amounting to at least ₱1.7 billion and which properties are vital to its business operations. If at all, the repercussions and far-reaching implications of the sale of these properties on the operations of Petron merit the issuance of a writ of preliminary injunction in its favor.

We are not unaware of the doctrine that taxes are the lifeblood of the government, without which it can not properly perform its functions; and that appeal shall not suspend the collection of realty taxes. However, there is an exception to the foregoing rule, *i.e.*, where the taxpayer has shown a clear and unmistakable right to refuse or to hold in abeyance the payment of taxes. In the instant case, we note that respondent contested the revised assessment on the following grounds: that the subject assessment pertained to properties that have been previously declared; that the assessment covered periods of more than 10 years which is not allowed under the LGC; that the fair market value or replacement cost used by petitioner included items which should be properly excluded; that prompt payment of discounts were not considered in determining the fair market value; and that the subject assessment should take effect a year after or on January 1, 2008. To our mind, the resolution of these issues would have a direct bearing on the assessment made by petitioner. Hence, it is necessary that the issues must first be passed upon before the properties of respondent is sold in public auction.

In addition to the fact that the issues raised by the respondent would have a direct impact on the validity of the assessment made by the petitioner, we also note that respondent has posted

---

[22] *Manila International Airport Authority v. Court of Appeals*, G.R. No. 118249, February 14, 2003, 397 SCRA 348, 359.

a surety bond equivalent to the amount of the assessment due. The Rules of Procedure of the LBAA, particularly Section 7, Rule V thereof, provides:

> Section 7. Effect of Appeal on Collection of Taxes. — An appeal shall not suspend the collection of the corresponding realty taxes on the real property subject of the appeal as assessed by the Provincial, City or Municipal Assessor, without prejudice to the subsequent adjustment depending upon the outcome of the appeal. An appeal may be entertained but the hearing thereof shall be deferred until the corresponding taxes due on the real property subject of the appeal shall have been paid under protest or the petitioner shall have given a surety bond, subject to the following conditions:
>
> (1) the amount of the bond must not be less than the total realty taxes and penalties due as assessed by the assessor nor more than double said amount;
>
> (2) the bond must be accompanied by a certification from the Insurance Commissioner (a) that the surety is duly authorized to issue such bond; (a) that the surety bond is approved by and registered with said Commission; and (c) that the amount covered by the surety bond is within the writing capacity of the surety company; and
>
> (3) the amount of the bond in excess of the surety company's writing capacity, if any, must be covered by Reinsurance Binder, in which case, a certification to this effect must likewise accompany the surety bond.

Corollarily, Section 11 of Republic Act No. 9282,[23] which amended Republic Act No. 1125 (The Law Creating the Court of Tax Appeals) provides:

> Section 11. Who may Appeal; Mode of Appeal; Effect of Appeal; —
>
> x x x x x x x x x
>
> No appeal taken to the Court of Appeals from the Collector of Internal Revenue x x x shall suspend the payment, levy, distraint,

[23] 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 mended, otherwise known as the Law Creating the Court of Tax Appeals, and for other purposes.

and/or sale of any property for the satisfaction of his tax liability as provided by existing law. **Provided, however, That when in the opinion of the Court** the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the processing may suspend the collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

WHEREFORE, in view of all the foregoing, the instant petition is *DISMISSED*.

SO ORDERED.

Austria-Martinez, Carpio Morales,[*] *Chico-Nazario,* and *Reyes, JJ.,* concur.

---

[*] In lieu of Associate Justice Antonio Eduardo B. Nachura.

INDEX

INDEX

ACTIONS

Action for reconveyance — Proper remedy once a patent is registered and the corresponding certificate of title is issued in the name of the grantee; reason. (Buston-Arendain *vs*. Gil, G.R. No. 172585, June 26, 2008) p. 519

Appeal and certiorari — These remedies are mutually exclusive and not alternative or successive. (Ortega *vs*. Social Security Commission, G.R. No. 176150, June 25, 2008) p. 338

ACTIONS, DISMISSAL OF

Dismissal upon notice by plaintiff — Inconsiderate dismissals neither constitute a panacea nor a solution to the congestion of court dockets. (Tabuada *vs*. Judge Ruiz, G.R. No. 168799, June 27, 2008) p. 847

Failure to prosecute as a ground — Rests on the sound discretion of the court. (RN Dev't. Corp. *vs*. A.I.I. System, Inc., G.R. No. 166104, June 26, 2008) p. 475

Motu propio dismissal — Although authorized, if plaintiff fails to comply with the rules or any order of the court, it cannot be used to justify the convenient, though erroneous, termination of the proceedings. (Tabuada *vs*. Judge Ruiz, G.R. No. 168799, June 27, 2008) p. 847

ADMINISTRATIVE AGENCIES

Doctrine of primary jurisdiction — Courts cannot take cognizance of cases pending before administrative agencies of special competence. (Lt. Gen. Dagudag [Ret.] *vs*. Judge Paderanga, A.M. No. RTJ-06-2017, June 19, 2008) p. 207

ADMINISTRATIVE PROCEEDINGS

Administrative cases — Only substantial evidence is required. (Palero-Tan *vs*. Urdaneta, Jr., A.M. No. P-07-2399, June 18, 2008) p. 25

Administrative due process — The decision must be rendered on the evidence presented at the hearing, or at least

contained in the record and disclosed to the parties affected. (Tan Uy *vs*. Office of the Ombudsman, G.R. Nos. 156399-400, June 27, 2008) p. 635

AGRARIAN REFORM CASES

Agrarian disputes — Jurisdiction of the Provincial Agrarian Reform Adjudicatory Board, the Department of Agrarian Reform Adjudicatory Reform Board and the Court of Appeals is limited to disputes involving the implementation of the Comprehensive Agrarian Reform Law and other agrarian laws. (Pag-asa Fishpond Corp. *vs*. Jimenez, G.R. No. 164912, June 18, 2008) p. 106

AGRARIAN REFORM LAW (P.D. NO. 27)

Application — Forbids the transfer or alienation of covered agricultural lands after October 21, 1972 except to the tenant-beneficiary. (Sta. Monica Industrial and Dev't. Corp. *vs*. DAR Regional Director for Region III, G.R. No. 164846, June 18, 2008) p. 91

AGRICULTURAL TENANCY

Tenancy relations — Consent of the landowner is a condition sine qua non for the installation of tenants. (Pag-asa Fishpond Corp. *vs*. Jimenez, G.R. No. 164912, June 18, 2008) p. 106

— Intent is material in tenancy relations. *(Id.)*

— Requisites. *(Id.)*

— Tenancy is not a purely factual relationship, it is also a legal relationship. *(Id.)*

— Without a Certificate of Land Ownership Award, no vested right to security can accrue to persons claiming it. *(Id.)*

ALIBI

Defense of — An accused must establish with clear and convincing evidence that it was physically impossible for him to have been at the scene of the crime at the time of its commission. (People *vs*. Santos, G.R. No. 176735, June 26, 2008) p. 535

— (People *vs*. De la Cruz, G.R. No. 173308, June 25, 2008) p. 314

— (People *vs*. Coja, G.R. No. 179277, June 18, 2008) p. 169

— Cannot prevail over the credible testimonies of the witnesses. (People *vs*. De la Cruz, G.R. No. 173308, June 25, 2008) p. 314

— Cannot prevail over the positive identification of a credible witness. (People *vs*. Ranin, Jr., G.R. No. 173023, June 25, 2008) p. 285

ANTI-CHILD ABUSE LAW (R.A. NO. 7610)

Application — A measure geared towards the implementation of a national comprehensive program for the survival of the most vulnerable members of the population, the Filipino children. (Araneta *vs*. People, G.R. No. 174205, June 27, 2008) p. 876

— Acts punishable, cited. *(Id.)*

Child abuse — Construed. (Araneta *vs*. People, G.R. No. 174205, June 27, 2008) p. 876

Violation of — Entitles the victim to an award of ₱50,000.00 as moral damages. (Araneta *vs*. People, G.R. No. 174205, June 27, 2008) p. 876

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Giving unwarranted benefits, advantage or preference in the discharge of official functions — Elements. (Soriano *vs*. Ombudsman Marcelo, G.R. No. 163017, June 18, 2008) p. 79

— Mistakes committed by a public officer are not actionable absent malice or gross negligence amounting to bad faith. *(Id.)*

APPEALS

Factual findings of administrative agencies — Conclusive on the parties and not reviewable by the Supreme Court when affirmed by the Court of Appeals. (Ortega *vs*. Social Security Commission, G. R. No. 176150, June 25, 2008) p. 338

Factual findings of quasi-judicial agencies — Accorded respect and even finality, when adopted and confirmed by the appellate court and if supported by substantial evidence; exceptions. (Ortega *vs*. Social Security Commission, G.R. No. 176150, June 25, 2008) p. 338

Factual findings of the Court of Appeals — Generally conclusive and binding on the Supreme Court; exception. (EDSA Shangri-la Hotel and Resort, Inc. *vs*. BF Corp., G.R. No. 145842, June 27, 2008) p. 588

(Hanjin Heavy Industries and Construction Co., Ltd. *vs*. Ibañez, G. R. No. 170181, June 26, 2008) p. 497

Factual findings of the trial court — When affirmed by the appellate court, are accorded the highest degree of respect and are considered conclusive between the parties; exceptions. (People *vs*. Concepcion, G.R. No. 178876, June 27, 2008) p. 957

(Lloyd's Enterprises and Credit Corp. *vs*. Sps. Dolleton, G.R. No. 171373, June 18, 2008) p. 135

Failure to appeal — A party who has failed to appeal from a judgment can no longer obtain from the appellate court any affirmative relief other than what was already granted under said judgment; exception. (Corinthian Gardens Assn., Inc. *vs*. Sps. Tanjangco, G.R. No. 160795, June 27, 2008) p. 712

(BPI *vs*. Lifetime Marketing Corp., G.R. No. 176434, June 25, 2008) p. 354

Fresh period rule — Being procedural in character, it is given retroactive effect on actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, insomuch as there are no vested rights in the rules of procedure. (Fil-Estate Properties, Inc. *vs*. Judge Homena-Valencia, G.R. No. 173942, June 25, 2008) p. 331

Petition for review on certiorari to the Supreme Court under Rule 45 — Factual issues are not proper; exceptions. (Int'l. Container Terminal Services, Inc. *vs*. FGU Insurance Corp., G.R. No. 161539, June 27, 2008) p. 751

(Aliño *vs*. Heirs of Angelica A. Lorenzo, G.R. No. 159550, June 27, 2008) p. 698

(Badillo *vs*. CA, G.R. No. 131903, June 26, 2008) p. 404

— Petition shall state the full names of the appealing party as the petitioner and the adverse party as respondent. (Sia Tio *vs*. Abayata, G.R. No. 160898, June 27, 2008) p. 731

— Questions of fact are not appropriate, except when the judgment is based on a misapprehension of facts. *(Id.)*

Points of law, theories, issues and arguments — Factual questions may not be raised for the first time on appeal. (Ortega *vs*. Social Security Commission, G.R. No. 176150, June 25, 2008) p. 338

Questions of law — Involve the correct interpretation or application of relevant laws and rules, without the need for review of the evidences presented before the court *a quo*. (Badillo *vs*. CA, G.R. No. 131903, June 26, 2008) p. 404

ARREST

Illegality of arrest — Not a sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. (People *vs*. Santos, G.R. No. 176735, June 26, 2008) p. 535

— Voluntary submission to the court by entering a plea deemed a waiver of the right to assail the legality of the arrest. (People *vs*. De la Cruz, G.R. No. 173308, June 25, 2008) p. 314

Warrantless arrest — An arrest made after an entrapment does not require a warrant inasmuch as it is considered a valid warrantless arrest. (People *vs*. Santos, G.R. No. 176735, June 26, 2008) p. 535

ATTORNEYS

Duties — As officers of the court, lawyers owe it the duty of candor, honesty and fairness. (Sta. Monica Industrial and Dev't. Corp. *vs*. DAR Regional Director for Region III, G.R. No. 164846, June 18, 2008) p. 91

— Lawyers must observe proper decorum at all times. (Samaniego *vs*. Atty. Ferrer, A.C. No. 7022, June 18, 2008) p. 1

Effect of of attorney-client relationship — Consultation and information between counsel and client is privileged communication and the counsel may not divulge these without the consent of the client. (Aquino *vs*. Paiste, G.R. No. 147782, June 25, 2008) p. 244

Existence of attorney-client relationship — Services of a lawyer, when deemed engaged by the client. (Aquino *vs*. Paiste, G.R. No. 147782, June 25, 2008) p. 244

Gross immorality — Imposable penalty. (Samaniego *vs*. Atty. Ferrer, A.C. No. 7022, June 18, 2008) p. 1

Gross misconduct — Committed in case of willful failure to pay just debts. (Cham *vs*. Atty. Paita-Moya, A.C. No. 7494, June 27, 2008) p. 566

Practice of law — Membership in the legal profession is a privilege and it demands a high degree of good moral character, not only as a condition precedent to admission, but also as a continuing requirement for the practice of law. (Cham *vs*. Atty. Paita-Moya, A.C. No. 7494, June 27, 2008) p. 566

Willful failure to pay just debts — Constitutes grave misconduct. (Cham *vs*. Atty. Paita-Moya, A.C. No. 7494, June 27, 2008) p. 566

— Manifested by the lawyer's act of abandoning the leased premises to void her obligations for the rent. *(Id.)*

— Warrants administrative sanction. *(Id.)*

BAIL

Where filed — Bail may be filed with the court where the case is pending; exceptions. (Barbero *vs*. Judhe Dumlao, A.M. No. MTJ-07-1682, June 19, 2008) p. 185

BANKS

Fiduciary nature of banking industry — Elucidated. (BPI *vs*. Lifetime Marketing Corp., G.R. No. 176434, June 25, 2008) p. 354

BILL OF RIGHTS

Administrative due process — The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. (Tan Uy *vs*. Office of the Ombudsman, G.R. Nos. 156399-400, June 27, 2008) p. 635

Due process — Satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy. (People *vs*. De la Cruz, G.R. No. 173308, June 25, 2008) p. 314

Equal protection of the law — Not violated by denial of accused's plea for liberal treatment accorded to other detention prisoner. (Trillanes IV *vs*. Hon. Pimentel, G.R. No. 179817, June 27, 2008) p. 1002

Right to bail — Constitutional provision on right to bail equally apply to rape and coup d' etat cases. (Trillanes IV *vs*. Hon. Pimentel, G.R. No. 179817, June 27, 2008) p. 1002

Right to counsel — Intended to preclude the slightest coercion as would lead the accused to admit something false. (Aquino *vs*. Paiste, G.R. No. 147782, June 25, 2008) p. 244

BOUNCING CHECKS LAW (B.P. BLG. 22)

Element of knowledge — Absent sufficient proof that the accused received the notice of dishonor, the presumption that he had knowledge of insufficiency of funds cannot arise. (Suarez *vs*. People, G.R. No. 172573, June 19, 2008) p. 228

— When presumption of knowledge of insufficiency of funds arises. *(Id.)*

CERTIORARI

Grave abuse of discretion — Defined as a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. (Engr. Feliciano *vs*. Villasin, G.R. No. 174929, June 27, 2008) p. 889

(Tan Uy *vs*. Office of the Ombudsman, G.R. Nos. 156399-400, June 27, 2008) p. 635

Petition for — A motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*; exceptions. (Talento *vs*. Judge. Escalada, Jr., G.R. No. 180884, June 27, 2008) p. 1021

— Cannot be availed of as a substitute for the lost remedy of an ordinary appeal; exceptions. *(Id.)*

(Badillo *vs*. CA, G.R. No. 131903, June 26, 2008) p. 404

— Essential requisites. (Engr. Feliciano *vs*. Villasin, G.R. No. 174929, June 27, 2008) p. 889

— Failure to implead public respondent as nominal party is sufficient ground for dismissal of petition. *(Id.)*

— Meant to correct only errors of jurisdiction, not error of judgment. (Soriano *vs*. Ombudsman Marcelo, G.R. No. 163017, June 18, 2008) p. 79

CIVIL SERVICE

Coverage — Includes officers and employees of water districts. (Engr. Feliciano *vs*. Villasin, G.R. No. 174929, June 27, 2008) p. 889

CLERKS OF COURT

Duties and responsibilities — All fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank. (In-House Financial Audit Conducted in the Books of Accounts of Khalil B. Dipatuan, RTC-Malabang, Lanao del Sur, A.M. No. P-06-2121, June 26, 2008) p. 387

— As custodian of the court's funds and properties, they are liable for any loss, shortage, destruction or impairment of such funds and properties. *(Id.)*

Neglect of duty — Committed in case of delay in the remittance of collections. (In-House Financial Audit Conducted in the Books of Accounts of Khalil B. Dipatuan, RTC-Malabang, Lanao del Sur, A.M. No. P-06-2121, June 26, 2008) p. 387

Rights of the accused under custodial investigation — Apply to situations in which an individual has not been formally arrested but has merely been invited for questioning. (Aquino *vs*. Paiste, G.R. No. 147782, June 25, 2008) p. 244

COMPREHENSIVE AGRARIAN REFORM LAW (R.A. No. 6657)

Coverage — Private lands actually, directly and exclusively used for prawn farms and fishponds are exempted. (Pag-asa Fishpond Corp. *vs*. Jimenez, G.R. No. 164912, June 18, 2008) p. 106

Just compensation — Expropriation of property under R.A. No. 6657 puts the landowner in a situation where the odds are against him and his only consolation is that he can negotiate for the amount of compensation to be paid for the property taken by the government. (Land Bank of the Phils. *vs*. Sps. Orilla, G.R. No. 157206, June 27, 2008) p. 663

— It cannot be said that there is already a prompt payment of just compensation when there is only a partial payment. *(Id.)*

— Prompt payment of just compensation is not satisfied by the mere deposit with any accessible bank of the provisional compensation determined by the Land Bank and the Department of Agrarian Reform. *(Id.)*

Notice of coverage — Must be sent to the landowner. (Sta. Monica Industrial and Dev't. Corp. *vs*. DAR Regional Director for Region III, G. R. No. 164846, June 18, 2008) p. 91

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Illegal sale of drugs — Elements. (People *vs*. Concepcion, G.R. No. 178876, June 27, 2008) p. 957

— (People *vs*. Santos, G.R. No. 176735, June 26, 2008) p. 535

— Mere sale of any dangerous drugs is punishable by life imprisonment regardless of its quantity and purity. (People *vs*. Concepcion, G.R. No. 178876, June 27, 2008) p. 957

Prosecution of drug cases — Failure to record the marked money used in a buy-bust operation is not material. (People *vs*. Concepcion, G.R. No. 178876, June 27, 2008) p. 957

— Failure to submit in evidence the physical inventory of the seized drugs and photographs is not fatal to the prosecution. *(Id.)*

— Rule on the limited applicability of the Revised Penal Code. (People *vs*. Santos, G.R. No. 176735, June 26, 2008) p. 535

— The law punishes not only the sale but also the mere act of delivery of prohibited drugs. (People *vs*. Concepcion, G.R. No. 178876, June 27, 2008) p. 957

COMPROMISES

Compromise agreements —While it is strongly encouraged, the failure to consummate one does not warrant any procedural sanction, much less provide an authority for the court to jettison the case. (Tabuada *vs*. Judge Ruiz, G.R. No. 168799, June 27, 2008) p. 847

CONFESSION

Admissibility of — Telling the accused that it would be better for him to tell the truth is not considered a sufficient inducement as to render objectionable a confession thereby obtained, unless threats or promises are applied. (Aquino *vs*. Paiste, G.R. No. 147782, June 25, 2008) p. 244

CONSPIRACY

Existence of — Conviction is proper upon proof that the accused acted in concert, each of them doing his part to fulfill the common design. (People *vs*. De la Cruz, G.R. No. 173308, June 25, 2008) p. 314

— Neither joint nor simultaneous action is per se sufficient proof of conspiracy. (Aquino *vs*. Paiste, G.R. No. 147782, June 25, 2008) p. 244

— There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. *(Id.)*

Criminal liability of conspirators — Once conspiracy is proved, the act of one becomes the act of all. (Aquino *vs*. Paiste, G.R. No. 147782, June 25, 2008) p. 244

CONTRACTS

Interpretation of — As a general rule, in the interpretation of a contract, the intention of the parties is to be pursued. (Aliño *vs*. Heirs of Angelica A. Lorenzo, G.R. No. 159550, June 27, 2008) p. 698

Simulated contract — Established when the parties conceal their true agreement and the contract is not really desired or intended to produce legal effects or in any way alter the juridical situation of the parties. (Aliño *vs*. Heirs of Angelica A. Lorenzo, G.R. No. 159550, June 27, 2008) p. 698

— When present. *(Id.)*

Voidable contracts — Four-year period for filing an action for annulment, on the ground of vitiated consent, had already lapsed when complaint was filed. (Sps. Dela Cruz *vs*. Sps. Segovia, G. R. No. 149801, June 26, 2008) p. 420

CORPORATE PERSONALITY

Piercing the veil of corporate fiction — Proper when it is used to defeat public convenience and subvert public policy. (Sta. Monica Industrial and Dev't. Corp. *vs*. DAR Regional Director for Region III, G. R. No. 164846, June 18, 2008) p. 91

CORPORATIONS

Liquidation of corporation — Falls within the jurisdiction of the Regional Trial Court. (Consuelo Metal Corp. *vs*. Planters Dev't. Bank, G.R. No. 152580, June 26, 2008) p. 431

Solidary liability of corporate officers — Proper when they act with malice or in bad faith. (EDSA Shangri-la Hotel and Resort, Inc. *vs*. BF Corp., G.R. No. 145842, June 27, 2008) p. 588

COURT PERSONNEL

Conduct of — Every employee of the judiciary should be an example of integrity, morality and honesty. (Go *vs*. Hortaleza, A.M. No. P-05-1971, June 26, 2008) p. 377

(Palero-Tan *vs*. Urdaneta, Jr., A.M. No. P-07-2399, June 18, 2008) p. 25

— It is commendable to strive for an ideal government office where every public servant devotes himself wholly to public service with the utmost integrity, honesty and diligence in his work. (Judge Ginete *vs*. Caballero, A.M. No. P-07-2413, June 19, 2008) p. 197

— Shouting at one another in the workplace and during office hours is arrant discourtesy and disrespect not only towards co-workers but to the court as well. *(Id.)*

Grave abuse of authority — Committed in case a sheriff enforced the order of seizure with undue haste and without giving the complainant prior notice or reasonable time to deliver the property subject of the writ. (Hao *vs*. Andres, A.M. No. P-07-2384, June 18, 2008) p. 7

Grave misconduct — Defined. (Palero-Tan *vs*. Urdaneta, Jr., A.M. No. P-07-2399, June 18, 2008) p. 25

— Imposable penalty. *(Id.)*

Gross negligence — Good faith is not material. (Hao *vs*. Andres, A.M. No. P-07-2384, June 18, 2008) p. 7

— Imposable penalty. *(Id.)*

— When committed by a sheriff in the implementation of court writs and processes. *(Id.)*

Misconduct — Defined. (Palero-Tan *vs*. Urdaneta, Jr., A.M. No. P-07-2399, June 18, 2008) p. 25

Simple misconduct — Committed when a sheriff departed from the procedure prescribed by the Rules in the collection of payment for sheriff's expenses in implementing a writ of execution. (Go *vs*. Hortaleza, A.M. No. P-05-1971, June 26, 2008) p. 377

Verbal tussle between court employees — Imposable penalty for the transgressor. (Judge Ginete *vs*. Caballero, A.M. No. P-07-2413, June 19, 2008) p. 197

CREDIT CORPORATIONS

Requirement of good faith — Entities engaged in the business of extending credit to the public is expected to exercise due diligence in dealing with properties offered as security. (Lloyd Enterprises and Credit Corp. *vs*. Sps. Dolleton, G.R. No. 171373, June 18, 2008) p. 135

— Rule that purchaser or mortgagee of land is not required to look further than what appears on the face of the title is not applicable when the purchaser or mortgagee is a financing institution. *(Id.)*

— The party found negligent in ascertaining the true ownership of the property offered as a security shall bear the loss. *(Id.)*

CREDITS, PREFERENCE OF

Order of preference — Secured creditors shall enjoy preference over unsecured creditors. (Consuelo Metal Corp. *vs*. Planters Dev't. Bank, G.R. No. 152580, June 26, 2008) p. 431

DAMAGES

Award of — Kinds of damages that may be awarded when death occurs due to a crime. (People *vs*. Sorila, G.R. No. 178540, June 27, 2008) p. 931

Interests — Rule on the imposition of interest. (Sunga-Chan *vs*. CA, G.R. No. 164401, June 25, 2008) p. 262

— Until reasonably determined, an unliquidated claim shall not earn interest. *(Id.)*

Liquidated claim — Cannot validly be asserted without accounting. (Sunga-Chan *vs*. CA, G.R. No. 164401, June 25, 2008) p. 262

DANGEROUS DRUGS

Buy-bust operation — Absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation. (People *vs*. Concepcion, G.R. No. 178876, June 27, 2008) p. 957

DENIAL OF THE ACCUSED

Defense of — Cannot be given greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters. (People *vs*. Sorila, G.R. No. 178540, June 27, 2008) p. 931

(People *vs*. De la Cruz, G.R. No. 173308, June 25, 2008) p. 314

— Cannot prevail over the positive identification of a credible witness. (People *vs*. Ranin, Jr., G.R. No. 173023, June 25, 2008) p. 285

(People *vs*. Sison, G.R. No. 172752, June 18, 2008) p. 150

— To be believed, it must be buttressed by a strong evidence of non-culpability; otherwise, such denial is purely self-serving and with nil evidentiary value. (Palero-Tan *vs*. Urdaneta, Jr., A.M. No. P-07-2399, June 18, 2008) p. 25

DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB)

Appellate jurisdiction — The Board cannot resolve, on appeal, a key administrative issue of the case when the Provincial Agrarian Reform Adjudicator (PARAD) had not yet ruled on such issue on the merits. (Ibañez *vs*. AFP Retirement and Service Benefit System, G.R. No. 152859, June 18, 2008) p. 61

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Jurisdiction — Cited. (Lt. Gen. Dagudag [Ret.] *vs*. Judge Paderanga, A.M. No. RTJ-06-2017, June 19, 2008) p. 207

DOCUMENTARY EVIDENCE

Affidavits — Rule on its probative value. (People *vs*. Sorila, G.R. No. 178540, June 27, 2008) p. 931

Best evidence rule — A document or writing admitted as part of the testimony of a witness does not constitute proof of the facts stated therein. (Rep. of the Phils. *vs*. T.A.N. Propeties, Inc., G.R. No. 154953, June 26, 2008) p. 441

Public documents — Defined. (Rep. of the Phils. *vs*. T.A.N. Propeties, Inc., G.R. No. 154953, June 26, 2008) p. 441

— Government certifications are prima facie evidence of their due execution and date of issuance but they do not constitute prima facie evidence of the facts stated therein. *(Id.)*

DUE PROCESS

Administrative due process — Requires that the right to know and to meet a case demands that a person be fully informed of the pertinent and material facts unique to the inquiry to which he is called as a party respondent. (Tan Uy *vs*. Office of the Ombudsman, G.R. Nos. 156399-400, June 27, 2008) p. 635

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

ELECTIONS

Certificate of candidacy — Its filing produces a permanent legal effect and it remains even if said certificate be subsequently withdrawn. (Limbona *vs*. COMELEC, G.R. No. 181097, June 25, 2008) p. 364

Qualifications for elective office — Residency requirement; elucidated. (Limbona *vs*. COMELEC, G.R. No. 181097, June 25, 2008) p. 364

ELECTORAL REFORM LAW OF 1987 (R.A. NO. 6646)

Application — Authorizes the Commission on Elections to try and decide petitions for disqualification even after the elections. (Limbona *vs*. COMELEC, G.R. No. 181097, June 25, 2008) p. 364

Powers — Include the power to try and decide petitions for disqualifications even after the elections as provided in the Electoral Reform Law of 1987 (R.A. No. 6646). (Limbona *vs*. COMELEC, G.R. No. 181097, June 25, 2008) p. 364

EMPLOYEES, KINDS OF

Project employees — A completion bonus, if paid as a mere afterthought, cannot be used to determine whether or not the employment was regular or merely for a project. (Hanjin Heavy Industries and Construction Co., Ltd. *vs*. Ibañez, G.R. No. 170181, June 26, 2008) p. 497

— Absence of a written contract of employment does not by itself grant a regular status of employment. *(Id.)*

— Defined. *(Id.)*

— Distinguished from regular employees. *(Id.)*

— Failure of an employer to file a termination report with the DOLE every time a project or a phase thereof is completed indicates that the employees were not project employees. *(Id.)*

— Length of service or the re-hiring of construction workers on a project-to-project basis does not confer upon them a regular employment status. *(Id.)*

— When employees are considered project employees. *(Id.)*

Regular employees — Distinguished from project employees. (Hanjin Heavy Industries and Construction Co., Ltd. *vs*. Ibañez, G.R. No. 170181, June 26, 2008) p. 497

EMPLOYEES' COMPENSATION LAW (P.D. NO. 626)

Ailment — When compensable. (GSIS *vs*. Corrales, G.R. No. 166261, June 27, 2008) p. 784

Cardiovascular or heart diseases — Conditions to be compensable. (GSIS *vs*. Corrales, G R. No. 166261, June 27, 2008) p. 784

— Fall under the category of work-related diseases. *(Id.)*

— Include congenital heart diseases. *(Id.)*

— Refers to all diseases of the cardiovascular system, without qualification as to nature, origin or type. *(Id.)*

Claim for compensation —Claims under the Labor Code and under the Social Security Law for benefits are not the same as to their nature and purpose. (Ortega *vs*. Social Security Commission, G.R. No. 176150, June 25, 2008) p. 338

Compensability of sickness — The yardstick in employees' compensation cases is mere probability and not certainty and whatever doubt a contrary medical opinion may engender should be interpreted in favor of the employees for whom social legislation like P.D. No. 626 is enacted. (GSIS *vs*. Corrales, G.R. No. 166261, June 27, 2008) p. 784

EMPLOYMENT

Employment contract — Stipulation providing for a fixed period of employment should be knowingly and voluntarily agreed upon by the parties. (Hanjin Heavy Industries and Construction Co., Ltd. *vs*. Ibañez, G.R. No. 170181, June 26, 2008) p. 497

EMPLOYMENT, TERMINATION OF

Backwages — When the employee was not entirely faultless, award of backwages is reckoned from the date of the NLRC's promulgation of the decision. (Salas *vs*. Aboitiz One, Inc., G.R. No. 178236, June 27, 2008) p. 915

Dismissal — The burden of proving a just and valid cause for dismissal rests upon the employer. (Hanjin Heavy Industries and Construction Co., Ltd. *vs*. Ibañez, G.R. No. 170181, June 26, 2008) p. 497

Gross neglect of duty — Not committed when a material controller, who monitors the availability and supply of materials, made several follow-ups and talked to the supplier to facilitate the immediate delivery of the materials. (Salas *vs*. Aboitiz One, Inc., G.R. No. 178236, June 27, 2008) p. 915

Reinstatement — When considered a proper remedy. (Ambee Food Services, Inc. *vs*. CA, G.R. No. 153517, June 27, 2008) p. 620

Valid dismissal — Past offenses not related to employee's latest infraction cannot be used as an added justification for dismissal. (Salas *vs*. Aboitiz One, Inc., G.R. No. 178236, June 27, 2008) p. 915

Willful breach of trust as a ground — A breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse. (Salas *vs*. Aboitiz One, Inc., G.R. No. 178236, June 27, 2008) p. 915

— Should be genuine and not simulated, nor should it appear as a mere afterthought to justify an earlier action taken in bad faith or a subterfuge for causes which are improper, illegal or unjustified. *(Id.)*

EQUITABLE MORTGAGE

Nature — One that, althought lacking some formality or form, nevertheless reveals the intention of the parties to change a real property as security for a debt. (Sia Tio *vs*. Abayata, G.R. No. 160898, June 27, 2008) p. 731

ESTAFA

Estafa by means of deceit — Criminal fraud or deceit, explained. (Lopez *vs*. People, G.R. No. 166810, June 26, 2008) p. 486

— Elements. *(Id.)*

— Imposable penalty. *(Id.)*

— Receipt by the drawer of the notice of dishonor is not an element of the offense; the presumption only dispenses with the presentation of evidence of deceit if such notification is received and the drawer of the check failed

to deposit the amount necessary to cover his check within three (3) days from receipt of the notice of dishonor. *(Id.)*

Estafa through false pretenses or fraudulent representation — Elements. (Lao *vs*. People, G.R. No. 159404, June 27, 2008) p. 679

— Inability to benefit from the money obtained from the victim does not relieve the accused from criminal responsibility. *(Id.)*

— Whether or not the purpose of the money was accomplished is immaterial. *(Id.)*

EVIDENCE

Best evidence rule — Conditions *sine qua non* for the presentation and reception of the photocopies of the original document as secondary evidence. (EDSA Shangri-la Hotel and Resort, Inc. *vs*. BF Corp., G.R. No. 145842, June 27, 2008) p. 588

— Does not apply when the original is in the custody or under the control of the adverse party. *(Id.)*

Substantial evidence — In administrative proceedings, it needs only relevant substantial evidence for a finding of guilt. (Gutierrez *vs*. Judge Belen, A.M. No. RTJ-08-2118, June 26, 2008) p. 393

— Sufficient in administrative and quasi-judicial proceedings. (Ortega *vs*. Social Security Commission, G.R. No. 176150, June 25, 2008) p. 338

— There is no basis to impose sanctions upon respondent judge where there is failure of the complainant to present substantial evidence to prove his charges. (Gutierrez *vs*. Judge Belen, A.M. No. RTJ-08-2118, June 26, 2008) p. 393

EVIDENT PREMEDITATION

As a qualifying circumstance — Its essence is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm

judgment. (People *vs*. Ranin, Jr., G.R. No. 173023, June 25, 2008) p. 285

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Doctrine/principle of — All actions seeking to recover forest products in the custody of the Department of Environment and Natural Resources shall be directed to said agency, not the courts. (Lt. Gen. Dagudag [Ret.] *vs*. Judge Paderanga, A.M. No. RTJ-06-2017, June 19, 2008) p. 207

— Construed. (Buston-Arendain *vs*. Gil, G.R. No. 172585, June 26, 2008) p. 519

— Purpose. (Lt. Gen. Dagudag [Ret.] *vs*. Judge Paderanga, A.M. No. RTJ-06-2017, June 19, 2008) p. 207

— Rule and exceptions. (Buston-Arendain *vs*. Gil, G.R. No. 172585, June 26, 2008) p. 519

EXPROPRIATION

Just compensation — Expropriation of property under R.A. No. 6657 puts the landowner in a situation where the odds are against him and his only consolation is that he can negotiate for the amount of compensation to be paid for the property taken by the government. (Land Bank of the Phils. *vs*. Sps. Orilla, G.R. No. 157206, June 27, 2008) p. 663

— It cannot be said that there is already a prompt payment of just compensation when there is only a partial payment. *(Id.)*

— Prompt payment of just compensation is not satisfied by the mere deposit with any accessible bank of the provisional compensation determined by the Land Bank and the Department of Agrarian Reform. *(Id.)*

EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (ACT NO. 3135)

Writ of possession — Issuance thereof is a ministerial duty of the court during the period of redemption. (Metropolitan Bank and Trust Co. *vs*. Tan, G.R. No. 159934, June 26, 2008) p. 464

— Trial court's order granting the writ is final and the proper remedy is an appeal. *(Id.)*

FORUM SHOPPING

Concept — Defined. (Buston-Arendain *vs.* Gil, G.R. No. 172585, June 26, 2008) p. 519

— Elements. (Engr. Feliciano *vs*. Villasin, G.R. No. 174929, June 27, 2008) p. 889

Presence of — Tests. (Engr. Feliciano *vs.* Villasin, G.R. No. 174929, June 27, 2008) p. 889

Rule against forum shopping — Prohibits a party against whom an adverse judgment has been rendered in one forum from seeking another forum in the hope of obtaining a favorable disposition in the latter. (Engr. Feliciano *vs*. Villasin, G.R. No. 174929, June 27, 2008) p. 889

GUARANTY

Provisions of the Civil Code — Applicable and available to a surety. (Autocorp Group *vs*. Intra Strata Assurance Corp., G.R. No. 166662, June 27, 2008) p. 804

Rights of a guarantor — A guarantor may proceed against the principal debtor the moment the debt becomes due and demandable. (Autocorp Group *vs*. Intra Strata Assurance Corp., G.R. No. 166662, June 27, 2008) p. 804

HOUSING AND LAND USE REGULATORY BOARD (HLURB)

Jurisdiction — Its jurisdiction to hear and decide cases is determined by the nature of the cause of action, the subject matter or property involved, and the parties. (Badillo *vs*. CA, G.R. No. 131903, June 26, 2008) p. 404

— Sole regulatory body for housing and land development. *(Id.)*

INDETERMINATE SENTENCE LAW

Application of — Rule when the offense is punished by the Revised Penal Code or its amendments. (Lopez *vs*. People, G.R. No. 166810, June 26, 2008) p. 486

INJUNCTION

Injunctive writ — Its purpose is to prevent threatened or continuous irremediable injury to the parties seeking the writ by preserving the status quo until the merits of the case can be heard fully. (Ibañez *vs*. AFP Retirement and Service Benefit System, G.R. No. 152859, June 18, 2008) p. 61

JUDGES

Administrative case against a judge — Silence of the judge on the charge against him is deemed an admission of the truth of the charge. (Barbero *vs*. Judge Dumlao, G.R. No. MTJ-07-1682, June 19, 2008) p. 185

Admonition of — Proper in case of carelessness in signing an erroneously dated warrant of arrest. (Lopez *vs*. People, G.R. No. 166810, June 26, 2008) p. 486

Code of Judicial Conduct — Judges must refrain from inflammatory, excessively rhetoric, or vile language. (Lt. Gen. Dagudag [Ret.] *vs*. Judge Paderanga, A.M. No. RTJ-06-2017, June 19, 2008) p. 207

Duties — Should dispose of the court's business promptly and expeditiously and decide cases within the period fixed by law. (Mina *vs*. Judge Mupas, A.M. No. RTJ-07-2067, June 18, 2008) p. 41

— Should keep themselves abreast with legal developments and show acquaintance with the law. (Lt. Gen. Dagudag [Ret.] *vs*. Judge Paderanga, A.M. No. RTJ-06-2017, June 19, 2008) p. 207

Gross ignorance of the law — Acts of approving bail and ordering the release of accused whose cases are pending before other courts constitute gross ignorance of the law. (Barbero *vs*. Judge Dumlao, G.R. No. MTJ-07-1682, June 19, 2008) p. 185

— Classified as a serious offense. (Lt. Gen. Dagudag [Ret.] *vs*. Judge Paderanga, A.M. No. RTJ-06-2017, June 19, 2008) p. 207

— Imposable penalty. *(Id.)*

Gross misconduct — Committed in case of refusal of a judge to comment on the administrative complaints despite several directives from the Court. (Barbero *vs*. Judge Dumlao, G.R. No. MTJ-07-1682, June 19, 2008) p. 185

Ignorance of the law — Established in case of a wanton display of utter lack of familiarity with the rules that inevitably erodes the confidence of the public in the competence of our courts to render justice. (Lt. Gen. Dagudag [Ret.] *vs*. Judge Paderanga, A.M. No. RTJ-06-2017, June 19, 2008) p. 207

Undue delay in rendering a decision or order — Imposable penalty. (Mina *vs*. Judge Mupas, A.M. No. RTJ-07-2067, June 18, 2008) p. 41

— Not excused by additional judicial assignments since extension of time to decide a case may be requested. *(Id.)*

Violation of Supreme Court rules, directives and circulars — Imposable penalty. (Barbero *vs*. Judhe Dumlao, G.R. No. MTJ-07-1682, June 19, 2008) p. 185

JUDGMENTS

Execution pending appeal — Existence of "good reasons" is what confers discretionary power on a court to issue the writ. (Land Bank of the Phils. *vs*. Sps. Orilla, G.R. No. 157206, June 27, 2008) p. 663

Formal service of judgment — Necessary as a rule; exception. (Sps. Hernal, Jr. *vs*. Sps. De Guzman, Jr., G.R. No. 181568, June 26, 2008) p. 562

JUDICIAL DEPARTMENT

Judicial office — Competence is a prerequisite to the due performance of judicial office. (Barbero *vs*. Judhe Dumlao, G.R. No. MTJ-07-1682, June 19, 2008) p. 185

JURISDICTION

Doctrine of primary jurisdiction — Courts cannot take cognizance of cases pending before administrative agencies of special competence. (Lt. Gen. Dagudag [Ret.] *vs*. Judge Paderanga, A.M. No. RTJ-06-2017, June 19, 2008) p. 207

KIDNAPPING FOR RANSOM

Commission of — Civil liability of the accused. (People *vs*. De la Cruz, G.R. No. 173308, June 25, 2008) p. 314

— Imposable penalty. *(Id.)*

LABOR RELATIONS

Labor disputes — If doubts exist between the evidence presented by the employer and that by the employee, the scales of justice must be tilted in favor of the employee. (Hanjin Heavy Industries and Construction Co., Ltd. *vs*. Ibañez, G.R. No. 170181, June 26, 2008) p. 497

Quitclaims — As a rule, it is looked upon with disfavor and frowned upon as contrary to public policy, thus ineffective to bar claims for the full measure of a worker's legal rights; exception. (Hanjin Heavy Industries and Construction Co., Ltd. *vs*. Ibañez, G.R. No. 170181, June 26, 2008) p. 497

LAND REGISTRATION

Application for registration — Burden of proof to overturn by incontrovertible evidence the presumption that the land subject of an application is alienable and disposable rests with the applicant. (Rep. of the Phils. *vs*. T.A.N. Propeties, Inc., G.R. No. 154953, June 26, 2008) p. 441

LEGAL FEES

Sheriff's fees — Procedure for the execution of writs and other processes. (Hao *vs*. Andres, A.M. No. P-07-2384, June 18, 2008) p. 7

— Steps to be followed before an interested party pays the sheriff's expenses. (Go *vs*. Hortaleza, A.M. No. P-05-1971, June 26, 2008) p. 377

LITIS PENDENTIA

As a ground for a motion to dismiss — Requisites. (City of Makati vs. Municipality [now City] of Taguig, G.R. No. 163175, June 27, 2008) p. 773

LOCAL GOVERNMENT CODE (R.A. NO. 7160)

Permanent vacancy — When it arises. (Limbona *vs*. COMELEC, G.R. No. 181097, June 25, 2008) p. 364

Rule on succession in case of permanent vacancies — In case of permanent vacancy in the office of the mayor, the vice-mayor shall become the mayor. (Limbona *vs*. COMELEC, G.R. No. 181097, June 25, 2008) p. 364

MARINE INSURANCE

Claim for lost cargo — The marine insurance policy should be presented in evidence before the trial court or even belatedly before the appellate court; exception. (Int'l. Container Terminal Services, Inc. *vs*. FGU Insurance Corp., G.R. No. 161539, June 27, 2008) p. 751

Liability of insurer — Should cover the actual value of the lost shipment. (Int'l. Container Terminal Services, Inc. *vs*. FGU Insurance Corp., G.R. No. 161539, June 27, 2008) p. 751

— The court may impose interest on insurer's adjudged liability. *(Id.)*

Marine risk note — An acknowledgment or declaration of the insurer confirming the specific shipment covered by the marine open policy which is the main insurance contract. (Int'l. Container Terminal Services, Inc. *vs*. FGU Insurance Corp., G.R. No. 161539, June 27, 2008) p. 751

MARRIAGE, NULLITY OF

Proceedings — Any doubt should be resolved in favor of the validity of the marriage and the indissolubility of the marital vinculum. (Navales *vs*. Navales, G.R. No. 167523, June 27, 2008) p. 826

— The Family Code mandates the active participation of the public prosecutor or the Office of the Solicitor General to ensure that the interest of the state is represented and protected in the proceedings by preventing collusion between the parties or the fabrication or suppression of evidence. *(Id.)*

Psychological incapacity as a ground — Contemplates downright incapacity or inability to take cognizance of and to assume basic marital obligations. (Navales *vs.* Navales, G.R. No. 167523, June 27, 2008) p. 826

— Irreconciliable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility, and the like, do not by themselves warrant a finding of psychological incapacity. *(Id.)*

— It is a malady that is so grave and permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume. *(Id.)*

— Must be characterized by gravity, juridical antecedence and incurability. *(Id.)*

MIRANDA RIGHTS

Violation of — Renders inadmissible only the extrajudicial confession or admission made during custodial investigation. (Aquino *vs.* Paiste, G.R. No. 147782, June 25, 2008) p. 244

MORTGAGES

Equitable mortgages — Defined. (Sia Tio *vs.* Abayata, G.R. No. 160898, June 27, 2008) p. 731

Foreclosure of mortgage — Proceedings thereon are presumed to have been regularly performed. (Consuelo metal Corp. *vs.* Planters Dev't. Bank, G.R. No. 152580, June 26, 2008) p. 431

Mortgagee-bank in bad faith — Present when the bank did not exercise the due diligence required of a banking and financial institution before entering into a mortgage contract. (Sia Tio *vs.* Abayata, G.R. No. 160898, June 27, 2008) p. 731

Right to foreclose real estate mortgage — When it may be exercised. (Consuelo metal Corp. *vs*. Planters Dev't. Bank, G.R. No. 152580, June 26, 2008) p. 431

MOTION TO DISMISS

Litis pendentia as a ground — Requisites. (City of Makati *vs*. Municipality [now City] of Taguig, G.R. No. 163175, June 27, 2008) p. 773

MURDER

Commission of — Civil liabilities of accused. (People *vs*. Ranin, Jr., G.R. No. 173023, June 25, 2008) p. 285

(People *vs*. Sison, G.R. No. 172752, June 18, 2008) p. 150

— Imposable penalty. (People *vs*. Ranin, Jr., G.R. No. 173023, June 25, 2008) p. 285

(People *vs*. Sison, G.R. No. 172752, June 18, 2008) p. 150

NATIONAL ECONOMY AND PATRIMONY

Acquisition of lands of the public domain — The 1987 Constitution continues the prohibition against private corporations from acquiring any kind of alienable land of the public domain. (Rep. of the Phils. *vs*. T.A.N. Propeties, Inc., G.R. No. 154953, June 26, 2008) p. 441

— To enable a corporation to file for registration of alienable and disposable land, the corporation must have acquired the land when its transferor had already a vested right to a judicial confirmation of title to the land by virtue of his open, continuous, and adverse possession of the land in the concept of an owner for at least 30 years since June 12, 1945. *(Id.)*

NEGOTIABLE INSTRUMENTS

Notice of dishonor — When it need not be given to the drawer. (Lopez *vs*. People, G.R. No. 166810, June 26, 2008) p. 486

NOTARIES PUBLIC

Duty — Notaries public are required to exercise utmost diligence in ascertaining the true identity of the person who wishes to have his document notarized. (Baylon *vs*. Atty. Almo, A.C. No. 6962, June 25, 2008) p. 238

Notarization — Converts a private document into a public document thus making that document admissible in evidence without further proof of its authenticity. (Baylon *vs*. Atty. Almo, A.C. No. 6962, June 25, 2008) p. 238

— Invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. *(Id.)*

OBLIGATIONS

Demand — Judicial or extrajudicial demand is not required before an obligation becomes due and demandale. (Autocorp Group *vs*. Intra Strata Assurance Corp., G.R. No. 166662, June 27, 2008) p. 804

Solidary obligations — The law imposes a solidary obligation when it is impossible to draw the line between when the liability of one party ends and the liability of the others starts. (Sunga-Chan *vs*. CA, G.R. No. 164401, June 25, 2008) p. 262

OMBUDSMAN

Power to investigate and prosecute — Cannot be interfered with by the Supreme Court when supported by substantial evidence absent grave abuse of discretion amounting to lack or excess of jurisdiction. (Soriano *vs*. Ombudsman Marcelo, G.R. No. 163017, June 18, 2008) p. 79

OWNERSHIP

Evidence of — Payment of realty taxes strengthens one's bona fide claim of acquisition of ownership. (Aliño *vs*. Heirs of Angelica A. Lorenzo, G.R. No. 159550, June 27, 2008) p. 698

— Tax declaration by itself is not sufficient to prove ownership but the same may serve as sufficient basis for inferring possession. (Rep. of the Phils. *vs*. Imperial Credit Corp., G.R. No. 173088, June 25, 2008) p. 300

— Tax declarations are not conclusive evidence of ownership but constitute proof of claim of ownership. *(Id.)*

OWNERSHIP, MODES OF ACQUIRING

Occupation — Duty of finder in case of lost movable properties. (Palero-Tan *vs*. Urdaneta, Jr., A.M. No. P-07-2399, June 18, 2008) p. 25

PARTIES TO CIVIL ACTIONS

Death of a party — Criteria for determining whether an action survives the death of a plaintiff or petitioner. (Judge Sumaljag *vs*. Sps. Literato, G.R. No. 149787, June 18, 2008) p. 48

— Effect of failure of counsel to comply with his duty to inform the court of the death of his client. *(Id.)*)

— Heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs. *(Id.)*

Misjoinder and non-joinder of parties — Does not warrant the dismissal of an action. (Autocorp Group *vs*. Intra Strata Assurance Corp., G.R. No. 166662, June 27, 2008) p. 804

Necessary party — Defined. (Autocorp Group *vs*. Intra Strata Assurance Corp., G.R. No. 166662, June 27, 2008) p. 804

PRELIMINARY INJUNCTION

Injunction to stay a final and executory decision — Unavailing except only after a showing that facts and circumstances exist which would render execution just and inequitable, or that a change in the situation of the parties occurred. (Corinthian Gardens Assn., Inc. *vs*. Sps. Tanjangco, G.R. No. 160795, June 27, 2008) p. 712

Right to injunctive relief — One must show that there exists a right to be protected which is directly threatened by the act sought to be enjoined. (Corinthian Gardens Assn., Inc. *vs*. Sps. Tanjangco, G. R. No. 160795, June 27, 2008) p. 712

— There must be a showing that the invasion of the right is material and substantial, that the right of complainant is clear and unmistakable, and that there is an urgent and paramount necessity for the writ to issue in order to prevent serious damage. *(Id.)*

Writ of preliminary injunction — Grounds for issuance. (Talento *vs*. Judge. Escalada, Jr., G.R. No. 180884, June 27, 2008) p. 1021

PRELIMINARY INVESTIGATION

Nature — Although only a statutory right, it is a component of due process in administrative criminal justice. (Tan Uy *vs*. Office of the Ombudsman, G.R. Nos. 156399-400, June 27, 2008) p. 635

— Preliminary investigation is subject to the requirements of both substantive and procedural due process. *(Id.)*

Objective and purpose — To secure the innocent against hasty, malicious, and oppressive prosecution; to protect him from an open and public accusation of a crime, as well as from the trouble, expenses, and anxiety of a public trial. (Tan Uy *vs*. Office of the Ombudsman, G.R. Nos. 156399-400, June 27, 2008) p. 635

PRESCRIPTION OF ACTIONS

Action for reconveyance — If a person claiming to be the owner of the property is in actual possession thereof, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe. (Aliño *vs*. Heirs of Angelica A. Lorenzo, G.R. No. 159550, June 27, 2008) p. 698

PRESUMPTIONS

Presumption of regularity in the performance of official duty — Stands when there was no indication that the police were impelled by any improper motive in making the arrest. (People *vs*. Santos, G.R. No. 176735, June 26, 2008) p. 535

PRE-TRIAL

Proceedings — Not a mere technicality in court proceedings for it is essential in the simplication and the speedy disposition of disputes. (RN Dev't. Corp. *vs*. A.I.I. System, Inc., G.R. No. 166104, June 26, 2008) p. 475

PROCEDURAL RULES

Amendments to procedural rules — Procedural or remedial in character as they do not create new or remove vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing. (Fil-Estate Properties, Inc. *vs*. Judge Homena-Valencia, G.R. No. 173942, June 25, 2008) p. 331

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Involuntary registration — A declaration from the court that buyer was in bad faith is not necessary in order that the notice of levy on attachment may be annotated on the certificate of title. (Armed Forces and Police Mutual Benefit Assn., Inc. *vs*. Bolos Santiago, G.R. No. 147559, June 27, 2008) p. 609

— Attachment that was registered before the sale takes precedence over the sale. *(Id.)*

— Entry of attachment, levy upon execution, lis pendens and the like in the day book is a sufficient notice to all persons of such adverse claim. *(Id.)*

— Where there is failure to surrender the owner's duplicate certificate so that the attachment lien may be annotated, a court order is necessary in order to compel its surrender. *(Id.)*

Voluntary registration — Distinguished from involuntary registration (Armed Forces and Police Mutual Benefit Assn., Inc. *vs*. Bolos Santiago, G.R. No. 147559, June 27, 2008) p. 609

PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE

Absolute community of property — May be held liable for the obligations contracted by either spouse. (Sunga-Chan *vs*. CA, G.R. No. 164401, June 25, 2008) p. 262

Administration of conjugal partnership of gains — Now a joint undertaking of the husband and wife as provided by the Family Code. (Sps. Dela Cruz *vs*. Sps. Segovia, G.R. No. 149801, June 26, 2008) p. 420

— Rule against disposition of property without the consent of the other spouse, when not applicable. *(Id.)*

PUBLIC LAND ACT (C.A. NO. 141)

Acquisition of public lands — Open, exclusive and undisputed possession of alienable land for the period prescribed by law created the legal fiction whereby the land, upon completion of the requisite period, *ipso jure* and without the need of judicial or other sanctions ceases to be public land and becomes private property. (Rep. of the Phils. *vs*. T.A.N. Propeties, Inc., G.R. No. 154953, June 26, 2008) p. 441

— Reckoning date. (Rep. of the Phils. *vs*. Imperial Credit Corp., G.R. No. 173088, June 25, 2008) p. 300

Application for confirmation and registration of an imperfect or incomplete title — Applicant must conclusively prove that the land is private and not part of the public domain. (Rep. of the Phils. *vs*. Imperial Credit Corp., G.R. No. 173088, June 25, 2008) p. 300

— Requisites. *(Id.)*)

CENRO Certification — Evidences the alienability of the land, not the open, continuous, exclusive and notorious possession and occupation of the land. (Rep. of the Phils. *vs*. Imperial Credit Corp., G.R. No. 173088, June 25, 2008) p. 300

Conversion of public land into a private land under the laws of prescription — Requisites. (Rep. of the Phils. *vs.* Imperial Credit Corp., G.R. No. 173088, June 25, 2008) p. 300

Open, continuous, exclusive and notorious possession and occupation of the land — Elucidated. (Rep. of the Phils. *vs.* Imperial Credit Corp., G.R. No. 173088, June 25, 2008) p. 300

PUBLIC OFFICERS AND EMPLOYEES

Administrative charge against — Not obliterated by the election to public office. (Trillanes IV *vs*. Hon. Pimentel, G.R. No. 179817, June 27, 2008) p. 1002

Code of Conduct and Ethical Standards for Public Officials and Employees (R.A. No. 6713) — Requires that public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communication sent by the public. (Go *vs*. Hortaleza, A.M. No. P-05-1971, June 26, 2008) p. 377

Retirement — Having applied for disability retirement will not serve to deprive a retiree of his monthly pension, assuming he is still alive beyond the period of ten (10) years after his retirement. (In *Re*: Petition for the Favorable Consideration of the Four [4] Years Length of Service as a Sangguniang Bayan Member of the Petitioner to Complete the Twenty-One Years of Government Service for Purposes of Receiving His Monthly Lifetime Pension after Five [5] years, Judge Antonio S. Alanao [Ret.], A.M. No. No. 10654-Ret., June 27, 2008) p. 577

— Notwithstanding the lapse of time, the court has the obligation under R.A. No. 910 to grant retiree his vested right to his retirement benefits. *(Id.)*

— Retirement laws should be liberally construed and all doubts as to the intent of the law should be resolved in favor of the retiree to achieve its humanitarian purposes. *(Id.)*

— The twenty (20) year service requirement under R.A. No. 910 makes no distinction whether it was rendered in the executive, legislative or judicial branch. *(Id.)*

QUALIFYING CIRCUMSTANCES

Evident premeditation — Requisites. (People *vs*. Sison, G.R. No. 172752, June 18, 2008) p. 150

Minority and relationship — When established. (People *vs*. Maglente, G.R. No. 179712, June 27, 2008) p. 980

Treachery — Appreciated when the mode of the attack tends to insure the accomplishment of the criminal purpose without risk to the attacker arising from any defense the victim might offer. (People *vs*. Ranin, Jr., G.R. No. 173023, June 25, 2008) p. 285

(People *vs*. Sison, G.R. No. 172752, June 18, 2008) p. 150

QUASI-DELICTS

Concept — Elements. (BPI *vs*. Lifetime Marketing Corp., G.R. No. 176434, June 25, 2008) p. 354

Negligence — Committed in case a homeowners association failed to prevent the encroachment of the perimeter wall of one of its member's property, despite the inspection conducted. (Corinthian Gardens Assn., Inc. *vs*. Sps. Tanjangco, G.R. No. 160795, June 27, 2008) p. 712

— Test to determine its existence. *(Id.)*

— The omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do. (BPI *vs*. Lifetime Marketing Corp., G.R. No. 176434, June 25, 2008) p. 354

Proximate cause — That cause which, in a natural and continuous sequence, unbroken by any efficient intervening cause produces the injury, and without which the result would not have occurred. (BPI *vs*. Lifetime Marketing Corp., G.R. No. 176434, June 25, 2008) p. 354

QUO WARRANTO

Petition for — Clear legal right is wanting. (Engr. Feliciano *vs*. Villasin, G.R. No. 174929, June 27, 2008) p. 889

— May be dismissed at any stage when it becomes apparent that the plaintiff is not entitled to the disputed public office, position or franchise. *(Id.)*

Proceedings — Determine the right of a person to the use or exercise of a franchise or an office and to oust the holder from its enjoyment, if the latter's claim is not well-founded, or if he has forfeited his right to enjoy the privilege. (Engr. Feliciano *vs*. Villasin, G.R. No. 174929, June 27, 2008) p. 889

RAPE

Commission of — Civil indemnities of the accused. (People *vs*. Maglente, G.R. No. 179712, June 27, 2008) p. 980

— Elements. (People *vs*. Coja, G.R. No. 179277, June 18, 2008) p. 169

— Hymenal laceration of the victim is not material. *(Id.)*

REPLEVIN

Not proper subject of — Property lawfully seized by the Department of Environment and Natural Resources cannot be the subject of replevin. (Lt. Gen. Dagudag [Ret.] *vs*. Judge Paderanga, A.M. No. RTJ-06-2017, June 19, 2008) p. 207

Writ of — Duty of the sheriff in the implementation of the writ of replevin and the disposition of the property subject thereof. (Hao *vs*. Andres, A.M. No. P-07-2384, June 18, 2008) p. 7

— Property seized is not to be delivered immediately to the plaintiff. *(Id.)*

RIGHTS OF THE ACCUSED

Miranda rights — Its violation renders inadmissible only the extrajudicial confession or admission made during custodial

investigation. (Aquino *vs*. Paiste, G.R. No. 147782, June 25, 2008) p. 244

Presumption of innocence — Does not carry with it the full enjoyment of civil and political rights. (Trillanes IV *vs*. Hon. Pimentel, G.R. No. 179817, June 27, 2008) p. 1002

Right to bail — Constitutional provision on the right to bail equally apply to rape and *coup d' etat* cases. (Trillanes IV *vs*. Hon. Pimentel, G.R. No. 179817, June 27, 2008) p. 1002

— May be denied when evidence of guilt is strong regardless of the stage of the criminal action; rationale. *(Id.)*

Right to counsel — Intended to preclude the slightest coercion as would lead the accused to admit something false. (Aquino *vs*. Paiste, G.R. No. 147782, June 25, 2008) p. 244

ROBBERY WITH HOMICIDE

Commission of — Elements. (People *vs*. Sorila, G.R. No. 178540, June 27, 2008) p. 931

ROBBERY WITH USE OF FORCE

Commission of — Imposable penalty if the offender is fourteen (14) years old. (Estioca *vs*. People, G.R. No. 173876, June 27, 2008) p. 853

RULES OF PROCEDURE

Application of — Courts must avoid the rigid application of the rules of procedure which tends to frustrate rather than promote the ends of justice. (RN Dev't. Corp. *vs*. A.I.I. System, Inc., G.R. No. 166104, June 26, 2008) p. 475

Purpose — They are mere tools designed to facilitate the attainment of justice. (RN Dev't. Corp. *vs*. A.I.I. System, Inc., G.R. No. 166104, June 26, 2008) p. 475

SALES

Duty of the vendee — Where the land sold is in the possession of a person other than the vendor, the purchaser must go beyond the certificate of title and make inquiries concerning

the actual possessor. (Sia Tio *vs*. Abayata, G.R. No. 160898, June 27, 2008) p. 731

Equitable mortgage — A contract of sale is considered an equitable mortgage when the real intention of the parties was to secure an existing debt by way of mortgage. (Olivares *vs*. Sarmiento, G.R. No. 158384, June 12, 2008)

— One that, althought lacking some formality or form, nevertheless reveals the intention of the parties to charge a real property as security for a debt. (Sia Tio *vs*. Abayata, G.R. No. 160898, June 27, 2008) p. 731

Innocent purchaser for value — Application. (Sia Tio *vs*. Abayata, G. R. No. 160898, June 27, 2008) p. 731

Purchaser in good faith — A purchaser cannot close his eyes to facts which should put a reasonable man on his guard and claim that he acted in good faith under the belief that there was no defect in the title of the vendor. (Lloyd Enterprises and Credit Corp. *vs*. Sps. Dolleton, G.R. No. 171373, June 18, 2008) p. 135

— Established when buyer is without actual notice of another party's claim of ownership over the property, and which claim was not discoverable after examining the title, the annotation on the title, and an observation of the property. (Sia Tio *vs*. Abayata, G.R. No. 160898, June 27, 2008) p. 731

— Mere inadequacy of price is not *ipso facto* a badge of lack of good faith. *(Id.)*

SECURITIES AND EXCHANGE COMMISSION (R.A. NO. 8799)

Jurisdiction — Retained over pending suspension of payment/ rehabilitation cases filed as of June 30, 2000 until finally disposed. (Consuelo Metal Corp. *vs*. Planters Dev't. Bank, G.R. No. 152580, June 26, 2008) p. 431

SHERIFFS

Duty — Duty to enforce a writ of execution once it is placed in their hands is mandatory and ministerial. (Go *vs*. Hortaleza, A.M. No. P-05-1971, June 26, 2008) p. 377

— In serving and implementing court writs, as well as processes and orders of the court, they cannot afford to err without affecting adversely the proper dispensation of justice. (Hao *vs*. Andres, A.M. No. P-07-2384, June 18, 2008) p. 7

Grave abuse of authority — Committed in case a sheriff enforced the order of seizure with undue haste and without giving the complainant prior notice or reasonable time to deliver the property subject of the writ. (Hao *vs*. Andres, A.M. No. P-07-2384, June 18, 2008) p. 7

Gross negligence — Good faith is not material. (Hao *vs*. Andres, A.M. No. P-07-2384, June 18, 2008) p. 7

— Imposable penalty. *(Id.)*

— When committed by a sheriff in the implementation of court writs and processes. *(Id.)*

SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

Application — A measure geared towards the implementation of a national comprehensive program for the survival of the most vulnerable members of the population, the Filipino children. (Araneta *vs*. People, G.R. No. 174205, June 27, 2008) p. 876

— Acts punishable, cited. *(Id.)*

Child abuse — Construed. (Araneta *vs*. People, G.R. No. 174205, June 27, 2008) p. 876

Violation of — Entitles the victim to an award of ₱50,000.00 as moral damages. (Araneta *vs*. People, G.R. No. 174205, June 27, 2008) p. 876

STATE WITNESSES

Discharge of accused to be a state witness — Grounds. (People *vs*. De la Cruz, G.R. No. 173308, June 25, 2008) p. 314

SUFFRAGE

Acquisition of domicile — Requisites. (Limbona *vs*. COMELEC, G.R. No. 181097, June 25, 2008) p. 364

Change of domicile — How effected. (Limbona *vs*. COMELEC, G.R. No. 181097, June 25, 2008) p. 364

Disenfranchisement of voter — Not present when accused who was elected was disallowed to perform certain functions. (Trillanes IV *vs*. Hon. Pimentel, G.R. No. 179817, June 27, 2008) p. 1002

SUPREME COURT

Administrative supervision over lower courts — The Court will not hesitate to impose the ultimate penalty for it cannot tolerate any conduct that diminishes the faith of the people in the judicial system. (Barbero *vs*. Judhe Dumlao, A.M. No. MTJ-07-1682, June 19, 2008) p. 185

Jurisdiction — It is not the duty of the Supreme Court, not being a trier of facts, to analyze all over again the evidence supportive of such determination, absent the most compelling and cogent reasons. (Sunga-Chan *vs*. CA, G.R. No. 164401, June 25, 2008) p. 262

TAXES

Assessment and collection — Collection of taxes may also be suspended when it will jeopardize the interest of the government or the taxpayer. (Talento *vs*. Judge. Escalada, Jr., G.R. No. 180884, June 27, 2008) p. 1021

— For collection of taxes to be suspended by an appeal, the posting of a bond equivalent to the amount of the assessment due is required. *(Id.)*

Lifeblood doctrine — Taxes are the lifeblood of the government and the collection thereof cannot be suspended by an appeal; exception. (Talento *vs*. Judge. Escalada, Jr., G.R. No. 180884, June 27, 2008) p. 1021

TESTIMONIES

Credibility of — Testimony of a single witness is sufficient for conviction. (People *vs*. Sorila, G.R. No. 178540, June 27, 2008) p. 931

WAGES

Wage Board — It would be highly irregular for the Board to issue an across-the-board increase, its mandate being limited to determining and fixing the minimum wage rates within its area of concern and to issue the corresponding wage orders and implementing rules. (Nasipit Integrated Arrastre and Stevedoring Services, Inc. *vs*. Nasipit Employees Labor Union-ALU-TUCP, G.R. No. 162411, June 27, 2008) p. 762

Wage Order No. RXIII-02 — Applies only to minimum wage earners. (Nasipit Integrated Arrastre and Stevedoring Services, Inc. *vs*. Nasipit Employees Labor Union-ALU-TUCP, G.R. No. 162411, June 27, 2008) p. 762

WITNESSES

Credibility of — Findings of fact of the trial court will not be overturned for the reason that the judge who penned the decision was not the judge who heard the testimonies of the witnesses. (People *vs*. Ranin, Jr., G.R. No. 173023, June 25, 2008) p. 285

— Findings of the trial court thereon are entitled to the highest respect and will not be disturbed on appeal; rationale. (People *vs*. Maglente, G.R. No. 179212, June 27, 2008) p. 980

(Araneta *vs*. People, G.R. No. 174205, June 27, 2008) p. 876

(Estioca *vs*. People, G.R. No. 173876, June 27, 2008) p. 853

(People *vs*. Santos, G.R. No. 176735, June 26, 2008) p. 535

(People *vs*. Ranin, Jr., G.R. No. 173023, June 25, 2008) p. 285

(Aquino *vs*. Paiste, G.R. No. 147782, June 25, 2008) p. 244

(People *vs*. Coja, G.R. No. 179277, June 18, 2008) p. 169

(People *vs*. Sison, G.R. No. 172752, June 18, 2008) p. 150

— Minor variances in the details of a witness' account are badges of truth rather than an *indicia* of falsehood and they bolster the probative value of the testimony. (People *vs*. Maglente, G.R. No. 179212, June 27, 2008) p. 980

(People *vs*. Ranin, Jr., G.R. No. 173023, June 25, 2008) p. 285

— Not affected by inconsistencies between the sworn statement or affidavit and the direct testimony given in open court. (Estioca *vs*. People, G.R. No. 173876, June 27, 2008) p. 853

— Not affected by the delay of the young victim in reporting the crime of rape. (People *vs*. Maglente, G.R. No. 179212, June 27, 2008) p. 980

— Rape victims, especially those of tender age would not concoct a story of sexual violation or allow an examination of their private parts and undergo public trial, if they are not motivated by the desire to obtain justice for the wrong committed to them. *(Id.)*

— Stands in the absence of ill-motive to falsely testify against the accused. *(Id.)*

Disqualification of counsel as witness — Consultation and information between counsel and client is privileged communication and the counsel may not divulge these without the consent of the client. (Aquino *vs*. Paiste, G.R. No. 147782, June 25, 2008) p. 244

CITATION

Page

I. LOCAL CASES

Abalde *vs.* Roque, A.M. No. P-02-1643, April 1, 2003, 400 SCRA 210, 214 384
Abella *vs.* COMELEC, G.R. Nos. 100710 & 100739, Sept. 3, 1991, 201 SCRA 259, 264 376
Abesco Construction and Development Corporation *vs.* Ramirez, G.R. No. 141168, April 10, 2006, 487 SCRA 9, 14 510
Aboitiz Shipping Corporation *vs.* Philippine American General Insurance Co., G.R. No. 77530, Oct. 5, 1989, 178 SCRA 357, 360-361 759
Acabal *vs.* Acabal, G.R. No. 148376, Mar. 31, 2005, 454 SCRA 555, 573 748
Acebedo Optical Company, Inc. *vs.* CA, 385 Phil. 956, 976 (2000) 723
Aclon *vs.* CA, 436 Phil. 219, 230 (2002) 999
Adapon *vs.* Domagtoy, A.M. No. MTJ-96-1112, Dec. 27, 1996, 265 SCRA 824, 830-831 191
Adriano *vs.* Pangilinan, 424 Phil. 578 (2002) 148
Africa *vs.* IAC, G.R. No. 76372, Aug. 14, 1990, 188 SCRA 586 483
Agabon *vs.* NLRC, et al. 442 SCRA 573 508
Agag *vs.* Alpha Financing Corp., 455 Phil. 397 (2003) 147
Agilent Technologies Singapore (Pte.) Ltd. *vs.* Integrated Silicon Technology Philippines Corporation, G.R. No. 154618, April 14, 2004, 427 SCRA 593, 601 782
Aguinaldo *vs.* Santos, G.R. No. 94115, Aug. 21, 1992, 212 SCRA 768, 773 1018
Alauya, Jr. *vs.* COMELEC, 443 Phil. 893, 907 (2003) 723
Alcantara *vs.* Secretary of Interior, 61 Phil. 459, 465 (1935) 374
Alejano *vs.* Cabuay, G.R. No. 160792, Aug. 25, 2005, 468 SCRA 188, 212 1014
Allado *vs.* Diokno, G.R. No. 113630, May 5, 1994, 232 SCRA 192, 210 662
Allied Banking Corporation *vs.* CA, G.R. No. 56279, Feb. 9, 1993, 218 SCRA 578 1010
Allied Banking Corporation *vs.* Quezon City Government, G.R. No. 154126, Oct. 11, 2005, 472 SCRA 303, 316 600

Page

Almeida *vs.* CA, G.R. No. 159124, Jan. 17, 2005,
448 SCRA 681, 694 721
Alonzo *vs.* San Juan, G.R. No. 137549, Feb. 11, 2005,
451 SCRA 45, 55-56 573
ALU-TUCP *vs.* NLRC, G.R. No. 109902, Aug. 2, 1994,
234 SCRA 678, 685 510
Amane *vs.* Atty. Mendoza-Arce, 376 Phil. 575, 600 (1999) 206
Ambayec *vs.* CA, G.R. No. 162780, June 21, 2005,
460 SCRA 537 454
American President Lines, Ltd. *vs.* CA,
391 Phil. 473, 478 (2000) 999
Ang Tibay *vs.* Court of Industrial Relations,
69 Phil. 635 (1940) 656
Antonio *vs.* Reyes, G.R. No. 155800, Mar. 10, 2006,
484 SCRA 353, 375 839
Ao-As *vs.* CA, G.R. No. 128464, June 20, 2006,
491 SCRA 339, 353 912
Apo Fruits Corporation *vs.* CA, G.R. No. 164195,
Dec. 19, 2007, 541 SCRA 117, 142 676
Apo Fruits Corporation *vs.* CA, G.R. No. 164195,
Feb. 6, 2007, 514 SCRA 537, 558 676
Aquino *vs.* Israel, A.M. No. P-04-1800, March 25, 2004,
426 SCRA 266-267 205-206
Arcenas *vs.* Avelino, A.M. No. MTJ-06-1642,
June 15, 2007, 524 SCRA 618, 622 46
Arlegui *vs.* CA, 428 Phil. 381, 398 (2002) 710
Arrieta *vs.* Llosa, 346 Phil. 932, 939 (1997) 575
Asia Traders Insurance Corporation *vs.* CA,
467 Phil. 531, 536 (2004) 741
Asiaworld Publishing House, Inc. *vs.* Ople,
152 SCRA 219 (1987) 926
Associated Bank *vs.* Tan, G.R. No. 156940, Dec. 14, 2004,
446 SCRA 282, 292 361
Association of Small Landowners in the Philippines, Inc.
vs. Secretary of Agrarian Reform, G.R. Nos. 78742, 79310,
79744, 79777, July 14, 1989, 175 SCRA 343, 386 673
Asuncion *vs.* NLRC, 414 Phil. 329, 341-342 (2001) 518

Page

Atlas Fertilizer Corp. *vs.* Secretary, Department of Agrarian Reform, G.R. Nos. 93100 & 97855, June 19, 1997, 274 SCRA 30, 36 128
Audion Electric Co., Inc. *vs.* NLRC, G.R. No. 106648, June 17, 1999, 308 SCRA 341, 350 512
Austria *vs.* NLRC, G.R. No. 123646, July 14, 1999, 310 SCRA 293, 300 513
Aznar Brothers Realty Company *vs.* Aying, G.R. No. 144773, May 16, 2005, 458 SCRA 496, 510 710
Badillo *vs.* Tayag, 448 Phil. 606, 623 (2003) 729
Balajedeong *vs.* Del Rosario, A.M. No. MTJ-07-1662, June 8, 2007, 524 SCRA 13, 20 45
Balayan *vs.* Acorda, G.R. No. 153537, May 5, 2006, 489 SCRA 637, 641 418
Balite *vs.* CA, G.R. No. 140931, Nov. 26, 2004, 444 SCRA 410, 421-422 533
Bangko Sentral ng Pilipinas *vs.* Santamaria, G.R. No. 139885, Jan. 13, 2003, 395 SCRA 84, 92 600
Bank of Commerce *vs.* San Pablo, Jr., G.R. No. 167848, April 27, 2007, 522 SCRA 713, 728 745
Bank of the Philippine Islands *vs.* ALS Management and Development Corporation, G.R. No. 151821, April 14, 2004, 427 SCRA 564, 578-579 353
CA, G.R. No. 117385, Feb. 11, 1999, 303 SCRA 19, 24-25 483
Casa Montessori Internationale, G.R. No. 149507, May 28, 2004, 430 SCRA 261, 287 362
Sarmiento, G.R. No. 146021, Mar. 10, 2006, 484 SCRA 261, 267-268 706
Uy, G.R. No. 156994, Aug. 31, 2005, 468 SCRA 633, 646 513
Barrientos *vs.* Libiran-Meteoro, A.C. No. 6408, Aug. 31, 2004, 437 SCRA 209, 216 576
Barrios *vs.* Martinez, A.C. No. 4585, Nov. 12, 2004, 442 SCRA 324, 338 575
Bautista *vs.* Inciong, 158 SCRA 665 (1988) 926
Beltran, Jr. *vs.* Paderanga, 455 Phil. 227, 236 (2003) 227
Bernardo *vs.* Restauro, Adm. Case No. 3849, June 25, 2003, 404 SCRA 599, 604 242
BF Corporation *vs.* Eshri, G.R. No. 132655, Aug. 11, 1998, 294 SCRA 109 598

Page

Bonilla *vs.* Barcena, 71 SCRA 491 (1976) 56
Borinaga *vs.* Tamin, A.M. No. RTJ-93-936, Sept. 10, 1993,
226 SCRA 206, 213 1016
Bravo, Jr. *vs.* Borja, G.R. No. 65228, Feb. 18, 1985,
134 SCRA 466, 472 1017
Bravo-Guerrero *vs.* Bravo, G.R. No. 152658, July 29, 2005,
465 SCRA 244, 261 711
Bristol Myers Squibb, (Phils.), Inc. *vs.* Viloria,
G.R. No. 148156, Sept. 27, 2004, 439 SCRA 202 345
Brucal *vs.* Desierto, G.R. No. 152188, July 8, 2005,
463 SCRA 151, 166 21
Buenaventura *vs.* CA, 461 Phil. 761, 772 (2003) 711
Bukidnon Doctors' Hospital, Inc. *vs.* Metropolitan
Bank & Trust Co., G.R. No. 161882, July 8, 2005,
463 SCRA 222, 233 418
Bustamante-Alejandro *vs.* Alejandro, A.C. No. 4256,
Feb. 13, 2004, 422 SCRA 527, 532-533 4
C. Planas Commercial *vs.* NLRC, G.R. No. 144619,
Nov. 11, 2005, 474 SCRA 608, 620 517
C.T. Torres Enterprises, Inc. *vs.* Hibionada, G.R. No. 80916,
Nov. 9, 1990, 191 SCRA 268, 272-273 415
Caballes *vs.* Department of Agrarian Reform, G.R. No. 78214,
Dec. 5, 1998, 168 SCRA 247, 254 127
Cabrera *vs.* Marcelo, G.R. Nos. 157419-20, Dec. 13, 2004,
446 SCRA 207, 217 1017
Cabrera *vs.* People, 454 Phil. 759, 774 (2003) 236
Cagas *vs.* Torrecampo, A.M. No. RTJ-06-1979,
Mar. 14, 2007, 518 SCRA 110, 117 45
Cagungun *vs.* Planters Development Bank, G.R. No. 158674,
Oct. 17, 2005, 473 SCRA 259, 27 888
Calicdan *vs.* Cendaña, 466 Phil. 894, 904 (2004) 709
Calub *vs.* CA, 387 Phil. 67, 79 (2000) 221
Candano Shipping Lines, Inc. *vs.* Sugata-on,
G.R. No. 163212, Mar. 13, 2007, 518 SCRA 221 351
Cano *vs.* Jumawan, G.R. No. 153860, Feb. 6, 2006,
481 SCRA 582 130
Capili *vs.* Cardaña, G.R. No. 157906, Nov. 2, 2006,
506 SCRA 569, 575 725

Page

Capistrano *vs.* Philippine National Bank, G.R. No. L-9628, Aug. 30, 1957, 101 Phil. 1117 618
Caramol *vs.* NLRC, G.R. No. 102973, Aug. 24, 1993, 225 SCRA 582, 586 511
Carating-Siayngco *vs.* Siayngco, G.R. No. 158896, Oct. 27, 2004, 441 SCRA 422, 435 839
Casanova, Jr. *vs.* Cajayon, 448 Phil. 573, 582-583 (2003) 205
Castro *vs.* CA, 208 Phil. 691, 696 (1983) 688
Catungal *vs.* Hao, 407 Phil. 309, 323 (2001) 730
Caviles, Jr. *vs.* Bautista, 377 Phil. 25 (1999) 616
Cavite Development Bank *vs.* Lim, 381 Phil. 355 (2000) 149
Chavez *vs.* Public Estates Authority, 433 Phil. 506 (2002) 458
Chemphil Export & Import Corporation *vs.* CA, G.R. Nos. 112438-39, Dec. 12, 1995, 251 SCRA 257, 291-292 911
Child Learning Center, Inc. *vs.* Tagorio, G.R. No. 150920, Nov. 25, 2005, 476 SCRA 236, 242 725
Chua *vs.* CA, G.R. No. 125837, Oct. 6, 2004, 440 SCRA 121 346
Santos, G.R. No. 132467, Oct. 18, 2004, 440 SCRA 365, 374 1029
Soriano, G.R. No. 150066, April 13, 2007, 521 SCRA 68, 77 ..... 706, 741
Chupungco *vs.* Cabusao, Jr., A.M. No. P-03-1758, Dec. 10, 2003, 417 SCRA 365, 369 20
Cioco, Jr. *vs.* C.E. Construction Corporation, G.R. Nos. 156748 and 156896, Sept. 8, 2004, 437 SCRA 648, 652 510
Citibank, N.A. *vs.* Cabamongan, G.R. No. 146918, May 2, 2006, 488 SCRA 517, 531 361
Citytrust Finance Corp. *vs.* NLRC, 157 SCRA 87 (1988) 926
Civil Service Commission *vs.* Sebastian, G.R. No. 161733, Oct. 11, 2005, 472 SCRA 364, 375 741
Claro *vs.* Efondo, A.M. No. MTJ-05-1585, Mar. 31, 2005, 454 SCRA 218, 227 47
Co *vs.* Bernardino, A.C. No. 3919, Jan. 28, 1998, 285 SCRA 102, 106 575
Coca-Cola Bottlers, Philippines, Inc. *vs.* Daniel, G.R. No. 156893, June 21, 2005, 460 SCRA 494, 504 905

Page

Coca-Cola Bottlers, Philippines, Inc. *vs.*
Kapisanan ng Malayang Manggagawa
sa Coca Cola-FFW, G.R. No. 148205, Feb. 28, 2005,
452 SCRA 480, 503 929
Cochingyan, Jr. *vs.* Cloribel, 167 Phil. 106, 131 (1977) 905
Cojuangco, Jr. *vs.* Palma, Adm. Case No. 2474,
Sept. 15, 2004, 438 SCRA 306, 317 4
Cojuangco, Jr. *vs.* PCGG, et al., G.R. Nos. 92319-201,
Oct. 2, 1990, 190 SCRA 226 655
Collantes *vs.* Marcelo, G.R. Nos. 167006-07, Aug. 14, 2007,
530 SCRA 142 89
Comilang *vs.* Burcena, G.R. No. 146853, Feb. 13, 2006,
482 SCRA 342, 352 938
Commissioner of Customs *vs.*
Court of Tax Appeals, G.R. Nos. L-48886-88,
July 21, 1993, 224 SCRA 665, 669-670 769
Confederation of Sugar Producers Association, Inc. *vs.*
Department of Agrarian Reform (DAR), G.R. No. 169514,
Mar. 30, 2007, 519 SCRA 582, 636 673
Consolidated Bank and Trust Corporation (SOLIDBANK)
vs. Del Monte Motor Works, Inc., G.R. No. 143338,
July 29, 2005, 465 SCRA 117, 131 600
Court Administrator *vs.* Sevillo, 336 Phil. 931 (1997) 40
Cristobal *vs.* CA, G.R. No. 125339, June 22, 1998,
291 SCRA 122, 132 416
Cruz *vs.* Bancom Finance Corporation,
429 Phil. 225, 235-236 (2002) 707
CA, 346 Phil. 506, 512 (1997) 745
People , G.R. No. 110436, June 27, 1994,
233 SCRA 439, 449-450 656
Judge Yaneza, 363 Phil. 629, 644 (1999) 190
Cuison *vs.* CA, 351 Phil. 1089, 1102 (1998) 905
Cuizon *vs.* Remoto, G.R. No. 143027, Oct. 11, 2005,
472 SCRA 274, 287 710
D.M. Consunji, Inc. *vs.* NLRC, 401 Phil. 635, 641 (2000) 510
Daffon *vs.* CA, 436 Phil. 233, 242 (2002) 905
Dalton-Reyes *vs.* CA, G.R. No. 149580, Mar. 16, 2005,
453 SCRA 498 485

Page

Davao City Water District *vs.* Civil Service Commission, G.R. Nos. 95237-38, Sept. 13, 1991, 201 SCRA 593 899
David *vs.* Cordova, G.R. No. 152992, July 28, 2005, 464 SCRA 384, 394-395 419
Dayo *vs.* Dayo, 95 Phil. 703, 707 (1954) 851
De Baron *vs.* CA, 420 Phil. 474, 482 (2001) 905
De Gracia *vs.* San Jose, 94 Phil. 623 (1954) 473
De la Camara *vs.* Enage, 41 SCRA 1, 6-7 (1971) 1017
De la Cruz (Concerned Citizen of Legaspi City) *vs.* Carretas, A.M. No. RTJ-07-2043, Sept. 5, 2007, 532 SCRA 218, 227-228 226
De la Rama *vs.* People's Court, 77 Phil. 461 (1946) 1016
De Leon *vs.* Corpuz, A.M. No. RTJ-03-1780, Sept. 14, 2005, 469 SCRA 624, 627-629 191
De los Santos *vs.* Vda. De Mangubat, G.R. No. 149508, Oct. 10, 2007, 535 SCRA 411 335
Del Rosario *vs.* Cedillo, A.M. No. MTJ-04-1577, Oct. 21, 2004, 441 SCRA 70, 77 237
Dela Cruz *vs.* Zabala, A.C. No. 6294, Nov. 17, 2004, 442 SCRA 407, 411 242
Delfin *vs.* Billones, G.R. No. 146550, Mar. 17, 2006, 485 SCRA 38, 50 ..... 454, 710
Delos Santos *vs.* Sarmiento, G.R. No. 154877, Mar. 27, 2007, 519 SCRA 62, 73 414
Delsan Transport Lines, Inc. *vs.* CA, 420 Phil. 824, 835 (2001) 760
Department of Agrarian Reform *vs.* CA, et al., 319 Phil. 246 (1995) 668
Development Bank of the Philippines *vs.* CA, G.R. No. L-49410, Jan. 26, 1989, 169 SCRA 409, 411 484
Director of Lands *vs.* IAC, 230 Phil. 590, 602, 605 (1986) 460-461
Director of Lands *vs.* IAC, G.R. No. 68946, May 22, 1992, 209 SCRA 214, 224 11-312
Domino *vs.* COMELEC, 369 Phil. 798, 819 (1999) 374
Drilon *vs.* CA, 336 Phil. 949-956 (1997) 353
Du *vs.* Stronghold Insurance Co., Inc., G.R. No. 156580, June 14, 2004, 432 SCRA 43 618

Page

Duero *vs.* CA, 424 Phil. 12, 20 (2002) 905
Dumadag *vs.* Atty. Lumaya, 390 Phil. 1, 10 (2000) 575
Dungaran *vs.* Koschnicke, G.R. No. 161048, Aug. 31, 2005,
468 SCRA 676, 685 600
Duterte *vs.* Sandiganbayan, G.R. No. 130191,
April 27, 1998, 289 SCRA 721, 737-738 655
Dy *vs.* CA, 363 Phil. 676, 682 (1999) 218
E. Ganzon, Inc. *vs.* NLRC, G.R. No. 123769, Dec. 22, 1999,
321 SCRA 434, 442 515
Eastern Shipping Lines, Inc. vs. CA, 234 SCRA 78 756
Eastern Shipping Lines, Inc. *vs.* CA, G.R. No. 97412,
July 12, 1994, 234 SCRA 78 274
Employees' Compensation Commission *vs.* CA,
332 Phil. 278 (1996) 803
Enrile *vs.* Senate Electoral Tribunal, G.R. No. 132986,
May 19, 2004, 428 SCRA 472, 477 372
Enriquez Security Services, Inc. *vs.* Cabotaje,
G.R. No. 147993, July 21, 2006, 496 SCRA 169, 175 607
Escañan *vs.* Monterola II, A.M. No. P-99-1347,
Feb. 6, 2001, 351 SCRA 228 391
Esmalin *vs.* NLRC, 177 SCRA 537 (1989) 926
Español *vs.* Mupas, A.M. No. MTJ-01-1348, Nov. 11, 2004,
442 SCRA 13, 50 193
Español *vs.* Toledo-Mupas, A.M. No. 03-1462-MTJ,
April 19, 2007, 521 SCRA 403, 415-416 222
Estate of Salvador Serra Serra *vs.* Heirs of Primitivo Hernaez,
G.R. No. 142913, Aug. 9, 2005, 466 SCRA 120, 128-129 532
Estoya *vs.* Abraham-Singson, A.M. No. RTJ-91-758,
Sept. 26, 1994, 237 SCRA 1 206
Estrada *vs.* Sandiganbayan, 427 Phil. 820, 864 (2002) 1014
Ever Emporium, Inc. *vs.* Judge Maceda,
A.M. Nos. RTJ-04-1881 and RTJ-04-1882,
Oct. 14, 2004, 440 SCRA 298 403
Expresscredit Financing Corporation *vs.* Spouses Velasco,
G.R. No. 156033, Oct. 20, 2005, 473 sCRA 570, 580 146
F.F. Marine Corporation *vs.* NLRC, Second Division,
G.R. No. 152039, April 8, 2005, 455 SCRA 154 352
Fabrigas *vs.* San Francisco Del Monte, Inc., G.R. No. 152346,
Nov. 25, 2005, 476 SCRA 263 430

Page

Factoran, Jr. *vs.* CA, 378 Phil. 282, 292 (1999) 218
Far East Bank and Trust Company *vs.* Querimit,
424 Phil. 721, 730-731 (2002) 573
Ferancullo *vs.* Ferancullo, Jr., A.C. No. 7214, Nov. 30, 2006,
509 SCRA 1, 15 4
Fernandez *vs.* People, 395 Phil. 478, 489 (2000) 689
Fernando *vs.* CA, G.R. No. 92087, May 8, 1992,
208 SCRA 714, 718 726
Ferrer *vs.* People, G.R. No. 143487, Feb. 22, 2006,
483 SCRA 31, 54 687
Filipinas Pre-Fabricated Building Systems
(Filsystems), Inc. *vs.* Puente, G.R. No. 153832,
Mar. 18, 2005, 453 SCRA 820, 826 509
Filoteo, Jr. *vs.* Sandiganbayan, 331 Phil. 531, 568-569 (1996) 125
Firestone Tire and Rubber Company of the Philippines *vs.*
Tempongko, 27 SCRA 418, 424 (1969) 722
First Asian Transport and Shipping Agency Inc. *vs.*
Ople, 226 Phil. 446, 453-454 (1986) 688
First Bancorp, Inc. *vs.* CA, G.R. No. 151132, June 22, 2006,
492 SCRA 221, 235 417
First Corporation *vs.* Former Sixth Division of the CA,
G.R. No. 171989, July 4, 2007, 526 SCRA 564 87
First Global Realty and Development Corp. *vs.* San Agustin,
G.R. No. 144499, Feb.19, 2002, 377 SCRA 341, 349 77
Florendo *vs.* Ruiz, G.R. No. 60225, May 8, 1992,
208 SCRA 542 277
Frivaldo *vs.* COMELEC, 327 Phil. 521, 568 (1996) 373
Fuentes *vs.* CA, 335 Phil. 1163, 1167-1168 (1997) 999
Gallego *vs.* Verra, 73 Phil. 453, 456 (1941) 374
Ganila *vs.* CA, G.R. No. 150755, June 28, 2005,
461 SCRA 435 457
Garcia *vs.* CA, 184 Phil. 358 (1980) 616
Garcia *vs.* Perez, G.R. No. L-28184, Sept. 11, 1980,
99 SCRA 628 907
Garcia *vs.* Sandiganbayan, G.R. No. 165835, June 22, 2005,
460 SCRA 600, 637-638 911
Gatchalian *vs.* COMELEC, 146 Phil. 435, 442-443 (1970) 797
Gatioan *vs.* Gaffud, 137 Phil. 125 (1969) 619

Page

General Manager, Philippine Ports Authority, et al. *vs.* Julieta Monserat, 381 SCRA 200 908
Gesmundo *vs.* CA, 378 Phil. 1099, 1107 (1999) 313
Globe-Mackay Cable and Radio Corporation *vs.* NLRC, et al., G.R. No. 82511, Mar. 3, 1992 926
Gochan *vs.* Young, G.R. No. 131889, Mar. 12, 2001, 354 SCRA 207 59
Gokongwei, Jr. *vs.* Securities and Exchange Commission, 178 Phil. 266, 292 (1979) 688
Goldloop Properties, Inc. *vs.* CA, 212 SCRA 498, 506 (1992) 851
Gonzalez *vs.* Pagcor, G.R. No. 144891, May 27, 2004, 429 SCRA 533 55
Gonzaludo *vs.* People, G.R. No. 150910, Feb. 6, 2006, 481 SCRA 569, 577 689
Government *vs.* American Surety Company, 11 Phil. 203 (1908) 125
Government of the Philippine Islands *vs.* Aballe, G.R. No. L-41342, Nov. 28, 1934, 60 SCRA 986 618
Government of the United States of America *vs.* Puruganan, 438 Phil. 417, 456-458 (2002) 1019
Government Service Insurance System *vs.* Baul, G.R. No. 166556, July 31, 2006, 497 SCRA 397, 404 798
Cuanang, G.R. No. 158846, June 3, 2004, 430 SCRA 639, 646 799
Palma, G.R. No. 167572, July 27, 2007, 528 SCRA 386, 394 802
Valenciano, G.R. No. 168821, April 10, 2006, 487 SCRA 109, 117-118 799
Villareal, G.R. No. 170743, April 12, 2007, 520 SCRA 741, 744 796
Grandspan Development Corporation *vs.* Bernardo, G.R. No. 141464, Sept. 21, 2005, 470 SCRA 461, 470 510
GSIS *vs.* CA, 368 Phil. 36, 50 (1999) 722
Guanzon *vs.* Rufon, A.M. No. RTJ-07-2038, Oct. 19, 2007, 537 SCRA 38 225
Guaranteed Hotels, Inc. *vs.* Baltao, G.R. No. 164338, Jan. 17, 2005, 448 SCRA 738, 744 911

Page

Guevara *vs.* BPI Securities Corporation, G.R. No. 159786, Aug. 15, 2006, 498 SCRA 613, 637-638 914
Guevarra *vs.* Eala, A.C. No. 7136, Aug. 1, 2007, 529 SCRA 1, 21 4
Guinhawa *vs.* People, G.R. No. 162822, Aug. 25, 2005, 468 SCRA 278 492
Gumabon *vs.* Larin, 422 Phil. 222, 230-231 (2001) 125
Gutierrez *vs.* Quitalig, A.M. No. P-02-1545, April 2, 2003, 400 SCRA 391 391
Haberer *vs.* CA, G.R. Nos. L-42699 to L-42707, May 26, 1981, 104 SCRA 540 56
Hagonoy Water District *vs.* NLRC, G.R. No. 81490, Aug. 31, 1988, 165 SCRA 272 911
Haverton Shipping Ltd. *vs.* NLRC, 220 Phil. 356 (1985) 454
Heirs of Batongbacal *vs.* CA, R. No. 125063, Sept. 24, 2002, 389 SCRA 517 101
Heirs of Bertuldo Hinog *vs.* Melicor, 455 SCRA 460, 478 (2005) 55
Heirs of Dicman *vs.* Cariño, G.R. No. 146459, June 8, 2006, 490 SCRA 240, 261 706
Heirs of Eugenio Lopez, Sr. *vs.* Enriquez, G.R. No. 146262, Jan. 21, 2005, 449 SCRA 173, 186-187 748
Heirs of Gregorio Tengco *vs.* Heirs of Jose Aliwalas, G.R. No. 77541, Nov. 29, 1988, 168 SCRA 198, 203-204 532
Heirs of Jose Olviga *vs.* CA, G.R. No. 104813, Oct. 21, 1993, 227 SCRA 330, 335 710
Heirs of Macabangkit Sangkay *vs.* National Power Corporation, G.R. No. 141447, May 4, 2006, 489 SCRA 401, 417 673
Heirs of Mayor Nemencio Galvez *vs.* CA, 325 Phil. 1028 (1996) 1011
Heirs of Pomposa Saludares *vs.* CA, 464 Phil. 958, 966 (2004) 710
Heirs of the Late Flor Tungpalan *vs.* CA, G.R. No. 136207, June 21, 2005, 460 SCRA 392, 397 527
Herrera *vs.* Bollos, G.R. No. 138258, Jan. 18, 2002 729
Home Insurance Corporation *vs.* CA, G.R. No. 109293, Aug. 18, 1993, 225 SCRA 411, 416 ..... 760, 755

Page

Hongkong and Shanghai Banking Corporation Limited *vs.* Catalan, G.R. Nos. 159590-91, Oct. 18, 2004, 440 SCRA 498, 513 911
Hugo *vs.* CA, G.R. No. 126752, Sept. 6, 2002, 388 SCRA 458, 465-466 294
Huibonhoa *vs.* Concepcion, G.R. No. 153785, Aug. 3, 2006, 497 SCRA 562, 569 912
Ignacio *vs.* Coca-Cola Bottlers Phils., Inc., 417 Phil. 747 (2001) 633
Imbang *vs.* Del Rosario, A.M. No. 03-1515-MTJ, Nov. 19, 2004, 443 SCRA 79, 83-85 195
In re: Consulta of Vicente J. Francisco on behalf of Cabantug, 67 Phil. 222 616
Industrial Insurance Company, Inc. *vs.* Bondad, 386 Phil. 923, 934 (2000) 750
Inoturan *vs.* Limsiaco, Jr., A.M. No. MTJ-01-1362, May 6, 2005, 458 SCRA 48, 55 191
Intestate Estate of Carmen de Luna *vs.* IAC, G.R. No. 72424, Feb. 13, 1989, 170 SCRA 246 655
Jacang *vs.* Employees' Compensation Commission, G.R. No. 151893, Oct. 20, 2005, 473 SCRA 520, 531 799
Jesena *vs.* Oñasa, 211 Phil. 543, 546 (1983) 575
Jose *vs.* People, 479 Phil. 969, 986 (2004) 697
Joya *vs.* Pareja, 106 Phil. 645 (1959) 131
Jugueta *vs.* Estacio, A.M. No. CA-04-17-P, Nov. 25, 2004, 444 SCRA 10, 16 35
Katon *vs.* Palanca, Jr., G.R. No. 151149, Sept. 7, 2004, 437 SCRA 565, 573-574 125
Kiani *vs.* Bureau of Immigration and Deportation (BID), G.R. No. 160922, Feb. 27, 2006, 483 SCRA 341, 353-354 534
Kilat *vs.* Macias, A.M. No. RTJ-5-1960, Oct. 25, 2005, 474 SCRA 101 402
King *vs.* People, 377 Phil. 692, 710 (1999) 236
Lachica *vs.* Judge Flordeliza, A.M. No. MTJ-94-921, Mar. 5, 1996, 324 Phil. 534, 254 SCRA 278 402
Ladonga *vs.* People, G.R. No. 141066, Feb. 17, 2005, 451 SCRA 673, 685-686 260
Lalican *vs.* Vergara, G.R. No. 108619, July 31, 1997, 276 SCRA 518 655

Page

Land and Housing Development Corporation *vs.*Esquillo, G.R. No. 152012, Sept. 30, 2005, 471 SCRA 488, 499 517
Landbank of the Philippines *vs.* CA, 327 Phil. 1047 (1996) 668
Lao *vs.* CA, G.R. No. 119178, June 20, 1997, 274 SCRA 572, 594 236
Medel, 453 Phil. 115, 121 (2003) 576
Medel, A.C. No. 5916, July 1, 2003, 405 SCRA 227, 234 575
Lapu-Lapu Development and Housing Corporation *vs.* Group Management Corporation, G.R. No. 141407, Sept. 9, 2002, 388 SCRA 493, 506-507 1029
Larena *vs.* Mapili, G.R. No. 146341, Aug. 7, 2003, 408 SCRA 484 600
Larrazabal *vs.* COMELEC, G.R. No. 100739, Sept. 3, 1991 371
Lavina *vs.* CA, G.R. No. 78295, April 10, 1989, 171 SCRA 691 56
Lazaro *vs.* Social Security Commission, 479 Phil. 384 (2004) 346
Lee Hong Hok *vs.* David, 150-C Phil. 542, 550 (1972) 531
Lepanto Consolidated Mining Co. *vs.* CA, 1 SCRA 1251 (1961) 926
Levin *vs.* Bass, 91 Phil. 420 (1952) 616
Leviste *vs.* Social Security System (Solid Mills, Inc.), G.R. No. 159060, Nov. 28, 2007, 539 SCRA 120, 128 798
Leyson *vs.* Bontuyan, G.R. No. 156357, Feb. 18, 2005, 452 SCRA 94, 113 710
Leyson *vs.* Lawa, G.R. No. 150756, Oct. 11, 2006, 504 SCRA 147, 161 954
Lianga Lumber Co. *vs.* Lianga Timber Co., Inc., 166 Phil. 661-686 (1977) 352
Lim *vs.* Dumlao, A.M. No. MTJ-04-1556, Mar. 31, 2005, 454 SCRA 196, 201 191
Lim *vs.* Vianzon, G.R. No. 137187, Aug. 3, 2006, 497 SCRA 482, 494 911
Lopez *vs.*Luna, A.M. No. P-04-1786, Feb. 13, 2006, 482 SCRA 265, 277-278 ..... 197, 228
Loyola *vs.* CA, 383 Phil. 171, 182 (2000) 707
Lumayag *vs.* Heirs of Jacinto Nemeño, G.R. No. 162112, July 3, 2007, 526 SCRA 315, 325 743

Page

Luna *vs.* Rodriguez, 36 Phil. 401, 403 (1917) 907
Macalintal *vs.* Judge Teh, 345 Phil. 871, 878 (1997) 222
Mackay *vs.* Judge Angeles, 458 Phil. 1031, 1037-1038 (2003) ... 345
Maglutac *vs.* NLRC, 189 SCRA 767 (1990) 926
Mahinay *vs.* Velasquez, Jr., 464 Phil. 146, 149 (2004) 749
Malayan Insurance Co., Inc. *vs.* Regis Brokerage Corp.,
G.R. No. 172156, Nov. 23, 2007, 538 SCRA 681, 688 760
Maligsa *vs.* Atty. Cabanting, 338 Phil. 912, 916-917 (1997) 575
Mallari *vs.* People, G.R. No. 153911, Dec. 10, 2004,
446 SCRA 74, 91 181
Mamanteo *vs.* Magumun, A.M. No. P-98-1264,
July 28, 1999, 311 SCRA 259, 265 23
Manalo *vs.* CA, 402 Phil. 152, 165 (2001) 851
Mangubat *vs.* Sandiganbayan, 227 Phil. 642 (1986) 1015
Manila Banking Corporation *vs.* Silverio, G.R. No. 132887,
Aug. 11, 2005, 466 SCRA 438, 452 707
Manila Electric Company *vs.* CA, 413 Phil. 338, 354 (2001) 726
Manila International Airport Authority *vs.* CA,
G.R. No. 118249, Feb. 14, 2003, 397 SCRA 348, 359 1031
Manila Memorial Park Cemetery, Inc. *vs.* Panado,
G.R. No. 167118, June 15, 2006, 490 SCRA 751, 769 927
Manila Surety and Fidelity Co., Inc. *vs.* Batu Corporation
and Company, 101 Phil. 494, 501 (1957) 825
Marcelo *vs.* Sandiganbayan, (185 SCRA 346) 86
Marcos *vs.* Marcos, 397 Phil. 840, 850 (2000) 844
Maricalum Mining Corporation *vs.* Brion,
G.R. Nos. 157696-97, Feb. 9, 2006, 482 SCRA 87, 105-106 911
Martinez *vs.* CA, G.R. No. 168827, April 13, 2007,
521 SCRA 176, 205 956
Martinez *vs.* NLRC, G.R. No. 118743, Oct. 12, 1998,
297 SCRA 643, 652 517
Mato *vs.* CA, 320 Phil. 344, 349 (1995) 761
Matuguina Integrated Wood Products, Inc. *vs.* CA,
331 Phil. 795 (1996) 1010
Maturillas *vs.* People, G.R. No. 163217, April 18, 2006,
487 SCRA 273, 302-303 954
Mendoza *vs.* Allas, 362 Phil. 238, 244-245 (1999) 907
Mendoza *vs.* Buo-Rivera, A.M. No. P-04-1784,
April 28, 2004, 428 SCRA 72, 76 35

Page

Menguito *vs.* Republic, 401 Phil. 274 (2000) 456
Mercado *vs.* CA, G.R. No. 150241, Nov. 4, 2004,
441 SCRA 463-470 346
Merilo-Bedural *vs.* Edroso, 396 Phil. 756, 762-763 (2000) 39
Metro Drug Distribution, Inc. *vs.* Metro Drug Corporation
Employees Association-Federation of Free Workers,
G.R. No. 142666, Sept. 26, 2005, 471 SCRA 45, 56 905
Metropolitan Bank and Trust Company *vs.* Tan,
G.R. No. 163712, Nov. 30, 2006, 509 SCRA 383 472
Metropolitan Bank and Trust Company, Inc. *vs.*
National Wages and Productivity Commission,
G.R. No. 144322, Feb. 6, 2007, 514 SCRA 346, 361-363 770
Mindanao Savings and Loan Association, Inc. *vs.*
Vda. De Flores, G.R. No. 142022, Sept. 7, 2005,
469 SCRA 416, 423 1030
Mon *vs.* CA, G.R. No. 118292, April 14, 2004,
427 SCRA 165, 175 127
Mondragon Leisure and Resorts Corporation *vs.*
United Coconut Planters Bank, G.R. No. 154187,
April 14, 2004, 427 SCRA 585, 590 912
Monfort *vs.* Aguinaldo, 91 Phil. 913 (1952) 573
Monroy *vs.* CA, 127 Phil. 1, 6 (1967) 372
Montano *vs.* Ocampo. G.R. No. L-6352, Jan. 29, 1953,
49 O.G. No. 5 (May 1953), 1855 1016
Morales, Sr. *vs.* Judge Dumlao, 427 Phil. 56, 61-62 (2002) 196
Municipality of Taguig *vs.* CA, G.R. No. 142619,
Sept. 13, 2005, 469 SCRA 588, 59 913
National Bureau of Investigation *vs.* Judge Reyes,
382 Phil. 872, 886 (2000) 575
Nagkahiusang Mamumuo sa PICOP Resources,
Inc.-Southern Philippines Federation of Labor *vs.*
CA, G.R. Nos. 148839-40, Nov. 2, 2006, 506 SCRA 542 344
Naguiat *vs.* CA, 459 Phil. 237, 241-242 (2003) 337
Nakpil *vs.* Valdes, 350 Phil. 412, 430 (1998) 575
Napere *vs.* Barbarona, G.R. No. 160426, Jan. 31, 2008 55
Natividad *vs.* CA, G.R. No. 88233, Oct. 4,1991,
202 SCRA 493 462
Navarro, Jr. *vs.* Cecilio-Navarro, G.R. No. 162049,
April 13, 2007, 521 SCRA 121, 129 843

Page

Navarro Vda. de Taroma *vs.* Taroma, G.R. No. 160214, Dec. 16, 2005, 478 SCRA 336, 345-346 911
Nerpio *vs.* People, G.R. No. 155153, July 24, 2007, 528 SCRA 93, 102 953
Neypes *vs.* CA, G.R. No. 141524, Sept. 14, 2005, 469 SCRA 633 ..... 334, 564
Nicario *vs.* NLRC, G.R. No. 125340, Sept. 17, 1998, 295 SCRA 619, 626-627 518
Norkis Free and Independent Workers Union *vs.* Norkis Trading Company, Inc., G.R. No. 157098, June 30, 2005, 462 SCRA 485, 497 773
Nuñez *vs.* GSIS Family Bank, G.R. No. 163988, Nov. 17, 2005, 475 SCRA 305 346
Obosa *vs.* CA, 334 Phil. 253, 271 (1997) 1016
Ocampo *vs.* People, G.R. No. 163705, July 30, 2007, 528 SCRA 547, 557-558 ..... 873, 954
Office of the Clerk of Court *vs.* Bernardino, A.M. No. P-97-1258, Jan. 31, 2005, 450 SCRA 88, 111 392
Office of the Court Administrator *vs.* Alon, A.M. No. RTJ-06-2022, June 27, 2007, 525 SCRA 786, 790 46
Alumbres, A.M. No. RTJ-05-1965, Jan. 23, 2006, 479 SCRA 375, 390 47
Dumlao, A.M. No. MTJ-07-1679, Mar. 4, 2008 195
Laron, A.M. No. RTJ-04-1870, July 9, 2007, `527 SCRA 45, 57 47
Magno, 419 Phil. 593, 602 (2001) 39
Paderanga, A.M. No. RTJ-01-1660, Aug. 25, 2005, 468 SCRA 21, 36 226
Judge Sumilang, 338 Phil. 28, 38 (1997) 35
Olalia *vs.* Hizon, G.R. No. 87913, May 6, 1991, 196 SCRA 665 77
Olivarez *vs.* CA, G.R. No. 163866, July 29, 2005, 465 SCRA 465 164
Ong *vs.* Rosete, A.M. No. 04-1538, Oct. 22, 2004, 441 SCRA 150 402
Ong Chiu Kwan *vs.* CA, 399 Phil. 336, 340 (2000) 688
Orasa *vs.* Seva, 472 Phil. 75, 83 (2005) 574

Page

Ortiz *vs.* COMELEC, G.R. No. 78957, June 28, 1988,
162 SCRA 812, 821-822 587
Osea *vs.* Ambrosio, G.R. No. 162774, April 7, 2006,
486 SCRA 599, 607 ..... 412, 414
Paat *vs.* CA, 334 Phil. 146, 152-153 (1997) 530
Paat *vs.* CA, G.R. No. 111107, Jan. 10, 1997,
266 SCRA 167, 175 218
Pacheco *vs.* CA, G.R. No. 126670, Dec. 2, 1999,
319 SCRA 595 490
Pacquing *vs.* Gobarde, A.M. No. RTJ-07-2042**,**
April 19, 2007, 521 SCRA 464, 467-468 45
Padilla *vs.* CA, 328 Phil. 1266, 1269-1270 (1996) 1014
Pag-Asa Steel Works, Inc. *vs.* CA, G.R. No. 166647,
Mar. 31, 2006, 486 SCRA 475 771
Palisoc *vs.* Easways Marine, Inc., G.R. No. 152273,
Sept. 11, 2007, 532 SCRA 585 352
Palon, Jr. *vs.* Vallarta, A.M. No. MTJ-04-1530, Mar. 7, 2007,
517 SCRA 624, 628 192
Pamintuan *vs.* San Agustin, 43 Phil. 558 (1922) 531
Panday *vs.* NLRC, G.R. No. 67664, May 20, 1992,
209 SCRA 122, 125-126 926
Pardo *vs.* Velasco, Adm. Matter Nos. P-90-408 & P-90-453,
Aug. 7, 1992, 212 SCRA 323 18
Pascual *vs.* Judge Dumlao, 414 Phil. 1, 10-13 (2001) 194
Peña *vs.* GSIS, G.R. No. 159520, Sept. 19, 2006,
502 SCRA 383, 402 415
People *vs.* Abesamis, G.R. No. 140985, Aug. 28, 2007,
531 SCRA 300 955
Abolidor, G.R. No. 147231, Feb. 18, 2004,
423 SCRA 260, 268 296
Acala, 366 Phil. 797, 814 (1999) 993
Agbayani, G.R. No. 122770, Jan. 16, 1998,
284 SCRA 315 160
Agsaoay, Jr., G.R. Nos. 132125-26, June 3, 2004,
430 SCRA 450, 459 178
Aguila, G.R. No. 171017, Dec. 6, 2006,
510 SCRA 642, 661 ..... 299, 938
Alabado, G.R. No. 176267, Sept. 3, 2007,
532 SCRA 189, 208 954

Page

Alfaro, 458 Phil. 942, 957 (2003) 993
Alfon, 447 Phil. 138, 147 (2003) 947
Alfon, G.R. No. 126028, Mar. 14, 2003, 399 SCRA 64 166
Almedilla, G.R. No. 150590, Aug. 21, 2003, 409 SCRA 428 ... 166
Arca, G.R. No. 135857, June 18, 2003, 404 SCRA 311 165
Asis, 439 Phil. 707, 720 (2002) 324
Astudillo, 440 Phil. 203, 224 (2002) 976
Astudillo, 449 Phil. 778, 790-791 (2003) 873, 954
Bajar, 460 Phil. 683, 700 (2003) 956
Baldogo, 444 Phil. 35, 66 (2003) 330
Ballesteros, 349 Phil. 366, 375 (1998) 558
Balonzo, G.R. No. 176153, Sept. 21, 2007,
533 SCRA 760, 773 938
Baltazar, G.R. No. 143126, July 31, 2003,
407 SCRA 542 166
Barcenal, G.R. No. 175925, Aug. 17, 2007,
530 SCRA 706, 726 328
Bares, 407 Phil. 747, 759 (2001) 178
Bautista, G.R. No. 131840, April 27, 2000,
331 SCRA 170 165
Beltran, G.R. No. 168051, Sept. 27, 2006,
503 SCRA 715, 729 954
Bernal, G.R. Nos. 132791 & 140465-66, Sept. 2, 2002,
388 SCRA 211 168
Bongalon, 425 Phil. 96, 119-120 (2002) 324
Buayaban, G.R. No. 112459, Mar. 28, 2003,
400 SCRA 48, 57 294
Buenviaje, 408 Phil. 342, 351 (2001) 178
Buli-e, 452 Phil. 129, 152 (2003) 695
Bustamante, G.R. Nos. 140724-26, Feb. 12, 2003,
397 SCRA 326, 341 293
Bustos, G.R. No. L-35475, Mar. 16, 1989,
171 SCRA 243 166
CA, 368 Phil. 169, 184-185 (1999) 687
CA, G.R. No. 144332, June 10, 2004, 431 SCRA 610, 621 353
Caballero, G.R. Nos. 149028-30, April 2, 2003,
400 SCRA 424 166
Cabalquinto, G.R. No. 167693, Sept. 19, 2006,
502 SCRA 419 ..... 172, 879, 985

Page

Cabbab, Jr., G.R. No. 173479, July 12, 2007,
527 SCRA 589, 604 949
Cabote, G.R. No. 136143, Nov. 15, 2001, 369 SCRA 65 165
Cabugatan, G.R. No. 172019, Feb. 12, 2007,
515 SCRA 537, 547, 552 . ..... 549, 973, 975
Cadley, 469 Phil. 515, 525 (2004) 975
Calvo, G.R. No. 91694, Mar. 14, 1997,
269 SCRA 676, 683-684 258
Caraang, 463 Phil. 715, 744 (2003) 939
Caritativo, 451 Phil. 741, 762 (2003) 948
Castillon III, 439 Phil. 92, 103 (2001) 324
Catubig, G.R. No. 137842, Aug. 23, 2001,
363 SCRA 621, 635 168
Chen Tiz Chang, 382 Phil. 669, 684 (2000) 976
Chua, G.R. No. 130632, Sept. 28, 1999,
315 SCRA 326, 336 492
Cordero, G.R. No. 108919, Oct. 11, 1996, 263 SCRA 122 167
Corral, 446 Phil. 652, 665 (2003)..... 947
Cortezano, 425 Phil. 696, 708 (2002)..... 870
Dagami, 461 Phil. 139 (2003) 178
Dala, G.R. No. 134563, Oct. 28, 2003, 414 SCRA 532 166
Degamo, 450 Phil. 159, 175 (2003) 948
Degoma, G.R. Nos. 89404-05, May 22, 1992,
209 SCRA 266 167
Del Monte, G.R. No. 179940, April 23, 2008 971
Del Mundo, 418 Phil. 740, 756 (2001) 324
Del Mundo, G.R. No. 169141, Dec. 6, 2006,
510 SCRA 554, 565-566 974
Dela Cruz, 446 Phil. 549, 571 (2003) 954
Delim, et al., G.R. No. 175942, Sept. 13, 2007..... 326
Delmo, 439 Phil. 212, 247 (2002) 696
Divina, G.R. Nos. 93808-09, April 7, 1993,
221 SCRA 209, 223 1014
Domantay, G.R. No. 130612, May 11, 1999, 307 SCRA 1 255
Ducabo, G.R. No. 175594, Sept. 28, 2007,
534 SCRA 458, 476 956
Emoy, 395 Phil. 371, 384 (2000) 558
Escano, 427 Phil. 162, 198 (2002) 1001

Page

Escote, 448 Phil. 749, 783-784 (2003) 948
Escote, Jr., G.R. No. 140756, April 4, 2003, 400 SCRA 603 ... 166
Eugenio, 443 Phil. 411, 419 (2003) 978
Fajardo, 399 Phil. 109, 128-129 (2000) 695, 697
Feliciano, 418 Phil. 88, 106 (2001) 687
Fitzgerald, G.R. No. 149723, Oct. 27, 2006,
505 SCRA 573, 585-586 1016
Fortes, G.R. No. 90643, June 25, 1993,
223 SCRA 619, 625-626 1014
Gabres, 335 Phil. 242, 257 (1997) 697
Galano, 384 Phil. 206, 216 (2000) 953
Galido, G.R. Nos. 148689-92, Mar. 30, 2004,
426 SCRA 502, 513 864
Gallego, 453 Phil. 825, 846 (2003) 939
Galo, G.R. No. 132025, Jan. 16, 2001, 349 SCRA 161 167
Garalde, G.R. No. 173055, April 13, 2007 330
Garcia, 424 Phil. 158, 194 (2002) 330
Garcia, 447 Phil. 244, 260 (2003) 870
Gaufo, 469 Phil. 66 (2004) 182
Gomez, 381 Phil. 870 (2000) 1014
Gonzales, 430 Phil. 504, 514 (2002) 975
Gregorio, G.R. No. 153781, Sept. 24, 2003, 412 SCRA 90 166
Gumayao, G.R. No. 138933, Oct. 28, 2003, 414 SCRA 539 166
Guzman, G.R. No. 169246, Jan. 26, 2007,
513 SCRA 156, 177 296
Hermosa, 452 Phil. 404, 411 (2003) 991
Holzer, G.R. No. 132323, July 20, 2000, 336 SCRA 319 492
Ibañez, G.R. Nos. 133923-24, July 30, 2003,
407 SCRA 406, 430 167
Jerez, G.R. No. 114385, Jan. 29, 1998, 285 SCRA 393, 401 257
Julian-Fernandez, 423 Phil. 895, 910 (2001) 974
Juliano, G.R. No. 134120, Jan. 17, 2005,
448 SCRA 370, 379 492
Kinok, G.R. No. 104629, Nov. 13, 2001,
368 SCRA 510, 521 165
Lacao, Sr., G.R. No. 95320, Sept. 4, 1991,
201 SCRA 317 166
Lara, G.R. No. 171449, Oct. 23, 2006, 505 SCRA 137, 153 948

Page

Larranaga, 466 Phil. 324, 373-374 (2004) 327
Layugan, G.R. Nos. 130493-98, April 28, 2004,
428 SCRA 98, 105 178
Layuso, G.R. No. 69210, July 5, 1989, 175 SCRA 47 257
Li Yin Chu, 467 Phil. 582, 597 (2004) 975
Libnao, 443 Phil. 506, 519 (2003) 761
Lozada, 454 Phil. 241, 254 (2003) 949
Lucero, 407 Phil. 377, 388 (2001) 687
Macabalang, G.R. No. 168694, Nov. 27, 2006,
508 SCRA 282, 293-294 549
Macapal, Jr., G.R. No. 155335, July 14, 2005,
463 SCRA 387, 400 179
Maceda, 380 Phil. 1, 5 (2000) 1014-1015
Maglente, 366 Phil. 221, 244 (1999) 997
Malapo, G.R. No. 123115, Aug. 25, 1998,
294 SCRA 579, 588 996
Malejana, G.R. No. 145002, Jan. 24, 2006,
479 SCRA 610, 624-625 ..... b184
Malicsi, G.R. No. 175833, Jan. 29, 2008 947
Malimit, G.R. No. 109775, Nov. 14, 1996,
264 SCRA 167, 177 258
Malinao, G.R. No. 128148, Feb. 16, 2004,
423 SCRA 34, 54 ..... 168, 299
Manes, 362 Phil. 569, 576 (1999) 1014
Manlansing, G.R. Nos. 131736-37, Mar. 11, 2002,
378 SCRA 685, 701 165
Marra, G.R. No. 108494, Sept. 20, 1994,
236 SCRA 565, 573 255
Martinez, 469 Phil. 558, 570 (2004) 326
Mascariñas, 432 Phil. 96, 102 (2002) 993
Mateo, G.R. Nos. 147678-87, July 7, 2004,
433 SCRA 640, 656 ..... 159, 323, 547
Mercado, G.R. No. 116239, Nov. 29, 2000,
346 SCRA 256, 291 167
Mesa, G.R. No. 120072, July 28, 1997, 276 SCRA 407 165
Mondigo, G.R. No. 167954, Jan. 31, 2008 956
Montemayor, 444 Phil. 169, 190 (2003) 1001
Mostrales, G.R. No. 125937, Aug. 28, 1998,
294 SCRA 701 168

Page

Nicolas, G.R. No. 170234, Feb. 8, 2007,
515 SCRA 187, 205 561
Noay, 357 Phil. 295, 309 (1998) 696
Nullan, G.R. No. 126303, April 14, 1999,
305 SCRA 679, 706 167
Ocampo, G.R. Nos. 90247, Feb. 13, 1992,
206 SCRA 223, 232 999
Oco, 458 Phil. 815, 844 (2003) 938
Ojeda, G.R. Nos. 104238-58, June 3, 2004,
430 SCRA 436 492
Ortoa, G.R. No. 176266, Aug. 8, 2007,
529 SCRA 536, 550-551 994
Pacis, 434 Phil. 148, 159 (2002) 974
Padasin, 445 Phil. 448, 461 (2003) 549
Padilla, G.R. No. 142899, Mar. 31, 2004,
426 SCRA 648, 663 183
Panado, G.R. No. 133439, Dec. 26, 2000,
348, SCRA 679, 690 299
Patamama, 321 Phil. 193 (1995) 455
Patrolla, Jr., G.R. No. 112445, Mar. 7, 1996,
254 SCRA 467 165
Pedrigal, G.R. No. 152604, Sept. 18, 2003,
411 SCRA 339 166
Perez, 366 Phil. 741 (1999) 182
Perez, G.R. No. 134485, Oct. 23, 2003, 414 SCRA 106 166
Perreras, G.R. No. 139622, July 31, 2001,
362 SCRA 202, 214 167
Piedad, 441 Phil. 818, 838-839 (2002) 887
Pinuela, G.R. Nos. 140727-28, Jan. 31, 2003,
396 SCRA 561 166
Ponce, 395 Phil. 563, 571-572 (2000) 559
Prades, G.R. No. 127569, July 30, 1998, 293 SCRA 411 168
Quiachon, G.R. No. 170236, Aug. 31, 2006,
500 SCRA 704, 718 875
Quiaoit, Jr., G.R. No. 175222, July 27, 2007,
528 SCRA 474, 489 979
Quilatan, 395 Phil. 444, 450 (2000) 993
Quirol, G.R. No. 149259, Oct. 20, 2005,
473 SCRA 509, 517 259

Page

Raquipo, G.R. No. 90766, Aug. 13, 1990,
188 SCRA 571, 577 165
Reyes, G.R. Nos. 74226-27, July 27, 1989,
175 SCRA 597 619
Rodriguez, 429 Phil. 359, 370 (2002) 977
Rosario, 455 Phil. 876, 886 (2003) 991
Ruales, 457 Phil. 161, 173 (2003) 947
Sabardan, G.R. No. 132135, May 21, 2004, 429 SCRA 9 182
Sades, G.R. No. 171087, July 12, 2006,
494 SCRA 716, 725-726 293
Salome, G.R. No. 169077, Aug. 31, 2006,
500 SCRA 659, 675 298
Santos, 418 Phil. 299, 308 (2001) 993
Sernadilla, G.R. No. 137696, Jan. 24, 2001,
350 SCRA 243 164
Servano, 454 Phil. 256, 271-272 (2003) 993
Solamillo, 452 Phil. 261, 275 (2003) 948
Solangon, G.R. No. 172693, Nov. 21, 2007 330
Soriano, 436 Phil. 719, 756 (2002) 1001
Suarez, G.R. No. 111193, Jan. 28, 1997, 267 SCRA 119 257
Suson, G.R. No. 152848, July 12, 2006,
494 SCRA 691, 705 976
Sy, G.R. No. 171397, Sept. 27, 2006, 503 SCRA 772, 783 977
Togahan, G.R. No. 174064, June 8, 2007,
524 SCRA 557, 571 939
Toledano, 387 Phil. 957 (2000) 1018
Toledo, Sr., 409 Phil. 746 (2001) 870
Torres, 418 Phil. 694, 711-712 (2001) 997
Tumulak, G.R. No. 177299, Nov. 28, 2007 326
Tundag, 396 Phil. 873, 882 (2000) 993
Umayam, 450 Phil. 543, 560 (2003 991
Valdez, G.R. No. 127663, Mar. 11, 1999,
304 SCRA 611, 626 165
Velaga, Jr., G.R. No. 87202, July 23, 1991,
199 SCRA 518, 523 166
Ventura, G.R. Nos. 148145-46, July 5, 2004,
433 SCRA 389, 400 165
Vicente, G.R. No. 137296, June 26, 2003, 405 SCRA 40 166

Page

Villanueva, G.R. No. 139177, Aug. 11, 2003,
408 SCRA 571 167
Visperas, Jr., G.R. No. 147315, Jan. 13, 2003,
395 SCRA 128, 137 296
Werba, G.R. No. 144599, June 9, 2004, 431 SCRA 482 167
Whisenhunt, 420 Phil. 677, 698 (2001) 324
Yambot, 397 Phil. 23, (2000) 330
Yang, 467 Phil. 492, 509 (2004) 973
Zheng Bai Hui, 393 Phil. 68, 138 (2000) 978
Pepsi-Cola Distributors of the Philippines, Inc. *vs.* NLRC,
338 Phil. 773, 782 (1997) 929
Perez-Ferraris *vs.* Ferraris, G.R. No. 162368, July 17, 2006,
495 SCRA 396, 403 838
Pestaño *vs.* Sumayang, 400 Phil. 740, 749 (2000) 726
Petron Corporation *vs.* NLRC, G.R. No. 154532,
Oct. 27, 2006, 505 SCRA 596, 613-614 607
Pfizer, Inc. *vs.* Galan, 410 Phil. 483, 491 (2001) 335
Phil. Aeolus Automotive United Corp. *vs.* NLRC,
387 Phil. 250, 263 (2000) 925
Philippine Airlines Employees Savings and Loan
Association, Inc. *vs.* Philippine Airlines, Inc.,
G.R. No. 161110, Mar. 30, 2006, 485 SCRA 632, 646 911
Philippine Airlines, Inc. *vs.* CA, G.R. No. 159556,
May 26, 2005, 459 SCRA 236, 258 259
Philippine American General Insurance Co., Inc. *vs.*
Mutuc, 158 Phil. 699 (1974) 826
Philippine Bank of Commerce *vs.* CA,
336 Phil. 667, 675-676 (1997) 361-362
Philippine Charter Insurance Corporation *vs.*
Unknown Owner of the Vessel M/V "National Honor,"
G.R. No. 161833, July 8, 2005, 463 SCRA 202, 215 756
Philippine Employ Services and Resources, Inc. *vs.* Paramio,
G.R. No. 144786, April 15, 2004, 427 SCRA 732, 755 517
Philippine Health Insurance Corporation *vs.* Chinese
General Hospital and Medical Center, G.R. No. 163123,
April 15, 2005, 456 SCRA 459, 472 529
Philippine National Bank *vs.* CA,
326 Phil. 326, 335-336 (1996) 573

Page

Philippine National Bank *vs.* Heirs of Estanislao Militar, G.R. No. 164801, June 30, 2006, 494 SCRA 308, 315 746
Philippine School of Business Administration-Quezon City *vs.* Tolentino-Genilo, G.R. No. 159277, Dec. 21, 2004, 447 SCRA 442, 448 722
Philippine Sinter Corporation *vs.* Cagayan Electric Power and Light Co., Inc., 431 Phil. 324, 333 (2002) 722
Picart *vs.* Smith, 37 Phil. 809, 813 (1992) 726
Pimentel *vs.* COMELEC, 352 Phil. 424, 434 (1998) 885
Planas *vs.* Reyes, A.M. No. RTJ-05-1905, Feb. 23, 2005, 452 SCRA 146 402
PLDT *vs.* NLRC, 362 Phil. 352 (1999) 930
PNB *vs.* Hon. Adil, etc., et al., 203 Phil. 492, 499 (1982) 473-474
Ponce *vs.* Guevarra, 119 Phil. 923 (1961) 131
Portic *vs.* Villalon-Pornillos, A.M. No. RTJ-02-1717, May 28, 2004, 430 SCRA 29, 34 402
Preferred Home Specialties, Inc. *vs.* CA, G.R. No. 163593, Dec. 16, 2005, 478 SCRA 387, 415 259
Presidential Ad-Hoc Fact Finding Committee on Behest Loans *vs.* Desierto, G.R. No. 138142, Sept. 19, 2007, 533 SCRA 571 88
Presidential Commission on Good Government *vs.* Desierto, G.R. No. 139296, Nov. 27, 2007 88
Prudential Bank *vs.* Lim, G.R. No. 136371, Nov. 11, 2005, 474 SCRA 485, 495 361
Prudential Guarantee and Assurance Inc. *vs.* Trans-Asia Shipping Lines, Inc., G.R. No. 151890, June 20, 2006, 491 SCRA 411 761
Pucay *vs.* People, G.R. No. 167084, Oct. 31, 2006, 506 SCRA 411, 420 179
Ramos *vs.* Director of Lands, 39 Phil. 175, 178 (1918) 708
Ramos *vs.* Heirs of Honorio Ramos, Sr., 431 Phil. 337, 345 (2002) 706
Ramoso *vs.* Obligado, 70 Phil. 86 (1940) 531
Rañises *vs.* Employees' Compensation Commission, G.R. No. 141709, Aug. 16, 2005, 467 SCRA 71, 75 799
Raycor *vs.* Aircontrol Systems, Inc., G.R. No. 114290, Sept. 9, 1996, 261 SCRA 589, 608 512

Page

Razon *vs.* People, G.R. No. 158053, June 21, 2007, 525 SCRA 284, 303 956
Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division, A.M. No. 2001-7-SC, July 22, 2005, 464 SCRA 1, 15 386
Re: Application for Retirement Under R.A. No. 910 of Associate Justice Ramon B. Britanico of the Intermediate Appellate Court, A.M. No. 6484-Ret., May 15, 1989, 173 SCRA 421, 426 585
Re: Initial Report on the Financial Audit Conducted in the Municipal Trial Court of Pulilan, Bulacan, A.M. No. 01-11-291-MTC, July 7, 2004, 433 SCRA 486 391
Re: Misappropriation of the Judiciary Fund Collections by Ms. Juliet C. Banag, Clerk of Court, MTC, Plaridel, Bulacan, A.M. No. P-02-1641, Jan. 20, 2004, 420 SCRA 150 391
Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City, A.M. No. P-06-2140, June 26, 2006, 492 SCRA 469, 483 39
Re: Report on the Judicial Audit and Physical Inventory of Cases in the Regional Trial Court, Branch 54, Bacolod City, A.M. No. 06-4-219-RTC, Nov. 2, 2006, 506 SCRA 505, 518 46
Re: Ruperto G. Martin, A.M. No. 747-RET, July 13, 1990, 187 SCRA 477 586
Re: Withholding of Other Emoluments of the Following Clerks of Court: Elsie C. Remoroza, et al., A.M. No. 01-4-133-MTC, Aug. 26, 2003, 409 SCRA 575, 583 392
Real *vs.* Belo, G.R. No. 146224, Jan. 26, 2007, 513 SCRA 111, 126-127 363
Recuerdo *vs.* People, G.R. No. 168217, June 27, 2006, 493 SCRA 517 492
Reformina *vs.* Tomol, Jr., No. 59096, Oct. 11, 1985, 139 SCRA 260 276
Regalario *vs.* Northwest Finance Corporation, 202 Phil. 366, 371 (1982) 688

Page

Repide *vs.* Astuar, 2 Phil. 757, 762 (1902) 708
Report on the Alleged Spurious Bailbonds and Release Orders Issued by the RTC, Br. 27, Sta. Cruz, Laguna, A.M. No. 04-6-332-RTC, April 5, 2006, 486 SCRA 500, 518 22
Report on the Financial Audit on the Books of Accounts of Mr. Delfin C. Polido, Former Clerk of Court of Municipal Circuit Trial Court, Victoria-La Paz, Tarlac, A.M. No. 05-11-320-MCTC, Feb. 17, 2006, 482 SCRA 571, 576 392
Republic *vs.* Agunoy, Sr., G.R. No. 155394, Feb. 17, 2005, 451 SCRA 735, 738 745
CA, 379 Phil. 92 (2000) 346
CA, 216 Phil. 500, 508-509 (1984) 709
CA, G.R. No. 144057, Jan. 17, 2005, 448 SCRA 442, 453 313
Candy Maker, Inc., G.R. No. 163766, June 22, 2006, 492 SCRA 272, 296 709
Carrasco, G.R. No. 143491, Dec. 6, 2006, 510 SCRA 150 312
Central Surety and Insurance Company, 134 Phil. 631, 640 (1968) 688
Cuison-Melgar, G.R. No. 139676, Mar. 31, 2006, 486 SCRA 177, 184-185 838
Doldol, 356 Phil. 671 (1998) 309
Enciso, G.R. No. 160145, Nov. 11, 2005, 474 SCRA 700 312
Enriquez, G.R. No. 160990, Sept. 11, 2006, 501 SCRA 436, 449 709
Guerrero, G.R. No.133168, Mar. 28, 2006, 485 SCRA 424, 435-436 532
Iyoy, G.R. No. 152577, Sept. 21, 2005, 470 SCRA 508, 521 840
Kalaw, G.R. No. 155138, June 8, 2004, 431 SCRA 401 ... 309, 312
Lorenzo Shipping Corporation, G.R. No. 153563, Feb. 7, 2005, 450 SCRA 550, 558 750
Manna Properties, Inc., G.R. No. 146527, Jan. 31, 2005, 450 SCRA 247, 260 310-312
Molina, 335 Phil. 664 (1997) 836
Naguiat, G.R. No. 134209, Jan. 24, 2006, 479 SCRA 585 450
San Lorenzo Development Corporation, G.R. No. 170724, Jan. 29, 2007, 513 SCRA 294, 301 310

Page

Silerio, G.R. No. 108869, May 6, 1997,
272 SCRA 280, 287 77
Tri-Plus Corporation, G.R. No. 150000, Sept. 26, 2006,
503 SCRA 91, 103-104 709
Reyes *vs.* CA, 374 Phil. 236, 242-243 (1999) 708
NLRC, G.R. No. 160233, Aug. 8, 2007, 529 SCRA 487 346
Republic, G.R. No. 141924, Jan. 23, 2007,
512 SCRA 217, 220 308
Reyes-Domingo *vs.* Morales, A.M. No. P-99-1285,
Oct. 4, 2000, 342 SCRA 6 391
Rizal Commercial Banking Corporation *vs.* IAC,
378 Phil. 10 (1999) 439
Rizal Commercial Banking Corporation *vs.*
Magwin Marketing Corporation,
450 Phil. 720, 738 (2003) 851
Roberts *vs.* Papio, G.R. No. 166714, Feb. 9, 2007,
515 SCRA 346, 368 743
Rodriguez *vs.* Jardin, G.R. No. 141834, July 30, 2007,
528 SCRA 516 1011
Rodriguez *vs.* Rodriguez, 127 Phil. 294, 301 (1967) 707
Romero *vs.* Tan, G.R. No. 147570, Feb. 27, 2004,
424 SCRA 108, 120 127
Rural Bank of Sta. Maria, Pangasinan *vs.* CA,
373 Phil. 27, 45 (1999) 745
Salalima *vs.* Employees' Compensation Commission,
G.R. No. 146360, May 20, 2004, 428 SCRA 715, 723 799
Salalima *vs.* Guingona, 326 Phil. 847, 919-920 (1996) 1018
Salic *vs.* COMELEC, 469 Phil. 775 (2004) 453
Salinas, Jr. *vs.* NLRC, G.R. No. 114671, Nov. 24, 1999,
319 SCRA 54, 61 511
Salmone *vs.* Employee's Compensation Commission,
341 SCRA 150 (2001) 792
Salmone *vs.* Employees' Compensation Commission,
395 Phil. 341, 347 (2000) 798-799
Salvador *vs.* Serrano, A.M. No. P-06-2104, Jan. 31, 2006,
481 SCRA 55, 67-68 35
Samson *vs.* NLRC, G.R. No. 113166, Feb. 1, 1996,
253 SCRA 112, 124 515

Page

San Fernando Rural Bank *vs.* Pampanga Omnibus Development Corporation and Dominic G. Aquino, G.R. No. 168088, April 4, 2007, 520 SCRA 564 474
San Juan *vs.* Arambulo, Sr., G.R. No. 143217, Dec. 14, 2005, 477 SCRA 725, 728 911
San Juan, Jr. *vs.* Cruz, G.R. No. 167321, July 31, 2006, 497 SCRA 410 59
Sanchez *vs.* CA, 129 SCRA 717 125
Sanchez *vs.* CA, 345 Phil. 155, 179 (1997) 905
SANLAKAS *vs.* Executive Secretary Reyes, 466 Phil. 482 (2004) 1007
Santiago *vs.* CA, 343 Phil. 612, 620-621 (1997) 707
Santos *vs.* CA, 310 Phil. 21 (1995) 840
CA, G.R. No. 100963, April 6, 1993, 221 SCRA 42, 46 363
Guadiz, G.R. No. 85923, Feb. 26, 1992, 206 SCRA 590, 597 ... 565
Parañaque Kings Enterprises, Inc., G.R. No. 153562, Oct. 23, 2006, 505 SCRA 48, 53 912
People, 443 Phil. 618, 635 (2003) 875
Rafanan, A.C. No. 6252, Oct. 5, 2004, 440 SCRA 91 241
Sanyo Travel Corporation *vs.* NLRC, G.R. No. 121449, Oct. 2, 1997, 280 SCRA 129, 139 518
Seagull Ship Management and Transport, Inc. *vs.* NLRC, 388 Phil. 906, 914 (2000) 804
Sebastian *vs.* Valino, A.M. No. P-91-549, July 5, 1993, 224 SCRA 256 18
Segovia *vs.* Republic, G.R. No. L-46102, April 15, 1988, 160 SCRA 296, 300 688
Serra *vs.* Heirs of Primitivo Hernaez, G.R. No. 142913, Aug. 9, 2005, 466 SCRA 120, 127 1029
Sevilleno *vs.* Carilo, G.R. No. 146454, Sept. 14, 2007, 533 SCRA 385, 388 416
Sia *vs.* CA, 272 SCRA 141, May 5, 1997 729
Siguenza *vs.* CA, G.R. No. L-44050, July 16, 1985, 137 SCRA 570, 576-577 688
Singapore Airlines Limited *vs.* CA, 243 SCRA 143, 148 (1995) 722
Siy Lim *vs.* Judge Fineza, 450 Phil. 642, 650 (2003) 39
Sollesta *vs.* Mission, A.M. No. P-03-1755, April 29, 2005, 457 SCRA 519, 534 392

Page

Soria *vs.* Oliveros, A.M. No. P-00-1372, May 16, 2005, 458 SCRA 410, 422 391
Soto *vs.* Jareno, 228 Phil. 117, 119 (1986) 530
Spouses Normandy and Ruth Bautista *vs.* Sula, Sheriff IV, Regional Trial Court, Branch 98, Quezon City, A.M. No. P-04-1920, Aug. 17, 2007, 530 SCRA 406, 422 17
Spouses Saguid *vs.* Security Finance, Inc., G.R. No. 159467, Dec. 9, 2005, 477 SCRA 255, 275-276 888
Sullon *vs.* People, G.R. No. 139369, June 27, 2005, 461 SCRA 248, 257 292
Sumaya vs. IAC, G.R. Nos. 68843-44, Sept. 2, 1991, 201 SCRA 178 619
Summa Insurance Corporation *vs.* CA, 323 Phil. 214 (1996) 757
Suntay *vs.* CA, 321 Phil. 809, 831-832 (1995) 707
Suntay *vs.* Cojuangco-Suntay, 360 Phil. 932, 939 (1998) 905
Sycip, Jr. *vs.* CA, 385 Phil. 143, 154 (2000) 235
Syndicated Media Access Corp. *vs.* CA, G.R. No. 106982, Mar. 11, 1993, 219 SCRA 794, 798 77
Tabacalera Insurance Co. *vs.* NLRC, 152 SCRA 667 (1987) 926
Tabao *vs.* Judge Lilagan, 416 Phil. 710, 719-720 (2001) 220
Tagaro *vs.* Garcia, G.R. No. 158568, Nov. 17, 2004, 442 SCRA 562, 571-572 913
Tan *vs.* Estoconing, A.M. No. MTJ-04-1554, June 29, 2005, 462 SCRA 10, 17 45
Tanjay Water District *vs.* Gabaton, G.R. No. 63742, April 17, 1989, 172 SCRA 253 910
Tating *vs.* Marcella, G.R. No. 155208, Mar. 27, 2007, 519 SCRA 79, 87 707
Tayag *vs.* Lacson, G.R. No. 134971, Mar. 25, 2004, 426 SCRA 282 77
Teodosio *vs.* CA, G.R. No. 124346, June 8, 2004, 431 SCRA 194, 203 558
Teodosio *vs.* Carpio, A.M. No. MTJ-02-1416, Feb. 27, 2004, 424 SCRA 56, 62 47
Teotico *vs.* Baer, G.R. No. 147464, June 8, 2006, 490 SCRA 279 411
The Consolidated Bank & Trust Corporation *vs.* CA, 457 Phil. 688, 713 (2003) 363

Page

The Director of Lands Management Bureau *vs.* CA, 381 Phil. 761 (2000) 312
Ting *vs.* CA, 398 Phil. 481, 494 (2000) 236
Tiongson *vs.* CA, G.R. No. 62626, July 18, 1984, 130 SCRA 482, 488 127
Tongoy *vs.* CA, 208 Phil. 95, 113 (1983) 707
Torres *vs.* Specialized Packaging Development Corporation, G.R. No. 149634, July 6, 2004, 433 SCRA 455 925
Towne and City Dev't. Corp. *vs.* CA, G.R. No. 135043, July 14, 2004, 434 SCRA 356, 361-363 573
Tres Reyes *vs.* Maxim's Tea House, 398 SCRA 288 921
Tuazon *vs.* Tuazon, G.R. No. 168438, Aug. 28, 2006, 499 SCRA 791 130
Umale *vs.* Fadul, Jr., A.M. No. MTJ-06-1660, Nov. 30, 2006, 509 SCRA 19, 26 46
Union Bank of the Philippines *vs.* CA, G.R. No. 164910, Sept. 30, 2005, 471 SCRA 751 440
Union Bank of the Philippines *vs.* Ong, G.R. No. 152347, June 21, 2006, 491 SCRA 581, 602 607
United States *vs.* Umali, 15 Phil. 33, 38 (1910) 695
Valencia *vs.* CA, G.R. No. 122363, April 29, 2003, 401 SCRA 666 ..... 124, 130
Valencia *vs.* Manila Yacht Club, Inc., 138 Phil. 761, 764-765 (1969) 351
Valerio *vs.* Refresca, G.R. No. 163687, Mar. 28, 2006, 485 SCRA 494, 501 706
Vicente *vs.* Employees' Compensation Commission, G.R. No. 85024, Jan. 23, 1991, 193 SCRA 190 351
Vidallon-Magtolis *vs.* Salud, A.M. No. CA-05-20-P, Sept. 9, 2005, 469 SCRA 439, 469 39
Viernes *vs.* Government Service Insurance System, G.R. No. 141171, Sept. 26, 2001 796
Villaluz *vs.* Zaldivar, 122 Phil. 1091 (1965) 901
Villarico *vs.* CA, 424 Phil. 26, 32 (2002 145
Villarta *vs.* CA, No. L-40195, May 29, 1987, 150 SCRA 336 492
Villaruel *vs.* Manila Port Service, 131 Phil. 438, 444-445 (1968) 759
Violeta *vs.* NLRC, G.R. No. 119523, Oct. 10, 1997, 280 SCRA 520, 533 515

Page

Visitacion, Jr. *vs.* Ediza, A.M. No. P-01-1495, Aug. 9, 2001, 362 SCRA 403, 406 386
VMC Rural Electric Service Cooperative, Inc. *vs.* CA, G.R. No. 153144, Oct. 16, 2006, 504 SCRA 336, 353 419
Wallem Philippines Shipping, Inc. *vs.* Prudential Guarantee and Assurance, Inc., 445 Phil. 136, 153 (2003) 760
Wallem Philippines Shipping, Inc. and Seacoast Maritime Corp. *vs.* Prudential Guarantee and Assurance, Inc., et al. G.R. No. 152158, Feb. 7, 2003 755
Whitson *vs.* Atienza, A.C. No. 5535, Aug. 28, 2003, 410 SCRA 10, 15 575
Ybañez *vs.* CA, 323 Phil. 643 (1996) 344
Young *vs.* Sy, G.R. No. 157745, Sept. 26, 2006, 503 SCRA 151 345
Zaguirre *vs.* Castillo, A.C. No. 4921, Aug. 3, 2005, 465 SCRA 520, 525 4
Zaguirre *vs.* Castillo, Adm. Case No. 4921, Mar. 6, 2003, 398 SCRA 658, 666 4
Zamboanga Barter Goods Retailers Association, Inc. *vs.* Lobregat, G.R. No. 145466, July 7, 2004, 433 SCRA 624, 628-629 1030
Zarate *vs.* Untalan, A.M. No. MTJ-05-1584, Mar. 31, 2005, 454 SCRA 206, 215 382

II. FOREIGN CASES

Metropolitan Stevedore Co. *vs.* Rambo (94-820), 515 U.S. 291 (1995) 797
State Board of Dental Examiners *vs.* Savelle, 90 Colo. 177, 8 P. 2d 693, 697 39

Page

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

1935 Constitution
Art. XIII, Sec. 2 460
1987 Constitution
Art. III, Sec. 1 740
Sec. 14 (2) 256
Art. VI, Sec. 4 1007
Art. VII, Sec. 14 606
Art. VIII, Sec. 15 (1) 45
Art. XII, Sec. 3 458
Art. XV, Sec. 3, par. 2 883

B. STATUTES

Act
Sec. 7 472
Sec. 8 471-472
Batas Pambansa
B.P. Blg. 22 231-234
Sec. 2 235
B.P. Blg. 881, as amended, Sec. 73 372
Civil Code, New
Art. 94 282
Art. 410 454
Art. 719 37
Arts. 1169-1170 819
Art. 1172 363
Art. 1207 281
Art. 1303 822
Art. 1311 608
Art. 1345 707
Art. 1359 425
Arts. 1370-1371 707

Page

Art. 1391 ..... 427, 740
Art. 1409 101
Art. 1649 131
Art. 2067 823
Art. 2071 ..... 818, 822
Art. 2079 823
Art. 2176 361
Art. 2199 167
Art. 2206 (3) 168
Art. 2209 276
Art. 2213 273
Art. 2234 749
Art. 2248 440
Code of Judicial Conduct, New
Canon 6, Sec. 5 45
Canon 6, Sec. 6 ..... 216, 221
Code of Professional Responsibility
Canon 1, Rule 1.01 ..... 5, 574
Canon 7 5
Rule 7.03 6
Canon 10 102
Commonwealth Act
C.A. No. 141, (Public Land Act), as amended 463
Chapters VII-VIII 309
Sec. 47 463
Sec. 48 (b) 308-309
C.A. No. 536 580
Corporation Code
Sec. 31 607
Sec. 121 436
Executive Order
E.O. No. 90 411
E.O. No. 192, Sec. 4 217
E.O. No. 228 95
E.O. No. 229, Sec. 17 68
E.O. No. 648 (Charter of the Human Settlements
Regulatory Commission) 411
Sec. 8 413
E.O. No. 1096, Sec. 307 410

Page

Family Code
Arts. 35, 37-38, 41 843
Art. 36 ..... 833, 841
Art. 48 838
Arts. 68-69 ..... 376, 842
Arts. 70-71 842
Art. 124 429
Arts. 220-221, 225 842
Forestry Code, Revised
Sec. 78-A 221
General Order
G.O. No. 4 1007
Labor Code
Art. 124 770
Arts. 173, 192 352
Arts. 191-192, as amended by P.D. No. 626 796
Art. 279 ..... 923, 930
Art. 280 509
Art. 282 (a)-(c) 922
Local Government Code
Secs. 222, 231, 252 1026
Negotiable Instruments Law
Sec. 114 (d) 494
Penal Code, Revised
Art. 14 (6) 165
Art. 22 875
Art. 62 875
Art. 63 561
Art. 63 (2) 560
Art. 64, par. 1 ..... 861-862, 873
Art. 68, par. 1 ..... 861, 873
Art. 134-A 1007
Art. 248 ..... 154, 167, 292, 1016
Art. 248, as amended by R.A. No. 7659 158
Art. 266-A, as amended by R.A. No. 8353, par. 1 (b) 175
Art. 266-A, par. 1, in relation to Art. 266-B number 1 of par. 6 of of the RPC, as amended by R.A. No. 8369 985

Page

Art. 266-A par. 1 in relation to Art. 266-B, 6th par., No.1 of the RPC, as amended in further relation to R.A. 8367 989
Arts. 266-B & 135 1013
Art. 267 323
Art. 294 (1) 948
Art. 299, subdiv. (a), number (2) 855
Art. 299, subd. (a), number (2), par. 4 ..... 860, 873
Art. 315, as amended by P.D. No. 818 495-496
Art. 315 par. 2 (a) 683
Art. 315, par. 2 (d), as amended by R.A. No. 4885 ..... 488, 493
Presidential Decree
P.D. No. 27 (The Tenants' Emancipation Decree) 65, 95
P.D. No. 198 (The Provincial Water Utilities Act of 1973) 894, 909
P.D. No. 442 790
P.D. No. 603 (The Child and Youth Welfare Code), Art. 192 ..... 860, 874
P.D. No. 603, as amended, but not covered by the RPC, as amended, Art. 59 ..... 882, 884
P.D. No. 626 790
P.D. No. 626, as amended 791
P.D. No. 705, as amended, Sec. 8 219
P.D. No. 705, as amended by E.O. No. 277, Sec. 68 217
P.D. No. 768 amended Sec. 23 of P.D. No. 198 910
P.D. No.. 902-A, Sec. 5 (d) 434
Sec. 6 (c) 440
P.D. No. 957 (The Subdivision and Condominium Buyers' Protective Decree) 411-412
Sec. 22 412
P.D. No. 1073, Sec. 4 309
P.D. No. 1216 411
P.D. No. 1344 411
Sec. 1 ..... 409, 412
Sec. 4 410
P.D. No. 1479 amended P.D. No. 198, as amended by P.D. No. 768, removing Sec. 25 of the latter 910
P.D. No. 1529 (The Property Registration Decree), Sec. 14 307

Page

Sec. 14, par. 1 ..... 307, 312
Sec. 14, pars. 2 & 4 307
Secs. 51-52 617
Sec. 71 619
Sec. 78 740
P.D. No. 1866 155
P.D. No. 1866, as amended by R.A. No. 8294 159
Proclamation
Proclamation No. 423, as amended by Proclamation No. 2475 776
Proclamation No. 427 1007
Proclamation No. 435 1007
Republic Act
R.A. Nos. 274, 730 777
Sec. 1 580
Sec. 3 586
R.A. No. 910, as amended 580, 582
R.A. No. 1125 (Law Creating the Court of Tax Appeals, and for other purposes) , as amended 1032
R.A. No. 1199, Sec. 8 132-133
Sec. 42 123
R.A.No. 3019 (Anti-Graft and Corrupt Practices Act) 12
Sec. 3 (e) 83, 89
R.A. No. 3844, (The Agricultural Land Reform Code), Sec. 6, as amended 130, 132-133
Secs. 6-7 122
Sec. 8 123
Sec. 166 (1) 128
R.A. No. 6646 (Electoral Reforms Law of 1987), Sec. 6 373
R.A. No. 6657 (The Comprehensive Agrarian Reform Law of 1988) 65, 71, 94, 118, 667
Sec. 3(d), as amended 125
Sec. 10 125
Sec. 16 99
Sec. 16 (e) 671
Sec. 18 (1) 669
Sec. 50 68
Sec. 73 71

Page

Sec. 73 (c) 78
Sec. 76 127
R.A. No. 6713 (The Code of Conduct and Ethical Standards for Public Officials and Employees), Sec. 5 384
R.A. No. 6727 770
R.A. No. 6940 462
R.A. No. 7227 (Creating The Bases Conversion and Development Authority (BCDA) 775
Sec. 4 (a) 775
R.A. No. 7438 ..... 255, 1018
Sec. 2 255
Sec. 4, last par. 1018
R.A. No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), as amended, Art. I, Sec. 3 (a) 886
Art. VI, Sec. 10 (a) 879, 881, 886
Sec. 29 986
R.A. No. 7659 (The Death Penalty Law) 298, 1013, 1016
R.A. No. 7881, Sec. 2 125
Sec. 2 (b) 129
R.A. No. 8177 (The Act Designating Death by Lethal Injection) 297
R.A. No. 8791 (The General Banking Law of 2000) 361
Sec. 2 361
R.A. No. 8799 (The Securities Regulation Code) 438
Sec. 5.2 438
R.A. No. 9165 (The Comprehensive Dangerous Drugs Act of 2002) 539
Art. II, Sec. 5 ..... 539, 548, 962, 968, 979
Sec. 11 ..... 539, 548, 979
Sec. 21 971
Art. XIII, Sec. 98 560
R.A. No. 9176 462
R.A. No. 9262 (The Anti-Violence Against Women and Their Children Act of 2004) 172, 879
Sec. 44 986
R.A. No. 9282, Sec. 11 1032
R.A. No. 9286 (An Act Further Amending P.D. No. 198), Sec. 23 ..... 906, 910

Page

R.A. No. 9344 (The Juvenile Justice and Welfare Act of 2006) 862
Sec. 6 ..... 863, 874
Sec. 20 874
R.A. No. 9346 (An Act Prohibiting the Imposition of Death Penalty in the Philippines) 297, 980, 1013
Sec. 2 ..... 329, 990
Sec. 2, par. (a) 1001
Rule on Violence Against Women and Their Children (A.M. No. 04-10-11-SC)
Sec. 40 986
Rules of Court
Rule 1, Sec. 3 (c) 851
Rule 3, Secs. 8, 10 821
Sec. 11 820
Sec. 17 1010
Rule 7 911
Sec. 5 ..... 912, 924
Rule 8, Sec. 11 573
Rule 13, Sec. 14 740
Rule 17, Sec. 3 850
Rule 39, Sec. 2 (a) 672
Sec. 5 605
Sec. 13 282
Sec.47, pars. (a-c) 661
Rule 41, Sec. 2 416
Sec. 2 (c) 1028
Rule 42 416
Rule 43 69
Rule 45 ..... 266, 304, 416, 421, 477, 502
Sec. 4 826
Sec. 4 (a) 740
Rule 50, Sec. 2 418
Rule 58, Sec. 3 1030
Rule 60, Sec. 4 16
Sec. 6 17
Rule 65 ..... 83, 407, 640, 669, 894, 1025
Sec. 1 ..... 337, 345, 654, 904

Page

Rule 66, Sec. 1 906
Sec. 5 907
Rule 112, Sec. 8 (b) 661
Rule 113, Sec. 5 (a) 558
Rule 114, Sec. 3 190
Sec. 5 1016
Secs. 6-7 1013
Sec. 8 ..... 1014, 1016
Sec. 17 (a) 190
Rule 119, Sec. 17 327
Sec. 22 541
Rule 124, as amended by A.M. No. 00-5-03-SC,
Sec. 13 (a) 324
Rule 130, Sec. 3 601
Sec. 5 603
Sec. 6 602
Secs. 26, 33 258
Rule 133, Sec. 4 181
Sec. 5 347
Rule 140, Sec. 8 ..... 193, 227
Sec. 9 196
Sec. 11(A) 194
Sec. 11(B) 196
Rule 140, as amended by A.M. No. 01-8-10-SC 47
Rule 141, as amended by A.M. No. 04-2-04-SC,
Sec. 9 ..... 20, 382-383
Rules on Civil Procedure, 1997
Rule 39, Sec. 2 668
Rule 43 122
Rule 45 ..... 139, 253, 433, 446, 465
Rule 65 411
Rules on Criminal Procedure, Revised
Rule 110, Sec. 7 644
Rule 122 , Secs. 3, 10 159
Rule 124, Sec. 13 159
Rule 125, Sec. 3 159
Rules on Criminal Procedure (1964)
Rule 114, Sec. 6 1017

Page

Rules on Criminal Procedure (1940)
Rule 110, Sec. 6 1017
Rules on Evidence, Revised
Rule 132, Sec. 19 453
Sec. 23 454
Sec. 124 453

C. OTHERS

Amended Rules on Employees' Compensation
Rule VII, Sec. 2 (b) 352
Omnibus Rules Implementing Book V of E.O No. 292
(Administrative Code of 1987), as amended
Rule XIV, Sec. 22(a) 39
Sec. 23 39
Rules of Procedure of the DARAB (New)
Rule VIII, Sesc. 5-6 74
Rule X, Sec. 3 76
2004 Rules on Notarial Practice
Rule II, Sec. 12 242
Supreme Court Administrative Circular
S.C. Adm. Circular No. 2-92 (January 20, 1992) 1014
S.C. Adm. Circular No. 5-93 391
S.C. Adm. Circular No. 08-99 (July 2, 1999) 385
S.C. Adm. Circular No. 3-2000 390
Uniform Rules on Administrative Cases in the Civil Service
Rule IV, Sec. 52 ..... 23, 24
Sec. 52, B (2) 386
Secs. 53-54 24
Sec. 55 23

D. BOOKS

R.J. Francisco, Basic Evidence 283 (1991) 602
Herrera (ret.), Justice Oscar M ., Remedial Law,
Vol. 1, 2007 Ed. 57
Vitug, J., Commercial Laws and Jurisprudence, 557
(Vol. 1, Ed. 2006) 439

Page

II. FOREIGN AUTHORITIES

BOOKS

Black's Law Dictionary (5th Ed.), p. 901 39
Black's Law Dictionary 644 (1990) 276
65 C.J.S. §1(14), p. 462 725
Dorland's Medical Dictionary, 24th Ed., p. 255 797
McCormick, Handbook of the Law on Evidence 409 (1954) 601
Websters Third New International Dictionary, 1981 Ed. 798