PHILIPPINE REPORTS

VOL. 579

JUNE 30, 2008 TO JULY 9, 2008

VOLUME 579

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JUNE 30, 2008 TO JULY 9, 2008

SUPREME COURT
MANILA
2013

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. Nos. 1302,[1] 1391,[2] & 1543.[3] June 30, 2008]

CONSTANCIA L. VALENCIA, *complainant, vs.* **ATTY. DIONISIO C. ANTINIW,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; REINSTATEMENT, WHEN PROPER.— The record shows that the long period of respondent's disbarment gave him the chance to purge himself of his misconduct, to show his remorse and repentance, and to demonstrate his willingness and capacity to live up once again to the exacting standards of conduct demanded of every member of the bar and officer of the court. During respondent's disbarment for more than fifteen (15) years to date for his professional infraction, he has been persistent in reiterating his apologies and pleas for reinstatement to the practice of law and unrelenting in his efforts to show that he has regained his worthiness to practice law, by his civic and humanitarian activities and unblemished record as an elected public servant, as attested to by numerous civic and professional organizations, government institutions, public officials and members of the judiciary. Guided by this doctrine and considering the evidence

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[1] Entitled *Paulino Valencia v. Atty. Arsenio Fer Cabanting.*

[2] The complete title of which is *Constancia L. Valencia v. Atty. Dionisio C. Antiniw, Atty. Eduardo U. Jovellanos and Atty. Arsenio Fer Cabanting.*

[3] Entitled *Lydia Bernal v. Atty. Dionisio C. Antiniw.*

submitted by respondent satisfactorily showing his contrition and his being again worthy of membership in the legal profession, the Court finds that it is now time to lift herein respondent's disbarment and reinstate him to the august halls of the legal profession.

2. ID.; ID.; ID.; JUSTIFICATION FOR REINSTATEMENT; RELEVANT RULINGS, CITED.— In *Adez Realty, Inc. v. Court of Appeals*, the disbarment of a lawyer was lifted for the reasons quoted hereunder: The disbarment of movant Benjamin M. Dacanay for three (3) years has, quite apparently, given him sufficient time and occasion to soul-search and reflect on his professional conduct, redeem himself and prove once more that he is worthy to practice law and be capable of upholding the dignity of the legal profession. His admission of guilt and repeated pleas for compassion and reinstatement show that he is ready once more to meet the exacting standards the legal profession demands from its practitioners. Moreover, it is well-settled that the objective of a disciplinary case is not so much to punish the individual attorney as to protect the dispensation of justice by sheltering the judiciary and the public from the misconduct or inefficiency of officers of the court. Restorative justice, not retribution, is our goal in disciplinary proceedings.

APPEARANCES OF COUNSEL

Numeriano G. Tanopo, Jr. for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal for reinstatement to the Bar of respondent Dionisio C. Antiniw.

The record shows that respondent was disbarred and his name stricken off the Roll of Attorneys on April 26, 1991 in a consolidated Decision[4] of this Court, the dispositive portion of which reads:

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[4] *Rollo*, pp. 514-529.

WHEREFORE, judgment is hereby rendered declaring: 1. Dionisio Antiniw DISBARRED from the practice of law, and his name is ordered stricken off from the roll of attorneys; 2. Arsenio Fer Cabanting SUSPENDED from the practice of law for six months from finality of this judgment; and 3. Administrative Case No. 1391 against Atty. Eduardo Jovellanos and additional charges therein, and Administrative Case No. 1543 DISMISSED.

In the aforesaid consolidated Decision, respondent was found guilty of malpractice in falsifying a notarized deed of sale and subsequently introducing the same as evidence for his client in court.

Respondent's motion for reconsideration of the consolidated decision disbarring him was denied by the Resolution of August 26, 1993.[5] In the same Resolution, the Court also held with respect to respondent's plea for mercy and compassion that:

x x x the same is merely NOTED until such time as he would have been able to satisfactorily show contrition and proof of his being again worthy of membership in the legal profession.

Subsequently, in a Manifestation dated September 17, 1993,[6] respondent proffered his apologies to the Court for his shortcomings as a legal practitioner asserting that if *there was an offense or oversight committed against the legal profession, it was due to his sincere belief that he was doing it honestly to protect the interest of his client*. He pleaded that, pending his submission of proof showing that he is again worthy of membership in the Bar, he be permitted to continue with his notarial work. In a Resolution dated October 19, 1993,[7] the Court denied respondent's plea in the aforesaid Manifestation.

On January 4, 1994, respondent filed a Petition dated December 8, 1993[8] praying for leave to submit proof of his

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[5] *Id.*, p. 555.

[6] *Id.*, pp. 557-558.

[7] *Id.*, p. 560.

[8] *Id.*, pp. 561-568.

being again worthy to be re-admitted to the legal profession. Attached to the Petition were testimonials, affidavits and sworn certifications of known and outstanding members of his community at Urdaneta, Pangasinan, as well as manifestos and resolutions of groups and associations representing various sectors thereat, all attesting to his honesty, worthiness, respectability and competency as a lawyer and as an elected Board Member in Pangasinan. In a Resolution dated January 27, 1994,[9] the Court denied said petition. A Letter dated February 1, 1995[10] which was sent to the Court by Bishop Jesus C. Galang, D.D. of the Diocese of Urdaneta, Pangasinan, pleading for respondent's reinstatement, was noted in the Court's Resolution dated March 14, 1995.[11]

Respondent filed an Appeal for Reinstatement dated March 8, 1996,[12] declaring that since his disbarment, he had embarked on and actively participated in civic and humanitarian activities in the Fifth District of Pangasinan where he was again elected for the third time as a Provincial Board Member and for which activities he received Plaques of Appreciation and Recognition, Resolution/Letters, Awards and Commendations from local government officials of Pangasinan and different groups and associations in the province, all showing that he is worthy to once again practice the legal profession. His appeal, however, was denied by the Resolution dated April 23, 1996.[13]

On December 17, 1996, respondent filed a Plea for Re-Admission dated December 8, 1996,[14] reiterating his earlier plea for the lifting of his disbarment. The plea was also denied on January 28, 1997.[15]

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[9] *Id*., p. 605.

[10] *Id*., pp. 18-19.

[11] *Id*., p. 680.

[12] *Id*., pp. 644-654.

[13] *Id*., p. 690.

[14] *Id*., pp. 695-698.

[15] *Id*., p. 701.

On September 1, 1997, respondent again filed a Plea for Judicial Clemency and Reinstatement to the Bar dated August 30, 1997,[16] submitting in support thereof the favorable indorsements, letters and resolutions from the Pangasinan Chapter of the Integrated Bar of the Philippines (IBP); the Executive Judges of the Regional Trial Courts at Lingayen and Urdaneta, Pangasinan; the Provincial Prosecutor's Association of Pangasinan; Eastern Pangasinan Lawyer's League; the Provincial Board of Pangasinan; Rotary Club of Urdaneta; and the past National President of the IBP, Atty. Numeriano G. Tanopo Jr. The foregoing plea was merely noted by the Court on October 14, 1997.[17]

The following year, respondent filed an Appeal dated July 8, 1998,[18] reiterating therein his apologies to the Court and promising that should he be given back his license to practice law, he will live up to the exacting standards of the legal profession and abide by the Code of Professional Ethics and the Lawyer's Oath. Among the written proofs appended to his appeal was the Letter dated June 18, 1998[19] from Bishop Galang, of the Diocese of Urdaneta, Pangasinan, wherein he reiterated his earlier plea for respondent's reinstatement.

In a Letter dated July 13, 1998[20] received by this Court on July 23, 1998, Bishop Galang withdrew his letter dated July 10, 1998 recommending respondent's reinstatement for being misled into signing the same.

Thereafter, respondent filed a Manifestation and Motion dated December 22, 1998,[21] wherein he pointed out that more than seven (7) years had elapsed from the time of his disbarment and that others who were likewise disbarred but for a shorter

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[16] *Id*., pp. 949-952.

[17] *Id*., p. 989.

[18] *Id.,* pp. 8-10.

[19] *Id*., p. 22.

[20] *Id*., p. 14.

[21] *Id.*, pp. 27-29.

duration, namely Attys. Benjamin Grecia and Benjamin Dacanay,[22] had already been reinstated to the law profession. Among the attachments to respondent's Manifestation was Resolution No. 98-7c dated 6 July 1998 issued by the IBP, Pangasinan Chapter, strongly indorsing respondent's plea for judicial clemency and reinstatement, and the letter dated June 18, 1998 from Bishop Galang supporting his reinstatement to the Bar.

In a Resolution dated February 9, 1999,[23] the Court noted (a) the letters dated June 18, 1998 and July 13, 1998 of Bishop Galang; (b) Appeal dated July 8, 1998 and Manifestation and Motion dated December 22, 1998 both filed by respondent. Respondent was also required to comment on Bishop Galang's letter dated July 13, 1998 within ten days from notice.

In his Comments with Motion dated March 23, 1999,[24] on Bishop Galang's letter dated July 13, 1998, respondent denied the existence of a letter dated July 10, 1998 of Bishop Galang but acknowledged the existence of the letter dated June 18, 1998. Respondent averred that if the Bishop was indeed referring to the June 18, 1998 letter, he never misled or had any intention to mislead the bishop into signing the same. By its Resolution dated June 22, 1999,[25] the Court noted the aforesaid Comments with Motion of respondent

An Appeal Reiterating Earlier Petition, Appeal, Pleas and Motion for Reinstatement to the Bar dated August 28, 1999[26] was filed by the respondent on September 21, 1999. In a Resolution dated November 16, 1999,[27] the Court noted said appeal and denied for lack of merit respondent's prayer that

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[22] In A.C. No. 2756, December 18, 1990 and G.R. No. 100643, December 12, 1995, respectively.

[23] *Rollo*, p. 78.

[24] *Id*., pp. 97-102.

[25] *Id*., p. 114.

[26] *Id.*, pp. 115-125.

[27] *Id*., p. 133.

his Plea for Judicial Clemency and Reinstatement dated September 1, 1997 and Manifestation and Motion for Reinstatement dated December 22, 1998 be approved and given due course.

Thereafter, respondent's wife, Manuela A. Antiniw, sent to the Court a Letter of Appeal dated February 7, 2000,[28] asking for clemency in behalf of her husband and affirming therein that her husband had for eight (8) years continuously pleaded for his reinstatement and that he had submitted proof by way of testimonials of (a) his character and standing prior to his disbarment, (b) his conduct subsequent to his disbarment, and (c) his efficient government service. Attached to the letter of respondent's wife was a sworn testimonial of one of the complainants in the consolidated administrative cases, Lydia Bernal, attesting to the respondent's character reformation. The aforesaid letter was noted by the Court in a Resolution dated 28 February 2000.[29]

Respondent filed a Plea for Judicial Clemency and Reinstatement dated March 19, 2001,[30] therein asserting that the long period of his disbarment gave him sufficient time to soul-search and reflect on his professional conduct, redeem himself, and prove once more that he would be able to practice law and at the same time uphold the dignity of the legal profession. The Court, in its Resolution of June 26, 2001,[31] denied the aforesaid plea.

By its Indorsement dated September 10, 2001,[32] the Office of the Chief Justice referred to the Bar Confidant the letter dated August 24, 2001[33] of Assistant Commissioner Jesse J. Caberoy of the Civil Service Commission (CSC) requesting

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[28] *Id.*, pp. 134-139.

[29] *Id.*, p. 143.

[30] *Id.*, pp. 148-152.

[31] *Id.*, p. 180.

[32] *Id.*, p. 181.

[33] *Id.*, p. 182.

comment on the contention of respondent that the disbarment of a lawyer only prevents him from practicing his profession and does not operate to divest him of his earned eligibility by passing the Bar examination. In a Letter dated September 20, 2001,[34] respondent cited pertinent provisions of the Omnibus Rules Implementing Book V of Executive Order No. 292 and other pertinent Civil Service Laws in support of his aforementioned stand. The aforesaid Letters dated August 24, 2001 and September 20, 2001, of CSC Assistant Commissioner and respondent, respectively, were noted by the Court's Resolution dated November 20, 2001.[35] Likewise in said Resolution, the letters were referred to the Office of the Bar Confidant (OBC) for evaluation, report and recommendation.

In its Report and Recommendation dated January 25, 2002,[36] the OBC opined that the eligibility vested in a successful bar candidate would not be prejudiced or forfeited by his disbarment and the matter of enjoying first- grade eligibility by passing the Bar, in relation to the position of City Administrator, should be determined by the CSC. Nevertheless, the OBC was of the view that the controversy between the CSC and respondent could not be considered as already ripe for judicial determination. Thus, the OBC recommended that the CSC, through Assistant Commissioner Caberoy, and respondent be advised to institute the corresponding legal remedy before the proper court.

In a Resolution dated February 12, 2002,[37] the Court held that it could only resolve actual controversies brought before it and would thus, refrain from rendering advisory opinions. Accordingly, the Letter dated August 24, 2001 of Assistant Commissioner Caberoy and Letter dated September 20, 2001 of respondent were merely noted.

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[34] *Id*., pp. 188-189.

[35] *Id*., p. 192.

[36] *Id*., pp. 202-208.

[37] *Id*., pp. 209-211.

Respondent then filed a Plea for Reinstatement to the Bar dated February 28, 2002,[38] stating therein that for the past ten (10) years since he was disbarred, he had deeply regretted having violated his obligations as a lawyer; that he realized the gravity of his mistakes; and that because of such disbarment, he even lost his chance to be permanently appointed as City Administrator of Urdaneta City and/or as City Legal Officer, after his stint as a Provincial Board Member in Pangasinan for three (3) consecutive terms. In the event his disbarment is lifted, respondent then promised never to cause dishonor again to the legal profession and to abide by the ideals and canons thereof. Attached to his Plea for Reinstatement to the Bar were certifications from various civic and religious groups attesting to his good moral character and to his worthiness to be a member of the legal profession. In a Resolution dated April 23, 2002,[39] the Court noted the aforesaid Plea. Subsequently, the Court required the IBP to Comment on the aforesaid respondent's Plea through its Resolution dated July 23, 2002.[40]

In its Comment of September 9, 2002,[41] the IBP, through its Commission on Bar Discipline, recommended the following:

> Considering that the respondent has shown that he has been repentant of what he had done which was a gross violation of his lawyer's oath and of the Canon of Professional Ethics and that he has been completely reformed and is therefore worthy to be reinstated in the Roll of Attorney's as evidenced by Certifications of different religious and civic groups, it is recommended that he be allowed to again practice the legal profession.
>
> It is, however recommended that he be placed on probation, meaning that the reinstatement should only be temporary and that he be placed under observation for one year.
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> If during the period of one year, he proves that he has completely lived up to the high standards of the legal profession, by then it

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[38] *Id.*, pp. 234-247.

[39] *Id.*, p. 256.

[40] *Id.*, p. 257.

[41] *Id.*, pp. 259-264.

will be recommended that his reinstatement as a member of the Bar be made permanent.[42]

The aforesaid comment was noted and referred to the IBP Board of Governors for comment and recommendation by the Resolution dated December 3, 2002.[43]

The IBP Board of Governors issued its Resolution No. XVI-2005-99, dated March 12, 2005[44] resolving as follows:

> xxx to approve respondent's Plea for Reinstatement and recommend the reinstatement of Atty. Dionisio C. Antiniw as member of the bar immediately.

On June 6, 2006, the Court issued a Resolution[45] referring the case to the Office of the Bar Confidant (OBC) for study and recommendation.

On March 23, 2007, the OBC submitted its Report and Recommendation,[46] to wit:

> Indeed the high standards of the Bar require an impeccable record but our findings show that respondent has been sufficiently punished for the last fifteen (15) years of his disbarment and he has sufficiently reformed to be a worthy member of the Bar. In all candor, he promises the Court that should he be reinstated to practice the legal profession, he will faithfully abide by the ideals, canons and ethics of the legal profession and by his oath as a lawyer.
>
> x x x x x x x x x
>
> In the light of the foregoing, it is respectfully submitted that the disbarment of respondent DIONISIO C. ANTINIW from the practice of law be LIFTED and he be allowed to resume the practice of law.[47]

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[42] *Id*., pp. 263-264.

[43] *Id.*, p. 267.

[44] See Notice of Resolution of the IBP; *Rollo,* p. 364.

[45] *Rollo*, p. 366.

[46] *Id*., pp. 400-404.

[47] *Id*., p. 404.

We agree with the foregoing recommendations of the Office of the Bar Confidant and the IBP Commission on Bar Discipline as affirmed by the IBP Board of Governors.

Respondent was disbarred from the practice of law pursuant to the Decision promulgated on April 26, 1991[48] which pertinently reads, as follows:

> There is a clear preponderant evidence that Atty. Antiniw committed falsification of a deed of sale, and its subsequent introduction in court prejudices his prime duty in the administration of justice as an officer of the court.
>
> A lawyer owes entire devotion to the interest of his client. (*Santos vs. Dichoso*, 84 SCRA 622) but not at the expense of truth. (*Cosmos Foundry Shopworkers Union vs. La Bu*, 63 SCRA 313). The first duty of a lawyer is not to his client but to the administration of justice. (*Lubiano vs. Gordalla*, 115 SCRA 459) To that end, his client's success is wholly subordinate. His conduct ought to and must always be scrupulously observant of law and ethics. While a lawyer must advocate his client's cause in utmost earnestness and with the maximum skill he can marshall, he is not at liberty to resort to illegal means for his client's interest. It is the duty of an attorney to employ, for the purpose of maintaining the causes confided to him, such means as are consistent with truth and honor. (*Pangan vs Ramos*, 93 SCRA 87).
>
> Membership in the Bar is a privilege burdened with conditions. By far, the most important of them is mindfulness that a lawyer is an officer of the court. (*In re: Ivan T. Publico*, 102 SCRA 722). This Court may suspend or disbar a lawyer whose acts show his unfitness to continue as a member of the Bar. (*Halili vs. CIR*, 136 SCRA 112). Disbarment, therefore, is not meant as a punishment depriving him of a source of livelihood but is rather intended to protect the administration of justice by requiring that those who exercise this function should be competent, honorable and reliable in order that courts and the public may rightly repose confidence in them. (*Noriega vs. Sison,* 125 SCRA 293). Atty. Antiniw failed to live up to the high standards of the law profession.[49]

However, the record shows that the long period of respondent's disbarment gave him the chance to purge himself of his misconduct,

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[48] *Supra* at note 4.

[49] Id., pp. 525-526.

to show his remorse and repentance, and to demonstrate his willingness and capacity to live up once again to the exacting standards of conduct demanded of every member of the bar and officer of the court. During respondent's disbarment for more than fifteen (15) years to date for his professional infraction, he has been persistent in reiterating his apologies and pleas for reinstatement to the practice of law and unrelenting in his efforts to show that he has regained his worthiness to practice law, by his civic and humanitarian activities and unblemished record as an elected public servant, as attested to by numerous civic and professional organizations, government institutions, public officials and members of the judiciary.

In *Adez Realty, Inc. v. Court of Appeals*,[50] the disbarment of a lawyer was lifted for the reasons quoted hereunder:

> The disbarment of movant Benjamin M. Dacanay for three (3) years has, quite apparently, given him sufficient time and occasion to soul-search and reflect on his professional conduct, redeem himself and prove once more that he is worthy to practice law and be capable of upholding the dignity of the legal profession. His admission of guilt and repeated pleas for compassion and reinstatement show that he is ready once more to meet the exacting standards the legal profession demands from its practitioners.[51]

Moreover, it is well-settled that the objective of a disciplinary case is not so much to punish the individual attorney as to protect the dispensation of justice by sheltering the judiciary and the public from the misconduct or inefficiency of officers of the court. Restorative justice, not retribution, is our goal in disciplinary proceedings.[52]

Guided by this doctrine and considering the evidence submitted by respondent satisfactorily showing his contrition and his being again worthy of membership in the legal profession, the Court

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[50] *Adez Realty, Inc. v. Honorable Court of Appeals, et al.*, G.R. No. 100643, December 12, 1995, 251 SCRA 201.

[51] *Id.*, pp. 204-205.

[52] *Dr. Gil Y. Gamilla, et al. v. Atty. Eduardo J. Marino Jr.*, A.C. No. 4763, March 20, 2003, 399 SCRA 308, 320.

finds that it is now time to lift herein respondent's disbarment and reinstate him to the august halls of the legal profession, but with the following reminder:

> [T]he practice of law is a privilege burdened with conditions. Adherence to the rigid standards of mental fitness, maintenance of the highest degree of morality and faithful compliance with the rules of the legal profession are the conditions required for remaining a member of good standing of the bar and for enjoying the privilege to practice law. The Supreme Court, as guardian of the legal profession, has ultimate disciplinary power over attorneys. This authority to discipline its members is not only a right but a bounden duty as well x x x. That is why respect and fidelity to the Court is demanded of its members.[53]

Likewise, respondent is enjoined to keep in mind that:

> Of all classes and professions, the lawyer is most sacredly bound to uphold the laws, as he is their sworn servant; and for him, of all men in the world, to repudiate and override the laws, to trample them under foot and to ignore the very bonds of society, argues recreancy to his position and office and sets a pernicious example to the insubordinate and dangerous elements of the body politic.[54]

WHEREFORE, the disbarment of DIONISIO C. ANTINIW from the practice of law is *LIFTED* and he is therefore allowed to resume the practice of law upon payment of the required legal fees. This resolution is effective immediately.

SO ORDERED.

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

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[53] *Maximo Dumadag v. Atty. Ernesto L. Lumaya,* A.C. No. 2614, June 29, 2000, 334 SCRA 513, 521.

[54] *Michael P. Barrios v. Atty. Francisco P. Martinez*, A.C. No. 4585, November 12, 2004, 442 SCRA 324, 341.

SECOND DIVISION

[A.C. No. 6909. June 30, 2008]

LUZ VECINO, *complainant, vs.* **ATTY. GERVACIO B. ORTIZ, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ADMINISTRATIVE COMPLAINT; DISMISSAL THEREOF DUE TO LACK OF EVIDENCE.— After a careful scrutiny of the records of this case, we find the recommended dismissal of the complaint to be in order, considering the absence of any evidence substantiating the allegation that it was Atty. Ortiz who notarized the Deed of Sale.

2. ID.; ID.; A LAWYER IS DUTY BOUND TO COMPLY WITH ALL THE LAWFUL DIRECTIVES OF THE IBP.— We also agree that Atty. Ortiz should be held administratively liable for his failure to submit his position paper since he is duty-bound to comply with all the lawful directives of the IBP, not only because he is a member thereof, but more so because IBP is the Court-designated investigator of this case.

APPEARANCES OF COUNSEL

Rodolfo Mapili for complainant.

R E S O L U T I O N

QUISUMBING, *J.*:

In a Letter-Complaint[1] dated September 15, 2005 filed before the Office of the Bar Confidant, Luz Vecino charged Atty. Gervacio B. Ortiz, Jr. of notarizing a Deed of Sale[2] despite his knowledge that one of the supposed vendors mentioned therein, Manolito C. Espino, had long been dead.

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

[2] Id. at 5-6.

In his Comment[3] dated December 5, 2005, Atty. Ortiz denied any participation in the notarization of the Deed of Sale. He claimed that his purported signature thereon was forged as shown by its disparity from the specimens[4] of his usual and customary signature. He also pointed out that the Deed of Sale does not bear his notarial seal and that its acknowledgment portion failed to state the date of issue of his professional tax receipt. Thus, Atty. Ortiz prayed for the dismissal of the complaint.

In our Resolution[5] dated April 3, 2006, we referred this case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

On the scheduled mandatory conference of the case before the IBP on October 25, 2006, Atty. Rodolfo Mapile manifested that his client, Vecino, is already withdrawing the complaint. Atty. Ortiz expressed his appreciation for the same. Thus, IBP Commissioner Cecilio A.C. Villanueva directed the parties to submit the necessary pleadings in connection with the said withdrawal on the next hearing set on November 9, 2006.

Before the case was called for hearing on November 9, 2006, Atty. Mapile submitted a compromise agreement, signed by Vecino, to the IBP stenographer. Atty. Mapile instructed the stenographer to ask Atty. Ortiz to sign the agreement during the hearing. Allegedly, Atty. Mapile had to leave early for a scheduled medical check up that day.

Atty. Ortiz did not sign the agreement because he had some concerns regarding the same. Hence, a subsequent hearing was scheduled on November 29, 2006.

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[3] *Id*. at 13-24.

[4] *Id*. at 23, 36, 38-39. His signature appearing in his Comment dated December 5, 2005, the specimen signatures which he filed before the RTC Makati in connection with his 2002 petition for a notarial commission, his signatures appearing in the Verification/Certification dated January 9, 2002, and his signature in his Individual Application for Guarantee of Loan dated February 19, 2002.

[5] *Id*. at 41.

The parties, however, failed to reach a compromise during the November 29, 2006 hearing. Thus, Commissioner Villanueva directed the parties to submit their respective verified position papers on or before December 11, 2006. Both parties, however, failed to submit their position papers.

In his Report and Recommendation[6] dated June 6, 2007, Commissioner Villanueva recommended (1) the dismissal of the complaint since Vecino failed to prove Atty. Ortiz's participation in the notarization of the Deed of Sale, and (2) the one-month suspension of notarial commission of Atty. Ortiz for his failure to submit: (a) a disclaimer the moment that he learned that his name was used and his signature was forged in the Deed of Sale; and (b) his position paper, which was considered by Commissioner Villanueva to be a blatant disrespect to the proceedings of the Commission on Bar Discipline. Commissioner Villanueva also mentioned that he was fully convinced that Atty. Ortiz's signature in the Deed of Sale was forged.

The IBP Board of Governors, in its Resolution dated June 19, 2007, adopted the findings and the recommendations of Commissioner Villanueva. We received a copy of the said Resolution[7] on September 27, 2007.

After a careful scrutiny of the records of this case, we find the recommended dismissal of the complaint to be in order, considering the absence of any evidence substantiating the allegation that it was Atty. Ortiz who notarized the Deed of Sale. Regarding the issue on forgery, we shall however, refrain from making a pronouncement thereon, in view of the pending case[8] against Maria Elena Espino (Manolito Espino's widow), for allegedly falsifying the subject Deed of Sale.

We also agree that Atty. Ortiz should be held administratively liable for his failure to submit his position paper since he is

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[6] *Id*. at 54-59.

[7] *Id*. at 51-53.

[8] *Id*. at 25 (I.S. No. V-05-1511, Office of the City Prosecutor of Valenzuela City).

duty-bound to comply with all the lawful directives of the IBP, not only because he is a member thereof,[9] but more so because IBP is the Court-designated investigator of this case.

However, we find the recommendation to hold Atty. Ortiz administratively liable for his failure to submit a disclaimer to be unwarranted, considering that there is no law or rule requiring him to file the same.

Taking into account all of the foregoing, we modify the recommended penalty to that of admonition.

WHEREFORE, the instant administrative complaint is *DISMISSED*. However, Atty. Gervacio B. Ortiz, Jr. is hereby *ADMONISHED* for failing to comply with a lawful order of the IBP. He is further *WARNED* that his commission of another or similar offense shall be dealt with more severely.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

EN BANC

[A.M. No. 07-11-13-SC. June 30, 2008]

RE: LETTER-COMPLAINT OF CONCERNED CITIZENS AGAINST SOLICITOR GENERAL AGNES VST. DEVANADERA, ATTY. ROLANDO FALLER, and ATTY. SANTIAGO VARELA

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[9] See *Toledo v. Abalos*, A.C. No. 5141, September 29, 1999, 315 SCRA 419, 422; *Tomlin II v. Moya II*, A.C. No. 6971, February 23, 2006, 483 SCRA 154, 161-162.

SYLLABUS

1. REMEDIAL LAW; DISBARMENT AND DISCIPLINE OF LAWYERS; UNVERIFIED COMPLAINT IS DISMISSED AS THE ALLEGATIONS THEREIN ARE VAGUE.— Section 1 of Rule 139-B (DISBARMENT AND DISCIPLINE OF ATTORNEYS) of the Rules of Court requires that the complaint against an attorney must be verified. In *Fernandez v. Atty. Novero, Jr.*, however, this Court held that failure to verify the complaint constitutes a mere formal defect, and the Court may "order the correction of the unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may be served." Complainant "Concerned Citizens" provided no mailing address or contact information in their letter-complaint. And they did not proffer any justification for not coming out in the open other than the self-serving reason of "for self-preservation," which is contrary to their claim that they are "not afraid to rock the boat … so that the proper government authorities will hear the plain and painful truths." *Anonymous v. Geverola* which the Solicitor General *et al*. cites is instructive: An anonymous complaint is always received with great caution, originating as it does from an unknown author. However, a complaint of such sort does not always justify its outright dismissal for being baseless or unfounded for such comp[laint] may be **easy of verification** and may, **without much difficulty, be substantiated and established by other competent evidence**… A reading of the August 26, 2007 letter-complaint, however, shows that the allegations are vague. And the attachments thereto are mere photocopies, not to mention the plaint of the Solicitor General *et al*. that they were not furnished copies of the annexes to the August 6, 2007 complaint. The Court is thus inclined to, as it does, dismiss the complaint.

2. ID.; ID.; DUTY OF THE COURT IS NOT ONLY LIMITED TO DISCIPLINE LAWYERS BUT ALSO TO PROTECT THEIR REPUTATION.— The duty of the Court towards members of the bar is not only limited to the administration of discipline to those found culpable of misconduct but also to the protection of the reputation of those frivolously or maliciously charged. The Court will not thus shirk from its responsibility to mete out proper disciplinary punishment to lawyers who are shown to have failed to live up to their sworn

duties; but neither will it hesitate to extend its protective arm to those the accusation against whom is not indubitably proven. For a lawyer's good name is, in the ultimate analysis, his most important possession. Indeed, the success of a lawyer in his profession depends almost entirely on his reputation. Anything which will harm his good name is to be deplored as a lawyer's reputation is "a plant of tender growth, and its bloom, once lost, is not easily restored." The eventual dismissal however of the administrative case, as in this case, should more than redeem and maintain petitioner's good name.

R E S O L U T I O N

CARPIO MORALES, *J.*:

The Office of the Chief Justice (OCJ) received on September 5, 2007 an unverified letter-complaint[1] dated August 26, 2007 written by "Concerned Citizens" and addressed to Chief Justice Reynato S. Puno.

In that August 26, 2007 letter-complaint, the "Concerned Citizens" informed that on August 6, 2007, they filed before the Court "through" the Office of the Chief Justice, a complaint **for disbarment/disciplinary action** against former Government Corporate Counsel (GCC), now Solicitor General AGNES VST. DEVANADERA, along with the present GCC ALBERTO C. AGRA and other lawyers of the Office of the Government Corporate Counsel (OGCC), for "engaging directly or indirectly in partisan political activities" during the May 14, 2007 national and local elections, and for violating the Anti-Graft and Corrupt Practices Act." To the August 26, 2007 letter-complaint was attached a copy of the complaint of the "Concerned Citizens" filed on August 6, 2007, with annexes.

The "Concerned Citizens" further informed in the August 26, 2007 letter that they filed also on August 6, 2007 a complaint[2] before the Office of the Ombudsman against now

[1] *Rollo*, pp. 3-4.

[2] *Id*. at 3.

Solicitor General Devanadera and Attys. Faller and Varela and that they were "filing [the following] complaints on the basis of the same facts and incidents [they] filed against the above three (3) lawyers in the Ombudsman" for:

> x x x **Violation of the Code of Professional Responsibility**. We are not lawyers, however, we believe that these three (3) government lawyers violated the Code of Professional Responsibility namely: Canon 1 (A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes) and Canon 6 (These canons shall apply to lawyers in government services in the discharge of their official tasks.) We also believe that as complainants who called the attention of the Supreme Court, the unethical acts of these three (3) lawyers are related to the discharge of their functions (**Malversation under Art. 217 of the Revised Penal Code**, Violation of Sec. 3(e), **Anti-Graft and Corrupt Practices Act**, **Dishonesty**, **grave Misconduct** in office and **Conduct Prejudicial** to the Best Interest of the Service) and can be proceeded independently by the Ombudsman and the disbarment/disciplinary proceedings can be undertaken by separately by the Supreme Court because the sole question for determination in disbarment/disciplinary proceedings is **whether the said three (3) government lawyers, as members of the Philippine bar are fit to be allowed the privilege as such or not**.
>
> x x x (Emphasis and underscoring supplied)

By Resolution of November 20, 2007,[3] the Court required Solicitor General Devanadera, GCC Agra and Attys. Faller and Varela to Comment on the August 26, 2007 letter-complaint within ten days from notice.

The Solicitor General *et al*. filed their separate comments,[4] praying for the outright dismissal of the complaint for being anonymous and contrary to the intent of Section 1, Rule 139-B of the Rules of Court which provides:

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[3] *Id*. at 62.

[4] The comments of Solicitor General Devanadera, GCC Agra and Atty. Faller are dated December 17, 2007 and were filed on even date (*rollo,* pp. 72-89). Atty. Varela's Comment is dated December 26, 2007 and was filed on even date (*rollo,* pp. 65-68).

Section 1. *How instituted.* – Proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon the **verified complaint of any person.** The complaint shall state clearly and concisely the facts complained of and shall be supported by **affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts**. (Italics in the original; emphasis and underscoring supplied)

Solicitor General Devanadera states in her Comment[5] dated December 17, 2007 that, in any event, since she is holding a cabinet rank, pursuant to Republic Act No. 9417, she is not covered by the prohibition of Section 261 (i) of the Omnibus Election Code,[6] the law that prohibits partisan political activity. She cites "*Santos v. Yatco,* 106 Phil. 745," which held that, so she states, "the ban on prohibited campaigning stated in Section 261(i) of the Omnibus Election Code does not extend to those officers and employees outside of the civil service such as members of the Cabinet."[7]

Solicitor General Devanadera and Attys. Faller and Varela later filed a joint Motion for Clarification with Motion to Admit Supplemental Comment[8] manifesting that there might have been a misunderstanding on what this Court wanted them to comment on, hence, their filing of a Supplemental Comment.[9]

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[5] *Rollo*, pp. 72-77.

[6] Sec. 261. *Prohibited acts.* – The following shall be guilty of an election offense:

x x x

(i) Intervention of public officers and employees. – Any officer or employee in the civil service, except those holding political offices; any officer, employee, or member of the Armed Forces of the Philippines, or any police force, special forces, home defense forces, *barangay* self-defense units and all other para-military units that now exists or which may hereafter be organized who, directly or indirectly, intervenes, in any election campaign or engages in any partisan political activity, except to vote or to preserve public order, if he is a peace officer.

[7] *Rollo*, p. 75, underscoring in the original.

[8] *Id*. at 96-101.

[9] *Id*. at 102-109.

In their Supplemental Comment, Solicitor General Devenadera *et al*. inform that they had not received a copy of the above-mentioned August 6, 2007 letter-complaint for disbarment allegedly filed before this Court through the OCJ but that they came to learn about it only because a copy thereof was attached to the August 26, 2007 letter-complaint. They add, however, that there were no annexes attached to that copy of the August 6, 2007 letter-complaint, thus denying them due process as they are prevented from refuting each document-annex and the conclusions drawn therefrom.[10]

The Solicitor General *et al*. just the same moved for the dismissal of the August 26, 2007 letter-complaint for prematurity as the resolution of the complaint filed before the Office of the Ombudsman, if indeed there was, is material in determining whether they committed error in the performance of their duties.[11]

Section 1 of Rule 139-B (DISBARMENT AND DISCIPLINE OF ATTORNEYS) of the Rules of Court requires that the complaint against an attorney must be verified. In *Fernandez v. Atty. Novero, Jr.*,[12] however, this Court held that failure to verify the complaint constitutes a mere formal defect, and the Court may "order the correction of the unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may be served."

Complainant "Concerned Citizens" provided no mailing address or contact information in their letter-complaint. And they did not proffer any justification for not coming out in the open other than the self-serving reason of "for self-preservation," which is contrary to their claim that they are "not afraid to rock the boat … so that the proper government authorities will hear the plain and painful truths."

Anonymous v. Geverola[13] which the Solicitor General *et al*. cites is instructive:

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[10] *Id*. at 103-104.

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

[12] 441 Phil. 506, 513 (2002).

[13] 344 Phil. 688 (1997).

An anonymous complaint is always received with great caution, originating as it does from an unknown author. However, a complaint of such sort does not always justify its outright dismissal for being baseless or unfounded for such comp[laint] may be **easy of verification** and may, **without much difficulty, be substantiated and established by other competent evidence**…[14] (Emphasis and underscoring supplied)

A reading of the August 26, 2007 letter-complaint, however, shows that the allegations are vague. And the attachments thereto are mere photocopies, not to mention the plaint of the Solicitor General *et al*. that they were not furnished copies of the annexes to the August 6, 2007 complaint. The Court is thus inclined to, as it does, dismiss the complaint.

The duty of the Court towards members of the bar is not only limited to the administration of discipline to those found culpable of misconduct but also to the protection of the reputation of those frivolously or maliciously charged.[15] The Court will not thus shirk from its responsibility to mete out proper disciplinary punishment to lawyers who are shown to have failed to live up to their sworn duties; but neither will it hesitate to extend its protective arm to those the accusation against whom is not indubitably proven.[16] For a lawyer's good name is, in the ultimate analysis, his most important possession.[17]

Indeed, the success of a lawyer in his profession depends almost entirely on his reputation. Anything which will harm his good name is to be deplored as a lawyer's reputation is "a plant of tender growth, and its bloom, once lost, is not easily restored." The eventual dismissal however of the administrative case, as in this case, should more than redeem and maintain petitioner's good name.[18]

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[14] *Id*. at 696-697.

[15] *Dela Cruz v. Diesmos*, A.C. No. 6850, July 27, 2006, 496 SCRA 525, 534.

[16] *Asturias v. Serrano*, A.C. No. 6538, November 25, 2005, 476 SCRA 97, 107.

[17] *Ibañez v. Viña,* A.C. No. 1648, September 26, 1981, 107 SCRA 607, 613.

[18] *Saludo, Jr. v. Court of Appeals,* G.R. No. 121404, May 3, 2006, 489 SCRA 14, 20.

A word more. *Santos v. Yatco,* which was cited by the Solicitor General, is actually entitled "*Delos Santos, et al. v. Hon. Yatco, et al*." Nowhere, however, in the Decision in said case, a 1959 case, did this Court dwell on Section 261 (i) of the Omnibus Election Code of the Philippines (Batas Pambansa Blg. 881), which was actually enacted into law only on December 3, 1985. The Court thus takes this opportunity to again enjoin lawyers to be more circumspect in the citation of cases or authorities in support of their positions.

> …But if inferior courts and members of the bar meticulously discharge their duty to check and recheck their citations of authorities culled not only from this Court's decisions but from other sources…, appellate courts will be precluded from acting on misinformation, as well as **be saved precious time in finding out whether the citations are correct**.[19] (Emphasis and underscoring supplied)

WHEREFORE, the August 26, 2007 complaint against former Government Corporate Counsel, now Solicitor General Agnes Vst. Devanadera, and Attys. Rolando Faller and Santiago Varela[20] of the Office of the Government Corporate Counsel is *DISMISSED*.

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.

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[19] *Insular Life Assurance Co. Ltd. Employees Association-NATU, et al. v. Insular Life Assurance Co., Ltd., et al.,* 147 Phil. 194, 229 (1971).

[20] Since the "Concerned Citizens'" information in their letter-complaint dated August 26, 2007 is that they are filing the complaint "on the basis of the same facts and incidents . . . against the above three lawyers in the Ombudsman – Solicitor General Devanadera and Attys. Faller and Varela – GCC Agra appears not to be among the three charged herein.

SECOND DIVISION

[A.M. No. P-06-2201. June 30, 2008]
(Formerly A.M. OCA I.P.I. No. 03-1649-P)

JUDGE PLACIDO C. MARQUEZ, *complainant, vs.* **MARIO M. PABLICO, Process Server, Regional Trial Court, Manila, Branch 40,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE COMPLAINT; COURT PERSONNEL; HEAVY WORKLOAD IS NOT AN EXCUSE TO EVADE ADMINISTRATIVE LIABILITY.— The Court is not unaware of the heavy workload of court personnel in Manila, given the number of cases filed and pending before it. It does not, however, serve as a convenient excuse to evade administrative liability; otherwise, every government employee faced with negligence and dereliction of duty would resort to that excuse to evade punishment, to the detriment of the public service.

2. ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY BECOMES GROSS WHEN IT IS HABITUAL; PENALTY.— To fault respondent only for simple neglect of duty on account of the observation of Judge Eugenio that "no single instance where respondent's neglect of duty resulted in the disruption of service to the public nor did it damage or prejudice any litigant" does not sit well with the Court. . . . Neglect of duty is the failure of an employee to give one's attention to a task expected of him. Gross neglect is such neglect which, 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... Judge Eugenio himself found that respondent's infractions were "habitual" which, under Section 53, Rule IV of the *Uniform Rules on Administrative Cases in the Civil Service*, could be appreciated as either extenuating, mitigating, or aggravating. It can not be gainsaid that respondent's habituality of infractions calls for its treatment as aggravating in the present case. It may not be amiss to state that in another case against respondent, A.M. No. P-06-2109, "*Reyes v. Pablico*," this Court, by Decision of November 27, 2006, found respondent guilty of simple

neglect of duty, on similar grounds, in which it imposed a penalty of suspension for three months, with a stern warning against repetition of similar acts. Under the same *Uniform Rules*, gross neglect of duty is classified as a grave offense punishable by dismissal even for the first offense.

R E S O L U T I O N

CARPIO MORALES, *J.*:

On September 2, 2002, Judge Placido C. Marquez[1] (the judge or complainant), then Presiding Judge, Regional Trial Court, Branch 40, Manila, issued two letters-memoranda[2] to Mario Pablico (respondent), Branch Process Server, directing him to explain in writing within ten days why he should not be recommended to be dropped from the rolls, in accordance with Rule XII, Section 2.2. (a) of Memorandum Circular No. 40, series of 1998 of the Civil Service Commission, for failure to attach registry receipts and registry return cards to the records of the cases enumerated in the letters-memoranda. The Office of the Court Administrator (OCA), which was copy furnished these memoranda, directed respondent, by 1st Indorsement of October 23, 2002, to Comment thereon.[3]

In his November 29, 2002 letter-comment,[4] respondent, denying the charge, attached copies of several Orders issued in the cases listed in the memoranda, together with the corresponding registry receipts and registry return cards.

Listing the following as his duties assigned to him by the judge, *viz*:

1. Stitching of records;

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[1] Judge Marquez filed a notice of change of address dated March 20, 2006 (*rollo,* Vol. I, pp. 637-638) to Bauan, Batangas in view of his retirement on October 5, 2006.

[2] *Rollo*, Volume I, pp. 41-45.

[3] *Id*. at 39.

[4] *Id*.at 47-48.

2. Preparing Registry Receipts and attaching the same to the record;
3. Preparing return cards and attaching the same to their respective cases;
4. Mailing of Orders and Subpoenas;
5. Personally serving motions/orders to parties;
6. Receiving all motions/pleadings both of civil and criminal cases, and mail matters and attach them to the record aside from the regular and designated job for the Process Server as stated in Job Description.

respondent stated:

With all above load works imposed by Judge Marquez to the undersigned, it is not surprising, if and when there are some little things that undersigned would neglect but were also being done. Nobody is perfect anyway and Judge Marquez should understand that. But instead of giving undersigned his full understanding as a father to his children, here are left and right accusations being imputed by said Judge as well as our Officer-in-Charge, Ligaya V. Reyes. This is the third (3rd) charge as against undersigned. It seems there is a concerted effort to remove the undersigned from the service, unfortunately, all their charges have no basis at all. If there is an iota of neglect, maybe minimal which undersigned may have overlooked due to the numerous works designated to undersigned and to which I beg your Honors to understand. (Underscoring supplied)

By letter of January 13, 2003,[5] the OCA forwarded a copy of respondent's Comment *cum* annexes to the judge and required him to inform if he was satisfied therewith.

Complainant, by letter dated February 8, 2003,[6] manifested his dissatisfaction with the explanation of respondent and recommended that he be dropped from the rolls.

Complainant emphasized that respondent performed additional duties only in the absence of a utility worker in his sala, but that he was relieved thereof when a new utility aide assumed the post.

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[5] *Id*. at 46.

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

To refute respondent's allegation that he had consistently performed his duties, complainant attached a copy of the memorandum dated November 26, 2001[7] of then Branch Clerk of Court Gilbert A. Berjamin.

Respecting the return card and registry receipts attached to respondent's Comment, complainant averred that they were accomplished only after a physical inventory of all pending cases was conducted and his attention to his failure to accomplish them was repeatedly called.

To prove his "continuing gross neglect of duties," complainant cited the Orders which were mostly issued during actual court hearings to compel him to perform his duties.[8]

By Resolution of July 2, 2003,[9] this Court referred the case to the then Executive Judge Enrico A. Lanzanas for investigation, report and recommendation within 90 days from receipt of the records of the case.

Judge Antonio M. Eugenio, Jr., who succeeded Judge Lanzanas as Executive Judge, by Report and Recommendation dated November 23, 2005,[10] submitted the following findings:

> Respondent admitted neglecting some of his duties giving as a reason the volume of work assigned to him by the complainant, *i.e.*, the duties of the Utility Worker. This is no excuse. Respondent may well be reminded that in the job description, **the employee is sworn to perform such other duties that may be assigned to him, aside from the duties specified therein**. Moreover, respondent's assumption of the additional duties of the Utility Worker was only temporary as the position was then vacant. Who is more likely to take over the duties of the Utility Worker other than the Process Server? And the record shows that **as soon as a Utility Worker was hired, these additional duties ceased to be his responsibilities.**

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[7] *Id*. at 8-9. Respondent was directed to explain within five days from receipt of the memorandum his neglect of duty and absences.

[8] Annexes "D" to "Z", *id*. at 10-38.

[9] *Id*. at 77.

[10] *Id*. at 493-506.

Respondent's neglect of his duties did not occur once or twice. It was in fact habitual. The several memoranda issued to him by Ligaya V. Reyes, regardless of whether or not she was still the officer in charge at the time, and their former branch clerk, Atty. Gilbert Benjamin, as well as the meetings called by the complainant, to remind of his duties are more than adequate to put a neglectful employee on guard. That his former judges were not strict on the way he performed his duties and did not require of him as much as the complainant did is of no consequence. The fact remains that as process server of Branch 40, he is sworn to perform his duties as described in his job description and all other tasks that may be assigned to him from time to time.

Section 1, Article XI of the 1987 Philippine Constitution should be taken to heart by every public officer and employee, to wit: "Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives."

An additional task like the job of a utility worker, in the absence of such an employee, is not too much to ask if the same would redound to the good of the service. And the respondent should not harp on it or invoke it as a protective shield in neglecting his other duties.[11] (Emphasis and underscoring supplied)

Judge Eugenio thereupon recommended the suspension of respondent for one month and one day without pay, with a stern warning that a repetition of the same or similar act would be dealt with more severely, ratiocinating as follows:

[T]hough we find the respondent answerable to the charges aired by the complainant, a meticulous perusal of the documents presented by the complainant reveals **no single instance where respondent's neglect of duty resulted in the disruption of service to the public nor did it damage or prejudice any litigant**. This circumstance should serve to mitigate the actuations of respondent.[12] (Emphasis supplied)

By Resolution of February 6, 2006,[13] this Court required the parties to manifest whether they were willing to submit the

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

[12] *Id*. at 506.

[13] *Id*. at 563.

case for decision on the basis of the pleadings/records already filed and submitted. Only complainant complied (in the affirmative), however.[14]

And by Resolution of March 22, 2006,[15] this Court referred the report and recommendation of Judge Eugenio to the OCA for evaluation, report and recommendation.

In its Memorandum dated June 13, 2006,[16] the OCA found the recommendation of Judge Eugenio to be in accordance with the result of the investigation. It accordingly adopted the recommended penalty.

In the meantime, this Court, in A.M. No. 06-2-92-RTC,[17] "*Re: Dropping from the Rolls of Mr. Mario M. Pablico, Process Server, RTC, Br. 40, Manila*," after considering the Report dated January 31, 2006 of the OCA, issued Resolution dated June 28, 2006 dropping respondent from the rolls "for obtaining 'Unsatisfactory' performance ratings during the periods from 01 July to 31 December 2003, 01 January to 30 June 2004 and 01 July to 31 December 2004 WITHOUT PREJUDICE to the continuation of the administrative complaints filed against him."[18] (Capitalization in the original, underscoring supplied). The Court thereupon declared the position of Process Server, Branch 40 of the Manila RTC vacant.

Parenthetically, in her letter dated September 12, 2006,[19] the Officer-in-Charge of Branch 40, Manila RTC informed the Court that when respondent received the June 28, 2006 Resolution of the Court on July 28, 2006, he sent a text message that

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[14] *Id*. at 602-603.

[15] *Id*. at 580.

[16] *Id*. at 623-631.

[17] *Id*. at 633.

[18] Respondent was also charged with neglect of duty, incompetence and other acts prejudicial to the best interest of the service in OCA IPI No. 01-1228-P, redocketed as A.M. No. P-06-2109, and Grave Misconduct for Falsification of Daily Time Record in OCA IPI No. 05-2171-P

[19] *Id*. at 639.

evening to her saying *"LINTEK! LANG ANG WALANG GANTI, KUNG AKALA MO NA TPOS NA TAYO, LULUHA KA NG BATO, SA GAGAWIN KO SA IYO, AT SA PAMILYA MO."*[20] (Capitalization in the original; italics supplied).

The Court is not unaware of the heavy workload of court personnel in Manila, given the number of cases filed and pending before it. It does not, however, serve as a convenient excuse to evade administrative liability; otherwise, every government employee faced with negligence and dereliction of duty would resort to that excuse to evade punishment, to the detriment of the public service.[21]

To fault respondent only for simple neglect of duty on account of the observation of Judge Eugenio that "no single instance where respondent's neglect of duty resulted in the disruption of service to the public nor did it damage or prejudice any litigant" does not sit well with the Court.

> . . . Neglect of duty is the failure of an employee to give one's attention to a task expected of him. Gross neglect is such neglect which, 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...[22] (Emphasis and underscoring supplied)

Judge Eugenio himself found that respondent's infractions were "habitual" which, under Section 53, Rule IV of the *Uniform Rules on Administrative Cases in the Civil Service*,[23] could be appreciated as either extenuating, mitigating, or aggravating. It can not be gainsaid that respondent's habituality of infractions calls for its treatment as aggravating in the present case.

It may not be amiss to state that in another case against respondent, A.M. No. P-06-2109, "*Reyes v. Pablico*," this Court, by Decision

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[20] *Id*. at 642.

[21] *Vide Laguio, Jr. v. Amante-Casicas*, A.M. No. P-05-2092, November 10, 2006, 506 SCRA 705, 711.

[22] *Rodrigo-Ebron v. Adolfo*, A.M. No. P-06-2231, April 27, 2007, 522 SCRA 286, 293.

[23] CSC Resolution No. 991936, series of 1999.

of November 27, 2006,[24] found respondent guilty of simple neglect of duty, on similar grounds, in which it imposed a penalty of suspension for three months, with a stern warning against repetition of similar acts.

Under the same *Uniform Rules*, gross neglect of duty is classified as a grave offense punishable by dismissal even for the first offense.[25] This Court having, as priorly stated, ordered the dropping of respondent from the rolls in another administrative matter, in line with *Sibulo v. San Jose*[26] where the therein respondent was found guilty of gross neglect in the performance of his duty but was earlier dropped from the rolls, now imposes upon him a fine in the amount of ₱5,000, and orders all his benefits, except accrued leave credits, forfeited, with prejudice to his re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations and financial institutions.

WHEREFORE, respondent, MARIO M. PABLICO, former Process Server, Regional Trial Court, Manila, Branch 40, is found guilty of *gross* neglect of duty. He would have been ordered dismissed from the service were he not, by this Court's Resolution in A.M. No. 06-2-92-RTC, dropped from the rolls. He is thus *FINED* in the amount of Five Thousand Pesos (₱5,000). All his benefits, except accrued leave credits, if any, are declared *FORFEITED*, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations and financial institutions.

SO ORDERED.

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

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[24] 508 SCRA 146.

[25] Section 52 (A) (2), Rule IV, CSC Resolution No. 991936, series of 1999.

[26] A.M. No. P-05-2088, November 11, 2005, 474 SCRA 464. *Vide Soberano, Jr. v. Nebres,* A.M. No. P-00-1426, February 23, 2001, 352 SCRA 597.

* Additional member per Raffle dated July 2, 2008 pursuant to Administrative Circular No. 84-2007 in lieu of Justice Presbitero J. Velasco, Jr. who inhibited.

SECOND DIVISION

[A.M. No. P-07-2388. June 30, 2008]
(Formerly OCA-IPI No. 07-2558-P)

SANNIE V. JUARIO, *complainant, vs.* **NORBERTO LABIS, Sheriff IV, RTC, Branch 44, Initao, Misamis Oriental,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE COMPLAINT; SHERIFF; NATURE OF HIS DUTY, DISCUSSED.— A sheriff's duty in the execution of the writ issued by a court is purely ministerial. When a writ is placed in his hands, it is his duty, in the absence of instructions, to proceed with reasonable celerity and promptness to execute it according to its mandate. He has no discretion whether to execute it or not. Good faith on his part, 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.

2. ID.; ID.; ID.; ID.; FAILURE TO EXERCISE DUE DILIGENCE IN THE IMPLEMENTATION OF THE WRIT OF EXECUTION CONSTITUTES SIMPLE NEGLECT OF DUTY; PENALTY.— In the case at bar, the Court finds that respondent sheriff was lackadaisical in the enforcement of the writ of execution in Criminal Case No. 2522. While he did serve the writ on Laura, it appears that he failed to exercise due diligence in determining whether Laura had any other property out of which the decreed obligation could be satisfied. It must be stressed that a judgment, if not executed, would be an empty victory on the part of the prevailing party. Clearly, by his actuations, respondent displayed a conduct falling short of the stringent standards required of court employees. He is guilty of simple neglect of duty, defined as the failure of an employee to give one's attention to a task expected of him, signifying a disregard of a duty resulting from carelessness or indifference. Under the civil service rules and regulations, simple neglect of duty is punishable with suspension of one

(1) month and one (1) day for the first offense. However, to prevent any undue adverse effect on public service which would ensue if work was otherwise left unattended by reason of respondent's suspension, the Court deems it wise to impose the penalty of fine instead. Thus, in line with jurisprudence, the Court imposes a fine instead of suspension from service so that respondent can continue to discharge his assigned tasks.

R E S O L U T I O N

TINGA, *J.*:

This is an administrative complaint against respondent Norberto Labis, sheriff of the Regional Trial Court of Initao, Misamis Oriental, Branch 44, for grave misconduct and neglect of duty relative to the execution of the judgment in Criminal Case No. 2522, entitled "*People of the Philippines v. Leo Galono and Laura Galono"* for slight physical injuries, which was filed before the 8th Municipal Circuit Trial Court of Initao, Misamis Oriental.

In an Affidavit-complaint[1] dated 14 September 2006, complainant Sannie V. Juario alleged that he was the private complainant in the criminal case and that on 30 June 2005, the trial court found Laura Galono (Laura) guilty of the crime charged. In addition to the penalty of imprisonment, Laura was ordered to pay complainant ₱3,000.00 as moral damages and ₱5,000.00 as reimbursement of attorney's fees. Laura did not appeal the judgment and instead applied for probation. Thus, on 15 August 2005, complainant filed a motion for execution of the civil aspect of the case which the trial court granted.[2]

Thereafter, respondent, who had been tasked to implement the writ of execution, allegedly demanded from complainant certain sums of money to facilitate the execution of the judgment. Complainant, in response, gave respondent through his brother, Orlando Juario, the amount of ₱3,200.00.[3]

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[1] *Rollo*, pp. 6-8.

[2] *Id*. at 6.

[3] *Id*.

Several weeks after, respondent informed complainant that he could not attach any of Laura's properties as the same were not hers but had been merely mortgaged to her. Respondent, however, could not present any document bearing proof of the mortgage. Subsequently, complainant related to respondent that Laura co-owned a parcel of land covered by Certificate of Land Ownership Award (CLOA) No, 00201250. Respondent suggested that complainant conduct a survey and have a portion of the land segregated. Complainant readily complied but respondent failed to do his part. Later on, respondent informed him that it would be contrary to law to have the property attached.[4]

In his Comment[5] dated 27 October 2006, respondent denied the charges against him and averred that the instant administrative complaint should be dismissed on the ground of forum shopping in view of the pendency of a case involving the same facts previously filed against him by complainant's father.[6]

Respondent also asserted that he implemented the writ of execution on 8 December 2005 with the assistance of police personnel. He recalled that in Laura's absence, her sister presented to him a document showing that the former did not own the tools and equipment sought to be attached. He also explained that he did not notice other property within the premises that could be attached except a welding machine and other tools which are exempt from attachment for being essential implements to Laura's occupation.[7]

As regards the parcel of land that Laura co-owned, respondent maintained that the title does not evince such co-ownership and that since it is covered by a CLOA, a writ of execution may not be implemented against it.[8]

Finally, while he admitted having received money from complainant in the amount of ₱2,500.00 and not ₱3,000.00 to defray

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

[5] *Id*. at 28-31.

[6] *Id*. at 28-29.

[7] *Id*. at 29-30.

[8] *Id*. at 30.

the expenses in the implementation of the writ, respondent asserted that the money had been properly accounted for as evidenced by the photocopies of the report of estimated execution expenses and of the sheriff's report of the actual expenses.[9]

In a Report[10] dated 8 August 2007, the Office of the Court Administrator (OCA) found respondent guilty of simple neglect of duty for failing to exercise diligence in the implementation of the writ of execution, but found that the charge of grave misconduct relative to respondent's demand for money to facilitate the implementation of the writ was unsubstantiated. Accordingly, the OCA recommended that respondent be fined in the amount of ₱5,000.00.

In a Resolution[11] dated 10 October 2007, the Court noted the report of the OCA and directed the parties to manifest whether they are willing to submit the case for resolution on the basis of the pleadings filed. In an undated letter, complainant manifested his willingness to submit the case to the Court for disposition.[12] Respondent expressed the same willingness in his Manifestation dated 26 November 2007.[13]

The Court finds the OCA's recommendations in order.

A sheriff's duty in the execution of the writ issued by a court is purely ministerial. When a writ is placed in his hands, it is his duty, in the absence of instructions, to proceed with reasonable celerity and promptness to execute it according to its mandate. He has no discretion whether to execute it or not. Good faith on his part, or lack of it, in proceeding to properly execute his mandate would be of no moment, for he is chargeable with the knowledge

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[9] *Id*. at 31.

[10] *Id*. at 1-4.

[11] *Id*. at 41.

[12] *Id*. at 47.

[13] *Id*. at 44.

that being an officer of the court tasked therefor, it behooves him to make due compliance.[14]

In the case at bar, the Court finds that respondent sheriff was lackadaisical in the enforcement of the writ of execution in Criminal Case No. 2522. While he did serve the writ on Laura, it appears that he failed to exercise due diligence in determining whether Laura had any other property out of which the decreed obligation could be satisfied. It must be stressed that a judgment, if not executed, would be an empty victory on the part of the prevailing party.[15] Clearly, by his actuations, respondent displayed a conduct falling short of the stringent standards required of court employees. He is guilty of simple neglect of duty, defined as the failure of an employee to give one's attention to a task expected of him, signifying a disregard of a duty resulting from carelessness or indifference.[16] Under the civil service rules and regulations, simple neglect of duty is punishable with suspension of one (1) month and one (1) day for the first offense. However, to prevent any undue adverse effect on public service which would ensue if work was otherwise left unattended by reason of respondent's suspension, the Court deems it wise to impose the penalty of fine instead. Thus, in line with jurisprudence, the Court imposes a fine instead of suspension from service so that respondent can continue to discharge his assigned tasks.[17]

Concerning the charge of grave misconduct, the Court likewise finds the same to be unsubstantiated. Respondent reasonably explained why he had asked an amount from complainant and was able to satisfactorily prove that the money had been properly accounted for.

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[14] *Zarate v. Untalan*, A.M. No. MTJ-05-1584, 31 March 2005, 454 SCRA 206, 215.

[15] *Id*.

[16] *Pesongco v. Estoya*, A.M. No. P-06-2131, 10 March 2006, 484 SCRA 239, 255-256.

[17] *Angeles v. Base*, 443 Phil. 723, 731-732 (2003).

WHEREFORE, for simple neglect of duty, respondent Norberto Labis, Sheriff IV of the Regional Trial Court of Initao, Misamis Oriental, Branch 44, is *FINED* in the sum of Five Thousand Pesos (₱5,000.00). For lack of factual and legal bases, the charge of grave misconduct against him is *DISMISSED*.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. RTJ-07-2037. June 30, 2008]
(Formerly OCA IPI No. 07-2540-RTJ)

ATTY. NORITO E. TORRES, ATTY. EPIFANIO G. BOLANDO, GERONIMO MEJIAS, OSMUNDO FLORES, AMADOR LABASTIDA, ELENA ANASCO, ROSABELLA GUDES, ALEJANDRO PAJULERAS, CELSO PETALCORIN, CARLITO LOBERTERNOS, DOLORES ESTRADA, PELAR DUPA,* *complainants, vs.* **JUDGE IRMA ZITA V. MASAMAYOR, Presiding Judge, Regional Trial Court, Branch 52, Talibon, Bohol,** *respondent.*

SYLLABUS

1. LEGAL AND JUDICIAL ETHICS; JUDGES; CARELESSNESS IN SIGNING AN ERRONEOUSLY DATED WARRANT OF ARREST.— In this particular instance, respondent was wanting in her duty to supervise properly her personnel. She likewise

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* Ricardo Lapeña, Larry Sadorra and Amelita Espinoza, although named as complainants, did not sign the complaint and the attached joint affidavit. They are excluded as complainants.

failed to ensure that her court personnel perform their tasks as they should. And she was not careful at all in signing the erroneously dated warrant of arrest. Worse, upon the discovery of the erroneous but signed warrant, no sufficient precautionary measure was adopted to prevent its issuance to one of those sought to be arrested, Atty. Bolando. While we see nothing wrong in treating it as a scratch paper, it was definitely improper to issue it since it was not obtained from the case records, but from the clerk's drawer. In fact, the warrant was not even verified from the records. That the error was not respondent's direct error but of the clerk/typist cannot exculpate respondent from a finding of an administrative lapse on her part. Respondent judge cannot take refuge behind the mistakes and inefficiency of her court personnel.

2. ID.; ID.; ID.; ADMONITION, HELD APPROPRIATE.— However, we find that *in lieu* of the fine recommended, an admonition to respondent to be careful in signing orders, to be more efficient in the performance of duty, and to closely supervise her personnel will suffice. In *Joaquin Vda. de Agregado v. Bellosillo*, we admonished the respondent therein for failure to observe the care and diligence required of him in the performance of his duties as a judge. Considering that respondent is similarly liable merely for inadvertence, and considering further that respondent acted without any intent to do wrong, this Court finds a similar admonition appropriate.

APPEARANCES OF COUNSEL

Norito E. Torres for complainants.

R E S O L U T I O N

QUISUMBING, *J.*:

For resolution is a letter-complaint with Joint Affidavit[1] dated August 28, 2006 by the complainants, charging respondent Judge Irma Zita V. Masamayor with grave abuse of authority, gross ignorance of the law, grave misconduct, obvious bias and partiality,

[1] *Rollo*, pp. 4-14.

and gross violation of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act.

The pertinent facts in this case are as follows:

Complainants were among those charged with sedition in Criminal Case No. 04-1368[2] before the Regional Trial Court (RTC) of Talibon, Bohol, Branch 52, presided by respondent judge.

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[2] *Id*. at 102-104.

The accused were **Atty. Norito Torres**, **Atty. Epifanio Bolando G.**, **Geronimo Mejias**, **Osmundo Flores**, **Amador Labastida *a.k.a.* Dominador Labastida**, Ricardo Lapena, **Elena Anasco**, **Ros[a]bella Gudes**, Larry Ladosa *y* Eberias *a.k.a*. Candelario Sadorra and Larry Sadorra, **Alejandro Pajuleras *y* Aparicio**, **Celso Petalcorin *y* Cenita**, **Carlito [Loberternos] *y* Pajuleras**, **Dolores Estrada *y* Jimenez *a.k.a.* Dolor Estrada**, **Pelar Dupa *y* Mejias** and Amelita Lim *y* Espinoza. (Emphasis supplied for the names of the complainants herein.)

The accusatory portion of the Information reads:

x x x x x x x x x

That on or about the 17th day of May and days prior thereto during the May 10, 2004 elections, in the Municipality of Inabanga, Province of Bohol, … the above-named accused LEADERS, conspiring, confederating and mutually helping each other, by means of force, intimidation and other means outside of the legal methods and the rest of the accused MEMBERS/PARTICIPANTS, did then and there wilfully, unlawfully and feloniously rise publicly and tumultuously by causing and creating serious trouble and disturbances in front of the municipal building … in order to inflict an act of hate or revenge upon the person of JOSEPHINE SOCORRO JUMAMOY, the incumbent municipal mayor of Inabanga, Bohol, the members of the police force of the municipality, and the members of the Municipal Board of Canvassers through their acts of attacking the municipal building, stoning and destroying parts of said building while openly declaring their hatred and contempt against the above-named public official and authorities … to prevent the officials and employees of the municipal government of Inabanga and the Municipal Board of Canvassers from freely exercising their duties and functions as these acts did, in fact, disrupted and prevented the normal functioning of various government offices and agencies in the municipality of Inabanga, Bohol including the canvassing of votes by the Municipal Board of Canvassers which was transferred to Tagbilaran City; to the damage and prejudice of the Republic of the Philippines and of the local government of Inabanga and its public officials particularly Mayor Josephine Socorro Jumamoy.

x x x x x x x x x

On July 10, 2006, complainants' lawyer, Atty. Rolindo A. Navarro, informed the branch clerk of court, Atty. Maria Cristina P. Tecson, that he will immediately file an urgent motion for judicial determination of probable cause and to hold in abeyance the issuance or service of warrant of arrest. The motion was filed on July 11, 2006 at 8:10 a.m.[3] When complainant Atty. Epifanio Bolando appeared before the RTC on July 14, 2006 to argue the motion, respondent informed him that an order finding probable cause and the corresponding warrant of arrest had already been issued. Thus, Atty. Bolando obtained from the court a copy of the warrant of arrest. The copy he obtained showed that the warrant was issued on July 5, 2006,[4] but the Order finding probable cause was dated July 10, 2006.[5]

Aggrieved, complainants filed this complaint. Complainants argue that respondent's issuance of the warrant for their arrest five days before she found probable cause constitutes grave abuse of authority and gross ignorance of the law, and shows respondent's bias and bad faith. They also allege that respondent acted with questionable haste in finding probable cause on July 10, 2006 although she knew that Atty. Navarro would file a motion to seek judicial determination of probable cause. Complainants point out that respondent released the order finding probable cause at 4:00 p.m. on July 11, 2006 even though the motion was already filed as of 8:10 a.m.

In her comment,[6] respondent avers that the clerk of court informed Atty. Navarro that respondent had already rendered an order finding probable cause when Atty. Navarro intimated that he will file a motion seeking judicial determination of probable cause. Nonetheless, Atty. Navarro said that he will still file the motion.[7]

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

[4] *Id*. at 49-50.

[5] *Id*. at 51-52.

[6] *Id*. at 55-62.

[7] *Id*. at 72.

Respondent maintains that the warrant of arrest was prepared on July 10, 2006. In fact, the Philippine National Police (PNP) of Inabanga, Bohol and Tagbilaran City certified[8] that they received the warrant of arrest dated July 10, 2006. She explains that the erroneously dated warrant came about because the clerk/typist "forgot to change the date of the format-warrant earlier entered into the word processor." Upon discovery of the error, the erroneous warrant was "relegated to the scratch paper bin." The clerk/typist, unfortunately, gave it to Atty. Bolando thinking that it was an extra copy since it was already signed.

Upon evaluation of the case, the Office of the Court Administrator (OCA) found respondent liable for violation of Rule 3.09,[9] Canon 3 of the Code of Judicial Conduct which requires judges to organize and supervise court personnel for prompt and efficient dispatch of business. The OCA said that respondent failed to perform her duties when she merely relied on the document prepared by her personnel. Respondent could have checked the details of the warrant of arrest, particularly the date, knowing that dates are always material in legal procedure. The laxity and inefficiency of respondent's court personnel reflect her lack of management skills. The OCA added that respondent was not meticulous and thorough in organizing and supervising the work of her subordinates whose mistakes are her responsibility. Thus, the OCA recommended that respondent be fined ₱2,000 with a stern warning that repetition of the same offense shall be dealt with more severely.[10]

On April 18, 2007 and September 14, 2007, respondent and complainants, respectively, filed their manifestations expressing their willingness to submit the case for resolution based on the pleadings filed.

We find respondent administratively liable.

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[8] *Id.* at 80, 84.

[9] Rule 3.09. – A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.

[10] *Rollo*, pp. 3-4.

We note the OCA's implied finding that respondent is not guilty of grave abuse of authority, gross ignorance of the law, grave misconduct, obvious bias and partiality, and gross violation of Rep. Act No. 3019. We expressly rule that indeed respondent did not commit these serious accusations.

We recall that the charges arose from the erroneously dated warrant of arrest which made complainants suspect that it was issued before respondent found probable cause. The facts would show, however, that such suspicion is not true. Respondent adequately explained the circumstances surrounding the issuance of the erroneous warrant. The clerk/typist failed to change the date of a previous warrant of arrest saved as a soft copy in the computer. Upon discovery, the erroneous warrant was considered a scratch paper and this fact is supported by the affidavit[11] of Cesar A. Garcia, Jr., the criminal cases docket clerk and typist who prepared it and later mistook it as an extra copy when he gave it to complainant Atty. Bolando. Moreover, the PNP received the correct warrant of arrest dated July 10, 2006. Such receipt proves that it was not issued before respondent's July 10, 2006 Order finding probable cause.

Accordingly, the charges of grave abuse of authority, gross ignorance of the law, grave misconduct, obvious bias and partiality, and gross violation of Rep. Act No. 3019 against respondent are dismissed for lack of factual and legal basis. We fail to see any grave abuse of authority under the circumstances. Nor is respondent grossly ignorant of the law for she did not commit a patent, deliberate and malicious error. There is also no showing that she is unaware of a basic law.[12]

Neither did respondent commit grave misconduct. She did not commit an unlawful conduct motivated by a premeditated or intentional purpose.[13] Moreover, nothing supports the accusation of obvious bias and partiality there being no proof of respondent's

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[11] *Id*. at 88-89.

[12] See *Bellena v. Perello*, A.M. No. RTJ-04-1846, January 31, 2005, 450 SCRA 122, 129.

[13] *Id*. at 130.

specific acts indicating prejudice or arbitrariness.[14] And, we find that respondent did not commit any corrupt practice of a public officer, even as we note that the corrupt practices defined under Section 3(a) to (k) of Rep. Act No. 3019 are criminal offenses.

In addition, complainants were less than candid to this Court when they stated that the clerk of court informed their lawyer Atty. Navarro on July 10, 2006 that there was no order yet finding probable cause.[15] Notably, Atty. Navarro gave no statement to this effect. The clerk of court furthermore executed an affidavit[16] that after verification she informed Atty. Navarro that an order finding probable cause had already been issued. Still, Atty. Navarro insisted that he will file a motion for judicial determination of probable cause. Complainants are thus reminded that their statements in their joint affidavit[17] are under oath.

Likewise, without merit is complainants' allegation that the respondent hastily issued her order after learning that complainants would file a motion for judicial determination of probable cause. When Atty. Navarro said that he will immediately file the motion and before the motion was actually filed on July 11, 2006, respondent had already issued her order finding probable cause on July 10, 2006. Complainants' allegation fails even more when it is considered that several days had passed since the Information was filed on June 23, 2006, and that it is not unlikely that respondent has already reviewed the case.

The above notwithstanding, however, we affirm the OCA that respondent failed to properly observe Rule 3.09, Canon 3 of the Code of Judicial Conduct. The rule provides that "*a judge should* organize and *supervise the court personnel to ensure the prompt and efficient dispatch of business*, and require at all times the observance of high standards of public service and fidelity." *Efficient court management is a judge's*

[14] *Id.* at 131.

[15] *Rollo*, p. 8.

[16] *Id.* at 72-74.

[17] *Id.* at 7-14.

responsibility.[18] *A judge is ultimately responsible for ensuring that court personnel perform their tasks* and that the parties are promptly notified of his orders and decisions.[19]

In this particular instance, respondent was wanting in her duty to supervise properly her personnel. She likewise failed to ensure that her court personnel perform their tasks as they should. And she was not careful at all in signing the erroneously dated warrant of arrest. Worse, upon the discovery of the erroneous but signed warrant, no sufficient precautionary measure was adopted to prevent its issuance to one of those sought to be arrested, Atty. Bolando. While we see nothing wrong in treating it as a scratch paper, it was definitely improper to issue it since it was not obtained from the case records, but from the clerk's drawer. In fact, the warrant was not even verified from the records.

That the error was not respondent's direct error but of the clerk/typist cannot exculpate respondent from a finding of an administrative lapse on her part. Respondent judge cannot take refuge behind the mistakes and inefficiency of her court personnel.[20]

In addition, even if the PNP was furnished the correct warrant of arrest, which shows the RTC's immediate correction of the error, we must emphasize that because of the incident, complainants harbored the notion that an injustice was done against them, ironically, by a court.

However, we find that *in lieu* of the fine recommended, an admonition to respondent to be careful in signing orders, to be more efficient in the performance of duty, and to closely supervise her personnel will suffice.

In *Joaquin Vda. de Agregado v. Bellosillo*,[21] we admonished the respondent therein for failure to observe the care and diligence

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[18] *Aguilar v. How*, A.M. No. RTJ-03-1783, July 31, 2003, 407 SCRA 482, 488.

[19] *Visbal v. Buban*, A.M. No. MTJ-02-1432, September 3, 2004, 437 SCRA 520, 524.

[20] *Id.* at 523; *Aguilar v. How*, *supra* at 487; *Lagatic v. Peñas, Jr.*, A.M. No. RTJ-97-1383, July 24, 1997, 276 SCRA 46, 53.

[21] A.M. No. MTJ-05-1600, August 9, 2005, 466 SCRA 29.

required of him in the performance of his duties as a judge. Considering that respondent is similarly liable merely for inadvertence, and considering further that respondent acted without any intent to do wrong, this Court finds a similar admonition appropriate.

WHEREFORE, the complaint is *DISMISSED* for lack of sufficient basis. However, respondent Judge Irma Zita V. Masamayor, presiding judge of the Regional Trial Court of Talibon, Bohol, Branch 52, is *ADMONISHED* to be careful in signing orders, to be more efficient in the performance of her duty, and to closely supervise her personnel. Repetition of the same or similar incidents shall merit a more severe penalty.

Complainants are also reminded of possible adverse consequences of false statements made under oath, hence the need for candor, accuracy and truthfulness in sworn statements.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

SECOND DIVISION

[A.M. No. RTJ-08-2119. June 30, 2008]
(Formerly A.M. O.C.A. IPI No. 07-2709-RTJ)

ATTY. MELVIN D.C. MANE, *complainant, vs.* **JUDGE MEDEL ARNALDO B. BELEN, REGIONAL TRIAL COURT, BRANCH 36, CALAMBA CITY,** *respondent.*

SYLLABUS

LEGAL AND JUDICIAL ETHICS; JUDGES; A JUDGE WHO WAS ENGAGED ON A SUPERCILIOUS LEGAL AND PERSONAL DISCOURSE EXHIBITED CONDUCT UNBECOMING OF A JUDGE; PENALTY.— An alumnus of a particular law school has no monopoly of knowledge of the law. By hurdling the Bar Examinations which this Court administers, taking of the Lawyer's oath, and signing of the Roll of Attorneys, a lawyer is presumed to be competent to discharge his functions and duties as, *inter alia*, an officer of the court, irrespective of where he obtained his law degree. For a judge to determine the fitness or competence of a lawyer primarily on the basis of his alma mater is clearly an engagement in an argumentum *ad hominem*. A judge must address the merits of the case and not on the person of the counsel. If respondent felt that his integrity and dignity were being "assaulted," he acted properly when he directed complainant to explain why he should not be cited for contempt. He went out of bounds, however, when he, as the above-quoted portions of the transcript of stenographic notes show, engaged on a supercilious legal and personal discourse. This Court has reminded members of the bench that even on the face of boorish behavior from those they deal with, they ought to conduct themselves in a manner befitting gentlemen and high officers of the court. Respondent having exhibited conduct unbecoming of a judge, classified as a light charge under Section 10, Rule 140 of the Revised Rules of Court, which is penalized under Section 11(c) of the same Rule by any of the following: (1) a fine of not less than ₱1,000 but not exceeding ₱10,000; (2) censure; (3) reprimand; and (4) admonition with warning, the Court imposes upon him the penalty of reprimand.

APPEARANCES OF COUNSEL

Noe Cangco Zarate for complainant.

R E S O L U T I O N

CARPIO MORALES, *J.*:

By letter-complaint dated May 19, 2006[1] which was received by the Office of the Court Administrator (OCA) on May 26, 2006, Atty. Melvin D.C. Mane (complainant) charged Judge Medel Arnaldo B. Belen (respondent), Presiding Judge of Branch 36, Regional Trial Court, Calamba City, of "demean[ing], humiliat[ing] and berat[ing]" him during the hearing on February 27, 2006 of Civil Case No. 3514-2003-C, "*Rural Bank of Cabuyao, Inc. v. Samuel Malabanan, et al.*" in which he was counsel for the plaintiff.

To prove his claim, complainant cited the remarks made by respondent in the course of the proceedings conducted on February 27, 2006 as transcribed by stenographer Elenita C. de Guzman, *viz*:

COURT:

> . . . Sir, **are you from the College of Law of the University of the Philippines?**

ATTY. MANE:

> No[,] [Y]our Honor[,] from Manuel L. Quezon University[,] [Y]our Honor.

COURT:

> No, you're not from UP.

ATTY. MANE:

> I am very proud of it.

COURT:

> Then you're not from UP. **Then you cannot equate yourself to me** because there is a saying and I know this, not all law students are created equal, not all law schools are created equal, not all lawyers are created equal despite what the

[1] *Rollo*, pp. 8-10.

> Supreme Being that we all are created equal in His form and substance.[2] (Emphasis supplied)

Complainant further claimed that the entire proceedings were "duly recorded in a tape recorder" by stenographer de Guzman, and despite his motion (filed on April 24, 2006) for respondent to direct her to furnish him with a copy of the tape recording, the motion remained unacted as of the date he filed the present administrative complaint on May 26, 2006. He, however, attached a copy of the transcript of stenographic notes taken on February 27, 2006.

In his Comments[3] dated June 14, 2006 on the complaint filed in compliance with the Ist Indorsement dated May 31, 2006[4] of the OCA, respondent alleged that complainant filed on December 15, 2005 an "Urgent Motion to Inhibit,"[5] paragraph 3[6] of which was malicious and "a direct assault to the integrity and dignity of the Court and of the Presiding Judge" as it "succinctly implied that [he] issued the order dated 27 September 2005 for [a] consideration other than the merits of the case." He thus could not "simply sit idly and allow a direct assault on his honor and integrity."

On the unacted motion to direct the stenographer to furnish complainant with a copy of the "unedited" tape recording of the proceedings, respondent quoted paragraphs 4 and 3[7] of the motion which, to him, implied that the trial court was "illegally, unethically and unlawfully engaged in 'editing' the transcript of records to favor a party litigant against the interest of [complainant's] client."

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[2] *Id*. at 15.

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

[4] *Id*. at 33.

[5] *Id*. at 37-38.

[6] Paragraph 3 read:

> Without imputing any wrongdoings to the Honorable Presiding Judge, the content of the said Order [dated September 27, 2005] of the Honorable Presiding Judge has induced doubt as to his competence to handle this case.

[7] Should have been paragraph 6.

Respondent thus claimed that it was on account of the two motions that he ordered complainant, by separate orders dated June 5, 2006, to explain within 15 days[8] why he should not be cited for contempt.

Complainant later withdrew his complaint, by letter of September 4, 2006,[9] stating that it was a mere result of his impulsiveness.

In its Report dated November 7, 2007,[10] the OCA came up with the following evaluation:

> . . . The withdrawal or desistance of a complainant from pursuing an administrative complaint does not divest the Court of its disciplinary authority over court officials and personnel. Thus, the complainant's withdrawal of the instant complaint will not bar the continuity of the instant administrative proceeding against respondent judge.
>
> The issue presented before us is simple: Whether or not the statements and actions made by the respondent judge during the subject February 27, 2006 hearing constitute conduct unbecoming of a judge and a violation of the Code of Judicial Conduct.
>
> After a cursory evaluation of the complaint, the respondent's comment and the documents at hand, we find that there is no issue as to what actually transpired during the February 27th hearing as evidenced by the stenographic notes. The happening of the incident complained of by herein complainant was **never denied** by the respondent judge. If at all, respondent judge merely raised his justifications for his complained actuations.
>
> x x x x x x x x x
>
> . . . [A] judge's official conduct and his behavior in the performance of judicial duties should be free from the appearance of impropriety and must be beyond reproach. A judge must at all times be temperate in his language. **Respondent judge's insulting statements which tend to question complainant's capability and credibility stemming from the fact that the latter did not graduated [sic] from UP Law school is clearly unwarranted and inexcusable.** When a judge indulges in

[8] Both dated June 5, 2006, *rollo*, pp. 44-46.

[9] *Id*. at 47-48.

[10] *Id*. at 1-7.

intemperate language, the lawyer can return the attack on his person and character, through an administrative case against the judge, as in the instant case.

Although respondent judge's use in intemperate language may be attributable to human frailty, the noble position in the bench demands from him courteous speech in and out of the court. Judges are demanded to be always temperate, patient and courteous both in conduct and language.

x x x x x x x x x

Judge Belen should bear in mind that all judges should always observe courtesy and civility. In addressing counsel, litigants, or witnesses, the judge should avoid a controversial tone or a tone that creates animosity. Judges should always be aware that disrespect to lawyers generates disrespect to them. There must be mutual concession of respect. **Respect is not a one-way ticket where the judge should be respected but free to insult lawyers and others who appear in his court.** Patience is an essential part of dispensing justice and courtesy is a mark of culture and good breeding. If a judge desires not to be insulted, he should start using temperate language himself; he who sows the wind will reap a storm.

It is also noticeable that during the subject hearing, not only did respondent judge make insulting and demeaning remarks but he also **engaged in unnecessary "lecturing" and "debating**". . .

x x x x x x x x x

Respondent should have just ruled on the propriety of the motion to inhibit filed by complainant, but, instead, he opted for a conceited display of arrogance, a conduct that falls below the standard of decorum expected of a judge. If respondent judge felt that there is a need to admonish complainant Atty. Mane, he should have called him in his chambers where he can advise him privately rather than battering him with insulting remarks and embarrassing questions such as asking him from *what school he came from* publicly in the courtroom and in the presence of his clients. Humiliating a lawyer is highly reprehensible. It betrays the judge's lack of patience and temperance. A highly temperamental judge could hardly make decisions with equanimity.

Thus, it is our view that respondent judge should shun from lecturing the counsels or debating with them during court hearings to prevent suspicions as to his fairness and integrity. While judges

should possess proficiency in law in order that they can competently construe and enforce the law, it is more important that they should act and behave in such manner that the parties before them should have confidence in their impartiality.[11] (Italics in the original; emphasis and underscoring supplied)

The OCA thus recommended that respondent be reprimanded for violation of Canon 3 of the Code of Judicial Conduct with a warning that a repetition of the same shall be dealt with more severely.[12]

By Resolution of January 21, 2008,[13] this Court required the parties to manifest whether they were willing to submit the case for resolution on the basis of the pleadings already filed. Respondent complied on February 26, 2008,[14] manifesting in the affirmative.

The pertinent provision of the Code of Judicial Conduct reads:

Rule 3.04. – A judge should be patient, attentive, and courteous to lawyers, especially the inexperienced, to litigants, witnesses, and others appearing before the court. A judge should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts, instead of the courts for the litigants.

An author explains the import of this rule:

Rule 3.04 of the Code of Judicial Conduct mandates that a judge should be courteous to counsel, especially to those who are young and inexperienced and also to all those others appearing or concerned in the administration of justice in the court. He should be considerate of witnesses and others in attendance upon his court. **He should be courteous and civil, for it is unbecoming of a judge to utter intemperate language during the hearing of a case.** In his conversation with counsel in court, a judge should be studious to avoid controversies which are apt to obscure the merits of the dispute between litigants and lead to its unjust disposition. He should not interrupt counsel in their arguments except to clarify his mind as to their positions.

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

[12] *Id*. at 7.

[13] *Id*. at 51-52.

[14] *Id*. at 54.

Nor should he be tempted to an unnecessary display of learning or premature judgment.

A judge without being arbitrary, unreasonable or unjust may endeavor to hold counsel to a proper appreciation of their duties to the courts, to their clients and to the adverse party and his lawyer, so as to enforce due diligence in the dispatch of business before the court**. He may utilize his opportunities to criticize and correct unprofessional conduct of attorneys,** brought to his attention, **but he may not do so in an insulting manner.**[15] (Emphasis and underscoring supplied)

The following portions of the transcript of stenographic notes, ***quoted verbatim***, taken during the February 27, 2006 hearing show that respondent made sarcastic and humiliating, even threatening and boastful remarks to complainant who is admittedly "still young," "unnecessary lecturing and debating," as well as unnecessary display of learning:

COURT:

x x x x x x x x x

Sir do you know the principle or study the stare decisis?

ATTY. MANE:

Ah, with due respect your…

COURT:

Tell me, **what is your school?**

ATTY. MANE:

I am proud graduate of Manuel L. Quezon University.

COURT:

Were you taught at the MLQU College of Law of the principle of *Stare Decisis* and the interpretation of the Supreme Court of the rules of procedure where it states that if there is already a decision by the Supreme Court, when that decision shall be complied with by the Trial Court otherwise non-compliance thereof shall subject the Courts to judicial sanction, and I quote the decision. That's

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[15] AGPALO, *LEGAL AND JUDICIAL ETHICS* 558-559 (2002 ed).

why I quoted the decision of the Supreme Court Sir, because I know the problem between the bank and the third party claimants and I state, "The fair market value is the price at which a property may be sold by a seller, who is not compelled to sell, and bought by a buyer, who is not compelled to buy." Sir, that's very clear, that is what fair market value and that is not assessment value. In fact even you say assessment value, the Court further state, "the assessed value is the fair market value multiplied. Not mere the basic assesses value. Sir that is the decision of the Supreme Court, am I just reading the decision or was I inventing it?

ATTY. MANE:

May I be allowed to proceed.

COURT:

Sir, you tell me. Was I inventing the Supreme Court decision which I quoted and which you should have researched too or I was merely imagining the Supreme Court decision sir? Please answer it.

ATTY. MANE:

No your Honor.

COURT:

Please answer it.

x x x x x x x x x

COURT:

That's why. Sir second, and again I quote from your own pleadings, hale me to the Supreme Court otherwise I will hale you to the bar**. Prove to me that I am grossly ignorant or corrupt.**

ATTY. MANE:

Your Honor when this representation, your Honor . . .

COURT:

No, sir.

ATTY. MANE:

Yes your Honor . . .

COURT:

No sir unless you apologize to the Court I will hale you to the IBP Because hindi naman ako ganon. I am not that vindictive but if this remains. You cannot take cover from the instruction of your client because even if the instruction of a client is "secret." Upon consideration, the language of the pleader must still conform with the decorum and respect to the Court. Sir, that's the rule of practice. In my twenty (20) years of practice I've never been haled by a judge to any question of integrity. Because even if I believed that the Court committed error in judgment or decision or grave abuse of discretion, I never imputed any malicious or unethical behavior to the judge because I know and I believe that anyone can commit errors. Because no one is like God. Sir, I hope sir you understand that this Court, this Judge is not God but this Judge is human when challenge on his integrity and honor is lodged. No matter how simple it is because that is the only thing I have now.

Atty. Bantin, **can you please show him my statement of assets and liabilities?**

ATTY. MANE:

I think that is not necessary your Honor.

COURT:

No counsel because the imputations are there, that's why I want you to see. **Show him my assets and liabilities for the proud graduate of MLQU.** Sir, look at it. Sir, I have stock holdings in the U.S. before I joined the bench. And it was very clear to everyone, I would do everything not be tempted to accept bribe but I said I have spent my fifteen (15) years and that's how much I have worked in fifteen (15) years excluding my wife's assets which is more than what I have may be triple of what I have. May be even four fold of what I have. And look at my assets. May be even your bank can consider on cash to cash basis my personal assets. That is the reason I am telling you Atty. Mane. Please, look at it. If you want I can show you even the Income Tax Return of my wife and you will be surprised that my salary is not even her one-half month salary. Sir, she is the Chief Executive Officer of a Multi-National Publishing Company. That's why I have the guts to take this job because *doon po sa salary niya umaasa na lamang po ako sa aking asawa*. Atty. Mane, please you are still young. Other judges you would already be haled to the IBP. Take that as a lesson. Now that you are saying that I was wrong in the three-day notice

rule, again the Supreme Court decision validates me, PNB vs. Court of Appeals, you want me to cite the quotation again that any pleadings that do not conform with the three-day notice rule is considered as useless scrap of paper and therefore not subject to any judicial cognizance. You know sir, you would say but I was the one subject because the judge was belligerent. No sir, you can go on my record and you will see that even prior to my rulings on your case I have already thrown out so many motion for non-compliance of a three-day notice rule. If I will give you an exception because of this, then I would be looked upon with suspicion. So sir again, please look again on the record and you will see how many motions I threw out for non-compliance with the three-day notice rule**. It is not only your case sir, because sir you are a practitioner and a proud graduate of the MLQU** which is also the Alma Mater of my uncle. **And I supposed you were taught in thought that the three-day notice rule is almost sacrosanct in order to give the other party time to appear and plead. In all books, Moran, Regalado and all other commentators state that non-compliance with the three-day notice rule makes the pleading and motion a useless scrap of paper. If that is a useless scrap of paper, sir, what would be my ground to grant exception to your motion?** Tell me.

x x x x x x x x x

COURT:

Procedural due process. See. So please sir don't confuse the Court. Despite of being away for twenty years from the college of law, still I can remember my rules, In your motion you said . . . imputing things to the Court. **Sir please read your rules. Familiarize yourself, understand the jurisprudence before you be the Prince Valiant or a Sir Gallahad in Quest of the Holy Grail**. *Sir, ako po ay mahirap na tao, karangalan ko lang po ang aking kayang ibigay sa aking mga anak at iyan po ay hindi ko palalampasin maski kanino pa*. Sir, have you ever heard of anything about me in this Court for one year. Ask around, ask around. **You know, if you act like a duck, walk like a duck, quack like a duck, you are a duck.** But have you ever heard anything against the court. Sir in a judicial system, in a Court, one year is time enough for the practitioner to know whether a judge is what, dishonest; 2), whether the judge is incompetent; and 3) whether the judge is just playing loco. And I have sat hear for one year sir and please ask around before you charge into the

windmill. I am a proud product of a public school system from elementary to college. And my only, and my only, the only way I can repay the taxpayers is a service beyond reproach without fear or favor to anyone. Not even the executive, not even the one sitting in Malacañang, not even the Supreme Court if you are right. *Sir, sana po naman inyo ring igalang ang Hukuman kasi po kami, meron nga po, tinatanggap ko, kung inyo pong mamarapatin, meron pong mga corrupt, maaari pong nakahanap na kayo ng corrupt na Judge pero hindi po lahat kami ay corrupt. Maaari ko rin pong tanggapin sa inyong abang lingcod na merong mga Hukom na tanga pero hindi po naman lahat kami ay tanga. Ako po ay 8:30 or before ay nandito po ako sa husgado ko. Aalis po ako dito sa hapon, babasahin ko lahat ang kaso ko para ko po malaman kung any po ang kaso, para po pagharap ko sa inyo at sa publiko hindi po ako magmumukhang tanga*. Sir, please have the decency, not the respect, not to me but to the Court. Because if you are a lawyer who cannot respect the Court then you have no business appearing before the Court because you don't believe in the Court system. That's why one of my classmates never appeared before Court because he doesn't believe in that system. He would rather stay in their airconditioned room because they say going to Court is useless. Then, to them I salute, I give compliment because in their own ways they know the futility and they respect the Court, in that futility rather than be a hypocrite. **Atty. Mane hindi mo ako kilala**, I've never disrespect the courts and I can look into your eyes. *Kaya po dito ko gusto kasi di po ako dito nagpractice para po walang makalapit sa akin*. *Pero kung ako po naman ay inyong babastusin ng ganyang handa po akong lumaban kahit saan*, *miski saan po*. And you can quote me, you can go there together to the Supreme Court. Because the only sir, the only treasure I have is my name and my integrity. I could have easily let it go because it is the first time, but the second time is too much too soon. *Sir, masyado pong kwan yon*, *sinampal na po ninyo ako nung primero, dinuran pa po ninyo ako ng pangalawa. That's adding insult to the injury po. Hindi ko po sana gagawin ito pero ayan po ang dami diyang abugado*. I challenge anyone to file a case against me for graft and corruption, for incompetence.

x x x x x x x x x

COURT:

I will ask the lawyer to read the statement and if they believe that you are not imputing any wrong doing to me I will apologize to you.

Atty. Hildawa please come over. The Senior, I respect the old practitioner, whose integrity is unchallenged.

Sir you said honest. *Sir ganoon po ako*. You still want to defend your position, so be it.

Atty. Hildawa I beg your indulgence, I am sorry but I know that you are an old practitioner hammered out by years of practice and whose integrity by reputation precedes you. Please read what your younger companero has written to this Honorable Court in pleading and see for yourself the implications he hurled to the Court in his honest opinion. Remember he said honest. That implication is your honest opinion of an implication sir.

Sir 1, 2 and 3. Paragraphs 1, 2 and 3. If that is your honest opinion. Remember the word you said honest opinion.

Alam mo Atty. Mane I know when one has to be vigilant and vigorous in the pursue of pride. But if you are vigilant and vigor, you should never crossed the line.

Sir, what is your interpretation to the first three paragraphs?

ATTY. HILDAWA:

There will be some . . .

COURT:

What sir?

ATTY. HILDAWA:

. . . indiscretion.

COURT:

Indiscretion. See, that is the most diplomatic word that an old practitioner could say to the Court because of respect.

Sir, *salamat po*.

x x x x x x x x x

COURT:

Kita po ninyo, iyan po ang matatandang abogado. *Indiscretion na lang*. Now you say that is your honest opinion and the old practitioner hammered through years of practice could only say indiscretion committed by this judge. Much more I who sits in this bench?

Now is that your honest opinion?[16] (Emphasis and underscoring supplied)

The Court thus finds the evaluation by the OCA well-taken.

An alumnus of a particular law school has no monopoly of knowledge of the law. By hurdling the Bar Examinations which this Court administers, taking of the Lawyer's oath, and signing of the Roll of Attorneys, a lawyer is presumed to be competent to discharge his functions and duties as, *inter alia*, an officer of the court, irrespective of where he obtained his law degree. For a judge to determine the fitness or competence of a lawyer primarily on the basis of his alma mater is clearly an engagement in an argumentum *ad hominem*.

A judge must address the merits of the case and not on the person of the counsel. If respondent felt that his integrity and dignity were being "assaulted," he acted properly when he directed complainant to explain why he should not be cited for contempt. He went out of bounds, however, when he, as the above-quoted portions of the transcript of stenographic notes show, engaged on a supercilious legal and personal discourse.

This Court has reminded members of the bench that even on the face of boorish behavior from those they deal with, they ought to conduct themselves in a manner befitting gentlemen and high officers of the court.[17]

Respondent having exhibited conduct unbecoming of a judge, classified as a light charge under Section 10, Rule 140 of the Revised Rules of Court, which is penalized under Section 11(c) of the same Rule by any of the following: (1) a fine of not less than ₱1,000 but not exceeding ₱10,000; (2) censure; (3) reprimand; and (4) admonition with warning, the Court imposes upon him the penalty of reprimand.

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[16] *Rollo*, pp. 17-27.

[17] *Re: Anonymous Complaint dated Feb. 18, 2005 of a "Court Personnel" against Judge Francisco C. Gedorio, Jr., RTC, Br. 12, Ormoc City,* A.M. No. RTJ-05-1955, May 25, 2007, 523 SCRA 175, 181-182; *Bravo v. Morales,* A.M. No. P-05-1950, August 30, 2006, 500 SCRA 154, 160.

WHEREFORE, respondent, Judge Medel Arnaldo B. Belen, Presiding Judge of the Regional Trial Court, Branch 36, Calamba City, is found *GUILTY* of conduct unbecoming of a judge and is *REPRIMANDED* therefor. He is further warned that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 145545. June 30, 2008]

PAZ SAMANIEGO-CELADA, *petitioner, vs.* **LUCIA D. ABENA,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT MAY NOT BE THE SUBJECT OF A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF CIVIL PROCEDURE; CASE AT BAR.—We find that the issues raised by petitioner concern pure questions of fact, which may not be the subject of a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure. The issues that petitioner is raising now *i.e.*, whether or not the will was signed by the testator in the presence of the witnesses and of one another, whether or not the signatures of the witnesses on the pages of the will were signed on the same day, and whether or not undue influence was exerted upon the testator which compelled her to sign the will, are all questions of fact. This Court does not resolve questions of fact in a petition for review under Rule 45 of the 1997 Rules of Civil Procedure. Section 1 of Rule 45 limits this Court's review to questions of law only. Well-settled is the rule that the Supreme

Court is not a trier of facts. When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court.

APPEARANCES OF COUNSEL

Francisco L. Rosario, Jr. for petitioner.
Nazario B. Regino for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This is a petition for review under Rule 45 of the 1997 Rules of Civil Procedure seeking to reverse the Decision[1] dated October 13, 2000 of the Court of Appeals in CA-G.R. CV No. 41756, which affirmed the Decision[2] dated March 2, 1993 of the Regional Trial Court (RTC), Branch 66, Makati City. The RTC had declared the last will and testament of Margarita S. Mayores probated and designated respondent Lucia D. Abena as the executor of her will. It also ordered the issuance of letters testamentary in favor of respondent.

The facts are as follows:

Petitioner Paz Samaniego-Celada was the first cousin of decedent Margarita S. Mayores (Margarita) while respondent was the decedent's lifelong companion since 1929.

On April 27, 1987, Margarita died single and without any ascending nor descending heirs as her parents, grandparents and siblings predeceased her. She was survived by her first cousins Catalina Samaniego-Bombay, Manuelita Samaniego Sajonia, Feliza Samaniego, and petitioner.

Before her death, Margarita executed a Last Will and Testament[3] on February 2, 1987 where she bequeathed one-half of her undivided

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[1] *Rollo*, pp. 41-48. Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Salvador J. Valdez, Jr. and Eliezer R. delos Santos concurring.

[2] *Id.* at 34-40. Penned by Judge Eriberto U. Rosario, Jr.

[3] *Id.* at 31-33.

share of a real property located at Singalong Manila, consisting of 209.8 square meters, and covered by Transfer Certificate of Title (TCT) No. 1343 to respondent, Norma A. Pahingalo, and Florentino M. Abena in equal shares or one-third portion each. She likewise bequeathed one-half of her undivided share of a real property located at San Antonio Village, Makati, consisting of 225 square meters, and covered by TCT No. 68920 to respondent, Isabelo M. Abena, and Amanda M. Abena in equal shares or one-third portion each. Margarita also left all her personal properties to respondent whom she likewise designated as sole executor of her will.

On August 11, 1987, petitioner filed a petition for letters of administration of the estate of Margarita before the RTC of Makati. The case was docketed as SP Proc. No. M-1531.

On October 27, 1987, respondent filed a petition for probate of the will of Margarita before the RTC of Makati. The case was docketed as SP Proc. No. M-1607 and consolidated with SP Proc. No. M-1531.

On March 2, 1993, the RTC rendered a decision declaring the last will and testament of Margarita probated and respondent as the executor of the will. The dispositive portion of the decision states:

> In view of the foregoing, judgment is hereby rendered:
>
> 1) declaring the will as probated;
>
> 2) declaring Lucia Abena as the executor of the will who will serve as such without a bond as stated in paragraph VI of the probated will;
>
> 3) ordering the issuance of letters testamentary in favor of Lucia Abena.
>
> So ordered.[4]

Petitioner appealed the RTC decision to the Court of Appeals. But the Court of Appeals, in a decision dated October 13, 2000,

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[4] *Id*. at 40.

affirmed *in toto* the RTC ruling. The dispositive portion of the Court of Appeals' decision states:

> WHEREFORE, foregoing premises considered, the appeal having no merit in fact and in law, is hereby **ORDERED DISMISSED** and the appealed Decision of the trial court **AFFIRMED IN TOTO**, with cost to oppositors-appellants.
>
> SO ORDERED.[5]

Hence, the instant petition citing the following issues:

> I.
>
> WHETHER OR NOT THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN NOT INVALIDATING THE WILL SINCE IT DID NOT CONFORM TO THE FORMALITIES REQUIRED BY LAW;
>
> II.
>
> WHETHER OR NOT THE COURT OF APPEALS COMMITTED ERROR IN NOT INVALIDATING THE WILL BECAUSE IT WAS PROCURED THROUGH UNDUE INFLUENCE AND PRESSURE[;] AND
>
> III.
>
> WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN NOT DECLARING PETITIONER, HER SIBLINGS AND COUSIN AS THE LEGAL HEIRS OF MARGARITA S. MAYORES AND IN NOT ISSUING LETTERS OF ADMINISTRATION TO HER.[6]

Briefly stated, the issues are (1) whether the Court of Appeals erred in not declaring the will invalid for failure to comply with the formalities required by law, (2) whether said court erred in not declaring the will invalid because it was procured through undue influence and pressure, and (3) whether it erred in not declaring petitioner and her siblings as the legal heirs of Margarita, and in not issuing letters of administration to petitioner.

Petitioner, in her Memorandum,[7] argues that Margarita's will failed to comply with the formalities required under

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[5] *Id*. at 47.

[6] *Id*. at 85.

[7] *Id*. at 82-102.

Article 805[8] of the Civil Code because the will was not signed by the testator in the presence of the instrumental witnesses and in the presence of one another. She also argues that the signatures of the testator on pages A, B, and C of the will are not the same or similar, indicating that they were not signed on the same day. She further argues that the will was procured through undue influence and pressure because at the time of execution of the will, Margarita was weak, sickly, jobless and entirely dependent upon respondent and her nephews for support, and these alleged handicaps allegedly affected her freedom and willpower to decide on her own. Petitioner thus concludes that Margarita's total dependence on respondent and her nephews compelled her to sign the will. Petitioner likewise argues that the Court of Appeals should have declared her and her siblings as the legal heirs of Margarita since they are her only living collateral relatives in accordance with Articles 1009[9] and 1010[10] of the Civil Code.

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[8] Art. 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.

The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.

The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them.

[9] Art. 1009. Should there be neither brothers nor sisters nor children of brothers or sisters, the other collateral relatives shall succeed to the estate.

The latter shall succeed without distinction of lines or preference among them by reason of relationship by the whole blood.

[10] Art. 1010. The right to inherit *ab intestato* shall not extend beyond the fifth degree of relationship in the collateral line.

Respondent, for her part, argues in her Memorandum[11] that the petition for review raises questions of fact, not of law and as a rule, findings of fact of the Court of Appeals are final and conclusive and cannot be reviewed on appeal to the Supreme Court. She also points out that although the Court of Appeals at the outset opined there was no compelling reason to review the petition, the Court of Appeals proceeded to tackle the assigned errors and rule that the will was validly executed, sustaining the findings of the trial court that the formalities required by law were duly complied with. The Court of Appeals also concurred with the findings of the trial court that the testator, Margarita, was of sound mind when she executed the will.

After careful consideration of the parties' contentions, we rule in favor of respondent.

We find that the issues raised by petitioner concern pure questions of fact, which may not be the subject of a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure.

The issues that petitioner is raising now *i.e.*, whether or not the will was signed by the testator in the presence of the witnesses and of one another, whether or not the signatures of the witnesses on the pages of the will were signed on the same day, and whether or not undue influence was exerted upon the testator which compelled her to sign the will, are all questions of fact.

This Court does not resolve questions of fact in a petition for review under Rule 45 of the 1997 Rules of Civil Procedure. Section 1[12] of Rule 45 limits this Court's review to questions of law only.

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[11] *Rollo*, pp. 108-111.

[12] SECTION 1. *Filing of petition with Supreme Court*.— A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

Well-settled is the rule that the Supreme Court is not a trier of facts. When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is a 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 the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) When the findings are contrary to those of the trial court;

(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[13]

We find that this case does not involve any of the abovementioned exceptions.

Nonetheless, a review of the findings of the RTC as upheld by the Court of Appeals, reveal that petitioner's arguments lack basis. The RTC correctly held:

With [regard] to the contention of the oppositors [Paz Samaniego-Celada, *et al*.] that the testator [Margarita Mayores] was not mentally

[13] *Ontimare, Jr. v. Elep*, G.R. No. 159224, January 20, 2006, 479 SCRA 257, 265.

capable of making a will at the time of the execution thereof, the same is without merit. The oppositors failed to establish, by preponderance of evidence, said allegation and contradict the presumption that the testator was of sound mind (See Article 800 of the Civil Code). In fact, witness for the oppositors, Dr. Ramon Lamberte, who, in some occasions, attended to the testator months before her death, testified that Margarita Mayores could engage in a normal conversation and he even stated that the illness of the testator does not warrant hospitalization…. Not one of the oppositor's witnesses has mentioned any instance that they observed act/s of the testator during her lifetime that could be construed as a manifestation of mental incapacity. The testator may be admitted to be physically weak but it does not necessarily follow that she was not of sound mind. [The] testimonies of contestant witnesses are pure aforethought.

Anent the contestants' submission that the will is fatally defective for the reason that its attestation clause states that the will is composed of three (3) pages while in truth and in fact, the will consists of two (2) pages only because the attestation is not a part of the notarial will, the same is not accurate. While it is true that the attestation clause is not a part of the will, the court, after examining the totality of the will, is of the considered opinion that error in the number of pages of the will as stated in the attestation clause is not material to invalidate the subject will. It must be noted that the subject instrument is consecutively lettered with pages A, B, and C which is a sufficient safeguard from the possibility of an omission of some of the pages. The error must have been brought about by the honest belief that the will is the whole instrument consisting of three (3) pages inclusive of the attestation clause and the acknowledgement. The position of the court is in consonance with the "doctrine of liberal interpretation" enunciated in **Article 809 of the Civil Code which reads:**

> **"In the absence of bad faith, forgery or fraud, or undue [and] improper pressure and influence, defects and imperfections in the form of attestation or in the language used therein shall not render the will invalid if it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of Article 805."**

The court also rejects the contention of the oppositors that the signatures of the testator were affixed on different occasions based on their observation that the signature on the first page is allegedly

different in size, texture and appearance as compared with the signatures in the succeeding pages. After examination of the signatures, the court does not share the same observation as the oppositors. The picture (Exhibit "H-3") shows that the testator was affixing her signature in the presence of the instrumental witnesses and the notary. There is no evidence to show that the first signature was procured earlier than February 2, 1987.

Finally, the court finds that no pressure nor undue influence was exerted on the testator to execute the subject will. In fact, the picture reveals that the testator was in a good mood and smiling with the other witnesses while executing the subject will (See Exhibit "H").

In fine, the court finds that the testator was mentally capable of making the will at the time of its execution, that the notarial will presented to the court is the same notarial will that was executed and that all the formal requirements (See Article 805 of the Civil Code) in the execution of a will have been substantially complied with in the subject notarial will.[14] (Emphasis supplied.)

Thus, we find no reason to disturb the abovementioned findings of the RTC. Since, petitioner and her siblings are not compulsory heirs of the decedent under Article 887[15] of the Civil Code and as the decedent validly disposed of her properties in a will duly executed and probated, petitioner has no legal right to claim any part of the decedent's estate.

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[14] *Rollo*, pp. 38-40.

[15] Art. 887. The following are compulsory heirs:

(1) Legitimate children and descendants, with respect to their legitimate parents and ascendants;

(2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;

(3) The widow or widower;

(4) Acknowledged natural children, and natural children by legal fiction;

(5) Other illegitimate children referred to in Article 287.

Compulsory heirs mentioned in Nos. 3, 4 and 5 are not excluded by those in Nos. 1 and 2; neither do they exclude one another.

In all cases of illegitimate children, their filiation must be duly proved.

The father or mother of illegitimate children of the three classes mentioned, shall inherit from them in the manner and to the extent established by this Code.

WHEREFORE, the petition is *DENIED*. The assailed Decision dated October 13, 2000 of the Court of Appeals in CA-G.R. CV No. 41756 is *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

FIRST DIVISION

[G.R. No. 146175. June 30, 2008]

SIMEON M. VALDEZ, *petitioner, vs.* **GOVERNMENT SERVICE INSURANCE SYSTEM,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 8291 (THE GOVERNMENT SERVICE INSURANCE ACT OF 1997); PROVIDES FOR THE COMPUTATION OF SERVICE IN THE GOVERNMENT FOR THE PURPOSE OF DETERMINING THE AMOUNT OF BENEFITS PAYABLE UNDER THIS ACT. — Section 10 of RA No. 8291, otherwise known as the "Government Service Insurance System Act of 1997," explicitly authorizes the GSIS and the CSC to work hand in hand in the computation of service in the government for the purpose of availment of the retirement benefits under the said Act. Pertinently, the said Act provides: "Sec. 10. *Computation of Service*. — (a) The computation of service for the purpose of determining the amount of benefits payable under this Act shall be from the date of original appointment/election, including periods of service at different times under one or more employers, those performed overseas under the authority of the Republic of the Philippines, and those that may be prescribed by the GSIS in coordination with the Civil Service Commission."

2. REMEDIAL LAW; ACTIONS; JURISDICTION; JURISDICTIONAL QUESTION MAY BE RAISED AT ANY TIME EXCEPT WHEN ESTOPPEL HAS SUPERVENED.— While it is a rule that jurisdictional question may be raised at any time, this, however, admits of an exception where, as in this case, estoppel has supervened. The Court has, time and again, frowned upon the undesirable practice of a party submitting his case for decision and then accepting the judgment only if favorable, and attacking it for lack of jurisdiction when adverse.

3. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 8291 (THE GOVERNMENT SERVICE INSURANCE ACT OF 1997); DICTATES THAT FOR PURPOSES OF COMPUTATION OF GOVERNMENT SERVICE, ONLY FULL-TIME SERVICES WITH COMPENSATION ARE INCLUDED.— [T]he last paragraph of Section 10 of RA No. 8291 dictates that for purposes of computation of government service, only full-time services with compensation are included: "For the purpose of this section, the term service shall include full time service with compensation: *Provided*, That part time and other services with compensation may be included under such rules and regulations as may be prescribed by the GSIS."

4. ID.; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; CIVIL SERVICE COMMISSION; THE CONSTITUTION MANDATES THE STANDARDIZATION OF COMPENSATION OF GOVERNMENT OFFICIALS AND EMPLOYEES COVERED BY THE CIVIL SERVICE.— The Constitution itself mandated the standardization of compensation of government officials and employees covered by the civil service under Article IX B, Section 5, *viz:* "Sec. 5. The Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for their positions."

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN AVAILABLE.— It is an elementary principle that a petition for *certiorari* under Rule 65 cannot be used if the proper remedy is appeal. Being an extraordinary remedy, a party can only avail himself of *certiorari*, if there is no appeal, or

any plain, speedy, and adequate remedy in the ordinary course of law. Here, appeal is the correct mode but was not seasonably utilized by the petitioner. Resort to this petition for *certiorari* is, therefore, improper because *certiorari* cannot be used as a substitute for a lost remedy of appeal. Petitions for *certiorari* are limited to resolving only errors of jurisdiction. It is not to stray at will and resolve questions or issues beyond its competence such as errors of judgment. For, it is basic that *certiorari* under Rule 65 is a remedy narrow in scope and inflexible in character. It is not a general utility tool in the legal workshop. It offers only a limited form of review. Its principal function is to keep an inferior tribunal within its jurisdiction. It can be invoked only for an error of jurisdiction, that is, one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction. It is not to be used for any other purpose, such as to cure errors in proceedings or to correct erroneous conclusions of law or fact, as what petitioner would like the Court to venture into.

APPEARANCES OF COUNSEL

Mario G. Aglipay for petitioner.
Cesar L. Aganon for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a special civil action for *certiorari* under Rule 65 of the Rules of Court, filed by petitioner Simeon M. Valdez assailing the July 31, 2000 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 54870, as reiterated in its Resolution[2] of October 17, 2000, upholding the Civil Service Commission's (CSC's) January 14, 1999 Opinion and Resolution No. 991940.

[1] Penned by then Associate Justice Romeo A. Brawner, with Associate Justices Quirino D. Abad Santos, Jr. (ret.) and Andres B. Reyes, Jr., concurring; *rollo*, pp. 26-34.

[2] *Id.*, p. 36.

Principally, the CSC held that petitioner's services rendered in the Manila Economic Cultural Office (MECO), Mariano Memorial State University (MMSU), Philippine Veterans Investment Development Company (PHIVIDEC) and as OIC Vice-Governor of Ilocos Norte cannot be credited in the computation of his retirement benefits.

The facts are as follows:

On October 09, 1998, petitioner filed his application for retirement benefits with the Government Service Insurance System (GSIS).

On November 03, 1998, petitioner filed the same application with the CSC and at the same time, he sought the CSC's opinion on whether his two (2) years and three (3) months stint as MECO Director can be accredited as government service among others.

In support of his claim for retirement benefits, petitioner submitted a summary of his government service record, to wit:

SUMMARY

1. As Congressman (5th, 6th, 7th & 10th Congress) - 15 years
2. As Director of PHIVIDEC

November 1974 to March 1987	-	12 years 5 months
Sub total		27 years 5 months

3. As Member, Board of Regents

a) INIT (1975-1977)	-	3 years
b) MMSU (1978-1987)	-	10 years
c) MMSU (1989-1992)	-	4 years
Sub total	-	17 years

4. As OIC Vice-Governor Ilocos Norte

Nov. 1986-Dec. 1986	-	2 months
Jan. 1, 1987 to Mar. 1987	-	3 months
Sub total	-	5 months

5. As Director of MECO

1 Jan. 1993 to 31 Dec. 1994	-	2 year
1 Jan. 1995 to March 1995	-	3 months
Sub total	-	2 years 3months

REMARKS

1. Please note therefore that there is overlapping of my services at PHIVIDEC & MMSU. My services of 12 years 5 months with PHIVIDEC should be counted and only 4 years and 7 months with MMSU where there is no overlapping.
2. My services as OIC Governor should not be counted as I was still with PHIVIDEC during the 6 months I served as OIC Vice-Governor.
3. Therefore the length of service to be credited for my retirement will cover only the following:

a) As Congressman	-	15 years
b) As Director of PHIVIDEC	-	12 years 5 months
c) As Board of Regent MMSU	-	4 years 7 months
d) As Director of MECO	-	2 years 3 months
Total	-	33 years 15 months

On February 23, 1999, petitioner received two mails, one from the CSC and the other from GSIS. The letter from CSC contained the challenged January 14, 1999 Opinion[3] denying the accreditation of petitioner's services as former Director of MECO and of PHIVIDEC and as Member of the Board of Regents of MMSU, pertinently reading as follows:

Section 2 (1), Article IX of the 1987 Constitution provides that the "*civil service embraces all branches, subdivisions, instrumentalities and agencies of the Government,* **including government-owned or controlled corporations with original charters**." (Underscoring Ours). Equivocably, subsidiary corporations created

[3] *Id.,* pp. 44-47.

under the Corporation Code are not considered part of the Civil Service. Since MECO is a subsidiary corporation of the government governed by its Articles of Incorporation and By-Laws, whatever services rendered therein shall not be considered part and parcel of government service.

x x x x x x x x x

We note that at the time you were still a member of the Board of Regents of the Mariano Marcos State University (MMSU) from 1978 to 1992, you were likewise holding the positions of Philvidic (sic) Director (November 1974-March 1987) and as OIC-Vice Governor (August 1986-March 1987). As such, it must be reiterated that a part-time employee is not entitled to leave benefits unless he works part-time in two different government offices and renders the required office hours. This rule has been emphasized in CSC Resolution No. 90-1087, pertinent portion of which reads as follows:

> "Under the Leave Law and Rules, Leave Privileges are accorded only to regular, temporary, provisional or casual officials and employees who are rendering full time service in an agency or government. However, the status of appointment of employees in the government further identify certain specifications in the entitlement of leave privileges; **hence, a part-time employee is not entitled to leave unless he works part-time in two different offices and renders the required office hours** (Manual of Leave Administration, p.3.2). Thus it is completely inconceivable that members of the various Regulatory Board of the PRC who hold concurrently other positions in the civil service are, at the same time on full-time basis in other positions. x x x To grant them leave benefits in consideration of their services would be tantamount to double compensation, the receipt of which is constitutionally prescribed. x x x This has to be so, otherwise they would be enjoying leave privileges over and above what is provided in the leave Law and Rules (*Valdez v. Commission on Audit:* G.R. No. 87277, 25 May 1989). Besides, CSC Memorandum Circular No. 43, series of 1989 (Retirement of Employees Holding More than One Positions), is explicit that 'an appointment to a second position must be regarded only as imposing additional duties to the regular functions of an employee and consequently an employee can retire only from his regular or main position and not from his additional position."

Let is *(sic)* be stressed that for purposes of computation of government service, only "full-time services with compensation" are included (Section 10 (b), RA 8291). Moreover, under Section 2(l) of RA 8291, "compensation" refers to the basic pay or salary received by an employee, pursuant to his election/appointment, excluding per diems, bonuses, overtime pay, honoraria, allowances and other emoluments received in addition to the basic pay which are not integrated into the basic pay under existing laws. (Underscoring Ours)

Premised on our answer in your first query, your services at the MECO for 2 years and 3 months did not earn any leave credit for you.

The correspondence from the GSIS contained a Letter[4] and a Retirement Voucher informing petitioner of the approval of his retirement benefits computed on the basis of the CSC's opinion.

Displeased, petitioner sought reconsideration of the subject CSC opinion in a Letter[5] addressed to the CSC and the GSIS. Petitioner insisted on the inclusion of his services rendered in the MECO, PHIVIDEC and MMSU in the computation of his retirement benefits pursuant to Sections 10 (b) and 2 (l) of Republic Act (RA) No. 8291.[6]

The GSIS indorsed[7] the Letter to the CSC with a view that the same is within the jurisdiction of the latter.

The CSC, for its part, rendered Resolution No. 991940[8] dated August 31, 1999 denying petitioner's request for reconsideration of the subject CSC opinion, thus:

WHEREFORE, the Commission hereby resolves to deny the instant request of Simeon Valdez. Accordingly, the assailed Opinion is affirmed.

Petitioner then elevated the matter to the CA by way of petition for review on *certiorari* against the CSC and the GSIS.

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[4] *Id.,* p. 48.

[5] *Id.*, pp. 49-58.

[6] The Government Service Insurance System Act of 1997.

[7] *Rollo*, p. 59.

[8] *Id.*, pp. 60-63.

There, petitioner argued that his services rendered as Director of MECO should have been credited for retirement purposes and that his salary thereat should have been the highest remuneration considered in the computation of his retirement benefits. Petitioner likewise insisted that his respective tenures as Member of the Board of Regents of Ilocos Norte Institute of Technology (INIT) and the MMSU, as Director of the PHIVIDEC and as OIC Vice-Governor of Ilocos Norte be included as government service in the computation of his retirement benefits.

On July 31, 2000, the CA rendered the herein challenged decision dismissing the petition and affirming both the January 14, 1999 Opinion and Resolution No. 991940 of the CSC. Dispositively, the Decision reads:

> With the foregoing, the assailed CSC Opinion dated 14 January 1999 and Resolution No. 991940 dated 31 August 1999 are hereby AFFIRMED.
>
> SO ORDERED.

Thereafter, petitioner filed a motion for reconsideration of the foregoing decision and for the first time raised as an issue the lack of jurisdiction of the CSC and the CA over the case.

In the resolution of October 17, 2000, the CA denied petitioner's motion for reconsideration.

Petitioner now comes to this Court *via* this petition for *certiorari*. Although the CSC was the author of the challenged issuances which were affirmed by the CA and in fact it was a respondent in the case below, it was not impleaded in the instant petition. Petitioner now lays all the blame on the GSIS as he raises the following assigned errors:

I.

THE INDORSEMENT OF THE GSIS OF PETITIONER'S CLAIM FOR RETIREMENT BENEFITS TO THE CSC SUFFERS JURAL INFIRMITY AND ALL THE RESULTING CSC PROCEEDINGS AND RESOLUTIONS THEREON ARE NULL AND VOID *AB INITIO,* INCLUDING THE NOW QUESTIONED COURT OF APPEALS

DECISION AND RESOLUTION (ANNEXES A AND B), FOR LACK OF JURISDICTION.

II.

ASSUMING THAT CSC AND THE COURT OF APPEALS HAVE JURISDICTION, THE HOLDING THAT PETITIONER'S CLAIM FOR RETIREMENT BENEFITS HAD ALREADY PRESCRIBED IS DEFINITELY A LEGAL ERROR.

III.

ASSUMING THAT CSC AND THE COURT OF APPEALS HAVE JURISDICTION, THE DENIAL OF THE ACCREDITATION OF PETITONER'S SERVICES RENDERED WITH MECO IS PLAINLY A LEGAL ERROR.

IV.

THE LACK OF JURISDICTION EXTENDS TO THE COURT OF APPEALS' AFFIRMING THE EXCLUSION OF PETITIONER'S SERVICES RENDERED WITH INIT, MMMCST, MMSU, PHIVEDEC (sic) AND OIC VICE-GOVERNOR OF ILOCOS NORTE.

V.

THE LACK OF JURISDICTION OF THE CSC AND THE COURT OF APPEALS, LAWLESSLY DEPRIVED PETITIONER THE RIGHT TO A RETIREMENT BENEFITS COMPUTED AT HIS HIGHEST SALARY RATE WITH MECO.

The petition is utterly bereft of merit.

First off, petitioner's argument that the GSIS violated RA No. 8291 when it indorsed petitioner's claim to the CSC for resolution is untenable. Section 10 of RA No. 8291, otherwise known as the "Government Service Insurance System Act of 1997," explicitly authorizes the GSIS and the CSC to work hand in hand in the computation of service in the government for the purpose of availment of the retirement benefits under the said Act. Pertinently, the said Act provides:

Sec. 10. *Computation of Service*. — (a) The computation of service for the purpose of determining the amount of benefits payable under this Act shall be from the date of original appointment/election, including periods of service at different times under one or more

employers, those performed overseas under the authority of the Republic of the Philippines, and those that may be prescribed by the GSIS in coordination with the Civil Service Commission.

Besides, the petitioner himself sought the CSC's opinion on matters related to his application for retirement. He too filed a motion for the CSC to reconsider its opinion. Surely, the GSIS could not be faulted for merely referring his letter seeking reconsideration of the CSC opinion which was addressed to the GSIS, stated, "*I respectfully seek to reconsider the denial of the Chairman of the Civil Service Commission of the other benefits* xxx." Moreover, the GSIS' action on petitioner's claim relied on the CSC's Opinion.[9] Unless the CSC would reconsider or revise its earlier opinion, which it did not, it was unlikely for the GSIS to reconsider its previous opinion, given the statutory mandate for the said two institutions of government to coordinate on the matter of computation of government services of retirees.

While it is a rule that jurisdictional question may be raised at any time, this, however, admits of an exception where, as in this case, estoppel has supervened. The Court has, time and again, frowned upon the undesirable practice of a party submitting his case for decision and then accepting the judgment only if favorable, and attacking it for lack of jurisdiction when adverse.[10]

Secondly, petitioner argues that the CSC and the CA erroneously held that his claim had already prescribed. A perusal of the record shows that no such finding was ever made, neither by the CSC in its January 14, 1999 Opinion and Resolution No. 991940 nor by the CA in the herein challenged July 31, 2000 Decision in *CA-G.R. SP No. 54870*, as reiterated the resolution of October 17, 2000.

The remaining three assigned errors being interrelated, we shall address them together. Petitioner would have the Court

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[9] *Supra*, note 3.

[10] *CL Sales Corporation v. Court of Appeals*, G.R. No. 129777, January 5, 2001, 349 SCRA 35, 44 and *Macahilig v. Heirs of Grace M. Magalit,* G.R. No. 141423, November 15, 2000, 344 SCRA 838, 851.

reverse the CA's rejecting his assertion that his services rendered in the MECO, MMSU, PHIVIDEC and as OIC Vice-Governor of Ilocos Norte should be credited in the computation of his retirement benefits. We are not convinced for two reasons. First, the assailed CA decision affirming the impugned CSC issuances is anchored on law and jurisprudence. Thus, we quote with approval the following excerpt from the decision of the CA:

> None other than the 1987 Constitution of the Philippines, the Highest Law of the Land, confines the scope of the civil service as embracing "all the branches, subdivisions, instrumentalities and agencies of the government, including government-owned and controlled corporations with original charters."
>
> x x x x x x x x x
>
> In *Philippine National Company-Energy Development Corporation v. Leogardo,* 175 SCRA 26, 30 (1989), the Supreme Court categorically ruled that "under the present law, the test in determining whether a government-owned or controlled corporation is subject to the Civil Service Law is the manner of its creation such that government corporations created by special charter are subject to its provision while those incorporated under the General Corporation Law are not within its coverage."
>
> With this in mind, the CSC was not in error in holding that:
>
> > "It is noted that MECO was created before the effectivity of the 1987 Constitution. In this regard, granting without admitting that at the time of its incorporation (during the effectivity of the 1973 Constitution) MECO was yet under the coverage of the Philippine Civil Service, the appellant's (*i.e.*, petitioner's services rendered thereat for that period, however, still cannot be accredited as government service because at the time of his retirement/filing of the case/complaint, the abovequoted provision (*i.e.*, Section 2(1), Article IX) of the 1987 Constitution has already come into effect. As held by the Honorable Supreme Court in *Lumanta, et al. vs. National Labor Relations Commission and Food Terminal, Inc*. (170 SCRA 79), 'jurisdiction is determined as of the time of the filing of the complaint.'"
>
> The established rule is that the statute (in this case, the

Constitution) in force at the time of the commencement of the action determines the jurisdiction of the court (in this case, the administrative body).

It was likewise no error for the CSC to deny accreditation of petitioner's services rendered for MMSU, PHIVIDEC and INIT, concurrently, because of the lack of sufficient basis to compute services rendered therefor converted to their full-time equivalent, reckoned in hours or days actually rendered, using a Forty-(40) hour week and 52 weeks a year as basis, in accordance with Section 5.3, Rule V of the Rules and Regulations Implementing the Government Service Insurance System Act of 1997.

Relevantly, the last paragraph of Section 10 of RA No. 8291 dictates that for purposes of computation of government service, only full-time services with compensation are included:

For the purpose of this section, the term service shall include full time service with compensation: *Provided*, That part time and other services with compensation may be included under such rules and regulations as may be prescribed by the GSIS.

While petitioner invokes the proviso in the above-quoted provision of law, the GSIS, which has been given the authority to include part-time services in the computation, has pointed out that the services in the MMSU, PHIVIDEC and as OIC Vice-Governor of Ilocos Norte cannot be credited because, aside from having been rendered part-time in said agencies, the said positions were without compensation as defined in Section 2(i) of RA No. 8291.[11]

Petitioner's insistence that the emoluments he received as MECO director be the basis in the computation of his retirement benefits, the same being the *highest basic salary rate*, is unavailing. Indeed, the salaries that he received at the time he served as MECO director were unusually high for any position covered by the civil service. Petitioner received a monthly pay of ₱40,000.00 in addition to a ₱65,000.00 representation and

[11] (i) *Compensation* .– The basic pay or salary received by an employee, pursuant to his election or appointment, excluding *per diems*, bonuses, overtime pay, honoraria, allowances and any other emoluments received in addition to the basic pay under existing laws.

travel allowance and US$2,500.00 per diem for overseas board meetings. The Constitution itself mandated the standardization of compensation of government officials and employees covered by the civil service under Article IX B, Section 5, *viz:*

> Sec. 5. The Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for their positions.

The salary received by petitioner during his stint at MECO appears to be way beyond that authorized by RA No. 6758,[12] otherwise known as the Salary Standardization Law. For this reason, it is doubtful that petitioner's employment with the MECO is embraced by the civil service. Otherwise, the salary rate received by petitioner from MECO would not have been legally feasible, unless there was a law exempting the MECO from the Salary Standardization Law.

Finally, the instant petition purports to be a petition for *certiorari* under Rule 65 of the Rules of Court. However, a cursory reading of the issues raised discloses that petitioner's arguments are not anchored on lack of jurisdiction but on questions of law which fall within the realm of petitions for review on *certiorari* under Rule 45 of the Rules of Court.

It is an elementary principle that a petition for *certiorari* under Rule 65 cannot be used if the proper remedy is appeal. Being an extraordinary remedy, a party can only avail himself of *certiorari*, if there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[13] Here, appeal is the correct mode but was not seasonably utilized by the petitioner. Resort to this petition for *certiorari* is, therefore, improper because *certiorari* cannot be used as a substitute

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[12] Effective July 1989.

[13] 1997 Rules of Civil Procedure, Rule 65, Section 1; see *B.F. Corporation v. Court of Appeals*, G.R. No. 120105, March 27, 1998, 288 SCRA 267.

[14] *Chico v. Court of Appeals,* G.R. No. 122704, January 5, 1998, 284 SCRA 33, 37.

for a lost remedy of appeal.[14] Petitions for *certiorari* are limited to resolving only errors of jurisdiction. It is not to stray at will and resolve questions or issues beyond its competence such as errors of judgment. For, it is basic that *certiorari* under Rule 65 is a remedy narrow in scope and inflexible in character. It is not a general utility tool in the legal workshop.[15] It offers only a limited form of review. Its principal function is to keep an inferior tribunal within its jurisdiction. It can be invoked only for an error of jurisdiction, that is, one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction. It is not to be used for any other purpose, such as to cure errors in proceedings or to correct erroneous conclusions of law or fact, as what petitioner would like the Court to venture into. A petition for *certiorari* not being the proper remedy to correct errors of judgment as alleged in the instant case, the herein petition should be dismissed pursuant to SC Circular No. 2-90.[16]

WHEREFORE, in view of the foregoing, the petition is *DISMISSED* and the assailed decision and resolution of the CA are *AFFIRMED*.

SO ORDERED.

Carpio, Corona, and *Azcuna, JJ.,* concur.
Puno, C.J. (Chairperson), no part, close relationship.

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[15] *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 129368, August 25, 2003, 409 SCRA 455, 479*; San Miguel Foods, Inc.-Cebu B-Meg Feed Plant v. Laguesma,* G.R. No. 116172, October 10, 1996, 263 SCRA 68, 84-85.

[16] GUIDELINES TO BE OBSERVED IN APPEALS TO THE COURT OF APPEALS AND TO THE SUPREME COURT.

SECOND DIVISION

[G.R. No. 148123. June 30, 2008]

RENE SORIANO @ "RENATO," *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ALIBI; REQUISITES. — As a rule, alibi is considered with suspicion and is always received with caution, not only because it is inherently weak and unreliable but also because it can easily be fabricated. For alibi to prosper, the accused must satisfactorily prove (1) that he was somewhere else when the crime was committed and (2) that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission.

2. ID.; ID.; ID.; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF A CREDIBLE WITNESS. — Against positive evidence, alibi becomes most unsatisfactory. Alibi cannot prevail over the positive identification of a credible witness.

3. ID.; ID.; CREDIBILITY OF WITNESSES; A TRIAL COURT'S ASSESSMENT THEREON IS ENTITLED TO GREAT WEIGHT.— Well-settled is the principle that the evaluation of the credibility of witnesses is a matter particularly falling within the authority of the trial court, as it had the opportunity to observe the demeanor of the witnesses on the stand. A trial court's assessment of the credibility of a witness is entitled to great weight—even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.

4. CIVIL LAW; DAMAGES; MORAL DAMAGES; MUST BE AWARDED IN MURDER OR HOMICIDE EVEN IN THE ABSENCE OF ALLEGATION AND PROOF OF THE HEIR'S EMOTIONAL SUFFERING. — While moral suffering may perhaps not have been testified to or proven, the Court hereby

awards moral damages to the heirs of Amarillo even granting that there is no allegation and proof of emotional suffering. As we said in *People v. Panado*: "Unlike in the crime of rape, we grant moral damages in murder or homicide only when the heirs of the victim have alleged and proved mental suffering. However, as borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, x x x but often leaves them with the gnawing feeling that an injustice has been done to them. For this reason, moral damages must be awarded even in the absence of allegation and proof of the heirs' emotional suffering. x x x"

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

For review before the Court are the Decision[1] and Resolution[2] dated November 21, 2000 and May 3, 2001, respectively, of the Court of Appeals (CA) in CA G.R. CR No. 21084 which affirmed the Decision[3] dated April 17, 1997 of the Regional Trial Court (RTC), Branch 57 in San Carlos City, Pangasinan, finding petitioner Rene Soriano @ "Renato" guilty beyond reasonable doubt of the complex crime of homicide with frustrated homicide, and sentencing him accordingly.

[1] *Rollo*, pp. 66-77. Penned by Associate Justice Cancio C. Garcia (now a retired member of this Court) and concurred in by Associate Justices Romeo A. Brawner and Andres B. Reyes, Jr.

[2] *Id*. at 93.

[3] *Id*. at 29-37. Penned by Judge Bienvenido R. Estrada.

The Facts

For the death of Ernesto Amarillo and the serious wounding of Soledad Ferrer, petitioner was charged with homicide and frustrated homicide under the following Information, docketed as Crim. Case No. SCC-2348:

> That on or about the 29th day of December, 1994, at around 9:30 o'clock in the evening, in San Carlos City, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and shoot Ernesto Amarillo and Soledad Ferrer, thereby inflicting upon Ernesto Amarillo serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said victim x x x; and that as a consequence of the shooting of Soledad Ferrer by said accused, the crime of Homicide would have been produced by reasons of causes independent of the will of the accused and that is due to the timely and able medical attendance rendered to Soledad Ferrer, which prevented her death.
>
> Contrary to Article 249 in relation to Article 250 of the Revised Penal Code.[4]

When arraigned on March 28, 1995, petitioner pleaded not guilty to the charge. During trial, the prosecution presented Benjamin Cabansag, a tricycle driver and resident of Pagal, San Carlos City, Pangasinan, who allegedly witnessed the shootings. Benjamin testified that on December 29, 1994, between 9:00 p.m. and 9:30 p.m., he was conversing with Federico Castro and Alfredo Paragas in front of the house of *Kagawad* Cancino in Brgy. Pagal, San Carlos City. At about that time, petitioner, a neighbor of Cancino, arrived and, upon alighting from a tricycle, kicked the gate as he entered his own house. Not long after, petitioner came out with an armalite rifle in hand, proceeded towards the middle of the road, fired shots upwards for about 15 minutes, and then started harassing passing tricycles. A single motorbike later passed by with the unsuspecting Amarillo and Ferrer on board. According to Benjamin, petitioner fired at and hit the passing duo. Amarillo died on the spot. Also hit

[4] *Id*. at 29-30.

and killed was petitioner's brother, Loreto Soriano. Ferrer, on the other hand, survived, but suffered serious injuries which eventually prevented her from testifying at the trial.[5] As the CA would later conclude, the injuries Ferrer sustained, consisting of lacerations, contusion, ecchymose, and cerebral laceration, definitely could not have been caused by bullets but must have been logically due to Ferrer's violent fall to the ground.

Roger Doldol, a police investigator, testified seeing, when he arrived at the crime scene, two lifeless bodies sprawled on the side of the road. They were later identified to be those of Amarillo and Loreto. He also testified that Ferrer was one of the victims shot and rushed to the hospital.[6] Doldol presented a photograph of Loreto's body behind the gate and testified that, based on the interview he conducted, Loreto was hit while on the side of the street, then pulled by his brother and sister behind the gate and into the family compound.[7]

Dr. Rachel Leyva-Uy, who conducted the autopsy on Amarillo's cadaver, declared the gunshot wound on Amarillo's neck to be the most fatal. She explained that, based on the location of the wound and the bullet's points of entry and exit, the fatal bullet came from behind the victim.

Dr. Manuel Austria, testifying on Ferrer's condition, stated that she suffered cerebral ostentation which impaired her learning capabilities and rendered her incapable of testifying at the trial. Lastly, Onofre Ferrer testified shouldering the hospital expenses incurred as a result of his sister Soledad's month long confinement.

Petitioner denied the accusations and presented an alibi. He stated that as 1st Lieutenant of the Philippine Army's 48th Infantry Battalion, 5th Infantry Division, he was at his base station in Camp Boloan, Kalinga, Apayao on the date and time the crime happened. He claimed that he learned of the criminal case against him only on February 2, 1995 when he received a

[5] *Id*. at 31, 67-69.

[6] *Id*. at 31.

[7] TSN, October 12, 1995, Vol. 3, pp. 61-63.

subpoena relative thereto while in the camp. His fellow army officers corroborated his alibi as follows: (1) S/Sgt. Mario Salmos testified being with the petitioner on December 29 and 30, 1994, a fact he distinctly remembered because he was then the Sergeant of the Guard while petitioner was then the officer of the day (OD); (2) Lt. Dominador Tamo testified that he prepared the Guard Detail for December 29, 1994 and petitioner reported for duty on that date; and (3) 1st Lt. Prudencio Dimas stated that he personally turned over to petitioner the responsibility as OD on December 29, 1994. The defense adduced in evidence the Guard Detail and the Disposition and Location of Troops––documents in which the name of petitioner appeared as one of those assigned on duty from December 28 to 31, 1994.[8]

Petitioner testified that he learned of his brother's demise only on January 3, 1995. He immediately secured a travel order from his commanding officer so he could attend his brother's wake and funeral.[9]

Carmen Soriano, a *kagawad* of Brgy. Pagal and the wife of petitioner's uncle, also took the witness stand for the defense. She testified that the prosecution witness, Benjamin, could not have possibly been at the *situs* of the crime inasmuch as she saw him at the wake of a certain Iling Cabansag in Brgy. Cacaritan, San Carlos City from 8:00 p.m. to 10:00 p.m. on December 29, 1994. In fact, she related that she, Benjamin, and one Ernesto Resuello, Jr., upon learning of the shooting incident, immediately repaired to the scene. And while there, she did not notice, so she claimed, any police officer investigating the incident, albeit investigator Doldol would later testify, on rebuttal, seeing Carmen during the investigation.

Another defense witness, Luciano Soriano, corroborated Carmen's account regarding the presence of Benjamin at the wake of Iling. According to Luciano, Benjamin was at the wake before the 8:00 p.m. gambling.[10]

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[8] *Rollo*, pp. 69-70.

[9] *Id*. at 145.

[10] *Id*. at 32-33.

In a bid to further discredit Benjamin, the defense parlayed the existence of bad blood between the Soriano and Cabansag families. In this regard, petitioner testified that Benjamin's brother, Florante, once stoned his house and later challenged him to a gun duel. Petitioner presented the police reports on the twin incidents.[11]

On April 17, 1997, the RTC, finding the prosecution's witnesses against petitioner, as accused below, more credible and their accounts more tenable, rendered judgment convicting petitioner of the complex crime of homicide with frustrated homicide. The *fallo* of the judgment reads:

> WHEREFORE, in the light of the foregoing, the Court finds the accused, Rene Soriano guilty beyond reasonable doubt with crime charged, and Homicide being the graver offense, the accused is hereby sentenced to an Indeterminate prison terms 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 heirs of Ernesto Amarillo and Soledad Ferrer in the amount of Fifty Thousand Pesos (₱50,000.00) and Twenty Thousand Pesos (₱20,000.00) respectively as civil indemnity, and to pay the costs.[12]

Ruling of the CA

Even as he reiterated his main defense and invited attention to the testimonies of his fellow army officers supporting his alibi, petitioner, on appeal, impugned Benjamin's credibility as witness, tagging the latter's stated reaction during and shortly after the alleged shooting rampage as incredible and unnatural. Benjamin's reaction referred to consisted of his not hiding for safety during the shooting incident or telling anyone later in the wake about it. Petitioner further dismissed Benjamin's testimony as inconsistent with the physical evidence because the entry and exit points of the bullet found in Amarillo's body show that the firing position is not angular, contrary to Benjamin's testimony.[13] Petitioner also scored the prosecution for not calling

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[11] *Id*.

[12] *Supra* note 3, at 36-37.

[13] *Rollo*, p. 72.

to testify witnesses who were in a position to corroborate Benjamin's purported eyewitness account, specifically the persons Benjamin was allegedly conversing with shortly before the shooting.

As stated at the threshold hereof, the CA, in the herein assailed Decision dated November 21, 2000, as reiterated in a Resolution of May 3, 2001, dismissed petitioner's appeal and effectively affirmed his conviction of the complex crime of homicide with frustrated homicide.[14] Thus, we have this petition.

Petitioner's Sole Issue

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT CONVICTING HEREIN PETITIONER DESPITE THE MISERABLE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Essentially, petitioner faults the appellate court for making much, as did the trial court, of Benjamin's testimony as basis of its judgment of conviction, petitioner's well-founded alibi notwithstanding.

The Court's Ruling

The conviction is **AFFIRMED**.

Petitioner relies on (1) his alibi and (2) the weakness of the prosecution's evidence as bases for his acquittal.

We are not persuaded.

As a rule, alibi is considered with suspicion and is always received with caution, not only because it is inherently weak and unreliable but also because it can easily be fabricated.[15] For alibi to prosper, the accused must satisfactorily prove (1) that he was somewhere else when the crime was committed and (2) that he was so far away that he could not have been

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[14] *Id*. at 76.

[15] *People v. Paraiso*, G.R. No. 131823, January 17, 2001, 349 SCRA 335, 350.

physically present at the place of the crime or its immediate vicinity at the time of its commission.[16] In this case, petitioner alleged being in Camp Boloan, Kalinga, Apayao on the fateful night in question. Assuming the veracity of this allegation, it would still be not impossible for petitioner to leave the base camp and travel to and arrive in San Carlos City at about 9:30 p.m. of December 29, 1994.

Petitioner's reliance on the presumptive regularity of official functions to support his alibi, pointing to the official documents and testimony of his fellow officers regarding his presence in Camp Boloan on the night of the shooting, is misplaced. The presumption leaned on is disputable and can be overcome, as it had been overcome, by evidence to the contrary, which, in this case, is Benjamin's testimony that he saw petitioner in San Carlos City alight from a tricycle on the night of December 29, 1994. While petitioner's fellow officers also testified on his presence in Camp Boloan at about the same time, the Court is more inclined to accept the trial court's appreciation of the testimony of Benjamin and the weight it gave to such testimony as against those of the defense witnesses. We quote the pertinent portions of the trial court's sound holding:

> As to the documents presented by the accused supporting his theory that he was in Kalinga Apayao, the Court cannot accord its reliance on the same because alibi cannot prevail over the positive identification of prosecution eyewitness. The facility which the accused can secure documents to bolster his claim that he was not present at the scene of the crime cannot be denied considering that the sources of such documents are his fellow soldiers many of whom are his subordinates. Even assuming arguendo that the said documents are real, in the face of the clear and positive testimony of the prosecution witness regarding the participation of the accused in the crime, the accused's alibi dwindles into [nothing]. x x x However, in the case at bar, the eyewitness pointing to the herein accused as the author of the crime has positively and in a straightforward manner identified the accused as the one who committed the crime charged.[17]

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[16] *People v. Valdez*, G.R. No. 128105, January 24, 2001, 350 SCRA 189, 195.

[17] *Supra* note 3, at 36.

Citing the RTC's Decision, the CA rejected the soldiers' testimony to prop up petitioner's defense of alibi, thus:

> While it may be true that the witnesses who testified on the whereabouts of the accused are not related to him by blood, they belong to a group of men where loyalty and obedience are the first order. How many battles have been fought with a man in uniform sacrificing his own dear life just to save a brother in arms? Sadly to say, the seeming formidable defense of alibi is [dwarfed] by the positive identification of the accused by an eyewitness whose candid and straightforward account on what transpired on December 29, 1994 the defense failed to shatter.[18]

Against positive evidence, alibi becomes most unsatisfactory. Alibi cannot prevail over the positive identification of a credible witness. In this case, Benjamin testified that he saw Soriano on a shooting spree on December 29, 1994, as follows:

> Atty. M. Ramos (Q). Sometimes on December 29, 1994 about 9:00 to 9:30 o'clock in the evening do you remember where you were?
>
> [Benjamin] Cabansag (A). Yes, sir.
>
> x x x x x x x x x
>
> Q. Kindly inform this Honorable Court?
>
> A. I was in front of the house of Kagawad Cancino, sir.
>
> Q. Did [you] have any companion at that time when you were in front of the house of Kagawad Cancino?
>
> A. Yes, sir.
>
> Q. Who were your companion[s] at that time?
>
> A. I was with Federico Castro, Alfredo Paragas and no more, sir.
>
> Q. And what were you doing there at that time in the company of Alfredo Paragas and the other person you have just mentioned?
>
> A. We were just stand by, sir.
>
> x x x x x x x x x

[18] *Supra* note 1, at 75-76; *supra* note 3, at 35.

Q. While you were there together with Mr. Paragas and Mr. Castro, do you remember if there was any unusual thing that happened at that date and time?

A. Yes, sir.

Q. What was that incident about?

A. When Rene Soriano alighted from the tricycle and kicked their gate, sir.

x x x x x x x x x

Q. Now after kicking the gate of their house, what did Rene Soriano do after that?

A. He got a gun, sir.

Q. From where did Rene Soriano get the gun?

A. Inside their house, sir.

Q. Do you know what kind of gun did Rene Soriano take out from their house?

x x x x x x x x x

A. Armalite, sir.

x x x x x x x x x

Q. What did Rene Soriano do after he got that armalite from their house?

A. He went outside and went to the middle of the road, [and fired shots] sir.

x x x x x x x x x

Q. In what direction where he fired shots while he was in the middle of the road?

A. At the town proper, he [accosted] tricycles, sir.

Q. While you saw Rene Soriano went in the middle of the road and you said you saw him fire shots towards town proper, where were you at that time?

A. I was in front of the house of Kagawad Cancino, sir.

x x x x x x x x x

Q. How far were you when Rene Soriano shot those 2 persons riding tandem on a motor bike, from where Rene Soriano was?

A. About 7 meters, sir.

x x x x x x x x x

Q. Before this incident, do you know this Rene Soriano whom you are referring to?

A. Yes, sir.

Q. How long have you known this Rene Soriano?

A. I was ahead in the Elementary grades sir and he follows me, and we are neighbors.

x x x x x x x x x

Q. Now this person you have just pointed before this Honorable Court, is he the same Rene Soriano whom you saw on the night of December 29, 1994 at around 9:00 to 9:30 o'clock in the evening that shot 2 persons riding on a motor bike?

A. Yes, sir.

Q. Now, that was evening Mr. Witness or it was a night time how were you able to identify that that person whom you saw on December 29, 1994 at around 9:30 o'clock in the evening is the same person that you have just pointed to inside this courtroom?

A. There is a fluorescent lamp in front of Kagawad Cancino, and also a light in front the house of Rene Soriano, sir.[19]

Like the CA, the Court cannot accord cogency to the defense's characterization of Benjamin's behavior, *i.e.,* "incredible and unnatural," during and right after the shooting incident. As aptly observed by the appellate court:

To Our mind, there is nothing incredible in [Benjamin] Cabansag's reaction of not running away or seeking cover immediately upon seeing appellant came out from house with an armalite and firing the same at random to the extent of hitting and killing his very own brother, Loreto Soriano. x x x

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[19] TSN, August 7, 1995, pp. 19-29.

In *People vs. Roncal*, 272 SCRA 242 [1997], and again in *People vs. Palma*, 308 SCRA 466 [1999], the Supreme Court, citing Its earlier pronouncements, made it clear "*that different people react differently to a given type of situation, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience,"* adding that "*[O]ne person's spontaneous or unthinking, or even instinctive, response to a horrid and repulsive stimulus may be aggression, while another person's reaction may be cold indifference*."[20]

The ensuing parallel observation of the Solicitor General also deserves mention:

> x x x Diversities in reaction are to be expected from different persons due to their psychological conditions and make-up. In this case, [Benjamin] Cabansag opted to stay put during the incident in question, thus seeing with his own eyes the minutest detail of petitioner's criminal act. This reaction on the part of Cabansag cannot be said to be unnatural. The incident that he saw was a violent stimulus that impelled him not to move where he was, though it may not have been the reaction of another person under the same circumstances. The same is true when he opted to keep silent about the incident immediately thereafter. Delay in reporting a criminal incident as long as it was fully explained is not an indication of fabricated charges [*People vs. Rafanan*, 182 SCRA 811 (1990)].[21]

What perhaps might be viewed as unnatural and certainly inconsistent to human experience was petitioner's reaction to the death of his own brother, Loreto. Benjamin, police investigator Doldol, and petitioner's own aunt, Carmen,[22] all testified that Loreto was among the victims on that fateful night of December 29, 1994. The defense neither contradicted the witnesses' account of Loreto's death nor offered any explanation as to why petitioner and his family did not initiate a thorough probe into their kin's death. Petitioner merely testified that he learned of his brother's death while in camp on January 3, 1995.[23]

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[20] *Supra* note 1, at 72.

[21] *Rollo*, pp. 127-128.

[22] TSN, May 22, 1996, p. 196.

[23] *Rollo*, p. 14.

He admitted that after the burial of his brother, he immediately went back to camp to resume his duties without as much as bothering to inquire from the police about how his brother died.[24] Itself puzzled by this odd behavior of the petitioner, the trial court wrote:

> x x x The credibility of the accused is made suspect because the defense from their own evidence, his brother was also among the fatalities of the incident that occurred in the evening of December 29, 1994. His silence on the matter of death of his own brother is not one normally the outrage of which is to be suffered in silence, and yet, no complaint was ever filed against anybody responsible for the death of Loreto Soriano. This must be one for the books considering that the killing was perpetuated almost in front of the house of the accused.[25]

The Court, like the trial court, finds petitioner's behavior indeed strange. Based on investigation reports and testimonies given below, the death of Loreto was inevitably linked to the shooting of Amarillo and Ferrer. Petitioner's silence regarding his brother's death raises some questions as to his credibility and even his alibi. Is it possible that a formal investigation of Loreto's death will place petitioner at the scene of the crime, making his liability for the fate of Amarillo and Ferrer very much easier to establish? Is it possible that petitioner's unusual silence on the death of his brother is avoidance of being implicated in the crimes charged herein, as well as an additional and more serious charge for Loreto's death? Petitioner's unexplainable reaction to his brother's death casts a doubt on his credibility and the tenability of his alibi. Silence regarding the circumstances surrounding the unjustified death of a family member is contrary to human experience.

Petitioner would next maintain that Benjamin could not plausibly have witnessed the shooting since, at about 8:00 p.m. of December 29, 1994, he was at a nearby town attending a wake. The contention may be extended plausibility had the testimony as to the whereabouts of Benjamin during the time material

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[24] TSN, April 17, 1996, pp. 42-43.

[25] *Supra* note 3, at 35.

came from an unbiased source whose credibility is not under a cloud. As it were, however, Carmen, petitioner's own aunt, and Luciano, doubtless a relative, had by reason of kinship a strong motive to concoct a story to free petitioner from criminal liability. Not lost on the Court, furthermore, is the fact that under the information, the crime was committed around 9:30 p.m. which makes it possible for Benjamin to be present in the wake and in the crime scene on the same night.

Petitioner's imputation of ill motives to Benjamin in view of the purported bad blood between him and Benjamin's brother, Florante, cannot be given credence for lack of adequate substantiation. In this regard, suffice it to reproduce what the CA said on this point:

> We may add that no convincing evidence has been adduced by appellant to establish his imputation of ill-motive on the part of [Benjamin] Cabansag. [Absent] such a convincing proof, the presumption arises that Cabansag was not so ill-motivated, and therefore, his testimony deserves full faith and credit.[26] x x x

Lastly, petitioner assails the prosecution's failure to present other witnesses who could have had corroborated Benjamin's testimony. The assault is untenable for "[t]he testimony of a single witness, if credible, positive and satisfies the court beyond reasonable doubt, is sufficient to convict. After all, witnesses are weighed, not numbered."[27] The Court notes with approval the CA's reasons for making short shrift of petitioner's above posture. Wrote the CA:

> If at all, therefore, whatever [Benjamin] Cabansag's companions could have mouthed in court could at best be merely corroborative or cumulative, reason for which their non-presentation could not have given rise to the disputable presumption that there was an attempt to suppress evidence (*People vs. Pagal*, 272 SCRA 443). In any event, considering that the same companions are likewise available to the defense, it puzzles Us why appellant, despite his perception that they

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[26] *Supra* note 1, at 75.

[27] *Panahon v. People*, G.R. No. 134342, August 11, 2005, 466 SCRA 456, 461.

would give an account derogatory to the prosecution's cause, did not bother to utilize them as his own witnesses.

Besides, it is not for appellant to dictate on the prosecution the choice of its witnesses, as it is the prerogative of each party to determine what evidence should be presented.[28]

Well-settled is the principle that the evaluation of the credibility of witnesses is a matter particularly falling within the authority of the trial court, as it had the opportunity to observe the demeanor of the witnesses on the stand.[29] A trial court's assessment of the credibility of a witness is entitled to great weight—even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.[30]

The trial court observed that Benjamin "has positively and in a straightforward manner identified the accused as the one who committed the crime charged."[31] Upon review of the records, we concur with the appellate and trial courts in their appreciation of Benjamin's testimony. Pertinently, the CA explained:

> For one, [Benjamin] Cabansag could not have been mistaken in positively identifying appellant as the perpetrator of the crime. As testified to by this witness, there was light at the scene, and he was at a distance of only about seven (7) meters from appellant (TSN, August 7, 1995, p. 8). Cabansag, therefore, could very well see appellant when the latter fired his armalite. For sure, Cabansag could not have been mistaken appellant for somebody else, what with the undisputed fact that the two (2) were former neighbors and schoolmates (*Ibid*. p. 7).[32]

It may be stated at this juncture that Benjamin's testimony regarding the weapon the petitioner used, an armalite rifle, is

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[28] *Supra* note 1, at 74.

[29] *People v. Cabareño*, G.R. No. 138645, January 16, 2001, 349 SCRA 297, 304.

[30] *People v. Toyco, Sr.*, G.R. No. 138609, January 17, 2001, 349 SCRA 385, 393-394; citations omitted.

[31] *Supra* note 3, at 36.

[32] *Supra* note 1, at 75.

consistent with the physical evidence obtained at the scene of the crime, as SPO2 Marciano de los Santos described in his testimony.[33] This circumstance, to be sure, adds another convincing dimension to the credibility of Benjamin as witness.

A final note. While moral suffering may perhaps not have been testified to or proven, the Court hereby awards moral damages to the heirs of Amarillo even granting that there is no allegation and proof of emotional suffering. As we said in *People v. Panado*:

> Unlike in the crime of rape, we grant moral damages in murder or homicide only when the heirs of the victim have alleged and proved mental suffering. However, as borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, x x x but often leaves them with the gnawing feeling that an injustice has been done to them. For this reason, moral damages must be awarded even in the absence of allegation and proof of the heirs' emotional suffering.[34] x x x

In accordance with jurisprudence,[35] the amount of moral damages is pegged at PhP 50,000.

Moral damages in the same amount should also be awarded to Ferrer. She suffered, as a result of petitioner's criminal act, cerebral lacerations which impaired her learning capabilities, among other serious injuries. The fact that she sustained near fatal wounds for which she was confined for one month in a hospital constituted what we considered in *People v. Caraig* "the trauma of physical, psychological and moral sufferings on which the award of moral damages x x x could be based."[36]

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[33] TSN, November 9, 1995, p. 26.

[34] G.R. No. 133439, December 26, 2000, 348 SCRA 679, 690-691.

[35] *People v. Abella*, G.R. No. 127803, August 28, 2000, 339 SCRA 129 and other cases.

[36] G.R. Nos. 116224-27, March 28, 2003, 400 SCRA 67, 85.

Moral damages can be awarded without the need for pleading or proof of the basis thereof, her physical suffering being quite obvious.

WHEREFORE, the appealed Decision and Resolution dated November 21, 2000 and May 3, 2001, respectively, of the CA, which affirmed the conviction of petitioner by the RTC of the complex crime of homicide with frustrated homicide, are *AFFIRMED* in all respects, with the *MODICATION* that he is hereby ordered to pay Soledad Ferrer the amount of PhP 50,000 and the same amount of PhP 50,000 to the heirs of Ernesto Amarillo as moral damages. The instant petition is accordingly *DENIED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 148606. June 30, 2008]

CHARLES LIMBAUAN, *petitioner, vs.* **FAUSTINO ACOSTA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER SUIT; REQUISITES.— Section 2, Rule 70 of the Revised Rules of Court provides as follows: "*Sec. 2. Lessor to proceed against lessee only after demand.* – Unless otherwise stipulated, such action by the lessor shall be commenced only after demand to pay or comply with the conditions of the lease and to vacate is made upon the lessee,

or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no person be found thereon, and the lessee fails to comply therewith after fifteen (15) days in the case of land or five (5) days in the case of buildings. As contemplated in the aforecited rule, the demand to pay rent and vacate is necessary if the action for unlawful detainer is anchored on the non-payment of rentals, as in the instant case. The same rule explicitly provides that the unlawful detainer suit must be commenced only if the lessee fails to comply after the lapse or expiration of fifteen (15) days in case of lands and five (5) days in case of buildings, from the time the demand is made upon the lessee. The demand required and contemplated in Section 2 of Rule 70 is a jurisdictional requirement for the purpose of bringing an unlawful detainer suit for failure to pay rent. It partakes of an extrajudicial remedy that must be pursued before resorting to judicial action such that full compliance with the demand would render unnecessary a court action. Hence, it is settled that for the purpose of bringing an ejectment suit, two requisites must concur, namely: (1) there must be failure to pay rent or to comply with the conditions of the lease and (2) there must be demand both to pay or to comply and vacate within the periods specified in Section 2, particularly, 15 days in the case of land and 5 days in the case of buildings. The first requisite refers to the existence of the cause of action for unlawful detainer while the second refers to the jurisdictional requirement of demand in order that said cause of action may be pursued.

2. ID.; CIVIL PROCEDURE; AMENDED AND SUPPLEMENTAL PLEADINGS; AMENDMENTS AS A MATTER OF RIGHT; A PARTY HAS THE ABSOLUTE RIGHT TO AMEND HIS PLEADING AT ANY TIME BEFORE THE FILING OF ANY RESPONSIVE PLEADING.— Section 2, Rule 10 of the Revised Rules of Court x x x "*Sec. 2. Amendments as a matter of right*. — A party may amend his pleading once as a matter of course at any time **before a responsive pleading is served** or, in the case of a reply, at any time within ten (10) days after it is served." Under this provision, a party has the absolute right to amend his pleading whether a new cause of action or change in theory is introduced, at any time before the filing of any responsive pleading. x x x It is well-settled that amendment of pleadings is favored and should be liberally allowed in the furtherance of justice in order to determine every case

as far as possible on its merits without regard to technicalities. This principle is generally recognized in order that the real controversies between the parties are presented, their rights determined and the case decided on the merits without unnecessary delay to prevent circuity of action and needless expense.

3. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; COMPLAINT FOR UNLAWFUL DETAINER, WHEN DEEMED SUFFICIENT.— [I]t is a well-settled rule that what determines the nature of an action as well as which court has jurisdiction over it are the allegations of the complaint and the character of the relief sought. A complaint for unlawful detainer is deemed sufficient if it alleges that the withholding of the possession or the refusal to vacate is unlawful, without necessarily employing the terminology of the law.

4. ID.; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; LIMITED TO REVIEW OF QUESTIONS OF LAW; CASE AT BAR.— In petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be put in issue. Questions of fact cannot be entertained. The issue of whether or not a lessor-lessee relationship existed between the herein parties is a question of fact which we cannot pass upon as it would entail a re-evaluation of the evidence and a review of the factual findings thereon of the courts *a quo*. As a rule, factual findings of the trial court, especially those affirmed by the CA, are conclusive on this Court when supported by the evidence on record. We find no cogent reason to disturb the findings of the MTC and the RTC, which the Court of Appeals had affirmed.

5. ID.; ID.; PARTIES TO CIVIL ACTIONS; DEATH OF PARTY; FAILURE OF COUNSEL TO COMPLY WITH HIS DUTY TO INFORM THE COURT OF THE DEATH OF HIS CLIENT, EFFECT.— Section 16, Rule 3 of the Revised Rules of Court provides that: "*Sec. 16. Death of 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 first 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. xxx." It is well settled that the failure of counsel to comply with his duty under Section 16 to inform the court of the death of his client and no substitution of such party is effected, will not invalidate the proceedings and the judgment thereon if the action survives the death of such party. Moreover, the decision rendered shall bind his successor-in-interest. The instant action for unlawful detainer, like any action for recovery of real property, is a real action and as such survives the death of Faustino Acosta. His heirs have taken his place and now represent his interests in the instant petition. Hence, the present case cannot be rendered moot despite the death of respondent.

APPEARANCES OF COUNSEL

The Law Office of Del Castillo & Associates for petitioner.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In this petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, petitioner seeks to set aside and annul the Decision[1] dated June 26, 2001 rendered by the Court of Appeals (CA), Thirteenth Division, in *CA-G.R. SP No. 49144.*

The CA decision affirmed an earlier decision[2] of the Regional Trial Court (RTC) of Caloocan City, Branch 125, dated March 12, 1998 which also affirmed the decision[3] dated

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[1] Penned by then Associate Justice Romeo J. Callejo, Sr. (now retired Associate Justice of this Court), with Associate Justices Renato C. Dacudao (ret.) and Perlita J. Tria Tirona (ret.), concurring; *rollo*, pp. 32-43.

[2] Decided by Judge Adoracion G. Angeles; *id*., at 55-60.

[3] Decided by Judge Delfina Hernandez Santiago; *id*., at 61-66.

December 29, 1997 of the Metropolitan Trial Court (MTC), Caloocan City, Branch 52, ordering herein petitioner to surrender possession of the property in question and pay the unpaid monthly rentals thereon.

The pertinent facts, as found by the CA, are quoted hereunder:

Sometime in 1938, the Government acquired the Tala Estate consisting of 808 hectares, located in Kalookan, primarily for a leprosarium. However, the State utilized only one-fifth of the property for the purpose. More, under Republic Act 4085, it was no longer mandatory for the segregation of hansenites. Consequently, the State needed a lesser portion of the property for the leprosarium. In the meantime, the State found it necessary to establish new residential areas within a 20-kilometer radius from the center of the Metropolitan Manila and/or utilizing inexpensive land in order to serve low-income families whose housing needs can only be met by the Government. On April 26, 1971, President Ferdinand E. Marcos issued Proclamation No. 843 allocating the property to the Department of Health, the National Housing Corporation, the PHHC and Department of Social Welfare and Development xxx.

It was also decreed that, more precise identities of the parcels of land allocated to the government will be made only after a final survey shall have been completed. **A joint PHHC-Bureau of Lands team was tasked to undertake the necessary segregation survey and inquiries on private rights within the Estate**. In the Interim, it was decreed that no transfer of title shall be made until the enactment of a law allowing the use of the site for purposes other than that of a leprosarium.

In the meantime, Faustino Acosta took possession of a vacant portion of the Tala Estate and constructed his house thereon, bearing address No. 786, Barrio San Roque, Barangay 187, Tala, Caloocan City. In August, 1982, Faustino Acosta, who was then a Barangay Councilman, executed a deed styled "**Registration of Property,**" attested by the *Barangay* Captain, over **another** vacant portion of the Estate, west of the *Barangay* Hall, with an area of 150 square meters, bearing the following boundaries:

NORTH: WAITING SHED……SOUTH: JUAN DAMIAN WEST: NITA CRUZ, RESTAURANT…..EAST: BRGY. HALL…187 (**at page 7, Records**)

Faustino Acosta then took possession of the property, constructed a fence around the perimeter of the property and planted vegetables thereon. However, in 1984, Paulino Calanday took possession of the said property without the consent of Faustino, constructed an edifice thereon and used the same as a beerhouse. When Faustino remonstrated, Paulino filed two (2) criminal complaints against Faustino with the Metropolitan Trial Court, entitled and docketed "***People versus Faustino Acosta*, Criminal Case Nos. 143550-51,**" for "**Malicious Michief**" and "**Unjust Vexation.**" However, on September 27, 1985, the Court issued an Order dismissing the cases for failure of Paulino to comply with PD 1508.

Paulino, in the meantime, conveyed the beerhouse to Juanita Roces. The latter and Faustino entered into an oral contract of lease over the parcel of land for a monthly rental of ₱60.00. About a year thereafter, Juanita suddenly stopped paying to Faustino her rentals for the property. It turned out that Juanita conveyed the beerhouse to her nephew, Charles Limbauan, who forthwith assumed the lease from his aunt and who, thenceforth, paid the monthly rentals for the property in the amount of ₱60.00 to Faustino. However, in November, 1987, Charles stopped paying rentals to Faustino claiming that, since the property was government property, Faustino had no right to lease the same and collect the rentals therefore. However, Faustino did not file any complaint nor unlawful detainer against Charles.

Sometime in February, 1995, Congress approved Republic Act 7999 under which the State converted a portion of the Estate, **with a total area of 120 hectares**, for use as a housing site for residents and employees of the Department of Health, with the National Housing Authority as the leading implementing agency:

> (a) Seventy (70) hectares of the one hundred thirty (130) hectares reserved for the leprosarium and settlement site of the hansenites and their families under Proclamation No. 843 are hereby declared alienable and disposable for use as a housing site for the bona fide residents, hansenites and their immediate families and for qualified employees of the Department of Health: *Provided*, That if the said beneficiary is an employee of the Deparment of Health, the said employee must have been assigned in the Tala Leprosarium and must have been a resident thereat for at least five (5) years: *Provided*, *further,* That the residential lot awarded to the beneficiaries under this Act shall

not be transferred, conveyed or assigned to any other person for a period of twenty-five (25) years, except to legal heirs by way of succession; and

(b) The fifty (50) hectares reserved for the plants, installations and pilot housing project of the National Housing Corporation, as provided in the same proclamation, are hereby declared as alienable and disposable: *Provided*, That twenty-nine (29) hectares of the said fifty (50) hectares shall be converted into a housing site exclusively for the bona fide and qualified residents of the area. (***idem, supra***)

After the passage by Congress of Republic Act 7999, Faustino filed a complaint against Charles with the Lupon for ejectment for failure of Charles to pay his rentals from October, 1987. On April 15, 1995, the Lupon issued a "**Certification to File Action**" (**at page 9, Records**). Republic Act 7999 became law on April 22, 1995, without the signature of the President.

On January 2, 1996, Faustino, through Law Interns in the office of Legal Aid of the University of the Philippines, sent a letter to Charles demanding that the latter vacate the property within five (5) days from notice for his failure to pay the monthly rentals in the amount of ₱60.00 a month since October, 1987. Charles Limbauan ignored the letter and refused to vacate the property.

Faustino, forthwith, filed, on February 7, 1996, a complaint for "**Unlawful Detainer**" against Charles with the Metropolitan Trial Court, entitled and docketed "***Faustino Acosta versus Charles Limbauan*, Civil Case No. 22521,**" praying that, after due proceedings, judgment be rendered in his favor as follows:

PRAYER

WHEREFORE, it is respectfully prayed of this Honorable Court that judgment be rendered in favor of plaintiff and against the defendant as follows:

1. To order the immediate restoration of the premises to plaintiff in accordance with Rule 70, Sec. 3 of the Rules of Court;

2. Ordering the defendants to pay to plaintiff the sum of ₱60.00 a month plus interest from November 1987 until they vacate the premises;

2.(*sic*) Ordering defendant to pay plaintiff the sum of ₱10,000.00 by way of moral damages;

3. Such other remedies as may be just and equitable under the premises. (**at page 4, Records**)

Upon suggestion of the Court, Faustino Acosta, through the Law Interns, sent another letter of demand to Charles Limbauan, dated March 7, 1996, demanding that the latter vacate the property this time within fifteen (15) days from notice, otherwise, Faustino will institute the appropriate action for his eviction from the property. Charles Limbauan received the letter, on March 13, 1996, but refused to vacate the property. Faustino forthwith filed a "**Motion to Approve Attached Amended Complaint**" with the Court which was granted by the Court.

In his Answer to the Complaint, Charles alleged, ***inter alia*** that Faustino had no cause of action against him because the property on which the beerhouse was constructed is owned by the government since the government is the owner of the property, Faustino had no right of possession over the property and collect rentals therefore. Besides, it was unfair for Faustino, who was already in possession of the lot at No. 786 B. San Roque, Barangay 187 to still claim possession over the subject property. The Defendant interposed the defense that the Court had no jurisdiction over the action of the Plaintiff as it was one of ***accion publiciana*** and not one for unlawful detainer.

On December 29, 1997, the Court promulgated a Decision in favor of the Plaintiff and against the Defendant, the decretal portion of which reads as follows:

DISPOSITION BY THE COURT:

Premises considered, decision is rendered for the plaintiff, Faustino Acosta, and against the defendant, Charles Limbauan, directing the latter and all those claiming under him to vacate the premises specifically described as the parcel of commercial land located at the west portion of the barangay hall, barangay 187, Zone 16, B. Sto. Nino, Tala, Caloocan City, to surrender peaceful possession of the same to the former, and to pay him the following amounts:

a. ₱60.00 monthly from November, 1987, as reasonable compensation for the use and occupancy of the parcel of land

subject matter of this case with legal interests from today up to the actual surrender of the same.

b. ₱130.00 by way of reimbursement for costs of suit as shown by the receipts on record.

Given in Chambers. (**at page 79, Records**)

The Court found and declared that the Plaintiff adduced evidence that the Defendant was the lessee of the Plaintiff over the property and, hence, the latter was estopped from assailing Plaintiff's title over the property.

The Defendant interposed an appeal from said Decision to the Regional Trial Court which, on August 28, 1998, rendered a Decision affirming the Decision of the Court ***a quo***.

The Petitioner forthwith filed a "**Petition for Review**" with this Court (Court of Appeals), under Rule 42 of the 1997 Rules of Civil Procedure, and posed, for our resolution, the following issues: (a) whether or not the remedy of the Respondent in the Metropolitan Trial Court for unlawful detainer was proper; (b) the subject property was government property and, hence, cannot be the lawful subject of a lease contract between the Petitioner and Respondent and, hence, the latter had no right to have the Petitioner evicted from the property and to collect rentals from him. It was inappropriate for the trial court, and the Regional Trial Court, to apply and rely on Section 2(b), Rule 131 of the Rules of Evidence.

On June 26, 2001, the CA dismissed the aforementioned Petition for Review and affirmed the decision of the RTC.

Hence, this petition for review which seeks the reversal of the said CA decision on the basis of the issues quoted hereunder:

a) DID THE HONORABLE COURT OF APPEALS IN RENDERING THE ASSAILED DECISION COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF JURISDICTION?

b) WHETHER OR NOT THE CASE IS RENDERED MOOT AND ACADEMIC ON ACCOUNT OF THE DEATH OF THE RESPONDENT.[4]

In relation to the aforequoted issues, the petitioner adduces the following arguments:

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[4] *Id*., at 24.

(1) The right application of laws under Rule 70 and Rule 10 in relation with the law on jurisdiction over the case was ignored.

(2) The amendment under Section 2, Rule 10, Rules of Court is a futile remedy when the Court has no jurisdiction over the case.

(3) The alleged existence of lessor-lessee relationship between the parties had not been sufficiently established.

(4) The fact of death of respondent rendered the case moot and academic.[5]

The first and second arguments advanced by petitioner are interrelated. Thus, they shall be discussed jointly. Petitioner argues that there must be a prior demand to vacate the leased premises and pay the rent and a 15-day period from the time of demand must have lapsed before a complaint for unlawful detainer may be commenced pursuant to Section 2, Rule 70. According to petitioner, respondent's demand letter gave the petitioner a five-day period only instead of fifteen (15) days within which to comply with the demand to vacate. A jurisdictional requisite, not having been complied with, the MTC did not acquire jurisdiction over the case.

Section 2, Rule 70 of the Revised Rules of Court provides as follows:

Sec. 2. Lessor to proceed against lessee only after demand. – Unless otherwise stipulated, such action by the lessor shall be commenced only after demand to pay or comply with the conditions of the lease and to vacate is made upon the lessee, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no person be found thereon, and the lessee fails to comply therewith after fifteen (15) days in the case of land or five (5) days in the case of buildings.

As contemplated in the aforecited rule, the demand to pay rent and vacate is necessary if the action for unlawful detainer is anchored on the non-payment of rentals, as in the instant case. The same rule explicitly provides that the unlawful detainer

[5] *Id*., at 24-27.

suit must be commenced only if the lessee fails to comply after the lapse or expiration of fifteen (15) days in case of lands and five (5) days in case of buildings, from the time the demand is made upon the lessee. The demand required and contemplated in Section 2 of Rule 70 is a jurisdictional requirement for the purpose of bringing an unlawful detainer suit for failure to pay rent. It partakes of an extrajudicial remedy that must be pursued before resorting to judicial action such that full compliance with the demand would render unnecessary a court action.[6]

Hence, it is settled that for the purpose of bringing an ejectment suit, two requisites must concur, namely: (1) there must be failure to pay rent or to comply with the conditions of the lease and (2) there must be demand both to pay or to comply and vacate within the periods specified in Section 2, particularly, 15 days in the case of land and 5 days in the case of buildings. The first requisite refers to the existence of the cause of action for unlawful detainer while the second refers to the jurisdictional requirement of demand in order that said cause of action may be pursued.[7]

As the subject matter of the instant case is a parcel of land, the expiration of the aforesaid fifteen-day period is a prerequisite to the filing of an action for unlawful detainer. As to whether respondent observed this fifteen-day period, an affirmative answer can be gleaned from the evidence on record. Respondent's first demand letter dated January 2, 1996 gave petitioner five (5) days from receipt within which to pay the unpaid rentals and vacate the premises. Petitioner received the demand letter on January 10, 1996 while respondent brought the action for unlawful detainer on February 7, 1996, which was clearly more than 15 days from the time petitioner received the demand letter on January 10, 1996 and well within the one-year period set forth by Section 1, Rule 70.[8] Thus, the fact that respondent's demand letter granted

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[6] *Cetus Development, Inc. v. Court of Appeals*, G.R. Nos. 77647-77652, August 7, 1989, 176 SCRA 72, 80-81.

[7] *Ibid*.

[8] *Sec. 1. Who may institute proceedings, and when*. – Subject to the provisions of the next succeeding section, a person deprived of the possession

petitioner five (5) days to pay and to vacate the subject property is of no moment because what is important and required under Section 2 of Rule 70 is for the lessor to allow a period of fifteen (15) days to lapse before commencing an action for unlawful detainer. Evidently, respondent actually complied with this requirement. For this reason, we find no error in the MTC assuming jurisdiction over respondent's complaint and in not dismissing the same.

Moreover, upon the advice of the MTC, respondent sent another demand letter dated March 7, 1996 to petitioner, this time giving the latter fifteen (15) days within which to vacate the subject property and when petitioner still refused, respondent was compelled to file a Motion to Approve Attached Amended Complaint. The said motion was rightly granted by the MTC in accordance with Section 2, Rule 10 of the Revised Rules of Court, to wit:

> *Sec. 2. Amendments as a matter of right*. — A party may amend his pleading once as a matter of course at any time **before a responsive pleading is served** or, in the case of a reply, at any time within ten (10) days after it is served.

Under this provision, a party has the absolute right to amend his pleading whether a new cause of action or change in theory is introduced, at any time before the filing of any responsive pleading.[9] Undoubtedly, when respondent filed his Amended Complaint on May 16, 1996,[10] no responsive pleading had yet been filed by petitioner, thus, the MTC validly admitted the said amended complaint.

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of any land or building by force, intimidation, threat, strategy or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time **within one (1) year after such unlawful deprivation or withholding of possession**, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

[9] *Radio Communications of the Philippines, Inc. vs. Court of Appeals*, G.R. No. 121397, April 17, 1997, 271 SCRA 286, 289.

[10] *Rollo*, pp. 82-86.

It is well-settled that amendment of pleadings is favored and should be liberally allowed in the furtherance of justice in order to determine every case as far as possible on its merits without regard to technicalities. This principle is generally recognized in order that the real controversies between the parties are presented, their rights determined and the case decided on the merits without unnecessary delay to prevent circuity of action and needless expense.[11]

Petitioner also contends that the MTC's purpose for admitting the amended complaint was to eliminate the jurisdictional defect of the original complaint. Petitioner cites the cases of *Rosario v. Carandang*[12] and *Gaspar v. Dorado*[13] which declared that the amendment of the complaint could not be allowed when its purpose is to confer jurisdiction upon the court, since the court must first acquire jurisdiction over the case in order to act validly therein. Petitioner's contention is devoid of merit. As earlier discussed, respondent's original complaint was free from any jurisdictional flaw and the MTC had jurisdiction over the case to begin with. Thus, the cited cases are not applicable in the instant case. Hence, the MTC was correct in allowing the amendment.

Furthermore, it is a well-settled rule that what determines the nature of an action as well as which court has jurisdiction over it are the allegations of the complaint and the character of the relief sought.[14] A complaint for unlawful detainer is deemed sufficient if it alleges that the withholding of the possession or the refusal to vacate is unlawful, without necessarily employing the terminology of the law.[15] Here, respondent alleged that he acquired possessory rights over the subject property by virtue of a government grant.

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[11] *Andres v. Cuevas*, G.R. No. 150869, June 9, 2005, 460 SCRA 38, 49.

[12] 96 Phil. 845 (1955).

[13] No. L-17884, November 29, 1965, 15 SCRA 331.

[14] *Ross Rica Sales Center, Inc. v. Ong*, G.R. No. 132197, August 16, 2005, 467 SCRA 35, 45.

[15] *Ibid*.

He leased the property to petitioner for a monthly rental of ₱60.00. When petitioner failed to pay the rentals, respondent eventually sent two demand letters asking petitioner to pay and vacate the premises. Petitioner refused, thereby depriving respondent of possession of the subject property. Clearly, the complaint alleges the basic elements of an unlawful detainer case, which are sufficient for the purpose of vesting jurisdiction over it in the MTC.

Likewise, petitioner's allegation in his petition that he received respondent's second demand letter on May 8, 1996 was belied by the records of this case, the truth being that, the said demand letter dated March 7, 1996 was received by petitioner on March 13, 1996.[16] The letter granted petitioner fifteen (15) days within which to pay and vacate the subject property. Respondent's Amended Complaint was filed on May 16, 1996 which was obviously two (2) months from the time petitioner had notice of the demand, and again more than 15 days as required by Section 2, Rule 70.

In sum, respondent clearly satisfied the jurisdictional requirement of prior demand to vacate within the period set by the rules. The MTC validly acquired jurisdiction over both the original complaint and the amended complaint.

Petitioner next argues that no lessor-lessee relationship existed between him and respondent. This argument clearly deals with a question of fact. In petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be put in issue. Questions of fact cannot be entertained.[17] The issue of whether or not a lessor-lessee relationship existed between the herein parties is a question of fact which we cannot pass upon as it would entail a re-evaluation of the evidence and a review of the factual findings thereon of the courts *a quo*. As a rule, factual findings of the trial court, especially those affirmed by the CA, are conclusive on this Court when

[16] CA Decision; *rollo*, p. 10.

[17] *Lambert v. Heirs of Ray Castillon*, G.R. No. 160709, February 23, 2005, 452 SCRA 285, 290.

supported by the evidence on record.[18] We find no cogent reason to disturb the findings of the MTC and the RTC, which the Court of Appeals had affirmed.

Lastly, petitioner capitalizes on the failure of respondent's counsel to inform the court of the death of his client, Faustino Acosta, who passed away on October 22, 2000[19] while the case was pending appeal with the CA. He avers that such failure rendered the case moot and academic as no proper substitution of a party was effected in compliance with Rule 3, Section 16 of the Rules of Court.

Section 16, Rule 3 of the Revised Rules of Court provides that:

> *Sec. 16. Death of 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 first 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. xxx.

It is well settled that the failure of counsel to comply with his duty under Section 16 to inform the court of the death of his client and no substitution of such party is effected, will not invalidate the proceedings and the judgment thereon if the action survives the death of such party. Moreover, the decision rendered shall bind his successor-in-interest.[20] The instant action for

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[18] *Ibid*.

[19] *Rollo*, p. 44.

[20] *Benavidez v. Court of Appeals,* G.R. No. 125848, September 6, 1999, 313 SCRA 714, 722.

unlawful detainer, like any action for recovery of real property, is a real action and as such survives the death of Faustino Acosta. His heirs have taken his place and now represent his interests in the instant petition.[21] Hence, the present case cannot be rendered moot despite the death of respondent.

WHEREFORE, the petition for review is hereby *DENIED*. The assailed decision of the Court of Appeals in *CA-G.R. SP No. 49144* is hereby *AFFIRMED*.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and Azcuna, JJ., concur.

SECOND DIVISION

[G.R. No. 151133. June 30, 2008]

AFP GENERAL INSURANCE CORPORATION, *petitioner, vs.* **NOEL MOLINA, JUANITO ARQUEZA, LEODY VENANCIO, JOSE OLAT, ANGEL CORTEZ, PANCRASIO SIMPAO, CONRADO CALAPON and NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION),** *respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEALS; APPEAL FROM THE LABOR ARBITER'S MONETARY AWARD; APPEAL BOND; EXPLAINED. — The controversy before the Court involves more than just the mere application of the provisions of the Insurance Code to the factual circumstances. This instant case, after all, traces

[21] *Rollo*, pp. 169-170.

its roots to a labor controversy involving illegally dismissed workers. It thus entails the application of labor laws and regulations. x x x [T]he heart of the dispute is not an ordinary contract of property or life insurance, but an appeal bond required by both substantive and adjective law in appeals in labor disputes, specifically Article 223 of the Labor Code, as amended by Republic Act No. 6715, and Rule VI, Section 6 of the Revised NLRC Rules of Procedure. Said provisions mandate that in labor cases where the judgment appealed from involves a monetary award, the appeal may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company accredited by the NLRC. The perfection of an appeal by an employer "only" upon the posting of a cash or surety bond clearly and categorically shows the intent of the lawmakers to make the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be perfected. Additionally, the filing of a cash or surety bond is a jurisdictional requirement in an appeal involving a money judgment to the NLRC. In addition, Rule VI, Section 6 of the Revised NLRC Rules of Procedure is a contemporaneous construction of Article 223 by the NLRC. As an interpretation of a law by the implementing administrative agency, it is accorded great respect by this Court. Note that Rule VI, Section 6 categorically states that the cash or surety bond posted in appeals involving monetary awards in labor disputes "shall be in effect until final disposition of the case." This could only be construed to mean that the surety bond shall remain valid and in force until finality and execution of judgment, with the resultant discharge of the surety company only thereafter, if we are to give teeth to the labor protection clause of the Constitution. To construe the provision any other way would open the floodgates to unscrupulous and heartless employers who would simply forego paying premiums on their surety bond in order to evade payment of the monetary judgment. The Court cannot be a party to any such iniquity.

2. MERCANTILE LAW; INSURANCE LAW; THE PHILIPPINE INSURANCE CODE; SURETYSHIP; A SURETY BOND, ONCE ACCEPTED BY THE OBLIGEE BECOMES VALID AND ENFORCEABLE, IRRESPECTIVE OF WHETHER OR NOT THE PREMIUM HAS BEEN PAID BY THE OBLIGEE. — The instant case pertains to a surety bond; thus, the applicable provision

of the Insurance Code is Section 177, which specifically governs suretyship. It provides that a surety bond, once accepted by the obligee becomes valid and enforceable, irrespective of whether or not the premium has been paid by the obligor. The private respondents, the obligees here, accepted the bond posted by Radon Security and issued by the petitioner. Hence, the bond is both valid and enforceable. *A verbis legis non est recedendum* (from the language of the law there must be no departure).

3. ID.; ID.; ID.; ID.; THE LIABILITY OF THE SURETY AND THE OBLIGOR IS SOLIDARY IN NATURE; CASE AT BAR.— Under Section 176 of the Insurance Code, the liability of petitioner and Radon Security is solidary in nature. There is solidary liability only when the obligation expressly so states, or when the law so provides, or when the nature of the obligation so requires. Since the law provides that the liability of the surety company and the obligor or principal is joint and several, then either or both of them may be proceeded against for the money award.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; GUARANTY; PRINCIPLE OF SUBROGATION; APPLIED IN CASE AT BAR.— The Labor Arbiter directed the NLRC Sheriff to garnish the surety bond issued by the petitioner. The latter, as surety, is mandated to comply with the writ of garnishment, for x x x the bond remains enforceable and under the jurisdiction of the NLRC until it is discharged. In turn, the petitioner may proceed to collect the amount it paid on the bond, plus the premiums due and demandable, plus any interest owing from Radon Security. This is pursuant to the principle of subrogation enunciated in Article 2067 of the Civil Code which we apply to the suretyship agreement between AFPGIC and Radon Security, in accordance with Section 178 of the Insurance Code.

APPEARANCES OF COUNSEL

Tagle-Chua Cruz & Aquino for petitioner.
Fernando T. Collantes for respondents.

D E C I S I O N

QUISUMBING, *J.*:

This is a petition for review on *certiorari* of the Decision[1] dated August 20, 2001 of the Court of Appeals in CA-G.R. SP No. 58763 which dismissed herein petitioner's special civil action for *certiorari*. Before the appellate court, petitioner AFP General Insurance Corporation (AFPGIC) sought to reverse the Resolution[2] dated October 5, 1999 of the National Labor Relations Commission (NLRC) in NLRC NCR CA-011705-96 for having been issued with grave abuse of discretion. The NLRC affirmed the Order[3] dated March 30, 1999 of Labor Arbiter Edgardo Madriaga in NLRC NCR Case No. 02-00672-90 which had denied AFPGIC's Omnibus Motion to Quash Notice/Writ of Garnishment and Discharge AFPGIC's appeal bond for failure of Radon Security & Allied Services Agency (Radon Security) to pay the premiums on said bond. Equally challenged is the Resolution[4] dated December 14, 2001 of the appellate court in CA-G.R. SP No. 58763 which denied herein petitioner's motion for reconsideration.

The facts of this case are not disputed.

The private respondents are the complainants in a case for illegal dismissal, docketed as NLRC NCR Case No. 02-00672-90, filed against Radon Security & Allied Services Agency and/or Raquel Aquias and Ever Emporium, Inc. In his Decision dated August 20, 1996, the Labor Arbiter ruled that the private respondents were illegally dismissed and ordered Radon Security to pay them separation pay, backwages, and other monetary claims.

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[1] CA *rollo*, pp. 133-138. Penned by Associate Justice Wenceslao I. Agnir, Jr., with Associate Justices Salvador J. Valdez, Jr. and Juan Q. Enriquez, Jr. concurring.

[2] *Id*. at 16-21.

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

[4] *Id.* at 161-162.

Radon Security appealed the Labor Arbiter's decision to public respondent NLRC and posted a *supersedeas* bond, issued by herein petitioner AFPGIC as surety. The appeal was docketed as NLRC NCR CA-011705-96.

On April 6, 1998, the NLRC affirmed with modification the decision of the Labor Arbiter. The NLRC found the herein private respondents constructively dismissed and ordered Radon Security to pay them their separation pay, in lieu of reinstatement with backwages, as well as their monetary benefits limited to three years, plus attorney's fees equivalent to 10% of the entire amount, with Radon Security and Ever Emporium, Inc. adjudged jointly and severally liable.

Radon Security duly moved for reconsideration, but this was denied by the NLRC in its Resolution dated June 22, 1998.

Radon Security then filed a Petition for *Certiorari* docketed as G.R. No. 134891 with this Court, but we dismissed this petition in our Resolution of August 31, 1998.

When the Decision dated April 6, 1998 of the NLRC became final and executory, private respondents filed an Urgent Motion for Execution. As a result, the NLRC Research and Information Unit submitted a Computation of the Monetary Awards in accordance with the NLRC decision. Radon Security opposed said computation in its Motion for Recomputation.

On February 5, 1999, the Labor Arbiter issued a Writ of Execution[5] incorporating the computation of the NLRC Research and Information Unit. That same date, the Labor Arbiter dismissed the Motion for Recomputation filed by Radon Security. By virtue of the writ of execution, the NLRC Sheriff issued a Notice of Garnishment[6] against the *supersedeas* bond.

Both Ever Emporium, Inc. and Radon Security moved to quash the writ of execution.

On March 30, 1999, the Labor Arbiter denied both motions, and Radon Security appealed to the NLRC.

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[5] *Rollo*, pp. 63-65.

[6] *Id.* at 66.

On April 14, 1999, AFPGIC entered the fray by filing before the Labor Arbiter an Omnibus Motion to Quash Notice/Writ of Garnishment and to Discharge AFPGIC's Appeal Bond on the ground that said bond "has been cancelled and thus non-existent in view of the failure of Radon Security to pay the yearly premiums."[7]

On April 30, 1999, the Labor Arbiter denied AFPGIC's Omnibus Motion for lack of merit.[8] The Labor Arbiter pointed out that the question of non-payment of premiums is a dispute between the party who posted the bond and the insurer; to allow the bond to be cancelled because of the non-payment of premiums would result in a factual and legal absurdity wherein a surety will be rendered nugatory by the simple expedient of non-payment of premiums.

The petitioner then appealed the Labor Arbiter's order to the NLRC. The appeals of Radon Security and AFPGIC were jointly heard as NLRC NCR CA-011705-96.

On October 5, 1999, the NLRC disposed of NLRC NCR CA-011705-96 in this wise:

> WHEREFORE, premises considered, the appeals under consideration are hereby DISMISSED for lack of merit.
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> SO ORDERED.[9]

In dismissing the appeal of AFPGIC, the NLRC pointed out that AFPGIC's theory that the bond cannot anymore be proceeded against for failure of Radon Security to pay the premium is untenable, considering that the bond is effective until the finality of the decision.[10] The NLRC stressed that a contrary ruling would allow respondents to simply stop paying the premium to frustrate satisfaction of the money judgment.[11]

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[7] CA *rollo*, p. 30.

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

[9] *Id*. at 20.

[10] *Rollo*, pp. 58-59.

[11] *Id*. at 59.

AFPGIC then moved for reconsideration, but the NLRC denied the motion in its Resolution[12] dated February 29, 2000.

AFPGIC then filed a special civil action for *certiorari*, docketed as CA-G.R. SP No. 58763, with the Court of Appeals, on the ground that the NLRC committed a grave abuse of discretion in affirming the Order dated March 30, 1999 of the Labor Arbiter.

On August 20, 2001, the appellate court dismissed CA-G.R. SP No. 58763, disposing as follows:

> WHEREFORE, the foregoing considered, the petition is **denied due course** and accordingly **DISMISSED**.
>
> SO ORDERED.[13]

AFPGIC seasonably moved for reconsideration, but this was denied by the appellate court in its Resolution[14] of December 14, 2001.

Hence, the instant case anchored on the lone assignment of error that:

> THE COURT OF APPEALS SERIOUSLY ERRED IN SUSTAINING THE PUBLIC RESPONDENT NLRC ALTHOUGH THE LATTER GRAVELY ABUSED ITS DISCRETION WHEN IT ARBITRARILY IGNORED THE FACT THAT SUBJECT APPEAL BOND WAS ALREADY CANCELLED FOR NON-PAYMENT OF PREMIUM AND THUS IT COULD NOT BE SUBJECT OF EXECUTION OR GARNISHMENT.[15]

The petitioner contends that under Section 64[16] of the Insurance Code, which is deemed written into every insurance contract or contract of surety, an insurer may cancel a policy upon non-

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[12] *Id*. at 61-62.

[13] CA *rollo*, pp. 137-138.

[14] *Id*. at 161-162.

[15] *Rollo*, p. 24.

[16] Sec. 64. No policy of insurance other than life shall be cancelled by the insurer except upon prior notice thereof to the insured, and no notice of cancellation shall be effective unless it is based on the occurrence, after the effective date of the policy, of one or more of the following:

payment of the premium. Said cancellation is binding upon the beneficiary as the right of a beneficiary is subordinate to that of the insured. Petitioner points out that in *South Sea Surety & Insurance Co., Inc. v. CA,*[17] this Court held that payment of premium is a condition precedent to and essential for the efficaciousness of a contract of insurance.[18] Hence, following *UCPB General Ins. Co., Inc. v. Masagana Telamart, Inc.,*[19] no insurance policy, other than life, issued originally or on renewal is valid and binding until actual payment of the premium.[20] The petitioner also points to *Malayan Insurance Co., Inc. v. Cruz Arnaldo,*[21] which reiterated that an insurer may cancel an insurance policy for non-payment of premium.[22] Hence, according to petitioner, the Court of Appeals committed a reversible error in not holding that under Section 77[23] of the Insurance Code, the surety bond between it and Radon Security was not valid and

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(a) non-payment of premium;

(b) conviction of a crime arising out of acts increasing the hazard insured against;

(c) discovery of fraud or material misrepresentation;

(d) discovery of willful or reckless acts or omissions increasing the hazard insured against;

(e) physical changes in the property insured which result in the property becoming uninsurable; or

(f) a determination by the Commissioner that the continuation of the policy would violate or would place the insurer in violation of this Code.

[17] 314 Phil. 761 (1995).

[18] *Id.* at 767.

[19] 367 Phil. 539 (1999).

[20] *Id.* at 544.

[21] No. 67835, October 12, 1987, 154 SCRA 672.

[22] *Id.* at 679.

[23] Sec. 77. An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against. Notwithstanding any agreement to the contrary, no policy or contract of insurance issued by an insurance company is valid and binding unless and until the premium thereof has been paid, except in the case of a life or an industrial life policy whenever the grace period provision applies.

binding for non-payment of premiums, even as against a third person who was intended to benefit therefrom.

The private respondents adopted *in toto* the ratiocinations of the Court of Appeals that inasmuch as a *supersedeas* bond was posted for the benefit of a third person to guarantee that the money judgment will be satisfied in case it is affirmed on appeal, the third person who stands to benefit from said bond is entitled to notice of its cancellation for any reason. Likewise, the NLRC should have been notified to enable it to take the proper action under the circumstances. The respondents submit that from its very nature, a *supersedeas* bond remains effective and the surety liable thereon until formally discharged from said liability. To hold otherwise would enable a losing party to frustrate a money judgment by the simple expedient of ceasing to pay premiums.

We find merit in the submissions of the private respondents.

The controversy before the Court involves more than just the mere application of the provisions of the Insurance Code to the factual circumstances. This instant case, after all, traces its roots to a labor controversy involving illegally dismissed workers. It thus entails the application of labor laws and regulations. Recall that the heart of the dispute is not an ordinary contract of property or life insurance, but an appeal bond required by both substantive and adjective law in appeals in labor disputes, specifically Article 223[24] of the Labor Code, as amended by

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[24] ART. 223. *Appeal*. – . . .

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In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated

Republic Act No. 6715,[25] and Rule VI, Section 6[26] of the Revised NLRC Rules of Procedure. Said provisions mandate that in labor cases where the judgment appealed from involves a monetary award, the appeal may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company accredited by the NLRC.[27] The perfection of an appeal by an employer "only" upon the posting of a cash or surety bond clearly and categorically shows the intent of the lawmakers to make the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be perfected.[28] Additionally, the filing of a cash or surety bond

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in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

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[25] AN ACT TO EXTEND PROTECTION TO LABOR, STRENGTHEN THE CONSTITUTIONAL RIGHTS OF WORKERS TO SELF-ORGANIZATION, COLLECTIVE BARGAINING AND PEACEFUL CONCERTED ACTIVITIES, FOSTER INDUSTRIAL PEACE AND HARMONY, PROMOTE THE PREFERENTIAL USE OF VOLUNTARY MODES OF SETTLING LABOR DISPUTES, AND REORGANIZE THE NATIONAL LABOR RELATIONS COMMISSION, AMENDING FOR THESE PURPOSES CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES, effective on March 2, 1989.

[26] Section. 6. Bond. – In case the decision of the Labor Arbiter, the Regional Director or his duly authorized Hearing Officer involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond, which shall be in effect until final disposition of the case, issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of moral and exemplary damages and attorney's fees.

The employer, his counsel, as well as the bonding company, shall submit a joint declaration under oath attesting that the surety bond posted is genuine.

The Commission may, in justifiable cases and upon Motion of the Appellant, reduce the amount of the bond. The filing of the motion to reduce bond shall not stop the running of the period to perfect appeal.

[27] *Navarro v. NLRC*, 383 Phil. 765, 773 (2000).

[28] *Catubay v. National Labor Relations Commission*, 386 Phil. 648, 658 (2000).

is a jurisdictional requirement in an appeal involving a money judgment to the NLRC.[29] In addition, Rule VI, Section 6 of the Revised NLRC Rules of Procedure is a contemporaneous construction of Article 223 by the NLRC. As an interpretation of a law by the implementing administrative agency, it is accorded great respect by this Court.[30] Note that Rule VI, Section 6 categorically states that the cash or surety bond posted in appeals involving monetary awards in labor disputes "shall be in effect until final disposition of the case." This could only be construed to mean that the surety bond shall remain valid and in force until finality and execution of judgment, with the resultant discharge of the surety company only thereafter, if we are to give teeth to the labor protection clause of the Constitution. To construe the provision any other way would open the floodgates to unscrupulous and heartless employers who would simply forego paying premiums on their surety bond in order to evade payment of the monetary judgment. The Court cannot be a party to any such iniquity.

Moreover, the Insurance Code supports the private respondents' arguments. The petitioner's reliance on Sections 64 and 77 of the Insurance Code is misplaced. The said provisions refer to insurance contracts in general. The instant case pertains to a surety bond; thus, the applicable provision of the Insurance Code is Section 177,[31] which specifically governs suretyship. It provides that a surety bond, once accepted by the obligee

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[29] *Blancaflor v. NLRC*, G.R. No. 101013, February 2, 1993, 218 SCRA 366, 370-371.

[30] *Madrigal and Paterno v. Rafferty and Concepcion*, 38 Phil. 414, 423 (1918).

[31] Sec. 177. The surety is entitled to payment of the premium as soon as the contract of suretyship or bond is perfected and delivered to the obligor. No contract of suretyship or bonding shall be valid and binding unless and until the premium therefor has been paid, except where the obligee has accepted the bond, in which case the bond becomes valid and enforceable irrespective of whether or not the premium has been paid by the obligor to the surety; *Provided,* That if the contract of suretyship or bond is not accepted by, or filed with the obligee, the surety shall collect only a reasonable amount, not exceeding fifty *per centum* of the premium due thereon as service fee plus the cost of stamps or other taxes imposed for the issuance of the contract or bond; *Provide, however*, That if the

becomes valid and enforceable, irrespective of whether or not the premium has been paid by the obligor. The private respondents, the obligees here, accepted the bond posted by Radon Security and issued by the petitioner. Hence, the bond is both valid and enforceable. *A verbis legis non est recedendum* (from the language of the law there must be no departure).[32]

When petitioner surety company cancelled the surety bond because Radon Security failed to pay the premiums, it gave due notice to the latter but not to the NLRC. By its failure to give notice to the NLRC, AFPGIC failed to acknowledge that the NLRC had jurisdiction not only over the appealed case, but also over the appeal bond. This oversight amounts to disrespect and contempt for a quasi-judicial agency tasked by law with resolving labor disputes. Until the surety is formally discharged, it remains subject to the jurisdiction of the NLRC.

Our ruling, anchored on concern for the employee, however, does not in any way seek to derogate the rights and interests of the petitioner as against Radon Security. The former is not devoid of remedies against the latter. Under Section 176[33] of the Insurance Code, the liability of petitioner and Radon Security is solidary in nature. There is solidary liability only when the obligation expressly so states, or when the law so provides, or when the nature of the obligation so requires.[34] Since the law

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non-acceptance of the bond be due to the fault of the surety, no such service fee, stamps or taxes shall be collected.

In the case of a continuing bond, the obligor shall pay the subsequent annual premium as it falls due until the contract of suretyship is cancelled by the obligee or by the Commissioner or by a court of competent jurisdiction, as the case may be.

[32] *Cordero v. The Court of First Instance of Laguna*, 67 Phil. 358, 362 (1939); F. Moreno, *PHILIPPINE LAW DICTIONARY* 993 (3rd ed., 1988).

[33] Sec. 176. The liability of the surety or sureties shall be joint and several with the obligor and shall be limited to the amount of the bond. It is determined strictly by the terms of the contract of suretyship in relation to the principal contract between the obligor and the obligee. (*as amended by Pres. Decree No. 1855.)*

[34] *Sesbreño v. Court of Appeals*, G.R. No. 89252, May 24, 1993, 222 SCRA 466, 481.

provides that the liability of the surety company and the obligor or principal is joint and several, then either or both of them may be proceeded against for the money award.

The Labor Arbiter directed the NLRC Sheriff to garnish the surety bond issued by the petitioner. The latter, as surety, is mandated to comply with the writ of garnishment, for as earlier pointed out, the bond remains enforceable and under the jurisdiction of the NLRC until it is discharged. In turn, the petitioner may proceed to collect the amount it paid on the bond, plus the premiums due and demandable, plus any interest owing from Radon Security. This is pursuant to the principle of subrogation enunciated in Article 2067[35] of the Civil Code which we apply to the suretyship agreement between AFPGIC and Radon Security, in accordance with Section 178[36] of the Insurance Code. Finding no reversible error committed by the Court of Appeals in CA-G.R. SP No. 58763, we sustain the challenged decision.

WHEREFORE, the instant petition is *DENIED* for lack of merit. The assailed Decision dated August 20, 2001 of the Court of Appeals in CA-G.R. SP No. 58763 and the Resolution dated December 14, 2001, of the appellate court denying the herein petitioner's motion for reconsideration are *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

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[35] Art. 2067. The guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor.

If the guarantor has compromised with the creditor, he cannot demand of the debtor more than what he has really paid.

[36] Sec. 178. Pertinent provisions of the Civil Code of the Philippines shall be applied in a suppletory character whenever necessary in interpreting the provisions of a contract of suretyship.

SECOND DIVISION

[G.R. No. 153287. June 30, 2008]

NOEL GUILLERMO *y* BASILIANO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; THE PROSECUTION GENERALLY BEARS THE BURDEN OF ESTABLISHING THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT; BURDEN OF EVIDENCE, WHEN SHIFTED. — As a rule, the prosecution bears the burden of establishing the guilt of the accused beyond reasonable doubt. However, when the accused admits the killing and, by way of justification, pleads self-defense, the burden of evidence shifts; he must then show by clear and convincing evidence that he indeed acted in self-defense. For that purpose, he must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence.

2. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS. — The elements that the accused must establish by clear and convincing evidence to successfully plead self-defense are enumerated under Article 11(1) of the Revised Penal Code: "ART. 11. *Justifying circumstances*. – The following do not incur any criminal liability: 1. **Anyone who acts in defense of his person or rights, provided that the following circumstances concur; First. Unlawful aggression; *Second*. Reasonable necessity of the means employed to prevent or repel it; Third. Lack of sufficient provocation on the part of the person defending himself."** As a justifying circumstance, self-defense may be complete or incomplete. It is complete when all the three essential requisites are present; it is incomplete when the *mandatory element of unlawful aggression* by the victim is present, *plus any one of the two essential requisites*.

3. ID.; ID.; ID.; ID.; REASONABLENESS OF THE MEANS TO REPEL THE AGGRESSION, EXPLAINED.— Generally, reasonableness is a function of the nature or severity of the

attack or aggression confronting the accused, the means employed to repel this attack, the surrounding circumstances of the attack such as its place and occasion, the weapons used, and the physical condition of the parties – which, when viewed as material considerations, must show rational equivalence between the attack and the defense. In *People v. Escarlos*, this Court held that the means employed by a person invoking self-defense must be reasonably commensurate to the nature and the extent of the attack sought to be averted. In *Sienes v. People*, we considered the nature and number of wounds inflicted on the victim as important *indicia* material to a plea for self-defense.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AND ITS ASSESSMENT OF THE CREDIBILITY OF WITNESSES ARE GENERALLY NOT DISTURBED ON APPEAL. — We have time and again held that the findings of facts of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies, and the conclusions based on the these factual findings are to be given the highest respect; the trial court enjoys the unique advantage of being able to observe, at close range, the conduct and deportment of witnesses as they testify. These factual findings, when adopted and confirmed by the CA, are final and conclusive and need not be reviewed on the appeal to us. We are not a trier of facts; *as a rule*, we do not weigh anew the evidence already passed on by the trial court and affirmed by the CA. Only after a showing that the courts below ignored, overlooked, misinterpreted, or misconstrued cogent facts and circumstances of substance that would alter the outcome of the case, are we justified in undertaking a factual review.

5. CRIMINAL LAW; HOMICIDE; PENALTY; CASE AT BAR. — The imposable penalty for homicide under Article 249 of the Revised Penal Code is *reclusion temporal* in its full range. Article 69 of the Code however provides that: "ART. 69. *Penalty to be imposed when the crime committed is not wholly excusable*. — A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in Articles 11 and 12, provided that the majority of such conditions be present. The courts

shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking." Since the petitioner's plea of self-defense lacks only the element of "reasonable means," the petitioner is, therefore, entitled to the privileged mitigating circumstance of incomplete self-defense. Consequently, the penalty for homicide may be lowered by one or two degrees, at the discretion of the court. The penalty which the RTC imposed and which the CA affirmed lowered the penalty of *reclusion temporal* by one degree, which yields the penalty of *prision mayor*. From this penalty, the **maximum of the indeterminate penalty** is determined by taking into account the attendant modifying circumstances, applying Article 64 of the Revised Penal Code. Since no aggravating nor mitigating circumstance intervened, the maximum of the indeterminate penalty shall be *prision mayor* in its medium period whose range is from 8 years and 1 day to 10 years. To determine the **minimum of the indeterminate penalty,** *prision mayor* has to be reduced by one degree without taking into account the attendant modifying circumstances. The penalty lower by one degree is *prision correccional* whose range is from 6 months and 1 day to 6 years. The trial court is given the widest discretion to fix the minimum of the indeterminate penalty provided that such penalty is within the range of *prision correccional.* The CA affirmed the indeterminate penalty of six (6) years *prision correccional,* as minimum, to ten (10) years of *prision mayor,* as maximum, as imposed by the RTC on petitioner. We affirm this to be the legally correct and proper penalty to be imposed upon petitioner.

6. CIVIL LAW; DAMAGES; DEATH INDEMNITY AND MORAL DAMAGES; AWARDED IN CASE AT BAR. — We x x x affirm the ₱50,000.00 death indemnity awarded to Winnie's heirs, in accordance with prevailing jurisprudence. We add that moral damages should be awarded as they are mandatory in murder and homicide cases without need of allegation and proof other than the death of the victim. The award of ₱50,000.00 as moral damages is, therefore, in order.

APPEARANCES OF COUNSEL

Bereber Law Office & Villareal Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

For our review is the petition[1] filed by the petitioner Noel Guillermo *y* Basiliano (*petitioner*) against the decision[2] dated November 15, 2001 and the resolution[3] dated April 5, 2002 of the Court of Appeals (*CA*) in **CA-G.R. CR No. 24181**. The challenged decision[4] affirmed the decision of the Regional Trial Court (*RTC*), Branch 18, Roxas City convicting and penalizing the petitioner for the crime of homicide with an indeterminate sentence of six (6) years of *prision correccional,* as minimum, to ten (10) years of *prision mayor,* as maximum. The assailed resolution, on the other hand, denied the petitioner's motion for reconsideration.

BACKGROUND

For the death of one Winnie Alon (*Winnie*), the prosecution charged Arnaldo Socias,[5] Joemar Palma, and the petitioner with the crime of homicide under an Information that states:

x x x x x x x x x

That at or about 5:40 o'clock in the afternoon, on or about July 21, 1996, at Brgy. Poblacion Takas, Municipality of Cuartero, Province of Capiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating[,] and mutually helping one another, armed with knives and with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack and stab one WINNIE ALON *y* BILLANES,

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[1] Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court.

[2] Penned by Associate Justice (now retired Supreme Court Justice) Romeo J. Callejo, Sr. and concurred in by Associate Justice Remedios Salazar-Fernando and Associate Justice Josefina Guevarra-Salonga; *rollo*, pp. 21-30.

[3] *Id*., p. 54.

[4] Penned by Judge Charlito F. Fantilanan; *id*., pp. 31-46.

[5] In some parts of the record, he is also referred to as Arnold or Arnel Socias.

hitting the latter and inflicting multiple stab wounds on the different parts of his body, which injuries caused his death shortly thereafter.

That due to the untimely death of Winnie Alon *y* Billanes[,] his heirs are entitled to death indemnity in the amount of ₱50,000.00 and other damages pursuant to the provisions of the Civil Code of the Philippines.

ACTS CONTRARY TO LAW.[6]

The petitioner and his co-accused were arraigned and pleaded not guilty to the offense charged with the assistance of their counsel *de parte.* The prosecution presented Vicente Alon (*Vicente*) and Eddie Roque (*Eddie*) as witnesses in the trial that followed; Dr. Ricardo Betita, Jr. (*Dr. Betita*), Baby Lou Felipe (*Baby Lou*), and the three accused – the petitioner, Arnaldo Socias Arnaldo, and Joemar Palma Joemar – took the witness stand for the defense.

The material points in the testimony of Vicente were summarized by the trial court in its decision[7] as follows:

Vicente Alon averred that at 5:40 in the afternoon of July 21, 1996, Winnie Alon, Wilfredo Cabison, Eddie Roque, and him [sic] were at the public market of Cuartero, at [sic] the restaurant of Melecio Heyres to eat.[8] Noel Guillermo, Arnel Socias, and Joemar Palma were at the restaurant drinking beer. Noel Guillermo and Arnel Socias are known to him since childhood since they come from the same *barangay*.[9] Joemar Palma is known to him only recently in that incident.[10]

While sitting at the table inside the restaurant, an altercation between Arnel Socias and Winnie Alon regarding the cutting of wood by a chain saw [sic] transpired. Noel Guillermo suddenly took hold of Winnie Alon and stabbed the latter at the neck three (3) times.[11] Joemar Palma went to the kitchen and got a knife. Arnel Socias hit

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

[7] Dated January 8, 2000; *rollo*, pp. 31-46.

[8] TSN, June 23, 1998, p. 3.

[9] *Id*., p. 4.

[10] *Id*., p. 5.

[11] *Id.*, pp. 5-6.

him with a bottle of beer by [sic] the head. He fell down and lost consciousness.[12] [Footnotes referring to the pertinent parts of the record supplied]

Significantly, Vicente admitted on cross-examination that he and Winnie were already drunk even before they went to the restaurant where the stabbing took place.[13]

Eddie corroborated the testimony of Vicente on material points, particularly on the state of their intoxication even before going to the scene of the stabbing. His testimony on what transpired at the restaurant was summarized in the RTC decision[14] as follows:

Eddie Roque alleged that at around 5:40 o'clock in the afternoon of July 21, 1996, he, together with Winnie Alon, Vicente Alon and Wilfredo Cabison, were [sic] inside the restaurant of Mrs. Heyres at Cuartero Public Market to leave their tools of the chain saw [sic] and to eat and drink.[15] Noel Guillermo, Arnel Socias, and Joemer Palma were ahead of them to [sic] the restaurant and were drinking beer. They invited them and they joined them.[16] Before each of them could fully consume a bottle served upon each of them, Winnie Alon and Arnel Socias argued about the cutting of wood by means of a chain saw [sic]. The argument was so heated that each of the protagonists stood up and Arnel Socias took 2 bottles which were thrown to Vicente Alon who was hit on the forehead.[17]

Noel Guillermo hugged or embraced Winnie Alon and stabbed him three times (3) on [sic] the neck with a Batangueño knife. Arnel Socias went around, then behind, and stabbed Winnie Alon once, on the left side of his body, just below his left armpit, with a pointed object, but he could not determine what weapon was used. Joemar Palma also helped in stabbing Winnie Alon once, hitting him at the right side of his body.[18]

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[12] *Id.,* pp. 7-8.

[13] *Id.*, pp. 11-12.

[14] *Rollo,* p. 32.

[15] TSN, July 27, 1998, p. 3.

[16] *Id.,* p. 4.

[17] *Id.,* p. 5.

[18] *Id.,* pp. 5-6.

Winnie Alon resisted trying to struggle [sic], but could not move because he was ganged up by the three.[19] [Footnotes referring to the pertinent parts of the record supplied]

Dr. Betita, rural health physician of Cuartero, Capiz, declared on the witness stand that he conducted on July 22, 1996 a *post mortem* examination on the body of Winnie[20] and made the following findings:

POST MORTEM EXAMINATION

The *post mortem* examination is done on the remains of Winnie Alon, 31 years old, single, from Malagab-i, Cuartero, Capiz, was stab [sic] to death at about 5:40 P.M. at Pob. Takas, Public Market, Cuartero, Capiz sustaining the following injuries:

1. Stab wound 1.5 x 3 cm with 6-8 cm depth [L]eft anterior chest at level of 5th rib mid clavicular area.

2. Stab wound 2 x 3 cm with 5 cm depth anterior neck just above the sternum.

3. Stab wound 2 x 3 cm with 3-5 cm depth at epigastric area.

The most probable cause of death was massive [H]emorrhage secondary to multiple stab wounds.[21]

According to Dr. Betita, the cause of death was massive hemorrhage due to multiple stab wounds.[22] He added that the three (3) stab wounds were probably caused by a sharp-bladed instrument like a knife.[23]

The petitioner gave a different version of the events, summarized in the RTC decision as follows:

Noel Guillermo testified that at 5:30 in the afternoon of July 21, 1996, he was in Cuartero at the restaurant of Melecio Heyres, husband of Gertrudes Heyres, together with Arnel Socias and Joemar Palma

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[19] *Id*., p. 8.

[20] TSN, January 26, 1999, p. 4.

[21] Records, p. 216.

[22] *Supra,* note 20, p. 6.

[23] *Id.,* pp. 9-10.

drinking beer, consuming only about half a bottle, when Winnie Alon, Eddie Roque, Vicente Alon, and Wilfredo Cabison arrived and ordered beer from Babylou Felipe. Winnie Alon came to him and requested to join them in their table which he affirmatively answered. Winnie Alon then had an altercation with Arnel Socias regarding "*labtik*" (string used in marking wood to be cut).[24]

Winnie Alon challenged Arnel Socias to a contest on clean or straight cutting of wood. Arnel declined the challenge claiming that he is only an assistant to his brother-in-law. Winnie Alon got angry and told him that he has long been in [the] chain saw [sic] business but "you're stupid" ("*gago ka!*"). Arnel responded: "If the wood is crooked and you would deviate from line, you're stupid."[25]

Winnie Alon suddenly stood up and said to Arnel: "Don't ever call me stupid," pointing his finger to Arnel. He told them to settle the matter peacefully as they are friend [sic], but Winnie Alon was so furious and grabbed Arnel Socias by the collar. Arnel tried to release the hold of Winnie from his collar. While he was pacifying the two telling them to settle the matter peacefully, Winnie Alon turned to him and said: "you also," then struck him with a beer bottle. He was hit at the right top of his head thrice. He stood up and boxed Winnie who again picked up a bottle break [sic] it against the wall, and struck him with the broken bottle. He stepped back, pulled his knife, and stabbed him three (3) times but cannot remember what part of his body was hit by his successive stabs.[26] x x x [Footnotes referring to the pertinent parts of the record supplied]

Baby Lou, a waitress at the restaurant of Melecio Heyres, narrated that in the afternoon of July 21, 1996, the petitioner, together with Arnaldo and Joemar, arrived at the restaurant and ordered beer.[27] A few minutes later, Vicente, Eddie, Winnie, and Wilfredo Cabison arrived and also ordered beer. She then saw the group of Winnie transfer to the table occupied by the petitioner and his companions. Thereafter, the group had a heated

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[24] TSN, July 15, 1999, pp. 3-4.

[25] *Id.*, pp. 4-5.

[26] *Id.*, pp. 5-6.

[27] TSN, March 23, 1999, p. 4.

argument among themselves regarding "*labtik.*"[28] In the course of the exchange, she saw Winnie strike the petitioner on the head with a bottle. Winnie and the petitioner then grappled with each other. At that point, she hid behind the refrigerator and did not see what happened next. Afterwards, she saw the bloodied body of Winnie lying outside the restaurant.[29] She likewise saw the petitioner outside the restaurant; his shirt was splattered with blood.[30]

Dr. Betita, this time testifying as defense witness, stated, among others, that the contusion hematoma suffered by the petitioner could have been caused by a hard object like a beer bottle, while the linear abrasion could have been caused by a fingernail.[31]

Arnaldo Socias testified that on July 21 1996, he, together with the petitioner and Joemar, was drinking beer at the restaurant of Melecio Heyres[32] when Winnie stood up and asked if they (Winnie's group) could join them at their table. Arnaldo and his companions agreed. Winnie's group then transferred to the table of Arnaldo's group.[33]

The discussion took a bad turn when the matter of cutting by chainsaw was raised. Winnie challenged Arnaldo to a contest to determine who could do the cleanest cut. He declined and claimed he does not know how to operate a chainsaw. To this, Winnie retorted, "You are already old in that business, but your finished product is still crooked. You are all dumb." He countered, "If the wood itself is crooked, you cannot have a straight lumber. You are dumb if you insist you can." At that point, Winnie stood up and grabbed him by the collar. The petitioner intervened and told them to settle their differences peacefully. Winnie then

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[28] *Id.,* p. 5.

[29] *Id.,* p. 6.

[30] *Id.,* p. 7.

[31] *Id.*, p. 15.

[32] TSN, April 6, 1999, pp. 5-6.

[33] *Id.,* p. 7.

grabbed a bottle and struck the petitioner on the head three times.[34] Arnaldo added that he did not see who stabbed Winnie, because while the petitioner and Winnie were grappling, he was busy fighting with Vicente.[35]

Joemar Palma testified that in the afternoon of July 21, 1996, the petitioner, Arnaldo, and he were drinking beer at the restaurant of Mr. Heyres when four persons, who appeared to be drunk (later identified as Vicente, Eddie, Winnie, and Wilfredo Cabison), entered the restaurant and ordered beer.[36] After the latter group joined them at their table, Winnie and Arnaldo had a heated discussion regarding expertise in operating a chainsaw. Winnie grabbed the shirt collar of Arnaldo in the course of the heated exchange.[37] The petitioner advised them to calm down, but Winnie struck him (petitioner) on the head with a beer bottle three times. Vicente also tried to strike Arnaldo, but the latter managed to duck and so he (Joemar) took the hit instead. Thereafter, he and Arnaldo engaged Vicente.[38]

The RTC, in its decision of January 8, 2000, convicted the petitioner of the crime of homicide, but acquitted Arnaldo and Joemar. The dispositive portion of the decision reads:

> WHEREFORE, the evidence on record having established the guilt of Noel Guillermo as principal in the crime of homicide for stabbing three (3) times Winnie Alon which caused the latter's death, attended by a special or privileged mitigating circumstance of incomplete justification, and without any aggravating or mitigating circumstances attendant, he is imposed an indeterminate sentence of six (6) years of *prision correccional,* as minimum, to ten (10) years of *prision mayor*, as maximum, with the corresponding accessory penalties, and to pay death indemnity of ₱50,000.00 to the heirs of Winnie Alon, in the service of his sentence he shall be credited the period that he undergone [sic] preventive imprisonment, conformably with Art. 29 of the Code.

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[34] *Id.,* pp. 7-9.

[35] *Id.,* p. 10.

[36] TSN, April 13, 1999, p. 3.

[37] *Id.*, p. 4.

[38] *Id*., pp. 4-5.

Costs against the accused.

For insufficiency of evidence, the accused Arnaldo Socias and Joemar Palma are acquitted of the crime charged. The bail bond for their provisional liberty is **CANCELLED AND DISCHARGED.**

SO ORDERED.[39] [Emphasis in the original]

The petitioner appealed to the CA whose decision is now assailed in the present petition. The petitioner essentially claims that the RTC and the CA erred in failing to recognize the existence of all the elements of self-defense.

THE COURT'S RULING

We resolve to deny the petition for lack of merit.

Plea of Self-Defense

We note at the outset that the petitioner does not deny that he killed Winnie. He expressly made this admission in his testimony of July 15, 1999:

ATTY. VILLAREAL:

Q: And what did you do when he struck you with the bottle?

NOEL GUILLERMO:

A: I was able to move backward and I realized that I have a knife on [sic] the back of my waist.

Q: And what did you do with your knife?

A: **I then stabbed him.**

Q: How many times?

A: About three times as far as I can remember.[40] [Emphasis supplied]

The petitioner justifies the stabbing as an act of self-defense.

As the lower courts did, we do not recognize that the petitioner fully acted in self-defense.

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[39] *Supra*, note 14, pp. 15-16.

[40] *Supra*, note 24, p. 6.

As a rule, the prosecution bears the burden of establishing the guilt of the accused beyond reasonable doubt. However, when the accused admits the killing and, by way of justification, pleads self-defense, the burden of evidence shifts; he must then show by clear and convincing evidence that he indeed acted in self-defense. For that purpose, he must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence.[41]

The elements that the accused must establish by clear and convincing evidence to successfully plead self-defense are enumerated under Article 11(1) of the Revised Penal Code:

ART. 11. *Justifying circumstances*. – The following do not incur any criminal liability:

1. **Anyone who acts in defense of his person or rights, provided that the following circumstances concur;**

***First.* Unlawful aggression;**

***Second*. Reasonable necessity of the means employed to prevent or repel it;**

***Third.* Lack of sufficient provocation on the part of the person defending himself.**

As a justifying circumstance, self-defense may be complete or incomplete. It is complete when all the three essential requisites are present; it is incomplete when the *mandatory element of unlawful aggression* by the victim is present, *plus any one of the two essential requisites*.[42]

In the present case, we find it beyond dispute that the victim Winnie started the fight that ended in his death; he struck the petitioner on the head when the latter intervened to pacify the quarrel between Winnie and Arnaldo. In short, the victim was the unlawful aggressor while the petitioner was in the lawful act of pacifying the quarreling parties; thus, the latter has in his favor the element of **unlawful aggression** by the victim.

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[41] *People v. Santillana*, G.R. No. 127815, June 9, 1999, 308 SCRA 104.

[42] *Senoja v. People*, G.R. No. 160341, October 19, 2004, 440 SCRA 695, 703.

We consider it also established that the petitioner did not provoke the fight that ensued; he was a third party to the quarrel between the original protagonists – Winnie and Arnaldo – and did not at all initiate any provocation to ignite the quarrel. Thus, the petitioner also has the element of **lack of sufficient provocation** in his favor.

The third element – the reasonableness of the means to repel the aggression – is the critical element that the lower courts found lacking in the petitioner's case. Generally, reasonableness is a function of the nature or severity of the attack or aggression confronting the accused, the means employed to repel this attack, the surrounding circumstances of the attack such as its place and occasion, the weapons used, and the physical condition of the parties – which, when viewed as material considerations, must show rational equivalence between the attack and the defense.[43] In *People v. Escarlos*,[44] this Court held that the means employed by a person invoking self-defense must be reasonably commensurate to the nature and the extent of the attack sought to be averted. In *Sienes v. People*,[45] we considered the nature and number of wounds inflicted on the victim as important *indicia* material to a plea for self-defense.

In the present case, the attack on the petitioner came as he intervened in a quarrel between the victim and another party. As we concluded above, we deem it established that the victim was the unlawful aggressor who attacked the petitioner. Physical evidence shows that indeed the petitioner suffered the following injuries:

1. Contusion Hematoma 2 x 3 left parital area just above the left ear.
2. Linear abrasion 3 – 4 cm left hand medial side.
3. Linear abrasion 2 – 3 cm left head ulnar side.[46]

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[43] See *People v. Encomienda*, G.R. No. L-26750, August 18, 1972, 46 SCRA 522; *Eslabon v. People*, G.R. No. 66202, February 24, 1984, 127 SCRA 785.

[44] G.R. No. 148912, September 10, 2003, 410 SCRA 463.

[45] G.R. No. 132925, December 13, 2006, 511 SCRA 13.

[46] Exhibit "1", records, p. 347.

The weapons that caused these injuries were a beer bottle and, quite possibly, fingernails as the victim and the appellant grappled with each other.[47] In contrast, the victim suffered three stab wounds: at the neck, at the abdomen and in the chest. The weapon used was a Batangas knife that admittedly belonged to the petitioner. Thus, the physical evidence in the case stands.

The petitioner claims self-defense on the position that Winnie, after hitting him on the head three times with an empty bottle, grabbed another bottle, broke it against the wall, and thrust it towards him. It was at this point that the petitioner used his knife to inflict Winnie's fatal wounds. Clearly, the petitioner wants to impress upon us that his response to Winnie's attack was reasonable; he used a knife to repel an attacker armed with a broken beer bottle.

Several reasons militate against our acceptance of the petitioner's version and interpretation of events.

First, there is intrinsic disproportion between a Batangas knife and a broken beer bottle. Although this disproportion is not conclusive and may yield a contrary conclusion depending on the circumstances, we mention this disproportionality because we do not believe that the circumstances of the case dictate a contrary conclusion.

Second, physical evidence shows that the petitioner suffered only one contusion hematoma at the parietal area above the left ear. Unless the three (3) beer bottle blows that the petitioner alleged all landed on the same site – a situation that could have incapacitated the petitioner – the more plausible conclusion from the physical evidence is that the petitioner received only one blow, not three as he claimed. Contrary to what the petitioner wishes to imply, he could not have been a defender reeling from successive head blows inflicted by the victim.

Third, the victim, Vicente, and Eddie, were already drunk when they arrived at the restaurant before the fatal fight. This state of intoxication, while not critically material to the stabbing

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[47] *Supra*, note 31.

that transpired, is still material for purposes of defining its surrounding circumstances, particularly the fact that a broken beer bottle might not have been a potent weapon in the hands of a drunk wielder.

Fourth, and as the CA aptly observed as well, the knife wounds were all aimed at vital parts of the body, thus pointing against a conclusion that the petitioner was simply warding off broken beer bottle thrusts and used his knife as a means commensurate to the thrusts he avoided. To be precise, the petitioner inflicted on the victim: **one stab wound at the chest, 6-8 cms. deep**, at the 5th rib clavicular area, or in plainer terms, in the area of the victim's heart; **another was at the neck, 5 cms. deep**, just above the breastbone; and a **last one was in the abdominal area, 3-5 cms. deep**. The depth of these wounds shows the force exerted in the petitioner's thrusts while the locations are indicative that the thrusts were all meant to kill, not merely to disable the victim and thereby avoid his drunken thrusts.

Fifth, in appreciating the facts, the RTC and the CA were one in the conclusion to disbelieve the petitioner's allegation of complete self-defense, as reflected in the CA's further cogent observations that:

> (b) If, indeed the deceased picked up another bottle of beer, hit the same against the wall, resulting in the breakage of the bottle, and with it, hit the Appellant anew, it behooved the Appellant to have rushed posthaste to the police station and report the stabbing, with the request that a policeman be dispatched to the *locus criminis* and confirm the presence of broken pieces of beer bottle in the restaurant. The Appellant did not. He and his companions, Arnaldo and Joemar, fled from the scene, via the back door, and escaped on board a motorcycle.
>
> (c) Neither Arnaldo, Joemar, or Babylou corroborated the claim of the Appellant that, after the Appellant boxed Winnie, who lost his hold of the bottle of beer, he picked up another bottle and struck the bottle of beer against the wall and hit the Appellant with the bottle. The appellant relied solely on is own testimony to buttress his defense.

(d) The Municipal Trial Court conducted a preliminary investigation of the "Criminal Complaint" filed against the Appellant, Arnaldo, and Joemar. However, the Appellant did not submit any "Counter-Affidavit" claiming that he was impelled to stab Winnie three (3) successive times on mortal parts of his body and killing [sic] him because Winnie picked up a bottle, hit the same against a wall and hit the Appellant anew with the broken bottle.[48] [Underscoring in the original]

We see no reason to disturb these findings as they are based on existing evidence, and the conclusions drawn therefrom are patently reasonable. We have time and again held that the findings of facts of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies, and the conclusions based on the these factual findings are to be given the highest respect; the trial court enjoys the unique advantage of being able to observe, at close range, the conduct and deportment of witnesses as they testify. These factual findings, when adopted and confirmed by the CA, are final and conclusive and need not be reviewed on the appeal to us. We are not a trier of facts; *as a rule*, we do not weigh anew the evidence already passed on by the trial court and affirmed by the CA.[49] Only after a showing that the courts below ignored, overlooked, misinterpreted, or misconstrued cogent facts and circumstances of substance that would alter the outcome of the case, are we justified in undertaking a factual review. No such exceptional grounds obtain in this case.

In sum, we rule that there was **no rational equivalence** between the means of the attack and the means of defense sufficient to characterize the latter as reasonable.

The Proper Penalty

The imposable penalty for homicide under Article 249 of the Revised Penal Code is *reclusion temporal* in its full range.[50] Article 69 of the Code however provides that:

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[48] Annex "A", *rollo,* p. 29.

[49] *Chua v. People*, G.R. Nos. 150926 and 30, March 6, 2006, 484 SCRA 161, 167.

[50] Article 249. *Homicide.* – Any person who, not falling within the provisions of Article 246, shall kill another, without the attendance of any of the

ART. 69. *Penalty to be imposed when the crime committed is not wholly excusable*. — A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in Articles 11 and 12, provided that the majority of such conditions be present. The courts shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking.

Since the petitioner's plea of self-defense lacks only the element of "reasonable means," the petitioner is, therefore, entitled to the privileged mitigating circumstance of incomplete self-defense. Consequently, the penalty for homicide may be lowered by one or two degrees, at the discretion of the court.

The penalty which the RTC imposed and which the CA affirmed lowered the penalty of *reclusion temporal* by one degree, which yields the penalty of *prision mayor*. From this penalty, the **maximum of the indeterminate penalty** is determined by taking into account the attendant modifying circumstances, applying Article 64 of the Revised Penal Code.[51] Since no aggravating

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circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

[51] Article 64. *Rules for the application of penalties which contain three periods*. – In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

2. When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.

3. When only an aggravating circumstance is present in the commission of the act, they shall impose the penalty in its maximum period.

4. When both mitigating and aggravating circumstances are present, the court shall reasonably offset those of one class against the other according to their relative weight.

nor mitigating circumstance intervened, the maximum of the indeterminate penalty shall be *prision mayor* in its medium period whose range is from 8 years and 1 day to 10 years.

To determine the **minimum of the indeterminate penalty**, *prision mayor* has to be reduced by one degree without taking into account the attendant modifying circumstances. The penalty lower by one degree is *prision correccional* whose range is from 6 months and 1 day to 6 years. The trial court is given the widest discretion to fix the minimum of the indeterminate penalty provided that such penalty is within the range of *prision correccional.*

The CA affirmed the indeterminate penalty of six (6) years *prision correccional,* as minimum, to ten (10) years of *prision mayor,* as maximum, as imposed by the RTC on petitioner. We affirm this to be the legally correct and proper penalty to be imposed upon petitioner.

We also affirm the ₱50,000.00 death indemnity awarded to Winnie's heirs, in accordance with prevailing jurisprudence.[52]

We add that moral damages should be awarded as they are mandatory in murder and homicide cases without need of allegation and proof other than the death of the victim.[53] The award of ₱50,000.00 as moral damages is, therefore, in order.

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5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

6. Whatever may be the number and nature of the aggravating circumstances, the courts shall not impose a greater penalty than that prescribed by law, in its maximum period.

7. Within the limits of each period, the courts shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime.

[52] See *People v. Tabuelog*, G.R. No. 178059, January 22, 2008; *Licyayo v. People*, G.R. No. 169425, March 4, 2008.

[53] *People v. Rodas*, G.R. No. 175881, August 28, 2007, 531 SCRA 554, 573, citing *People v. Bajar*, 414 SCRA 494, 510 (2003).

WHEREFORE, in light of all the foregoing, we *DENY* the petition. The assailed decision and resolution of the CA dated November 15, 2001 and April 5, 2002, respectively, in CA-G.R. CR No. 24181 are *AFFIRMED* with the *MODIFICATION* that the petitioner is ordered to pay the heirs of Winnie Alon the amount of ₱50,000.00 as moral damages. Costs against the petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 160208. June 30, 2008]

RAFAEL R. MARTELINO, BARCHELECHU S. MORALES, ROSELYN S. CACHAPERO, REYNALDO R. EVANGELISTA, CESAR B. YAPE, LEONORA R. PARAS, SEGUNDINA I. IBARRA, RAQUEL G. HALNIN, ZAMORA I. DIAZ, and ARTHUR L. VEGA,* *petitioners, vs.* **NATIONAL HOME MORTGAGE FINANCE CORPORATION and HOME DEVELOPMENT MUTUAL FUND,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; SHALL NOT BE GRANTED WITHOUT HEARING AND PRIOR NOTICE TO THE PARTY SOUGHT TO BE ENJOINED.— Section 5,

* The other twenty-three (23) petitioners before the Court of Appeals did not join this petition.

Rule 58 of the Rules of Court expressly states that "[n]o preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined."

2. ID.; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; WHEN RESORTED TO.— [U]nder Section 1, Rule 63, a person must file a petition for declaratory relief before breach or violation of a deed, will, contract, other written instrument, statute, executive order, regulation, ordinance or any other governmental regulation. x x x As we said in *Tambunting, Jr. v. Sumabat*: ". . . The purpose of the action [for declaratory relief] is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, contract, *etc*. for their guidance in its enforcement or compliance and not to settle issues arising from its alleged breach. It may be entertained only before the breach or violation of the statute, deed, contract, *etc*. to which it refers. Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the court can no longer assume jurisdiction over the action.... Under such circumstances, inasmuch as a cause of action has already accrued in favor of one or the other party, there is nothing more for the court to explain or clarify short of a judgment or final order."

3. ID.; ID.; PROHIBITION; DEFINED.— Prohibition is a remedy against proceedings that are without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy adequate remedy in the ordinary course of law.

4. ID.; ACTIONS; FORUM SHOPPING; ELEMENTS; NOT ESTABLISHED IN CASE AT BAR.— On the matter of forum shopping, we find the claim unsubstantiated. The NHMFC has not explained why there is forum shopping. It failed to show the elements of forum shopping, *i.e.*, (1) identity of parties in the HLURB cases and this case; (2) identity of rights asserted or relief prayed for; and (3) identity of the two preceding particulars so that the judgment in the HLURB cases will be *res judicata* in this case. In any event, the decision in the HLURB cases, as affirmed with modification by the HLURB Board of Commissioners, ordered Shelter to complete the subdivision roads, sidewalks, water, electrical and drainage systems. Thus, there is no forum shopping since the petition for declaratory relief and prohibition filed by

petitioners against respondents is entirely different from the HLURB cases. Involved were different parties, rights asserted and reliefs sought. Obviously, the NHMFC invokes a ruling of the RTC and Court of Appeals that petitioners committed forum shopping, when no such ruling exists.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; HOUSING AND LAND USE REGULATORY BOARD; JURISDICTION. — The jurisdiction of the HLURB is defined under Section 1 of P.D. No. 1344, to wit: "*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 [now HLURB] 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." [T]he jurisdiction of the HLURB to hear and decide cases is determined by the nature of the cause of action, the subject matter or property involved and the parties.

APPEARANCES OF COUNSEL

Buenaventura R. Puentebella for petitioners.
Eduardo A. Balauro and *Fernando Anos* for respondent.

D E C I S I O N

QUISUMBING, *J.*:

On appeal is the Decision[1] dated April 22, 2003 of the Court of Appeals in C.A.-G.R. CV No. 70231, which had affirmed

[1] *Rollo*, pp. 39-47. Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices B.A. Adefuin-De La Cruz and Hakim S. Abdulwahid concurring.

the March 12, 2001 Order[2] of the Regional Trial Court (RTC), Branch 120, Caloocan City, dismissing Civil Case No. C-551 for declaratory relief and prohibition. Also assailed is the appellate court's Resolution[3] dated September 25, 2003, denying petitioners' motion for reconsideration.

The case stemmed from the petition for declaratory relief and prohibition with urgent prayer for the issuance of a temporary restraining order and/or preliminary injunction[4] filed before the RTC of Caloocan City, by petitioners against the National Home Mortgage Finance Corporation (NHMFC) and the Home Development Mutual Fund (HDMF), herein respondents, and Sheriff Alberto A. Castillo.[5] Petitioners alleged that they obtained housing loans from respondents who directly released the proceeds thereof to the subdivision developer, Shelter Philippines, Inc. (Shelter).

However, Shelter failed to complete the subdivision according to its representations and the subdivision plan. They were thus compelled to spend their own resources to improve the subdivision roads and alleys, and to install individual water facilities. Respondents, on the other hand, failed to ensure Shelter's completion of the subdivision. Instead, respondents ignored their right to suspend amortization payments for Shelter's failure to complete the subdivision, charged interests and penalties on their outstanding loans, threatened to foreclose their mortgages and initiated foreclosure proceedings against petitioner Rafael Martelino. Hence, they prayed that respondents be restrained from foreclosing their mortgages.

Moreover, petitioners specifically sought a declaration from the RTC (1) that their right as house and lot buyers to suspend payment to Shelter for its failure to fully develop the subdivision also applied to respondents who released their loans directly to Shelter; and (2) that during the suspension of payment,

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[2] Records, pp. 405-412. Penned by Judge Victorino S. Alvaro.

[3] *Rollo,* pp. 49-51.

[4] Records, pp. 8-20.

[5] In this petition, Sheriff Alberto A. Castillo is not impleaded.

respondents should not assess them accrued interests and penalties. Petitioners further prayed that they be allowed to pay their housing loans without interest and penalties.

In its June 17, 1998 Order,[6] the RTC set the preliminary injunction hearing, but said order, including the summons and petition, were served only on the NHMFC and Sheriff Castillo.[7] Despite notice, the NHMFC failed to attend the preliminary injunction hearing. On July 9, 1998, the RTC ordered that a writ of preliminary injunction be issued restraining the respondents from foreclosing the mortgages on petitioners' houses.[8] The writ[9] was issued on July 14, 1998.

On July 22, 1998, the NHMFC filed its Answer with Special and Affirmative Defenses.[10] Thereafter, the RTC ordered the parties to submit their pre-trial briefs and scheduled the pre-trial conference.[11]

On August 10, 1998, the NHMFC filed a Manifestation and Motion to Dismiss the Petition on the ground that the RTC had no jurisdiction over its person or over the subject matter of the case.[12]

The next day, the HDMF moved to set aside the July 9, 1998 preliminary injunction order on the ground that it was not notified of the hearing. The HDMF also stated that the petition should have been filed with the Housing and Land Use Regulatory Board (HLURB) as the case involved the developer's failure to complete the subdivision. The HDMF alleged that the RTC had no jurisdiction over the case or even to implead the HDMF which only financed petitioners' housing loans.[13]

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[6] Records, p. 23.

[7] *Id*. at 25.

[8] *Id*. at 74-76.

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

[10] *Id*. at 132-135.

[11] *Id*. at 144.

[12] *Id*. at 145.

[13] *Id*. at 147-150.

Petitioners opposed the NHMFC's motion to dismiss and the HDMF's motion to set aside the July 9, 1998 Order.[14] They said that the NHMFC stated no basis why the RTC lacked jurisdiction. Since they sought a judicial declaration of their right to suspend amortization payments to respondents, not to the subdivision developer, the HLURB had no jurisdiction over the case. Petitioners also averred that the HDMF cannot claim ignorance of the preliminary injunction hearing because the NHMFC was duly notified. They claimed that the HDMF's motion constituted voluntary submission to the RTC's jurisdiction which cured the lack of service of summons.

On February 10, 2000, petitioners moved to cite Atty. Florentino C. Delos Santos, Manager of HDMF's Legal Department, in contempt for foreclosing the mortgage of Rosella T. Rosete [15] and threatening to pursue similar actions against petitioners, in defiance of the preliminary injunction order.[16]

On March 12, 2001, the RTC, Branch 120, Caloocan City, issued an Order, decreeing as follows:

WHEREFORE, premises considered:

1) The motion to set aside [the] order of this Court dated July 9, 1998 is hereby granted;

2) The motion to cite defendant HDMF in contempt is denied; and

3) The motion to dismiss is hereby granted and the herein petition is DISMISSED.

SO ORDERED.[17]

The RTC held that the July 9, 1998 Order was not applicable to the HDMF since it was not notified of the preliminary injunction hearing. Thus, no basis existed to declare Atty. Delos Santos in contempt of court.

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[14] *Id.* at 158-169.

[15] One of the original petitioners/plaintiffs who did not join this petition.

[16] Records, pp. 265-273.

[17] Id. at 412.

In dismissing the case, the RTC ruled that the issue of non-completion of the subdivision should have been brought before the HLURB. It also ruled that no judicial declaration can be made because the petition was vague. The RTC assumed that the subject of the petition was Republic Act No. 8501[18] or the Housing Loan Condonation Act of 1998 which was cited by petitioners. But the RTC pointed out that petitioners failed to state which section of the law affected their rights and needed judicial declaration. The RTC also noted that, as stated by petitioners, respondents still foreclosed their mortgages, a breach of said law which rendered the petition for declaratory relief improper. The proper remedy was an ordinary civil action, the RTC concluded.

The Court of Appeals affirmed the RTC Order. First, the appellate court ruled that the writ of preliminary injunction was not valid against the HDMF since under Section 5,[19] Rule 58 of the Rules of Court, no preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. The HDMF was not notified of the hearing and only appeared before the RTC to object to its jurisdiction for non-service of summons. Second, the appellate court held that petitioners were not denied due process because the motions to dismiss and to set aside the July 9, 1998 Order both raised the issue of jurisdiction and were duly heard. Petitioners even filed a memorandum. Third, the appellate court did not entertain the issue of whether the petition for declaratory relief can be converted to an ordinary action for it was not raised before the

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[18] AN ACT TO RESCUE THE NATIONAL SHELTER PROGRAM OF THE GOVERNMENT BY CONDONING THE PENALTIES ON ALL OUTSTANDING/DELINQUENT HOUSING LOAN ACCOUNTS WITH ANY OF THE GOVERNMENT INSTITUTIONS AND AGENCIES INVOLVED IN THE NATIONAL SHELTER PROGRAM AND BY AMENDING PRESIDENTIAL DECREE NO. 1752, AS AMENDED, approved on February 13, 1998.

[19] **SEC. 5.** *Preliminary injunction not granted without notice; exception.* – No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. …

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RTC. The Court of Appeals also denied the motion for reconsideration.

In this appeal, petitioners contend that the Court of Appeals erred:

I.

…IN AFFIRMING THE ORDER OF DISMISSAL OF THE TRIAL COURT BASED ON A GROUND NOT ALLEGED IN THE MOTION TO DISMISS;

II.

…IN APPLYING THE RULING IN ***U. BAÑEZ ELECTRIC LIGHT CO., vs. ABRA ELECTRIC COOPERATIVE[,] INC.,*** **(119 SCRA 90)** TO SUPPORT THE ORDER OF DISMISSAL BY THE TRIAL COURT;

III.

…IN NOT HOLDING THAT PETITIONERS WERE DENIED THEIR RIGHT TO DUE PROCESS OF LAW WHEN THE TRIAL COURT FAVORABLY RESOLVED THE MOTION TO DISMISS BASED ON A GROUND NOT RAISED IN THE MOTION TO DISMISS;

IV.

…IN NOT HOLDING THAT THE PETITION SHOULD BE CONVERTED INTO AN ORDINARY ACTION ASSUMING THAT DECLARATORY RELIEF IS NOT THE PROPER REMEDY;

V.

…IN NOT HOLDING THAT THE TRIAL COURT HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR . . . EXCESS OF JURISDICTION IN GRANTING THE MOTION TO DISMISS;

VI.

…IN SUSTAINING THE RTC ORDER SETTING ASIDE THE INJUNCTIVE ORDER BY NOT HOLDING THAT THE HOME DEVELOPMENT MUTUAL FUND IS DEEMED TO HAVE VOLUNTARILY SUBMITTED TO THE JURISDICTION OF THE LOWER COURT[.][20]

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[20] *Rollo,* pp. 11-12.

In brief, the basic issues pertain (1) to the validity of the preliminary injunction order against the HDMF and (2) the propriety of dismissing the petition for declaratory relief and prohibition.

Petitioners point out that, contrary to the finding of the Court of Appeals, the HDMF did not question the lack of service of summons upon it nor did it raise the issue of jurisdiction of the RTC over its person. What the HDMF protested, they say, were the lack of notice of the preliminary injunction hearing and the RTC's lack of jurisdiction over the subject matter. But by filing the motion to set aside the July 9, 1998 Order, the HDMF voluntarily submitted to the RTC's jurisdiction.[21]

In its comment, the HDMF maintains that it was not notified of the preliminary injunction hearing and this fact is admitted by petitioners. Thus, the preliminary injunction order is null and void.[22]

We affirm the RTC and Court of Appeals ruling that the preliminary injunction order is not valid against the HDMF. Section 5, Rule 58 of the Rules of Court expressly states that "[n]o preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined." Here, petitioners even admit that the HDMF was not notified of the preliminary injunction hearing. In fact, petitioners do not contest the lower courts' ruling that the July 9, 1998 Order cannot apply to the HDMF. They merely contend and insist that the HDMF voluntarily submitted to the RTC's jurisdiction. Unfortunately, such contention is immaterial. The issue involves the validity of the preliminary injunction order absent a notice of hearing for its issuance to the HDMF, and not the HDMF's voluntary submission to the RTC's jurisdiction.

Petitioners also argue that the Court of Appeals erred when it sustained the RTC's dismissal of the petition on a ground not relied upon by respondents. They contend that the RTC went beyond the issue of jurisdiction raised by respondents by

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[21] *Id*. at 29-30.

[22] *Id*. at 123-124.

determining the sufficiency of the petition and ruling that it was vague and improper. The basic issue petitioners raised is whether their right under Section 23[23] of Presidential Decree No. 957[24] to suspend amortization payments to the subdivision developer is equally available against respondents.

In response, the NHMFC "reiterates and adheres" to the lower courts' ruling that the petition for declaratory relief is a case of forum shopping considering consolidated HLURB Cases Nos. REM-111585-4240 and REM-022690-4355 (HLUR Bcases) which were decided allegedly in petitioners' favor. The NHMFC also maintains that the RTC had no jurisdiction since petitioners' complaint of the developer's failure to complete the subdivision is a case cognizable by the HLURB.

After a careful study of the case, we are in agreement to uphold the dismissal of the petition for declaratory relief and prohibition.

I. Worthy of recall, the RTC held that respondents'[25] act of initiating foreclosure proceedings was in breach of Rep. Act No. 8501 and rendered the action of declaratory relief improper. The RTC suggested that the proper remedy is an ordinary civil action. Incidentally, this point is also related to petitioners' contention that the Court of Appeals should have ordered the conversion of their petition filed before the RTC to

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[23] SEC. 23. *Non-Forfeiture of Payments*. - No installment payment made by a buyer in a subdivision or condominium project for the lot or unit he contracted to buy shall be forfeited in favor of the owner or developer when the buyer, after due notice to the owner or developer, desists from further payment due to the failure of the owner or developer to develop the subdivision or condominium project according to the approved plans and within the time limit for complying with the same. Such buyer may, at his option, be reimbursed the total amount paid including amortization interests but excluding delinquency interests, with interest thereon at the legal rate.

[24] THE SUBDIVISION AND CONDOMINIUM BUYERS' PROTECTIVE DECREE, done on July 12, 1976.

[25] The records show that only the HDMF initiated the foreclosure proceedings.

an ordinary civil action, under the provisions of Section 6,[26] Rule 63 of the Rules of Court.

We agree with the RTC but hasten to point out that the RTC had not ruled on whether the petition was also improper as a petition for prohibition. Indeed, under Section 1,[27] Rule 63, a person must file a petition for declaratory relief before breach or violation of a deed, will, contract, other written instrument, statute, executive order, regulation, ordinance or any other governmental regulation. In this case, the petitioners had stated in their petition that respondents assessed them interest and penalties on their *outstanding loans*, initiated foreclosure proceedings against petitioner Rafael Martelino as evidenced by the notice of extra-judicial sale[28] and threatened to foreclose the mortgages of the other petitioners, all in disregard of their right to suspend payment to Shelter for its failure to complete the subdivision. Said statements clearly mean one thing: petitioners had already suspended paying their amortization payments. Unfortunately, their actual suspension of payments defeated the purpose of the action to secure an authoritative declaration of their supposed right to suspend payment, for their guidance. Thus, the RTC could no longer assume jurisdiction over the action for declaratory relief because its subject initially unspecified, now identified as P.D. No. 957 and relied upon — correctly or otherwise — by petitioners, and assumed by the

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[26] **SEC. 6.** *Conversion into ordinary action.* – If before the final termination of the case, a breach or violation of an instrument or a statute, executive order or regulation, ordinance, or any other governmental regulation should take place, **the action may thereupon be converted into an ordinary action**, and the parties shall be allowed to file such pleadings as may be necessary or proper. (Emphasis supplied.)

[27] **SECTION 1.** *Who may file petition.* – Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, **before breach or violation** thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder. (Emphasis supplied.)

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[28] Records, p. 40.

RTC to be Rep. Act No. 8501, was breached before filing the action. As we said in *Tambunting, Jr. v. Sumabat*:[29]

> . . . The purpose of the action [for declaratory relief] is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, contract, *etc*. for their guidance in its enforcement or compliance and not to settle issues arising from its alleged breach. It may be entertained only before the breach or violation of the statute, deed, contract, *etc*. to which it refers. Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the court can no longer assume jurisdiction over the action.… Under such circumstances, inasmuch as a cause of action has already accrued in favor of one or the other party, there is nothing more for the court to explain or clarify short of a judgment or final order.[30]

Under the circumstances, may the Court nonetheless allow the conversion of the petition for declaratory relief and prohibition into an ordinary action? We are constrained to say: no. Although Section 6, Rule 63 might allow such course of action, the respondents did not argue the point, and we note petitioners' failure to specify the ordinary action they desired. We also cannot reasonably assume that they now seek annulment of the mortgages. Further, the records support the Court of Appeals' finding that this issue was not raised before the RTC.[31] The Court of Appeals therefore properly refused to entertain the issue as it cannot be raised for the first time on appeal.[32]

Relatedly, the Court had considered *De La Llana, etc., et al. v. Alba, etc., et al.*,[33] where this Court considered a petition erroneously entitled Petition for Declaratory Relief and/or for Prohibition as an action for prohibition. That case involved the constitutionality of *Batas Pambansa Blg.* 129 or the Judiciary

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[29] G.R. No. 144101, September 16, 2005, 470 SCRA 92.

[30] *Id.* at 96.

[31] Records, pp. 381-391.

[32] *Pineda v. Heirs of Eliseo Guevara*, G.R. No. 143188, February 14, 2007, 515 SCRA 627, 634.

[33] 198 Phil. 1, 37 (1982).

Reorganization Act of 1980. Citing *De La Llana*, Justice Florenz D. Regalado opined in his book[34] that if the petition has far-reaching implications and it raises questions that should be resolved, it may be treated as one for prohibition.

Assuming the Court can also treat the Petition for Declaratory Relief and Prohibition as an action for prohibition, we must still hold that prohibition is improper. Prohibition is a remedy against proceedings that are without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy adequate remedy in the ordinary course of law.[35] But here, the petition did not even impute lack of jurisdiction or grave abuse of discretion committed by respondents and Sheriff Castillo regarding the foreclosure proceedings. Foreclosure of mortgage is also the mortgagee's right in case of non-payment of a debt secured by mortgage. The mortgagee can sell the encumbered property to satisfy the outstanding debt.[36] Hence, the HDMF cannot be faulted for exercising its right to foreclose the mortgages,[37] under the provisions of Act

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[34] I F. REGALADO, *REMEDIAL LAW COMPENDIUM* 771 (9th rev. ed., 2005).

[35] RULES OF COURT, Rule 65, Sec. 2.

SEC. 2. *Petition for prohibition.* – When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

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[36] CIVIL CODE, Art. 2087. It is also of the essence of these contracts [pledge and mortgage] that when the principal obligation becomes due, the things in which the pledge or mortgage consists may be alienated for the payment to the creditor. *Guanzon v. Argel*, No. L-27706, June 16, 1970, 33 SCRA 474, 478-479; *Caviles v. Seventeenth Division, Court of Appeals*, G.R. No. 126857, September 18, 2002, 389 SCRA 306, 314-315.

[37] *Supra* note 28.

No. 3135[38] as amended by Act No. 4118.[39] We are not saying, however, that the HDMF must exercise its right at all cost, considering that Rep. Act No. 8501 allows condonation of loan penalties when appropriate.

We note that Rep. Act No. 8501 not only allows condonation of loan penalties,[40] it also grants to the HDMF Board of Trustees the power to condone penalties imposed on loans of HDMF members-borrowers who for, justifiable reasons, failed to pay on time any obligation due to the HDMF.[41] Notably, the law applies to borrowers who failed or refused to pay their monthly amortizations due to structurally defective or substandard housing units and/or subdivisions lacking in basic amenities such as water, light, drainage, good roads and others as required by law.[42]

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[38] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES, approved on March 6, 1924.

[39] AN ACT TO AMEND ACT NUMBERED THIRTY-ONE HUNDRED AND THIRTY-FIVE, ENTITLED "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES," approved on December 7, 1933.

[40] SEC. 2. *Condonation Clause*. – (a) All unpaid penalties on housing loans from any of the government institutions and agencies involved in the National Shelter Program of the Government, including . . . [HDMF], National Home Mortgage Finance Corporation (NHMFC), . . . are hereby condoned: …

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[41] SEC. 3. *Amendatory Clause*. – . . .

"SEC. 12. Powers of the Board. – . . .

x x x x x x x x x

(d) To condone, in whole or in part, penalties imposed on loans of members-borrowers of the fund who for justifiable reasons, failed to pay on time any obligation due to the Fund …

[42] SEC. 4. *Applicability on Delinquent Accounts Due to Defective Housing Units*. – This Act shall likewise apply to borrowers who failed or refused to pay their monthly amortizations due to structurally defective or substandard housing units and/or subdivisions lacking in basic amenities such as water, light, drainage, good roads and others and as required by law.

And the rules promulgated by the HDMF provide that such refusal shall be considered as a justifiable reason for failure to pay the required amortization.[43] Furthermore, the Board of Trustees of the HDMF may also consider other causes similarly justifiable.[44]

Petitioners wanted to avail of the benefits of Rep. Act No. 8501 and said that "the most that [respondents] should have done under the circumstances was to advise [them] about the effectivity of said law and encourage them to apply thereunder."[45] But instead of applying for condonation of penalties and restructuring of their loans, they filed an erroneous petition before the RTC. They need not wait for encouragement because the HDMF, the assignee of petitioners' loans, had already issued and published its rules according to the NHMFC.[46] Petitioners need only to apply with the HDMF and squarely raise before the HDMF not only their refusal to pay amortizations because of the defective subdivision – a justifiable reason according to the rules – but also their implied imputation of negligence against respondents who allegedly released the proceeds of their loans directly to Shelter, despite its failure to complete the subdivision.

The HDMF could then determine if the latter ground is also a justifiable cause for non-payment of amortization. Surely,

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[43] RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 8501 (Otherwise known as the Housing Loan Condonation Act of 1998), Rule IV, Section 2.

Section 2. **Justifiable Reasons.** . . .

x x x x x x x x x

f) Failure or refusal to pay his monthly amortizations due to structurally defective or substandard housing units and/or subdivisions lacking in basic amenities such as water, light, drainage, good roads and others and as required by law;

x x x x x x x x x

[44] *Id*.

h) Other causes as may be considered as justifiable by the Board of Trustees.

[45] Records, p. 16.

[46] *Id.* at 134.

respondents would not espouse a policy to go after petitioners if they were found justified. Respondents could even enhance administrative controls for releasing future loans to protect borrower-mortgagors against subdivision developers who renege on their obligations.

II. We cannot agree, however, with the RTC's ruling that the vagueness of the petition furnished additional justification for its dismissal. If the petition for declaratory relief and prohibition was vague, dismissal is not proper because the respondents may ask for more particulars.[47] Notably, the NHMFC never assailed the supposed vagueness of the petition in its motion to dismiss nor did it ask for more particulars before filing its answer. When the RTC also set the pre-trial conference and ordered the parties to submit their pre-trial briefs, it even noted that the issues had already been joined.[48] Petitioners fairly stated also the necessary ultimate facts, except that their action for declaratory relief was improper.

Moreover, the RTC made an assumption that Rep. Act No. 8501 was the subject matter of the case. But while the petition mentioned the law, the declaration that petitioners sought was not anchored on any of its provisions. The petition only stated that despite the effectivity of said law, respondents still acted in bad faith and with undue haste in threatening petitioners with foreclosures, instead of encouraging them to avail of its benefits.

III. On the matter of forum shopping, we find the claim unsubstantiated. The NHMFC has not explained why there is forum shopping.[49] It failed to show the elements of forum shopping, *i.e.*, (1) identity of parties in the HLURB cases and this case; (2) identity of rights asserted or relief prayed for; and (3) identity of the two preceding particulars so that the judgment in the

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[47] *Ilano v. Español*, G.R. No. 161756, December 16, 2005, 478 SCRA 365, 373.

[48] Records, p. 144.

[49] *Rollo*, p. 110.

HLURB cases will be *res judicata* in this case.[50] In any event, the decision in the HLRB cases, as affirmed with modification by the HLURB Board of Commissioners,[51] ordered Shelter to complete the subdivision roads, sidewalks, water, electrical and drainage systems. Thus, there is no forum shopping since the petition for declaratory relief and prohibition filed by petitioners against respondents is entirely different from the HLURB cases. Involved were different parties, rights asserted and reliefs sought. Obviously, the NHMFC invokes a ruling of the RTC and Court of Appeals that petitioners committed forum shopping, when no such ruling exists.

IV. Respondents' contention that the case should or could have been filed with the HLURB lacks merit. The jurisdiction of the HLURB is defined under Section 1 of P.D. No. 1344,[52] to wit:

> *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 [now HLURB] 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.

As we previously held, the jurisdiction of the HLURB to hear and decide cases is determined by the nature of the cause

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[50] *Silangan Textile Manufacturing Corporation v. Demetria*, G.R. No. 166719, March 12, 2007, 518 SCRA 160, 168.

[51] Records, pp. 200-223.

[52] EMPOWERING THE NATIONAL HOUSING AUTHORITY TO ISSUE WRIT OF EXECUTION IN THE ENFORCEMENT OF ITS DECISION UNDER PRESIDENTIAL DECREE NO. 957, done on April 2, 1978.

of action, the subject matter or property involved and the parties.[53] In this case, the petition for declaratory relief and prohibition did not involve an unsound real estate business practice, or a refund filed by subdivision buyers against the developer, or a specific performance case filed by buyers against the developer. Rather, the petition specifically sought a judicial declaration that petitioners' right to suspend payment to the developer for failure to complete the subdivision also applies to respondents who provided them housing loans and released the proceeds thereof to the developer although the subdivision was not completed. Note also that the buyers (petitioners) are not suing the developer but their creditor-mortgagees[54] (respondents).

WHEREFORE, the petition is *DENIED* for lack of merit. The assailed Decision and Resolution of the appellate court are *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 164517. June 30, 2008]

BF CORPORATION, *petitioner, vs.* **MANILA INTERNATIONAL AIRPORT AUTHORITY,** *respondent.*

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[53] *Delos Santos v. Sarmiento*, G.R. No. 154877, March 27, 2007, 519 SCRA 62, 73.

[54] *Supra* note 28.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; ELEMENTS.— Section 2, Rule 2 of the Rules of Court defines "cause of action" as an act or omission by which one party violates a right of another. It has three elements: (1) a right existing in favor of the plaintiff, (2) a duty on the part of the defendant to respect the right of the plaintiff, and (3) a breach of the defendant's duty.

2. ID.; ID.; ID.; SUFFICIENCY OF THE FACTS ALLEGED IN THE COMPLAINT AS CONSTITUTING A CAUSE OF ACTION; TEST.— The test of sufficiency of the facts alleged in the complaint as constituting a cause of action is whether or not admitting the facts alleged; the court could render a valid verdict in accordance with the prayer of the complaint.

3. ID.; ACTIONS; ESTOPPEL; EXPLAINED.— Under the doctrine of estoppel, an admission or representation is conclusive on the person making it and cannot be denied or disproved as against the person relying on it. A person, who by deed or conduct has induced another to act in a particular manner, is barred from adopting an inconsistent position, attitude, or course of conduct that thereby causes loss or injury to another.

4. ID.; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; ELEMENTS.— For *res judicata* to exist, the following elements must be present: (1) the judgment must be final; (2) the court that rendered judgment must have jurisdiction over the parties and the subject matter; (3) it must be a judgment on the merits; and (4) there must be between the first and second actions identity of parties, subject matter, and cause of action.

APPEARANCES OF COUNSEL

Tan Acut & Lopez for petitioner.
Office of the Government Corporate Counsel for respondent.
Sycip Salazar Hernandez & Gatmaitan for intervenor Tokyu Construction Co. Ltd.

D E C I S I O N

VELASCO, JR., *J.*:

In this petition for review under Rule 45, petitioner BF Corporation (BF) assails the Decision of the Court of Appeals (CA) that disallowed BF to re-implead the Manila International Airport Authority (MIAA) as a party-defendant in Civil Case No. 66060 entitled *BF Corporation v. Tokyu Construction Co., Ltd., Mitsubishi Corporation, A.M. Oreta & Co., Inc., and Manila International Airport Authority*.

Mitsubishi Corporation (Mitsubishi), Tokyu Construction Co., Ltd. (Tokyu), A.M. Oreta & Co., Inc. (Oreta), and BF formed themselves into the MTOB Consortium (Consortium) to participate in the bidding for the construction of the Ninoy Aquino International Airport Terminal II (NAIA II) Project. MIAA awarded the contract to the Consortium, recognizing that the Consortium was a distinct and separate entity from the four member corporations.

Unfortunately, the four members had serious business differences, including the division of the contract price, forcing BF to file on January 10, 1997, with the Regional Trial Court (RTC) in Pasig City, an action for Specific Performance, Rescission, and Damages with application for a Temporary Restraining Order (TRO), docketed as Civil Case No. 66060. BF alleged in its complaint that Tokyu and Mitsubishi invited BF to form a consortium for the NAIA II Project and after the members of the Consortium reached an agreement couched in general terms, for the purpose of prequalification bidding, Tokyu allegedly refused to execute a final consortium agreement; unreasonably demanded that BF reduce its asking prices for its assigned work; engaged the services of other subcontractors to do BF's portion of the project; and refused to remit to BF its 20% share of the down payment, thereby easing out BF in the project in breach of the Consortium agreement. BF prayed that Tokyu be enjoined from further (1) receiving any payment from MIAA for illegally executing BF's portion of the work in

the project; (2) engaging the services of other subcontractors to do BF's portion of the project; (3) acting as lead partner of the Consortium; and (4) compelling BF to reduce its prices. BF also prayed that MIAA be enjoined from directly paying Tokyu the collectible compensation *vis-à-vis* Tokyu's illegal execution of BF's portion in the project.[1]

The RTC served a TRO on Tokyu, the lead partner of the Consortium. During the hearing on the preliminary injunction, MIAA stressed its position that it should not be dragged into the dispute since it was a consortium internal matter. Thereafter, in an amended complaint, BF dropped MIAA as a party-defendant.

When the RTC issued the Order dated January 21, 1997 extending the TRO, Tokyu filed with the CA a Petition for *Certiorari* and Prohibition with prayer for a writ of preliminary injunction docketed as **CA-G.R. SP No. 43133**. Tokyu contended that the order violated (1) Presidential Decree No. 1818 prohibiting any court in the Philippines from issuing any restraining order, preliminary injunction, or preliminary mandatory injunction on any case, dispute, or controversy involving an infrastructure project; and (2) Supreme Court Circular No. 68-94 disallowing issuance of TROs in cases involving government infrastructure projects to obviate complaints against indiscriminate issuance of TROs.

On May 15, 1997, the CA dismissed the petition and ordered the trial court to continue hearing the main case. With respect to MIAA's right to intervene, the CA stressed that MIAA was no longer a party-defendant since it had been dropped from the complaint by BF and, therefore, no relief may be had from MIAA. The CA explained that MIAA had nothing to do with whatever BF alleges were violations of the Consortium agreement by Tokyu because these were intra-consortium matters.[2] The CA also said it was convinced that "MIAA had no actual, direct and immediate interest" in CA-G.R. SP No. 43133.

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[1] *Rollo*, p. 2.

[2] *Id*. at 186.

The CA denied the motion for reconsideration and the RTC proceeded with the case subsequently issuing the **Order dated July 8, 1997**, which ordered Tokyu to: (1) retrieve its deposit in Japan and make it available in the Philippines for the prompt execution of the project; (2) remit to BF its 20% share in the down payment and its share in the subsequent payments made by MIAA; and (3) allow BF to execute its portion of the work in the project by terminating the services of the subcontractors.[3]

Tokyu filed before the CA a Petition for *Certiorari* with urgent prayer for a TRO and preliminary injunction docketed as CA-G.R. SP No. 44729. On October 20, 1997, the Special Seventh Division of the CA granted Tokyu's petition and annulled the RTC's Order dated July 8, 1997.

On November 26, 1999, when the project was nearing completion, BF filed a second amended complaint. In it, BF pleaded causes of action against Tokyu, Mitsubushi, and Oreta which have all submitted themselves to the jurisdiction of the court, and also MIAA who had possession of money to be paid to Tokyu. BF claimed it was entitled to a proportionate share of the money based on the Consortium agreement. Thus, BF asked that MIAA be re-impleaded as a party-defendant so it could obtain complete relief.[4]

In an **Order dated May 24, 2001**, the RTC directed that MIAA be re-impleaded as a party-defendant in Civil Case No. 66060. It said that BF's earlier move to drop MIAA as a party-defendant should not preclude it from re-impleading MIAA which still has the obligation to pay the remainder of the contract price. The dispositive portion of the order reads:

> WHEREFORE, the order of this Court dated February 23, 2001 is hereby reconsidered insofar as it ordered the dismissal of this case as against MIAA which is hereby restored and re-impleaded as a party defendant.
>
> SO ORDERED.

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[3] *Id*.

[4] *Id*. at 185.

The motion for reconsideration was denied in an **Order dated September 13, 2001**.[5] MIAA appealed to the CA alleging grave abuse of discretion on the part of the RTC when it ordered MIAA to be re-impleaded as a party-defendant. The petition was docketed as **CA-G.R. SP No. 67765**.

In a Decision dated January 9, 2004,[6] the CA granted MIAA's petition and annulled and set aside the May 24, 2001 and September 13, 2001 Orders in Civil Case No. 66060. The CA said that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the orders. According to the CA, MIAA's refusal to be a part of the internal squabble among members of the Consortium was not an "act or omission" that gave BF a cause of action. MIAA had not in any way violated any right of BF. The CA commented that an interference by MIAA in the Consortium quarrel could even expose MIAA to a suit by the other members of the Consortium. The CA stressed that MIAA had in fact earlier recognized the Consortium as a distinct and separate personality from its members. As far as MIAA was concerned, the CA concluded that BF was a stranger to the contract between MIAA and the Consortium, and if BF's interest was its right to a portion of the contract price, its proper recourse was to first secure an assignment of its proportionate rights from the Consortium.

The CA also pointed out that BF was estopped from treating MIAA as a necessary party, because when it dropped MIAA as a party in its amended complaint without stating why it did, BF implicitly admitted that MIAA was not a necessary party.

The CA also ruled that *res judicata* had set in when the CA denied a reconsideration of the Decision in CA-G.R. SP No. 43133 and said decision was not appealed. Recall that in the said decision, the CA Fourteenth Division stressed that MIAA was no longer a party-defendant since it had been dropped by BF and, therefore, no relief may be had from MIAA; that

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[5] *Id*. at 369.

[6] *Id*. at 10-17. Penned by Associate Justice Sergio L. Pestaño and concurred in by Associate Justices Marina L. Buzon and Jose C. Mendoza.

the case was not a matter *in rem* but can only give rise to a judgment *in personam*; that the CA was convinced MIAA had no actual, direct, and immediate interest in the dispute since the dispute was intra-corporate; and that MIAA had nothing to do with BF's complaint against Tokyu.[7] The CA added that since the issue with respect to MIAA was not appealed, the said decision had become final and another case on the same issue had been barred by *res judicata*.

The CA also noted that when MIAA was allowed to intervene in the aforementioned case, the RTC had acquired jurisdiction over MIAA; thus, there was identity of parties between CA-G.R. SP No. 43133 and CA-G.R. SP No. 67765. According to the CA, although the subject matter of CA-G.R. SP No. 43133 was the propriety of the grant of the TRO enjoining Tokyu from receiving any amount from MIAA and the subject matter in CA-G.R. SP No. 67765 was the propriety in including MIAA as a party-defendant in Civil Case No. 66060, both cases involved the issue of whether or not MIAA was a proper party-defendant in Civil Case No. 66060. Thus, the CA concluded that the elements of *res judicata* were present.

The motion for reconsideration was denied by the CA; hence, BF filed this petition raising the following as issues:

I.

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT BF HAS NO CAUSE OF ACTION AGAINST MIAA AS, IN FACT, BF'S SECOND AMENDED COMPLAINT STATES A CAUSE OF ACTION AGAINST MIAA.

II.

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT BF IS ESTOPPED FROM IMPLEADING MIAA IN THE CASE.

III.

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT BF IS BARRED UNDER THE DOCTRINE OF *RES JUDICATA* FROM IMPLEADING MIAA IN THE MAIN CASE.

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[7] *Id*. at 186.

The appellate court had correctly granted the petition of MIAA.

In this petition before us, BF would have us believe that it dropped MIAA as a party-defendant in its first amended complaint because its cause of action against MIAA was not yet ripe.[8] It said that it re-impleaded MIAA in the second amended complaint because of the impending release of the final payment and the retention money to Tokyu. And if the project were completed and full payment were given to the Consortium, BF could no longer get its supposed share in the payments.

The ultimate facts, as alleged by BF, that are the bases of its cause of action against MIAA, are found on items 2.18 to 2.21 of BF's second amended complaint, as follows:

> 2.18 To protect its rights and interests, BF, through counsel, wrote MIAA calling its attention to the contract violations committed by TOKYU in bad faith, and requesting its intervention to see an early end to the dispute. More specifically, BF requested MIAA to:
>
> 1. Persuade TOKYU to remit to us our rightful 20% share in the downpayment of the Project;
>
> 2. Enjoin TOKYU's unauthorized and illegally hired subcontractors from executing BF's portion of the NAIA II project;
>
> 3. Directly remit to us our 20% share in the subsequent payments to be made under the construction contract; and
>
> 4. Should TOKYU stubbornly refuse to heed any of the above, expel TOKYU from the consortium and let BF, MITSUBISHI and ORETA take over the entire project.
>
> x x x x x x x x x
>
> 2.19 Later, BF, through counsel, wrote TOKYU revoking [its] authority as lead partner to represent BF in dealing with MIAA in connection with the execution of the Project x x x.
>
> 2.20 Despite the revocation made by BF and **its request for MIAA** to resolve the dispute, TOKYU continued to act as the lead partner and has in fact taken its role to the extreme by hiring

[8] *Id*. at 30.

> other subcontractors to do BF's portion of the work. On the other hand, **MIAA has opted to take a nonchalant hands-off policy**, choosing to ignore TOKYU's bullying tactics and iniquitous actions by even **awarding the latter with prompt payments of the contract price**. Worse, in coddling and protecting TOKYU despite its illegal acts, **MIAA has allowed this foreign country to unduly profit from this centerpiece project and stash away the Philippine money it has collected in commercial banks in Japan**.
>
> 2.21 Further, as a result of **MIAA's inaction**, the Project is now complete with TOKYU ready and raring to collect the remainder of the contract price from MIAA, including the 10% retention money being held by MIAA and now ready to be released after the Project had been completed.[9] (Emphasis supplied.)

On the bases of these allegations, we can hardly rule that BF has a cause of action against MIAA.

Section 2, Rule 2 of the Rules of Court defines "cause of action" as an act or omission by which one party violates a right of another. It has three elements: (1) a right existing in favor of the plaintiff, (2) a duty on the part of the defendant to respect the right of the plaintiff, and (3) a breach of the defendant's duty.[10]

A close reading of the aforecited portions of the second amended complaint discloses that the rights of BF that have allegedly been violated are those contained in the Consortium agreement. A scrutiny of the agreement, however, would readily show that there is nothing in it that would constitute acts or omissions of MIAA that violate BF's rights. Even if BF wrote MIAA and called the latter's attention to the contract violations of Tokyu and asked MIAA to persuade Tokyu to remit to BF its 20% share in the down payment; enjoin Tokyu from illegally hiring subcontractors to do BF's part of the project; and expel Tokyu from the Consortium, these facts are insufficient to

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[9] *Id*. at 437-438.

[10] *Luzon Development Bank v. Conquilla*, G.R. No. 163338, September 21, 2005, 470 SCRA 533, 546.

constitute the bases of BF's cause of action against MIAA. The test of sufficiency of the facts alleged in the complaint as constituting a cause of action is whether or not admitting the facts alleged; the court could render a valid verdict in accordance with the prayer of the complaint.[11] Even if we assume that the facts alleged were true, we still cannot grant any of BF's prayers against MIAA as we would have no basis to do so in fact and in law.

The best evidence to show whether or not BF has a cause of action against MIAA is the contract/agreement itself. The Agreement[12] awarding the NAIA II Project to the Consortium was between MIAA and the Consortium, as contractor, represented by the Consortium's project manager. BF was not a party to the Agreement. From the very start, MIAA had categorically said it recognized the Consortium as a distinct and separate entity.

The Agreement laid down all the rights and obligations of MIAA to the Consortium and vice-versa, and as aptly pointed out by MIAA, payment to BF was not among them. The Agreement does not say that MIAA shall withhold payment in the event that a dispute arises amongst the members of the Consortium. Neither does the contract require MIAA to mediate in any intra-consortium dispute that may arise within the Consortium. The primary obligation of MIAA is found in Article III of the Agreement which stipulates that "MIAA agrees to pay the CONTRACTOR the Contract Price x x x in the manner prescribed by the Contract." Note that the CONTRACTOR refers to the Consortium not to the individual members of the Consortium. BF by itself is not a party to the Agreement. If MIAA is prevented from making payments to the Consortium, MIAA will be considered in breach of the Agreement. Verily, a preliminary prohibitory injunction, enjoining MIAA from releasing to Tokyu the remainder of the contract price owing to the Consortium or any amount for that matter,

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[11] *Misamis Occidental II Cooperative, Inc. v. David*, G.R. No. 129928, August 25, 2005, 468 SCRA 63, 72.

[12] *Rollo*, pp. 113-131.

including the 10% retention fee now ready for release after the project had been completed, cannot be validly issued. If BF wants its share in what was yet due to the Consortium, BF's recourse is against the Consortium. It can present to MIAA an assignment of its alleged rights from the Consortium. Impleading MIAA is not the remedy to enable BF to collect its share in the NAIA II Project of the Consortium. In short, MIAA cannot be ordered to be a collecting agent for BF.

To sum up, none of the elements required in Sec. 2, Rule 2 of the Rules of Court that constitute a cause of action are present in this case. BF cannot ask MIAA to persuade Tokyu to remit to BF its 20% share in the down payment; cannot enjoin Tokyu from hiring subcontractors to do BF's part of the project; and cannot expel Tokyu from the Consortium. MIAA is a stranger to the Consortium agreement among Tokyu, Mitsubishi, Oreta, and BF. Under both the Consortium agreement and the Agreement between MIAA and the Consortium, MIAA has no obligation to have the terms of the Consortium agreement enforced, MIAA not being privy to it. Lastly, BF even admits that the Consortium agreement does not embody any specific agreement between the parties as the agreement amongst them was couched in general terms. In fact, the only clear agreement among the members was that Tokyu is the appointed lead partner.

As to the issue of estoppel, we agree with the CA that BF is now estopped from re-impleading MIAA. While the Rules allow amendments to pleadings by leave of court, in our view, in this case, it would be an affront to the judicial process to first include a party as defendant, then voluntarily drop the party off from the complaint, only to ask that it be re-impleaded. When BF dropped MIAA as defendant in its first amended complaint, it had performed an affirmative act upon which MIAA based its subsequent actions, *e.g.* payments to Tokyu, on the faith that there was no cause of action against it, and so on. BF cannot now deny that it led MIAA to believe BF had no cause of action against it only to make a complete turn-about and renege on the effects of dropping MIAA as a party-defendant months after, to the prejudice of MIAA. MIAA had all reasons

to rely on the CA's decision that it was no longer a party to the suit. Under the doctrine of estoppel, an admission or representation is conclusive on the person making it and cannot be denied or disproved as against the person relying on it.[13] A person, who by deed or conduct has induced another to act in a particular manner, is barred from adopting an inconsistent position, attitude, or course of conduct that thereby causes loss or injury to another.[14]

Finally, we tackle the issue of *res judicata*. Did the decision in CA-G.R. SP No. 43133 constitute a bar to CA-G.R. SP No. 67765? For *res judicat*a to exist, the following elements must be present: (1) the judgment must be final; (2) the court that rendered judgment must have jurisdiction over the parties and the subject matter; (3) it must be a judgment on the merits; and (4) there must be between the first and second actions identity of parties, subject matter, and cause of action. There is no dispute on the presence of the first three elements enumerated above. However, the same cannot be said regarding the last element. As BF has correctly pointed out, CA-G.R. SP No. 43133 was filed by Tokyu against the trial judge and BF, while CA-G.R. SP No. 67765 was filed by MIAA in which Tokyu is not even a party. It is also apparent that the subject matter in CA-G.R. SP No. 43133 was the propriety of the TRO granted by the RTC, and the subject matter in CA-G.R. SP No. 67765 is the propriety of including MIAA as a party-defendant in Civil Case No. 66060. While it may be true that both cases touched on MIAA as a party-defendant, we are unable to say that the subject matters of CA-G.R. SP No. 43133 and CA-G.R. SP No. 67765 are identical. As to the cause of action, CA-G.R. SP No. 43133 is the off-shoot of the alleged abuse of discretion of the trial judge in issuing the TRO, while CA-G.R. SP No. 67765 is the result of the alleged grave abuse of discretion of the trial court judge in allowing MIAA to be

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[13] *Luzon Development Bank v. Angeles*, G.R. No. 150393, July 31, 2006, 497 SCRA 264, 270.

[14] *Caldo v. Caldo-Atienza*, G.R. No. 164453, March 28, 2006, 485 SCRA 504, 511; citing *Cruz v. Court of Appeals*, 354 Phil. 1036, 1054 (1998).

re-impleaded as a party-defendant. Lacking the identity of parties, subject matter, and cause of action, the doctrine of *res judicata* is inapplicable. This, however, should not detract from the fact that the CA was correct in granting the petition.

WHEREFORE, we *DENY* this petition and *AFFIRM* the CA's Decision dated January 9, 2004 and Resolution dated July 13, 2004 in CA-G.R. SP No. 67765.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 167765. June 30, 2008]

COMMISSIONER OF INTERNAL REVENUE, *petitioner,* *vs.* **FMF DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. TAXATION; INTERNAL REVENUE TAXES; PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION; THREE-YEAR PRESCRIPTIVE PERIOD ON THE ASSESSMENT OF TAXES; EXPLAINED.— Under Section 203 of the NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.

2. ID.; ID.; ID.; ID.; EXCEPTION.— An exception to the three-year prescriptive period on the assessment of taxes is Section 222 (b) of the NIRC, which provides: "x x x x (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. x x x x" The above provision authorizes the extension of the original three-year period by the execution of a valid waiver, where the taxpayer and the BIR agreed in writing that the period to issue an assessment and collect the taxes due is extended to an agreed upon date. Under RMO No. 20-90, which implements Sections 203 and 222 (b), the following procedures should be followed: "1. The waiver must be in the form identified as Annex "A" hereof…. 2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. **The date of such acceptance by the Bureau should be indicated.** Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed. The following revenue officials are authorized to sign the waiver. A. In the National Office x x x 3. **Commissioner For tax cases involving more than ₱1M** B. In the Regional Offices 1. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount. x x x 4. The **waiver must be executed in three (3) copies,** the original copy to be attached to the docket of the case, **the second copy for the taxpayer** and the third copy for the Office accepting the waiver. **The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy. 5. The foregoing procedures shall be strictly followed.** Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with."

3. ID.; ID.; ID.; ID.; A WAIVER OF THE STATUTE OF LIMITATIONS IS NOT A WAIVER OF THE RIGHT TO INVOKE THE DEFENSE OF PRESCRIPTION; CASE AT BAR.— In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, we ruled that a waiver of the statute of limitations under the NIRC, to a certain extent being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed. The waiver of the statute of limitations does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally, particularly where the language of the document is equivocal. Notably, in this case, the waiver became unlimited in time because it did not specify a definite date, agreed upon between the BIR and respondent, within which the former may assess and collect taxes. It also had no binding effect on respondent because there was no consent by the Commissioner. On this basis, no implied consent can be presumed, nor can it be contended that the concurrence to such waiver is a mere formality.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Salvador Guevarra and Associates for respondent.

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* is the Decision[1] and Resolution[2] dated January 31, 2005 and April 14, 2005, respectively, of the Court of Appeals in CA- G.R. SP No. 79675, which affirmed the Decision[3] dated March 20, 2003 of the Court of Tax Appeals (CTA) in C.T.A. Case No. 6153. In effect, the Court of Appeals cancelled the assessment notice issued by the Bureau of Internal Revenue (BIR) for the deficiency income and withholding taxes for the

[1] *Rollo*, pp. 58-71. Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Romeo A. Brawner and Magdangal M. De Leon concurring.

[2] *Id*. at 88.

[3] *Id*. at 179-196.

taxable year 1995 of respondent FMF Development Corporation (FMF), a domestic corporation organized and existing under Philippine laws.

The facts are as follows:

On April 15, 1996, FMF filed its Corporate Annual Income Tax Return for taxable year 1995 and declared a loss of ₱3,348,932. On May 8, 1996, however, it filed an amended return and declared a loss of ₱2,826,541. The BIR then sent FMF pre-assessment notices, all dated October 6, 1998, informing it of its alleged tax liabilities.[4] FMF filed a protest against these notices with the BIR and requested for a reconsideration/reinvestigation.

On January 22, 1999, Revenue District Officer (RDO) Rogelio

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[4] *Id*. at 59-60.

DEFICIENCY INCOME TAX

Net Income per investigation		(₱2,826,541.00)
Add: Unallowable Deductions/Additional Income		
Total Expenses	₱10,912,669.00	
Disallowed Portion	x 81%	
Total Adjustments		8,839,261.89
Net Income per investigation		₱6,012,720.89
Less: Personal and Additional Exemptions		- 0 -
		₱6,012,720.89
Income Tax Due (35%)		₱2,104,452.00
Less: Amount already assessed		154,995.30
TOTAL TAX DUE (excl. increments)		**₱2,461,820.87**

A. INCREMENTS ON LATE PAYMENT OF WITHHOLDING TAX ON COMPENSATION (dividend bonus payable)

Basic Tax	₱304,891.10
25% surcharge (Sec. 248)	87,016.20
Interest (1/26/96 to 11/7/96) (Sec. 249)	+ 60,343.02
Compromise Penalty (Sec. 254)	16,000.00
TOTAL	**₱163,359.22**

Zambarrano informed FMF that the reinvestigation had been referred to Revenue Officer Alberto Fortaleza. He also advised FMF of the informal conference set on February 2, 1999 to allow it to present evidence to dispute the BIR assessments.

On February 9, 1999, FMF President Enrique Fernandez executed a waiver of the three-year prescriptive period for the BIR to assess internal revenue taxes, hence extending the assessment period until October 31, 1999. The waiver was accepted and signed by RDO Zambarrano.

On October 18, 1999, FMF received amended pre-assessment notices[5] dated October 6, 1999 from the BIR. FMF immediately filed a protest on November 3, 1999 but on the same day, it received BIR's Demand Letter and Assessment Notice No. 33-1-00487-95 dated October 25, 1999 reflecting FMF's alleged deficiency taxes and accrued interests, as follows:

Income Tax Assessment	₱1,608,015.50
Compromise Penalty on Income Tax Assessment	20,000.00
Increments on Withholding Tax on Compensation	184,132.26
Compromise Penalty on Increments on Withholding Tax on Compensation	16,000.00

B. INCREMENTS ON LATE PAYMENT OF EXPANDED WITHHOLDING TAX ON MANAGEMENT FEE

Management fee per financial statement	₱4,104,800.00
Less: Management fee subj. to EWT (1995)	260,640.00
Mgmt. Fee not subject to EWT until 10-15-96	₱3,844,160.00
Basic Tax (10%)	₱ 384,416.00
25% surcharge (Sec. 248)	96,104.00
Interest (1-26-96 to 10-15-96) (Sec. 249)	69,942.35
Compromise Penalty (Sec. 254)	16,000.00
Total	**₱ 182,046.35**
INCREMENTS DUE (A + B)	**₱ 345,405.57**

[5] *Id*. at 61-62.

Net Income per Investigation	(₱2,826,541.00)
Add: Adjustments/Disallowances	
Management Fees-Not necessary (Sec. 29)	4,104,800.00
Employee Benefits-unsupported (Sec. 29)	58,611.55

Increments on Withholding Tax on Management Fees	209,550.49
Compromise Penalty on Increments on Withholding Tax on Management Fees	16,000.00
TOTAL	**₱2,053,698.25**[6]

Salaries and Wages-No EWT (Sec. 29)	1,059,118.50
Withholding Tax-unaccounted (Sec. 28)	348,813.13
Cash Overdraft-unaccounted (Sec. 28)	254,853.96
Transportation Exp.-unaccounted (Sec. 28)	22,390.16
Representation Exp.-unaccounted (Sec. 29)	14,772.59
Miscellaneous Exp.-unsupported (Sec. 29)	69,404.65
	5,932,764.44
Net Taxable Income	₱3,106,223.44
Income Tax Due Thereon	₱1,087,178.20
Less Tax Credit/Paid	154,995.30
Income Tax Due Thereon (excluding increments)	**₱ 932,182.90**

A. Increments on Late Payment of Withholding Tax on Compensation (dividend bonus payable)

Basic	₱ 304,891.10
25% surcharge (Sec. 248)	87,016.20
Interest (1/26/96 to 11/7/96) (Sec. 249)	60,343.02
Compromise Penalty (Sec. 254)	16,000.00
Total	₱ 163,359.22

B. Increments on Late Payment of Expanded Withholding Tax on Management Fee

Management Fee per financial Statement	₱4,104,800.00
Less: Management Fee subj. to EWT (1995)	260,640.00
Difference (Mgmt. fee subj. to EWT until 10-15-96)	₱3,844,160.00
Basic Tax (₱3,844,160.00 x 10%)	₱384,416.00
25% Surcharge (Sec. 248)	96,104.00
Interest (1-2-96 to 10-15-96) (Sec. 249)	69,942.35
Compromise Penalty (Sec. 254)	16,000.00
Total	₱182,046.35

TOTAL INCREMENTS ON LATE PAYMENTS (A+B) ₱345,405.57

[6] *Id*. at 63.

On November 24, 1999, FMF filed a letter of protest on the assessment invoking, *inter alia*,[7] the defense of prescription by reason of the invalidity of the waiver. In its reply, the BIR insisted that the waiver is valid because it was signed by the RDO, a duly authorized representative of petitioner. It also ordered FMF to immediately settle its tax liabilities; otherwise, judicial action will be taken. Treating this as BIR's final decision, FMF filed a petition for review with the CTA challenging the validity of the assessment.

On March 20, 2003, the CTA granted the petition and cancelled Assessment Notice No. 33-1-00487-95 because it was already time-barred. The CTA ruled that the waiver did not extend the three-year prescriptive period within which the BIR can make a valid assessment because it did not comply with the procedures laid down in Revenue Memorandum Order (RMO) No. 20-90.[8] *First*, the waiver did not state the dates of execution and acceptance of the waiver, by the taxpayer and the BIR, respectively; thus, it cannot be determined with certainty if the waiver was executed and accepted within the prescribed period. *Second*, the CTA also found that FMF was not furnished a copy of the waiver signed by RDO Zambarrano. *Third*, the CTA pointed out that since the case involves an amount of more than ₱1 million, and the period to assess is not yet about to prescribe, the waiver should have been signed by the

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

Nullity of the Assessment Notice for want of legal or factual basis:

a) That the taxpayer was not informed in writing of the law and facts on which the assessment was based;

b) The [BIR] erred in disallowing business expenses as deductions (management fees, cash overdraft, salaries, *etc*.)

c) That withholding tax should only be upon actual payment of compensation and not upon its accrual; and

d) That the withholding tax on management fees paid to another corporation (*i.e*., IPCP) should be only 5% and not 10%.

[8] SUBJECT: PROPER EXECUTION OF THE WAIVER OF THE STATUTE OF LIMITATIONS UNDER THE NATIONAL INTERNAL REVENUE CODE, dated April 4, 1990.

Commissioner of Internal Revenue, and not a mere RDO.[9] The Commissioner of Internal Revenue filed a motion for reconsideration, but it was denied.

On appeal to the Court of Appeals, the decision of the CTA was affirmed. Sustaining the findings of the CTA, the Court of Appeals held that the waiver did not strictly comply with RMO No. 20-90. Thus, it nullified Assessment Notice No. 33-1-00487-95. The *fallo* of the Court of Appeals' decision reads:

> WHEREFORE, finding the instant petition not impressed with merit, the same is **DENIED DUE COURSE** and is hereby **DISMISSED.** No costs.
>
> SO ORDERED.[10]

The Commissioner of Internal Revenue sought reconsideration, but it was denied.

Hence the instant petition, raising the following issues:

> I.
>
> WHETHER OR NOT RESPONDENT'S WAIVER OF THE STATUTE OF LIMITATIONS WAS VALIDLY EXECUTED.
>
> II.
>
> WHETHER O[R] NOT THE PERIOD TO ASSESS HAD PRESCRIBED.
>
> III.
>
> WHETHER OR NOT THE COURT OF APPEALS CORRECTLY DISREGARDED PETITIONER'S SUBSTANTIVE ARGUMENT.[11]

Essentially, the present controversy deals with the validity of the waiver and whether it validly extended the original three-year prescriptive period so as to make Assessment Notice No. 33-1-00487-95 valid. The basic questions to be resolved

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[9] *Rollo,* pp. 191-195.

[10] *Id.* at 70.

[11] *Id.* at 606.

therefore are: (1) Is the waiver valid? and (2) Did the three-year period to assess internal revenue taxes already prescribe?

Petitioner contends that the waiver was validly executed mainly because it complied with Section 222 (b)[12] of the National Internal Revenue Code (NIRC). Petitioner points out that the waiver was in writing, signed by the taxpayer and the Commissioner, and executed within the three-year prescriptive period. Petitioner also argues that the requirements in RMO No. 20-90 are merely directory; thus, the indication of the dates of execution and acceptance of the waiver, by the taxpayer and the BIR, respectively, are not required by law. Petitioner adds that there is no provision in RMO No. 20-90 stating that a waiver may be invalidated upon failure of the BIR to furnish the taxpayer a copy of the waiver. Further, it contends that respondent's execution of the waiver was a renunciation of its right to invoke prescription. Petitioner also argues that the government cannot be estopped by the mistakes committed by its revenue officer in the enforcement of RMO No. 20-90.

On the other hand, respondent counters that the waiver is void because it did not comply with RMO No. 20-90. Respondent assails the waiver because (1) it was not signed by the Commissioner despite the fact that the assessment involves an amount of more than ₱1 million; (2) there is no stated date of acceptance by the Commissioner or his duly authorized representative; and (3) it was not furnished a copy of the BIR-accepted waiver. Respondent also cites *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[13] and contends that

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[12] Section 222. ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –***

x x x x x x x x x

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

x x x x x x x x x

[13] G.R. No. 162852, December 16, 2004, 447 SCRA 214.

the procedures in RMO No. 20-90 are mandatory in character, precisely to give full effect to Section 222 (b) of the NIRC. Moreover, a waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription.[14]

After considering the issues and the submissions of the parties in the light of the facts of this case, we are in agreement that the petition lacks merit.

Under Section 203[15] of the NIRC, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the government must assess internal revenue taxes on time so as not to extend indefinitely the period of assessment and deprive the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.[16]

An exception to the three-year prescriptive period on the assessment of taxes is Section 222 (b) of the NIRC, which provides:

x x x x x x x x x

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the

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[14] *Id*. at 224-225, 227.

[15] Section 203. ***Period of Limitation Upon Assessment and Collection.*** **–** Except as provided in Section 222, ***internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return***, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed…. (Emphasis supplied.)

[16] See *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, *supra* note 13, at 225.

taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

x x x x x x x x x

The above provision authorizes the extension of the original three-year period by the execution of a valid waiver, where the taxpayer and the BIR agreed in writing that the period to issue an assessment and collect the taxes due is extended to an agreed upon date. Under RMO No. 20-90, which implements Sections 203 and 222 (b), the following procedures should be followed:

1. The waiver must be in the form identified as Annex "A" hereof….

2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.

Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. **The date of such acceptance by the Bureau should be indicated.** Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

3. The following revenue officials are authorized to sign the waiver.

A. In the National Office

x x x x x x x x x

3. **Commissioner For tax cases involving more than ₱1M**

B. In the Regional Offices

1. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount.

x x x x x x x x x

4. The **waiver must be executed in three (3) copies**, the original copy to be attached to the docket of the case, **the second copy for the taxpayer** and the third copy for the Office accepting the waiver. **The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.**

5. **The foregoing procedures shall be strictly followed.** Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with. (Emphasis supplied.)

Applying RMO No. 20-90, the waiver in question here was defective and did not validly extend the original three-year prescriptive period. Firstly, it was not proven that respondent was furnished a copy of the BIR-accepted waiver. Secondly, the waiver was signed only by a revenue district officer, when it should have been signed by the Commissioner as mandated by the NIRC and RMO No. 20-90, considering that the case involves an amount of more than ₱1 million, and the period to assess is not yet about to prescribe. Lastly, it did not contain the date of acceptance by the Commissioner of Internal Revenue, a requisite necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period. Bear in mind that the waiver in question is a bilateral agreement, thus necessitating the very signatures of both the Commissioner and the taxpayer to give birth to a valid agreement.[17]

Petitioner contends that the procedures in RMO No. 20-90 are merely directory and that the execution of a waiver was a renunciation of respondent's right to invoke prescription. We do not agree. RMO No. 20-90 must be strictly followed. In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,[18] we ruled that a waiver of the statute of limitations under the NIRC, to a certain extent being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed. The waiver of the statute of limitations does not mean that the taxpayer

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[17] *Id.* at 228-229.

[18] *Supra* note 13.

relinquishes the right to invoke prescription unequivocally, particularly where the language of the document is equivocal.[19] Notably, in this case, the waiver became unlimited in time because it did not specify a definite date, agreed upon between the BIR and respondent, within which the former may assess and collect taxes. It also had no binding effect on respondent because there was no consent by the Commissioner. On this basis, no implied consent can be presumed, nor can it be contended that the concurrence to such waiver is a mere formality.[20]

Consequently, petitioner cannot rely on its invocation of the rule that the government cannot be estopped by the mistakes of its revenue officers in the enforcement of RMO No. 20-90 because the law on prescription should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law. To the Government, its tax officers are obliged to act promptly in the making of assessment so that taxpayers, after the lapse of the period of prescription, would have a feeling of security against unscrupulous tax agents who will always try to find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of a possible opportunity to harass even law-abiding businessmen. Without such legal defense, taxpayers would be open season to harassment by unscrupulous tax agents.[21]

In fine, Assessment Notice No. 33-1-00487-95 dated October 25, 1999, was issued beyond the three-year prescriptive period. The waiver was incomplete and defective and thus, the three-year prescriptive period was not tolled nor extended and continued to run until April 15, 1999. Even if the three-year period be counted from May 8, 1996, the date of filing of the amended return, assuming the amended return was substantially

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[19] *Id*. at 227.

[20] *Id*. at 229, citing *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 115712, February 25, 1999, 303 SCRA 614, 620-622.

[21] See *Republic of the Phils. v. Ablaza*, 108 Phil. 1105, 1108 (1960).

different from the original return, a case which affects the reckoning point of the prescriptive period,[22] still, the subject assessment is definitely considered time-barred.

WHEREFORE, the petition is *DENIED* for lack of merit**.** The assailed Decision and Resolution dated January 31, 2005 and April 14, 2005, respectively, of the Court of Appeals in CA-G.R. SP No. 79675 are hereby *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 171042. June 30, 2008]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **LYNNETTE CABANTUG-BAGUIO,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; VOID MARRIAGES; PETITIONS FOR DECLARATION OF NULLITY OF MARRIAGE BASED ON PSYCHOLOGICAL INCAPACITY; PSYCHOLOGICAL INCAPACITY; ELUCIDATED.— Article 36 of the Family Code x x x provides that "[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

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[22] See B. ABAN, *LAW OF BASIC TAXATION IN THE PHILIPPINES* 271 (Rev. Ed., 2001), citing *Commissioner of Internal Revenue v. Phoenix Assurance Co., Ltd.,* No. L-19727, May 20, 1965, 14 SCRA 52, 59.

its solemnization." x x x *"Psychological incapacity"* has been elucidated on as follows: The term "*psychological incapacity*" 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 the marriage. It is a malady so grave and so 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 characteristics associated with certain personality disorders, there is hardly a doubt that the intendment 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.** x x x [T]he root cause must be identified as a psychological illness, and its incapacitating nature must be fully explained x x x. The mere showing of "irreconcilable differences" and "conflicting personalities" does not constitute psychological incapacity. Nor does failure of the parties to meet their responsibilities and duties as married persons. It is essential that the parties to a marriage must be shown to be *insensitive to* or *incapable* of meeting their duties and responsibilities due to some psychological (not physical) illness, which insensitivity or incapacity should have been existing at the time of the celebration of the marriage even if it becomes manifest only after its solemnization. x x x It is downright incapacity, not refusal or neglect or difficulty, much less ill will, which renders a marriage void on the ground of psychological incapacity.

2. ID.; ID.; ID.; ID.; ID.; NATURE.— In fine, for psychological incapacity to render a marriage void *ab initio*, it must be characterized by "(a) Gravity – It must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage; (b) Juridical Antecedence – It must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and (c) Incurability – it must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved."

3. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; IN PETITIONS FOR DECLARATION OF NULLITY OF MARRIAGE, THE BURDEN OF PROOF TO SHOW THE

NULLITY OF MARRIAGE LIES ON THE PLAINTIFF.— The Constitution sets out a policy of protecting and strengthening the family as the basic social institution and marriage as the foundation of the family. Marriage, an inviolable institution protected by the State, cannot be dissolved at the whim of the parties. In petitions for the declaration of nullity of marriage, the burden of proof to show the nullity of marriage lies on the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Singco and Cagara Law Offices for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

From the Decision of the Court of Appeals which affirmed that of the Regional Trial Court of Cebu, Branch 24 nullifying the marriage of respondent, Lynnette Cabantug-Baguio (Lynnette), to Martini Dico Baguio (Martini), the Republic through the Office of the Solicitor General filed the present petition for review.

Lynnette and Martini contracted marriage on August 12, 1997. Less than three years later or on October 12, 2000, Lynnette filed before the Regional Trial Court (RTC) of Cebu City a complaint[1] for declaration of nullity of marriage, docketed as Civil Case No. CEB 25700, on the ground of Martini's psychological incapacity to comply with the essential marital duties and obligations under Articles 68-70[2] of the Family Code.

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[1] Records, pp. 1-4.

[2] Article 68:

The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

Despite service of summons upon Martini, he never filed any responsive pleading to the complaint.[3] No collusion was established between the parties.[4] Upon the authority of the Solicitor General, the provincial prosecutor of Cebu City appeared in the case under the former's supervision and control.[5]

From the deposition of Lynnette taken before Branch Clerk of Court Atty. Monalila S. Tecson on January 10, 2001,[6] the following are gathered:

Lynnette and Martini, a seaman working overseas, became pen pals in 1995.

In 1996, the two met in person during Martini's vacation after the expiration of his contract on board an ocean-going vessel.

Article 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.

Article 70:

The spouses are jointly responsible for the support of the family. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income and fruits of their separate properties.

[3] Records, pp. 9-10.

[4] January 23, 2001 Investigation Report of Prosecutor II Enriqueta L. Belarmino of the Cebu City Prosecutor's Office bearing the approval of the Officer-in-Charge, *id*. at 17-18.

[5] *Id*. at 21-23.

[6] Exhibit "C", *id*. at 25-37. The motion to take deposition by oral examination, filed on December 21, 2000, on the ground that Lynnette was about to leave the Philippines on the second week of January 2001 in order to comply with the deadline set by her prospective employer in the United States to report for work on said date, was granted by the trial court by Order of January 2, 2001 (Exhibit "D", records, p. 14).

On August 12, 1997, Martini, then 32, and Lynnette, then 34, contracted marriage,[7] following which they moved to the house of Lynnette's parents at 33-B La Guardia Extension, Lahug, Cebu City. Martini, however, stayed there only on weekends, and during weekdays he stayed with his parents in Looc, Lapu-lapu City. While Lynnette suggested that the two of them stay in the house of Martini's parents, Martini disagreed, claiming that there were many already living with his parents.

Lynnette noticed that every time she conversed with Martini, he always mentioned his mother and his family, and she soon realized that he was a "mama's boy." And she noticed too that when she would call up Martini at his parent's house and his mother was the one who answered the call, she would deny that he was around.

In 1998, after Martini again returned following an almost 10-month contract overseas,[8] he stayed with Lynnette. When in 1999 Martini again disembarked, he stayed with his parents.

On the insistence of his mother, Martini's monetary allotment was shared equally between her and Lynnette.

Lynnette had since January 1999 not heard from Martini. And since April 1999, Lynnette stopped receiving her share of the allotment, drawing her to inquire from Martini's employer who informed her that he had already disembarked on even month. She soon found out that Martini was in Alabang, Muntinlupa.

When Lynnette and Martini finally met in Cebu City, he told her that they are not compatible and should just part ways.

The last time the couple talked was on October 14, 1999 when Martini was at the Ninoy Aquino International Airport (NAIA) about to depart for abroad. Since then, Martini never communicated with Lynnette. On investigation, Lynnette learned that Martini declared in his employment records that he was "single" and named his mother as principal allottee.[9]

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[7] Exhibit "A", records, p. 43.

[8] *Vide* TSN, January 8, 2001, pp. 6-7.

[9] Records, p. 44.

Hence, Lynnette's filing of the complaint for declaration of nullification of marriage.

Aside from her deposition,[10] Lynnette presented her Certificate of Marriage,[11] Martini's undated Seafarer Information Sheet,[12] the letter of clinical psychologist Dr. Andres S. Gerong (Dr. Gerong) to Martini requesting for a personal interview,[13] Dr. Gerong's testimony,[14] and the Psychological Evaluation Report[15] prepared by Dr. Gerong after his interview of Lynnette and her sister Dr. Rosemarie Sistoza.[16]

In the Psychological Evaluation Report, Dr. Gerong noted as follows:

1. The couples [*sic*] were married on August 12, 1997 in Danao City, Cebu[;]
2. After the wedding the couple stayed at the petitioner's residence, but the defendant would always go home to his parents in Looc, Lapu-lapu City;
3. Defendant did not show any directions to establish their home, [is] happy-go-lucky, and would just see the plaintiff for his physical and sexual needs;
4. Plaintiff felt being used, exploited, uncared for, taken for granted, abandoned;
5. Defendant's parents appeared to control the son to the extent of meddling [with] the finances coming from the income as a seaman;
6. Defendant never showed respect for his parents-in-law;

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[10] *Supra* note 8 at 1-12.

[11] Exhibit "A", records, p. 43.

[12] Exhibit "B", *id*. at 44.

[13] Exhibit "E", *id*. at 45.

[14] TSN, June 19, 2001, pp. 4-9.

[15] Exhibit "F", records, pp. 46-47.

[16] TSN, June 19, 2001, pp. 5-6.

7. Parents of the defendant insisted [on] a co-allot[ment without] any protestations from the plaintiff who has been generous all the time;

8. Defendant remained immature, could not stand by his wife and would still depend upon the decisions of his parents and without any personal directions as to what to do with his family;

9. Strictly speaking, the couple never really live[d] together as husband and wife like any ordinary couple[17] (underscoring supplied),

and concluded that

Defendant shows immature personality disorder, dependency patterns, and self-centered motives. Th[ese are] the core personality dysfunctions noted and have been exaggeratedly expressed which are detrimental to the familial well-being;

The situation is serious, grave, existing already during the adolescent period, and incurable because personality and character are stable whether or not it is normal and adaptive.

x x x x x x x x x

The defendant is psychologically incapacitated to comply with the essential obligations in marriage and family.[18] (Underscoring supplied)

Expounding on his findings, Dr. Gerong testified, thus:

ATTY. SINGCO: (To witness)

Q: In gist, what were your findings as to the psychological capacity or incapacity of defendant Martini Dico Baguio?

A: x x x [T]o sum it up, the synopsis of the findings, the defendant husband **appeared** to be [a] dependent person to his family and unable to [sever . . .] the connection being a married man and to establish a domicile for his family and to support his family.

x x x x x x x x x

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[17] Records, p. 46.

[18] *Id.* at 47.

ATTY. SINGCO: (To witness)

Q: Dr. Gerong, how grave or serious is the psychological incapacity of the defendant?

A: Being, I would say in our popular parlance, "mama's boy" as alleged, that will endanger the integrity of the marriage because instead of establishing a permanent conjugal relationship with the wife the husband-defendant would remain dependent on his family.

x x x x x x x x x

ATTY. SINGCO: (To witness)

Q: Okay, in terms of the chances that this incapacity will be cured, what are the chances, if any?

A: As to curability, since I am using a clinical term ["]personality or character disorder or dysfunction["] and as I have said many times that the personality is stable and pervasive over time. And **if** it is established as early as adolescent period and up to the present it has remained persistent thru the years and therefore it's a permanent trait of the defendant-husband, therefore it's incurable.[19] (Emphasis and underscoring supplied)

By Decision[20] of January 2, 2002, Branch 24 of the Cebu City RTC found Martini psychologically incapacitated to comply with the essential marital obligations of marriage, and that the same incapacity existed "at the time the couple exchanged their marriage vows."

The Solicitor General, via appeal,[21] challenged before the Court of Appeals the trial court's decision

. . . DECLARING THE PARTIES' MARRIAGE NULL AND VOID, DEFENDANTS MARTINI DICO BAGUIO'S PSYCHOLOGICAL INCAPACITY NOT HAVING BEEN PROVEN TO EXIST.[22]

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[19] TSN, June 19, 2001, pp. 6-7.

[20] Records, pp. 71-76.

[21] *Id.* at 78.

[22] CA *rollo*, p. 38.

By Decision[23] of January 13, 2005, the Court of Appeals affirmed the trial court's decision. Addressing the Solicitor General's argument that Dr. Gerong's testimony failed to establish the cause of Martini's psychological incapacity and to show that it existed at the inception of the marriage,[24] the Court of Appeals held:

> x x x [I]n contradiction of the Republic's contention and its supporting above-cited doctrine, this Court cites the more recent jurisprudence laid down in the case of *Marcos v. Marcos*,[25] in which the High Tribunal has foregone with the requirement that the defendant should be examined by a physician or psychologist as a *conditio sine qua non* for declaration of nullity of marriage. It held thus:
>
> "*The x x x guidelines do not require that a physician examine the person to be declared psychologically incapacitated x x x – [w]hat is important is the presence of evidence that can adequately establish the party's psychological condition, [f]or indeed, if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination for the person concerned need not be resorted to.*"[26]
>
> Therefore, **the oral deposition [of Lynette] and the Psychological Evaluation Report** by Dr. Andres S. Gerong, Ph.D. as Clinical Psychologist declaring the defendant psychologically incapacitated to comply with the essential obligations in marriage and family life was sufficient for US to believe that **undeniably the defendant suffers psychological incapacity**.[27] (Italics in the original; emphasis and underscoring supplied)

On the Solicitor General's contention that Martini's abandonment of Lynnette is a ground for legal separation and

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[23] Penned by Court of Appeals Associate Justice Arsenio J. Magpale, with the concurrences of Associate Justices Mariflor P. Punzalan Castillo and Ramon M. Bato, Jr. CA *rollo*, pp. 152-163.

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

[25] 397 Phil. 840 (2000).

[26] *Id*. at 850; italics added in CA *rollo*, p. 160.

[27] *Id*. at 160-161.

not for declaration of nullity of marriage,[28] and that Martini's alleged personality traits are not of the nature contemplated by Article 36 of the Family Code,[29] the Court of Appeals declared:

> x x x WE note that it was not the abandonment which was the ground relied upon by the plaintiff-appellee but the defendant's being a mama's boy.[30]
>
> x x x x x x x x x x x x
>
> Being a Mama's Boy, his **uncaring attitude towards his wife, declaring himself single and naming his mother as the beneficiary, spending more time with his family** and less with his wife and ultimately, abandoning her manifested defendant's psychological incapacity. These, to sum it all, to US are manifestations of severe psychological disorder rather than a mere obstinate refusal to comply with his marital obligations.[31] (Emphasis and underscoring supplied)

The Solicitor General's Motion for Reconsideration[32] having been denied by the Court of Appeals,[33] the present petition[34] was filed, faulting the appellate court to have gravely erred:

I

. . . IN RULING THAT THE PSYCHOLOGICAL EVALUATION AND TESTIMONY OF DR. ANDRES GERONG THAT DEFENDANT IS PSYCHOLOGICALLY INCAPACITATED HAVE LEGAL BASIS.

II

. . . IN FAILING TO TAKE INTO CONSIDERATION THAT ABANDONMENT BY ONE'S SPOUSE IS ONLY A GROUND FOR LEGAL SEPARATION AND NOT FOR THE DECLARATION OF NULLITY OF MARRIAGE.

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[28] *Id*. at 56.

[29] *Id*. at 46-56.

[30] *Id*. at 158.

[31] *Id*. at 159.

[32] *Id*. at 165-178.

[33] *Id*. at 191-192.

[34] *Rollo*, pp. 25-55.

III

. . . IN RULING THAT DEFENDANT'S BEING A MAMA'S BOY IS A MANIFESTATION OF A PSYCHOLOGICAL DISORDER.[35] (Italics in the original)

The Solicitor General's arguments persuade.

The Solicitor General argued as follows:

Dr. Gerong merely testified that defendant's alleged psychological incapacity (being a mama's boy) began in his adolescent stage and has remained persistent through the years (p. 20, Brief). Dr. Gerong did not detail this finding. He made no effort to look into and testify on defendant's past life, attitudes, habits and character to explain defendant's alleged psychological incapacity *as required* by this Honorable Court in the case of ***Republic vs. Court of Appeals and Molina***, 268 SCRA 198 (1998).

Again, while it is true that Dr. Gerong testified that defendant's alleged defect is incurable, he failed to explain why it is clinically or medically permanent. His only basis for saying that it is incurable is his finding that defendant has been a mama's boy since his adolescence (p. 7, TSN, June 19, 2001). During the trial, Dr. Gerong also failed to explain in detail why the defendant's alleged psychological incapacity is grave and to discuss what kind of disorder defendant is suffering from.[36] (Emphasis in the original; italics and underscoring supplied)

On the doctor's findings in his Report, the Solicitor General argued:

The said findings *reveal nothing in defendant's* ***past*** *life and acts* that shows a behavior pattern that would prove his alleged psychological incapacity. Dr. Gerong's finding that defendant's parents are too controlling because they were made co-allottees of the remittances sent by their son does not prove the alleged psychological incapacity of defendant. The report likewise *failed to explain* the gravity of the alleged psychological incapacity of

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[35] *Id*. at 28-29.

[36] *Rollo*, pp. 38-39.

defendant and state whether or not it incapacitates defendant from carrying out the normal and ordinary duties of marriage and family. There is likewise no explanation by Dr. Gerong why he found defendant's incapacity to be incurable. This Honorable Court has held that such illness must be shown to be grave enough to bring about the disability of the party to assume the essential obligation of the marriage. Such incapacity must also be shown to be medically or clinically permanent or incurable and grave [***Republic vs. Court of Appeals and Molina***, *supra*]. These Dr. Gerong failed to do.

Even when the rules have been relaxed and the personal examination of the defendant by a psychiatrist or psychologist is no longer mandatory for the declaration of nullity of marriage under Article 36 of the Family Code, the totality of evidence presented during trial by private respondent must **still *prove* the gravity, juridical antecedence, and incurability of the alleged psychological incapacity** (***Marcos v. Marcos***, 343 SCRA 755 [2000]; ***Santos v. Court of Appeals***, 240 SCRA 20 [1995]). (Emphasis in the original; italics and underscoring supplied)

In fine, the Solicitor General concluded that there was no showing that Martini's alleged personality traits are of the nature contemplated by Article 36 of the Family Code and the rulings of this Court in the cited cases,[37] and that Martini's abandonment of Lynnette constitutes only a ground for legal separation but not for declaration of nullity of marriage.[38]

Article 36 of the Family Code on which Lynnette anchors her complaint provides that "[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."

Article 36 must be read in conjunction with the other articles in the Family Code, specifically Articles 35, 37, 38, and 41 which provide different grounds to render a marriage void *ab initio*, as well as Article 45 which dwell on voidable marriages,

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[37] *Id*. at 46-56.

[38] *Id*. at 56.

and Article 55 on legal separation.[39] Care must be observed so that these various circumstances are not to be applied indiscriminately as if the law were indifferent on the matter.[40]

And Article 36 should not be confused with a divorce law that cuts the marital bond at the time the causes therefor manifest themselves, nor 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.[41]

"*Psychological incapacity*" has been elucidated on as follows:

> The term "*psychological incapacity*" 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 the marriage. It is a malady so grave and so 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 characteristics associated with certain personality disorders, there is hardly a doubt that the intendment 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**. x x x [T]he root cause must be identified as a psychological illness, and its incapacitating nature must be fully explained x x x.[42] (Emphasis and underscoring supplied)

The mere showing of "irreconcilable differences" and "conflicting personalities" does not constitute psychological incapacity.[43] Nor does failure of the parties to meet their responsibilities and duties as married persons.

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[39] *Vide Perez-Ferraris v. Ferraris*, G.R. No. 162368, 495 SCRA 396, July 17, 2006, 403-405.

[40] *Id*. at 405 (citation omitted).

[41] *Vide id*. at 405-406 (citations omitted).

[42] *Perez-Ferraris v. Ferraris*, G.R. No. 162368, July 17, 2006, 495 SCRA 396, 400-401.

[43] *Vide Republic v. Court of Appeals*, 335 Phil. 664, 674 (1997).

It is essential that the parties to a marriage must be shown to be *insensitive to* or *incapable* of meeting their duties and responsibilities due to some psychological (not physical) illness,[44] which insensitivity or incapacity should have been existing at the time of the celebration of the marriage even if it becomes manifest only after its solemnization.[45]

In fine, for psychological incapacity to render a marriage void *ab initio*, it must be characterized by

(a) Gravity – It must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage;

(b) Juridical Antecedence – It must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and

(c) Incurability – It must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved.[46]

Dr. Gerong found that Martini's "personality disorders" including his being a "mama's boy" are "serious, grave, existing already during the adolescent period and incurable" and concluded that Martini "appeared" to be dependent upon his family and unable "to establish a domicile for his family and to support his family."

The doctor's findings and conclusion were derived from his interview of Lynnette and her sister and Lynnette's deposition. From Lynnette's deposition, however, it is gathered that Martini's failure to establish a common life with her stems from his refusal, not incapacity, to do so. It is downright incapacity, not refusal or neglect or difficulty, much less ill will,[47] which renders a marriage void on the ground of psychological incapacity. In

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[44] *Ibid*.

[45] *Vide* FAMILY CODE, Article 36; *Republic v. Court of Appeals*, *id*. at 677; *Santos v. Court of Appeals*, 310 Phil. 21, 39 (1995).

[46] *Republic v. Iyoy*, G.R. No. 152577, September 21, 2005, 470 SCRA 508, 521 (citation omitted).

[47] *Vide Republic v. Court of Appeals, supra* note 43 at 678.

another vein, how the doctor arrived at the conclusion, after interviewing Lynnette and considering her deposition, that any such personality disorders of Martini have been existing since Martini's adolescent years has not been explained. It bears recalling that Martini and Lynnette became pen pals in 1995 and contracted marriage in 1997 when Martini was already 32 years old, far removed from adolescent years.

Dr. Gerong's citing of Martini's appointment of his mother as a beneficiary and his representing himself as single in his Seafarer Information Sheet, without more, as indications of Martini's dependence on his family amounting to his incapacity to fulfill his duties as a married man does not logically follow, especially given that the Seafarer's Information Sheet is not even dated[48] and, therefore, there is no certainty that it was prepared after Martini contracted marriage.

While the examination by a physician of a person in order to declare him/her psychological incapacitated is not required, the root cause thereof must be "medically or clinically identified." There must thus be evidence to adequately establish the same. There is none such in the case at bar, however.

The Constitution sets out a policy of protecting and strengthening the family as the basic social institution and marriage as the foundation of the family.[49] Marriage, an inviolable institution protected by the State,[50] cannot be dissolved at the whim of the parties.[51] In petitions for the declaration of nullity of marriage, the burden of proof to show the nullity of marriage lies on the plaintiff.[52] Any doubt should be resolved in favor of the existence

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[48] Exhibit "B", records, p. 44.

[49] *Vide* 1987 CONSTITUTION, Article XV, Sections 1 and 2; *Republic v. Iyoy*, G.R. No. 152577, September 21, 2005, 470 SCRA 508, 526-527.

[50] *Vide* 1987 CONSTITUTION, Article XV, Section 2; FAMILY CODE, Article 1.

[51] *Vide* FAMILY CODE, Article 1; *Perez-Ferraris v. Ferraris*, G.R. No. 162368, July 17, 2006, 495 SCRA 396, 403.

[52] *Republic v. Court of Appeals*, *supra* note 40 at 676.

and continuation of the marriage and against its dissolution and nullity.[53]

As reflected above, Lynnette failed to discharge the *onus probandi*. While the Court sympathizes with her predicament, its first and foremost duty is to apply the law.[54] *Dura lex sed lex*.

Lynnette's marriage with Martini may have failed then, but it cannot be declared void *ab initio* on the ground of psychological incapacity in light of the insufficient evidence presented.[55]

WHEREFORE, the petition is *GRANTED*. The decision of the Court of Appeals dated January 13, 2005 is *REVERSED* and *SET ASIDE*. Civil Case No. CEB 25700 of the Regional Trial Court of Cebu, Branch 24, is *DISMISSED*.

SO ORDERED.

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

EN BANC

[G.R. No. 171481. June 30, 2008]

CORAZON C. BALBASTRO, *appellee, vs.* **COMMISSION ON AUDIT, REGIONAL OFFICE NO. VI,** *appellant.*

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[53] *Ibid*.

[54] *Dedel v. Court of Appeals*, 466 Phil. 226, 235 (2004).

[55] *Vide Perez-Ferraris v. Ferraris*, G.R. No. 162368, July 17, 2006, 495 SCRA 396, 403.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; NOT VIOLATED IN CASE AT BAR.— [P]etitioner cannot protest that she was deprived of due process for not having been apprised of the charges against her since the charges did not go beyond the findings of the audit report, a copy of which she received and to which she responded via her Supplemental Answer. Petitioner's only objection, as it turns out in her Reply, is that she was not able to respond to the charges **specifically enough**. Petitioner has no one to blame but herself, she having had ample time to do the same. Besides, if she really wanted to be more particularly informed of the charges against her, she should have attended the two preliminary conferences set by the Ombudsman, one of the purposes of which being to allow the parties to consider, *inter alia*, whether they "desire a formal investigation to determine the nature of the charge, stipulation of facts, a definition of the issues."

2. ID.; ID.; ID.; ID.; RIGHT TO ASK FOR A FORMAL HEARING AND PRESENT EVIDENCE, DEEMED WAIVED IN CASE AT BAR.— *Apropos* is the ruling in *Alba v. Nitorreda* in which there appears to have been only one preliminary conference scheduled by a Graft Investigating Officer, unlike petitioner's case in which the initial preliminary conference was reset after petitioner and her counsel failed to show up thereat. x x x Petitioner goes on to claim the presence of the following irregularities in the proceedings before the Ombudsman: only one hearing was held, on December 19, 2001, where only Ocate testified; the case is bereft of any record containing the testimonies of complainant and its witnesses; the Ombudsman decided the case without even requiring the complainant and its witnesses to affirm and confirm their affidavits, if any were submitted, and testify on the unsworn and unsigned COA report which was furnished petitioner; and the members of the ICNHS Teachers and Employees Association who authored the letter-complaint were not presented during the formal investigation of the administrative case. Petitioner deprived herself of standing to raise these issues, however, for failing to show up for two consecutive times at the preliminary conference which thus constrained the Ombudsman to deem her to have waived her

right "to ask for a formal hearing and present evidence" and led it to consider the case "for resolution based on the evidence on record as far as she is concerned." The Court sees no reason to disturb this ruling of the Ombudsman.

3. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; THE QUANTUM OF PROOF REQUIRED FOR A FINDING OF GUILT IN ADMINISTRATIVE PROCEEDINGS.— As *Balbastro v. Junio* held, an administrative case also involving herein petitioner: "As to the findings of the Ombudsman, it is settled that in administrative proceedings, the quantum of proof required for a finding of guilt is only substantial evidence – that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. Factual findings of administrative bodies, when supported by substantial evidence, are entitled to great weight and respect on appeal. And a finding of guilt in an administrative case would also have to be sustained for as long as it is supported by substantial evidence that respondent has committed the acts stated in the complaint or formal charge."

APPEARANCES OF COUNSEL

Villa & Partners for appellee.
Gileo S. Alojado for appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner – former principal of the Iloilo City National High School (ICNHS or the school) in Molo, Iloilo City – assails via petition for review the Amended Decision of the Court of Appeals dated January 18, 2006, which affirmed the decision of the Office of the Ombudsman (Visayas) of April 11, 2002 finding her guilty of Grave Misconduct and dismissing her from government service.

Acting on a February 12, 1999 letter-complaint filed by the officers of the ICNHS Teachers and Employees Association,

against petitioner, the Ombudsman-Visayas (Ombudsman), in OMB-VIS-INQ-99-0183, requested respondent Commission on Audit Regional Office No. VI (COA Region VI) to conduct a fact-finding investigation thereon.

Upon order of the COA Region VI, State Auditors Arlene T. Tagonon and Marie Elaine G. Dolorfino conducted a comprehensive audit of the accounts of the ICNHS for the period January 1998 to March 1999 and submitted a report thereon on August 16, 1999. The audit report enumerated the following irregularities which it found to have been probably committed by petitioner and Lydia Ocate, the Disbursing Officer of ICNHS:

1. Late remittance of GSIS, PAG-IBIG and Medicare contributions, thus depriving the employees of availing themselves of loans and receiving benefits granted by these institutions;

2. Non-reflection as government funds in the books of account of miscellaneous fees received by the Principal from the City Government of Iloilo amounting to ₱184,536.76, which funds were spent for purposes other than those for which they were intended;

3. Spending the amount ₱161,150 purportedly for repair of projects which were not implemented and were without appropriation;

4. Disbursement by the school of a total of ₱467,254.55 for costumes of participants in the Ati-Atihan, but only ₱48,275 of which was spent for the designer's fees; and there was no appropriation for the disbursement of the said amount, which was sourced from the school's Personal Services Funds; and

5. Fifty laborers' names appearing as payees in the payrolls significantly differ from those in other payrolls, casting doubt as to the documents' authenticity.[1]

A copy of the audit report was forwarded to the Ombudsman for its evaluation.

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[1] *Rollo*, p. 38.

On the basis of the audit report of COA Region VI, Director Virginia Palanca-Santiago of the Office of the Ombudsman recommended on April 12, 2000 the upgrading of the inquiry in OMB-VIS-INQ-99-0183 into an administrative and criminal case. The administrative case was eventually docketed as OMB-VIS-ADM-2000-0441, and the criminal case as OMB-VIS-CRIM-2000-0494.

On July 7, 2000, COA Region VI, upon the request of Director Palanca-Santiago, submitted to the Ombudsman the complaint-affidavit of auditors Arlene Tagonon and Elaine Dolorfino.

By Order of December 11, 2000 issued in OMB-VIS-ADM-2000-0441 and OMB-VIS-CRIM-2000-0494,[2] "*Commission on Audit, Regional Office No. VI v. Corazon Balbastro and Lydia Ocate,*" the Ombudsman ordered the therein respondents to file their "counter-affidavit and controverting evidence to the herein attached complaint filed against you by COMMISSION ON AUDIT, REGIONAL OFFICE NO. VI" (underscoring in the original).

Corazon Balbastro, herein petitioner, filed her Answer dated January 31, 2001 alleging that the charges of the ICNHS Teachers & Employees Association are a mere duplication of the administrative charges filed against her at the Department of Education, Culture and Sports (DECS), Region VI entitled "*Ninfa Bata, et al. v. Corazon Balbastro*."

Petitioner later filed a Supplemental Answer dated July 4, 2001[3] reiterating her original claim that the charges in the letter-complaint merely duplicate the pending DECS case, and denying the charges set forth in the COA audit report.

When the cases were called for preliminary conference on July 5, 2001 by the Ombudsman, only petitioner's co-respondent Ocate and the latter's counsel appeared. In view of the absence of counsel's for COA and for petitioner, the preliminary conference was rescheduled initially to August 7, 2001, but finally to September 7, 2001.

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[2] *Rollo*, p. 51.

[3] *Rollo*, p. 89.

On September 7, 2001, only Atty. Rose Edith Togonon and Arlene Togonon of the COA, and therein respondent Ocate and her counsel, appeared. Petitioner again failed to show up despite notice, prompting the Ombudsman to consider petitioner's and her counsel's two consecutive absences as a waiver of petitioner's right to ask for a formal hearing and to present evidence on her behalf.[4]

The Ombudsman thereafter issued the aforementioned April 11, 2002 Decision in OMB-VIS-ADM-2000-0441 (Ombudsman decision) finding petitioner guilty of Grave Misconduct and imposing upon her the penalty of dismissal from the service with all its accessory penalties. Therein respondent Ocate was exonerated for lack of evidence.

The Ombudsman held petitioner guilty of the irregularities stated in the audit report, except with respect to late remittances of GSIS, PAG-IBIG and Medicare contributions. Albeit those remittances were indeed late, the Ombudsman gave petitioner the benefit of the doubt that she was not responsible for the delay.

With regard to the discrepancies in the payrolls, the Ombudsman noted that the same had already been the subject of another case, OMB-VIS-ADM-2000-0382 to 0391, in which petitioner and Ocate had already been penalized.

Petitioner's motion for reconsideration of the Ombudsman Decision was denied by Order dated September 19, 2002, hence, she filed a petition for review with the Court of Appeals.

The appellate court, while ruling that the COA audit report was "enough basis to sustain the Ombudsman's finding of guilt of petitioner," held that the Ombudsman had no power to directly impose sanctions against government officials and employees, its power being only limited to recommending the appropriate sanctions to the disciplining authority, which in this case is the DECS. Accordingly, the Court of Appeals, by Decision dated April 29, 2005, set aside the challenged Ombudsman decision insofar as it directly imposed on petitioner the penalty of dismissal.

[4] *Rollo*, p. 41.

On motion for reconsideration of the Ombudsman, however, the appellate court - on the basis of this Court's ruling in *Ledesma v. Court of Appeals*[5] that the Ombudsman has the power, not only to determine the administrative penalty of an erring public official, but also to compel the head of the agency concerned to implement the penalty imposed – promulgated an Amended Decision dated January 18, 2006 which affirmed the Ombudsman's imposition of the penalty of dismissal against petitioner.

Without filing a motion for reconsideration of the Amended Decision, petitioner filed the present petition.

Petitioner asserts that the Court of Appeals erred and gravely abused its discretion when it held that she was not denied due process in the proceedings before the Ombudsman and that the Ombudsman decision was supported by evidence and applicable jurisprudence.

Petitioner maintains that she was denied due process and that the proceedings before the Ombudsman were attended by serious irregularities. Thus she claims that she had not been furnished the sworn complaint of COA Region VI, thus giving her the mistaken impression that OMB-VIS-ADM-2000-0441 merely involved the allegations in the letter-complaint dated February 12, 1999 mentioned earlier; and that the letter-complaint, which requested for a comprehensive audit of the ICNHS, merely dwelt on the matter of late remittances to the GSIS, PAG-IBIG and BIR, hence, those were the only matters she responded to in her Answer filed with the Ombudsman.

The petition fails.

If indeed petitioner was not furnished a copy of the sworn complaint of COA Region VI, she could have easily manifested the same in her Answer; instead, she remained totally silent thereon and went on merely to argue that the allegations **in the letter-complaint** were then the subject of a pending case before the DECS.

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[5] G.R. No. 161629, July 29, 2005.

Petitioner could not have mistaken the letter-complaint of the INCHS Teachers and Employees Association to be the complaint referred to in the December 11, 2000 Order of the Ombudsman. Not only was COA Region VI the named complainant in the case title as set forth in that Order. The main body of the Order itself directed petitioner "to file your counter-affidavit and controverting evidence to the herein attached complaint filed against you by COMMISSION ON AUDIT, REGIONAL OFFICE NO. VI," the capitalization and underscoring of which are found in the original Order.

Petitioner, moreover, filed a Supplemental Answer in which she discussed matters that certainly strayed beyond those tackled in the letter-complaint of February 12, 1999 – a fact which petitioner admitted in her Reply filed with this Court only after respondent raised it as an argument in its Comment. Again, petitioner made no mention in that Supplemental Answer of the alleged failure of the Ombudsman to furnish her a copy of the sworn complaint. Instead, she responded to the findings stated in the audit report submitted by COA Region VI.

AT ALL EVENTS, petitioner cannot protest that she was deprived of due process for not having been apprised of the charges against her since the charges did not go beyond the findings of the audit report, a copy of which she received and to which she responded via her Supplemental Answer.[6]

Petitioner's only objection, as it turns out in her Reply, is that she was not able to respond to the charges **specifically enough**. Petitioner has no one to blame but herself, she having had ample time to do the same. Besides, if she really wanted to be more particularly informed of the charges against her, she should have attended the two preliminary conferences set by the Ombudsman, one of the purposes of which being to allow the parties to consider, *inter alia*, whether they "desire a formal investigation to determine the nature of the charge, stipulation of facts, a definition of the issues."[7]

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[6] *Rollo*, p. 38.

[7] Administrative Order No. 7, April 10, 1990, "RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN."

Apropos is the ruling in *Alba v. Nitorreda*[8] in which there appears to have been only one preliminary conference scheduled by a Graft Investigating Officer, unlike petitioner's case in which the initial preliminary conference was reset after petitioner and her counsel failed to show up thereat.

> Petitioner further assails the failure of the Graft Investigating Officer to call the parties to another preliminary conference after their failure to appear at the first one. He contends that the lack of any kind of hearing for evidence presentation resulted in "what may be termed, in the lingo of 'civil procedure', a 'judgment on the pleading.'" At the onset, it is worth pointing out that petitioner was afforded ample opportunity to present his side at the scheduled preliminary conference. His non-appearance thereat is attributable to no one else but himself and he cannot be allowed to now pass the buck to the Graft Investigating Officer who had complied strictly with the abovequoted procedure in the conduct of administrative investigations. x x x

Petitioner goes on to claim the presence of the following irregularities in the proceedings before the Ombudsman: only one hearing was held, on December 19, 2001, where only Ocate testified; the case is bereft of any record containing the testimonies of complainant and its witnesses; the Ombudsman decided the case without even requiring the complainant and its witnesses to affirm and confirm their affidavits, if any were submitted, and testify on the unsworn and unsigned COA report which was furnished petitioner; and the members of the ICNHS Teachers and Employees Association who authored the letter-complaint were not presented during the formal investigation of the administrative case.

Petitioner deprived herself of standing to raise these issues, however, for failing to show up for two consecutive times at the preliminary conference which thus constrained the Ombudsman to deem her to have waived her right "to ask for a formal hearing and present evidence" and led it to consider the case "for resolution based on the evidence on record as far as she is concerned."[9] The Court sees no reason to disturb this ruling of the Ombudsman.

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[8] 325 Phil. 229 (1996).

[9] *Rollo*, p. 41.

Respecting the non-appearance of the members of the ICNHS Teachers and Employees Association, since the charges against petitioner were not based on their letter-complaint but on the audit report submitted by COA Region VI, their appearance was not necessary. The letter-complaint merely served the purpose of initiating the investigation, not to establish the culpability of petitioner.

As to petitioner's contention that the Ombudsman decision is not supported by evidence and applicable jurisprudence, the arguments proffered in support thereof are sorely lacking in substance. Ironically, some of these arguments even reinforce the credibility of the COA audit report on which the Ombudsman based its findings against petitioner.

Petitioner furthermore asserts that the evidence in OMB-VIS-ADM-2000-0441 would show that the only person administratively liable is her therein co-respondent Ocate, she stressing that Ocate admitted "all the findings of the Commission on Audit" against her. Assuming *arguendo* that Ocate is indeed liable, it would not follow that petitioner is thereby exonerated, for petitioner may still be just as liable as Ocate for the acts charged. Moreover, her claim that Ocate admitted the findings of the COA is based solely on the statement of COA Region VI in its Comment filed with the appellate court, not on any finding by the Ombudsman or on any statement appearing in the records. The Ombudsman was in fact explicit in its decision that "[r]espondent Lydia E. Ocate, for her part, aside from claiming that the charges against her are not clear and ambiguous, **denies the same** and alleges the following as the truth of the matter x x x."[10]

With regard to the finding in the audit report that petitioner misapplied the ₱184,536.76 given by the city government of Iloilo for miscellaneous expenses of students, she, in her petition:

> . . . submits that she has never misapplied the miscellaneous funds she received in November 1997 and November 1998, long after the first semesters of the respective school years, when all the

[10] *Rollo*, p. 40. (Emphasis supplied)

miscellaneous expenses of the students had already been underwritten and paid for by the school. Certainly, said funds could not have been directly spent therefore (*sic*). Petitioner used the funds to cover all the other miscellaneous expenses of the students. She never personally gained a centavo out of the same.

Petitioner's above-quoted statement hardly serves to exonerate her. She would like the Court to believe that it was impossible to apply the questioned funds to the students' miscellaneous expenses because, at the time she received them, all such expenses had already been paid for, impliedly admitting that, indeed, the funds were not spent on the miscellaneous expenses they were intended for. Yet she proceeds to claim that she used the funds to cover "all the other miscellaneous expenses of the students." To make matters worse, she does not even attempt to spell out what those other miscellaneous expenses were.

More importantly, she does not categorically deny the findings of the COA, which were upheld by the Ombudsman, that she misapplied the funds to the following items of expense: (1) Ati-Atihan 1999; (2) sports/athletic meet; (3) food for visitors; (4) cultural/dance activities; (5) equipment and furniture; (6) office supplies; and (7) filling materials, stones and other landscaping materials.[11]

Regarding the finding that ₱161,150 was spent for projects that were not implemented, petitioner explains in her Reply that the report prepared by Senior Technical Audit Specialist Genesis H. Abello was clear that indeed there were repairs that were done but that the extent thereof merely cannot be determined. This explanation only echoes what has already been stated by the Ombudsman, to wit:

> However, during the ocular inspection the Technical Audit Specialist of the COA noted that although there were traces of repair works found in the Mathematics Building; Social Studies Building and school fences, the extent of repairs could not be determined or confirmed because of the absence of documents in support thereof such as: approved job order; estimate of works; program of works

[11] *Rollo*, p. 42.

and bill of materials. The location of the projects could not also be confirmed because of the absence of sketch plans detailing the location of the projects, as there were several waiting sheds; toilets and fences; and two (2) English Buildings. Thus, prompting the COA to conclude that these itemized projects were not implemented at all, which respondent Corazon Balbastro did not dispute with clear and convincing evidence. And all told, this Office is convinced that most, if not all, of these projects were non-existing.[12] (Underscoring supplied)

In fine, petitioner's arguments only render more pronounced the correctness of the Ombudsman's decision finding her guilty on the basis of the audit report which constitutes substantial evidence. As *Balbastro v. Junio*[13] held, an administrative case also involving herein petitioner:

As to the findings of the Ombudsman, it is settled that in administrative proceedings, the quantum of proof required for a finding of guilt is only substantial evidence – that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. Factual findings of administrative bodies, when supported by substantial evidence, are entitled to great weight and respect on appeal. And a finding of guilt in an administrative case would also have to be sustained for as long as it is supported by substantial evidence that respondent has committed the acts stated in the complaint or formal charge. (Underscoring supplied)

WHEREFORE, the petition is *DENIED*.

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.

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[12] *Rollo*, p. 43.

[13] G.R. No. 154678, July 17, 2007; 527 SCRA 680, 693.

THIRD DIVISION

[G.R. No. 171534. June 30, 2008]

MANILA ELECTRIC COMPANY, *petitioner, vs.* **WILCON BUILDERS SUPPLY, INC.,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; PUBLIC SERVICE LAW; PUBLIC UTILITIES; ELECTRIC COMPANIES; *RIDJO* DOCTRINE; EXPLAINED.— The *Ridjo* doctrine simply states that the public utility has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction. Its failure to discover the ***defect*****,** if any, considering the length of time, amounts to inexcusable negligence; its failure to make the necessary repairs and replace the ***defective*** electric meter installed within the consumer's premises limits the latter's liability. The use of the words "defect" and "defective" x x x does not restrict the application of the doctrine to cases of "mechanical defects" in the installed electric meters. A more plausible interpretation is to apply the rule on negligence whether the defect is inherent, intentional or unintentional, which therefore covers tampering, mechanical defects and mistakes in the computation of the consumers' billing. This is apparent in the rationale behind the ruling which states that: "The rationale behind this ruling is that public utilities should be put on notice, as a deterrent, that if they completely disregard their duty of keeping their electric meters in serviceable condition, they run the risk of forfeiting, by reason of their negligence, amounts originally due from their customers. Certainly, we cannot sanction a situation wherein the defects in the electric meter are allowed to continue indefinitely until suddenly the public utilities concerned demand payment for the unrecorded electricity utilized when, in the first place, they should have remedied the situation immediately. If we turn a blind eye on MERALCO's omission, it may encourage negligence on the part of public utilities, to the detriment of the consuming public." This Court had the occasion to apply the foregoing rule in *Manila Electric Company v. Macro Textile Mills Corp.*, *Davao Light & Power Co., Inc. v. Opeña*, and *Manila Electric Company v. T.E.A.M. Electronics Corporation, et al.*

Although there were allegations of tampering with the consumers' electric meters, this Court did not hesitate to apply the *Ridjo* doctrine in imputing negligence on the part of the public utility and in totally barring it from collecting its claim of differential billing.

2. ID.; ID.; ID.; ID.; TAMPERING WITH THE ELECTRIC METER; HOW COMMITTED.— Tampering with the electric meter is committed by the consumer to prevent the meter from registering the correct amount of electric consumption, and results in a reduced monthly electric bill while continuing to enjoy the same power supply. Only the registration of actual electric energy consumption, not the supply of electricity, is affected when a meter is tampered with. Stated otherwise, when the meter is tampered with, the registered electric consumption is reduced. Consequently, in case of the removal of the tampered meter and the installation of a new one, the registered consumption necessarily increases. However, in the instant case, after the replacement of the "tampered" meter, respondent's consumption remained the same.

3. ID.; ID.; ID.; PUBLIC SERVICE COMPANIES WHICH DO NOT EXERCISE PRUDENCE IN THE DISCHARGE OF THEIR DUTIES SHALL BE MADE TO BEAR THE CONSEQUENCES OF SUCH OVERSIGHT.— We would like to emphasize at this point that the production and distribution of electricity is a highly technical business undertaking, and in conducting its operation, it is only logical for a public utility, such as the petitioner, to employ mechanical devices and equipment for the orderly pursuit of its business. Indeed, it would be highly inequitable if we are to allow a public utility company to be continuously remiss in its duty and then later on charge the consumer exorbitant amounts for the alleged unbilled consumption or differential billing when such a situation could have been easily averted. We simply cannot sanction petitioner's utter neglect of its duty over a number of years, as this would undoubtedly be detrimental to the interest of the consuming public. In the final analysis, petitioner should bear the loss. Public service companies which do not exercise prudence in the discharge of their duties shall be made to bear the consequences of such oversight.

4. REMEDIAL LAW; CIVIL PROCEDURE; MODES OF APPEAL; THE COURT OF APPEALS IS EMPOWERED TO REVIEW QUESTIONS OF FACT IN AN ORDINARY

APPEAL. — *Section 2, Rule 41 of the Rules of Court* provides for the different modes of appeal from an RTC's judgment or final order, to wit: "Section 2. *Modes 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." Respondent elevated the matter before the CA through an ordinary appeal under Rule 41. Clearly therefore, the CA was empowered to review questions of fact. Although the trial court's findings of facts are accorded great respect because of the judge's opportunity to observe the witnesses firsthand, appellate courts, like the CA, are not precluded from reviewing the factual findings of lower courts.

5. ID.; ID.; ID.; APPEAL BY *CERTIORARI*; INSTANCES WHERE THE SUPREME COURT MAY REVIEW AND SET ASIDE FACTUAL FINDINGS OF BOTH THE TRIAL COURT AND THE COURT OF APPEALS.— Jurisprudence has established that even the Supreme Court may review and at times reverse and set aside factual findings of both the trial court and the CA in the following cases: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the

respondent; (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.

APPEARANCES OF COUNSEL

Noratio Enrico M. Bona Jose Reny T. Albarico Marlon J. Moises for petitioner.

Fortunato M. Lira for respondent.

D E C I S I O N

NACHURA, *J.*:

For review is the Decision[1] of the Court of Appeals (CA) dated June 30, 2005 and its Resolution[2] dated February 10, 2006 in CA-G.R. CV No. 60723. The assailed decision in turn reversed and set aside the Decision[3] of the Regional Trial Court (RTC), Branch 262, Pasig City in Civil Case No. 64678.

The facts of the case, as culled from the records, are as follows:

Petitioner Manila Electric Company (Meralco) is a utility company engaged in the business of distribution and sale of electric power; while respondent Wilcon Builders Supply, Inc. is one of its registered customers under Account No. 05380-0800-19.[4]

On January 17, 1991, petitioner's service inspectors conducted a routine inspection of the electric meters installed at respondent's

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[1] Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Godardo A. Jacinto and Bienvenido L. Reyes, concurring; *rollo*, pp. 30-41.

[2] *Rollo,* pp. 44-46.

[3] Penned by Judge Gregory S. Ong; records, pp. 384-402.

[4] Records, p. 1.

premises at No. 24, Quezon Avenue, Quezon City.[5] The inspection was witnessed by respondent's president and general manager, Mr. William Belo.[6] Allegedly, the meter was found to be tampered with and did not register the correct electric current consumed and used by respondent.[7] The results of the inspection were reflected in the Service Inspection Report[8] prepared by the inspectors. Thereafter, they prepared a Power Metering Field Order[9] and Meter Removal Form.[10] The subject meter was then removed, placed in a plastic bag and brought to the petitioner's office for further laboratory examination.[11]

After the laboratory test, otherwise known as Polyphase Meter Test, petitioner, through its technician, allegedly found, as written in the Report,[12] that: 1) the terminal seal was missing; 2) the lead cover seals were tampered with by cutting the sealing wire; and 3) the 1000th, 100th, and 10th dial pointers of the register were found out of alignment and scratches were present on the face dial of the register, which indicated that the meter had been opened to manipulate said dial pointers and set them manually to the desired readings.[13]

On February 20, 1991, petitioner wrote the respondent informing the latter of the alleged tampering and further demanding the payment of ₱250,565.59[14] representing its unregistered

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[5] *Id*.

[6] CA *rollo*, p. 132.

[7] Records, p. 1.

[8] *Id*. at 105.

[9] *Id*. at 119.

[10] *Id*. at 120.

[11] CA *rollo*, p. 132.

[12] Records, pp. 106-107.

[13] *Id*. at 107.

[14] The VOC (Violation of Contract) Billing Unit used the period covering November 17, 1983 to November 20, 1984 as basis for the computation of the differential billing.

consumption.[15] A final demand was, thereafter, made on December 6, 1991.[16] For failure of the respondent to pay the amount claimed, petitioner commenced the instant suit by filing a Complaint[17] for damages asking the court that respondent be ordered to pay the above differential billing with interest at the legal rate, plus attorney's fees.[18]

For its part, respondent denied having tampered with the subject meter. It instead explained that the increase in their electricity consumption was due to the installation of the 7.5 ton air-conditioning unit on June 6, 1981. Sometime in 1985, said unit started to break down; and in 1986, it was no longer functional, which thus caused the abrupt decrease in its consumption.[19] Respondent, likewise, averred that petitioner offered the settlement of the case and reduced its demand to more or less ₱70,000.00, but the former did not accede.[20] Hence, the complaint.

At the pre-trial, the parties agreed to limit the issues, as follows:

1. Whether or not the defendant's meter was tampered, and as a result thereof, failed to register the correct amount of energy consumed;
2. Whether or not the defendant is at fault or is responsible for such tampering;
3. Whether or not the defendant is liable to pay the plaintiff the amount of ₱250,565.59 representing the value of electricity consumed but not registered in defendant's meter;
4. Whether or not the defendant is liable to pay the plaintiff attorney's fees and expenses of litigation;

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[15] Records, p. 117.

[16] *Id*. at 118.

[17] *Id*. at 1-3.

[18] *Id*. at 2.

[19] CA *rollo*, pp. 134-135.

[20] *Id*. at 135.

5. Whether or not the plaintiff is liable under the defendant's counterclaim;

6. Whether or not the defendant is entitled to discounted rate.[21]

For failure of the parties to reach an amicable settlement, trial on the merits ensued. On June 29, 1998, the RTC rendered a Decision [22] in favor of the petitioner and against the respondent, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered ordering the defendant**,** WILCON BUILDERS SUPPLY, INC., to pay the plaintiff, Manila Electric Company, the following:

1. Actual damages in the sum of One Hundred Eighty-Seven Thousand Nine Hundred Twenty-Four Pesos and Nineteen Centavos (₱187,924.19);

2. Attorney's fees in the sum of Ten Thousand Pesos (₱10,000.00); and

3. Costs of suit.

SO ORDERED.[23]

The court gave credence to the testimonial and documentary evidence presented by petitioner which it held to be regular and authentic, and which indisputably showed that the subject meter was tampered with.[24] As to the authorship of the tampering, the court relied on the disputable presumption that respondent committed the act because the tampered meter was installed in its premises. Consequently, respondent was held liable for the differential billing. However, for failure of the respondent to use its air-conditioning unit, the court gave the former a discount of 25% of the amount due the petitioner. Since the petitioner was compelled to litigate, it was awarded attorney's fees.[25]

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[21] Records, pp. 49-50.

[22] *Id*. at 384-402.

[23] *Id*. at 401-402.

[24] *Id*. at 397.

[25] *Id*. at 396-401.

On appeal to the CA, respondent was able to obtain favorable relief. The appellate court reversed and set aside the earlier ruling of the trial court. Contrary to the trial court's conclusion, the CA found that respondent's reduced electric consumption was the result of the breakdown of its air-conditioning unit and not the "tampered" electric meter.[26] It also applied the rule on negligence on the part of petitioner because of its failure to discover the alleged "tampered" meter from 1984 until 1991 pursuant to the doctrine enunciated in *Ridjo Tape & Chemical Corp. v. Court of Appeals*.[27]

Aggrieved, petitioner comes before this Court raising the following issues:

A. IT IS REVERSIBLE ERROR TO RULE THAT THE RIDJO TAPE DOCTRINE APPLIES IN THE INSTANT CASE FOR TAMPERING.

B. IT IS REVERSIBLE ERROR ON THE PART OF THE HONORABLE COURT OF APPEALS TO MAKE ITS OWN FINDINGS OF FACTS, IN EFFECT, SUBSTITUTING THE FINDINGS OF FACTS OF THE COURT *A QUO* CONTRARY TO ESTABLISHED AND SETTLED JURISPRUDENCE.

C. IT IS REVERSIBLE ERROR ON THE PART OF THE HONORABLE COURT OF APPEALS TO DISMISS CIVIL CASE NO. 64678.[28]

The petition is bereft of merit.

Petitioner faults the CA for applying the doctrine pronounced by this Court in *Ridjo Tape & Chemical Corp. v. CA*[29] because of the difference in the factual circumstances surrounding the instant case. It argues that the *Ridjo* doctrine applies only to cases when the meter is defective and not when there is an allegation of tampering. Besides, petitioner contends, such claim of negligence on the part of the public utility only serves to mitigate the consumer's liability, but not to exempt him from paying the differential billing.[30]

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[26] CA *rollo*, pp. 138-140.

[27] 350 Phil. 184 (1998).

[28] *Rollo*, p. 116.

[29] *Supra* note 27.

[30] *Rollo*, pp. 116-120.

We do not agree.

The *Ridjo* doctrine simply states that the public utility has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction. Its failure to discover the ***defect,*** if any, considering the length of time, amounts to inexcusable negligence; its failure to make the necessary repairs and replace the ***defective*** electric meter installed within the consumer's premises limits the latter's liability.[31] The use of the words "defect" and "defective" in the above-cited case does not restrict the application of the doctrine to cases of "mechanical defects" in the installed electric meters. A more plausible interpretation is to apply the rule on negligence whether the defect is inherent, intentional or unintentional, which therefore covers tampering, mechanical defects and mistakes in the computation of the consumers' billing. This is apparent in the rationale behind the ruling which states that:

> The rationale behind this ruling is that public utilities should be put on notice, as a deterrent, that if they completely disregard their duty of keeping their electric meters in serviceable condition, they run the risk of forfeiting, by reason of their negligence, amounts originally due from their customers. Certainly, we cannot sanction a situation wherein the defects in the electric meter are allowed to continue indefinitely until suddenly the public utilities concerned demand payment for the unrecorded electricity utilized when, in the first place, they should have remedied the situation immediately. If we turn a blind eye on MERALCO's omission, it may encourage negligence on the part of public utilities, to the detriment of the consuming public.[32]

This Court had the occasion to apply the foregoing rule in *Manila Electric Company v. Macro Textile Mills Corp.*,[33] *Davao Light & Power Co., Inc. v. Opeña*,[34] and *Manila*

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[31] *Ridjo Tape and Chemical Corp. v. CA*, *supra* note 27, at 194-195. (Emphasis supplied.)

[32] *Id*. at 195.

[33] 424 Phil. 811 (2002).

[34] G.R. No. 129807, December 9, 2005, 477 SCRA 58.

Electric Company v. T.E.A.M. Electronics Corporation, et al.[35] Although there were allegations of tampering with the consumers' electric meters, this Court did not hesitate to apply the *Ridjo* doctrine in imputing negligence on the part of the public utility and in totally barring it from collecting its claim of differential billing.

In *Macro Textile Mills*,[36] there were allegations of tampering allegedly discovered during a routine inspection, coupled with the drastic slump in the electric consumption of the consumer several years before the inspection. The Court decided in favor of the consumer, ratiocinating that if indeed there was an unusual drop in electric consumption reflected in the statements of account, the public utility could have easily verified the error, considering its technical knowledge and vast experience in providing electric service. If there really was a mistake, the electric meters themselves should have been inspected for possible defects or breakdowns and forthwith repaired and, if necessary, replaced.[37] The Court went on to say that the utility company could have filed the appropriate criminal complaint against the erring consumer under Presidential Decree No. 401.[38]

In *Davao Light*,[39] the public utility claimed that there was a sudden drop in the consumer's registered electric consumption as early as 1983, but the inspection of its meters was conducted only in 1988. The court considered the public utility negligent in allowing several years to lapse before deciding to conduct an inspection of the electric meters. Hence, the case was decided in favor of the consumer.

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[35] G.R. No. 131723, December 13, 2007.

[36] *Supra* note 33.

[37] *Manila Electric Company v. Macro Textile Mills*, *supra* note 33, at 827.

[38] *Penalizing the Unauthorized Installation of Water, Electrical or Telephone Connections, the Use of Tampered Water or Electrical Meters, and Other Acts*, as amended by P.D. 401-A and further repealed by Republic Act No. 7832 otherwise known as the *"Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994."*

[39] *Supra* note 34.

Lastly, in *T.E.A.M Electronics,*[40] the public utility claimed that the consumer's electric meter was discovered to have been tampered with in 1987 and again, in 1988. This Court again refused to sustain the public utility's claim for payment of the differential because of negligence on its part when it failed to correct the meter upon discovery of the "tampering." By reason of such negligence, it ran the risk of forfeiting amounts originally due from its customers.

Applying the foregoing rules to the instant case, we sustain the CA's finding of negligence on the part of the petitioner and thus negate its claimed entitlement to a differential billing.

According to the petitioner, there was a sudden drop in respondent's electric consumption during the last quarter of 1984. Yet, petitioner conducted an inspection only in 1991 allowing the "defect" to remain unrepaired for a period of more or less seven (7) years. Besides, if we accept petitioner's contention that it was not the first time that the subject meter was tampered with because it allegedly discovered earlier that the same meter was tampered, although it was not made known to the respondent, with greater reason can we not excuse its inaction. If this contention were true, the moment a sudden drop of electric consumption was reflected in its records, petitioner should have conducted an immediate investigation to make sure that there was nothing wrong with the meter, especially because, by its own account, the subject meter had a history of previous tampering.

It is noteworthy that both the trial court and the appellate court agreed that the installation and the eventual breakdown of respondent's 7.5 ton air-conditioning unit affected the consumer's electric consumption. The non-use of said air-conditioning unit impelled the trial court to deduct 25% from the petitioner's claim. We hold, however, that the appellate court's conclusion is the more logical; that is, that the non-use of the air-conditioning unit, not the alleged tampering, sufficiently explains why the respondent had a reduced electric consumption during the subject period.

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[40] *Supra* note 35.

Tampering with the electric meter is committed by the consumer to prevent the meter from registering the correct amount of electric consumption, and results in a reduced monthly electric bill while continuing to enjoy the same power supply. Only the registration of actual electric energy consumption, not the supply of electricity, is affected when a meter is tampered with.[41] Stated otherwise, when the meter is tampered with, the registered electric consumption is reduced. Consequently, in case of the removal of the tampered meter and the installation of a new one, the registered consumption necessarily increases. However, in the instant case, after the replacement of the "tampered" meter, respondent's consumption remained the same.[42]

In view of the foregoing, we affirm the appellate court's findings of facts and conclusions of law.

We would like to emphasize at this point that the production and distribution of electricity is a highly technical business undertaking, and in conducting its operation, it is only logical for a public utility, such as the petitioner, to employ mechanical devices and equipment for the orderly pursuit of its business.[43] Indeed, it would be highly inequitable if we are to allow a public utility company to be continuously remiss in its duty and then later on charge the consumer exorbitant amounts for the alleged unbilled consumption or differential billing when such a situation could have been easily averted. We simply cannot sanction petitioner's utter neglect of its duty over a number of years, as this would undoubtedly be detrimental to the interest of the consuming public.[44] In the final analysis, petitioner should bear the loss. Public service companies which do not exercise prudence in the discharge of their duties shall be made to bear the consequences of such oversight.[45]

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[41] *Manila Electric Company v. T.E.A.M. Electronics Corporation, supra*.

[42] Records, p. 286.

[43] *Ridjo Tape and Chemical Corporation v. CA, supra* note 27, at 193.

[44] *Davao Light & Power Co., Inc. v. Opeña, supra* note 34, at 84.

[45] *Manila Electric Company v. Macro Textile Mills*, *supra* note 33, at 828.

Petitioner further asserts that the CA erred in making its own factual determination, for appellate courts should rely on the factual findings and conclusions of the trial court.

Again, such contention is misplaced.

Section 2, Rule 41 of the Rules of Court provides for the different modes of appeal from an RTC's judgment or final order, to wit:

> Section 2. *Modes 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.
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> (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.

Respondent elevated the matter before the CA through an ordinary appeal under Rule 41. Clearly therefore, the CA was empowered to review questions of fact. Although the trial court's findings of facts are accorded great respect because of the judge's opportunity to observe the witnesses firsthand, appellate courts, like the CA, are not precluded from reviewing the factual findings of lower courts.

Jurisprudence has established that even the Supreme Court may review and at times reverse and set aside factual findings of both the trial court and the CA in the following cases: (1) when the findings are grounded entirely on speculation, surmises

or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (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.[46]

Lastly, petitioner avers that the CA erred in dismissing its claim against the respondent, since the amount it collects redounds to the benefit of the consuming public and is used to lower the rates of electricity; and thus, any amount not claimed is likewise shouldered by the innocent consumers.

The right of the petitioner as a public utility to collect "systems losses" is a non-issue in the instant case. To be sure, in enacting Republic Act No. 7832[47] and Republic Act No. 9136,[48] the legislature did not intend to relax the rules in deciding cases of tampered electric meters. In no way can this Court grant a favorable judgment to the petitioner solely because of the benefit that the public will gain. To do so would result in unjust enrichment

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[46] *Superlines Transportation Company, Inc. v. Philippine National Construction Company,* G.R. No. 169596, March 28, 2007, 519 SCRA 432, 441, citing *Insular Life Assurance Company, Ltd. v. CA*, 428 SCRA 79, 86 (2004); *New City Builders, Inc. v. NLRC*, G.R. No. 149281, June 15, 2005, 460 SCRA 220, 227.

[47] Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994.

[48] Electric Power Industry Reform Act of 2001.

at the expense of the consumer accused of committing acts of tampering. Courts cannot and will not in any way blindly grant a public utility's claim for differential billing if there is no sufficient evidence to prove such entitlement.

WHEREFORE, premises considered, the petition is *DENIED*. The Decision of the Court of Appeals dated June 30, 2005 and its Resolution dated February 10, 2006 in CA-G.R. CV No. 60723 are *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 174925. June 30, 2008]

LOOC BAY TIMBER INDUSTRIES, INC., *petitioner, vs.* **INTESTATE ESTATES OF VICTOR MONTECALVO and CONCORDIA L. MONTECALVO, represented by DR. VICTOR L. MONTECALVO, JR., ENGR. FRANK L. MONTECALVO, JOHNNY L. MONTECALVO, PAUL L. MONTECALVO, DR. CHONA L. MONTECALVO and ROY L. MONTECALVO, and the COURT OF APPEALS,** *respondents.*

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[*] In view of inhibition of Justice Consuelo Ynares-Santiago.

[**] Designated to sit as additional member replacing Justice Consuelo Ynares-Santiago per raffle dated June 23, 2008.

SYLLABUS

REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURTS ARE GIVEN GREAT WEIGHT AND RESPECT; EXCEPTION; PRESENT IN CASE AT BAR. – Petitioner cites the settled doctrine that great weight and respect are accorded, sometimes even with finality, to findings of facts of trial courts. It concedes, however, that that doctrine holds true unless it is clearly shown that the trial court overlooked or disregarded certain facts and circumstances of critical significance. In the present case, the Court finds that the trial court overlooked the fact that the November 28, 1984 Agreement was *not signed* by Valeriano Bueno, the representative of petitioner's sister company–prospective vendee. Absent such signature, petitioner and/or its sister company could not have accepted the offer made by Montecalvo, Sr. to sell those "certain portions adjoining the logging road of [petitioner] or the entirety of the said land." The agreement was thus not perfected and therefore created or transmitted no rights.

APPEARANCES OF COUNSEL

Jaso Salgado Neri Law Office for petitioner.
Filemon T. Saborrido for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Victor Montecalvo, Sr. (Montecalvo, Sr.) and his wife Concordia Montecalvo purchased a parcel of land, identified as Lot No. 4083 (Lot No. 4083), containing an area of 23,920 square meters, located in Barangay Alegria (formerly Kaguit-itan), San Isidro, Northern Samar from Candida Apal in whose name the title to the land, Original Certificate of Title No. (5410) 3921 of the Register of Deeds of Samar,[1] was issued.

Montecalvo, Sr. leased Lot No. 4083 to Looc Bay Timber Industries, Inc. (petitioner) which it used as a logpond. Upon the

[1] Exhibit "A"-Rebuttal.

expiration of the lease in 1978, it was extended for ten years with the agreement that it was going to be extended for another ten years.

On November 10, 1983, the spouses Montecalvo, Sr. and petitioner forged an agreement (November 10, 1983 Agreement)[2] under which petitioner agreed to buy a 13,410-square meter portion of the land "which petitioner is presently using as its logpond" for a total consideration of ₱335,250, ₱203,000 of which had been previously paid by petitioner, the balance to be paid on installment.

On November 28, 1984, an agreement (November 28, 1984 Agreement)[3] was prepared wherein Montecalvo, Sr., therein described as "the owner and in the actual possession of the parcel of land located in Alegria," agreed to sell to the Visayan Forest Development Corporation, sister company of petitioner, "certain portions adjoining the logging road of [petitioner] or the entirety of the said land . . ." at ₱12.50 per square meter. Under the November 28, 1984 Agreement, the corporation was "to pay some amounts to [Victor Montecalvo . . . which would] be considered later when the deed of absolute sale shall be executed by the parties."

Montecalvo, Sr. died in October 1992, while his wife Concordia Montecalvo died on September 8, 1998.

By a Notice to Terminate Contract of Lease dated February 19, 1999, the couple's heirs notified petitioner that they were terminating the 1978 lease of "a certain parcel of land containing an area of three [3] [*sic*] hectares situated in Barangay Alegria . . . , covered by Original Certificate of Title No. 5410 . . ."

By petitioner's claim, during the lifetime of Montecalvo, Sr., the latter promised to execute the deeds of sale corresponding to the two above-mentioned agreements and to deliver "the owners copies of the titles" to the lands subject thereof but that he failed to do so; and that despite repeated demands from the herein respondents, Intestate Estates of Montecalvo, Sr. and his wife Concordia L. Montecalvo, represented by the couple's heirs,

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[2] Exhibit "D"-Rebuttal.

[3] Exhibit "F"-Rebuttal.

no documents of sale were executed nor were the owners copies of the titles delivered to it.

Petitioner thus filed on November 25, 1998 a complaint before the Regional Trial Court (RTC) of Samar against respondents for Specific Performance.

Respondents, in their Answer,[4] denied knowledge about their parents' execution of the two agreements. In any event, respondents contended that assuming that there were such agreements, the cause of action of petitioner had prescribed and that there were no more estates left by their parents "for the payment of [their] debts."

Branch 23 of the RTC of Allen, Samar, by Decision of June 27, 2002,[5] found that the agreements were valid but that there was no showing that the considerations mentioned therein were fully paid. Thus, it disposed:

> WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered ordering the defendants to execute the necessary deed of sale **subject to** the full payment of the considerations stipulated in the two (2) Agreements. Pending compliance by the plaintiff as to the full payment of the consideration, the decision in the instant case cannot be enforced.
>
> No pronouncement as to damages and counterclaims, both parties having failed to prove their claims.
>
> SO ORDERED.[6] (Emphasis and underscoring supplied)

On appeal, the Court of Appeals, by Decision of April 18, 2006,[7] found that the consideration stated in the first agreement-November 10, 1983 Agreement was fully paid.

With respect to the second agreement-November 28, 1984 Agreement, the appellate court held that it was not binding as

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[4] Records, pp. 23-26.

[5] *Id*. at 236-245.

[6] *Id*. at 245.

[7] CA *rollo*, pp. 129-139. Penned by Court of Appeals Associate Justice Pampio A. Abarintos, with the concurrence of Associate Justices Enrico A. Lanzanas and Apolinario D. Bruselas, Jr.

Valeriano Bueno, the representative of petitioner's sister company-prospective vendee Visayan Forest and Development Corporation, did not affix his signature on the agreement, an indication that it did not intend to enter into it. Thus the appellate court nullified the said agreement, disposing:

> IN LIGHT OF ALL THE FOREGOING, this appeal is DENIED but the decision of the Regional Trial Court, Br. 23, 8th Judicial Region, Allen, Northern Samar in Civil Case NO. A-821 for Specific Performance is AFFIRMED with MODIFICATION.
>
> The defendants are ordered to execute the necessary deed of conveyance in favor of the plaintiff for that property covering the **Agreement dated November 10, 1983.**
>
> **Declaring the Agreement dated November 28, 1984** to be void and of no effect for lack of consent on the part of the vendee.
>
> Costs against the defendants-appellants.
>
> SO ORDERED.[8] (Emphasis and underscoring supplied).

Hence, the present petition for review, petitioner faulting the appellate court

> . . . IN AFFIRMING WITH MODIFICATION THE DECISION OF THE TRIAL COURT "DECLARING THE AGREEMENT DATED NOVEMBER 28, 1984 TO BE VOID AND OF NO EFFECT FOR LACK OF CONSENT ON THE PART OF THE VENDEE."[9]

In nullifying the **November 28, 1984 Agreement**, the Court of Appeals observed:

> However, while we rule that the Agreement dated November 10, 1983 is a binding contract between Looc Bay Timber Industries Inc. and Victor Montecalvo, we cannot pronounce similarly with respect to the Agreement dated November 28, 1984. First, the said Agreement was **signed only by Victor Montecalvo** and **not** by Visayan Forest and Development Corporation, represented by Valeriano C. Bueno. While a contract may be entered in any form, the fact that only the vendor signed the second agreement is a clear indication that the vendee,

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[8] *Id*. at 138-139.

[9] *Rollo,* p. 16.

Valeriano Bueno, had no definite intention to enter into it. An essential requisite of a valid contract is the consent of the contracting parties. Consent may be construed to be present if the vendee also signed this second agreement. In the absence of Valeriano Bueno's signature, we cannot give validity to the second agreement. Second, the cash vouchers allegedly representing payment of the land described in the second agreement are not specific as to indicate that the same covers the second parcel of land. Third, we also perused the testimony of Valeriano Bueno and he categorically stated that the cash vouchers represented payments for a *part of the land*, *viz*:

> Q: Mr. Witness, there appears a signature at the bottom of all these receipts, whose signature is this?
>
> A: That of the late Victor Montecalvo?
>
> Q: Please examine these receipts one by one and please tell the Honorable Court if these are the receipts that you are referring to?
>
> A: All these receipts were done by Victor Montecalvo himself. So, all these payments were received by Victor Montecalvo until we finally have *paid part of the land.*[10] (Italics in the original; emphasis and underscoring supplied)

Petitioner cites the settled doctrine that great weight and respect are accorded, sometimes even with finality, to findings of facts of trial courts.[11] It concedes, however, that that doctrine holds true unless it is clearly shown that the trial court overlooked or disregarded certain facts and circumstances of critical significance.[12]

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[10] CA *rollo,* pp. 137-138.

[11] *Rollo,* pp. 20-21.

[12] *Id*. at 21; Well-entrenched is the legal precept that findings of facts of the trial court, its calibration of the testimonies of witnesses, its assessment of the credibility of the said witnesses and its evidence based on the said findings are given high respect if not conclusive effect by the appellate court, unless the trial court overlooked, misconstrued or misinterpreted facts and circumstances of substance which if considered will alter the outcome of the case. (*People v. Fajardo, Jr*., G.R. No. 173022, January 23, 2007, 512 SCRA 360, 374 citing *People v. Ocampo*, G.R. No. 171731, August 11, 2006, 498 SCRA 581, 587; *People v. Candaza*, G.R. No. 170474, June 16, 2006, 491 SCRA 280, 297, citing *People v. Gonzales, Jr*., 424 Phil. 336, 352-353 (2002); *Llave v. People*, G.R. No. 166040, April 26, 2006, 488 SCRA 376, 400).

In the present case, the Court finds that the trial court overlooked the fact that the November 28, 1984 Agreement was not signed by Valeriano Bueno, the representative of petitioner's sister company–prospective vendee. Absent such signature, petitioner and/or its sister company could not have accepted the offer made by Montecalvo, Sr. to sell those "certain portions adjoining the logging road of [petitioner] or the entirety of the said land." The agreement was thus not perfected and therefore created or transmitted no rights.

That leaves it unnecessary to pass on an Affidavit of Quitclaim executed by Montecalvo, Sr. dated September 16, 1990 which petitioner alleges covers the land subject of the November 28, 1984 Agreement. Suffice it to state that the quitclaim does not specifically refer to the land subject of the said agreement.

That leaves it unnecessary too to pass on petitioner's claim that substantial payments were made for those portions of the land subject of the same November 28, 1984 Agreement. Suffice it to state that the receipts of payment presented do not specify for what particular land were the same made.

WHEREFORE, the petition is *DENIED*.

Costs against petitioner.

SO ORDERED.

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

EN BANC

[G.R. No. 176296. June 30, 2008]

INDIRA R. FERNANDEZ, *petitioner, vs.* **HON. COMMISSION ON ELECTIONS (First Division) and MARK ANTHONY B. RODRIGUEZ,** *respondents*.

SYLLABUS

POLITICAL LAW; ELECTION LAWS; ELECTION PROTESTS; THE COMMISSION ON ELECTIONS HAS APPELLATE JURISDICTION OVER ALL CONTESTS DECIDED BY TRIAL COURTS OF LIMITED JURISDICTION INVOLVING ELECTIVE *BARANGAY* OFFICIALS, WHICH INCLUDE THE *SANGGUNIANG KABATAAN* CHAIRMAN.— The 1987 Constitution vests in the COMELEC appellate jurisdiction over all contests involving elective *barangay* officials decided by trial courts of limited jurisdiction. Construed in relation to the provision in R.A. No. 7160 that includes in the enumeration of *barangay* officials the SK chairman, the constitutional provision indeed sanctions the appellate review by the COMELEC of election protests involving the position of SK chairman, as in the instant case. Hence, we find nothing improper in the COMELEC's assumption of jurisdiction over respondent's appeal. Petitioner's reliance on our ruling in *Mercado v. Board of Election Supervisors* that contests involving the SK chairman do not fall within Section 252 of the Omnibus Election Code and paragraph 2, Section 2, Article IX-C of the Constitution, is misplaced. The doctrine therein, as we explained in the much later *Marquez v. Commission on Elections*, is no longer controlling. Thus, the rule at the present is that trial courts of limited jurisdiction have exclusive original jurisdiction over election protests involving *barangay* officials, which include the SK chairman, and that the COMELEC has the exclusive appellate jurisdiction over such protests.

APPEARANCES OF COUNSEL

Merito R. Fernandez for petitioner.
The Solicitor General for public respondent.
Arnel C. Sarmiento for private respondent.

D E C I S I O N

NACHURA, *J.*:

For the resolution of the Court is a petition for *certiorari* and prohibition filed under Rules 64 and 65 of the Rules of Court assailing the December 4, 2006 Resolution[1] and the January 31, 2007 Order[2] of the Commission on Elections (COMELEC) First Division in EAC No. 14-2004.

The records disclose that, in the July 15, 2002 synchronized *barangay* and *Sangguniang Kabataan* (SK) Elections, respondent Rodriguez, who had obtained 27 votes, emerged as the winning candidate for SK chairman of *Barangay* Pandan del Sur, Pandan, Catanduanes, over his opponent, petitioner Fernandez, who had garnered only 25 votes. Discontented with the results, petitioner instituted an election protest docketed as Election Case No. P-192 with the 4th Municipal Circuit Trial Court (MCTC) of Pandan-Caramoran.[3]

After the conduct of appropriate proceedings, the MCTC rendered its Decision[4] on January 12, 2004, declaring petitioner the duly elected SK chairman of the said *barangay* and ordering her proclamation as such. The decision was premised on the results of the revision which showed that petitioner obtained 29 votes and respondent, 24.[5]

Adversely affected, respondent appealed the case to the COMELEC. On December 4, 2006, the COMELEC First Division rendered the assailed Resolution[6] nullifying the MCTC's decision. It ruled that 3 ballots marked as Exhibits "1", "4" and "5" should not have been credited to the petitioner, given that

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[1] *Rollo*, pp. 25-30.

[2] *Id*. at 32.

[3] *Id*. at 26.

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

[5] *Id*. at 27, 63.

[6] *Supra* note 1.

they were tampered to show that they represented votes for Fernandez, when in truth they were for Rodriguez. It ruled that where a person other than the voter crossed out the originally written name of a candidate and replaced it with that of another, the vote should be admitted for the original candidate and rejected for the second. Thus, deducting the 3 votes from the 29 votes of the petitioner and adding the same to the 24 votes of the respondent, the result would be 26 for the petitioner and 27 for the respondent, with the latter winning by a single vote.[7]

On January 31, 2007, the COMELEC First Division, in the other assailed Order,[8] denied petitioner's motion for reconsideration for having been filed out of time and found no necessity to refer the same to the COMELEC *en banc*.

Petitioner, then, on February 6, 2007, filed the instant petition arguing in the main, as she had strongly argued before the COMELEC, that the latter has no appellate jurisdiction over

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[7] *Rollo*, pp. 28-30. The COMELEC First Division disposed of the case as follows:

WHEREFORE, premises considered, the Commission (First Division) RESOLVED, as it hereby RESOLVES, to GIVE DUE COURSE to the instant APPEAL finding it imbued with MERIT.

ACCORDINGLY, protestee-appellant Mark Anthony B. Rodriguez is hereby DECLARED as the DULY ELECTED Sangguniang Kabataan Chairman of Barangay Pandan del Sur, in the July 15, 2002 Synchronized *Barangay* and Sangguniang [Kabataan] (SK) Elections. The January 12, 2004 Decision of the 4th Municipal Circuit Trial Court of Pandan-[Caramoran] is hereby ORDERED SET ASIDE and the proclamation of protestant-appellee Indira R. Fernandez as Sangguniang Kabataan Chairman of said *Barangay* is hereby DECLARED NULL and VOID. CONSEQUENTLY, protestant-appellee Indira R. Fernandez is hereby ORDERED to immediately VACATE and RELINQUISH the duties and functions of the Office of Sanggunian Kabataan Chairman, to protestee-appellant Mark Anthony B. Rodriguez.

Let the Office of the Deputy Executive Director on Operations (ODEDO), this Commission, implement and furnish a copy of this Resolution to the Office of the President, Secretary of the Department of Interior and Local Government, Chairman of the Commission on Audit and the *Barangay* Secretary of Pandan del Sur, Pandan, Catanduanes, upon its finality.

SO ORDERED.

[8] *Supra* note 2.

contests involving SK officials decided by trial courts of limited jurisdiction. Even granting that it does, she claimed that the COMELEC gravely abused its discretion in nullifying the decision of the trial court.[9]

The Court dismisses the instant petition.

Considering that the term of the contested office has already expired, the petition has been rendered moot and academic.[10] Republic Act (R.A.) No. 9164[11] provides that the term of the SK officials elected in the July 15, 2002 synchronized *barangay* and SK elections shall be 3 years, commencing on August 15, 2002, and ending at noon on November 30, 2005.[12]

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[9] *Rollo*, pp. 135-148. The issues submitted by petitioner for our resolution are the following:

I – WHETHER OR NOT THE RESPONDENT COMELEC (FIRST DIVISION) HAS APPELLATE JURISDICTION TO ENTERTAIN APPEALS FROM DECISIONS OF THE METROPOLITAN TRIAL COURTS/MUNICIPAL TRIAL COURTS/MUNICIPAL CIRCUIT TRIAL COURTS IN CASES INVOLVING THE ELECTION OF THE CHAIRMAN AND MEMBERS OF THE *SANGGUNIANG KABATAAN*.

II – WHETHER OR NOT THERE IS A STATUTORY RIGHT TO APPEAL FROM THE DECISIONS OF THE AFORESAID COURTS TO ANY HIGHER COURT OR THE COMMISSION ON ELECTIONS.

III – ASSUMING THAT THE RESPONDENT COMELEC (FIRST DIVISION) HAS JURISDICTION OVER AN APPEALED ELECTION CASE, WHETHER OR NOT IT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NULLIFYING THE DECISION OF THE LOWER COURT *A QUO*. (*Id.* at 135-136.)

[10] *Albaña v. Commission on Elections*, 478 Phil. 941, 949 (2004); *Trinidad v. Commission on Elections*, 373 Phil. 802, 812-813 (1999), citing *Malaluan v. Commission on Elections*, 324 Phil. 676, 683 (1996).

[11] Entitled "AN ACT PROVIDING FOR SYNCHRONIZED *BARANGAY* AND *SANGGUNIANG KABATAAN* ELECTIONS, AMENDING REPUBLIC ACT NO. 7160, AS AMENDED, OTHERWISE KNOWN AS THE 'LOCAL GOVERNMENT CODE OF 1991,' AND FOR OTHER PURPOSES," and approved on March 19, 2002.

[12] Sections 1, 2 and 4 of R.A. 9164 pertinently read:

SEC. 1. *Date of Election*.—There shall be synchronized *barangay* and *sangguniang kabataan* elections which shall be held on July 15, 2002.

R.A. 9340,[13] however, amended the aforesaid law and reset the *barangay* and SK elections to October 2007, thereby extending the term of those elected in 2002 up to noon of November 30, 2007.[14] On the latter date, therefore, the term of the *barangay* and SK officials elected in 2002 expired. It is thus an exercise in futility for the Court to indulge itself in a review of the records and in an academic discussion of the applicable legal principles to determine who really won the said elections, because whatever judgment is reached, the same

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Subsequent synchronized *barangay* and *sangguniang kabataan* elections shall be held on the last Monday of October and every three (3) years thereafter.

SEC. 2. *Term of Office.*—The term of office of all *barangay* and *sangguniang kabataan* officials after the effectivity of this Act shall be three (3) years."

x x x x x x x x x

SEC. 4. *Assumption of Office*.—The term of office of the *barangay* and *sangguniang kabataan* officials elected under this Act shall commence on August 15, 2002. The term of office of the *barangay* and *sangguniang kabataan* officials elected in subsequent elections shall commence at noon of November 30 next following their election.

[13] Entitled "AN ACT AMENDING REPUBLIC ACT NO. 9164, RESETTING THE *BARANGAY* AND *SANGGUNIANG KABATAAN* ELECTIONS, AND FOR OTHER PURPOSES," and approved on September 22, 2005.

[14] Sections 1 and 2 of R.A. 9340 pertinently read:

SEC. 1. Section 1 of Republic Act No. 9164 is hereby amended to read as follows:

Section 1. *Date of Election*.—There shall be synchronized *barangay* and *sangguniang kabataan* elections which shall be held on July 15, 2002. Subsequent synchronized *barangay* and *sangguniang kabataan* elections shall be held on the last Monday of October 2007 and every three (3) years thereafter.

SEC. 2. Section 4 of Republic Act No. 9164 is hereby amended to read as follows:

Section 4. *Assumption of Office*.—The term of office of the *barangay* and *sangguniang kabataan* officials elected under this Act shall commence on August 15, 2002. The term of office of the *barangay* and *sangguniang kabataan* officials elected in the October 2007 election and subsequent elections shall commence at noon of November 30 next following their election.

can no longer have any practical legal effect or, in the nature of things, can no longer be enforced.[15]

Be that as it may, we deem it necessary to discuss the issue of jurisdiction raised in the petition for the guidance of the bench and the bar.[16]

The 1987 Constitution vests in the COMELEC appellate jurisdiction over all contests involving elective *barangay* officials decided by trial courts of limited jurisdiction.[17] Construed in relation to the provision in R.A. No. 7160[18] that includes in the enumeration of *barangay* officials the SK chairman,[19] the constitutional provision indeed sanctions the appellate review by the COMELEC of election protests involving the position of SK chairman, as in the instant case. Hence, we find nothing improper in the COMELEC's assumption of jurisdiction over respondent's appeal.

Petitioner's reliance on our ruling in *Mercado v. Board of Election Supervisors*[20] that contests involving the SK chairman do not fall within Section 252 of the Omnibus Election Code[21] and paragraph 2, Section 2, Article IX-C of the Constitution,

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[15] *Lanuza, Jr. v. Yuchengco*, G.R. No. 157033, March 28, 2005, 454 SCRA 130, 138.

[16] See *Roble Arrastre, Inc. v. Villaflor*, G.R. No. 128509, August 22, 2006, 499 SCRA 434, 446-447, in which the Court was constrained to decide a moot question in order to educate the bench and the bar.

[17] See CONSTITUTION, Art. IX-C, Sec. 2(2).

[18] Otherwise known as the "Local Government Code of 1991," approved on October 10, 1991 and became effective on January 1, 1992.

[19] Section 387(a) of the Local Government Code of 1991 pertinently reads:

Section 387. *Chief Officials and Offices.*—

(a) There shall be in each *barangay* a *punong barangay*, seven (7) *sangguniang barangay* members, **the *sangguniang kabataan* chairman**, a *barangay* secretary, and a *barangay* treasurer.

[20] 313 Phil. 278, 294 (1995).

[21] Batas Pambansa Blg. 881, approved on December 3, 1985. Section 252 thereof provides:

is misplaced. The doctrine therein, as we explained in the much later *Marquez v. Commission on Elections*,[22] is no longer controlling. Thus, the rule at the present is that trial courts of limited jurisdiction have exclusive original jurisdiction over election protests involving *barangay* officials, which include the SK chairman, and that the COMELEC has the exclusive appellate jurisdiction over such protests.[23]

WHEREFORE, premises considered, the petition for *certiorari* and prohibition is *DISMISSED*.

SO ORDERED.

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

Section 252. *Election contest for barangay offices*.—A sworn petition contesting the election of a *barangay* officer shall be filed with the proper municipal or metropolitan trial court by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after the proclamation of the results of the election. The trial court shall decide the election protest within fifteen days after the filing thereof. The decision of the municipal or metropolitan trial court may be appealed within ten days from receipt of a copy thereof by the aggrieved party to the regional trial court which shall decide the case within thirty days from its submission, and whose decisions shall be final.

In *Flores v. Commission on Elections*, G.R. No. 89604, April 20, 1990, 184 SCRA 484, 488-490, the Court declared that the appeal of the MTC's decisions in election protests involving *barangay* officials must be lodged with the COMELEC by virtue of Article IX-C, Section 2(2) of the Constitution.

[22] 371 Phil. 842, 850 (1999).

[23] *Batoy v. Judge Calibo, Jr.*, 445 Phil. 547, 553-554 (2003); *Beso v. Aballe*, 382 Phil. 862, 870 (2000).

SECOND DIVISION

[G.R. No. 176795. June 30, 2008]

SPS. CAROLINA and REYNALDO JOSE, *petitioners, vs.* **SPS. LAUREANO and PURITA SUAREZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF CIVIL ACTION; PREJUDICIAL QUESTION; ELEMENTS. — A prejudicial question generally comes into play in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the latter may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. The rationale behind the principle of prejudicial question is to avoid two conflicting decisions. It has two essential elements: (i) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (ii) the resolution of such issue determines whether or not the criminal action may proceed.

2. CRIMINAL LAW; BATAS PAMBANSA BLG. 22; NATURE. — The Court has consistently declared that the cause or reason for the issuance of a check is inconsequential in determining criminal culpability under B.P. Blg. 22. In several instances, we have held that what the law punishes is the issuance of a bouncing check and not the purpose for which it was issued or the terms and conditions relating to its issuance; and that the mere act of issuing a worthless check is *malum prohibitum* provided the other elements of the offense are properly proved. The nature and policy of B.P. Blg. 22 were aptly enunciated by the Court in *Meriz v. People*, when it stated: "x x x. [B.P. Blg.] 22 does not appear to concern itself with what might actually be envisioned by the parties, its primordial intention being to instead ensure the stability and commercial value of checks as being virtual substitutes for currency. It is a policy that can easily be eroded if one has yet to determine the reason

for which checks are issued, or the terms and conditions for their issuance, before an appropriate application of the legislative enactment can be made. The gravamen of the offense under [B.P. Blg.] 22 is the act of making or issuing a worthless check or a check that is dishonored upon presentment for payment. The act effectively declares the offense to be one of *malum prohibitum.* The only valid query then is whether the law has been breached, *i.e.*, by the mere act of issuing a bad check, without so much regard as to the criminal intent of the issuer."

3. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; WHEN PRESENT. — There is forum shopping when a party seeks to obtain remedies in an action in one court, which had already been solicited, and in other courts and other proceedings in other tribunals. Forum shopping is the act of one party against another, when an adverse judgment has been rendered in one forum, of seeking another and possibly favorable opinion in another forum other than by appeal or by special civil action of *certiorari*; or the institution of two or more acts or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioners.
Romeo J. Balili for respondents.

D E C I S I O N

TINGA, *J.*:

Petitioners filed this case assailing the Decision[1] of the Court of Appeals in CA-G.R. CEB SP No. 00397 dated 17 August 2006 which affirmed the Orders[2] of the Regional Trial Court (RTC) of Cebu City, Branch 19 restraining Branches 2 and 5 of the Municipal Trial Court in Cities (MTCC) of Cebu City from proceeding with the criminal cases for violation of Batas

[1] *Rollo*, pp. 25-36; penned by Associate Justice Romeo F. Barza with Associate Justices Arsenio J. Magpale and Vicente L. Yap concurring.

[2] *Id*. at 155-158.

Pambansa Bilang 22 (B.P. Blg. 22) filed against respondent Purita Suarez.

The facts of the case follow.

Respondents, spouses Laureano and Purita Suarez, had availed of petitioner Carolina Jose's (Carolina) offer to lend money at the daily interest rate of 1% to 2%. However, Carolina and her husband, petitioner Reynaldo Jose, later on increased the interest to 5% per day, which respondents were forced to accept because they allegedly had no other option left. It then became a practice that petitioners would give the loaned money to Purita and the latter would deposit the same in her and her husband's account to cover the maturing postdated checks they had previously issued in payment of their other loans. Purita would then issue checks in favor of petitioners in payment of the amount borrowed from them with the agreed 5% daily interest.

On 7 May 2004, respondents filed a Complaint[3] against petitioners seeking the declaration of "nullity of interest of 5% per day, fixing of interest, recovery of interest payments"[4] and the issuance of a writ of preliminary injunction, alleging that the interest rate of 5% a day is iniquitous, contrary to morals, done under vitiated consent and imposed using undue influence by taking improper advantage of their financial distress. They claimed that due to serious liquidity problems, they were forced to rely on borrowings from banks and individual lenders, including petitioners, and that they had to scramble for funds to cover the maturing postdated checks they issued to cover their other borrowings. In their prayer, respondents stated:

> WHEREFORE, it is prayed that upon the filing of the instant case and in accordance with the 1997 Rules on Civil Procedure[,] a writ of preliminary injunction or at least a temporary restraining order be issued restraining defendant from enforcing the checks as listed in Annex "E" including the filing of criminal cases for violation of B.P. [Blg.] 22 and restraining defendants from entering plaintiffs' store

[3] *Id*. at 47-60. The Complaint was raffled to the RTC of Cebu City, Branch 19, presided by Judge Ramon G. Codilla.

[4] *Id*. at 59.

and premises to get cash sales and other items against plaintiffs will [*sic*] under such terms and conditions as this Court may affix.[5]

Thereafter, at the instance of Carolina, several cases for violation of B.P. Blg. 22[6] were filed against respondent Purita before the MTCC of Cebu City, Branches 2 and 5. Purita, in turn filed motions to suspend the criminal proceedings on the ground of prejudicial question, on the theory that the checks subject of the B.P. Blg. 22 cases are void for being *contra bonos mores* or for having been issued in payment of the iniquitous and unconscionable interest imposed by petitioners. The motions were denied.[7]

Respondents thereafter filed before the RTC a "Motion for Writ of Preliminary Injunction with Temporary Restraining Order"[8] seeking to restrain the MTCCs from further proceeding with the B.P. Blg. 22 cases on the ground of prejudicial question. Petitioners opposed the motion. Nevertheless, the RTC through its 20 December 2004 Order[9] issued a writ of preliminary injunction, thereby enjoining the MTCCs from proceeding with the cases against Purita. Petitioners sought reconsideration of the order but their motion was denied due course in the RTC's 3 February 2005 Order.[10]

Petitioners elevated the case to the Court of Appeals[11] and questioned the propriety of the RTC's issuance of a preliminary injunction based on a prejudicial question. The appellate court stated that respondents had sought to annul the checks for being

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[5] *Id*. at 58-59.

[6] Criminal Case Nos. R-128868-R to 128877-R are pending before Branch 2, MTCC, Cebu City, and Case Nos. 128395-R to 128408-R and 128482-R to 128513-R are pending before Branch 5, MTCC, Cebu City.

[7] CA *rollo*, pp. 128-134. Order of the MTCC Branch 2, dated 12 November 2004 and Order of MTCC, Branch 5, dated 12 November 2004.

[8] *Id*. at 135-144.

[9] *Rollo*, pp. 155-157.

[10] *Id*. at 158.

[11] CA *rollo*, pp. 2-29.

void pursuant to Article 1422 of the Civil Code which provides that "a contract which is the direct result of a previous illegal contract, is also void and inexistent." Accordingly, the appellate court concluded that if the checks subject of the criminal cases were later on declared null and void, then said checks could not be made the bases of criminal prosecutions under B.P. Blg. 22. In other words, the outcome of the determination of the validity of the said checks is determinative of guilt or innocence of Purita in the criminal case.[12]

The appellate court also observed that respondents' resort to an application for preliminary injunction could not be considered as forum shopping since it is the only remedy available to them considering the express proscription of filing a petition for *certiorari* against interlocutory orders issued in cases under B.P. Blg. 22 which are governed by the rules on summary procedure.[13]

Before us, petitioners submit that because under Section 6, Rule 111 of the Rules on Criminal Procedure a petition to suspend proceedings on the ground of prejudicial question should be filed in the same criminal action, the RTC has no jurisdiction to issue the writ of preliminary injunction as it is not the court where the B.P. Blg. 22 cases were filed. Moreover, they argue that respondents are guilty of forum shopping because after the denial of their motion to suspend the proceedings before Branches 2 and 5 of the MTCC, they resorted to the filing of a motion for preliminary injunction before the RTC also on the ground of prejudicial question; therefore, they succeeded in getting the relief in one forum (RTC) which they had failed to obtain in the first forum (MTCCs). Likewise, petitioners claim that the Court of Appeals erred in holding that the civil case poses a prejudicial question to the B.P. Blg. 22 cases, thus resulting in the erroneous suspension of the proceedings the latter cases. Finally, petitioners posit that the RTC erred in issuing the preliminary injunction because respondents have no clear and unmistakable right to its issuance.[14]

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[12] *Rollo*, p. 32.

[13] *Id.* at 34.

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

Respondents, for their part, state that the possibility of a ruling in the civil case to the effect that the subject checks are *contra bonos mores* and hence null and void constitutes a prejudicial question in the B.P. Blg. 22 cases. Thus, proceeding with the trial in the criminal cases without awaiting the outcome of the civil case is fraught with mischievous consequences.[15] They cite the case of *Medel v. Court of Appeals*,[16] wherein the Court nullified the interest rate of 5.5% per month for being *contra bonos mores* under Article 1306 of the Civil Code, and recomputed the interest due at the rate of 1% per month.[17] Thus, if their loans are computed at 1% per month, it would mean that the checks subject of the B.P. Blg. 22 cases are not only fully paid but are also in fact overpaid. They also invoke the case of *Danao v. Court of Appeals*[18] wherein the Court allegedly ruled that there is no violation of B.P. Blg. 22 if the dishonored checks have been paid.[19] They claim that since the 5% interest per day was not contained in any written agreement, per Article 1956[20] of the Civil Code, petitioners are bound to return the total interest they collected from respondents. Respondents point out that they incorporated in their complaint an application for preliminary injunction and temporary restraining order to restrain Carolina from enforcing the interest and from filing criminal cases for violation of B.P. Blg. 22. Quoting the RTC, respondents explain:

> Since there was no proof at that time that plaintiff sustain or are about to sustain damages or prejudice if the acts complained of are not enjoined, the application was not acted upon by the Court. When the attention of the Court was invited by the plaintiffs of the refusal of the MTC, Branches 2 and 5, to suspend the criminal proceedings

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[15] *Id.* at 167.

[16] 359 Phil. 820 (1998).

[17] *Supra* note 15.

[18] 411 Phil. 63 (2001).

[19] *Rollo*, p. 169.

[20] CIVIL CODE, Art. 1956. No interest shall be due unless it has been expressly stipulated in writing.

despite being appraised of the pendency of this case, the Court has to act accordingly.[21]

Respondents maintain that they are not guilty of forum shopping because after the denial by the MTCCs of their motion to suspend proceedings, their only available remedy was the filing of an application for preliminary injunction in the existing civil case filed earlier than the B.P. Blg. 22 cases. In any case, respondents argue that the rule on forum shopping is not intended to deprive a party to a case of a legitimate remedy.[22] Finally, they claim that the case falls under the exceptions to the rule that the prosecution of criminal cases may not be enjoined by a writ of injunction, considering that in this case there is a prejudicial question which is *sub judice,* and that there is persecution rather than prosecution.[23]

The case hinges on the determination of whether there exists a prejudicial question which necessitates the suspension of the proceedings in the MTCCs.

We find that there is none and thus we resolve to grant the petition.

A prejudicial question generally comes into play in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the latter may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. The rationale behind the principle of prejudicial question is to avoid two conflicting decisions. It has two essential elements: (i) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (ii) the resolution of such issue determines whether or not the criminal action may proceed.[24]

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[21] *Rollo,* p. 158. Order dated 3 February 2005.

[22] *Id.* at 176-177.

[23] *Id.* at 180.

[24] *Carlos v. Court of Appeals*, 335 Phil. 490, 499 (1997), citing *Tuanda v. Sandiganbayan,* 249 SCRA 342 (1995).

Now the prejudicial question posed by respondents is simply this: whether the daily interest rate of 5% is void, such that the checks issued by respondents to cover said interest are likewise void for being *contra bonos mores*, and thus the cases for B.P. Blg. 22 will no longer prosper.

The prejudicial question theory advanced by respondents must fail.

In the first place, the validity or invalidity of the interest rate is not determinative of the guilt of respondents in the criminal cases. The Court has consistently declared that the cause or reason for the issuance of a check is inconsequential in determining criminal culpability under B.P. Blg. 22.[25] In several instances, we have held that what the law punishes is the issuance of a bouncing check and not the purpose for which it was issued or the terms and conditions relating to its issuance; and that the mere act of issuing a worthless check is *malum prohibitum* provided the other elements of the offense are properly proved.[26]

The nature and policy of B.P. Blg. 22 were aptly enunciated by the Court in *Meriz v. People*,[27] when it stated:

> x x x. [B.P. Blg.] 22 does not appear to concern itself with what might actually be envisioned by the parties, its primordial intention being to instead ensure the stability and commercial value of checks as being virtual substitutes for currency. It is a policy that can easily be eroded if one has yet to determine the reason for which checks are issued, or the terms and conditions for their issuance, before an appropriate application of the legislative enactment can be made. The gravamen of the offense under [B.P. Blg.] 22 is the act of making or issuing a worthless check or a check that is dishonored upon presentment for payment. The act effectively declares the offense

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[25] *Meriz v. People*, 420 Phil. 608, 617 (2001).

[26] *Abarquez v. Court of Appeals*, 455 Phil. 964, 975 (2003), *Ong v. People*, G.R. No. 139006, 27 November 2000, 346 SCRA 117, 122-123 and *Caras v. CA*, 418 Phil. 655, 664 (2001).

[27] *Meriz v. People*, 420 Phil. 608 (2001).

to be one of *malum prohibitum*. The only valid query then is whether the law has been breached, *i.e.*, by the mere act of issuing a bad check, without so much regard as to the criminal intent of the issuer.[28]

Thus, whether or not the interest rate imposed by petitioners is eventually declared void for being *contra bonos mores* will not affect the outcome of the B.P. Blg. 22 cases because what will ultimately be penalized is the mere issuance of bouncing checks. In fact, the primordial question posed before the court hearing the B.P. Blg. 22 cases is whether the law has been breached, that is, if a bouncing check has been issued.

The issue has in fact been correctly addressed by the MTCCs when respondents' motion to suspend the criminal proceedings was denied upon the finding that there exists no prejudicial question which could be the basis for the suspension of the proceedings. The reason for the denial of the motion is that the "cases can very well proceed for the prosecution of the accused in order to determine her criminal propensity … as a consequence of the issuance of several checks which subsequently … bounced" for "what the law punishes is the issuance and/or drawing of a check and upon presentment for deposit or encashment, it was dishonored due to insufficient funds [or] account closed."[29]

There being no prejudicial question, the RTC and, consequently, the Court of Appeals gravely erred when they allowed the suspension of the proceedings in the B.P. Blg. 22 cases.

Now, on to other matters.

We find that respondents are guilty of forum shopping. There is forum shopping when a party seeks to obtain remedies in an action in one court, which had already been solicited, and in other courts and other proceedings in other tribunals. Forum shopping is the act of one party against another, when an adverse judgment has been rendered in one forum, of seeking another

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[28] *Id.* at 617.

[29] CA *rollo*, p. 129. Per Order dated 12 November 2004 by MTCC Branch 2, Cebu City.

and possibly favorable opinion in another forum other than by appeal or by special civil action of *certiorari*; or the institution of two or more acts or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[30]

Respondents filed their motions to suspend proceedings in the MTCCs hearing the B.P. Blg. 22 cases but unfortunately, the same were denied. Failing to get the relief they wanted, respondents sought before the RTC, the suspension of the criminal proceedings which was granted. Respondents tried to extricate themselves from the charge of forum shopping by explaining that after the denial of their motions to suspend, their only remedy was the application for preliminary injunction in the civil case—a relief which they had already asked for in their complaint and which was also initially not granted to them. Any which way the situation is viewed, respondents' acts constituted forum shopping since they sought a possibly favorable opinion from one court after another had issued an order unfavorable to them.

The Court notes that three cases, namely, *Ras v. Rasul*,[31] *Medel v. CA*[32] and *Danao v. Court of Appeals*[33]—finding no application to the instant case—were mentioned by the RTC, the Court of Appeals and by respondents themselves in support of their position.

Ras v. Rasul cropped up in the order of the RTC which was quoted with approval by the Court of Appeals. According to the RTC, the ruling in the said case allegedly "can be squarely applied in this case which nullified and set aside the conviction in a criminal case because of a prejudicial question."[34] We do

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[30] *Montes v. Court of Appeals,* G.R. No. 143797, 4 May 2006, 489 SCRA 432, 439.

[31] Nos. 50441-42, 18 September 1980, 100 SCRA 125.

[32] 359 Phil. 820 (1998).

[33] *Danao v. Court of Appeals, supra* note 18.

[34] *Rollo,* p. 157.

not agree. The *Ras* case involves a petition for nullification of a deed of sale on the ground of forgery. While the civil case was pending, an information for *estafa* was filed against the respondent in the civil case. The Court ruled that there were prejudicial questions considering that the defense against the charge of forgery in the civil case is based on the very same facts which would be determinative of the guilt or innocence of the respondent in the estafa case. The instant case is different from *Ras* inasmuch as the determination of whether the 5% daily interest is *contra bonos mores* and therefore void, or that the total amount loaned from petitioners has been sufficiently paid, will not affect the guilt or innocence of Purita because the material question in the B.P. Blg. 22 cases is whether Purita had issued a bad check, regardless of the purpose or condition of its issuance.

Medel v. CA is the case upon which respondents anchor their claim that the interest due on their loans is only 1% per month and thus they have already overpaid their obligation to petitioners. In *Medel,* the Court declared that the rate of 5.5% interest per month on a ₱500,000.00 loan is iniquitous, unconscionable and hence contrary to morals, and must equitably be reduced to 12% per annum. While the *Medel* case made a finding that the stipulated interest rate is excessive and thus may be equitably reduced by the courts, we do not see how a reduction of the interest rate, should there be any, or a subsequent declaration that the amount due has been fully paid, will have an effect on the determination of whether or not Purita had in fact issued bouncing checks.

Meanwhile, respondents misunderstood our ruling in *Danao v. Court of Appeals*, which they claim to have ruled that there could be no violation of B.P. Blg. 22 if the dishonored checks have been paid. In *Danao,* the accused was convicted by the trial court for having issued two checks which eventually bounced. The Court found that there was no proof of receipt by the accused of any notice of nonpayment of the checks, and thus there was no way of determining when the five-day period prescribed in Section 2 of B.P. Blg. 22 would start and end.

Thus, the presumption or *prima facie* evidence of knowledge of the insufficiency of funds or credit at the time of the issuance of the checks did not arise. While there was a finding that the accused had already paid her obligations prior to receipt of the complainant's demand letter,[35] there was no declaration from the Court that such payment exonerated accused from liability for having issued bouncing checks. Instead, accused was acquitted due to insufficiency of evidence, and not because she had paid the amount covered by the dishonored checks[36] or that the obligation was deemed paid.

WHEREFORE, the petition is *GRANTED*. The impugned Decision of the Court of Appeals dated 17 August 2006 and its Resolution dated 27 February 2007, in CA-G.R. CEB-SP No. 00397, are *SET ASIDE*. The preliminary injunction issued by the Regional Trial Court of Cebu City, Branch 19 in its Order dated 20 December 2004 in Civil Case No. CEB-30278 enjoining the proceedings in the criminal cases for violation of B.P. Blg. 22 is *LIFTED AND SET ASIDE* and the MTCC of Cebu City, Branches 2 and 5 are *ORDERED* to proceed with dispatch with the arraignment and trial in the B.P. Blg. 22 cases pending before them.

SO ORDERED.

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

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[35] *Id.* at 73.

[36] There was a finding that accused had already paid her obligations prior to her receipt of the demand letter from complainant. However, there was no declaration from the Court that such payment exonerated accused from liability for the issuance of the bounced checks.

SECOND DIVISION

[G.R. No. 177136. June 30, 2008]
(Formerly G.R. Nos. 153295-99)

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ARTURO DOMINGO *y* GATCHALIAN,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DELAY IN REPORTING A CASE OF RAPE DUE TO THE THREATS OF THE ASSAILANT IS JUSTIFIED AND MUST NOT BE TAKEN AGAINST THE VICTIM; EXPLAINED.— [D]elay in reporting a case of rape is not always to be taken as an ostensible badge of a fabricated charge. A rape charge becomes doubtful only when the delay in revealing its commission is unreasonable and unexplained. In this case, AAA's reluctance and hesitation in breaking her agonizing silence were sufficiently established by her testimony that appellant was able to instill fear in her by threatening to kill her mother should the incidents be made known to anyone. Such intimidation is sufficient to cower AAA and make her choose to suffer privately instead of disclosing her sordid tale of abuse in the hands of appellant. Settled is the theory that delay or hesitation in reporting the abuse due to the threats of the assailant is justified and must not be taken against the victim, since it is not uncommon that a rape victim conceal for some time the assault against her person on account of fear of the threats posed by her assailant. Especially in cases where, as in this case, both the offender and the offended party are living under the same roof and are thus expected to give solace and protection to each other, the offender can easily build an atmosphere of psychological terror that effectively numbs the victim to silence. In these cases, it is fear, not reason, which abounds in the mind of the victim both at the time of the assaults and thereafter. Inasmuch as intimidation is addressed to the victim's mind, response thereto and the effect thereof naturally cannot be measured against any hard-and-fast rule such that it must be viewed in the context of the victim's perception and

judgment not only at the time of the commission of the crime but also at the time immediately thereafter.

2. ID.; ID.; ID.; ASSESSMENT OF THE TRIAL COURT THEREON IS CONTROLLING BECAUSE OF ITS UNIQUE OPPORTUNITY TO OBSERVE THE WITNESS ON THE STAND. — [W]hen the issue focuses on the credibility of witnesses, or the lack of it, the assessment of the trial court is controlling because of its unique opportunity to observe the witness and the latter's demeanor, conduct and attitude on the stand. And although this rule is open to certain defined exceptions, none obtains in this case.

3. CRIMINAL LAW; RAPE; PHYSICAL RESISTANCE; IMMATERIAL WHEN THE VICTIM IS SUFFICIENTLY INTIMIDATED BY HER ASSAILANT AND SHE SUBMITS AGAINST HER WILL BECAUSE OF FEAR FOR HER LIFE OR HER PERSONAL SAFETY. — Physical resistance is immaterial in a rape case when the victim is sufficiently intimidated by her assailant and she submits against her will because of fear for her life or her personal safety. To reiterate, intimidation in rape assumes a relative interpretation and depends not only on the age, size and strength of the parties but also on their relationship with each other. It is subjective as it is addressed to the mind of the victim and must therefore be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard-and-fast rule.

4. ID.; ID.; THE COMMISSION OF RAPE IS NOT HINDERED BY TIME OR PLACE AS IN FACT IT CAN BE COMMITTED EVEN IN THE MOST PUBLIC OF PLACES. — The commission of rape is not hindered by time or place as in fact it can be committed even in the most public of places. The presence of people nearby does not deter offenders from perpetrating their odious act. Indeed, rape can be committed in the same room where other members of the family are also sleeping, in a house where there are other occupants or even in places which to many might appear to be unlikely and high-risk venues for its commission.

5. REMEDIAL LAW; EVIDENCE; AFFIDAVITS; NATURE.— Affidavits or sworn statements are usually incomplete since they are often prepared by administering officers who cast the same in their language and understanding of what the affiant has said. Most of the time, they are products of partial suggestions and sometimes of want of suggestions and searching inquiries without the aid of which witnesses may be unable to recall the circumstances necessary for an accurate recollection.

6. CRIMINAL LAW; QUALIFIED RAPE; QUALIFYING CIRCUMSTANCES OF MINORITY OF VICTIM AND HER RELATIONSHIP TO OFFENDER, NOT SUFFICIENTLY ESTABLISHED IN CASE AT BAR.— As correctly ruled by the appellate court, appellant should be sentenced to suffer the penalty corresponding to only simple rape for it is settled that the minority of the victim and her relationship to the offender must be both alleged in the charging sheets and proved with certainty. These qualifying circumstances do not obtain in the present case for although the criminal informations allege that appellant is the stepfather of AAA, there is nothing in the evidence that supports the same. The stepfather-stepdaughter relationship as a qualifying circumstance presupposes that the victim's mother and the accused are married to each other. AAA herself stated that appellant is her stepfather but the prosecution did not submit any proof that BBB, AAA's mother, and appellant are indeed married to each other. Appellant for his part claimed that he and BBB are merely common-law spouses ("live-in" partners) which could also qualify the offense but only if the same is alleged in the informations and proven at the trial. In the same way, the circumstance pertaining to AAA's minority cannot likewise be taken into account for failure of the prosecution to prove the same with certainty.

7. ID.; RAPE; GUIDELINES IN APPRECIATING THE AGE OF THE VICTIM IN RAPE CASES.— *People v. Barcena*, citing *People v. Pruna*, laid down the following guidelines in appreciating the age of the victim in rape cases. It held that the original or certified true copy of birth certificate is the best evidence to prove the age of the victim in the absence of which similar authentic documents—*i.e.*, baptismal certificate and school records—showing the victim's date of birth may be submitted to the court; that should the foregoing be not available on account of loss or destruction, the credible

testimony of the mother or any relative by consanguinity or affinity qualified to testify on matters respecting pedigree shall be sufficient under certain conditions; and that if all the foregoing cannot be obtained, the testimony of the victim will suffice provided that it is expressly and clearly admitted by the accused.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TINGA, *J.*:

Plain and elementary in criminal law jurisprudence is the rule that in rape cases, the evidence for the prosecution must stand on its own merit and not merely draw strength from the weakness of the defense. We have pored over the records of the instant case and have found not only that the evidence of the defense is weak but also that the evidence of the prosecution is strong enough to overcome the constitutional presumption of innocence. We therefore dismiss the appeal.

The antecedents follow.

In five (5) similarly-worded Informations[1] filed with the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 78, appellant Arturo Domingo *y* Gatchalian was charged with violation

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[1] Records, pp. 1, 9, 13, 17 and 21. The inculpatory portions of the Informations read, thus:

Criminal Case No. 2715-M-99

That sometime in the middle part of 1996, in the [M]unicipality of Malolos, [P]rovince of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, stepfather of the offended party [AAA], did then and there willfully, unlawfully and feloniously, by use of force, violence and intimidation and with lewd designs, have carnal knowledge of the said [AAA], a 17-year old minor, against her will and without her consent.

Contrary to law.

of Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353[2] for the rapes he

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Criminal Case No. 2716-M-99

That sometime in the latter part of 1996, in the [M]unicipality of Malolos, [P]rovince of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, stepfather of the offended party [AAA], did then and there willfully, unlawfully and feloniously, by use of force, violence and intimidation and with lewd designs, have carnal knowledge the said [AAA], a 17-year old minor, against her will and without her consent.

Contrary to law.

Criminal Case No. 2717-M-99:

That sometime in the latter part of 1996, in the [M]unicipality of Malolos, [P]rovince of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, stepfather of the offended party AAAx, did then and there willfully, unlawfully and feloniously, by use of force, violence and intimidation and with lewd designs, have carnal knowledge the said [AAA], a 17-year old minor, against her will and without her consent.

Contrary to law.

Criminal Case No. 2718-M-99

That sometime in the early part of 1997, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, stepfather of the offended party x x x, did then and there willfully, unlawfully and feloniously, by use of force, violence and intimidation and with lewd designs, have carnal knowledge the said [AAA], a 17-year old minor, against her will and without her consent.

Contrary to law.

Criminal Case No. 2719-M-99

That sometime within the month of May 1997, in the [M]unicipality of Malolos, [P]rovince of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, stepfather of the offended party AAA, did then and there willfully, unlawfully and feloniously, by use of force, violence and intimidation and with lewd designs, have carnal knowledge the said [AAA], a 17-year old minor, against her will and without her consent.

Contrary to law.

[2] Entitled, AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES.

committed against AAA[3] on five different occasions. The informations alleged that appellant is the stepfather of AAA and that the latter was a minor at the time of the commission of the offense.

Appellant, assisted *de oficio,* entered a negative plea at the 6 December 1999 arraignment.[4] The case proceeded to trial with the prosecution offering the testimony of AAA.

At the stand,[5] AAA positively identified appellant as her "stepfather" and her assailant.[6] She recounted that she had been raped several times by appellant since May 1996 in their house on a farm somewhere in Malolos, Bulacan.[7]

It was around lunchtime in May 1996 and AAA, with her two siblings aged fourteen and twelve, was taking a nap on the floor of the kitchen. She was suddenly awakened by appellant who tried to strip her clothes. In that instant, appellant also undressed himself, touched AAA's private parts and then mounted her. AAA could not offer any resistance as appellant

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[3] The real name of the private offended party is withheld to protect her identity and privacy pursuant to Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262 and Section 40 of A.M. No. 04-10-11-SC. See our ruling in *People v. Cabalquinto,* G.R. No.167693, 19 September 2006, 502 SCRA 419.

[4] Records, p. 27.

[5] The cross-examination of AAA was initially scheduled on 3 March 2000. However, the same was reset to 17 March 2000 in view of the absence of counsel *de oficio.* On the appointed date, the hearing was again reset to 5 April 2000 because the presiding judge was on sick leave. It was reset to 10 May 2000 because this time, AAA did not appear in court, and again, to 19 May because both the judge and the prosecutor had gone on leave of absence. Finally, the trial court scheduled the hearing on 14 and 21 June 2000 with a directive that counsel *de oficio* explain why he should not be cited in contempt of court for his repeated failure to appear. Counsel *de oficio* did not comply with the directive and thus, by Order dated 14 June 2000 he was cited for contumacy and the accused's right to cross-examination was deemed waived. See *id.* at 47, 50, 51, 55, 56, 59, 60, 64, 65, 66, 67 & 72.

[6] *Id.* at 180, 198.

[7] *Id.* at 180-185.

held her hands firmly down. Neither could she cry out for help because appellant, armed with a knife, threatened to kill her if she did. Taking advantage of AAA's state of helplessness, appellant spread her legs, touched and kissed her breasts and forced his penis into her vagina. AAA felt pain in her genitalia as appellant even used his fingers to facilitate the penetration. After unleashing his bestial outrage, appellant warned that he would kill AAA's mother should the incident be revealed to anyone.[8]

The second rape occurred in the evening of 31 December 1996. Appellant instructed AAA's two siblings to leave the house and as soon as he was alone with AAA he ordered the latter to remove her clothes. Terrified because appellant was holding a kitchen knife, she did as told. She already knew what was going to happen. Appellant took two pillows, placed them on the kitchen floor and ordered AAA to lie down on top of them. Again appellant was able to have carnal knowledge with his victim in the same manner as the first time and after gratifying himself, left her alone crying.[9]

The last time AAA was abused by appellant was in May 1997 in the same manner and under the same circumstances as the first and second rapes[10] except that there was no mention that AAA was threatened by appellant with a knife on this occasion. AAA admitted that she had mustered no courage to relate her ordeal to anyone, not until her younger sister filed her own complaint against appellant for an attempted rape.[11]

Manuel Aves (Dr. Aves), the medical doctor who conducted a vaginal examination on AAA, testified that there was not a trace of physical injury on the victim's body because the rapes occurred three years prior to the examination.[12] Nevertheless,

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[8] *Id*.

[9] *Id*. at 192-196.

[10] *Id*.

[11] *Id*. at 196-197.

[12] *Id*. at 208-209.

the biological science report[13] signed by Dr. Aves, which was submitted to the court, revealed that AAA was in "non-virgin state" at the time of the examination owing to deep but healed lacerations in her hymen at 3, 5, 6 and 8 o'clock positions.[14]

Appellant, the lone witness for the defense, admitted that AAA is the daughter of his common-law wife ("live-in" partner), BBB.[15] He denied all the charges and claimed that AAA's allegations were ill-motivated as she was merely induced by BBB's mother to fabricate the charges because he would often catch the latter's ire whenever he and BBB quarreled.[16] He narrated that in the years when the alleged rapes took place, he was employed in the market as a *tanod* and porter; that he and BBB would leave their house together in the morning for work with AAA, who would then proceed to school; that in the afternoon, he and BBB would wait for AAA at the market and from there they would head home together at around 5:00 p.m.; and that AAA's two siblings would already be home when the three of them would arrive together[17] —which seems to imply that there could have been no opportunity for him to commit the rapes because AAA had always been in the company of the other members of the family especially on the subject dates. Furthermore he craftily disclosed to the court, when asked if he had raped AAA on the dates stated in the informations, that the latter supposedly had a lover and often came home from school late in the night by reason of which he often scolded her.[18]

After weighing the evidence, the trial court found appellant guilty of committing the alleged rapes against AAA in May and December 1996 and in December 1997, and acquitted him

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[13] Biological Science Report No. MR-105-99; *id*. at 158.

[14] *Id*.

[15] *Id*. at 212. The identity of AAA's mother is likewise concealed to protect the privacy of the private offended party. *Supra* note 3 .

[16] *Id*. at 218-220.

[17] *Id*. at 214-215, 217, 221-223, 228-230.

[18] *Id*. at 216-217.

of the rapes allegedly perpetrated in the latter part of 1996 and in the early part of 1997. Appellant was meted three death sentences and ordered to pay, for each of the three counts of rape, the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱10,000.00 as exemplary damages, and to pay the costs.[19]

The case was elevated to this Court on automatic review in view of the imposition of the death penalty. However, in conformity with the decision promulgated in *People v. Mateo*[20] and with the Court's Resolution of 19 September 1995, the case was transferred to the Court of Appeals for intermediate review.[21]

In the appeal brief he submitted to the Court of Appeals, appellant asserted that the trial court committed an error in finding him guilty of the charges and that assuming the trial court did not so err, it nevertheless erroneously imposed the death penalty on him.[22] With reference to the May 1996 rape,

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[19] *Id.* at 177. The RTC disposed of the case in this wise:

WHEREFORE, the foregoing considered, this Court hereby finds accused Arturo Domingo *y* Gatchalian GUILTY beyond reasonable doubt of three (3) counts of rape as defined and penalized under the provisions of Art. 266-B of the Revised Penal Code[,] as amended by Republic Act 7659, otherwise known as the Heinous Crimes Act and sentences him to suffer the mandatory penalty of DEATH for each count of the three (3) counts of rape with all the accessory penalties and to pay private complainant the sum of ₱50,000.00 for each of the three (3) counts of rape or a total of ₱150,000.00 as civil indemnity; ₱50,000.00 for each of the three (3) counts of rape or a total of ₱150,000.00 as moral damages; ₱10,000.00 for each of the three (3) counts of rape or a total of ₱30,000.00 as exemplary damages; and to pay the costs.

Accused is hereby acquitted of the charges for rape in Crim. Case Nos. 2717-M-99 and 2718-M-99 for insufficiency of evidence.

SO ORDERED.

[20] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 630. *People v. Mateo* modified Sections 3 and 10 of Rule 122, Section 13 of Rule 124 and Section 3 of Rule 125 insofar as they provide for direct appeals from the Regional Trial Court to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment.

[21] Per Resolution dated 9 November 2004; CA *rollo*, p. 105.

[22] *Id.* at 40-49.

appellant noted the improbability of AAA being raped in the presence of her two siblings. Emphasizing that the claim that he was armed with a knife at the time was not even mentioned in AAA's affidavit, he stressed that the same was raised by AAA belatedly at the stand and only when she was repeatedly asked why she did not cry for help or resist appellant's advances.[23] Anent the alleged rapes in December 1996 and May 1997, appellant claimed that AAA acted as though she was not an unwilling victim because as she herself admitted, she willingly stripped her clothes off and allowed herself to be sexually assaulted for yet a second and third time. Appellant tried to cast doubt on the credibility of AAA by pointing out that the prosecution had offered no ample explanation why it took more than two years before the abuses were reported to the authorities.[24] Finally, he questioned the propriety of the imposition of death penalty considering that the qualifying circumstances of relationship and minority, though alleged, had not been conclusively proven at the trial because AAA's birth certificate and appellant and BBB's marriage certificate were not submitted in evidence.[25]

On the contrary, observed the Office of the Solicitor General (OSG), the prosecution evidence sufficed to support a finding of guilt beyond reasonable doubt. The OSG pointed out that inasmuch as rape is no respecter of place, it was not impossible for appellant to carry out his bestial designs against AAA even when the latter's siblings were in the house at the time; that the failure of AAA to allege in her affidavit that her assailant was armed with a knife could not impair her credibility as a witness because affidavits are naturally incomplete; that the lack of any allegation that appellant was armed with a knife at the incident of May 1996 did not diminish the elements of the offense inasmuch as appellant's moral ascendancy over his victim constituted sufficient intimidation, which also explains why AAA did not offer any resistance to appellant's advances

[23] *Id*. at 50-51.

[24] *Id*. at 51-56.

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

nor report the incidents immediately; and that the fact that AAA removed her own clothes when told by appellant did not mean that she was a willing victim. Be that as it may, the OSG recommended that appellant be sentenced instead to *reclusion perpetua* considering that AAA's minority and her relationship to appellant had not been proven with certainty.[26]

In its decision[27] promulgated on 11 August 2006, the Court of Appeals affirmed the findings and conclusions of the trial court except that it sentenced appellant to suffer the penalty of *reclusion perpetua* in lieu of death, considering that the qualifying circumstances of minority and relationship had not been proven.[28]

Appellant filed a Notice of Appeal[29] whereby he intimated that the decision of the appellate court was contrary to the facts and the law, including applicable jurisprudence. Hence, the case is again before the Court bearing the same issues and arguments.

To begin with, let it be emphasized that delay in reporting a case of rape is not always to be taken as an ostensible badge of a fabricated charge.[30] A rape charge becomes doubtful only when the delay in revealing its commission is unreasonable and unexplained.[31] In this case, AAA's reluctance and hesitation

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[26] *Id.* at 82-96.

[27] *Rollo,* pp. 3-10.

[28] *Id.* at 8-10. The dispositive portion of the decision reads:

IN VIEW OF THE FOREGOING, the decision appealed from is MODIFIED in that in lieu of the death penalty, *reclusion perpetua* with all its accessory penalties shall be imposed. All other aspects of the decision are AFFIRMED.

SO ORDERED.

[29] *Id.* at 120.

[30] *People v. Barcena,* G.R. No. 168737, 16 February 2006, 482 SCRA 543, 555; *People v. Arsayo,* G.R. No. 166546, 26 September 2006, 503 SCRA 275, 289; *People v. Salome*, G.R. No. 169077, 31 August 2006, 500 SCRA 659, 670.

[31] *People v. Barcena, supra*; *People v. Arsayo, supra*.

in breaking her agonizing silence were sufficiently established by her testimony that appellant was able to instill fear in her by threatening to kill her mother should the incidents be made known to anyone. Such intimidation is sufficient to cower AAA and make her choose to suffer privately instead of disclosing her sordid tale of abuse in the hands of appellant. Settled is the theory that delay or hesitation in reporting the abuse due to the threats of the assailant is justified and must not be taken against the victim,[32] since it is not uncommon that a rape victim conceal for some time the assault against her person on account of fear of the threats posed by her assailant.[33]

Especially in cases where, as in this case, both the offender and the offended party are living under the same roof and are thus expected to give solace and protection to each other, the offender can easily build an atmosphere of psychological terror that effectively numbs the victim to silence.[34] In these cases, it is fear, not reason, which abounds in the mind of the victim both at the time of the assaults and thereafter. Inasmuch as intimidation is addressed to the victim's mind, response thereto and the effect thereof naturally cannot be measured against any hard-and-fast rule such that it must be viewed in the context of the victim's perception and judgment not only at the time of the commission of the crime but also at the time immediately thereafter.[35]

The threat and intimidation in this case, at least in the mind of AAA, were made even more real by the fact that at the time she was being ravished, a knife was drawn to her side which by itself was sufficient to animate her fear that appellant was seriously bent on actualizing his threat of physical harm,

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[32] *People v. Tabugoca*, 349 Phil. 236, 252 (1998); *People v. Matrimonio*, G.R. Nos. 82223-24, 13 November 1992, 215 SCRA 613, 633; *People v. Degala*, 411 Phil. 650, 663 (2001); *People v. Melivo*, 323 Phil. 412, 421-422 (1996); *People v. Aguero, Jr.*, 417 Phil. 836, 851 (2001).

[33] *People v. Alfaro*, 458 Phil. 942, 961 (2003); *People v. Ballester*, 465 Phil. 314, 321 (2004).

[34] *People v. Melivo*, 323 Phil. 412, 422 (1996).

[35] *People v. Acala*, 366 Phil. 797, 810-811 (1999).

or at the very least it placed AAA in a confused situation that effectively sealed her lips for some time. It is thus not strange that it actually took her two long years before she could muster enough courage in taking the bold step towards her expiation, that is, when she has finally decided to join the cause of her own sister who, for an attempted rape, lost no time in filing a complaint against appellant.[36]

Also, appellant posits that AAA, in filing the charges, was moved by no earnest desire to obtain justice because she has merely been pressured by her grandmother to fabricate a tale of rape as the latter often complained about his and BBB's frequent quarrels and often told them that they had better be separated than continue on living together.[37] Appellant in effect would have the Court reassess the credibility of AAA's testimony, which function however as we have held in not a few occasions is best discharged by the trial court. Suffice it to say that when the issue focuses on the credibility of witnesses, or the lack of it, the assessment of the trial court is controlling because of its unique opportunity to observe the witness and the latter's demeanor, conduct and attitude on the stand. And although this rule is open to certain defined exceptions,[38] none obtains in this case. More importantly, other than the bare imputation by appellant of ill motives against AAA and the latter's grandmother, there is nothing more in the evidence which indicates that AAA and her grandmother were animated by improper motives in pinning down appellant. To be sure, it would be highly unlikely and unnatural for a victim of a crime and her relatives to point to someone else as the author of the crime other than the real culprit.[39]

Appellant likewise attempts to cloud the credibility of AAA by pointing out that contrary to what the latter related in court, her act of willingly and voluntarily stripping her clothes, allowing appellant

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[36] Records, pp. 183, 194, 196, 197.

[37] *Id*. at 218-220.

[38] *Marturillas v. People*, G.R. No. 163217, 18 April 2006, 487 SCRA 273, 297-298; *People v. Degala*, 411 Phil. 650, 657 (2001); *People v. Maglente*, 366 Phil. 221, 235 (1999).

[39] *Marturillas v. People*, G.R. No. 163217, 18 April 2006, 487 SCRA 273, 302.

to have sexual knowledge of her for the second and third time, and failing to cry out for help at the time of the alleged rapes do tend to prove that she was not an unwilling victim. This argument must also fail for certainly, the circumstances under which appellant unleashed his bestial desires upon AAA necessarily subjected the latter to extreme psychological pressure. Considering that appellant ensured the cooperation, or at the very least the non-resistance, of AAA by using a knife and threats of physical harm—coupled with the perversion of whatever moral ascendancy he as a father figure exercises over his hapless victim—AAA cannot be expected to act conformably to the usual expectations of everyone. For the same reason, she cannot be faulted for failing to offer resistance to appellant's advances. Physical resistance is immaterial in a rape case when the victim is sufficiently intimidated by her assailant and she submits against her will because of fear for her life or her personal safety. To reiterate, intimidation in rape assumes a relative interpretation and depends not only on the age, size and strength of the parties but also on their relationship with each other.[40] It is subjective as it is addressed to the mind of the victim and must therefore be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard-and-fast rule.[41]

Moreover, that the crime was perpetrated when AAA's siblings were asleep in the same room and under conditions that did not prevent AAA from calling out for help to her neighbors does not negate the rapes committed by appellant. The commission of rape is not hindered by time or place as in fact it can be committed even in the most public of places. The presence of people nearby does not deter offenders from perpetrating their odious act.[42] Indeed, rape can be committed in the same room where other members of the family are also

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[40] *People v. Barcena*, G.R. No. 168737, 16 February 2006, 482 SCRA 543, 554.

[41] *People v. Salome*, G.R. No. 169077, 31 August 2006, 500 SCRA 659, 669.

[42] *Llave v. People*, G.R. No. 166040, 26 April 2006, 488 SCRA 376, 402.

sleeping, in a house where there are other occupants or even in places which to many might appear to be unlikely and high-risk venues for its commission.[43]

Finally, in a last-ditch attempt to exonerate himself from liability, appellant asks why AAA, testifying on the May 1996 incident, belatedly claimed that she was threatened with a kitchen knife when in fact the same was not even mentioned in her affidavit.[44] This argument is puerile. Affidavits or sworn statements are usually incomplete since they are often prepared by administering officers who cast the same in their language and understanding of what the affiant has said. Most of the time, they are products of partial suggestions and sometimes of want of suggestions and searching inquiries without the aid of which witnesses may be unable to recall the circumstances necessary for an accurate recollection.[45] Thus, AAA's belated claim that appellant poked a knife at her in all three instances of rape cannot be taken to hurt the credibility of her testimony. Be that as it may, such lapse in AAA's own narrative does not go into any of the elemental acts necessary to make a reasonable conclusion that appellant is guilty indeed of the charges.

In view of the foregoing, it is readily clear that the evidence adduced by the prosecution is sufficient to support a finding of guilt beyond reasonable doubt. The defense's bare denial and alibi, being negative and self-serving defenses, can hardly outweigh AAA's affirmative testimony in open court and her positive identification of appellant as her assailant.

One important note. As correctly ruled by the appellate court, appellant should be sentenced to suffer the penalty corresponding to only simple rape for it is settled that the minority of the victim and her relationship to the offender must be both alleged

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[43] *People v. Gloria*, G.R. No. 168476, 27 September 2006, 503 SCRA 742, 754.

[44] CA *rollo*, p. 51.

[45] *Marturillas v. People*, G.R. No. 163217, 18 April 2006, 487 SCRA 273, 302-303.

in the charging sheets and proved with certainty.[46] These qualifying circumstances do not obtain in the present case for although the criminal informations allege that appellant is the stepfather of AAA, there is nothing in the evidence that supports the same. The stepfather-stepdaughter relationship as a qualifying circumstance presupposes that the victim's mother and the accused are married to each other.[47] AAA herself stated that appellant is her stepfather[48] but the prosecution did not submit any proof that BBB, AAA's mother, and appellant are indeed married to each other. Appellant for his part claimed that he and BBB are merely common-law spouses ("live-in" partners)[49] which could also qualify the offense but only if the same is alleged in the informations and proven at the trial.

In the same way, the circumstance pertaining to AAA's minority cannot likewise be taken into account for failure of the prosecution to prove the same with certainty. *People v. Barcena*,[50] citing *People v. Pruna*,[51] laid down the following guidelines in appreciating the age of the victim in rape cases. It held that the original or certified true copy of birth certificate is the best evidence to prove the age of the victim in the absence of which similar authentic documents—*i.e.*, baptismal certificate and school records—showing the victim's date of birth may be submitted to the court; that should the foregoing be not available on account of loss or destruction, the credible testimony of the mother or any relative by consanguinity or affinity qualified to testify on matters respecting pedigree shall be sufficient under certain conditions; and that if all the foregoing cannot be obtained, the testimony of the victim will suffice provided that it is expressly

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[46] *People v. Barcena*, G.R. No. 168737, 16 February 2006, 482 SCRA 543, 556; *People v. Narido*, 374 Phil. 489, 510 (1999); *People v. Acala*, 366 Phil. 797, 829 (1999).

[47] See *People v. Villaraza*, 394 Phil. 175, 196 (2000); *People v. Tolentino*, 367 Phil. 755, 765 (1999).

[48] Records, p. 181.

[49] *Id.* at 212.

[50] G.R. No. 168737, 16 February 2006, 482 SCRA 543.

[51] 439 Phil. 440 (2002).

and clearly admitted by the accused.[52] In this case, the prosecution did not submit any proof that AAA was a minor at the time the rapes were committed, except the testimony of AAA herself which however has not been admitted by appellant as in fact the latter in his testimony claimed that he had no knowledge of AAA's age at the time.[53]

Hence, since there is neither an ordinary nor a qualifying aggravating circumstance in this case, no factual and legal basis exists for the grant of exemplary damages.[54] The award of exemplary damages must thus be deleted.

WHEREFORE, the appeal is *DISMISSED*. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00563 dated 11 August 2006 insofar as it (a) modified the penalty of death to *reclusion perpetua* with all its accessory penalties, and (b) affirmed the award by the Regional Trial Court of Malolos, Bulacan, Branch 78 of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, each for every count of rape, is *AFFIRMED*. The award of ₱10,000.00 as exemplary damages for each of the three counts of rape is *DELETED*.

Accordingly, appellant Arturo Domingo *y* Gatchalian is sentenced to suffer the penalty of *reclusion perpetua* with all its accessory penalties, to pay AAA (to be identified through the Informations) the sum of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, for each of the three (3) counts of rape, and to pay the costs.

SO ORDERED.

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

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[52] *People v. Barcena*, G.R. No. 168737, 16 February 2006, 482 SCRA 543, 558-559.

[53] Records, p. 213.

[54] See *People v. Calongui*, G.R. No. 170566, 3 March 2006, 484 SCRA 76, 88-89 and *People v. Catubig*, 416 Phil. 102, 120 (2001).

SECOND DIVISION

[G.R. No. 177161. June 30, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ABRAHAM BUNAGAN *y* SONIO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; THE EXACT DATE OF THE SEXUAL ASSAULT IS NOT AN ESSENTIAL ELEMENT OF THE CRIME OF RAPE.— The exact date of the sexual assault is not an essential element of the crime of rape. What is important is the fact of the commission of the rape or that there is proof of the penetration of the female organ. In this case, accused-appellant admitted that he had sexual relations with the victim during the times that the alleged rape took place. His only defense was that those sexual encounters happened with AAA's consent. Thus, the matter of the exact date of the commission of the crime is already immaterial.

2. ID.; ID.; RAPE THROUGH INTIMIDATION, SUFFICIENTLY ESTABLISHED IN CASE AT BAR.— Accused-appellant's argument that the prosecution failed to prove his guilt beyond reasonable doubt cannot be accorded merit in the face of the categorical and parallel findings to the contrary of the CA and the trial court. As the CA aptly observed, accused-appellant had carnal knowledge of AAA through intimidation. Wrote the CA: "AAA testified that accused-appellant was armed with a bolo on the two occasions that he molested her and warned her not to report the incidents or else he would kill her. Contrary to the contention of accused-appellant, failure to shout or offer tenacious resistance did not make voluntary AAA's submission to his criminal acts. Indeed it is not necessary that force be employed inasmuch as intimidation is sufficient. It has been held that intimidation is generally addressed to the mind of the victim and, therefore, subjective, and its presence could not be tested by any hard and fast rule but must be viewed in the light of the victim's perception and judgment at the time of the crime."

3. CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARDED IN CASE AT BAR.— We note x x x that the CA failed to impose civil liability which is mandatory upon a finding of the fact of rape. And the award of moral damages is automatically granted without need of further proof, it being assumed that a rape victim has actually suffered moral damages entitling her to such award. In line with prevailing jurisprudence, the victim of rape through sexual assault is entitled to recover civil indemnity in the amount of PhP 30,000 and moral damages of PhP 30,000.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the Decision[1] dated October 27, 2006 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01182 entitled *People of the Philippines v. Abraham Bunagan* which affirmed with modification the May 6, 2005 Judgment[2] of the Regional Trial Court (RTC), Branch 4 in Tuguegarao City, finding accused-appellant Abraham Bunagan *y* Sonio guilty of rape, by sexual assault under Article 266-A(2) of the Revised Penal Code (RPC) in Criminal Case No. 10078 and rape under Art. 266-A(1) of the same code in Criminal Case No. 10079.

The informations in the two (2) criminal cases respectively read as follows:

Criminal Case No. 10078

That on or about the first week of February 2002, at around 7:00 o'clock in the evening in the Municipality of Peñablanca, Province

[1] *Rollo*, pp. 2-12. Penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Regalado E. Maambong and Japar B. Dimaampao.

[2] CA *rollo*, pp. 10-15.

of Cagayan, and within the jurisdiction of [the RTC], the said accused, ABRAHAM BUNAGAN *Y* SONIO with lewd design and by the use of force, did, then and there, willfully, unlawfully and feloniously insert his finger into the vagina of the offended party, [AAA] a minor twelve (12) years of age against her will.

Contrary to law.

Criminal Case No. 10079

That on or about April 02, 2003, in the Municipality of Peñablanca, Province of Cagayan, and within the jurisdiction of [the RTC], the said accused, ABRAHAM BUNAGAN Y SONIO armed with a pointed knife, with lewd design and by the use of force and intimidation, did, then and there, willfully, unlawfully and feloniously have sexual intercourse with the offended party, [AAA] a minor twelve (12) years of age against her will.

Contrary to law.

The facts are as follows:

Sometime in the first week of February 2002, at about seven o'clock in the evening, AAA,[3] then 12 years old, passed by the house of accused-appellant who was then in his yard holding a bolo. There and then, accused-appellant approached AAA, held her hands, covered her mouth with his palm, and brought her at the back of his house. Despite AAA's resistance, accused-appellant was able to strip her of shorts and panty, and succeeded in inserting his two fingers into her vagina. Accused-appellant threatened to kill AAA if she reported the incident to anyone.[4]

In the morning of April 2, 2003,[5] AAA went with her father and his companions to the rice field to harvest *palay* (rice plant). After harvesting *palay*, AAA's father and his companions went

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[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 is withheld and a fictitious initial instead is used to represent her to protect her privacy.

[4] *Rollo*, p. 4.

[5] The trial court's narration states that the molestation occurred on April 2, 2002, albeit the date April 2, 2003 is referred to also.

to the forest to gather firewood. AAA stayed behind and climbed a *caymito* (star apple) tree to gather fruits. When she got down from the tree, she was surprised to see accused-appellant, who was armed with a bolo. Accused-appellant brought AAA to a grassy area and laid her down. AAA resisted but he threatened her by pointing his bolo on the left side of her body. He then undressed her, went on top of her, and inserted his penis inside her vagina. As in the previous molestation incident, accused-appellant warned AAA not to report what had just happened to anybody, else he will kill her.[6]

When they came out of the grassy area, accused-appellant decided to stay with AAA while she waited for her father. During the wait, accused-appellant repeated his threat against AAA. When AAA's father arrived, all of them went home.[7]

The next day, AAA disclosed to her mother that accused-appellant had raped her. Mother and daughter lost no time in reporting the matter first to *barangay* officials and then to the police.[8]

On April 4, 2003, Dr. Mila F. Lingan-Simangan, Municipal Health Officer of Cumasi, Peñablanca, Cagayan, examined AAA. The resulting medico-legal report yielded the information that AAA had healed lacerations in the hymen at three, six, and nine o'clock positions and that her vagina easily admitted the tip of a finger.[9]

Accused-appellant admitted having had sexual relations with AAA, but denied employing force or intimidation in the process. He claimed that in February 2002, AAA went to his house, hugged him, and asked for PhP 10. Thereafter, they had sexual intercourse. He stated that he had sexual intercourse with AAA six times, AAA each time asking and receiving PhP 10. Furthermore, he said that on April 2, 2003, AAA asked to see him at the rice field where they again had sex.[10]

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[6] *Rollo*, p. 5.

[7] *Id*.

[8] *Id*.

[9] *Id*.

[10] *Id*. at 6.

On May 6, 2005, the RTC rendered a Decision, the dispositive portion of which reads:

> Accordingly, this Court finds the accused ABRAHAM BUNAGAN *y* Sonio GUILTY beyond reasonable doubt of the crimes of Rape in two (2) counts in Criminal Cases Nos. 10078 and 10079 defined and penalized under Article 266-A No. 2 and Article 266-A No. 1 (a) in relation to Article 266-B of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of *RECLUSION PERPETUA*.
>
> He is likewise ordered to pay the complainant, AAA the amount of [PhP] 50,000.00 as civil indemnity, [PhP] 50,000.00 as moral damages and the amount of [PhP] 25,000.00 as exemplary damages.
>
> SO ORDERED.[11]

On appeal, the CA, in its October 27, 2006 Decision, disposed of the case as follows:

> WHEREFORE, the Decision appealed from is AFFIRMED with respect to Criminal Case No. 10079, and MODIFIED with respect to Criminal Case No. 10078, by sentencing accused-appellant to an indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.
>
> SO ORDERED.[12]

On November 23, 2006, accused-appellant filed a Notice of Partial Appeal.

On September 3, 2007, this Court required the parties to submit supplemental briefs if they so desired. The parties manifested their willingness to submit the case on the basis of the records already submitted.

Accused-appellant, in his October 26, 2005 Brief filed at the CA, raised two issues for the appellate court's consideration. These issues are now deemed adopted in this present appeal, thus:

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[11] *Supra* note 2, at 15.

[12] *Supra* note 1, at 11.

I.

The [CA and] trial court gravely erred in not considering the Information in Criminal Case No. 10078 insufficient to support a judgment of conviction for failure of the prosecution to state the precise date of the commission of the alleged rape.

II.

The [CA and] trial court gravely erred in convicting the accused-appellant in Criminal Case No. 10079 despite failure of the prosecution to prove his guilt beyond reasonable doubt.[13]

The appeal has no merit.

The exact date of the sexual assault is not an essential element of the crime of rape. What is important is the fact of the commission of the rape[14] or that there is proof of the penetration of the female organ.[15] In this case, accused-appellant admitted that he had sexual relations with the victim during the times that the alleged rape took place. His only defense was that those sexual encounters happened with AAA's consent. Thus, the matter of the exact date of the commission of the crime is already immaterial.

Accused-appellant's argument that the prosecution failed to prove his guilt beyond reasonable doubt cannot be accorded merit in the face of the categorical and parallel findings to the contrary of the CA and the trial court. As the CA aptly observed, accused-appellant had carnal knowledge of AAA through intimidation. Wrote the CA:

AAA testified that accused-appellant was armed with a bolo on the two occasions that he molested her and warned her not to report the incidents or else he would kill her. Contrary to the contention of accused-appellant, failure to shout or offer tenacious resistance did not make voluntary AAA's submission to his criminal acts. Indeed

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[13] CA *rollo*, p. 26. Original in capital letters.

[14] *People v. Gonzales*, G.R. No. 141599, June 29, 2004, 433 SCRA 102, 115.

[15] *People v. Pandapatan*, G.R. No. 173050, April 13, 2007, 521 SCRA 304, 319.

it is not necessary that force be employed inasmuch as intimidation is sufficient. It has been held that intimidation is generally addressed to the mind of the victim and, therefore, subjective, and its presence could not be tested by any hard and fast rule but must be viewed in the light of the victim's perception and judgment at the time of the crime.[16]

As regards the question of what was committed in Criminal Case No. 10078, the CA correctly ruled that the crime committed was rape by sexual assault as defined in Art. 266-A(2) of the RPC. We note, however, that the CA failed to impose civil liability which is mandatory upon a finding of the fact of rape.[17] And the award of moral damages is automatically granted without need of further proof, it being assumed that a rape victim has actually suffered moral damages entitling her to such award.[18] In line with prevailing jurisprudence, the victim of rape through sexual assault is entitled to recover civil indemnity in the amount of PhP 30,000 and moral damages of PhP 30,000.[19]

WHEREFORE, the Court *AFFIRMS* with *MODIFICATION* the October 27, 2006 Decision of the CA in CA-G.R. CR-H.C. No. 01182, the *fallo* of which shall now read:

WHEREFORE, this Court finds the accused ABRAHAM BUNAGAN *y* SONIO GUILTY beyond reasonable doubt of the crime of simple rape in Criminal Case No. 10079, and hereby sentences him to suffer the penalty of *RECLUSION PERPETUA* and to pay the complainant the amount of PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 25,000 as exemplary damages.

In Criminal Case No. 10078, the accused is found guilty of rape through sexual assault and is hereby sentenced to an indeterminate

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[16] *Supra* note 1, at 9.

[17] *People v. Colongui*, G.R. No. 170566, March 3, 2006, 484 SCRA 76, 88.

[18] *People v. Cayabyab*, G.R. No. 167147, August 3, 2005, 465 SCRA 681, 693.

[19] *People v. Hermocilla*, G.R. No. 175830*,* July 10, 2007, 527 SCRA 296, 305.

penalty of two (2) years, four (4) months and one (1) day of prison *correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, and to pay complainant PhP 30,000 as civil indemnity and PhP 30,000 as moral damages.

SO ORDERED.

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

EN BANC

[G.R. No. 178884. June 30, 2008]

RICARDO P. PRESBITERO, JR., JANET PALACIOS, CIRILO G. ABRASIA, ARMANDO G. ALVAREZ, NENITO A. ARMAS, RENE L. CORRAL, JOEMARIE A. DE JUAN, ENRILICE C. GENOBIS, WILLIAM A. PRESBITERO and REYNO N. SOBERANO, *petitioners, vs.* **COMMISSION ON ELECTIONS, ROMMEL YOGORE, GLORY GOMEZ, DAN YANSON, JOENITO DURAN, SR., LUCIUS BODIOS and REY SUMUGAT,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; FAILURE OF ELECTION; WHEN DECLARED.— Stressed repeatedly in our prior decisions is that a failure of election may be declared only in the three instances stated in Section 6 of the OEC: the election has not been held; the election has been suspended before the hour fixed by law; and the preparation and the transmission of the election returns have given rise to the consequent failure to elect, meaning nobody emerged as the winner. Furthermore, the reason for such failure of election should be *force majeure,* violence,

terrorism, fraud or other analogous causes. Finally, before the COMELEC can grant a verified petition seeking to declare a failure of election, the concurrence of 2 conditions must be established, namely: (1) no voting has taken place in the precincts concerned on the date fixed by law or, even if there was voting, the election nevertheless resulted in a failure to elect; and (2) the votes cast would affect the result of the election.

2. ID.; ID.; ID.; ID.; POWER TO DECLARE A FAILURE OF ELECTION, EXPLAINED.— [W]e reiterate our pronouncement in *Batabor v. Commission on Elections* that "[t]he power to declare a failure of election should be exercised with utmost care and only under circumstances which demonstrate beyond doubt that the disregard of the law has been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatsoever; or that the great body of voters have been prevented by violence, intimidation and threats from exercising their franchise. There is failure of election only when the will of the electorate has been muted and cannot be ascertained. If the will of the people is determinable, the same must as far as possible be respected."

APPEARANCES OF COUNSEL

George Erwin M. Garcia for petitioners.
The Solicitor General for public respondent.
Ramos Tan Tabirao Law Firm for private respondents.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for *certiorari* and prohibition assailing the June 25, 2007 Resolution[1] of the Commission on Elections (COMELEC) in SPA No. 07-534.

Briefly stated, the antecedent facts and proceedings are as follows:

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[1] *Rollo*, pp. 27-31.

On May 10, 2007, the 4th Municipal Circuit Trial Court (MCTC) of Valladolid-San Enrique-Pulupandan, Negros Occidental, in separate resolutions[2] in 16 inclusion/exclusion cases,[3] ordered the municipal election officer (EO) of Valladolid to include the names of 946 individuals in the list of qualified voters of the said municipality for the May 14, 2007 elections. Prompted by the advice of COMELEC Manila that decisions of trial courts of limited jurisdiction in inclusion/exclusion cases attain finality only after the lapse of five days from receipt of notice sans any appeal therefrom, the acting provincial election supervisor (PES), directed the EO on May 13, 2007 not to comply with the MCTC order.[4] As a consequence thereof, the said 946 were disallowed by the board of election inspectors to vote in their respective precincts.[5]

These 946 then moved before the MCTC for the issuance of a temporary restraining order (TRO) to prevent the Municipal Board of Canvassers (MBOC) from canvassing the election returns and from proclaiming the winning candidates for the local positions in the municipality.[6] On May 17, 2007, the MCTC granted the motion and issued the restraining order.[7] Nonetheless, contending that the MCTC had no jurisdiction over it, the MBOC continued with the canvassing and subsequently proclaimed all the winning candidates for the municipal offices, including four of the herein petitioners—Cirilo Abrasia, Armando Alvarez, Nenito Armas and Rene Corral—who won seats in the *Sangguniang Bayan*.[8]

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[2] *Id*. at 57-135.

[3] Election Cases Nos. 07-006-V, 07-007-V, 07-008-V, 07-009-V, 07-010-V, 07-011-V, 07-012-V, 07-013-V, 07-014-V, 07-015-V, 07-016-V, 07-017-V, 07-018-V, 07-019-V, 07-020-V, and 07-021-V.

[4] *Rollo*, p. 11.

[5] *Id*. at 140-150.

[6] *Id*. at 151-161.

[7] *Id*. at 163-167.

[8] *Id*. at 168 and 200.

Dissatisfied with the turn of events, petitioners filed before the COMELEC a petition for the declaration of failure of election and the holding of a special election in Valladolid, Negros Occidental, which was docketed as SPA No. 07-534.[9] The petition was anchored on the grounds that: (1) the 946 individuals who were found by the MCTC to be qualified voters were disenfranchised; (2) for reasons unclear to the petitioners, the EO of the municipality, who was also the *ex-officio* chairman of the MBOC, was abruptly and unceremoniously replaced by another person, an alleged COMELEC computer clerk, on orders of the acting PES; (3) the number of voters who actually voted in the said elections was unusually low and its percentage in relation to the number of registered voters barely reached 70%; (4) no less than 2,000 avid supporters of the petitioners failed to vote on election day as their names were missing from the official list of voters; (5) the MBOC blatantly defied the TRO issued by the MCTC; and (6) the acting PES and the acting EO threatened and coerced the vice chairman and member-secretary of the MBOC to continue with the canvassing and proclaim the winning candidates.[10]

On June 25, 2007, the COMELEC *en banc* issued the assailed Resolution[11] dismissing the case for lack of merit. The COMELEC ruled that the grounds relied upon by the petitioners were not among those enumerated in Section 6 of the Omnibus Election Code (OEC)[12] which would warrant the declaration of failure of election. There was not even an allegation in the petition that the election in any polling place was not held or was suspended before the hour fixed by law or that the voting resulted in a failure to elect. To the contrary, petitioners admitted that elections were held, that 70% of the registered voters were able to cast their votes, and that the respondents emerged as winners. Further, the MCTC is without authority to order the

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[9] *Id*. at 32.

[10] *Id*. at 35-42.

[11] *Supra* note 1.

[12] *Batas Pambansa Blg*. 881, approved on December 3, 1985.

suspension of the canvassing and of the proclamation of the winning candidates.[13]

Contending that the COMELEC gravely abused its discretion in the issuance of the said resolution, petitioners brought the case before us via a petition for *certiorari* and prohibition.

We agree with the ruling of the COMELEC. Thus, we dismiss the petition.

Stressed repeatedly in our prior decisions is that a failure of election may be declared only in the three instances[14] stated in Section 6[15] of the OEC: the election has not been held; the election has been suspended before the hour fixed by law; and the preparation and the transmission of the election returns have given rise to the consequent failure to elect, meaning nobody emerged as the winner.[16] Furthermore, the reason for such failure of election should be *force majeure*, violence, terrorism, fraud

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[13] *Rollo*, pp. 29-30.

[14] *Tan v. Commission on Elections*, G.R. Nos. 166143-47 and 166891, November 20, 2006, 507 SCRA 352, 378; *Banaga, Jr. v. Commission on Elections*, 391 Phil. 596, 606-607 (2000).

[15] Section 6 of the OEC reads:

SEC. 6. *Failure of election.*- If, on account of *force majeure*, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.

[16] *Mutilan v. Commission on Elections*, G.R. No. 171248, April 2, 2007, 520 SCRA 152, 161; *Borja, Jr. v. Commission on Elections*, 329 Phil. 409, 414 (1996).

or other analogous causes.[17] Finally, before the COMELEC can grant a verified petition seeking to declare a failure of election, the concurrence of 2 conditions must be established, namely: (1) no voting has taken place in the precincts concerned on the date fixed by law or, even if there was voting, the election nevertheless resulted in a failure to elect; and (2) the votes cast would affect the result of the election.[18]

In the instant case, it is admitted by the petitioners that elections were held in the subject locality. Also, the private respondents and *four of the petitioners* won in the elections and were proclaimed as the duly elected municipal officials. There is nothing in the records from which the Court can make even a slim deduction that there has been a failure to elect in Valladolid, Negros Occidental. Absent any proof that the voting did not take place, the alleged disenfranchisement of the 946 individuals and 2,000 more supporters of the petitioners cannot even be considered as a basis for the declaration of a failure of election.[19] Had petitioners been aggrieved by the allegedly illegal composition and proceedings of the MBOC, then they should have filed the appropriate pre-proclamation case contesting the aforesaid composition or proceedings of the board,[20] rather than erroneously raising the same as grounds for the declaration of failure of election. On the TRO issued by the MCTC and the subsequent defiance thereof by the MBOC, suffice it to state that the propriety of suspending the canvass of returns or

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[17] *Tan v. Commission on Elections*, 463 Phil. 212, 233 (2003).

[18] *Macabago v. Commission on Elections*, 440 Phil. 683, 695 (2002).

[19] See *Batabor v. Commission on Elections*, G.R. No. 160428, July 21, 2004, 434 SCRA 630, 634, in which the Court affirmed the COMELEC's refusal to declare a failure of election even if the votes of the allegedly disenfranchised supporters of the petitioner therein would, if cast, substantially affect the results of the elections, absent any proof that the voting did not take place. See also *Canicosa v. Commission on Elections*, 347 Phil. 189, 193 (1997), in which the Court did not consider as a ground for the declaration of failure of election the fact that the names of the registered voters in the various precincts were not in the list of voters.

[20] See Section 20 of the OEC, as modified by Section 19 of Republic Act No. 7166 entitled "An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes," approved on November 26, 1991.

the proclamation of candidates is a pre-proclamation issue that is solely within the cognizance of the COMELEC.[21] In sum, petitioners have not adduced any ground which will warrant a declaration of failure of election.

As a final note, we reiterate our pronouncement in *Batabor v. Commission on Elections*[22] that "[t]he power to declare a failure of election should be exercised with utmost care and only under circumstances which demonstrate beyond doubt that the disregard of the law has been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatsoever; or that the great body of voters have been prevented by violence, intimidation and threats from exercising their franchise. There is failure of election only when the will of the electorate has been muted and cannot be ascertained. If the will of the people is determinable, the same must as far as possible be respected."

WHEREFORE, premises considered, the petition for *certiorari* and prohibition is *DISMISSED.*

SO ORDERED.

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

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[21] See Section 242 of the OEC, which pertinently states that the Commission shall have exclusive jurisdiction of all pre-proclamation controversies; *Albano v. Hon. Arranz*, 114 Phil. 318, 321 (1962); *Salcedo, Jr. v. Commission on Elections*, 108 Phil. 1164, 1168 (1960); see also *Libardos v. Casar*, A.M. No. MTJ-92-728, July 8, 1994, 234 SCRA 13, 16, in which the Court held a judge administratively liable for having ordered the suspension of the canvassing in an election; *Gustilo v. Judge Real, Sr.*, 405 Phil. 435, 444 (2001), in which the Court considered a judge to have gravely abused his authority and to have usurped a power vested by law in the COMELEC when he annulled the proclamation of a duly elected *barangay* official; and *COMELEC v. Judge Datu-Iman*, 363 Phil. 446, 451 (1999), in which the Court ruled, citing *Zaldivar v. Estenzo*, No. L-26065, May 3, 1968, 23 SCRA 533, 539-541, that lower courts cannot issue writs of injunction enforceable against the COMELEC.

[22] *Supra* note 19, at 797.

THIRD DIVISION

[G.R. No. 156011. July 3, 2008]

HEIRS OF GENEROSO A. JUABAN[1] and **FRANCIS M. ZOSA,** *petitioners, vs.* **CONCORDIO BANCALE, ISIDRA BANCALE, JUANITA BANCALE, ALEJANDRA BANCALE, DEMETRIO BANCALE, MARTA BANCALE, TEOFILA BANCALE, IGNACIO BANCALE, FORTUNATA BANCALE, WILFREDO BANCALE, GAVINO BAHIA and GLORIA BAHIA,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; LITIGANTS ARE BOUND BY THE NEGLIGENCE OF THEIR COUNSEL; EXCEPTIONS.— Although litigants are normally bound by the negligence of their counsel, however, there were instances when the Court withheld the application of this rule in cases of recklessness or gross negligence of counsel which deprives the client of due process of law, or when its application results in an outright deprivation of one's property through technicality, as in the instant case.

2. JUDICIAL ETHICS; JUDGES; DISQUALIFICATION OF JUDGES; PARTIALITY AND PREJUDGMENT AS DISQUALIFYING CIRCUMSTANCE, EXPLAINED.— Mere suspicion that a judge or justice is partial to a party is not enough. Bare allegations of partiality and prejudgment will not suffice in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor. There should be sufficient evidence to prove the allegations, and there must be showing that the judge had an interest, personal or otherwise, in the prosecution

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[1] Petitioner Generoso A. Juaban died on April 19, 2006 and was substituted by his wife Vibina Juaban and children Jose Augusto Juaban, Generoso Juaban, Jr., Mariso Juaban and Antonio Juaban as approved by the Court in its Resolution of June 19, 2006; *rollo*, p. 437.

of the case. To be a disqualifying circumstance, the bias and prejudice must be shown to have stemmed from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.

3. REMEDIAL LAW; ACTIONS; LITIGATIONS MUST BE DECIDED ON THEIR MERITS AND NOT ON TECHNICALITY. – The court has the discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case. Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioners.
Castillo Lamantan Pantaleon & San Jose for private respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for *certiorari* assails the November 20, 2000 Resolution[2] of the Court of Appeals in CA-GR. CV. No. 61696 which reconsidered its March 20, 2000 Resolution and reinstated the appeal filed by respondents. Also assailed is the November 7, 2002 Resolution[3] denying the Motion for Inhibition and Motion for Reconsideration.

On August 10, 1990, respondents filed against Eva Paras a complaint for rescission and/or annulment of contract, recovery of ownership and possession, damages and attorney's fees, before the Regional Trial Court of Lapu-Lapu City docketed as Civil Case No. 2309-L. Respondents were initially represented by Atty. Remotique but when he died, herein petitioners entered their appearance as respondents' counsel.

During the course of the trial, respondents and Eva Paras entered into a Compromise Agreement[4] upon which a Decision[5] was rendered by the Regional Trial Court of Lapu-lapu City, Branch 27, the pertinent portions of which read:

> Finding the aforesaid compromise agreement to be in order and not contrary to law, morals or public policy, the said compromise agreement is hereby approved and judgment is hereby rendered in favor of plaintiffs and against defendants ordering the Register of Deeds of Lapu-lapu City to cancel TCT Nos. 15636 and 15818 and all titles subsequent thereto and to issue new titles in the names of plaintiffs Concordio Bancale, Isidra Bancale, Juanita Bancale, Gaudencia B. Gungob, Alejandra Bancale, Demetrio Bancale, Andresa Bancale, Marta Bancale, Teofila Bancale, Isidra Bancale, Regina Bancale, Fortunato Bancale and Wilfredo Bancale.

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[2] *Rollo*, pp. 277-281.

[3] *Id*. at 303-304.

[4] *Id*. at 104-107.

[5] *Id*. at 117-118; penned by Judge Teodoro K. Risos.

For this purpose, the notice of *lis pendens* annotated on T.C.T. Nos. 15636 and 15818 is hereby ordered cancelled.

SO ORDERED.[6]

Thereafter, respondents entered into an "Agreement to Sell and to Buy"[7] with Rene Espina which agreement contained the following stipulations, to wit:

2. That the First Party agrees to sell the above-described parcels of land to the Second Party and the latter agrees to buy the same for a consideration of ₱1,800.00 per square meter. Each party will pay whatever taxes is due and owing from them;

3. That in order to effect the transfer of TCT Nos. 15818 and 15636 from the name of Arte Cebuano to the names of the First Party, the Second Party will advance them the amount of ₱2,000,000.00;

4. That it will take the First Party 5 days within which to transfer said titles to their names;

5. That after the title is transferred to their names, the First Party will execute an absolute deed of sale in favor of the Second Party or whoever will be designated by him as the Vendee for the consideration mentioned in paragraph 2 hereof. The amount of ₱2,000,000.00 advanced by the Second Party shall form part of said certification;

6. That the Second Party shall immediately effect the sale thereof within 5 days from the signing of this agreement by depositing the full purchase price in the account of Atty. Francis Zosa in Cebu City who will effect the payment to the First Party. The First Party, upon receiving the said amount, shall execute the deed of absolute sale within five days from receipt thereof.[8]

On August 26, 1997, petitioners filed a Motion to Fix Attorney's Fees[9] alleging that it was through their efforts that respondents were able to recover their title to the property and thus prayed that attorney's fees be fixed at ₱9 million to be taken from the

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[6] *Id*. at 118.

[7] *Id*. at 108-115.

[8] *Id*. at 109.

[9] *Id*. at 127-128.

selling price of the properties. On the same day the motion was filed, Judge Teodoro K. Risos issued an Order fixing the attorney's fees at ₱9 million.[10]

Respondents filed a Motion for Reconsideration[11] alleging that there was no basis for the trial court to fix the attorney's fees at ₱9 million because it was not mentioned in the Agreement to Sell and to Buy or that the same would be deducted from the proceeds of the sale; that Regina Bancale who affixed her conformity to the motion was not authorized by respondents; and that they were denied due process because they were not given an opportunity to oppose the motion.

On September 22, 1997, the trial court issued an Order[12] disposing thus:

> WHEREFORE, in view of all the foregoing, the opposition to the motion to fix attorney's fees and the motion of plaintiffs-oppositors praying that the motion not to resolve the motion to fix attorney's fees until they are heard is declared moot and academic while their motion for reconsideration is declared as a mere scrap of paper and considered not filed.
>
> SO ORDERED.[13]

On October 15, 1997, respondents filed a Notice of Appeal,[14] to wit:

> Oppositors Concordio Bancale, *et al.*, by their undersigned counsel, not satisfied with the Order of this Honorable Court, dated **22 September 1997**, a copy of which was received by the undersigned on 09 October 1997, said order being not in accordance with law and not supported by facts, make known their intention to appeal, as they hereby appeal, said order to the Honorable Court of Appeals on questions of facts and law.

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[10] *Id*. at 129.

[11] *Id*. at 130-134.

[12] *Id*. at 138-140.

[13] *Id*. at 140.

[14] *Id*. at 141.

Cebu City, for Lapulapu City, 15 October 1997.

However, as early as October 10, 1997, the trial court has declared the Order dated August 26, 1997 which fixed the attorney's fees at ₱9 million as final and executory and ordered the issuance of a writ for execution, to wit:

> Considering that the Order of this Court dated August 26, 1997 has already become final and executory not having been appealed, the motion for execution is hereby GRANTED.
>
> Let a Writ of Execution issue to satisfy the Order dated August 26, 1997 to enforce the same fixing the attorney's fees.
>
> Sheriff Juan A. Gato of this Branch is hereby directed to implement the Writ.
>
> SO ORDERED.[15]

Thus, on October 23, 1997, Sheriff Juan A. Gato levied upon the "rights, interests and participation" of respondents over the two parcels of land covered by TCT Nos. 36425 and 36426 and sold the same at public auction for ₱9 million with herein petitioners as the winning bidders. Consequently, a certificate of sale was issued in their favor on December 3, 1997.[16]

Meanwhile, Judge Teodoro K. Risos compulsorily retired from service and was replaced by Judge Isaias R. Dicdican who issued an Order[17] dated December 1, 1998 stating thus:

> WHEREFORE, in view of the foregoing premises, this Court hereby sets aside the order issued in this case on October 10, 1997 which considered as final and executory the August 26, 1997 order and, in its stead, hereby gives due course **to the appeal filed by the plaintiffs-movants from the order issued in this case on September 22, 1997 which in effect is an appeal from the said August 26, 1997 order**.
>
> Consequently, the Clerk of this Branch of this Court is hereby directed to transmit immediately to the Clerk of Court of the Court of Appeals the entire record of this case.

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[15] *Id*. at 146.

[16] *Id*. at 158.

[17] *Id*. at 147-151.

The motion for reconsideration of the order issued on September 22, 1997 denying the plaintiffs-movants' plea for the inhibition of Judge Teodoro K. Risos is hereby denied for having become moot and academic as Judge Risos had already retired from the service.

IT IS SO ORDERED.[18]

In setting aside the October 10, 1997 Order of Judge Risos which considered as final and executory the August 26, 1997 Order fixing the attorney's fees at ₱9 million, Judge Dicdican found that there was a denial of due process because respondents were not allowed to comment on or oppose the motion to fix the attorney's fees. Moreover, Regina Bancale who signed the motion allegedly for herself and on behalf of the other respondents was not authorized.

Petitioners filed a Motion for Reconsideration[19] arguing that Judge Dicdican erred when he reconsidered the order declaring as final and executory the August 26, 1997 Order fixing petitioners' attorney's fees at ₱9 million; that the writ of execution has been fully implemented and the properties had been sold at public auction with herein petitioners as highest bidders; hence there is nothing more to reconsider. Petitioners also filed a Motion for Inhibition[20] and a Motion to Defer Consideration of the Motion for Reconsideration of the Order dated December 1, 1998 until after Motion for Inhibition of Acting Presiding Judge is finally resolved.[21]

In an Order [22] dated December 17, 1998, the trial court desisted from acting on the three motions on the ground that it has lost jurisdiction over the case after giving due course to respondents' appeal. The dispositive portion of the Order reads:

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[18] *Id*. at 151. Emphasis supplied.

[19] *Id*. at 152-157.

[20] *Id*. at 167-168.

[21] *Id*. at 169-170.

[22] *Id*. at 171.

WHEREFORE, in view of the foregoing premises, this Court hereby desists from acting on the three motions filed in this case on December 7 and 14, 1998.

Consequently, the Court hereby reiterates its directive to the Clerk of this Court contained in the order issued on December 1, 1998 to transmit the record of this case immediately to the Clerk of Court of the Court of Appeals.

IT IS SO ORDERED.

Thereafter, the records of the case were transmitted to the Court of Appeals.

On July 27, 1999, petitioners filed before the Court of Appeals a Motion to Remand Records to the Court of Origin For Being Prematurely Transmitted to this Honorable Court and/or to Dismiss Appeal on the Ground that the Order Sought to be Appealed is not Appealable,[23] which was granted in a Resolution[24] dated March 20, 2000, to wit:

WHEREFORE, the Motion to Remand Records to the court of Origin for being prematurely transmitted to this Honorable Court and/or to Dismiss Appeal on the ground that the Order sought to be appealed is not appealable filed by movant-appellees is hereby GRANTED. The appeal is considered DISMISSED.

SO ORDERED.[25]

Respondents filed a Motion for Reconsideration[26] which was granted by the Court of Appeals in the herein assailed Resolution[27] dated November 20, 2000, the dispostive portion of which reads:

WHEREFORE, the instant Motion for Reconsideration is GRANTED and this Court's Resolution dated March 20, 2000

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[23] *Id*. at 174-188.

[24] *Id*. at 230-235; penned by Associate Justice Eloy R. Bello, Jr. and concurred in by Associate Justices Delilah Vidallon-Magtolis and Mercedes Gozo-Dadole.

[25] *Id*. at 234.

[26] *Id*. at 236-251.

[27] *Id*. at 277-281.

dismissing the appeal and remanding the records to the court of origin, is hereby RECONSIDERED and SET ASIDE. Consequently, the instant appeal is REINSTATED. Appellants are therefore directed to file their appellants brief within the reglementary period provided by law.

SO ORDERED.[28]

Not satisfied, petitioners filed a Motion for Reconsideration[29] and a Motion for Inhibition[30] but both motions were denied in a Resolution[31] dated November 7, 2002.

Hence, the instant petition for *certiorari* raising the following issues:[32]

A. The Court of Appeals correctly dismissed the private respondents' appeal on the ground that the September 22, 1997 Order denying their Motion for Reconsideration is not appealable. However, it had no jurisdiction and/or committed grave abuse of discretion when it reconsidered the dismissal on the baseless ground that the intention of private respondents was to appeal as well the August 26, 1997 Order fixing petitioners' attorney's fees as said conclusion is contrary to the admission of private respondents that the only Order they were appealing was the September 22, 1997 Order denying their Motion for Reconsideration;

B. The Court of Appeals has no jurisdiction to review the August 26, 1997 Order as it is already final and executory no appeal having been interposed regarding said order; and

C. The Court of Appeals denied the petitioners due process when it denied petitioners Motion for the Inhibition of the *ponente* of the questioned resolutions.[33]

Petitioners allege that the appellate court committed grave abuse of discretion when it reconsidered its resolution dismissing

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[28] *Id*. at 281.

[29] *Id*. at 282-289.

[30] *Id*. at 300-302.

[31] *Id*. at 303-304.

[32] *Id*. at 18.

[33] *Id*.

the appeal of the respondents and concluded without basis that the latter intended to appeal as well the Order dated August 26, 1997 since the only subject of their appeal is the September 22, 1997 Order denying their motion for reconsideration, which is a non-appealable order.

The petition lacks merit.

Section 1 of Rule 41 and Section 9 of Rule 37 of the Rules of Court, provide:

RULE 41

APPEAL FROM THE REGIONAL TRIAL COURT

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

No appeal may be taken from:

(a) An order denying a motion for new trial or reconsideration;
x x x

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special action under Rule 65.

RULE 37

SEC. 9. Remedy against order denying a motion for new trial or reconsideration.- An order denying a motion for new trial or reconsideration is not appealable, the remedy being an appeal from the judgment or final order.

Respondents' reference in their notice of appeal to the September 22, 1997 Order denying their motion for reconsideration should be deemed to refer to the August 26, 1997 Order granting petitioners' motion to fix attorney's fees at ₱9 million. This was clearly stated in the Order of the trial court dated December 1, 1998, to wit:

WHEREFORE, in view of the foregoing premises, this Court hereby sets aside the order issued in this case on October 10, 1997 which considered as final and executory the August 26, 1997 order and, in its stead, hereby gives due course to the appeal filed by the plaintiffs-

movants from the order issued in this case on September 22, 1997 which in effect is an appeal from the said August 26, 1997 order.[34] (Underlining ours)

This interpretation is more in accord with the intent of the parties. We also agree with the foregoing ratiocination by the Court of Appeals, to wit:

> The interest of substantial justice dictates that we transcend literal error in order to give way to the real intention of the party appealing. Taken literally, the Notice of Appeal indeed convey that the subject of appeal is the September 22, 1997 Order. But going into the intent of the appellants as stated by them in their various pleadings and which intent was duly recognized by the lower court, it is apparent that what is really questioned and desired to be appealed is the August 26, 1997 Order. Even the period within which the appeal is lodged showed compliance within the 15-day reglementary period as reckoned from the August 26, 1997 Order. In recognition that what is in truth appealed is the August 26 Order, the lower court said:
>
> > x x x Nevertheless, the records shows that, on October 15, 1997, the plaintiffs-movants filed their Notice of Appeal from the said order issued by the Court in this case on September 22, 1997 which in effect is also an appeal from the August 26, 1997 Order. In their Notice of Appeal, the plaintiffs-movants stated that they received a copy of the order appealed from on October 9, 1997. This means that they filed their Notice of Appeal six (6) days from receipt of a copy of the order appealed from. This being so, their Notice of Appeal was filed on time, even if we tack the period of seven (7) days that elapsed from August 26 to September 2, 1997 when the period of appeal from the August 26, 1997 order was tolled by the filing by the plaintiffs-movants of a motion for reconsideration thereof. Adding seven (7) days and six (6) days would yield a total of only thirteen (13) days.[35]

We also find satisfactory the explanation of the respondents that the erroneous reference to the September 22, 1997 Order instead of the August 26, 1997 Order to which the Notice of Appeal relates was an oversight on the part of their counsel.

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[34] *Id*. at 151.

[35] *Id*. at 279.

Although litigants are normally bound by the negligence of their counsel, however, there were instances when the Court withheld the application of this rule in cases of recklessness or gross negligence of counsel which deprives the client of due process of law, or when its application results in an outright deprivation of one's property through technicality, as in the instant case. Besides, petitioners clearly understood from the start that the subject matter on appeal was the excessive award of attorney's fees in the Order dated August 26, 1997.

Petitioners' contention that the appellate court committed grave abuse of discretion in denying their motion for inhibition has likewise no merit. Mere suspicion that a judge or justice is partial to a party is not enough. Bare allegations of partiality and prejudgment will not suffice in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor. There should be sufficient evidence to prove the allegations, and there must be showing that the judge had an interest, personal or otherwise, in the prosecution of the case. To be a disqualifying circumstance, the bias and prejudice must be shown to have stemmed from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.[36] In the instant case, the fact that the Court of Appeals reconsidered its Order dated March 20, 2000 dismissing respondents' appeal and eventually reinstating the same, by itself, does not imply bias or partiality on the part of the justices.

The court has the discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case. Technicalities, however, must be avoided. The law abhors technicalities that

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[36] *Chin v. Court of Appeals*, G.R. No. 144618, August 15, 2003, 409 SCRA 206.

impede the cause of justice. The court's primary duty is to render or dispense justice.[37]

Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[38]

WHEREFORE, the petition is *DISMISSED*. The assailed Resolution of the Court of Appeals dated November 20, 2000 in CA-G.R. CV No. 61696 granting respondents' motion for reconsideration and reinstating their appeal, and the November 7, 2002 Resolution denying the motion for reconsideration, are *AFFIRMED*.

SO ORDERED.

Quisumbing,[*] *Austria-Martinez, Nachura,* and *Reyes, JJ.,* concur.

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[37] *Great Southern Maritime Services Corp. v. Acuña*, G.R. No. 140189, February 28, 2005, 452 SCRA 422, 436.

[38] *Id*.

[*] Designated in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 508 dated June 25, 2008.

EN BANC

[A.M. No. P-07-2303. July 4, 2008]

RE: REPORT OF ATTY. ELENITA MACATANGAY-ALVIAR, Branch Clerk of Court, Regional Trial Court, Branch 102 of Quezon City ON THE ALLEGED TARDINESS AND FALSIFICATION OF TIME CARDS OF MR. JOVENCIO G. OLIVEROS, JR., Utility Worker, RTC, Branch 102, Quezon City

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; THE CONDUCT AND BEHAVIOR OF A PERSON CONNECTED WITH AN OFFICE CHARGED WITH THE DISPENSATION OF JUSTICE SHOULD BE CIRCUMSCRIBED WITH THE HEAVY BURDEN OF RESPONSIBILITY.— As the Court has repeatedly stressed, the conduct and behavior of a person 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. Olivares ought to be reminded that the nature and responsibility of men and women of the judiciary, as defined in different canons of conduct, the *Code of Conduct for Court Personnel* among them, are neither pure jargon nor idealistic sentiments, but working standards and attainable goals that should be matched with actual deeds.

2. ID.; ID.; ID.; TAMPERING WITH THE ENTRIES IN THE TIME CARDS; PENALTY.— Tampering with the entries in the time cards constitutes falsification of official documents, which, under Section 22(f) of the *Civil Service Omnibus Rules and Regulations*, is a grave offense punishable by dismissal from the service even for the first offense.

Re: Report of Atty. Macatangay-Alviar on the alleged Tardiness and Falsification of the Time Card of Mr. Oliveros, Jr.

D E C I S I O N

***PER CURIAM*:**

Atty. Elenita Macatangay-Alviar, branch clerk of court of the Regional Trial Court (RTC), Branch 102 in Quezon City, reported that Jovencio G. Oliveros, Jr., utility worker in the said RTC, had habitually been tardy and had falsified his daily time records. Certified true copies of Oliveros' time cards from July 2004 to June 2006 and his monthly record of absences and tardiness for May to June 2004, April to May and August to December 2005, and January to June 2006 accompanied Atty. Alviar's report.

In his *Comment*, Oliveros denied the charges against him, claiming, with respect to his reported absences, that it was Atty. Alviar, as branch clerk of court, who failed to verify whether or not the presiding judge signed his (Oliveros') applications for leave of absence. Oliveros likewise denied allegations of time card tampering, contending that what he did was to make corrections, with the permission of Atty. Alviar, in the entries punched which were pale in appearance and hardly discernible. He said, however, that due to a personal misunderstanding, Atty. Alviar denied having consented to the said corrections. Lastly, as to his tardiness, Oliveros explained that, although he usually arrives early, he sometimes forgets, as he had in fact forgotten, to punch his time cards owing to his preoccupation with his early chores in court.

Upon investigation, the Office of the Court Administrator (OCA) found Oliveros' explanation as to his tardiness unconvincing. His acts, the OCA found, were in violation of Civil Service Memorandum Circular No. 23, Series of 1998, which provides that "[a]ny employee shall be considered habitually tardy if he incurs tardiness, regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester or at least two consecutive months during the year."

We agree with the OCA.

As the records show, Oliveros came in and reported for work late on ten (10) occasions in July 2005 and again in August 2005.[1] This conduct, which indicates a pattern of misfeasance, violates the above-mentioned circular and amounts to habitual tardiness.

Oliveros' proffered explanation about going to work early but forgetting to register his exact time of arrival by punching in his card on time because he was preoccupied with his early chores at the office strains credulity. The proof that an employee arrives on time is his time card or the attendance logbook. Punching in one's attendance card time upon arrival is a repetitive procedure which, in time, becomes a habit. It is thus highly unlikely that one would forget to punch his time card upon or shortly after arrival in office, at least not 20 times in a period of two months, as here. Considering his record of tardiness, Oliveros's explanation for his frequent tardiness cannot be due merely to forgetfulness to punch in his time of arrival.

The best evidence to prove attendance in office is the daily time record duly signed by the employee and verified by his or her immediate superior. In this case, Oliveros' time card for April 2006 was not signed by Atty. Alviar, who is duty bound to compare the entries in the office attendance logbook with the time cards submitted by the employees in order to check for variance. She observed that the entry for April 19, 2006 was tampered with and punched in on April 4, 2006.

By his acts, Oliveros betrayed his lack of regard for the norm of conduct expected to be observed by an employee of the judiciary. As the Court has repeatedly stressed, the conduct and behavior of a person 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.[2] Olivares ought to be reminded that the nature and responsibility of men

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[1] Monthly Report on Absences, Tardiness and Undertime submitted by Branch Clerk of Court Alviar as certified by Amelia S. Serafico, Supervising Judicial Staff Officer of the Leave Division, Office of Administrative Services, OCA.

[2] *Pagulayan-Torres v. Gomez*, A.M. No. P-03-1716, June 9, 2005, 460 SCRA 19, 25.

and women of the judiciary, as defined in different canons of conduct, the *Code of Conduct for Court Personnel*[3] among them, are neither pure jargon nor idealistic sentiments, but working standards and attainable goals that should be matched with actual deeds.

Tampering with the entries in the time cards constitutes falsification of official documents, which, under Section 22(f) of the *Civil Service Omnibus Rules and Regulations*, is a grave offense punishable by dismissal from the service even for the first offense.

WHEREFORE, we find Jovencio G. Oliveros, Jr. *GUILTY* of habitual tardiness and falsification of official documents. He is hereby *DISMISSED* from the service with forfeiture of all benefits, except accrued leave credits, with prejudice to reemployment in any agency of the government, including government-owned and controlled corporations.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, 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. 129486. July 4, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GLORIA BARTOLOME,** *accused-appellant.*

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[3] A.M. No. 03-06-13-SC, promulgated on April 13, 2004 and took effect on June 1, 2004.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; RECRUITMENT AND PLACEMENT OF WORKERS; ILLEGAL RECRUITMENT; ELEMENTS. — Illegal recruitment is committed when two (2) elements concur: *First*, the offender does not have the required license or authority to engage in the recruitment and placement of workers. *Second*, the offender undertook (1) recruitment and placement activity defined under Article 13(b) of the Labor Code or (2) any prohibited practice under Art. 34 of the same code. Illegal recruitment is qualified into large scale, when three or more persons, individually or as group, are victimized.

2. ID.; ID.; ID.; RECRUITMENT AND PLACEMENT; DEFINED. — Art. 13(b) of the Labor Code defines recruitment and placement, as follows: "x x x [A]ny act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not: *Provided*, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement."

3. REMEDIAL LAW; EVIDENCE; DENIALS; CANNOT PREVAIL OVER THE POSITIVE DECLARATION OF PROSECUTION WITNESSES. — [D]enials cannot prevail over the positive declaration of the prosecution witnesses. It is basic that affirmative testimony of persons who are eyewitnesses of the events or facts asserted easily overrides negative testimony.

4. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; RECRUITMENT AND PLACEMENT OF WORKERS; ILLEGAL RECRUITMENT IN LARGE SCALE; PENALTY. — The crime of illegal recruitment in large scale is punishable under Art. 39(a) of the Labor Code, as amended, with life imprisonment and a fine of PhP 100,000.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Vivar Lopez Fuentes and Associates and *Reynaldo B. Tatoy* for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

On September 6, 1989, in the Regional Trial Court (RTC) in Naic, Cavite, the Office of the Provincial Fiscal of Cavite filed eight (8) separate Informations, four (4) for Illegal Recruitment and four (4) for Estafa, against accused-appellant Gloria Bartolome and Lidelia Capawan. Docketed as Crim. Case Nos. NC-354 to NC-361, the cases were eventually raffled to Branch 15 of the court. Except for the names of the offended party and/or the amount involved, the following informations in Crim. Case No. NC-354 for illegal recruitment and Crim. Case No. NC-358 for estafa, as hereunder indicated, typified the other informations for the crime of illegal recruitment and estafa, as the case may be:

For Illegal Recruitment -

That on or about the period from July to September 1988 or for sometime prior or subsequent thereto, in the Municipality of Indang, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with grave abuse of trust and confidence reposed on them, with deliberate intent to defraud, by falsely representing themselves to have the capacity to contract, enlist and recruit workers abroad, did, then and there, willfully, unlawfully and feloniously for a fee, recruit and promise employment/job placement in Bahrain to one Fe Rollon without first obtaining the required license and/or authority from the Department of Labor and Employment, thereby resulting damage and prejudice.

CONTRARY TO LAW.

For Estafa –

That on or about the period from July to September 1988 or for sometime prior or subsequent thereto, in the Municipality of Indang, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another with deliberate intent to defraud with grave abuse of trust and confidence reposed on them, with false manifestation and misrepresentation pretending themselves that they possessed power and influence to recruit workers for employment abroad, obligated themselves to seek and facilitate employment abroad of Fe Rollon as saleslady in Bahrain and pursuant to said obligation received from Fe Rollon the total amount of ₱16,500.00, given them in Indang, Cavite and Makati, Metro Manila on different dates but accused upon receipt and possession of the aforementioned amount of ₱16,500.00 and far from complying with their obligation, did, then and there, willfully, unlawfully and feloniously misapply, misappropriate and convert the aforesaid amount of ₱16,500.00 to their own use and benefits and despite repeated demands made to make good of their promise and/or return the amount taken and/or received from the said victim, accused failed and refused to do so, thereby resulting to the damage and prejudice of said Fe Rollon in the aforesaid amount of ₱16,500.00.

CONTRARY TO LAW.

Of the two accused named in the informations, only accused-appellant Bartolome was brought under the jurisdiction of the RTC, Capawan being then and still is at large. When arraigned, accused-appellant entered a plea of not guilty to all charges. Thereafter, by agreement of the parties, all eight (8) cases were tried jointly.

The four (4) private complainants, Fe Rollon, Raymundo Dimatulac, Esperanza Buhay, and Reynaldo Rollon, each charging accused-appellant with one count of illegal recruitment and one count of estafa, were all from Calumpang Lejos, Indang, Cavite, like accused-appellant.[1] Buhay, presented as common prosecution witness for all cases, testified seeing accused-appellant, her husband, and Capawan, sometime in July 1988, walking around Calumpang Lejos making it appear that they were badly in need of workers for overseas employment. When

[1] *Rollo*, p. 38.

asked, Buhay evinced interest to work abroad and, upon being assured by accused-appellant and Capawan of the genuineness of their offer, later gave the two a sum of money to cover medical, processing, and passport fees. And very much later, Buhay paid accused-appellant and Capawan, in Makati City, PhP 13,000 as placement fee for which she was handed a pre-signed receipt. Buhay was given a photocopied plane ticket purportedly for a flight to Bahrain, but the promised job abroad never materialized.

Dimatulac, on the other hand, testified that he was given a run around about his departure for Bahrain. According to him, after signifying, when so asked, his desire to work in Bahrain as janitor, accused-appellant and Capawan told him to fill out a bio-data form and to pay the usual processing and placement fees which he did. Dimatulac was not able to leave and failed to get his money back, prompting him, like Buhay, to file a complaint with the Philippine Overseas Employment Agency (POEA).

With slight variations, complaining witnesses Fe and Reynaldo gave parallel accounts about their dealings with the reneging accused-appellant and Capawan, particularly with respect to personally meeting the latter two who offered overseas job placements in Bahrain, being asked to pay and paying the processing and placement fees, and being given a photocopy of a plane ticket.

Accused-appellant denied the accusations against her and disclaimed ever pretending to possess power and influence to recruit and secure overseas employment for private complainants. She claimed that the private complainants were only out to blackmail her because the wife of her brother-in-law is related to Capawan, who actually did the recruiting; and that her husband and her brother-in-law were themselves victims of Capawan's recruitment activities.

In a consolidated decision[2] dated November 10, 1992, the RTC found accused-appellant guilty beyond reasonable doubt of the crimes charged and sentenced her, thus:

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[2] *Id*. at 29-46. Penned by Judge Enrique M. Almario.

WHEREFORE, this Court finds accused Gloria Bartolome guilty beyond reasonable doubt of four (4) counts or offenses of illegal recruitment designated in Criminal Cases Nos. 354, 355, 356 and 357 under Art. 38, para. (b), Labor Code of the Philippines, as amended, and on each count or offense, sentences her with an imprisonment of eight (8) years and a fine of ₱50,000.00

Similarly, this Court finds said accused guilty beyond any shadow of doubt of four (4) counts or offenses of estafa under Art. 315, 2(A) [of the Revised Penal Code], and shall, for each count or offense designated in Crim. Case Nos. 358, 359, 360 and 361, suffer an imprisonment of *prision correccional* in its maximum period to *prision mayor* in its minimum period, or six (6) years, eight (8) months and 21 days to eight (8) years.

Additionally, the said accused shall indemnify:

Fe Rollon, ₱16,500.00

Esperanza Buhay, ₱16,500.00

Reynaldo Rollon, ₱16,500.00

Raymundo Dimatulac, ₱15,850.00

The services of the foregoing imposed penalties of imprisonment shall be successive pursuant to Art. 70, Revised Penal Code.

With costs.

SO ORDERED.

In due time, accused-appellant went to the Court of Appeals (CA) whereat her appellate recourse was docketed as CA-G.R. CR No. 14239. On February 19, 1997, the CA rendered a Decision[3] disposing as follows:

WHEREFORE, the appealed Decision of November 10, 1992 finding the accused guilty beyond reasonable doubt of four (4) counts or offenses of Illegal Recruitment and of four (4) counts of Estafa under Art. 315 of the Revised Penal Code is AFFIRMED subject to the MODIFICATION that appellant is hereby sentenced to suffer the penalty of Life Imprisonment and ordered to pay ₱100,000.00 as fine **for the crime of Illegal Recruitment in Large Scale.**

[3] *Id.* at 48-53. Penned by Associate Justice Maximiano C. Asuncion and concurred in by Associate Justices Artemon D. Luna and Ramon A. Barcelona.

In view of the penalty of Life Imprisonment imposed on appellant Gloria Bartolome, the Division Clerk of Court is hereby ORDERED TO REFRAIN FROM ENTERING JUDGMENT and to forthwith elevate the records of the case to the Supreme Court for review, pursuant to Sec. 13, Rule 124 of the Rules of Court.

SO ORDERED. (Emphasis added.)

The appellate court predicated its modificatory action on the following premises:

Appellant was charged and convicted of illegally recruiting four people and her crime is classified as Illegal Recruitment committed in large scale, and as such it is considered as involving economic sabotage. Said crime carries with it the penalty of Life Imprisonment and a fine of ₱100,000.00. x x x

In view of the penalty of life imprisonment imposed in CA-G.R. CR No. 14239, the CA forwarded the records of the case to the Court which docketed the same as **G.R. No. 128881**.

In the meantime, accused-appellant moved for reconsideration of the CA's February 19, 1997 Decision, but her motion was denied in a terse CA Resolution[4] of June 5, 1997. Therefrom, accused-appellant interposed a petition for review of said decision and resolution, docketed as **G.R. No. 129486**.

Per Resolution[5] dated July 23, 1997, the Court ordered the consolidation of G.R. No. 129486 with G.R. No. 128881. Earlier, owing to the fact that accused-appellant was out on bail, the Court, *inter alia*, ordered, pursuant to Section 7 of Administrative Circular No. 12-94,[6] the bondsman to surrender accused-appellant within 30 days from notice to the court of origin, failing which her bond shall be forfeited and an order shall then issue for her arrest. The details of what then followed are not of crucial materiality to these proceedings, but the bottom line is that the

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[4] *Id*. at 67.

[5] *Id*. at 7.

[6] No person charged with a capital offense or an offense punishable by *reclusion perpetua* or life imprisonment when evidence of guilt is strong shall be admitted to bail regardless of the stage of the criminal prosecution.

Court declared accused-appellant as having jumped bail and is now at large.[7] Her withdrawing counsel and the new collaborating counsel are at a loss as to her whereabouts;[8] her bondsman, having failed to secure her surrender, had paid her bail bond; and both the National Bureau of Investigation (NBI) and the Philippine National Police (PNP) had, after several attempts, been unable to serve the corresponding warrants and *alias* warrants for the arrest of accused-appellant.

By Resolution dated October 22, 1997, the Court dismissed accused-appellant's petition for review in G.R. No. 128881 for, among other grounds, non-compliance with the requirements on making a deposit to answer for cost. The dismissal became final and executory with the issuance of the entry of judgment[9] for G.R. No. 128881. For all intents and purposes, the RTC's decision convicting accused-appellant for estafa is deemed affirmed with finality.

This brings us to G.R. No. 129486, the case certified to the Court in view of the modified penalty of life imprisonment the CA imposed on, but did not enter against, accused-appellant for her conviction on the illegal recruitment in the large scale charge. It is over 10 years since accused-appellant jumped bail. The deferred judicial review of the certified case may now proceed without awaiting for her arrest.

Accused-appellant's underlying position is set forth in her "PETITION"[10] urging this Court to acquit her of the crimes of illegal recruitment and estafa. In it, she alleges that the CA erred "in affirming the decision of the lower court finding her guilty beyond reasonable doubt of four (4) counts of illegal recruitment and four (4) counts of estafa under Article 15 of the Revised Penal Code."

In fine, accused-appellant assails the credibility of the four (4) private complainants and the adequacy of the plaintiff-

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[7] *Rollo*, pp. 131-134, per Resolution dated February 8, 1999.

[8] *Id.* at 162.

[9] *Id.* at 166-189.

[10] *Id.* at 9-25.

appellee's evidence. Even as she denies making representation about having the authority and capacity to recruit and deploy workers abroad, accused-appellant insists that Capawan, confederating with a Thai national, was the illegal recruiter.

The Court is not convinced.

Illegal recruitment is committed when two (2) elements concur: *First*, the offender does not have the required license or authority to engage in the recruitment and placement of workers. *Second*, the offender undertook (1) recruitment and placement activity defined under Article 13(b) of the Labor Code or (2) any prohibited practice under Art. 34 of the same code. Illegal recruitment is qualified into large scale, when three or more persons, individually or as group, are victimized.[11]

Art. 13(b) of the Labor Code defines recruitment and placement, as follows:

> x x x [A]ny act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not: *Provided*, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

After a circumspect review of the records, the Court is fully convinced as to accused-appellant's guilt of the crime of illegal recruitment in large scale. The first element is present. Accused-appellant had not shown any license to recruit or engage in placement activities. As found by the trial court, the POEA no less initiated the filing of the complaints against accused-appellant, a reality which argues against the existence of such license or authority.

The second element also obtains. On separate occasions, accused-appellant approached and recruited at least four (4) persons at the same place and at about the same time, giving them the impression that she and Capawan had the capability

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[11] *People v. Dela Piedra*, G.R. No. 121777, January 24, 2001, 350 SCRA 163, 183.

to send them to Bahrain for employment. All four testified that accused-appellant promised them employment for a fee. Their testimonies corroborate each other on material points, such as the amount exacted as placement fee, the country of destination, and the photocopied plane tickets.

The private complainants were positive and categorical in their testimonies that they personally met accused-appellant and that she asked for, among others, placement fee in consideration for the promised employment in Bahrain. They had no motive to testify falsely against accused-appellant. In fact, accused-appellant admitted personally knowing them since childhood, describing them to be "not misbehaving or perjurious people."[12] The absence of evidence as to improper motive actuating the principal witnesses of the prosecution augurs well for their credibility. To be sure, the RTC and the CA found their testimonies to be worthy of full faith and credence. The testimonies of credible witness meet the standard of proof beyond reasonable doubt.[13]

Accused-appellant cannot plausibly escape liability for her criminal acts by conveniently pointing to and passing the blame on Capawan as the illegal recruiter. Like the trial court, we entertain serious doubts on this self-serving and gratuitous version of accused-appellant. What is more, her denials cannot prevail over the positive declaration of the prosecution witnesses. It is basic that affirmative testimony of persons who are eyewitnesses of the events or facts asserted easily overrides negative testimony.[14]

The crime of illegal recruitment in large scale is punishable under Art. 39(a) of the Labor Code, as amended, with life imprisonment and a fine of PhP 100,000. The CA, accordingly, imposed the right penalty.

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[12] *Rollo*, p. 34.

[13] *Dela Piedra*, *supra* at 184.

[14] *Id*.; citing *People v. Santos*, G.R. No. 113344, July 28, 1997, 276 SCRA 329.

IN VIEW OF ALL THE FOREGOING, the Court hereby *AFFIRMS* the Decision and Resolution dated February 19, 1997 and June 5, 1997, respectively, of the CA insofar as it convicted accused-appellant of illegal recruitment in a large scale and sentenced her to life imprisonment and to pay a fine of one hundred thousand pesos (PhP 100,000).

Let copies of this Decision be furnished the NBI and the PNP which are hereby commanded to arrest accused-appellant Gloria Bartolome whose last known address is at Bacao 2, Gen. Trias Cavite and commit her in the Correctional Institution for Women.

Costs against accused-appellant.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 133756. July 4, 2008]

PRESIDENTIAL *AD HOC* COMMITTEE ON BEHEST LOANS, represented by ATTY. ORLANDO SALVADOR, *petitioner, vs.* **ULPIANO TABASONDRA, ANIANO A. DESIERTO, ENRIQUE M. HERBOSA, ZOSIMO C. MALABANAN, ARSENIO S. LOPEZ, ROMEO V. REYES, HERADEO CUBALLA, NILO ROA, BENIGNO DEL RIO and JUAN P. TRIVINO,** *respondents.*

[G.R. No. 133757. July 4, 2008]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), *petitioner, vs.* **HON. ANIANO DESIERTO, OMBUDSMAN, PLACIDO L. MAPA, BENJAMIN T. ROMUALDEZ, JOSE R. TENGCO, JR., RAFAEL A. SISON, ALEJANDRO MELCHOR, ROSARIO B. OLIVARES, ALEJANDRO MARAMAG, EVELYN J. NICASIO, TUYNITA SORIANO, JOSE T. ABUNDO, CARIDAD E. ORPIADA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL REVIEW; ACTUAL CONTROVERSY; COURTS WILL NOT CONSIDER QUESTIONS IN WHICH NO ACTUAL INTERESTS ARE INVOLVED.— It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioner would be entitled, and which would be negated by the dismissal of the petition.

2. ID.; ID.; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; INVESTIGATORY AND PROSECUTORY POWERS OF THE OMBUDSMAN; EXPLAINED.— 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. In fact, the Ombudsman has the power to dismiss a complaint without going through a preliminary investigation, since he is the proper adjudicator of the question as to the existence of a case warranting the filing of information in court. The Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not. This is basically his prerogative. In recognition of this power, the Court has been consistent not to interfere with the Ombudsman's exercise of his investigatory and prosecutory powers. Various cases held that it is beyond the ambit of this Court to review the exercise of discretion of the Office of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service. The rationale underlying the Court's ruling has been explained in numerous cases. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they would be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant. In order to insulate the Office of the Ombudsman from outside pressure and improper influence, the Constitution as well as Republic Act No. 6770 saw fit to endow that office with a wide latitude of investigatory and prosecutory powers, virtually free from legislative, executive or judicial intervention. If the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings unless they are tainted with grave abuse of discretion.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; DEFINED.— Grave abuse of discretion is the capricious and whimsical exercise of judgment on the part of the public officer concerned, equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.

APPEARANCES OF COUNSEL

PCGG Legal Counsel for petitioner.
Cruz Durian Alday and Cruz-Matters for J. Tengco, Jr.
Fortun Narvasa & Salazar for Z. Malabanan.
Santiago and Santiago for R. Sison.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court are two special civil actions for *certiorari* under Rule 65 of the Rules of Court which were consolidated per Resolution dated 15 December 2004. The petitioner in G.R. No. 133756, which is the Presidential *Ad-Hoc* Committee on Behest Loans, represented by Atty. Orlando Salvador, seeks to set aside the public respondent Ombudsman's 12 August 1997 and 16 February 1998 Orders, both of which dismissed the case against private respondents Ulpiano Tabasondra, Enrique Herbosa, Zosimo Malabanan, Arsenio Lopez, Romeo Reyes, Heradeo Cuballa, Nilo Roa, Benigno del Rio and Juan Trivino for violation of Section 3(e) and (g) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act). The petitioner in G.R. No. 133757, the Presidential Commission on Good Government (PCGG), seeks the reversal of two Orders of the Office of the Ombudsman dated 28 November 1997 and 17 February 1998, dismissing two complaints filed by petitioner against private respondents Placido L. Mapa, Benjamin Romualdez, Jose R.

Tengco, Jr., Rafael A. Sison, Alejandro Melchor, Rosario B. Olivares, Alejandro Maramag, Evelyn J. Nicasio, Tuynita Soriano, Jose T. Abundo and Caridad E. Orpiada for violation of Section 3(e) and (g) of Republic Act No. 3019, and the Order dated 17 February 1998, denying petitioner's motion for reconsideration.

On 8 October 1992, then President Fidel V. Ramos issued Administrative Order No. 13 creating the Presidential *Ad-Hoc* Fact Finding Committee on Loans (Committee) which was tasked to inventory all behest loans, determine the parties involved and recommend whatever appropriate actions to be pursued thereby. President Ramos later issued Memorandum Order No. 61, dated 9 November 1992, expanding the functions of the Committee to include the inventory and review of all non-performing loans, whether behest or non-behest. Under the said memorandum, the following criteria may be used as a frame of reference in determining a behest loan:

a. It is undercollaterized (sic);

b. The borrower corporation is undercapitalized;

c. Direct or indirect endorsement by high government officials like presence of marginal notes;

d. Stockholders, officers or agents of the borrower corporation are identified as cronies;

e. Deviation of use of loan proceeds from the purpose intended;

f. Use of corporate layering;

g. Non-feasibility of the project for which financing is being sought; and

h. Extra-ordinary speed in which the loan release was made.

Moreover, a behest loan may be distinguished from a non-behest loan in that while both may involve civil liability for non-payment or non-recovery, the former may likewise entail criminal liability.[1]

Several loan accounts were referred to petitioner Committee

[1] *Rollo* of G.R. No. 133756, p. 437.

for its investigation, with Atty. Orlando Salvador as its coordinator. Among them were the loans of the Coco-Complex Philippines, Inc. (CCPI) from the Philippine National Bank (PNB) and that of the Philippine Journalists, Inc. (PJI) from the Development Bank of the Philippines (DBP). The Committee classified these loans as behest loans, prompting the PCGG to file a complaint with the Office of the Ombudsman against the Board of Directors of the two banks, as well as against the officers and stockholders of CCPI and PJI, for violation of Section 3(e) and (g) of Republic Act No. 3019.

G.R. No. 133756

This case arose from the Sworn Statement filed before the Office of the Ombudsman by Atty. Orlando L. Salvador on 23 June 1997, accusing the officers and board members of PNB,[2] namely: Ulpiano Tabasondra, Enrique Herbosa, P.O. Domingo and Zosimo Malabanan; and the stockholders and officers of CCPI, namely: Arsenio Lopez, Romeo Reyes, Heradeo Cuballa, Nilo Roa, Benigno del Rio and Juan Trivino, for violation of Section 3(e) and (g) of Republic Act No. 3019, as amended. The case was docketed as OMB-0-97-1138. The complaint originated from the guarantee loan application of CCPI, a domestic corporation primarily incorporated for manufacturing coconut oil, in the total amount of ₱9,277,080.00 for the purchase of an oil mill to be supplied by Krupp of Germany. On 17 January 1968, the loan application was approved. According to petitioner, the loan granted to CCPI was without sufficient collateral and that CCPI had no sufficient capital to be entitled to the amount of the loan considering that at the time the loan was granted, CCPI's existing assets amounted only to ₱495,300 and its paid-up capital amounted to ₱2,111,000.00 as of 31 December 1969.

Subsequently, on 10 February 1972, CCPI allegedly obtained an additional loan for restructuring and equity conversion of its outstanding obligation up to 1972 without sufficient collaterals and adequate capital to ensure not only the viability of its operation but its ability to repay all its loans, to wit:

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[2] Per petitioner's Amended Petition; *id*. at 433-457.

Nature	Date	Amount
1. Restructuring increase from DM 7.4 M to DM 12.2 M	11-25-70	DM 4.8 million
2. Equity conversion	12-02-70	₱7.07 million
3. Equity conversion	6-09-71	₱14.2 million
4. Credit Line with PNB	2-10-72	₱4.5 million
5. Guarantee Loan	2-10-72	$750,000.00[3]

Petitioner also alleged that per Statement of Deficiency as of 31 March 1992, the outstanding obligation of CCPI to the bank amounted to ₱205,889,545.76. According to petitioner, these transactions entered into by CCPI and the bank violated Section 3(e) and (g) of Republic Act No. 3019 and the aforementioned officers of DBP and CCPI were the ones responsible.

In an Order dated 12 August 1997, the Office of the Ombudsman dismissed the complaint on the sole ground of prescription, *viz*:

> The respondents are being charged with violation of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act. In Section 11 of said law, it is provided that "All offenses punishable under this Act shall prescribe in fifteen years." In the instant case, the last date of the loan obtained by CCPI was on February 10, 1972. This complaint was filed on June 23, 1997 and with due consideration to our laws on prescription, the offense allegedly committed by respondents had already prescribed. Generally, the period of prescription commences to run from the day on which the crime is discovered by the offended party, the authorities or their agents. However, in *People vs. Dinsay* (C.A.,40 O.G.,12th Supp. 50), "if there is nothing that was concealed or needed to be discovered, because the entire series of transactions was by public instruments, duly recorded, the crime of estafa committed in connection with said transaction was known to the offended party when it was committed and the period of prescription commenced to run from the date of its commission". In this case, since the transactions have been duly recorded and by public instruments, the period of

[3] *Id*. at 31-32.

prescription ran from the date of its commission, *i.e*., from February 10, 1992. **When this was filed on June 23, 1997, fifteen years had already elapsed and, hence, it has already prescribed.**[4] (Emphasis supplied.)

Petitioner filed a motion for reconsideration of the said order which was dismissed by the Office of the Ombudsman based again on prescription of the crime per its Order dated 16 February 1998, ratiocinating:

After reviewing the record of the instant case, the undersigned finds no reversible error in the Order of August 12, 1997. The period of prescription is reckoned from February 10, 1972 (final loan release) and June 23, 1997 the time of the filing of the complaint in this Office.

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Premises considered x x x the instant Motion for Reconsideration [is] DENIED.[5]

On 18 May 1998, petitioner filed the instant petition assailing the Ombudsman's Orders dated 12 August 1997 and 16 February 1998 and raising this single issue:

WHETHER OR NOT THE PUBLIC RESPONDENT OMBUDSMAN GRAVELY ABUSED HIS DISCRETION IN HOLDING THAT THE PRESCRIPTIVE PERIOD IN THIS CASE SHOULD BE COUNTED FROM THE DATE OF THE GRANT OF THE BEHEST LOANS INVOLVED, *i.e*., FROM THE DATE OF THE COMMISSION OF THE CRIME, AND NOT FROM THE DATE OF DISCOVERY OF SAME BY THE COMMITTEE.[6]

Petitioner argues that the right of the State to recover behest loans as ill-gotten wealth does not prescribe pursuant to Article XI, Section 15, of the 1987 Constitution and that the Court of Appeals' ruling in *People v. Dinsay*[7] is not a controlling doctrine to be followed in the instant case since decisions of

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[4] *Id*. at 86.

[5] *Id*. at 94-95.

[6] *Id*. at 441.

[7] C.A., 40 O.G., 12th Supp. 50.

the Court of Appeals have only a persuasive character. Petitioner stresses that the ruling in *Dinsay* is not applicable to the case under consideration because the former involved a prosecution for estafa in that the accused disposed of his property claiming that it was free from any lien or encumbrance despite the fact that a notice of *lis pendens* was registered with the Registry of Deeds. The sale, cancellation of the accused's title, and issuance of a new title to the buyer could not have been concealed from the offended parties or their lawyers because these transactions took place when the civil case involving the said property and the offended parties was in progress. Also, *Dinsay* involved private parties, while the instant case involves the Government and public officers.

Petitioner likewise theorizes that the nature of behest loans calls for the application of the "discovery rule," *i.e.*, when the *gravamen* of the cause of action is fraud, the statute of limitations does not begin to run against the injured person until discovery of the facts constituting the fraud or until, by reasonable diligence, such facts may have been discovered. Such rule is an exception to the general rule that the statute of limitations begins to run from the commission of the offense or when the crime is complete and not from the date the crime is discovered.

Petitioner notes that the Revised Penal Code adopts the "discovery rule" for prescription of offenses. Article 91 thereof states that **"the period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities or their agents x x x."** The Revised Penal Code, being suppletory in application to special laws such as Republic Act No. 3019, should govern the instant case.

Making use of the "discovery rule" and the Revised Penal Code in a suppletory manner, petitioner argues that, considering the discovery of the behest loan and the other related transactions during the evaluation of the pertinent documents by the Committee, the cause of action against respondents for violation of Section 3(e) and (g) of Republic Act No. 3019 has not yet prescribed.

Lastly, petitioner insists that even assuming that the "discovery rule" does not apply, nevertheless, on account of the principle of "equitable tolling," prescription has not yet set in for the offenses with which respondents in OMB-0-97-1138 were charged. This principle is based on the doctrine "*contra non valentem agere nulla currit praescriptio*," *i.e.*, "no prescription shall run against a person unable to bring an action." The Committee was unable to bring the action, for the cause therefor was not known or reasonably known to it owing to the fact that (1) the loans, being behest, were concealed; (2) both parties to the loan transactions were in conspiracy to perpetrate the fraud against the State; and (3) the loans were granted at the time when then President Ferdinand E. Marcos was at the threshold of his authority and no one dared question, much less investigate, any of his orders.

In the meantime, this Court, on 25 October 1999, rendered a decision in G.R. No. 130140 entitled, "*Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto,*" another case which involved the grant of an alleged behest loan by a government financial institution to a private corporation. The Court, in said case, resolved the issue of prescription of crimes relative to one of the behest loan cases filed with the Committee. The Court categorically enunciated that the prescriptive period for offenses involving behest loans, which the Committee charged the responsible persons with had not yet prescribed. It also directed the Office of the Ombudsman to conduct a preliminary investigation.

The ruling of this Court in G.R. No. 130140 prompted the Office of the Ombudsman to conduct a preliminary investigation of the instant case which was docketed as OMB-0-97-1138. The Office of the Ombudsman eventually dismissed the instant case against private respondents in a Resolution dated 16 October 2000 opining that the Board of Directors of the National Investment and Development Corporation, which approved the loan in favor of CCPI, should be the one indicted and not the private respondents. Petitioner filed a motion for reconsideration which was denied in an Order dated 27 February 2001. Dissatisfied, petitioner elevated anew the case to this Court questioning the finding that private

respondents could not have been responsible for the crime charged. Said case which is docketed as G.R. No. 148269, is still pending.

In his Comment dated 23 October 2003, private respondent Enrique M. Herbosa urged this Court to dismiss the herein case for being moot and academic since the Office of the Ombudsman had already conducted the appropriate preliminary investigation on the merits after this Court settled the issue of prescription.

The Court agrees with private respondent Herbosa that this case has been rendered moot and academic. It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases.[8] And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value.[9] There is no actual substantial relief to which petitioner would be entitled, and which would be negated by the dismissal of the petition.

In this case, the issues presented by the petition, *i.e.*, whether the offenses subject of the criminal complaint have prescribed and whether the prescriptive period should be reckoned from the date of the commission of the offense or from the date of discovery thereof, have already been settled by the Court in G.R. No. 130140 on 25 October 1999 in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*. As a result of said ruling in G.R. No. 130140, the Office of the Ombudsman set aside the questioned Orders dated 12 August 1997 and 16 February 1998 and thereafter conducted the preliminary investigation. There is no use in passing upon the merits of this case, the one involved in G.R. No. 148269, which is still pending. Notably, the issue of the existence of probable cause, or lack of it, is not the subject of the instant petition.

G.R. No. 133757

This case originated from the Sworn Statement dated 8 September 1997, signed by PCGG Consultant Atty. Orlando

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[8] *Lim v. Ang*, G.R. No. 152429, 18 March 2005, 453 SCRA 802, 811.

[9] *Id*.

L. Salvador. In the said sworn statement or complaint, it was alleged that two industrial loans were granted by DBP in favor of the PJI. The first was in the amount of US$1,745,000.00 approved under DBP Board Resolution No. 3634 dated 15 September 1976; and the second was for US$124,140.00, approved under DBP Board Resolution No. 2753 dated 13 September 1978.[10] In the complaint, it was alleged that the first loan was without sufficient collateral, as PJI had no sufficient capital to be entitled to the amount of the loan, considering that at the granting of the loan, PJI did not offer existing assets except for the assets to be acquired out of the proceeds from the loan, and that its paid-up capital amounted only to ₱100,000.00.[11] All these notwithstanding, PJI obtained the second loan without sufficient collaterals and adequate capital to ensure the viability of its operations and its ability to repay its loans.[12] It was also alleged that as of 30 June 1986, PJI had an outstanding and unpaid balance of ₱58,850,000.00. Furthermore, it averred that respondent Benjamin "Kokoy" Romualdez, the brother-in-law of then President Ferdinand E. Marcos, was the alleged owner of PJI and that PJI funds were used by respondent Benjamin Romualdez for his personal use.[13]

According to the complaint, the two industrial loans can be categorized as behest loans, since the same were not sufficiently secured, the grantee was undercapitalized, and the stockholders and officers of PJI were identified as cronies.

Based on these findings, the PCGG filed two cases with the Office of the Ombudsman for violation of Section 3(e) and (g) of Republic Act No. 3019.

The following former DBP officers were alleged to be the ones responsible for the approval of the behest loans: (1) Placido L. Mapa, Chairman; (2) Jose R. Tengco, Jr., full-time Governor; (3) Rafael A. Sison, full-time Governor; (4) Alejandro Melchor,

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[10] *Rollo* of G.R. No. 133757, Vol. 1, p. 94.

[11] *Id*.

[12] *Id*. at 95.

[13] *Id*. at 96.

part-time Governor; and (5) Alice Ll. Reyes, Manager of Industrial Projects Department. In addition to Benjamin Romualdez, the following PJI Officers were also indicted: (1) Rosario Olivares, President and Chairman; (2) Alejandro Maramag, Vice-President and General Manager; (3) Evelyn Nicasio, Assistant Treasurer and OIC, Purchasing Department; (4) Tuynita Soriano, Accounting Manager; (5) Jose T. Abundo, Chief Accountant; and (6) Caridad Orpiada, Cashier.

In an Order dated 28 November 1997, Graft Investigation Officer II Fe Q. Palmiano-Salvador recommended the dismissal of the cases on the grounds that the cases are barred by prescription and that the complainant's allegations that the loans were insufficiently secured were contradicted by the evidence on record. Said recommendation was approved by then Ombudsman Aniano A. Desierto on 12 December 1997.

Dissatisfied, petitioner filed a motion for reconsideration on 26 January 1998.

In an Order dated 17 February 1998, Graft Investigation Officer II Fe Q. Palmiano-Salvador recommended the denial of petitioner's motion for reconsideration.

The Ombudsman approved the recommendation denying the motion for reconsideration, and made some clarifications in his marginal note that the cases were being dismissed on the basis of insufficiency of evidence, and not because of prescription, thus:

> For insufficiency of evidence [the recommendation for dismissal is approved], not on the ground of prescription. For clarity, however, the constitutional rule of imprescriptibility of actions for recovery of ill-gotten wealth obviously does not apply to the right of the state to impose penalty on persons violating its laws. The same is waivable in favor of persons alleged to have committed an offense.[14]

Stressing that the Ombudsman committed grave abuse of discretion amounting to lack of or in excess of his jurisdiction, petitioner filed the instant special civil action for *certiorari* praying

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[14] *Id*. at 30.

for the annulment and setting aside of the Ombudsman's Orders dated 28 November 1997 and 17 February 1998, dismissing the charges against respondents.

The Ombudsman did not act with grave abuse of discretion when he dismissed the charges against respondents.

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.[15] In fact, the Ombudsman has the power to dismiss a complaint without going through a preliminary investigation, since he is the proper adjudicator of the question as to the existence of a case warranting the filing of information in court.[16] The Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not. This is basically his prerogative.[17]

In recognition of this power, the Court has been consistent not to interfere with the Ombudsman's exercise of his investigatory and prosecutory powers.[18]

Various cases held that it is beyond the ambit of this Court to review the exercise of discretion of the Office of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.[19]

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[15] *Pres. Ad Hoc Fact Finding Com. on Behest Loans v. Ombudsman Desierto*, 415 Phil. 135, 142 (2001).

[16] *Id*.

[17] *Pres. Ad Hoc Fact Finding Com. on Behest Loans v. Ombudsman Desierto*, *supra* note 14.

[18] *Venus v. Hon. Desierto*, 358 Phil. 675, 695 (1998).

[19] *Chan v. Court of Appeals*, G.R. No. 159922, 28 April 2005, 457 SCRA 502, 517; *Knecht v. Hon. Desierto*, 353 Phil. 494, 505-506; *Fuentes, Jr. v. Office of the Ombudsman*, G.R. No. 164865, 11 November 2005, 474 SCRA 779, 789; *Cabrera v. Marcelo*, G.R. Nos. 157419-20, 13 December 2004, 446 SCRA 207, 214-215.

The rationale underlying the Court's ruling has been explained in numerous cases. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they would be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant. In order to insulate the Office of the Ombudsman from outside pressure and improper influence, the Constitution as well as Republic Act No. 6770 saw fit to endow that office with a wide latitude of investigatory and prosecutory powers, virtually free from legislative, executive or judicial intervention.[20] If the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings unless they are tainted with grave abuse of discretion.[21]

Grave abuse of discretion is the capricious and whimsical exercise of judgment on the part of the public officer concerned, equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[22]

The Ombudsman, after a meticulous scrutiny of the evidence, found no sufficient ground to engender a well-founded belief that the complained transactions are behest loans and that respondents cannot be held liable under Republic Act No. 3019. The Ombudsman explained his reasons, based on evidence, for

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[20] *Id*.

[21] *Id*.

[22] *Perez v. Office of the Ombudsman*, G.R. No. 131445, 27 May 2004, 429 SCRA 357, 361-362.

finding that there was no probable cause to indict respondents. First, there were sufficient collaterals and securities for the first loan of US$1,745,000.00 (**its then peso equivalent was ₱13,087,500.00**) such as: (1) the chattel mortgage on machinery with the appraised value at ₱27,700,000.00; (2) the assignment of 670 voting rights of 670 common shares with a par value of ₱100.00 per share; (3) the amendment of the Articles of Incorporation to include the ₱5,000,000.00 authorized preferred stock of PJI, and the ₱3,300,000.00 loan of Graphics Marketing to be converted to preferred shares; and (4) the joint and several signatures of Roberto Garcia and Rosario Olivares, PJI Chairman and President, respectively. Second, the succeeding loan amounting to US$124,140.00 was collateralized by the following: (1) the first mortgage on assets to be acquired with the appraised value of ₱28,900,000.00; (2) the joint and several signatures of Roberto Garcia and Rosario Olivares; and (3) the fact that the DBP was given a representation by one director in the PJI and the former can designate the Comproller in the PJI. The Ombudsman's findings that the loans had ample collaterals read:

> Going further, the undersigned is dazzled by the series of conclusions reached by the reviewing Memorandum x x x that these are insufficiently secured loans and may still be prosecuted, contrary to the facts revealed after an exhaustive review of the records hereunder illustrated for clarity, namely:
>
> | Allegations | Facts | Doc. Evidence | Page # |
> |---|---|---|---|
> | x x x | x x x | | x x x |
> | 4) The questioned loans were under-collaterized | It was NOT only with sufficient collaterals but there were still additional securities | Summary Profile Sec. 78, Gen. Banking Act | p. 15 & 173, Records |
> | | Collaterals offered for the first loan were: "1. C/M on machinery and equipment with A/V ₱27.7 million. | Summary Profile | p. 15, Records |

2. Joint and several signatures of Roberto Garcia and Rosario Olivares, PJI Chairman and President respectively. 3. Assignment of 672 of voting shares-common stocks. 4. Amendment of Article of Incorporation to include ₱5 million Authorized Preferred Stock, and ₱3.3 million loan of Graphics Marketing Corporation to be converted to Preferred shares (of CCRDC)."		
Collaterals offered for second loan were: "1. First Mortgage on assets to be acquired with appraised value of ₱28.9 million. 2. Joint and several signatures of Roberto Garcia and Rosario Olivares in the meantime. 3. DBP to be represented by one director and to designate Comptroller, if necessary.	Summary Profile	p. 15, Records.

Third, the Ombudsman also found that contrary to petitioner's allegation, PJI was sufficiently capitalized as evidenced by its

article of incorporation. Fourth, the questioned loans in 1976 and 1978 were granted in view of the Project Profile (Project Study) considered by the different Departments of DBP and were reviewed by the Industrial Projects Department of the same bank, which established the financial and economic viability of PJI's loans or projects. The subject loans were properly evaluated; and the World Bank, Asian Development Bank, Board of Investments, National Economic Development Authority, and other agencies were consulted on the PJI project.

We have carefully examined the records of the case, the findings of the Ombudsman, and the opposing views of the parties. We find that the petition miserably fails to show that the Ombudsman gravely abused his discretion. On the contrary, the Ombudsman's resolutions are based on substantial evidence. In dismissing petitioner's cases against the respondents, we cannot say that the Ombudsman committed grave abuse of discretion so as to call for the exercise of our supervisory powers over him. As long as there is substantial evidence in support of the Ombudsman's decision, that decision will not be overturned.[23] Such is the case here.

WHEREFORE, premises considered, the consolidated petitions are hereby *DISMISSED* for lack of merit. G.R. No. 133756 is *DISMISSED* for being moot and academic. The 28 November 1997 and 17 February 1998 Orders of the Office of the Ombudsman in G.R. No. 133757 dismissing the complaints against the respondents therein are hereby *AFFIRMED*.

SO ORDERED.

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

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[23] *Tan v. Office of the Ombudsman*, 356 Phil. 626, 636 (1998), citing *Olivarez v. Ombudsman*, G.R. No. 118533, 4 October 1995, 248 SCRA 700, 709-710; *Cruz, Jr. v. People,* G.R. No. 110436, 27 June 1994, 233 SCRA 439, 450-451.

THIRD DIVISION

[G.R. No. 146730. July 4, 2008]

AMADO Z. AYSON, JR., *petitioner, vs.* **SPOUSES FELIX and MAXIMA PARAGAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT; NATURE.— [I]n ejectment suits the issue to be resolved is merely the physical possession over the property, *i.e.*, possession *de facto* and not possession *de jure*, independent of any claim of ownership set forth by the party-litigants. Should the defendant in an ejectment case raise the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession. The judgment rendered in such an action shall be conclusive only with respect to physical possession and shall in no wise bind the title to the realty or constitute a binding and conclusive adjudication of the merits on the issue of ownership. Therefore, such judgment shall not bar an action between the same parties respecting the title or ownership over the property x x x .

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; EXTINGUISHMENT OF SALE; EQUITABLE MORTGAGE; CASES IN WHICH A CONTRACT, PURPORTING TO BE A SALE, IS CONSIDERED ONLY AS A CONTRACT OF LOAN SECURED BY A MORTGAGE.— The Civil Code enumerates the cases in which a contract, purporting to be a sale, is considered only as a contract of loan secured by a mortgage, *viz.: "*Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases: (1) When the price of the sale with right to repurchase is unusually inadequate; (2) ***When the vendor remains in possession as lessee or otherwise***; (3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed; (4) When the purchaser retains for himself a part of the purchase price; (5) When the vendor

binds himself to pay the taxes on the thing sold; (6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation. In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws. Art. 1604. The provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale." In such cases, parol evidence then becomes competent and admissible to prove that the instrument was in truth and in fact given merely as a security for the repayment of a loan; and upon adequate proof of the truth of such allegations, the courts will enforce the agreement or understanding in this regard, in accord with the true intent of the parties at the time the contract was executed, even if the conveyance was accompanied by registration in the name of the transferee and the issuance of a new certificate of title in his name.

3. ID.; PRESCRIPTION OF ACTIONS; ACTION TO ANNUL VOIDABLE CONTRACTS, PRESCRIPTIVE PERIOD; CASE AT BAR.— An equitable mortgage is a voidable contract. As such, it may be annulled within four (4) years from the time the cause of action accrues. This case, however, not only involves a contract resulting from fraud, but covers a transaction ridden with threat, intimidation, and continuing undue influence which started when petitioner's adoptive father Amado Ll. Ayson and Blas F. Rayos, Felix's superiors at Dagupan Colleges, practically bullied respondent-spouses into signing the Deed of Absolute Sale under threat of incarceration. Thus, the four-year period should start from the time the defect in the consent ceases. While at first glance, it would seem that the defect in the consent of respondent-spouses ceased either from the payment of the obligation through salary deduction or from the death of Amado Ll. Ayson and Blas F. Rayos, it is apparent that such defect of consent never ceased up to the time of the signing of the Affidavit on April 8, 1992 when Zareno, acting on behalf of petitioner, caused respondent Felix to be brought to him, and taking advantage of the latter being unlettered, unduly influenced Felix into executing the said Affidavit for a fee of ₱10,000.00. The complaint praying for the nullity of the Deed

of Absolute Sale was filed on October 11, 1993, well within the four-year prescriptive period.

APPEARANCES OF COUNSEL

Villamor A. Tolete for petitioner.
Isayas G. Peneyra and *Tanopo & Serafica* for respondents.

D E C I S I O N

NACHURA, *J.*:

For review on *certiorari* under Rule 45 of the Rules of Court are the Decision[1] dated May 31, 2000 and the Resolution[2] dated December 12, 2000 of the Court of Appeals in CA-G.R. CV No. 59645.

The subject of this controversy is the one-fourth (1/4) portion of, corresponding to the share of respondent Maxima Paragas in, the real property located at Caranglaan District, Dagupan City, originally covered by Transfer Certificate of Title No. 7316 of the Register of Deeds of Dagupan City.

The controversy commenced with the filing of an ejectment complaint[3] on April 12, 1993 before Branch 1 of the Municipal Trial Court in Cities (MTCC) of Dagupan City by herein petitioner Amado Z. Ayson, as represented by his natural father Zosimo S. Zareno[4] (Zareno), against respondent-spouses Felix and Maxima Paragas. The complaint, docketed as Civil Case No. 9161, alleged, among others, that: (1) petitioner is the registered owner of the property being occupied by the respondent-spouses as shown by Transfer Certificate of Title No. 59036 of the Registry of Deeds of Dagupan City in his name; (2) respondent-spouses are occupying the said land through his tolerance without rent;

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[1] *Rollo*, pp. 43-51.

[2] *Id.* at 54.

[3] *Id*. at 68-72.

[4] TSN, October 8, 1997, p. 11 (Charito Ayson).

(3) on April 8, 1992, respondent-spouses executed an Affidavit[5] which declared:

> 1. That we are occupants of a parcel of land (Lot 6595-A-2) covered by Transfer Certificate of Title No. 57684 located at Caranglaan District, Dagupan City owned by Amado Ll. Ayson;
>
> 2. That we occupy the said land by tolerance without paying any rental whatsoever;
>
> 3. That we further agree to vacate the aforesaid land within three (3) months from the date hereof and to remove and transfer our house therefrom to another place;
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> 4. That in consideration of vacating the said parcel of land the amount of Twenty Thousand Pesos (₱20,000.00) shall be paid to us; and, that the amount of Ten Thousand Pesos (₱10,000.00) shall be paid upon signing of this affidavit and the balance of Ten Thousand Pesos (₱10,000.00) shall be paid upon removal of our house on the third month from date hereof.

(4) despite the receipt of the ₱10,000.00 upon the execution of the Affidavit, respondent-spouses refused to vacate the land as agreed upon; and (5) despite demands, respondent-spouses still refused to vacate, thus constraining him to file the complaint. Aside from respondents' vacating the land, petitioner prayed for the return of the ₱10,000.00 he paid them; and the payment of ₱10,000.00 actual damages, ₱10,000.00 exemplary damages, ₱20,000.00 attorney's fees, and the costs.

In their Answer,[6] respondent-spouses alleged that Zareno had no personality and authority to file the case and the filing of the complaint was made in bad faith.

During the preliminary conference, the following admissions were made –

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[5] *Rollo,* p. 107.

[6] *Id*. at 73-76.

By petitioner:

(1) That the defendants (respondent spouses) had been in possession of the land in question since 1930; and

(2) That the semi-concrete house of the defendants (respondent spouses) stands on the land in question.

By respondent spouses:

(1) That the defendant (respondent) Felix Paragas had executed an affidavit on April 8, 1992 wherein he admitted that he is occupying the land by tolerance of the plaintiff (petitioner) without paying any rental whatsoever and had agreed to vacate the premises within three (3) months but refused to vacate later;

(2) That the plaintiff (petitioner) is the registered owner of the land in question;

(3) That there was a demand to vacate the premises; and

(4) That there is a Certification to File Action in Court.[7]

On August 31, 1993, the MTCC, Branch 1, Dagupan City decided in favor of petitioner, based mainly on the above admissions, rendering judgment as follows:

WHEREFORE, the preponderance of evidence being in favor of the plaintiff (petitioner), judgment is hereby rendered:

1) Ordering the defendants (respondent spouses) to vacate the land in question located at Caranglaan District, Dagupan City and covered by Transfer Certificate of Title No. 59036 of the Registry of Deeds for the City of Dagupan, and to deliver the physical and peaceful possession to the plaintiff (petitioner);

2) Ordering the defendants (respondent spouses) jointly and severally to pay the plaintiff (petitioner) the sum of ₱300.00 as monthly rental of the land from the date of the filing of the complaint until the defendants (respondent spouses) vacate the premises;

3) Ordering defendant (respondent) Felix Paragas to return or indemnify the plaintiff (petitioner) the amount of ₱10,000.00 representing the sum received by him from the plaintiff (petitioner) on April 8, 1992;

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[7] *Id*. at 78-79.

4) Other claims are denied for lack of merit.

With costs against the defendants.

SO ORDERED.[8]

Respondent-spouses appealed the said Decision to the Regional Trial Court (RTC) of Dagupan City. In the Decision[9] dated August 16, 1996, the RTC affirmed the MTCC Decision, the dispositive portion of which reads –

WHEREFORE, the appeal interposed by the appellants is hereby DISMISSED. Judgment is rendered in favor of the plaintiff (petitioner) and against the defendants (respondent spouses), to wit:

1. ORDERING defendants (respondent spouses), their agents, representatives and assigns to vacate the land subject matter of this case;

2. ORDERING defendants (respondent spouses) to return to the plaintiff (petitioner) the amount of ₱10,000.00 received by them in consideration of their promise to vacate the land subject matter of this case;

3. ORDERING defendants (respondent spouses) to pay to the plaintiff (petitioner) ₱10,000.00 in actual damages; ₱10,000.00 in exemplary damages; and ₱20,000.00 in attorney's fees; and

4. ORDERING defendants to pay the costs.

SO ORDERED.[10]

Respondent-spouses went to the Court of Appeals via a petition for review. In its Decision[11] dated October 13, 1997, the appellate court dismissed the petition. The Decision was appealed to this Court. We denied the appeal in a Resolution dated December 3, 1997, on the basis of the failure of respondent-spouses to show any reversible error in the decisions of the three courts below. Our Resolution became final and executory

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[8] *Id*. at 83.

[9] *Id*. at 109-113.

[10] *Id*. at 113.

[11] *Id*. at 115-124.

on January 29, 1998 and was entered in the Book of Entries of Judgments.[12]

Meanwhile, on October 11, 1993, during the pendency of the appeal with the RTC, respondent-spouses filed against petitioner, as represented by his attorney-in-fact Zosimo S. Zareno, the heirs of Blas F. Rayos, the spouses Delfin and Gloria Alog, and Hon. Judge George M. Mejia, as Presiding Judge of the Metropolitan Trial Court, Branch 1 of Dagupan City, also before the RTC of Dagupan City, a complaint[13] for declaration of nullity of deed of sale, transactions, documents and titles with a prayer for preliminary injunction and damages. The complaint was docketed as Civil Case No. D-10772 and was raffled to Branch 42.

The complaint alleged, *inter alia*, that respondent Maxima is a co-owner of a parcel of land originally covered by TCT No. 7316 of the Registry of Deeds of Dagupan City, her ¼ share having an area of 435.75 square meters. Sometime prior to April 13, 1955, respondent Felix, then an employee of the defunct Dagupan Colleges (now University of Pangasinan) failed to account for the amount of ₱3,000.00. It was agreed that respondent Felix would pay the said amount by installment to the Dagupan Colleges. Pursuant to that agreement, Blas F. Rayos and Amado Ll. Ayson, then both occupying high positions in the said institution, required respondent-spouses to sign, without explaining to them, a Deed of Absolute Sale on April 13, 1955 over respondent Maxima's real property under threat that respondent Felix would be incarcerated for misappropriation if they refused to do so.

The complaint further alleged that later, respondent-spouses, true to their promise to reimburse the defalcated amount, took pains to pay their obligation in installments regularly deducted from the salaries received by respondent Felix from Dagupan Colleges; that the payments totaled ₱5,791.69; that notwithstanding the full payment of the obligation, Amado Ll.

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[12] Entry of Judgment; *id*. at 125.

[13] *Rollo*, pp. 92-99.

Ayson and Blas F. Rayos did nothing to cancel the purported Deed of Absolute Sale; and that they were shocked when they received a copy of the complaint for ejectment filed by petitioner.

During the pre-trial, the following was established –

[T] he land in question was a portion of a larger lot covered by TCT No. 41021 with an area of 1,743 square meters in the name of Buenaventura Mariñas, father of the plaintiff (respondent) Maxima Mariñas-Paragas. Transfer Certificate of Title No. 41021 was later on cancelled and replaced by TCT No. 7316 in the names of Maxima Mariñas, Rufino Mariñas, Rizalina Mariñas and Buenaventura Mariñas, specifying that each would receive one-fourth (1/4) thereof. The portion pertaining to Maxima Mariñas-Paragas was later on allegedly conveyed to Blas F. Rayos and Amado Ll. Ayson by virtue of a Deed of Sale allegedly executed on April 13, 1955 by Maxima Mariñas-Paragas with the conformity of her husband Felix Paragas, after which TCT 7354 was issued canceling TCT No. 7316. Under TCT No. 7354, the new owners were Blas F. Rayos and Amado Ll. Ayson, Rufino Mariñas, Rizalina Mariñas and Angela Mariñas. The land was subdivided later on into four (4) lots, distributed as follows: Lot A went to Blas F. Rayos and Amado Ll. Ayson, Lot B to Rufino Mariñas, Lot C to Rizalina Mariñas, and Lot D to Angela Mariñas. Each lot has an area of 435.75 square meters. For Lot A, TCT No. 22697 was issued in the name of both Blas F. Rayos and Amado Ll. Ayson.

On November 15, 1991, Lot A was the subject of a subdivision between Amado Ll. Ayson and Blas F. Rayos. Said subdivision was approved on December 10, 1991, dividing the property into equal halves, each half with an area of 217.88 square meters. Thereafter, the one-half (1/2) pertaining to Blas F. Rayos was sold by his successors-in-interest to spouses Delfin and Gloria Alog by virtue of an Extra-Judicial Settlement With Sale dated January 10, 1992, to which the said spouses were issued TCT 57683 on January 14, 1992. On the same day, Amado Ll. Ayson for his portion of the property was also issued TCT 57684. Amado Ll. Ayson later passed on ownership of his share to Amado Z. Ayson and issued to the latter was TCT 59036 after the latter executed an Affidavit of Self Adjudication dated August 3, 1992 upon the death of Amado Ll. Ayson.[14]

After trial on the merits, the RTC, Branch 42, Dagupan City rendered its Decision[15] dated March 6, 1998 in favor of respondent-

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

[15] *Id*. at 56-67.

spouses declaring the Deed of Absolute Sale as an equitable mortgage, the decretal portion of which reads –

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants, except the spouses Delfin and Gloria Alog:

1. Annulling the Deed of Sale executed by Felix Paragas and Maxima Paragas on April 13, 1955 (Exh. 3) in favor of defendants Blas F. Rayos and Amado Ll. Ayson except as it affects the interest of Spouses Delfin and Gloria Alog over the property in question;
2. Annulling likewise TCT No. 57684 issued to Amado Ll. Ayson and TCT No. 59036 issued to Amado Z. Ayson, including the respective tax declarations thereof;
3. Ordering Amado Z. Ayson to reconvey ownership of the property covered by TCT No. 59036 to the herein plaintiffs, the true owners thereof;
4. Ordering defendant Amado Z. Ayson and the estate of Blas F. Rayos to pay jointly and severally to the herein plaintiffs the amount paid by Spouses Delfin and Gloria Alog to the late Blas F. Rayos, there being no proof adduced by the plaintiffs as to the actual current market value of the said property;
5. Ordering the said defendants Amado Z. Ayson and the estate of Blas F. Rayos to pay jointly and severally to the plaintiffs other amounts of ₱50,000.00 as moral damages and ₱10,000.00 as attorney's fees, including appearance fee;
6. Further ordering the aforementioned defendants, except defendant-spouses Delfin and Gloria Alog, to pay costs.

SO ORDERED.[16]

Petitioner appealed the said Decision to the Court of Appeals, which affirmed the same in its Decision dated May 31, 2000. The motion for reconsideration filed by petitioner was likewise denied by the Court of Appeals in its Resolution dated December 12, 2000. Hence, this petition raising the sole issue that –

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[16] *Id*. at 66-67.

The Honorable Court of Appeals has acted in excess of or with grave abuse of discretion amounting to lack of jurisdiction in dismissing the appeal of the herein petitioner Amado Z. Ayson, Jr. and in affirming the decision of the Regional Trial Court, Branch 42, Dagupan City in Civil Case No. D-10772, in violation of the laws on sale, equitable mortgage, prescription, laches and estoppel as well as the laws on property registration.[17]

Petitioner contends that respondent-spouses are bound by the judicial admissions they made both in the ejectment case and in the case for declaration of nullity of the Deed of Absolute Sale.

With respect to the ejectment case, he posits that respondent-spouses cannot renege on the effects of their admissions that petitioner is the registered owner of the disputed property; that they were occupying the same by mere tolerance of the latter without rent; and that they undertook to vacate the premises in accordance with the Affidavit dated April 8, 1992, especially when the findings of the MTCC had already become final upon the Entry of Judgment of our Resolution affirming the MTCC, the RTC, and the Court of Appeals.

As regards the action for declaration of nullity of the deed of absolute sale, petitioner claims that respondent-spouses are likewise bound by their admission during the pre-trial that the series of certificates of title from the time the Deed of Absolute Sale was registered with the Register of Deeds of Dagupan City eventually led to the issuance of TCT No. 59036 in his name.

Petitioner further argues that the action instituted before the RTC, Branch 42, Dagupan City has already prescribed. According to him, the complaint alleged that the Deed of Absolute Sale was executed through fraud, making the said contract merely voidable, and the action to annul voidable contracts based on fraud prescribed in four (4) years from the discovery of fraud. He insists that the registration of the Deed of Absolute Sale occurred on May 4, 1955, which operated as constructive notice of the fraud to the whole world, including respondent-spouses.

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[17] *Id.* at 23.

Thus, petitioner concludes that the action had long prescribed when they filed the same on October 11, 1993, since its cause had accrued 38 years ago.

Petitioner adds that respondent-spouses are bound by estoppel and guilty of laches in light of the judicial admissions they have already made and the unreasonable length of time that had lapsed before they questioned the validity of the Deed of Absolute Sale and the Affidavit they executed on April 8, 1992.

He also asseverates that the Deed of Absolute Sale is a true sale and not an equitable mortgage, arguing that the alleged payments made by respondent Felix were made from December 29, 1965 to December 17, 1980, long after the execution of the contract on April 13, 1955; that respondent-spouses only paid realty taxes over their house and not on the disputed land; that their possession of the property was by his mere tolerance; that there was no evidence proffered that the amount of ₱3,000.00 as consideration for the sale was unusually inadequate in 1955; and that the other co-owners of the land did not question or protest the subdivision thereof leading to the issuance of TCT No. 59036 in his name.

Lastly, petitioner claims that he is a transferee in good faith, having had no notice of the infirmity affecting the title of his predecessor Amado Ll. Ayson over the property. He says that he was only exercising his right as an heir when he adjudicated unto himself the parcel of land pertaining to his adoptive father,[18] resulting in the issuance of TCT No. 59036 in his name, and, thus, should not be penalized for his exercise of a legal right.

The arguments do not persuade.

First. With respect to the admissions made by respondent-spouses, through their counsel during the preliminary conference of the ejectment case, it is worthy to note that, as early as the submission of position papers before the MTCC, they already questioned the sale of the subject property to Amado Ll. Ayson and Blas F. Rayos for being fictitious and asserted their ownership over the land, pointing to the fact that respondent Maxima had

[18] TSN, October 8, 1997, p. 9.

been living on the land since her birth in 1913 and that they had been in continuous possession thereof since her marriage to respondent Felix in 1944. However, unfortunately for them, the MTCC held them bound by the admissions made by their counsel and decided that petitioner had a better right to possess the property.

Nevertheless, it must be remembered that in ejectment suits the issue to be resolved is merely the physical possession over the property, *i.e.*, possession *de facto* and not possession *de jure*, independent of any claim of ownership set forth by the party-litigants.[19] Should the defendant in an ejectment case raise the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.[20] The judgment rendered in such an action shall be conclusive only with respect to physical possession and shall in no wise bind the title to the realty or constitute a binding and conclusive adjudication of the merits on the issue of ownership. Therefore, such judgment shall not bar an action between the same parties respecting the title or ownership over the property,[21] which action was precisely resorted to by respondent-spouses in this case.

Anent the claim that respondent-spouses admitted the series of TCTs issued by reason of the registration of the questioned Deed of Absolute Sale, suffice it to state that records show that they admitted only the existence thereof, not necessarily the validity of their issuance.

Second. The Deed of Absolute Sale is, in reality, an equitable mortgage or a contract of loan secured by a mortgage. The Civil Code enumerates the cases in which a contract, purporting to be a sale, is considered only as a contract of loan secured by a mortgage, *viz.:*

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[19] *Spouses Malison v. Court of Appeals*, G.R. No. 147776, July 10, 2007, 527 SCRA 109, 122.

[20] RULES OF COURT, Rule 70, Sec. 16.

[21] RULES OF COURT, Rule 70, Sec. 18; *Pajuyo v. Court of Appeals*, G.R. No. 146364, June 3, 2004, 430 SCRA 492, 509.

Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:

(1) When the price of the sale with right to repurchase is unusually inadequate;

(2) ***When the vendor remains in possession as lessee or otherwise***;

(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

(4) When the purchaser retains for himself a part of the purchase price;

(5) When the vendor binds himself to pay the taxes on the thing sold;

(6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws.[22]

Art. 1604. The provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale.

In such cases, parol evidence then becomes competent and admissible to prove that the instrument was in truth and in fact given merely as a security for the repayment of a loan; and upon adequate proof of the truth of such allegations, the courts will enforce the agreement or understanding in this regard, in accord with the true intent of the parties at the time the contract was executed, even if the conveyance was accompanied by registration in the name of the transferee and the issuance of a new certificate of title in his name.[23]

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[22] Emphasis supplied.

[23] Tolentino, A.M., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. V (1992), citing *Macapinlac v. Gutierrez Repide*, 43 Phil. 770 (1922).

In this case, the evidence before the RTC, Branch 42, Dagupan City had established that the possession of the subject property remained with respondent-spouses despite the execution of the Deed of Absolute Sale on April 13, 1955. In fact, testimonies during the trial showed that petitioner and his predecessors never disturbed the possession of respondent-spouses until the filing of the ejectment case on April 12, 1992.[24]

Moreover, the evidence presented by respondent-spouses indubitably reveals that they signed the contract under threat of prosecution, with the view to secure the payment of the ₱3,000.00 defalcated by respondent Felix. Amado Ll. Ayson and Blas F. Rayos obviously exerted undue influence on Felix taking advantage of the latter's lack of education and understanding of the legal effects of his signing the deed.

Respondent-spouses have clearly proven that they have already paid the aforesaid amount. That the obligation was paid in installments through salary deduction over a period of 10 years from the signing of the Deed of Absolute Sale is of no moment. It is safe to assume that this repayment scheme was in the nature of an easy payment plan based on the respondent-spouses' capacity to pay. Also noteworthy is that the deductions from respondent Felix's salary amounted to a total of ₱5,791.69,[25] or almost double the obligation of ₱3,000.00. Furthermore, it cannot be denied that petitioner failed to adduce countervailing proof that the payments, as evidenced by the volume of receipts, were for some other obligation.

That the realty taxes paid by respondent-spouses was only for their house can be explained by the fact that, until the filing of the ejectment case, respondent Maxima was not aware that the land she co-owned was already partitioned, such that the payments of real estate taxes in her name were limited to the improvement on the land.

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[24] TSN, May 15, 1995, p. 11 (Maxima Paragas); TSN, December 20, 1996, p. 6 (Rosario Paragas); TSN, March 11, 1997, p. 11 (Lydia Salazar); TSN, October 8, 1997, p. 10 (Charito Ayson).

[25] Exhibits "A" to "A-173".

An equitable mortgage is a voidable contract. As such, it may be annulled within four (4) years from the time the cause of action accrues. This case, however, not only involves a contract resulting from fraud, but covers a transaction ridden with threat, intimidation, and continuing undue influence which started when petitioner's adoptive father Amado Ll. Ayson and Blas F. Rayos, Felix's superiors at Dagupan Colleges, practically bullied respondent-spouses into signing the Deed of Absolute Sale under threat of incarceration. Thus, the four-year period should start from the time the defect in the consent ceases.[26] While at first glance, it would seem that the defect in the consent of respondent-spouses ceased either from the payment of the obligation through salary deduction or from the death of Amado Ll. Ayson and Blas F. Rayos, it is apparent that such defect of consent never ceased up to the time of the signing of the Affidavit on April 8, 1992 when Zareno, acting on behalf of petitioner, caused respondent Felix to be brought to him, and taking advantage of the latter being unlettered, unduly influenced Felix into executing the said Affidavit for a fee of ₱10,000.00.[27] The complaint praying for the nullity of the Deed of Absolute Sale was filed on October 11, 1993, well within the four-year prescriptive period.

Regarding the finality of the adjudication of physical possession in favor of petitioner, it may be reiterated that the right of possession is a necessary incident of ownership. This adjudication of ownership of the property to respondent-spouses must include the delivery of possession to them since petitioner has not shown a superior right to retain possession of the land independently of his claim of ownership which is herein rejected. Verily, to grant execution of the judgment in the ejectment case would work an injustice on respondent-spouses who had been conclusively declared the owners and thus, rightful possessors of the disputed land.[28]

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[26] CIVIL CODE, Art. 1391.

[27] TSN, December 19, 1997, pp. 3-4 (Rosario Paragas).

[28] *Roman Catholic Archbishop of Caceres v. Heirs of Manuel Abella*, G.R. No. 143510, November 23, 2005, 476 SCRA 1, 11; *Toledo-Banaga v. Court of Appeals*, 361 Phil. 1006, 1020 (1999).

WHEREFORE, the petition is *DENIED* and the Decision of the Court of Appeals in CA-G.R. CV No. 59645 dated May 31, 2000 is *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 149547. July 4, 2008]

PHILIPPINE AIRLINES, INC., *petitioner, vs.* **HON. ADRIANO SAVILLO, Presiding Judge of RTC Branch 30, Iloilo City, and SIMPLICIO GRIÑO,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; TRANSPORTATION LAW; AIR TRANSPORTATION; THE WARSAW CONVENTION; APPLICABILITY.— The Warsaw Convention applies to "all international transportation of persons, baggage or goods performed by any aircraft for hire." It seeks to accommodate or balance the interests of passengers seeking recovery for personal injuries and the interests of air carriers seeking to limit potential liability. It employs a scheme of strict liability favoring passengers and imposing damage caps to benefit air carriers. The cardinal purpose of the Warsaw Convention is to provide uniformity of rules governing claims arising from international air travel; thus, it precludes a passenger from maintaining an action for personal injury damages under local law when his or her claim does not satisfy the conditions of liability under the Convention. Article 19 of the Warsaw Convention provides for liability on the part of a carrier for "damages occasioned by delay in the transportation by air of

passengers, baggage or goods." Article 24 excludes other remedies by further providing that "(1) in the cases covered by Articles 18 and 19, any action for damages, however founded, can only be brought subject to the conditions and limits set out in this convention." Therefore, a claim covered by the Warsaw Convention can no longer be recovered under local law, if the statute of limitations of two years has already lapsed. Nevertheless, this Court notes that jurisprudence in the Philippines and the United States also recognizes that the Warsaw Convention does not "exclusively regulate" the relationship between passenger and carrier on an international flight. This Court finds that the present case is substantially similar to cases in which the damages sought were considered to be outside the coverage of the Warsaw Convention.

2. ID.; ID.; ID.; DAMAGES RECOVERABLE FOR BREACH; DAMAGE TO THE PASSENGER'S BAGGAGE AND HUMILIATION HE SUFFERED AT THE HAND'S OF THE AIRLINE'S EMPLOYEES, DISTINGUISHED.— In *United Airlines v. Uy*, this Court distinguished between the (1) damage to the passenger's baggage and (2) humiliation he suffered at the hands of the airline's employees. The first cause of action was covered by the Warsaw Convention which prescribes in two years, while the second was covered by the provisions of the Civil Code on torts, which prescribes in four years. Similar distinctions were made in American jurisprudence. In *Mahaney v. Air France*, a passenger was denied access to an airline flight between New York and Mexico, despite the fact that she held a confirmed reservation. The court therein ruled that if the plaintiff were to claim damages based solely on the delay she experienced – for instance, the costs of renting a van, which she had to arrange on her own as a consequence of the delay – the complaint would be barred by the two-year statute of limitations. However, where the plaintiff alleged that the airlines subjected her to unjust discrimination or undue or unreasonable preference or disadvantage, an act punishable under the United States laws, then the plaintiff may claim purely nominal compensatory damages for humiliation and hurt feelings, which are not provided for by the Warsaw Convention. In another case, *Wolgel v. Mexicana Airlines*, the court pronounced that actions for damages for the "bumping off" itself, rather than the incidental

damages due to the delay, fall outside the Warsaw Convention and do not prescribe in two years.

3. ID.; ID.; ID.; THE WARSAW CONVENTION; INAPPLICABLE IN CASE AT BAR.— The instant case is comparable to the case of *Lathigra v. British Airways*. In *Lathigra*, it was held that the airlines' negligent act of reconfirming the passenger's reservation days before departure and failing to inform the latter that the flight had already been discontinued is not among the acts covered by the Warsaw Convention, since the alleged negligence did not occur during the performance of the contract of carriage but, rather, days before the scheduled flight. In the case at hand, Singapore Airlines barred private respondent from boarding the Singapore Airlines flight because PAL allegedly failed to endorse the tickets of private respondent and his companions, despite PAL's assurances to respondent that Singapore Airlines had already confirmed their passage. While this fact still needs to be heard and established by adequate proof before the RTC, an action based on these allegations will not fall under the Warsaw Convention, since the purported negligence on the part of PAL did not occur during the performance of the contract of carriage but days before the scheduled flight. Thus, the present action cannot be dismissed based on the statute of limitations provided under Article 29 of the Warsaw Convention. Had the present case merely consisted of claims incidental to the airlines' delay in transporting their passengers, the private respondent's Complaint would have been time-barred under Article 29 of the Warsaw Convention. However, the present case involves a special species of injury resulting from the failure of PAL and/or Singapore Airlines to transport private respondent from Singapore to Jakarta – the profound distress, fear, anxiety and humiliation that private respondent experienced when, despite PAL's earlier assurance that Singapore Airlines confirmed his passage, he was prevented from boarding the plane and he faced the daunting possibility that he would be stranded in Singapore Airport because the PAL office was already closed. These claims are covered by the Civil Code provisions on tort, and not within the purview of the Warsaw Convention. Hence, the applicable prescription period is that provided under Article 1146 of the Civil Code: "Art. 1146. The following actions must be instituted within four years: (1) Upon an injury to the rights of the plaintiff; (2) Upon a quasi-delict." Private respondent's Complaint was filed with the RTC on 15 August 1997, which was less than four years

since PAL received his extrajudicial demand on 25 January 1994. Thus, private respondent's claims have not yet prescribed and PAL's Motion to Dismiss must be denied.

APPEARANCES OF COUNSEL

Siguion Reyna, Montecillo & Ongsiako for petitioner.
Padohinog Amane Gengos Billena & Coco Law Offices for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated 17 August 2001, rendered by the Court of Appeals in CA-G.R. SP No. 48664, affirming *in toto* the Order[2] dated 9 June 1998, of Branch 30 of the Regional Trial Court (RTC) of Iloilo City, dismissing the Motion to Dismiss filed by petitioner Philippine Airlines Inc. (PAL) in the case entitled, *Simplicio Griño v. Philippine Airlines, Inc. and Singapore Airlines*, docketed as Civil Case No. 23773.

PAL is a corporation duly organized under Philippine law, engaged in the business of providing air carriage for passengers, baggage and cargo.[3]

Public respondent Hon. Adriano Savillo is the presiding judge of Branch 30 of the Iloilo RTC, where Civil Case No. 23773 was filed; while private respondent Simplicio Griño is the plaintiff in the aforementioned case.

The facts are undisputed.

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[1] Penned by Associate Justice Alicia L. Santos with Associate Justices Ramon A. Barcelona and Mercedes Gozo-Dadole, concurring. *Rollo*, pp. 39-46.

[2] Penned by Judge Adriano S. Savillo. CA *rollo,* pp. 29-31.

[3] CA *rollo,* p. 33.

Private respondent was invited to participate in the 1993 ASEAN Seniors Annual Golf Tournament held in Jakarta, Indonesia. He and several companions decided to purchase their respective passenger tickets from PAL with the following points of passage: MANILA-SINGAPORE-JAKARTA-SINGAPORE-MANILA. Private respondent and his companions were made to understand by PAL that its plane would take them from Manila to Singapore, while Singapore Airlines would take them from Singapore to Jakarta.[4]

On 3 October 1993, private respondent and his companions took the PAL flight to Singapore and arrived at about 6:00 o'clock in the evening. Upon their arrival, they proceeded to the Singapore Airlines office to check-in for their flight to Jakarta scheduled at 8:00 o'clock in the same evening. Singapore Airlines rejected the tickets of private respondent and his group because they were not endorsed by PAL. It was explained to private respondent and his group that if Singapore Airlines honored the tickets without PAL's endorsement, PAL would not pay Singapore Airlines for their passage. Private respondent tried to contact PAL's office at the airport, only to find out that it was closed.[5]

Stranded at the airport in Singapore and left with no recourse, private respondent was in panic and at a loss where to go; and was subjected to humiliation, embarrassment, mental anguish, serious anxiety, fear and distress. Eventually, private respondent and his companions were forced to purchase tickets from Garuda Airlines and board its last flight bound for Jakarta. When they arrived in Jakarta at about 12:00 o'clock midnight, the party who was supposed to fetch them from the airport had already left and they had to arrange for their transportation to the hotel at a very late hour. After the series of nerve-wracking experiences, private respondent became ill and was unable to participate in the tournament.[6]

Upon his return to the Philippines, private respondent brought the matter to the attention of PAL. He sent a demand letter to

[4] *Id*.

[5] *Id*.

[6] *Id*. at 34.

PAL on 20 December 1993 and another to Singapore Airlines on 21 March 1994. However, both airlines disowned liability and blamed each other for the fiasco. On 15 August 1997, private respondent filed a Complaint for Damages before the RTC docketed as Civil Case No. 23773, seeking compensation for moral damages in the amount of ₱1,000,000.00 and attorney's fees.[7]

Instead of filing an answer to private respondent's Complaint, PAL filed a Motion to Dismiss[8] dated 18 September 1998 on the ground that the said complaint was barred on the ground of prescription under Section 1(f) of Rule 16 of the Rules of Court.[9] PAL argued that the Warsaw Convention,[10] particularly Article 29 thereof,[11]governed this case, as it provides that any

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[7] *Id*.

[8] *Id*. at 37-40.

[9] Section 1. *Grounds*. Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x x x x x x

(f) That the cause of action is barred by a prior judgment or by the Statute of Limitations.

x x x x x x x x x

[10] The official title of the Warsaw Convention is "The Convention for the Unification of Certain Rules Relating to International Carriage by Air," 12 October 1929. In the case of the Philippines, the Warsaw Convention was concurred in by the Senate, through Resolution No. 19, on 16 May 1950. The Philippine instrument of accession was signed by President Elpidio Quirino on 13 October 1950 and was deposited with the Polish Government on 9 November 1950. The Convention became applicable to the Philippines on 9 February 1951. On 23 September 1955, President Ramon Magsaysay issued Proclamation No. 201, declaring the Philippines' formal adherence thereto, "to the end that the same and every article and clause thereof may be observed and fulfilled in good faith by the Republic of the Philippines and the citizens thereof." (*Mapa v. Court of Appeals,* 341 Phil. 281, 295-296 [1997].)

[11] Article 29. (1) The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

(2) The method of calculating the period of limitation shall be determined by the law of the court to which the case is submitted.

claim for damages in connection with the international transportation of persons is subject to the prescription period of two years. Since the Complaint was filed on 15 August 1997, more than three years after PAL received the demand letter on 25 January 1994, it was already barred by prescription.

On 9 June 1998, the RTC issued an Order[12] denying the Motion to Dismiss. It maintained that the provisions of the Civil Code and other pertinent laws of the Philippines, not the Warsaw Convention, were applicable to the present case.

The Court of Appeals, in its assailed Decision dated 17 August 2001, likewise dismissed the Petition for *Certiorari* filed by PAL and affirmed the 9 June 1998 Order of the RTC. It pronounced that the application of the Warsaw Convention must not be construed to preclude the application of the Civil Code and other pertinent laws. By applying Article 1144 of the Civil Code,[13] which allowed for a ten-year prescription period, the appellate court declared that the Complaint filed by private respondent should not be dismissed.[14]

Hence, the present Petition, in which petitioner raises the following issues:

I

THE COURT OF APPEALS ERRED IN NOT GIVING DUE COURSE TO THE PETITION AS RESPONDENT JUDGE COMMITED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURSIDICTION IN DENYING PAL'S MOTION TO DISMISS.

II

THE COURT OF APPEALS ERRED IN NOT APPLYING THE PROVISIONS OF THE WARSAW CONVENTION DESPITE THE

[12] CA *rollo*, pp. 29-31.

[13] The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

[14] *Rollo*, pp. 14-17.

FACT THAT GRIÑO'S CAUSE OF ACTION AROSE FROM A BREACH OF CONTRACT FOR INTERNATIONAL AIR TRANSPORT.

III

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE COMPLAINT FILED BY GRIÑO BEYOND THE TWO (2)-YEAR PERIOD PROVIDED UNDER THE WARSAW CONVENTION IS ALREADY BARRED BY PRESCRIPTION.[15]

The petition is without merit.

In determining whether PAL's Motion to Dismiss should have been granted by the trial court, it must be ascertained if all the claims made by the private respondent in his Complaint are covered by the Warsaw Convention, which effectively bars all claims made outside the two-year prescription period provided under Article 29 thereof. If the Warsaw Convention covers all of private respondent's claims, then Civil Case No. 23773 has already prescribed and should therefore be dismissed. On the other hand, if some, if not all, of respondent's claims are outside the coverage of the Warsaw Convention, the RTC may still proceed to hear the case.

The Warsaw Convention applies to "all international transportation of persons, baggage or goods performed by any aircraft for hire." It seeks to accommodate or balance the interests of passengers seeking recovery for personal injuries and the interests of air carriers seeking to limit potential liability. It employs a scheme of strict liability favoring passengers and imposing damage caps to benefit air carriers.[16] The cardinal purpose of the Warsaw Convention is to provide uniformity of rules governing claims arising from international air travel; thus, it precludes a passenger from maintaining an action for personal injury damages under local law when his or her claim does not satisfy the conditions of liability under the Convention.[17]

Article 19 of the Warsaw Convention provides for liability on the part of a carrier for "damages occasioned by delay in the

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[15] *Id*. at 25.

[16] *Pennington v. British Airways*, 275 F.Supp. 2d 601, 11 July 2003.

[17] *Robertson v. American Airlines*, 277 F.Supp. 2d 91, 18 August 2003.

transportation by air of passengers, baggage or goods." Article 24 excludes other remedies by further providing that "(1) in the cases covered by Articles 18 and 19, any action for damages, however founded, can only be brought subject to the conditions and limits set out in this convention." Therefore, a claim covered by the Warsaw Convention can no longer be recovered under local law, if the statute of limitations of two years has already lapsed.

Nevertheless, this Court notes that jurisprudence in the Philippines and the United States also recognizes that the Warsaw Convention does not "exclusively regulate" the relationship between passenger and carrier on an international flight. This Court finds that the present case is substantially similar to cases in which the damages sought were considered to be outside the coverage of the Warsaw Convention.

In *United Airlines v. Uy*,[18] this Court distinguished between the (1) damage to the passenger's baggage and (2) humiliation he suffered at the hands of the airline's employees. The first cause of action was covered by the Warsaw Convention which prescribes in two years, while the second was covered by the provisions of the Civil Code on torts, which prescribes in four years.

Similar distinctions were made in American jurisprudence. In *Mahaney v. Air France*,[19] a passenger was denied access to an airline flight between New York and Mexico, despite the fact that she held a confirmed reservation. The court therein ruled that if the plaintiff were to claim damages based solely on the delay she experienced – for instance, the costs of renting a van, which she had to arrange on her own as a consequence of the delay – the complaint would be barred by the two-year statute of limitations. However, where the plaintiff alleged that the airlines subjected her to unjust discrimination or undue or unreasonable preference or disadvantage, an act punishable under the United States laws, then the plaintiff may claim purely nominal compensatory damages for humiliation and hurt feelings, which

[18] 376 Phil. 688 (1999).

[19] 474 F. Supp. 532, 28 June 1979.

are not provided for by the Warsaw Convention. In another case, *Wolgel v. Mexicana Airlines*,[20] the court pronounced that actions for damages for the "bumping off" itself, rather than the incidental damages due to the delay, fall outside the Warsaw Convention and do not prescribe in two years.

In the Petition at bar, private respondent's Complaint alleged that both PAL and Singapore Airlines were guilty of gross negligence, which resulted in his being subjected to "humiliation, embarrassment, mental anguish, serious anxiety, fear and distress."[21] The emotional harm suffered by the private respondent as a result of having been unreasonably and unjustly prevented from boarding the plane should be distinguished from the actual damages which resulted from the same incident. Under the Civil Code provisions on tort,[22] such emotional harm gives rise to compensation where gross negligence or malice is proven.

The instant case is comparable to the case of *Lathigra v. British Airways*.[23]

In *Lathigra*, it was held that the airlines' negligent act of reconfirming the passenger's reservation days before departure and failing to inform the latter that the flight had already been discontinued is not among the acts covered by the Warsaw Convention, since the alleged negligence did not occur during the performance of the contract of carriage but, rather, days before the scheduled flight.

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[20] 821 F. 2d 442, 12 June 1987.

[21] CA *rollo*, p. 34.

[22] 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 parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

[23] 41 F. 3d 535, 1 December 1994.

In the case at hand, Singapore Airlines barred private respondent from boarding the Singapore Airlines flight because PAL allegedly failed to endorse the tickets of private respondent and his companions, despite PAL's assurances to respondent that Singapore Airlines had already confirmed their passage. While this fact still needs to be heard and established by adequate proof before the RTC, an action based on these allegations will not fall under the Warsaw Convention, since the purported negligence on the part of PAL did not occur during the performance of the contract of carriage but days before the scheduled flight. Thus, the present action cannot be dismissed based on the statute of limitations provided under Article 29 of the Warsaw Convention.

Had the present case merely consisted of claims incidental to the airlines' delay in transporting their passengers, the private respondent's Complaint would have been time-barred under Article 29 of the Warsaw Convention. However, the present case involves a special species of injury resulting from the failure of PAL and/or Singapore Airlines to transport private respondent from Singapore to Jakarta – the profound distress, fear, anxiety and humiliation that private respondent experienced when, despite PAL's earlier assurance that Singapore Airlines confirmed his passage, he was prevented from boarding the plane and he faced the daunting possibility that he would be stranded in Singapore Airport because the PAL office was already closed.

These claims are covered by the Civil Code provisions on tort, and not within the purview of the Warsaw Convention. Hence, the applicable prescription period is that provided under Article 1146 of the Civil Code:

> Art. 1146. The following actions must be instituted within four years:
>
> (1) Upon an injury to the rights of the plaintiff;
>
> (2) Upon a quasi-delict.

Private respondent's Complaint was filed with the RTC on 15 August 1997, which was less than four years since PAL received his extrajudicial demand on 25 January 1994. Thus,

private respondent's claims have not yet prescribed and PAL's Motion to Dismiss must be denied.

Moreover, should there be any doubt as to the prescription of private respondent's Complaint, the more prudent action is for the RTC to continue hearing the same and deny the Motion to Dismiss. Where it cannot be determined with certainty whether the action has already prescribed or not, the defense of prescription cannot be sustained on a mere motion to dismiss based on what appears to be on the face of the complaint.[24] And where the ground on which prescription is based does not appear to be indubitable, the court may do well to defer action on the motion to dismiss until after trial on the merits.[25]

IN VIEW OF THE FOREGOING, the instant Petition is *DENIED*. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 48664, promulgated on 17 August 2001 is *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 151424. July 4, 2008]

EAGLE REALTY CORPORATION, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, represented by the Administrator of the Land Registration Authority, NATIONAL TREASURER OF THE PHILIPPINES, HEIRS OF CASIANO DE LEON, MARIA SOCORRO DE LEON, and PILARITA M. REYES,** *respondents.*

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[24] *Sison v. McQuaid*, 94 Phil. 201, 203-204 (1953).

[25] *Cordova v. Cordova*, 102 Phil. 1182 (1958).

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; THE BODY OF THE PLEADING OR COMPLAINT DETERMINES THE NATURE OF THE ACTION, NOT ITS TITLE OR HEADING; CASE AT BAR.— The body of the pleading or complaint determines the nature of an action, not its title or heading. This is because the complaint must contain a concise statement of the ultimate facts constituting the plaintiff's cause of action and specify the relief sought. Although denominated as an "Action for Annulment of Judgment and Cancellation of Decree and Titles," the complaint is not an action for annulment of judgment under Rule 47, but a case for cancellation of void titles. Annulment of judgment is a remedy against a final and executory judgment. Therefore, a necessary allegation in the complaint would be that there was in fact a judgment that has been issued by the trial court, which judgment has become final. Here, the Complaint does not contain any averment to such effect. On the contrary, the Complaint consistently mentions that the Medina Decision, upon which OCT No. 129 was issued, is a fake document. x x x From the allegations in the Complaint, it is evident that the action is mainly for the declaration of nullity of the certificates of title issued as a result of the fake court decision. This is an action incapable of pecuniary estimation; hence, the RTC properly assumed jurisdiction.

2. CIVIL LAW; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529; REGISTER OF DEEDS, WHEN AUTHORIZED TO FILE AN ACTION TO ANNUL CERTIFICATE OF TITLE ERRONEOUSLY OR UNLAWFULLY ISSUED.— [T]he government is charged with the duty to preserve the integrity of the Torrens System and protect the Assurance Fund. The plaintiff instituted the complaint precisely to perform this duty. The Complaint seeks the cancellation of erroneously issued titles to protect the Assurance Fund from being made liable by the private respondents for damages in case they fail to recover the property. The public officer specifically tasked to perform this duty is the Register of Deeds who, under Section 100 of P.D. No. 1529, is authorized to file an action to annul a certificate of title erroneously or unlawfully issued, thus: "SEC. 100. Register of Deeds as party

in interest. — When it appears that the Assurance Fund may be liable for damages that may be incurred due to the unlawful or erroneous issuance of a certificate of title, the **Register of Deeds concerned shall be deemed a proper party in interest who shall, upon the authority of the Commissioner of Land Registration,** file the necessary action in court to annul or amend the title. The court may order the Register of Deeds to amend or cancel a certificate of title or to do any other acts as may be just and equitable."

3. ID.; ID.; ID.; COMMISSIONER OF LAND REGISTRATION; AUTHORITY TO FILE THE COMPLAINT, EXPLAINED.— Under Section 6, P.D. 1529, the Commissioner of Land Registration shall exercise supervision and control over all Registers of Deeds. It is well understood that "supervision and control" includes the authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate. As the public officer having supervision and control over Registers of Deeds, the Commissioner of Land Registration therefore also has the authority to file the action himself. The LRC is a mere agency of the government, unincorporated, and with no separate juridical personality from that of the Republic of the Philippines. Naming the Republic of the Philippines as plaintiff and merely acting as its representative was not even necessary since the Commissioner of Land Registration himself, as the superior of and exercising control over the Register of Deeds, had the authority to file the complaint on his own. Under Section 1, Rule 3, an entity specifically authorized by law to file the action may be a party in a civil action. Likewise, it is not essential that the Republic of the Philippines has proprietary rights over the property covered by the subject titles as it does not lay any claim over this property. As previously stated, the complaint merely seeks the cancellation of erroneously issued titles in order to protect the Assurance Fund from liability for damages that may be filed by the rightful owners under Section 95 of P.D. No. 1529.

4. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; DISMISSAL OF THE PLAINTIFF'S ACTION IN CASE AT BAR DOES NOT NECESSARILY RESULT IN THE DISMISSAL OF THE INTERVENOR'S COMPLAINT IN INTERVENTION.—Dismissal of the plaintiff's action would

not necessarily result in the dismissal of the intervenor's complaint in intervention. An intervenor has the right to claim the benefit of the original suit and to prosecute it to judgment. Having been permitted to become a party in order to better protect his interest, an intervenor is entitled to have the issues raised between him and the original parties tried and determined.

5. CIVIL LAW; LAND TITLES AND DEEDS; PRINCIPLE OF INDEFEASIBILITY OF A TORRENS TITLE; DOES NOT APPLY WHERE FRAUD ATTENDED THE ISSUANCE OF THE TITLE.— The principle of indefeasibility of a Torrens title does not apply where fraud attended the issuance of the title. The Torrens title does not furnish a shield for fraud. As such, a title issued based on void documents may be annulled.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON CERTIORARI **UNDER RULE 45 OF THE RULES OF COURT; LIMITED TO REVIEW OF QUESTIONS OF LAW.—** As a rule, the Court cannot review the factual findings of the trial court and the CA in a petition for review on *certiorari* under Rule 45 of the Rules of Court. When supported by substantial evidence, findings of fact of the trial court, as affirmed by the CA, are conclusive and binding on the parties.

7. ID.; EVIDENCE; BURDEN OF PROOF; HE WHO ALLEGES THAT HE IS A PURCHASER IN GOOD FAITH AND FOR VALUE OF A REGISTERED LAND BEARS THE ONUS OF PROVING SUCH STATEMENT.— Case law has it that he who alleges that he is a purchaser in good faith and for value of registered land bears the onus of proving such statement. This burden is not discharged by involving the ordinary presumption of good faith.

8. CIVIL LAW; LAND TITLES AND DEEDS; CERTIFICATE OF TITLE; A PURCHASER MAY RELY ON WHAT APPEARS ON THE FACE OF A CERTIFICATE OF TITLE; EXCEPTION.— [T]he general rule is that a purchaser may rely on what appears on the face of a certificate of title. He may be considered a purchaser in good faith even if he simply examines the latest certificate of title. An exception to this rule is when there exist important facts that would create

suspicion in an otherwise reasonable man (and spur him) to go beyond the present title and to investigate those that preceded it. The presence of anything which excites or arouses suspicion should then prompt the vendee to look beyond the certificate and investigate the title of the vendor as appearing on the face of said certificate. One who falls within the exception can neither be denominated an innocent purchaser for value nor a purchaser in good faith, hence, does not merit the protection of the law.

9. MERCANTILE LAW; CORPORATION LAW; PRIVATE CORPORATIONS; A CORPORATION ENGAGED IN THE BUYING AND SELLING OF REAL ESTATE IS EXPECTED TO EXERCISE A HIGHER DEGREE OF CARE AND DILIGENCE IN ASCERTAINING THE STATUS AND CONDITION OF THE PROPERTY SUBJECT OF ITS BUSINESS TRANSACTION.— A corporation engaged in the buying and selling of real estate is expected to exercise a higher standard of care and diligence in ascertaining the status and condition of the property subject of its business transaction. Similar to investment and financing corporations, it cannot simply rely on an examination of a Torrens certificate to determine what the subject property, looks like as its condition is not apparent in the document.

10. CIVIL LAW; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529; ASSURANCE FUND; CLAIMS AGAINST THE ASSURANCE FUND, WHEN ALLOWED.— Petitioner's claim against the Assurance Fund must necessarily fail. Its situation does not come within the ambit of the cases protected by the Assurance Fund. It was not deprived of land in consequence of bringing it under the operation of the Torrens system through fraud or in consequence of any error, omission, mistake or misdescription in the certificate of title. It was simply a victim of unscrupulous individuals. More importantly, it is a condition *sine qua non* that the person who brings the action for damages against the Assurance Fund be the registered owner and, as the holders of transfer certificates of title, that they be innocent purchasers in good faith and for value. And we have already established that petitioner does not qualify as such.

APPEARANCES OF COUNSEL

Villaraza & Angangco Law Offices for petitioner.
The Solicitor General for public respondent.
Modesto Jimenez for P. Reyes.
Remulla & Associates Law Offices for Heirs of Casiano de Leon, *et al*.

D E C I S I O N

NACHURA, J.**:**

This petition assails the Court of Appeals' Decision[1] dated January 22, 2001, and Resolution[2] dated January 8, 2002, which annulled Original Certificate of Title (OCT) No. 129 issued by the Register of Deeds of Pasay City, and its derivative titles, the latest of which is in the name of petitioner.

The antecedents of the case are as follows:

On May 21, 1963, the spouses Casiano de Leon and Maria Socorro de Leon filed with the then Court of First Instance (CFI) of Rizal an application for registration of Lots 1 and 2, Plan Psu-173022-B, located at Barrio San Dionisio, Parañaque, Rizal, with an area of 57,989 square meters. The case was raffled to Branch II presided over by Judge Pedro C. Navarro and docketed as LRC Case No. N-4140. The applicants were represented by Atty. Domicador L. Reyes.

Several parties opposed the application, including the Heirs of Dionisio Tomas, represented by Atty. Lorenzo Sumulong, and the Carabeo family, represented by Atty. Romulo Bobadilla.

On December 11, 1979, the CFI rendered a decision in favor of Casiano de Leon and his children, namely, Esmeralda, Rosario Rodriguez, Bernardita, and Cesario (Maria Socorro having died on September 21, 1974). Copies of this decision (De Leon

[1] Penned by Associate Justice Teodoro P. Regino, with Associate Justices Delilah Vidallon-Magtolis and Josefina Guevara-Salonga, concurring; *rollo*, pp. 89-127.

[2] *Id*. at 130-131.

Decision, for brevity) were sent through registered mail to the Land Registration Commission (LRC), Solicitor General, Atty. Sumulong, and Atty. Bobadilla.[3]

The Heirs of Dionisio Tomas appealed the De Leon Decision to the Intermediate Appellate Court. On March 23, 1984, the appellate court affirmed the decision. The Heirs of Tomas elevated the case to this Court for review, docketed as G.R. No. 66949. On June 25, 1984, this Court dismissed the petition for having been filed out of time and for lack of merit. This judgment became final and executory on August 13, 1984.[4]

It appears that another decision, similar to the De Leon Decision but adjudicating the property to a certain Martina G. Medina, alleged intervenor in LRC Case No. N-4140, was surreptitiously inserted in the records of the LRC.[5] This decision (Medina Decision, for brevity) was similarly dated December 11, 1979 and purportedly signed by Judge Pedro C. Navarro. Likewise inserted in the records of the LRC was the Order for the Issuance of the Decree dated February 14, 1980, also bearing what purports to be the signature of Judge Pedro C. Navarro, with a Certification dated February 17, 1980 by Clerk of Court Nicanor G. Salaysay, attesting that the decision has not been supplemented, amended or otherwise modified.[6]

On May 30, 1983, pursuant to these documents, Hon. Oscar R. Victoriano, then Acting Land Registration Commissioner, issued Decree of Registration No. N-188044. In accordance with this Decree, the Register of Deeds of Pasay City issued OCT No. 129 on July 7, 1983 in the name of a Martina G. Medina.[7]

Medina later exchanged the property for a 3,000-hectare parcel of land in Norzagaray, Bulacan owned by Pilarita Reyes through

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[3] Records (LRC No. N-4140), p. 658 (dorsal portion).

[4] *Rollo,* p. 92.

[5] Records, p. 3.

[6] *Rollo,* pp. 92-93.

[7] Records, p. 4.

a Deed of Exchange dated September 12, 1983. The value of each property was approximately ₱451,900.00. On November 2, 1983, OCT No. 129 was canceled and Transfer Certificate of Title (TCT) No. 74216 issued in the name of Reyes. Thereafter, through a Deed of Sale dated February 22, 1984, Reyes sold the property to petitioner for ₱1,200,000.00. On March 1, 1984, TCT No. 74216 was canceled, and TCT No. 78982 was issued in petitioner's name.[8]

Meanwhile, Cesario de Leon discovered that OCT No. 129 was issued to Martina G. Medina. The De Leons sent a letter-complaint to the LRC asking for an investigation on the matter. This was referred to Atty. Manuel Panis, Chief of the Inspection and Investigation Division of the LRC. In a report dated July 20, 1984, Atty. Panis concluded that the Medina Decision and the Order for the Issuance of Decree dated February 14, 1980 were fake. He then recommended that the appropriate action be filed for the nullification of OCT No. 129 and its derivative titles – TCT No. 74216 in the name of Pilarita Reyes, and TCT No. 78982 in the name of petitioner Eagle Realty Corporation.

Consequently, on September 6, 1984, the Republic of the Philippines, represented by the Acting Land Registration Commissioner, filed a complaint for "Annulment of Judgment and Cancellation of Decree and Titles" against Martina G. Medina, Pilarita Reyes and petitioner Eagle Realty Corporation. The Register of Deeds of Pasay City was impleaded as a nominal party.

The complaint alleged that the LRC received a copy of the De Leon Decision but this was surreptitiously substituted with the Medina Decision, together with the Order for the Issuance of the Decree dated February 14, 1980, in the LRC records. It further alleged that the LRC, unaware of any irregularity, issued OCT No. 129 to Martina Medina on the basis of these fake documents.

In her Answer, Medina averred that she purchased the property from Justino de Leon on March 5, 1973. Justino, in turn, acquired this property from Casiano and Maria de Leon on

[8] *Id*.

October 29, 1971 through a Deed of Absolute Sale. She alleged that she verified the genuineness of this Deed of Absolute Sale from the Manila CFI Notarial Section and from Casiano de Leon himself. She immediately occupied the properties, appointed a caretaker thereof, paid all the land taxes, and caused the transfer to her name of LRC Survey Plan No. 13305 covering the property.[9] She claimed that, in 1979, she learned that this property was the subject of a pending registration proceeding, commenced by Casiano and Maria de Leon in 1966. She then filed, on September 28, 1979, a petition for intervention in said case. This petition for intervention was allegedly granted on October 4, 1979 by the CFI of Pasig.[10]

For its part, petitioner Eagle Realty Corporation alleged, *inter alia*, as affirmative defenses, that (a) the Republic of the Philippines is not the real party-in-interest since the subject property is private, (b) the one-year prescriptive period within which to seek a review of a decree of registration has already lapsed, and (c) it is a buyer in good faith and for value. Petitioner also filed a cross-claim against Pilarita Reyes to seek reimbursement for the purchase price and the Register of Deeds to hold the Assurance Fund liable in case Reyes fails to pay.[11] Later, petitioner filed a third-party complaint against the National Treasurer of the Philippines, the public officer entrusted with the payment of claims against the Assurance Fund.[12]

Pilarita Reyes interposed the same defenses as the petitioner. She further claimed that she had no knowledge of any infirmity in Medina's title and that she entered into the Deed of Exchange in good faith and for value. As for the petitioner's cross-claim, she averred that she acted in good faith in selling the property to petitioner.[13]

On February 8, 1985, respondents Heirs of Casiano and Maria de Leon filed a Motion for Leave of Court to Intervene which

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[9] *Id*. at 100.

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

[11] *Id*. at 57-60.

[12] *Id*. at 65-67.

[13] *Id*. at 110.

the trial court granted.[14] On July 19, 1985, they filed a Complaint-in-Intervention praying that judgment be rendered "in accordance with the prayer alleged in the complaint" and, in addition, order defendants jointly and severally to pay intervenors actual, moral and nominal damages, attorney's fees plus legal interest.[15]

On November 17, 1992, the RTC ruled in favor of the private respondents Heirs of De Leon, thus:

> From all the foregoing discussion, judgment is hereby rendered as follows:
>
> 1. Declaring the decision dated December 11, 1979 and the order for the issuance of decree dated February 14, 1980 in favor of Martina G. Medina purporting to emanate from LRC Case No. N-4140, LRC Record No. N-24165, null and void;
>
> 2. Declaring Decree No. N-188044 and Original Certificate of Title No. 129 in the name of Martina G. Medina, and Transfer Certificates of Title Nos. 74216 and 78982 in the name, respectively, of Pilarita M. Reyes and Eagle Realty Corporation, null and void;
>
> 3. Ordering Eagle Realty Corporation to surrender the owner's duplicate copy of Transfer Certificate of Title No. 78982 to the Register of Deeds of Pasay City (or his successor) who is hereby ordered to cancel this owner's copy and the original copy in his files;
>
> 4. Ordering the defendants to desist from exercising or representing acts of possession or ownership over the lots covered by the said titles;
>
> 5. Ordering the defendant Martina G. Medina to pay to the INTERVENORS the following amounts:
>
> a. the sum of ₱500,000.00 as moral damages for the sufferings said INTERVENORS have suffered arising from the submission of the forged decision and order for the issuance of decree to the Land Registration Commission;
>
> b. The sum of ₱300,000.00 to serve as exemplary damages and thereby discourage the proliferation of similar incidents;

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[14] *Id.* at 137.

[15] *Id.* at 191-192.

6. Ordering the defendants Martina G. Medina, Pilarita Reyes and Eagle Realty Corporation jointly and severally to pay or reimburse to the INTERVENORS attorney's fees in the sum of ₱250,000.00;

7. Ordering Martina G. Medina and Pilarita Reyes, jointly and severally, to refund to Eagle Realty Corporation the following amounts:

a. The sum of ₱1.2 Million which Eagle Realty Corporation paid to Pilarita Reyes for the property, with interest at the legal rate from February 22, 1984 to the time the same is fully paid;

b. The sum of ₱250,000.00 by way of reimbursement of attorney's fees;

c. The attorney's fees that Eagle Realty Corporation, under paragraph 6 above, may have paid to the INTERVENORS;

8. The counterclaims interposed by the defendants are dismissed;

9. In the event that Eagle Realty Corporation is unable to collect the sum of ₱1.2 million with legal interest from its co-defendants, the third-party defendant National Treasurer of the Philippines is ordered to pay the said amount.[16]

On appeal, the CA, in its Decision dated January 22, 2001, affirmed the RTC Decision with modifications, thus:

Wherefore, premises considered, the appeal is DISMISSED and the Decision, dated November 17, 1992, of the Regional Trial Court of Makati, Branch 142, in Civil Case No. 8400, is AFFIRMED with the following modifications: the liability of defendant-appellant Eagle Realty Corporation for attorney's fees under paragraph 6 of the dispositive portion is deleted and; paragraph 9 [*Id*.] is also deleted. Costs against defendants-appellants Medina and Eagle Realty Corporation.

SO ORDERED.[17]

The CA held that the complaint is actually an action for the annulment of a certificate of title, not for annulment of judgment

[16] *Rollo*, pp. 304-305.

[17] *Id*. at 126-127.

as alleged by petitioner; hence, the RTC properly acquired jurisdiction. It also upheld the LRC's personality to institute the complaint based on Section 100 of Presidential Decree (P.D.) No. 1529 in order to protect the Assurance Fund from being held accountable by the private respondents for the erroneous issuance of a certificate of title to Medina. It dismissed the issue on prescription, ratiocinating that an action to declare the nullity of a void title does not prescribe and, moreover, prescription does not run against the State.[18]

According to the CA, the trial court was correct in finding that the Medina Decision and the Order for the Issuance of Decree were both spurious and that petitioner was not an innocent purchaser for value because it failed to make a prior inspection of the subject property which would have revealed that it was being occupied by the private respondents. This omission amounted to a failure to exercise diligence which prevented it from becoming an innocent purchaser for value.[19] Hence, the Assurance Fund cannot be made liable.[20]

On January 8, 2002, the CA issued a Resolution[21] denying petitioner's motion for reconsideration. Petitioner filed this petition for review alleging the following errors:

I.

WITH ALL DUE RESPECT, THE COURT OF APPEALS ERRED IN RULING THAT THE SUBJECT MATTER OR NATURE OF THE ACTION IS NOT ONE FOR ANNULMENT OF JUDGMENT WITHIN THE EXCLUSIVE ORIGINAL JURISDICTION OF THE COURT OF APPEALS AND THAT THE TRIAL COURT ALLEGEDLY PROPERLY ACQUIRED JURISDICTION OVER THE SAME.

II.

WITH ALL DUE RESPECT, THE COURT OF APPEALS ERRED IN RULING THAT THE RESPONDENT REPUBLIC IS A REAL

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[18] *Id*. at 112-116.

[19] *Id*. at 117-121.

[20] *Id*. at 126.

[21] *Id*. at 130-131.

PARTY-IN-INTEREST AND HAS THE PERSONALITY TO FILE THE SUIT BELOW.

III.

WITH ALL DUE RESPECT, THE COURT OF APPEALS ERRED IN RULING THAT THE ONE-YEAR PRESCRIPTIVE PERIOD PROVIDED BY LAW IS NOT APPLICABLE TO THE INSTANT CASE.

IV.

WITH ALL DUE RESPECT, THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER EAGLE REALTY IS NOT AN INNOCENT PURCHASER FOR VALUE OF THE SUBJECT PROPERTY.

V.

WITH ALL DUE RESPECT, THE COURT OF APPEALS COMMITTED A GRAVE AND SERIOUS MISAPPREHENSION OF THE FACTS HEREIN INVOLVED AND MADE MANIFESTLY MISTAKEN, ABSURD OR IMPOSSIBLE INFERENCES:

A.

IN UPHOLDING THE FACTUAL FINDINGS OF THE TRIAL COURT DESPITE THE GLARING EVIDENCE ON RECORD WHICH SHOWS THAT THE DECISION DATED 11 DECEMBER 1979 IN LRC CASE NO. 4140 IN FAVOR OF DEFENDANT-APPELLANT MEDINA IS THE GENUINE DECISION OF JUDGE PEDRO G. NAVARRO.

B.

IN FAILING TO CONSIDER THE DEEDS OF SALE EXECUTED BY CASIANO DE LEON, JUSTINO DE LEON AND MEDINA, AS WELL AS THE PETITION FOR INTERVENTION AND SUBSTITUTION AND THE MEDINA DECISION.

VI.

WITH ALL DUE RESPECT, THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT RESPONDENT NATIONAL TREASURER IS NOT LIABLE TO PETITIONER EAGLE REALTY UNDER THE ASSURANCE FUND.[22]

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

We deny the petition.

Initially, petitioner undertakes to have the case dismissed on the ground of lack of jurisdiction by the RTC over the complaint. It insists that the complaint is an action for annulment of judgment which, under Rule 47 of the Rules of Court is cognizable by the CA.[23]

We do not agree. The body of the pleading or complaint determines the nature of an action, not its title or heading.[24] This is because the complaint must contain a concise statement of the ultimate facts constituting the plaintiff's cause of action and specify the relief sought.[25] Although denominated as an "Action for Annulment of Judgment and Cancellation of Decree and Titles," the complaint is not an action for annulment of judgment under Rule 47, but a case for cancellation of void titles.

Annulment of judgment is a remedy against a final and executory judgment. Therefore, a necessary allegation in the complaint would be that there was in fact a judgment that has been issued by the trial court, which judgment has become final. Here, the Complaint does not contain any averment to such effect. On the contrary, the Complaint consistently mentions that the Medina Decision, upon which OCT No. 129 was issued, is a fake document. The pertinent portions of the Complaint state:

8. Subsequently thereafter, without the knowledge of the Land Registration Commission as to the contents and true import of the Decision mentioned in paragraph 6 hereof and before the said Decision, together with the case record, could be processed and examined, there were surreptitiously inserted and substituted in its place, in the records of the Land Registration Commission, copies of another Decision also dated December 11, 1979 and an Order for the Issuance of Decree dated February 14, 1980, both **purportedly rendered** in the same land registration case and record, the dispositive portion of said **falsified decision** quoted hereunder:

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[23] *Id*. at 1294.

[24] *Heirs of Sanjorjo v. Heirs of Manuel Quijano*, G.R. No. 140457, January 19, 2005, 449 SCRA 15, 27.

[25] *Heirs of Tuazon v. Court of Appeals*, 465 Phil. 114, 120 (2004).

x x x x x x x x x

13. In July 1984, upon representations of the Applicants-Heirs of Casiano B. de Leon and Maria L. de Leon, thru Counsel Atty. Conrado M. Vasquez, Jr., and after a thorough investigation, the Land Registration Commission found and confirmed the **falsity of the decision dated December 11, 1979 adjudicating the lots in favor of defendant** Martina Medina and the order of decree dated February 14, 1980 for several reasons x x x.[26]

From the allegations in the Complaint, it is evident that the action is mainly for the declaration of nullity of the certificates of title issued as a result of the fake court decision. This is an action incapable of pecuniary estimation; hence, the RTC properly assumed jurisdiction.

Secondly, petitioner attacks the personality of the Republic of the Philippines, represented by the Commissioner of Land Registration, to file the Complaint. It contends that the CA's reliance on Section 100 of P.D. 1529 to justify the plaintiff's personality to file the complaint for cancellation of erroneously or unlawfully issued titles is misplaced as this provision only gives the Register of Deeds the authority to file such action. It is Section 32 of the same law that should apply and this provision clearly requires that the plaintiff must have a dominical right over the property. Petitioner argues that since the subject parcel of land is private property over which the government has no interest, the Republic of the Philippines has no right to file the suit for cancellation of titles.

Indisputably, the government is charged with the duty to preserve the integrity of the Torrens System and protect the Assurance Fund. The plaintiff instituted the complaint precisely to perform this duty. The Complaint seeks the cancellation of erroneously issued titles to protect the Assurance Fund from being made liable by the private respondents for damages in case they fail to recover the property. The public officer specifically tasked to perform this duty is the Register of Deeds who, under Section 100 of P.D. No. 1529, is authorized to file an action to annul a certificate of title erroneously or unlawfully issued, thus:

[26] *Rollo,* pp. 135-137.

SEC. 100. Register of Deeds as party in interest. — When it appears that the Assurance Fund may be liable for damages that may be incurred due to the unlawful or erroneous issuance of a certificate of title, the **Register of Deeds concerned shall be deemed a proper party in interest who shall, upon the authority of the Commissioner of Land Registration,** file the necessary action in court to annul or amend the title.

The court may order the Register of Deeds to amend or cancel a certificate of title or to do any other acts as may be just and equitable. (Emphasis supplied.)

Under Section 6, P.D. 1529, the Commissioner of Land Registration shall exercise supervision and control over all Registers of Deeds. It is well understood that "supervision and control" includes the authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate.[27] As the public officer having supervision and control over Registers of Deeds, the Commissioner of Land Registration therefore also has the authority to file the action himself.

The LRC is a mere agency of the government, unincorporated, and with no separate juridical personality from that of the Republic of the Philippines. Naming the Republic of the Philippines as plaintiff and merely acting as its representative was not even necessary since the Commissioner of Land Registration himself, as the superior of and exercising control over the Register of Deeds, had the authority to file the complaint on his own. Under Section 1, Rule 3, an entity specifically authorized by law to file the action may be a party in a civil action.

Likewise, it is not essential that the Republic of the Philippines has proprietary rights over the property covered by the subject titles as it does not lay any claim over this property. As previously stated, the complaint merely seeks the cancellation of erroneously issued titles in order to protect the Assurance Fund from liability for damages that may be filed by the rightful owners under Section 95 of P.D. No. 1529.

Moreover, it should be noted that the private respondents also filed a Complaint-in-Intervention which was granted by

[27] ADMINISTRATIVE CODE (1987), Book IV, Chapter 7, Sec. 38(1).

the RTC. The complaint in intervention reiterated the material allegations in the complaint and prayed for the same reliefs, plus damages. Hence, even if the main action is dismissed on the ground that the plaintiff had no personality to file the action, the complaint in intervention will remain. Dismissal of the plaintiff's action would not necessarily result in the dismissal of the intervenor's complaint in intervention. An intervenor has the right to claim the benefit of the original suit and to prosecute it to judgment.[28] Having been permitted to become a party in order to better protect his interest, an intervenor is entitled to have the issues raised between him and the original parties tried and determined.[29]

Petitioner likewise makes an issue out of the inclusion of the Register of Deeds as a party-defendant. It contends that it would cause an absurd situation because the plaintiff and defendant would be represented by the same counsel. Such contention is not worthy of consideration because the Register of Deeds was only impleaded as a nominal party for purposes of enforcement, since he is the public officer charged with the duty of registering land documents and certificates of title.[30]

Still on its bid to have the case dismissed, petitioner submits that the action to cancel OCT No. 129, and its derivative titles, has already prescribed because under Sec. 32 of P.D. No. 1529, upon the expiration of one year from the entry of the decree of registration, the certificate of title shall become incontrovertible. In this case, more than one year has already lapsed since the entry of the decree of registration on May 30, 1983. Petitioner further contends that the indefeasibility of a Torrens title binds even the government.

The principle of indefeasibility of a Torrens title does not apply where fraud attended the issuance of the title. The Torrens

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[28] *Metropolitan Bank and Trust Co. v. Presiding Judge, RTC Manila, Br. 39,* G.R. No. 89909, September 21, 1990, 189 SCRA 820, 826.

[29] *Id.* at 825.

[30] Dissenting Opinion of Justice Flerida Ruth P. Romero, *Civil Service Commission v. Dacoycoy*, 366 Phil. 86, 131 (1999).

title does not furnish a shield for fraud. As such, a title issued based on void documents may be annulled.[31] Moreover, elementary is the rule that prescription does not run against the State and its subdivisions.[32]

As a rule, the Court cannot review the factual findings of the trial court and the CA in a petition for review on *certiorari* under Rule 45 of the Rules of Court. When supported by substantial evidence, findings of fact of the trial court, as affirmed by the CA, are conclusive and binding on the parties. As found by both the trial court and the appellate court, Medina never intervened in the land registration case and the Medina Decision and the Order of Registration were forged documents. These findings are firmly grounded on the evidence on record which leaves no room for a review by this Court.

Petitioner is left with no other recourse but to pursue its claim that it is an innocent purchaser for value, entitled to be protected by law. Petitioner asserts that a person dealing with registered land may safely rely on the correctness of the certificate of title and need not go beyond the said title to determine the condition of the property. It argues that it had no actual knowledge of any fact that would engender suspicion that the seller's title is defective. It could hardly have discovered any defect in OCT No. 129 and TCT No. 72416 considering that these titles were actually issued by the Register of Deeds.

Case law has it that he who alleges that he is a purchaser in good faith and for value of registered land bears the onus of proving such statement. This burden is not discharged by involving the ordinary presumption of good faith.[33]

Petitioner failed to discharge this burden. In its Answer, petitioner merely alleged that it is an innocent purchaser for value since it acquired the land from Pilarita Reyes for

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[31] *Feliciano v. Zaldivar,* G.R. No. 162593, September 26, 2006, 503 SCRA 182, 193.

[32] *Republic of the Philippines v. Heirs of Angeles,* 439 Phil. 349, 357 (2002).

[33] *Salonga v. Concepcion,* G.R. No. 151333, September 20, 2005, 470 SCRA 291, 315.

₱1,200,000.00, without notice of any defect in her title and after verifying the genuineness of the title in the Register of Deeds of Pasay City and the LRC. However, petitioner did not present any proof that would substantiate this allegation nor did it present any evidence to show that it took other steps to verify the authenticity of its predecessor's title.

Indeed, the general rule is that a purchaser may rely on what appears on the face of a certificate of title. He may be considered a purchaser in good faith even if he simply examines the latest certificate of title. An exception to this rule is when there exist important facts that would create suspicion in an otherwise reasonable man (and spur him) to go beyond the present title and to investigate those that preceded it.[34] The presence of anything which excites or arouses suspicion should then prompt the vendee to look beyond the certificate and investigate the title of the vendor as appearing on the face of said certificate. One who falls within the exception can neither be denominated an innocent purchaser for value nor a purchaser in good faith, hence, does not merit the protection of the law.[35]

As correctly observed by the public respondent, the property covered by the void titles was transferred from Medina to petitioner with unusual haste. Only 8 months lapsed since OCT No. 129 was issued on July 7, 1983 until it was transferred to petitioner on February 22, 1984. The property was transferred to petitioner from Reyes only more than five months after she herself acquired the property. These circumstances, plus the fact that the subject property is a vast tract of land in a prime location, should have, at the very least, triggered petitioner's curiosity.

Moreover, petitioner is a corporation engaged in the real estate business. A corporation engaged in the buying and selling of real estate is expected to exercise a higher standard of care and diligence in ascertaining the status and condition of the property subject of its business transaction. Similar to investment and

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[34] *Sarmiento v. Court of Appeals*, G.R. No. 152627, September 16, 2005, 470 SCRA 99, 122-123.

[35] *Sandoval v. Court of Appeals,* 329 Phil. 48, 60-61 (1996).

financing corporations, it cannot simply rely on an examination of a Torrens certificate to determine what the subject property, looks like as its condition is not apparent in the document.[36]

Petitioner's claim against the Assurance Fund must necessarily fail. Its situation does not come within the ambit of the cases protected by the Assurance Fund. It was not deprived of land in consequence of bringing it under the operation of the Torrens system through fraud or in consequence of any error, omission, mistake or misdescription in the certificate of title[37] It was simply a victim of unscrupulous individuals. More importantly, it is a condition *sine qua non* that the person who brings the action for damages against the Assurance Fund be the registered owner and, as the holders of transfer certificates of title, that they be innocent purchasers in good faith and for value.[38] And we have already established that petitioner does not qualify as such.

WHEREFORE, premises considered, the petition is *DENIED*. The Court of Appeals' Decision dated January 22, 2001, and Resolution dated January 8, 2002, are *AFFIRMED*.

SO ORDERED.

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

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[36] *Sunshine Finance and Investment Corporation v. Intermediate Appellate Court,* G.R. Nos. 74070-71, October 28, 1991, 203 SCRA 210, 216.

[37] P.D. No. 1529, Sec. 95.

[38] *Treasurer of the Philippines v. Court of Appeals,* No. L-42805, August 31, 1987, 153 SCRA 359, 366.

THIRD DIVISION

[G.R. No. 152445. July 4, 2008]

CAMBRIDGE REALTY AND RESOURCES CORP., *petitioner, vs.* **ERIDANUS DEVELOPMENT, INC. and CHITON REALTY CORP.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS ARE ORDINARILY NOT SUBJECT TO REVIEW BY THE SUPREME COURT; EXCEPTION.— The findings of fact of the Court of Appeals are ordinarily not subject to review by this Court as they are deemed conclusive; but not when the findings of fact of the trial and appellate courts are conflicting.

2. ID.; ID.; ID.; IN CASES OF OVERLAPPING OF TITLES, THE TRIAL COURT MAY RELY ON THE FINDINGS AND CONCLUSIONS OF EXPERTS IN THE FIELD OF GEODETIC ENGINEERING.— The case of overlapping of titles necessitates the assistance of experts in the field of geodetic engineering. The very reason why commissioners were appointed by the trial court, upon agreement of the parties, was precisely to make an evaluation and analysis of the titles in conflict with each other. Given their background, expertise and experience, these commissioners are in a better position to determine which of the titles is valid. Thus, the trial court may rely on their findings and conclusions.

3. ID.; ACTIONS; LAND BOUNDARY DISPUTES, HOW RESOLVED; CASE AT BAR.— Courts exist to dispense justice through the determination of the truth to conflicting claims. A party comes to court equipped with the tools that will convince the court that his position is more viable than the other's. He may not hesitate to employ any method, means or artifice of persuasion that will sway the sympathies of the court in his favor. As we have said before, indeed, *each claim may appear to be as good and self-serving as the other*. In the quest for truth, a court often encounters concerns that

necessitate not only the application of the various principles of law, but likewise precepts of the exact sciences, various disciplines of study or fields of human endeavour about which the judge may not be knowledgeable or skilled, and which concerns he is not prepared to resolve, unless with the aid and intervention of or through the medium of learned and experienced disinterested experts. An example lies precisely in the area of land boundary disputes. The first step in the resolution of such cases is for the court to direct the proper government agency concerned (the Land Registration Authority, or LRA, or the Department of Environment and Natural Resources, or DENR) to conduct a verification or relocation survey and submit a report to the court, or constitute a panel of commissioners for the purpose. In every land dispute, the aim of the courts is to protect the integrity of and maintain inviolate the Torrens system of land registration, as well as to uphold the law; a resolution of the parties' dispute is merely a necessary consequence. Taking this to mind, we cannot grant the respondents' prayer without violating the very principles of the Torrens system. They have failed to lay the proper foundation for their claim of overlap. This is precisely the reason why the trial court should have officially appointed a commissioner or panel of commissioners and not leave the initiative to secure one to the parties: so that a *thorough* investigation, study and analysis of the parties' titles could be made in order to provide, in a comprehensive report, the necessary information that will guide it in resolving the case completely, and not merely leave the determination of the case to a consideration of the parties' more often than not self-serving evidence.

APPEARANCES OF COUNSEL

Fondevilla Jasarino Young Rondario & Librojo Law Offices for petitioner.

Roxas De Los Reyes Laurel & Rosario for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This Petition for Review on *Certiorari*[1] assails the October 17, 2001 Decision[2] of the Court of Appeals in CA-G.R. CV No. 51967 reversing and setting aside the October 10, 1995 Decision[3] of the Regional Trial Court of Quezon City, Branch 96 in Civil Case Nos. Q-89-2636 and Q-89-2750, which dismissed the complaints filed by respondents Eridanus Development Inc. (**ERIDANUS**) and Chiton Realty Corporation (**CHITON**) against petitioner Cambridge Realty and Resources Corporation (**CAMBRIDGE**). Also assailed is the March 1, 2002 Resolution[4] denying the Motion for Reconsideration.[5]

The antecedent facts are as follows:

Petitioner **CAMBRIDGE** is the registered owner of a 9,992-square meter lot, covered by **Transfer Certificate of Title No. (TCT) 367213 (the CAMBRIDGE title/property)**,[6] in the Registry of Deeds of Quezon City.

Respondent **ERIDANUS** is the registered owner of a 2,794 square meter parcel of land covered by **Transfer Certificate of Title No. (TCT) RT-38481 (the ERIDANUS title/property)**,[7] in the Registry of Deeds of Quezon City. A portion of the covering title thereof partially reads, as follows:

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[1] *Rollo*, pp. 11-58.

[2] *Id*. at 63-74; penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Perlita J. Tria Tirona and Amelita G. Tolentino.

[3] *Id*. at 75-93; penned by Judge (now Associate Justice of the Court of Appeals) Lucas P. Bersamin.

[4] *Id*. at 61.

[5] *Id*. at 94-117.

[6] Exhibit "L", respondents' Folder of Exhibits, p. 35.

[7] Exhibit "A", *id*. at 20.

IT IS FURTHER CERTIFIED that said land was originally registered on the ___23rd__ *day of* _____, *in the year nineteen hundred and* ____Veinte____ *in the Registration Book of the Office of the Register of Deeds of* ___Rizal___, *Volume* ___T-27___, *page* ___, *as Original Certificate of Title No.* _____, *pursuant to Decree No.* __Case no. 917__, *issued in L.R.C.* _____ *Record No.* _____, *in the name of* _____.

This certificate is a transfer from __Trans.__ *Certificate of Title No.* __346380/T-1736__ *which is cancelled by virtue hereof in so far as the above-described land is concerned.*

On the other hand, respondent **CHITON** is the registered owner of a 2,563 square meter lot, covered by **Transfer Certificate of Title No. (TCT) 12667 (the CHITON title/ property)**,[8] in the Registry of Deeds of Quezon City. A portion of the covering title thereof reads in part, as follows:

IT IS FURTHER CERTIFIED that said land was originally registered on the ___23rd__ *day of* _____Sept._____, *in the year nineteen hundred and* ____veinte____ *in the Registration Book of the Office of the Register of Deeds of* ___Rizal___, *Volume* ___T-27___, *page* _6__, *as Original Certificate of Title No.* _____, *pursuant to Decree No.* __Case no. 917__, *issued in L.R.C.* _____ *Record No.* _____, *in the name of* _____.

This certificate is a transfer from __Trans.__ *Certificate of Title No.* __346381/T-1736__ *which is cancelled by virtue hereof in so far as the above-described land is concerned.*

The CAMBRIDGE title has a covering title that reads in part, thus –

IT IS FURTHER CERTIFIED that said land was originally registered on the ___21st__ day of ___August___, in the year nineteen hundred and ____seven____ in the Registration Book of the Office of the Register of Deeds of ___RIZAL___, Volume ___A-4___, page __56_, as Original (sic) of Title No. _____355____, pursuant to Decree No. __1425__, issued in L.R.C. Rec. No. ____917___.

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[8] Exhibit "G", *id*. at 26.

This certificate is a transfer from __Trans.__ Certificate of Title No. __363717/T-1823__ which is cancelled by virtue hereof in so far as the above-described land is concerned.[9]

The foregoing properties are adjoining lots located in Barangay Valencia, Quezon City, and constitute the subject matter of the present controversy.

Original Certificate of Title No. (OCT) 362[10] was issued under Act 496 (The Land Registration Act) by virtue of Decree of Registration 1425, GLRO No. 917, based on the original survey conducted on November 17, 1906. It was subdivided into three portions: Lots 27-A, 27-B and 27-C. **Lot 27-C** was titled in the name of Rafael Reyes, under **Transfer Certificate of Title No. (TCT) 5506**[11] issued on September 23, 1920. TCT 5506, in turn, *appears* to have been transferred in the name of Susana Realty, Inc. (SUSANA) under **Transfer Certificate of Title No. (TCT) 18250**.[12] TCT 18250 was then subdivided into eight (8) lots, of which the ERIDANUS lot is *claimed* to be Lot 3 thereof and CHITON's is Lot 4.

The subdivision of TCT 18250 (or Lot 27-C) was claimed to have been made by geodetic surveyor Jaime V. Nerit (Nerit). Nerit said he began computing the boundaries based on the SUSANA title. He noticed that the **tie point**[13] of the property was not fixed

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[9] Exhibit "L", *id*. at 35.

[10] Exhibit "W", *id*. at 106.

[11] Exhibit "I", *id*. at 33-A.

[12] Exhibit "O", *id*. at 39.

[13] The **Manual for Land Surveys in the Philippines**, issued under Lands Administrative Order No. 4 (July 3, 1980) of the Ministry of Environment and Natural Resources, took effect on September 2, 1980. Section 36 thereof provides:

Land surveys shall be definitely **fixed** in position on the surface of the earth by monuments of **permanent** nature marking selected points of said surveys and by azimuths and distances to "points of reference" of known geographic positions or Philippine Plane Coordinates. These points of reference shall be as follows:

1. Bureau of Lands Location Monuments (BLLM);
2. Political Boundary Monuments:

and there were no fixed or permanent markers, so he conducted research and obtained from the Bureau of Lands the approved consolidated subdivision plan of an adjoining property, Gilmore Townhouses[14] – located on the western side and owned by Ayala Investments and Development Corporation (the AYALA property) – which had fixed monuments to which Nerit could establish and connect with those of TCT 18250. He found a fixed tie point therein, BLLM 1, Marikina[15] ("S. 68'19 W. Pt. 6785 from BLLM Marikina I, Marikina, Rizal"), and from there he next computed the relation between corner 1 as described in the technical description of TCT 18250, and corner 1 as described in that of the Ayala property. In this manner, Nerit said he was able to establish the position of respondents' property and prepare the subdivision plan of TCT 18250, which was subsequently approved by the Land Registration Commission.[16]

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a. Provincial and city boundary monuments,

b. Municipal boundary monuments,

c. *Barangay* boundary monuments;

3. Triangulation stations of:

a. The Bureau of Lands,

b. The Bureau of Coast and Geodetic Survey,

c. The United States Army Corp of Engineers,

d. Other organizations, the work of which is of acknowledged standard;

4. Primary stations of cadastral surveys;

5. Church towers, historical monuments and other prominent permanent structures of known geographic or Philippine plane coordinates;

6. Doppler, Hiran, Loran and other similar stations of at least third order accuracy. (Emphasis supplied)

[14] Exhibit "M", Folder of Exhibits, p. 37.

[15] Exhibit "L", *id*. at 35. The Manual for Land Surveys in the Philippines. Section 760 thereof states:

The Bureau of Lands Location Monument No. 1 (BLLM No. 1) of the cadastral survey shall **always** be used as the tie point of all cadastral lots in the project. The grid coordinates of this tie point shall be placed in the proper column of the lot data computation sheet. (Emphasis supplied)

[16] TSN, Nerit, August 2, 1991, pp. 8-18.

Original Certificate of Title No. (OCT) 355[17] was registered under Act 496 on August 21, 1907, based on the original survey conducted on June 16 to August 16, 1907. It was registered in the name of La Compania Agricola de Ultramar (AGRICOLA). Lot 21 thereof was subdivided and a portion thereof – Lot 21-A – was covered by **Transfer Certificate of Title No. (TCT) 578**,[18] from which TCT 367213, the CAMBRIDGE title, was *allegedly* derived.

On May 30, 1989, ERIDANUS filed Civil Case No. Q-89-2636 to enjoin CAMBRIDGE from pursuing the planned subdivision and development of its property, which ERIDANUS claims encroached upon its own. The Complaint prays for a writ of injunction; the removal of an alleged encroaching wall CAMBRIDGE constructed; that the encroached portion be vacated and surrendered to it; that it be paid ₱3,500.00 per month, from the time of filing of the complaint to surrender of possession, as reasonable value for the use and occupation by CAMBRIDGE of the encroached portion; and litigation expenses, attorney's fees and costs of suit.

On June 15, 1989, CHITON instituted Civil Case No. Q-89-2750, with a similar prayer for relief as in Civil Case No. Q-89-2636, except that CHITON seeks a lower monthly charge of ₱1,700.00 for the use and occupation of the alleged encroached portion, and a lesser amount for attorney's fees.

Both complaints were subsequently consolidated in Civil Case No. Q-89-2636 upon motion of CHITON.

The civil complaints were triggered by a previous verification survey conducted on respondents' respective properties, where the results allegedly showed that the CAMBRIDGE property encroached or overlapped upon respondents' lots, to the extent of **357 square meters** for ERIDANUS and **177 square meters** for CHITON.

Upon motion of the respondents, surveyors from the Survey Division of the Department of Environment and Natural Resources

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[17] Exhibit "X", respondents' Folder of Exhibits, p. 107.

[18] Exhibit "J", *id*. at 33-C.

(DENR) Lands Management Services conducted a relocation survey of the subject properties, pursuant to an Order of the trial court dated May 8, 1992. On February 10, 1993, they prepared a two-page Report,[19] finding in part thus -

1. That the Verification/Relocation Survey has been conducted on October 1, 2 and November 5, 1992.

2. At the outset, corresponding Technical Descriptions along the two (2) properties TCT 18250 and TCT 367213, supposedly common to both has already a difference of 3 degrees 10 minutes (3-0-00) as described on their respective titles inspite of the deficiency of TCT No. 18250 (Susana Realty Inc.) for not having any tie line.

3. That a subdivision of the lot covered by TCT No. 18250 under (LRC) Psd-335633 had been approved, June 19, 1986 referring to Lot 27-C, Psd -13458 as the source which records when researched could not be made available at hand, has established its tie line.

4. That the lot covered by TCT No. 367213 (Cambridge Realty and Resource Corporation) has also been subdivided under Psd-13-005784 approved by the Lands Management Services of this Region last May 3, 1988.

5. That the Technical Descriptions of TCT No. 367213 under Psd-13-005784 boundary referred from Lot 1, Sub-Block 1-A, Psd-225 was also researched and could not be made available at hand.

x x x x x x x x x

8. Party litigants has not paid corresponding survey deposit in the amount of ONE THOUSAND SIX HUNDRED PESOS (₱1,600.00).

x x x x x x x x x

(signed)
ELPIDIO T. DE LARA
Chief, Technical Services Section

The trial court received the evidence of both parties, which in the main consisted of the expert testimonies of practicing

[19] Exhibit "Z", *id*. at 111-112.

private geodetic surveyors. Thus, respondents, as plaintiffs *a quo*, presented Nerit, who claimed to have conducted a survey of the respondents' properties, as well as a study of the CAMBRIDGE property and its alleged predecessor title (TCT 578). He testified that in the course of his work, he found out that the CAMBRIDGE property overlapped that of ERIDANUS at the north with a distance of eight (8) linear meters;[20] that although the CAMBRIDGE property was formerly a portion of TCT 578, the former does not conform to the latter;[21] that when it was segregated from TCT 578, the bearings on the side abutting the respondents' property were altered;[22] that TCT 578 was issued in 1907, yet the original survey of the property covered by the CAMBRIDGE title was made in 1920;[23] that there is no record of the subdivision plan of the CAMBRIDGE lot;[24] and that it does not appear that the CAMBRIDGE lot came from TCT 578 (despite stating previously that the former used to be a portion of the latter).[25]

On cross-examination, Nerit stated that there is no basis for him to say that the CAMBRIDGE lot came from TCT 578,[26] because there is nothing in the title thereof that indicates that it was derived from the latter;[27] that when he first surveyed the SUSANA property (TCT 18250) in 1960, he did not discover any overlapping, and he did so only in 1990;[28] that he found out that there was a discrepancy between the tie point in the respondents' titles and their predecessor's, the SUSANA title;[29]

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[20] TSN, Nerit, September 13, 1991, p. 6.

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

[22] *Id*. at 10.

[23] *Id*. at 11.

[24] *Id*. at 11.

[25] *Id*. at 14.

[26] TSN, Nerit, March 5, 1992, page 5.

[27] *Id*. at 7.

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

[29] *Id*. at 10.

that the tie point of the SUSANA property was just a PLS monument (*i.e.*, technically, there is no tie point – meaning that the property's geographical position could not be found, such that there could be no starting point for the conduct of a survey), which he could not rely on for the survey;[30] so, he had to find a solution by creating a new one, BLLM 1 Marikina.[31]

Likewise, Nerit testified on cross-examination that there is no evidence to show that the CAMBRIDGE property was derived from OCT 355 (the AGRICOLA property, or the mother title);[32] that the CAMBRIDGE property came from TCT 578 but the common azimuth of the two titles do not conform to each other;[33] that the overlapping of titles could have occurred during the original survey of the CAMBRIDGE property on November 10, 1920;[34] that when he conducted the subdivision survey of the SUSANA property (TCT 18250), he certified that he did not find any overlapping;[35] that the blank spaces in the SUSANA title[36] were mere typographical errors or inadvertent mistakes;[37] that, knowing that these blank spaces existed, he did not endeavor to determine the reasons or causes thereof.[38]

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[30] *Id*.

[31] *Id*. at 12, 22; TSN, Nerit, April 30, 1992, pp. 23-24.

[32] TSN, Nerit, April 30, 1992, p. 3.

[33] *Id*. at 6.

[34] *Id*. at 7.

[35] *Id*. at 8, 17-18, 22.

[36] The covering title of TCT 18250 reads in part, as follows:

> It is further certified that said land was originally registered in the _23rd_ day of ___Sept.___, in the year nineteen hundred and __viente__, in the Registration Book of the Office of the Register of Deeds of RIZAL, Volume __I-27__ Page __6__, as Original Certificate of Title No. _____ pursuant to Decree No. __Case No. 917__, issued in L.R.C. Record No. _____.
>
> This certificate is a transfer from __Trans.__ Certificate of Title No. __6326/T-35__ which is cancelled by virtue in so far as the above described land is concerned.

[37] TSN, Nerit, April 30, 1992, pp. 9-11.

[38] *Id*. at 11.

On re-direct examination, Nerit testified that as to the respondents' properties, notwithstanding that they have no tie points, the boundaries thereof may still be determined and identified.[39] Nerit made a sketch of how he went about changing the floating (or "not fixed") tie point to a fixed one.[40]

Respondents next presented Engineer Oliver A. Morales, a licensed appraiser of real estate properties, for the purpose of establishing the fair market value of the ERIDANUS and CHITON properties in connection with the prayer for indemnification of fair rental value for the use of the alleged encroached property.

Respondents thereafter presented Ernesto Vidal, Clerk III of the Registry of Deeds of Rizal, who testified that he was specifically sent to testify in court by the Register of Deeds of Rizal, and he brought with him the original copies of OCTs 362 and 355 on file with the Registry. Said titles, however, have been rendered, by the passage of time, incapable of being read and deciphered for the most part.

Another witness, Elpidio T. De Lara, geodetic engineer and Chief (Engineer IV) of the Technical Services Sector of the Land Management Services, DENR, has been with the office since 1960 and had served as chief of the Technical Services Sector for five (5) years at the time of the taking of his testimony. He testified that he conducted an actual verification survey of the CAMBRIDGE, ERIDANUS and CHITON properties on October 1, 2, and November 5, 1992;[41] in connection therewith, he prepared a relocation/verification plan[42] which was duly approved by his superiors; he found out that there is an overlapping of the boundaries of the petitioner and respondents' properties.[43]

De Lara likewise testified that in the preparation of the relocation plan, he used as basis the SUSANA title for the

[39] TSN, Nerit, May 22, 1992, p. 9.

[40] *Id*. at 5-9; Exhibit "U", respondents' Folder of Exhibits, p. 81.

[41] TSN, De Lara, June 11, 1993, p. 6; Exhibit "Z", respondents' Folder of Exhibits, pp. 111-112.

[42] Exhibit "Y", respondents' Folder of Exhibits, p. 110.

[43] TSN, De Lara, June 11, 1993, pp. 10, 12.

respondents' properties, and for the petitioner, the CAMBRIDGE title;[44] but that with regard to the SUSANA title, there is no tie point;[45] there being no tie point, it would be difficult and impossible to make a relocation plan;[46] being so, respondents' properties were plotted on the basis of the technical descriptions in the title of an adjoining property, the AYALA property;[47] that if he plotted the respondents' properties on the basis of the common boundary (lines 1 to 2) between the adjacent AYALA and SUSANA properties as stated in the technical description of the SUSANA title, there would be no overlapping of boundaries between petitioner and respondents' titles;[48] on the other hand, if the survey were conducted based on the respondents' respective titles which do not have a tie line or tie point, there would be an overlap;[49] interestingly, he claims that he discovered an overlapping but that it is a "technical overlapping." Thus:

Atty. Bilog:

Did you research on the title of the plaintiffs and defendant, have you examined this title TCT No. 18250?

A Yes, your honor.

x x x x x x x x x

Q This TCT No. 18250, showing to you this copy of TCT No. 18250 which has been previously marked as Exhibit "O" for the plaintiffs and as Exhibit "1" for the defendant, will you look at this title and point to us, what is the reference point of the property described on this title?

x x x x x x x x x

Q Is there a reference point or tie point?

A Well, actually, there is no reference point…

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[44] TSN, De Lara, September 24, 1993, p. 7.

[45] *Id*. at 14.

[46] *Id*. at 15.

[47] *Id*. at 14-16, 26.

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

[49] *Id*. at 19.

Q So, if you had used this title, Exhibit "O", for the plaintiff in the plotting of this relocation plan, marked as Exhibit "11" for the defendant, you would not be able to plot on this Exhibit "11", the property of the plaintiff because the title of the plaintiff has no reference point or tie point?

Witness:

A But you can do this through its adjoining properties, on the basis of this title.

Q Witness did not answer my question, your honor…

Court What is the purpose of having reference or tie point?...Is it essential?

Atty. Bilog:

Very essential, your honor.

Court (to the witness)

Q Without it, as the Court gathers from your answer, it would be difficult and impossible for you to make the relocation plan?

A Yes, sir.

Q When you make a relocation plan, as you did in this Exhibit "11", you used the technical description of other properties?

A Yes, your honor.

Q Is that an accepted alternative?

A Yes, your honor, this determine the corresponding relations…

Atty. Bilog

Q Without thinking of the question of overlapping, when you are supposed to plot in the relocation plan the property of the plaintiff, the plaintiff's property is not connected to any tie line or tie point in the description of the title?

A I cannot use the common point, this is connected with the corresponding tie line, sir.

Q The technical descriptions which you narrated belong to other surveys?

A Yes, sir.

Q And that survey which is now in your possession, the plaintiff's property is adjacent to other property?

A It is not actually adjacent to this property except this portion, sir.

Court:

Witness pointing to lines between 1 and 2 on Exhibit "Y" and "11" within the plan of plaintiff's property.

Q Now, these lines between 1 and 2, representing perimeter or boundary, that is adjacent to the boundary of an adjoining property and this survey was used for plotting this relocation plan?

A Yes, sir.

Q Now, is this line between 1 and 2 of plaintiff's property, in any way described in the technical description of the property, this survey is also used in this relocation plan?

A It is prescribed, sir.

Q Now, you are talking about common boundary line, what do you mean by common boundary line, will you point in this plan, what is this common boundary line?

A The two surveys coincide with each other or tangent with each other, sir.

Q Can you point out to this plan, what is the common boundary?

A 1 and 2 of the plaintiff's technical description and 16 and 15, sir.

(Witness pointing to the figure on the plan…)

Q Why do you say it is a common boundary?

A Well, the technical description of the plaintiff's title and the adjacent property which is the Ayala property are the same…

Q You are saying that they are common?

A Yes, common sir.

x x x x x x x x x

A It is a common boundary as the survey stated, sir.

x x x x x x x x x

Q Can you say, in a reasonable certainty that the boundaries, which you are referring to point 1 and 2 of plaintiff's TCT No. 18250 is a common boundary with that of Ayala property that you are stating?

A It is a common boundary otherwise, you will not…

Q Now, Mr. Witness, if you will only plotted (sic) the plaintiff's property on the basis of the technical description of TCT 18250, in this relocation plan, there would be no overlapping of boundaries between plaintiff's and defendant's properties?

Atty. Barcelona

Objection, your honor.

Atty. Bilog

Assuming, your honor, he is an expert…

Court

Yes, he is an expert, he knows that…

Atty. Bilog

There would be no overlapping, is it not?

A As stated in the survey, the overlapping of the property has already been discovered but it is a technical overlapping, sir.

Atty. Bilog

I move that the testimony be strickened off the record, your honor, it is not responsive…

Court

Just answer yes or no?

A Yes, sir.

Q When the intention is to determine the degrees of overlapping of the two adjoining properties, can you not use the technical

descriptions contained in their respective TCT's for that purpose?

A If we use it…

Court

They will overlap, is that what you want to say?

A They will overlap, your honor because the plaintiff's property does not carry the tie line or tie point, your honor.[50]

Another geodetic engineer, William G. Lim, was presented by the respondents. He stated that he performed a verification survey of the respondents' properties, using as basis the SUSANA title, TCT 578, and the technical description of the CAMBRIDGE property.[51] He likewise testified that, for the survey of respondents' properties, he used as tie point "1 Marikina Rizal."[52] He prepared a verification survey plan (Exh. "BB") duly approved by the proper government authority.[53]

On cross-examination, Lim testified that the reference point for the respondents' properties for purposes of survey was "N. 60 gds. 23'30'E., 23.69 m.s. *de un mojon de concreto marcado PLS yes mismo punto 86 de la parcela* No. 21";[54] that said reference point was located "in the intersection of the road" and could no longer be located, or it could have been lost or destroyed, and because the BLLM reference point already exists;[55] that in surveying the respondents' properties, he used instead as reference point BLLM 1, not the PLS monument, because the government has been requiring that all subdivisions or surveys now should be tied with approved tie lines of the BLLM;[56] that if the property has no tie point or reference point, the surveyor

[50] *Id*. at 13-19.

[51] TSN, Lim, November 4, 1993, pp. 13-14, 21.

[52] *Id*. at 26.

[53] *Id*. at 11.

[54] TSN, Lim, December 3, 1993, p. 7.

[55] *Id*. at 7-8, 11.

[56] *Id*. at 15, 17.

may tie the same to the nearest reference point of other adjoining lots that have a tie point;[57] that even if the property has no reference point, its exact location could be determined in a survey;[58] that even if there is no reference point or BLLM monument, an overlapping of properties could still be detected on the basis of the title alone.[59]

On re-direct examination, Lim testified that he conducted at least two surveys on the ERIDANUS and CHITON properties, and for the first survey he found a difference in the overlap by the CAMBRIDGE lot of about 21 or 22 square meters compared to the 552 square meter overlap found by De Lara;[60] that with regard to the tie line, a change thereof does not affect the location of the surveyed property;[61] that when the reference point or tie point is changed, the azimuth lines and azimuth tie lines of the property are likewise changed, but not the location thereof.[62] In his written report, however, Lim computes the CAMBRIDGE overlap at 541 sq. m.[63]

The petitioner, as defendant *a quo*, presented geodetic engineer Emilia Rivera Sison, who testified that the ERIDANUS and CHITON titles lack material data in their covering titles, such that it appears that they did not undergo proper registration proceedings and that they do not have a mother title;[64] the CAMBRIDGE title, on the other hand, has a complete covering title, showing that it has a mother title (OCT 355) and that it underwent registration proceedings;[65] that it is impossible to plot the relative position of the ERIDANUS and CHITON

[57] *Id*. at 17.

[58] *Id*. at 26.

[59] *Id*. at 27.

[60] *Id*. at 35.

[61] *Id*. at 36.

[62] *Id*. at 40.

[63] Exhibit "CC", Folder of Exhibits, pp. 115-116.

[64] TSN, Sison, April 11, 1994, pp. 9-14. See covering titles of the ERIDANUS and CHITON properties.

[65] *Id*. at 14-16.

properties using the SUSANA title because the tie point appearing in the latter title is a PLS which has no known geographic position, or is "floating", which means that the property could not be located in a fixed place;[66] that Engr. Lim's verification survey plan (Exh. "BB") did not use tie points, nor did it indicate what titles were plotted therein as to show the fact of overlapping, since the said plan could not be compared with the titles plotted therein.[67]

Sison further testified that when she conducted a fixed survey of the properties in question, she found CAMBRIDGE to be in possession of the alleged overlapping portion, and that there was an existing adobe stone wall, which appeared to be old, within the claimed overlapping portion. She also saw townhouse units belonging to CAMBRIDGE on said portion.[68]

On cross-examination, Sison testified that as a surveyor, she would tie the properties she surveys to a BLLM reference (tie) point by computing the same to the nearest property that already has a reference (tie) point, in cases where the property she is surveying has no tie (reference) point;[69] but that when a tie point is changed, an overlapping is caused;[70] that it was error for the respondents' surveyors to have conducted their respective surveys without thorough research and without securing the titles to adjoining properties, as well as following certain processes of computation;[71] that she conducted these processes of computation on the SUSANA title, and she found that the technical description thereof contains an error, such that its actual area is either smaller or bigger, making reference to the said SUSANA title as an "open polygon" in surveying parlance, which means that the technical description is not correct (*i.e.*, the "polygon" should "close", and when it does, the technical description is then presumed to be correct).[72]

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

[67] *Id.* at 35-38.

[68] *Id.* at 38-41.

[69] TSN, Sison, May 13, 1994, pp. 4-5.

[70] *Id.* at 22.

[71] *Id.* at 27-28.

[72] *Id.* at 28-29.

On October 10, 1995, the Regional Trial Court of Quezon City, Branch 96 rendered a Decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

1. Dismissing the *complaints*;

2. Dismissing the *counterclaim*, except that plaintiffs shall pay to defendant attorney's fees of ₱50,000.00; and

3. Ordering the plaintiffs to pay the costs of the suit.

SO ORDERED.[73]

On appeal, the Court of Appeals reversed and set aside the Decision of the trial court, thus:

WHEREFORE, based on the foregoing premises and finding the appeal to be meritorious, the judgment appealed from is REVERSED and SET ASIDE. The case is remanded to the lower court with the direction to:

(1) allow the plaintiffs-appellants to elect whether to (a) appropriate as its own the buildings and improvements on the encroached property, subject to payment of indemnity or (b) oblige the defendant-appellee to pay the fair market value of the encroached property, within the time the lower court shall fix;

(2) if the plaintiffs-appellants shall elect to oblige the defendant-appellee to pay the fair market value of the encroached property, to refer the matter to a commissioner who shall be appointed by the lower court to receive evidence on the fair market value of the encroached property;

(3) if the value of the land is considerably more than that of the building and improvements, and the defendant-appellee cannot be obliged to buy the land pursuant to Article 448 of the New Civil Code, and the plaintiffs-appellants also do not choose to appropriate the buildings or improvements after proper indemnity, the lower court shall order the defendant-appellee to pay reasonable rent as agreed upon by the parties. In case of disagreement on the terms of the lease, the lower court shall fix the terms thereof; and

[73] *Rollo*, pp. 92-93.

(4) to render judgment on the basis of the election of the plaintiffs-appellants.

SO ORDERED.[74]

On March 1, 2002, the appellate court denied the Motion for Reconsideration; hence, this petition based on the following grounds:

I

WHETHER OR NOT RESPONDENTS WERE ABLE TO PROVE OVERLAP AND ENCROACHMENT OF PETITIONER'S PROPERTY ON RESPONDENTS' PROPERTIES.

II

WHETHER OR NOT THE TIE POINT OF A REGISTERED PROPERTY MAY BE ALTERED WITHOUT NOTICE TO THE ADJOINING OWNERS AND WITHOUT OBSERVING THE REQUIREMENTS OF SECTION 389 OF THE MANUAL OF LAND SURVEYS IN THE PHILIPPINES, SECTION 108 OF P.D. 1529, AND JURISPRUDENCE.

III

WHETHER OR NOT THE PRESUMPTION OF REGULARITY AND/OR THE APPROVAL OF GOVERNMENT AUTHORITIES IS SUFFICIENT TO VALIDATE A SURVEY PLAN AND/OR AMENDED TECHICAL DESCRIPTION WHICH DID NOT COMPLY WITH THE REQUIREMENTS OF LAW.

IV

WHETHER OR NOT RESPONDENTS ARE GUILTY OF LACHES.

V

WHETHER OR NOT A TORRENS CERTIFICATE OF TITLE, COMPLETE AND VALID ON ITS FACE MAY BE DEFEATED BY ANOTHER TORRENS CERTIFICATE OF TITLE WHICH, ON ITS FACE, IS IRREGULAR, AND WHICH CONTAINS DEFECTIVE TECHNICAL DESCRIPTION.

A review of the factual backdrop is proper for the resolution of the issues presented. The findings of fact of the Court of Appeals are ordinarily not subject to review by this Court as

[74] *Id*. at 73-74.

they are deemed conclusive; but not when the findings of fact of the trial and appellate courts are conflicting.[75]

There is one serious flaw that the trial court committed: its failure to require the court-appointed surveyors – considering that there are quite a number of irregularities in the certificates of title of the parties – to conduct an extensive investigation of the titles of the parties.

> The case of overlapping of titles necessitates the assistance of experts in the field of geodetic engineering. The very reason why commissioners were appointed by the trial court, upon agreement of the parties, was precisely to make an evaluation and analysis of the titles in conflict with each other. Given their background, expertise and experience, these commissioners are in a better position to determine which of the titles is valid. Thus, the trial court may rely on their findings and conclusions.[76]

It was the duty of the trial court, considering the magnitude and extent of the issues presented and the questions that arose from a careful examination of the parties' respective certificates of title, to have required the appointed surveyors of the DENR to investigate and trace the parties' respective titles, conduct a comprehensive survey, study and analysis of the boundaries, distances and bearings thereof, and submit an exhaustive report thereon. Given their expertise and experience, they would have been able to satisfactorily perform the required task. Yet the court did not. As a matter of fact, the services of the government surveyors were not even secured by court initiative; the trial court even threatened to do away with the testimonies of the state surveyors when their presence in court could not be guaranteed. It was through the auspices of the respondents that they were brought to court. To make matters worse, the parties did not even pay the required fees for the survey; the court did not compel them.

In overlapping of titles disputes, it has always been the practice for the court to appoint a surveyor from the government land agencies – the Land Registration Authority or the DENR – to

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[75] *Manila Electric Company v. Hua Kim Peng*, G.R. No. 109389, June 26, 2006, 492 SCRA 485, 493.

[76] *Manotok Realty, Inc. v. CLT Realty Development Corp.*, G.R. No. 123346, November 29, 2005, 476 SCRA 305, 335-336.

act as commissioner. Given that the trial court here did not, we are now left to make do with the two-page report of the state surveyors and decide the case with what evidence is made available to us by the parties' respective expert witnesses as well, which – for the most part – must be received with caution as their testimonies are understandably self-serving.

The crux of the matter, however, lies in ascertaining whether there really is overlapping of boundaries of the properties of the movants for intervention and that of the private respondent. As We scrutinize carefully the claim of each party based on survey readings and plottings appearing on the plans submitted as annexes, We find that the same have not passed the rigid test of accuracy and authenticity as should be determined by precision instruments duly verified by accredited surveyors. *Indeed, each claim may appear to be as good and self-serving as the other*. And since the Supreme Court is not a trier of facts, the veracity and correctness of the alleged overlapping is better left to those scientifically qualified, trained and experienced and whose integrity is beyond question and dispute.[77] (Italics supplied)

The present petition calls only for the settlement of the overlapping issue, barring direct and collateral attacks on each of the parties' respective certificates of title, which require different proceedings for the ventilation thereof.[78]

The trial court, in dismissing the case, held primarily that respondents failed to overcome the burden of establishing their claim of overlapping. It stated that the respondents' titles – whose tie points are based on mere PLS monuments (which are not fixed, and are therefore not in accordance with Sec. 36 of the Manual for Land Surveys in the Philippines[79]) cannot prevail as against the petitioner's, which has a fixed tie or reference point. Simply put, a PLS monument is not one of the reference points enumerated in Section 36 of the Manual, and cannot be used to defeat petitioner's

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[77] *Director of Lands v. Court of Appeals*, G.R. No. L-45168, September 25, 1979, 93 SCRA 238, 248-249.

[78] Presidential Decree No. 1529 (1978), Sec. 48:

Certificate not subject to collateral attack. – A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

[79] *Supra* note 13.

title. Secondly, the trial court held that Nerit, given his training and expertise as surveyor, should have detected the overlap – if there was one – in his 1960 survey of TCT 18250, and not suddenly discover it only in 1990. Thirdly, the presence of the old *adobe* wall as early as the 1960s and the absence of any protest or objection from Nerit or the Madrigals (then owner of the SUSANA title) militate against the present claim of overlap and encroachment.

The appellate court, however, found that there is an encroachment, and the cause thereof may be traced to a change in the technical description of the petitioner's title (which was derived from TCT 578) when it was subdivided on November 10, 1920. The appellate court held that the respective northeastern boundaries of the ERIDANUS, CHITON and CAMBRIDGE titles should be "**S.21'deg.56'55"E**" but the CAMBRIDGE title indicates "**N.25 deg. 07'W**". Yet TCT 578 carries the same bearing as the ERIDANUS and CHITON properties, "S.21'deg.56'55"E". This change in the technical description, according to the appellate court, caused the encroachment by the petitioner's property on the respondents' land. The appellate court ratiocinated that it was precisely for this reason that in 1960, Nerit found no encroachment during his subdivision survey of the SUSANA lot: because TCT 578 still carried the bearing "S.21'deg.56'55"E". When he conducted his 1990 survey, which among others included the petitioner's title (with the new and different bearing "N.25 deg. 07'W") as basis, he naturally found an overlap.

What the trial and appellate courts overlooked, however, was that out of the four expert witnesses presented, three of them (the government surveyor **De Lara**, respondents' witness **Lim**, and petitioner's witness **Sison**) categorically admitted that a change in the tie or reference point results in an overlap; or, more accurately, that a change in the tie or reference point has a corresponding **effect** on the survey.

What has been made clear by the law and practice is that PLS monuments have given way to Bureau of Lands Location Monument (BLLM) No. 1, which shall "always be used as the tie point."[80] In

[80] As required under Section 760, Manual for Land Surveys in the Philippines, *supra* note 15.

so doing (disregarding PLS monuments for the BLLM), such process somehow affects the integrity of the survey.

Thus, **De Lara** testified that if he plotted the respondents' properties on the basis of the common boundary (lines 1 to 2) between the adjacent AYALA and SUSANA properties as stated in the technical description of the SUSANA title, there would be no overlapping of boundaries between petitioner's and respondents' titles;[81] on the other hand, if the survey were conducted based on the respondents' respective titles which do not have a tie line or tie point, there would be an overlap.[82] De Lara claims, moreover, that the alleged encroachment is really a "technical overlapping."[83] **Lim**, on the other hand, testified – on re-direct examination – that when the reference point or tie point is changed, the azimuth lines and azimuth tie lines of the (respondents') property are likewise changed, but not the location thereof.[84] **Sison**, witness for the petitioner, testified on cross-examination that when a tie point is changed, an overlapping is caused.[85]

A case of overlapping of boundaries or encroachment depends on a **reliable**, if not accurate, verification survey; barring one, no overlapping or encroachment may be proved successfully, for obvious reasons. In the wake of the majority expert opinion that by changing the tie or reference point from a PLS to a BLLM 1 monument, a corresponding effect on the survey occurs – which can include a change in boundaries and, at worst, an overlap – the Court is not prepared to declare that an accurate survey of the respondents' properties has been made as to be a *proper* basis of the present claim of encroachment or overlap.

Likewise, we cannot see how a change in the bearings of the CAMBRIDGE property from "S.21'deg.56'55"E" in TCT 578 to "N.25 deg. 07'W" in the CAMBRIDGE title can cause an overlap of respondents' properties. This has not been sufficiently shown

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[81] TSN, De Lara, September 24, 1993, pp. 18-19.

[82] *Id*. at 19.

[83] *Id*.

[84] TSN, Lim, December 3, 1993, p. 40.

[85] TSN, Sison, May 13, 1994, p. 22.

by respondents' evidence to be the cause of the overlap. Respondents' key witness Nerit does *not* believe that the CAMBRIDGE title was a derivative of TCT 578, because there is nothing in the title thereof which indicates that it was derived from the latter; he was ambivalent, if not ambiguous, and definitely far from categorical, in this respect.[86] State surveyor De Lara's testimony and Report – inconclusive and incomplete as it is – does not help or indicate any. Likewise, a thorough examination of TCT 578 shows that it has no similar boundary and bearings with the CAMBRIDGE title. Finally, the CAMBRIDGE title explicitly declares that it is derived from TCT No. 363717/T-1823, and not TCT 578.

Thus, for failure of the respondents to prove that the CAMBRIDGE title is a derivative of TCT 578, the *conclusion* that a change in the technical description of the former – as compared to that of the latter – is the reason for the overlap, simply does not follow. The appellate court is in clear error.

Finally, we agree with the trial court's observation that the continuous presence of the old *adobe* wall diminishes the case for the respondents. It was only in 1989 that the wall became an ungainly sight for respondents. Previous owners of what now constitutes the respondents' respective lots did not complain of its presence. The wall appears to have been built in the 1960s, and yet the Madrigals (SUSANA title owners) did not complain about it; if they did, Nerit would have known and testified to the same since he was responsible for the subdivision of the lot. Only respondents complain about it now. In one overlapping of boundaries case,[87] the Court held that a land owner may not now claim that his property has been encroached upon when his predecessor did not register any objections at the time the monuments were being placed on the claimed encroached area; nor did the latter make any move to question the placement of said monuments at the time.

Courts exist to dispense justice through the determination of the truth to conflicting claims. A party comes to court equipped with

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[86] *Supra* note 21 *et seq*.

[87] *Golloy v. Court of Appeals*, G.R. No. 47491, May 4, 1989, 173 SCRA 26.

the tools that will convince the court that his position is more viable than the other's. He may not hesitate to employ any method, means or artifice of persuasion that will sway the sympathies of the court in his favor. As we have said before, indeed, *each claim may appear to be as good and self-serving as the other*.[88]

In the quest for truth, a court often encounters concerns that necessitate not only the application of the various principles of law, but likewise precepts of the exact sciences, various disciplines of study or fields of human endeavour about which the judge may not be knowledgeable or skilled, and which concerns he is not prepared to resolve, unless with the aid and intervention of or through the medium of learned and experienced disinterested experts.

An example lies precisely in the area of land boundary disputes. The first step in the resolution of such cases is for the court to direct the proper government agency concerned (the Land Registration Authority,[89] or LRA, or the Department of Environment and Natural Resources, or DENR) to conduct a verification or relocation survey and submit a report to the court,[90] or constitute a panel of commissioners for the purpose.[91]

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[88] *Director of Lands v. CA*, *supra* note 77.

[89] Formerly the Land Registration Commission. The LRA is charged with the task of guaranteeing the integrity of the Torrens system of land registration, and is the central repository of all records concerning registered or titled lands. Part of its mandate is to keep the title history of records of transactions involving registered or titled lands, and provide legal and technical assistance to the courts on land registration cases.

[90] *Sapida v. Villanueva*, G.R. No. L-27673, November 24, 1972, 48 SCRA 19; *Sta.Ana v. Suñga*, G.R. No. L-32642, November 26, 1973, 54 SCRA 36; *Director of Lands v. Court of Appeals*, G.R. No. L-45168, September 25, 1979, 93 SCRA 238; *Verdant Acres, Inc. v. Hernandez*, G.R. No.51352, January 29, 1988, 157 SCRA 495; *De Vera v. Court of Appeals*, G.R. No. 97761, April 14, 1999, 305 SCRA 624; *De Guzman v. Court of Appeals*, G.R. No. 120004, December 27, 2002, 394 SCRA 302; *De Pedro v. Romasan Development Corp*., G.R. No. 158002, February 28, 2005, 452 SCRA 564; *Banaga v. Majaducon*, G.R. No. 149051, June 30, 2006, 494 SCRA 153.

[91] *Angara v. Fedman Development Corp*., G.R. No. 156822, October 18, 2004, 440 SCRA 467.

In every land dispute, the aim of the courts is to protect the integrity of and maintain inviolate the Torrens system of land registration, as well as to uphold the law; a resolution of the parties' dispute is merely a necessary consequence. Taking this to mind, we cannot grant the respondents' prayer without violating the very principles of the Torrens system. They have failed to lay the proper foundation for their claim of overlap. This is precisely the reason why the trial court should have officially appointed a commissioner or panel of commissioners and not leave the initiative to secure one to the parties: so that a *thorough* investigation, study and analysis of the parties' titles could be made in order to provide, in a comprehensive report, the necessary information that will guide it in resolving the case completely, and not merely leave the determination of the case to a consideration of the parties' more often than not self-serving evidence.

WHEREFORE, the petition is *GRANTED*. The appealed Decision and Resolution of the Court of Appeals are *REVERSED and SET ASIDE*. The Decision of the Regional Trial Court of Quezon City, Branch 96, in Civil Case Nos. Q-89-2636 and Q-89-2750 dismissing the complaints filed by respondents is *REINSTATED and AFFIRMED*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 160905. July 4, 2008]

BIENVENIDO D. GOMA, *petitioner, vs.* **PAMPLONA PLANTATION INCORPORATED,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; REGULAR EMPLOYEES; KINDS. — Article 280 of the Labor Code, as amended, provides: **ART. 280. REGULAR AND CASUAL EMPLOYMENT.—** The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season. An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists. As can be gleaned from this provision, there are two kinds of regular employees, namely: (1) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; and (2) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed. Simply stated, regular employees are classified into: regular employees by nature of work; and regular employees by years of service. The former refers to those employees who perform a particular activity which is necessary or desirable in the usual business or trade of the employer, regardless of their length of service; while the latter refers to those employees who have

been performing the job, regardless of the nature thereof, for at least a year. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of that activity to the business.

2. ID.; ID.; PROJECT EMPLOYEES; DEFINED.— A project employee is assigned to carry out a specific project or undertaking the duration and scope of which are specified at the time the employee is engaged in the project. A project is a job or undertaking which is distinct, separate and identifiable from the usual or regular undertakings of the company. A project employee is assigned to a project which begins and ends at determined or determinable times.

3. ID.; ID.; PROJECT EMPLOYEES DISTINGUISHED FROM REGULAR EMPLOYEES; TEST.— The principal test used to determine whether employees are project employees as distinguished from regular employees, is whether or not the employees were assigned to carry out a specific project or undertaking, the duration or scope of which was specified at the time the employees were engaged for that project.

4. ID.; ID.; REGULAR EMPLOYMENT; NATURE.— What determines whether a certain employment is regular or otherwise is not the will or word of the employer, to which the worker oftentimes acquiesces. Neither is it the procedure of hiring the employee nor the manner of paying the salary or the actual time spent at work. It is the character of the activities performed by the employer in relation to the particular trade or business of the employer, taking into account all the circumstances, including the length of time of its performance and its continued existence.

5. ID.; ID.; REGULAR EMPLOYEES; ENJOY SECURITY OF TENURE AND CAN ONLY BE DISMISSED FOR JUST CAUSE AND WITH DUE PROCESS.— Well-established is the rule that regular employees enjoy security of tenure and they can only be dismissed for just cause and with due process, *i.e.*, after notice and hearing. In cases involving an employee's

dismissal, the burden is on the employer to prove that the dismissal was legal.

6. ID.; ID.; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; EFFECTS.— An illegally dismissed employee is entitled to: (1) either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and (2) backwages.

7. ID.; ID.; ID.; ID.; ID.; CASE AT BAR.— In the instant case, we are prepared to concede the impossibility of the reinstatement of petitioner considering that his position or any equivalent position may no longer be available in view of the length of time that this case has been pending. Moreover, the protracted litigation may have seriously abraded the relationship of the parties so as to render reinstatement impractical. Accordingly, petitioner may be awarded separation pay in lieu of reinstatement. Petitioner's separation pay is pegged at the amount equivalent to petitioner's one (1) month pay, or one-half (1/2) month pay for every year of service, whichever is higher, reckoned from his first day of employment up to finality of this decision. Full backwages, on the other hand, should be computed from the date of his illegal dismissal until the finality of this decision.

8. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARDED IN CASE AT BAR.— On petitioner's entitlement to attorney's fees, we must take into account the fact that petitioner was illegally dismissed from his employment and that his wages and other benefits were withheld from him without any valid and legal basis. As a consequence, he was compelled to file an action for the recovery of his lawful wages and other benefits and, in the process, incurred expenses. On these bases, the Court finds that he is entitled to attorney's fees equivalent to ten percent (10%) of the monetary award.

APPEARANCES OF COUNSEL

Yap-Siton Law Office for petitioner.

D E C I S I O N

NACHURA, *J.*:

For review is the Decision[1] of the Court of Appeals (CA) dated August 27, 2003 granting respondent Pamplona Plantation, Inc.'s petition for *certiorari* and its Resolution[2] dated November 11, 2003 denying petitioner Bienvenido Goma's motion for reconsideration, in CA-G.R. SP No. 74892.

Petitioner commenced[3] the instant suit by filing a complaint for illegal dismissal, underpayment of wages, non-payment of premium pay for holiday and rest day, five (5) days incentive leave pay, damages and attorney's fees, against the respondent. The case was filed with the Sub-Regional Arbitration Branch No. VII of Dumaguete City. Petitioner claimed that he worked as a carpenter at the *Hacienda* Pamplona since 1995; that he worked from 7:30 a.m. to 12:00 noon and from 1:00 p.m. to 5:00 p.m. daily with a salary rate of ₱90.00 a day paid weekly; and that he worked continuously until 1997 when he was not given any work assignment.[4] On a claim that he was a regular employee, petitioner alleged to have been illegally dismissed when the respondent refused without just cause to give him work assignment. Thus, he prayed for backwages, salary differential, service incentive leave pay, damages and attorney's fees.[5]

On the other hand, respondent denied having hired the petitioner as its regular employee. It instead argued that petitioner was hired by a certain Antoy Cañaveral, the manager of the *hacienda* at the time it was owned by Mr. Bower and leased by Manuel

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Mercedes Gozo-Dadole and Edgardo F. Sundiam, concurring; *rollo*, pp. 163-169.

[2] *Rollo*, p. 193.

[3] Petitioner filed the complaint on July 23, 1998.

[4] *Rollo*, p. 164.

[5] *Id*. at 90.

Gonzales, a *jai-alai* pelotari known as "Ybarra."[6] Respondent added that it was not obliged to absorb the employees of the former owner.

In 1995, Pamplona Plantation Leisure Corporation (PPLC) was created for the operation of tourist resorts, hotels and bars. Petitioner, thus, rendered service in the construction of the facilities of PPLC. If at all, petitioner was a project but not a regular employee.[7]

On June 28, 1999, Labor Arbiter Geoffrey P. Villahermosa dismissed the case for lack of merit.[8] The Labor Arbiter concluded that petitioner was hired by the former owner, hence, was not an employee of the respondent. Consequently, his money claims were denied.[9]

On appeal to the National Labor Relations Commission (NLRC), the petitioner obtained favorable judgment when the tribunal reversed and set aside the Labor Arbiter's decision. The dispositive portion of the NLRC decision reads:

> WHEREFORE, the Decision of the Labor Arbiter is hereby SET ASIDE and a new one is hereby issued ORDERING the respondent, Pamplona Plantation Incorporated, the following:
>
> 1) to reinstate the complainant, BIENVENIDO D. GOMA to his former position immediately without loss of seniority rights and other privileges;
>
> 2) to pay the same complainant TWELVE THOUSAND THREE HUNDRED FIFTY-NINE PESOS (₱12,359.00) in salary differentials;
>
> 3) to pay to the same complainant ONE HUNDRED ONE THOUSAND SIX HUNDRED SIXTY PESOS (₱101,660.00) in backwages to be updated until actual reinstatement; and

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[6] *Id*. at 165.

[7] *Id*. at 61.

[8] The dispositive portion of which reads:

> WHEREFORE, in the light of the foregoing, judgment is hereby rendered Dismissing this case for lack of merit.
>
> SO ORDERED. (*Id*. at 95.)

[9] *Rollo*, p. 94.

4) to pay attorney's fee in the amount of ELEVEN THOUSAND FOUR HUNDRED TWO PESOS (₱11,402.00) which is equivalent to ten percent (10%) of the total judgment award.

The respondent is further ordered to pay the aggregate amount of ONE HUNDRED FOURTEEN THOUSAND AND NINETEEN PESOS (₱114,019.00) to the complainant through the cashier of this Commission within ten (10) days from receipt hereof.

SO ORDERED.[10]

Respondent's motion for reconsideration was denied by the NLRC on September 9, 2002.[11]

The NLRC upheld the existence of an employer-employee relationship, ratiocinating that it was difficult to believe that a simple carpenter from far away Pamplona would go to Dumaguete City to hire a competent lawyer to help him secure justice if he did not believe that his right as a laborer had been violated.[12] It added that the creation of the PPLC required the tremendous task of constructing hotels, inns, restaurants, bars, boutiques and service shops, thus involving extensive carpentry work. As an old carpentry hand in the old corporation, the possibility of petitioner's employment was great.[13] The NLRC likewise held that the respondent should have presented its employment records if only to show that petitioner was not included in its list of employees; its failure to do so was fatal.[14] Considering that petitioner worked for the respondent for a period of two years, he was a regular employee.[15]

Aggrieved, respondent instituted a special civil action for *certiorari* under Rule 65 before the Court of Appeals which granted the same; and consequently annulled and set aside the NLRC decision. The CA disposed, as follows:

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[10] *Id*. at 83-84.

[11] *Id*. at 85-87.

[12] *Id*. at 79.

[13] *Id*. at 79-80.

[14] *Id*. at 80.

[15] *Id*. at 81.

WHEREFORE, premises considered, the instant petition is **GRANTED.** The assailed decision of the NLRC dated October 24, 2000, as well as the Resolution dated September 9, 2002 in NLRC Case No. V-000882-99, RAB VII-0088-98-D are hereby **ANNULLED and SET ASIDE.** The complaint is ordered **DISMISSED.**

SO ORDERED.[16]

Contrary to the NLRC's finding, the CA concluded that there was no employer-employee relationship. The CA stressed that petitioner having raised a positive averment, had the burden of proving the existence of an employer-employee relationship. Respondent, therefore, had no obligation to prove its negative averment.[17] The appellate court further held that while the respondent's business required the performance of occasional repairs and carpentry work, the retention of a carpenter in its payroll was not necessary or desirable in the conduct of its usual business.[18] Lastly, although the petitioner was an employee of the former owner of the *hacienda*, the respondent was not required to absorb such employees because employment contracts are *in personam* and binding only between the parties.[19]

Petitioner now comes before this Court raising the sole issue:

WHETHER OR NOT THE DECISION OF [THE] COURT OF APPEALS DATED AUGUST 27, 2003, REVERSING AND SETTING ASIDE THE NLRC (Fourth Division, Cebu City) RULING THAT THE "PETITIONER WAS NOT ILLEGALLY DISMISSED AS HE WAS NOT AN EMPLOYEE OF RESPONDENT," IS CONTRARY TO LAW AND JURISPRUDENCE ON WHICH IT WAS BASED, AND NOT IN CONSONANCE WITH THE EVIDENCE ON RECORD.[20]

The disposition of this petition rests on the resolution of the following questions: 1) Is the petitioner a regular employee of

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[16] *Id.* at 169.

[17] *Id.* at 167.

[18] *Id.* at 168.

[19] *Id.*

[20] *Id.* at 259.

the respondent? 2) If so, was he illegally dismissed from employment? and 3) Is he entitled to his monetary claims?

Petitioner insists that he was a regular employee of the respondent corporation. The respondent, on the other hand, counters that it did not hire the petitioner, hence, he was never an employee, much less a regular one.

Both the Labor Arbiter and the CA concluded that there was no employer-employee relationship between the petitioner and respondent. They based their conclusion on the alleged admission of the petitioner that he was previously hired by the former owner of the *hacienda*. Thus, they rationalized that since the respondent was not obliged to absorb all the employees of the former owner, petitioner's claim of employment could not be sustained. The NLRC, on the other hand, upheld petitioner's claim of regular employment because of the respondent's failure to present its employment records.

The existence of an employer-employee relationship involves a question of fact which is well within the province of the CA to determine. Nonetheless, given the reality that the CA's findings are at odds with those of the NLRC, the Court is constrained to probe into the attendant circumstances as appearing on record.[21]

A thorough examination of the records compels this Court to reach a conclusion different from that of the CA. It is true that petitioner admitted having been employed by the former owner prior to 1993 or before the respondent took over the ownership and management of the plantation, however, he likewise alleged having been hired by the respondent as a carpenter in 1995 and having worked as such for two years until 1997. Notably, at the outset, respondent categorically denied that it hired the petitioner. Yet, in its petition filed before the CA, respondent made this admission:

Private respondent [petitioner herein] cannot be considered a regular employee since the nature of his work is merely project in

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[21] *Manila Electric Company v. Benamira*, G.R. No. 145271, July 14, 2005, 463 SCRA 331, 348.

character in relation to the construction of the facilities of the Pamplona Plantation Leisure Corporation.

He is a project employee as he was hired – 1) for a specific project or undertaking, and 2) the completion or termination of such project or undertaking has been determined at the time of engagement of the employee. x x x.

x x x x x x x x x

In other words, as regards those workers who worked in 1995 specifically in connection with the construction of the facilities of Pamplona Plantation Leisure Corporation, their employment was definitely "temporary" in character and not regular employment. Their employment was deemed terminated by operation of law the moment they had finished the job or activity under which they were employed.[22]

Thus, departing from its initial stand that it never hired petitioner, the respondent eventually admitted the existence of employer-employee relationship before the CA. It, however, qualified such admission by claiming that it was PPLC that hired the petitioner and that the nature of his employment therein was that of a "project" and not "regular" employee.

Parenthetically, this Court in *Pamplona Plantation Company, Inc. v. Tinghil*[23] and *Pamplona Plantation Company v. Acosta*[24] had pierced the veil of corporate fiction and declared that the two corporations,[25] PPLC and the herein respondent, are one and the same.

By setting forth these defenses, respondent, in effect, admitted that petitioner worked for it, albeit in a different capacity. Such an allegation is in the nature of a negative pregnant, a denial pregnant with the admission of the substantial facts in the pleadings responded to which are not squarely denied, and amounts to an

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

[23] G.R. No. 159121, February 3, 2005, 450 SCRA 421.

[24] G.R. No. 153193, December 6, 2006, 510 SCRA 249.

[25] The Pamplona Plantation Corporation, Inc. and the Pamplona Plantation Leisure Corporation.

acknowledgment that petitioner was indeed employed by respondent.[26]

The employment relationship having been established, the next question we must answer is: Is the petitioner a regular or project employee?

We find the petitioner to be a regular employee.

Article 280 of the Labor Code, as amended, provides:

ART. 280. REGULAR AND CASUAL EMPLOYMENT. - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

As can be gleaned from this provision, there are two kinds of regular employees, namely: (1) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; and (2) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed.[27] Simply stated, regular employees are classified into:

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[26] *Pamplona Plantation Company v. Acosta*, *supra* note 24, at 253.

[27] *Rowell Industrial Corporation v. Court of Appeals*, G.R. No. 167714, March 7, 2007, 517 SCRA 691, 698-699; *ABS-CBN Broadcasting Corporation v. Nazareno*, G.R. No. 164156, September 26, 2006, 503 SCRA 204, 227; *Poseidon Fishing v. National Labor Relations Commission*, G.R. No. 168052, February 20, 2006, 482 SCRA 717, 731; *Aurora Land Projects Corp. v. NLRC*, G.R. No. 114733, January 2, 1997, 266 SCRA 48, 61-62.

regular employees by nature of work; and regular employees by years of service. The former refers to those employees who perform a particular activity which is necessary or desirable in the usual business or trade of the employer, regardless of their length of service; while the latter refers to those employees who have been performing the job, regardless of the nature thereof, for at least a year.[28] If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of that activity to the business.[29]

Respondent is engaged in the management of the Pamplona Plantation as well as in the operation of tourist resorts, hotels, inns, restaurants, *etc*. Petitioner, on the other hand, was engaged to perform carpentry work. His services were needed for a period of two years until such time that the respondent decided not to give him work assignment anymore. Owing to his length of service, petitioner became a regular employee, by operation of law.

Respondent argues that, even assuming that petitioner can be considered an employee, he cannot be classified as a regular employee, but merely as a project employee whose services were hired only with respect to a specific job and only while that specific job existed.

A project employee is assigned to carry out a specific project or undertaking the duration and scope of which are specified at the time the employee is engaged in the project. A project is a job or undertaking which is distinct, separate and identifiable from the usual or regular undertakings of the company. A project employee is assigned to a project which begins and ends at determined or determinable times.[30]

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[28] *Rowell Industrial Corporation v. Court of Appeals*, *supra*, at 700.

[29] *Philippine Long Distance Telephone Company, Inc. (PLDT) v. Ylagan*, G.R. No. 155645, November 24, 2006, 508 SCRA 31, 36; *ABS-CBN Broadcasting Corporation v. Nazareno*, *supra*, at 226; *Poseidon Fishing v. National Labor Relations Commission*, *supra*, at 730; see also *Aurora Land Projects Corp. v. NLRC*, *supra*, at 62.

[30] *Philippine Long Distance Telephone Company, Inc. (PLDT) v. Ylagan*, *supra* note 29, at 35.

The principal test used to determine whether employees are project employees as distinguished from regular employees, is whether or not the employees were assigned to carry out a specific project or undertaking, the duration or scope of which was specified at the time the employees were engaged for that project.[31] In this case, apart from respondent's bare allegation that petitioner was a project employee, it had not shown that petitioner was informed that he would be assigned to a specific project or undertaking. Neither was it established that he was informed of the duration and scope of such project or undertaking at the time of his engagement.

Most important of all, based on the records, respondent did not report the termination of petitioner's supposed project employment to the Department of Labor and Employment (DOLE). Department Order No. 19 (as well as the old Policy Instructions No. 20) requires employers to submit a report of an employee's termination to the nearest public employment office every time the employment is terminated due to a completion of a project. Respondent's failure to file termination reports, particularly on the cessation of petitioner's employment, was an indication that the petitioner was not a project but a regular employee.[32]

We stress herein that the law overrides such conditions which are prejudicial to the interest of the worker whose weak bargaining position necessitates the succor of the State. What determines whether a certain employment is regular or otherwise is not the will or word of the employer, to which the worker oftentimes acquiesces. Neither is it the procedure of hiring the employee nor the manner of paying the salary or the actual time spent at work. It is the character of the activities performed by the employer in relation to the particular trade or business of the employer, taking into account all the circumstances, including the length

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[31] *Poseidon Fishing v. National Labor Relations Commission*, *supra* note 27, at 734.

[32] *ABS-CBN Broadcasting Corporation v. Nazareno*, *supra* note 27, at 229; *Philippine Long Distance Telephone Company, Inc. (PLDT) v. Ylagan*, *supra* note 29, at 36.

of time of its performance and its continued existence. Given the attendant circumstances in the case at bar, it is obvious that one year after he was employed by the respondent, petitioner became a regular employee by operation of law.[33]

As to the question of whether petitioner was illegally dismissed, we answer in the affirmative.

Well-established is the rule that regular employees enjoy security of tenure and they can only be dismissed for just cause and with due process, *i.e.*, after notice and hearing. In cases involving an employee's dismissal, the burden is on the employer to prove that the dismissal was legal. This burden was not amply discharged by the respondent in this case.

Obviously, petitioner's dismissal was not based on any of the just or authorized causes enumerated under Articles 282,[34] 283[35]

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[33] *ABS-CBN Broadcasting Corporation v. Nazareno*, *supra* note 29, at 227-228.

[34] ART. 282. TERMINATION BY EMPLOYER. – An employer may terminate an employment for any of the following causes.

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[35] ART. 283. CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL. – The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment [now Secretary of Labor] at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month

and 284[36] of the Labor Code, as amended. After working for the respondent for a period of two years, petitioner was shocked to find out that he was not given any work assignment anymore. Hence, the requirement of substantive due process was not complied with.

Apart from the requirement that the dismissal of an employee be based on any of the just or authorized causes, the procedure laid down in Book VI, Rule I, Section 2 (d) of the *Omnibus Rules Implementing the Labor Code*, must be followed.[37] Failure to observe the rules is a violation of the employee's right to procedural due process.

In view of the non-observance of both substantive and procedural due process, in accordance with the guidelines outlined by this Court in *Agabon v. National Labor Relations*

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pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

[36] ART. 284. DISEASE AS GROUND FOR TERMINATION. – An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: *Provided*, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[37] Procedurally, (1) if the dismissal is based on a just cause under Article 282, the employer must give the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment: a notice specifying the grounds for which dismissal is sought a hearing or an opportunity to be heard and after hearing or opportunity to be heard, a notice of the decision to dismiss; and (2) if the dismissal is based on authorized causes under Articles 283 and 284, the employer must give the employee and the Department of Labor and Employment written notices 30 days prior to the effectivity of his separation; *Agabon v. National Labor Relations Commission*, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 607.

Commission,[38] we declare that petitioner's dismissal from employment is illegal.[39]

Having shown that petitioner is a regular employee and that his dismissal was illegal, we now discuss the propriety of the monetary claims of the petitioner. An illegally dismissed employee is entitled to: (1) either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and (2) backwages.[40]

In the instant case, we are prepared to concede the impossibility of the reinstatement of petitioner considering that his position or any equivalent position may no longer be available in view of the length of time that this case has been pending. Moreover, the protracted litigation may have seriously abraded the relationship of the parties so as to render reinstatement impractical. Accordingly, petitioner may be awarded separation pay in lieu of reinstatement.[41]

Petitioner's separation pay is pegged at the amount equivalent to petitioner's one (1) month pay, or one-half (1/2) month pay for every year of service, whichever is higher, reckoned from his first day of employment up to finality of this decision. Full backwages, on the other hand, should be computed from the date of his illegal dismissal until the finality of this decision.

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[38] *Id*.

[39] The Court, in the case of *Agabon* enumerated the four possible situations that may be derived in illegal dismissal cases, thus:

(1) the dismissal is for a just cause under Article 282 of the Labor Code, for an authorized cause under Article 283, or for health reasons under Aricle 284, and due process was observed.

(2) the dismissal is without just or authorized cause but due process was observed;

(3) the dismissal is without just or authorized cause and there was no due process; and

(4) the dismissal is for just or authorized cause but due process was not observed; *Agabon v. National Labor Relations Commission*, *supra* at 608.

[40] *Aurora Land Projects Corp. v. NLRC*, *supra* note 27, at 66.

[41] *Mendoza v. NLRC*, 369 Phil. 1113, 1131 (1999); *Caliguia v. NLRC*, 332 Phil. 128, 142 (1996).

On petitioner's entitlement to attorney's fees, we must take into account the fact that petitioner was illegally dismissed from his employment and that his wages and other benefits were withheld from him without any valid and legal basis. As a consequence, he was compelled to file an action for the recovery of his lawful wages and other benefits and, in the process, incurred expenses. On these bases, the Court finds that he is entitled to attorney's fees equivalent to ten percent (10%) of the monetary award.[42]

Lastly, we affirm the NLRC's award of salary differential. In light of our foregoing disquisition on the illegality of petitioner's dismissal, and our adoption of the NLRC's findings, suffice it to state that such issue is a question of fact, and we find no cogent reason to disturb the findings of the labor tribunal.

WHEREFORE, premises considered, the petition is *GRANTED*. The Decision of the Court of Appeals dated August 27, 2003 and its Resolution dated November 11, 2003 in CA-G.R. SP No. 74892 are *REVERSED* and *SET ASIDE*. Petitioner is found to have been illegally dismissed from employment and thus, is ***ENTITLED*** to: 1) Salary Differential embodied in the NLRC decision dated October 24, 2000 in NLRC Case No. V-000882-99; 2) Separation Pay; 3) Backwages; and 4) Attorney's fees equivalent to ten percent (10%) of the monetary awards. Upon finality of this judgment, let the records of the case be remanded to the NLRC for the computation of the exact amounts due the petitioner.

SO ORDERED.

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

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[42] *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*, G.R. No. 153031, December 14, 2006, 511 SCRA 44, 65.

THIRD DIVISION

[G.R. No. 162267. July 4, 2008]

PCI LEASING AND FINANCE, INC., *petitioner, vs.* **UCPB GENERAL INSURANCE CO., INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; THE REGISTERED OWNER OF A VEHICLE IS LIABLE FOR QUASI-DELICTS RESULTING FROM ITS USE; RATIONALE.— The principle of holding the registered owner of a vehicle liable for *quasi-delicts* resulting from its use is well-established in jurisprudence. *Erezo v. Jepte,* with Justice Labrador as *ponente,* wisely explained the reason behind this principle, thus: "Registration is required not to make said registration the operative act by which ownership in vehicles is transferred, as in land registration cases, because the administrative proceeding of registration does not bear any essential relation to the contract of sale between the parties (*Chinchilla vs. Rafael and Verdaguer*, 39 Phil. 888), but to permit the use and operation of the vehicle upon any public highway (Section 5 [a], Act No. 3992, as amended.) The main aim of motor vehicle registration is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefor can be fixed on a definite individual, the registered owner. Instances are numerous where vehicles running on public highways caused accidents or injuries to pedestrians or other vehicles without positive identification of the owner or drivers, or with very scant means of identification. It is to forestall these circumstances, so inconvenient or prejudicial to the public, that the motor vehicle registration is primarily ordained, in the interest of the determination of persons responsible for damages or injuries caused on public highways. "'One of the principal purposes of motor vehicles legislation is identification of the vehicle and of the operator, in case of accident; and another is that the knowledge that means of detection are always available may act as a deterrent from lax

observance of the law and of the rules of conservative and safe operation. Whatever purpose there may be in these statutes, it is subordinate at the last to the primary purpose of rendering it certain that the violator of the law or of the rules of safety shall not escape because of lack of means to discover him.' The purpose of the statute is thwarted, and the displayed number becomes a 'snare and delusion,' if courts would entertain such defenses as that put forward by appellee in this case. No responsible person or corporation could be held liable for the most outrageous acts of negligence, if they should be allowed to place a 'middleman' between them and the public, and escape liability by the manner in which they recompense their servants." (*King vs. Brenham Automobile Co*., 145 S.W. 278, 279.) With the above policy in mind, the question that defendant-appellant poses is: should not the registered owner be allowed at the trial to prove who the actual and real owner is, and in accordance with such proof escape or evade responsibility and lay the same on the person actually owning the vehicle? We hold with the trial court that the law does not allow him to do so; the law, with its aim and policy in mind, does not relieve him directly of the responsibility that the law fixes and places upon him as an incident or consequence of registration. Were a registered owner allowed to evade responsibility by proving who the supposed transferee or owner is, it would be easy for him, by collusion with others or otherwise, to escape said responsibility and transfer the same to an indefinite person, or to one who possesses no property with which to respond financially for the damage or injury done. A victim of recklessness on the public highways is usually without means to discover or identify the person actually causing the injury or damage. He has no means other than by a recourse to the registration in the Motor Vehicles Office to determine who is the owner. The protection that the law aims to extend to him would become illusory were the registered owner given the opportunity to escape liability by disproving his ownership. If the policy of the law is to be enforced and carried out, the registered owner should not be allowed to prove the contrary to the prejudice of the person injured, that is, to prove that a third person or another has become the owner, so that he may thereby be relieved of the responsibility to the injured person. The above policy and application of the law may appear quite harsh and would seem to conflict with truth and justice. We do not think it is so. A

registered owner who has already sold or transferred a vehicle has the recourse to a third-party complaint, in the same action brought against him to recover for the damage or injury done, against the vendee or transferee of the vehicle. The inconvenience of the suit is no justification for relieving him of liability; said inconvenience is the price he pays for failure to comply with the registration that the law demands and requires."

2. ID.; ID.; ID.; ID.; LIABILITY OF THE REGISTERED OWNER OF A VEHICLE FOR DAMAGE OR INJURY ARISING OUT OF NEGLIGENCE IN THE OPERATION THEREOF; EXPLAINED.— For damage or injuries arising out of negligence in the operation of a motor vehicle, the registered owner may be held civilly liable with the negligent driver either 1) *subsidiarily*, if the aggrieved party seeks relief based on a *delict* or crime under Articles 100 and 103 of the Revised Penal Code; or 2) *solidarily,* if the complainant seeks relief based on a *quasi-delict* under Articles 2176 and 2180 of the Civil Code. It is the option of the plaintiff whether to waive completely the filing of the civil action, or institute it with the criminal action, or file it separately or independently of a criminal action; his only limitation is that he cannot recover damages twice for the same act or omission of the defendant. In case a separate civil action is filed, the long-standing principle is that the registered owner of a motor vehicle is primarily and directly responsible for the consequences of its operation, including the negligence of the driver, with respect to the public and all third persons. In contemplation of law, the registered owner of a motor vehicle is the employer of its driver, with the actual operator and employer, such as a lessee, being considered as merely the owner's *agent*. This being the case, even if a sale has been executed before a tortious incident, the sale, if unregistered, has no effect as to the right of the public and third persons to recover from the registered owner. The public has the right to conclusively presume that the registered owner is the real owner, and may sue accordingly.

3. ID.; ID.; ID.; ID.; A SALE OR LEASE THAT IS NOT REGISTERED WITH THE LAND TRANSPORTATION OFFICE SHALL NOT BIND THIRD PERSONS WHO ARE AGGRIEVED IN TORTIOUS INCIDENTS.— [A] sale, lease,

or financial lease, for that matter, that is not registered with the Land Transportation Office, still does not bind third persons who are aggrieved in tortious incidents, for the latter need only to rely on the public registration of a motor vehicle as conclusive evidence of ownership. A lease such as the one involved in the instant case is an encumbrance in contemplation of law, which needs to be registered in order for it to bind third parties. Under this policy, the evil sought to be avoided is the exacerbation of the suffering of victims of tragic vehicular accidents in not being able to identify a guilty party. A contrary ruling will not serve the ends of justice. The failure to register a lease, sale, transfer or encumbrance, should not benefit the parties responsible, to the prejudice of innocent victims.

APPEARANCES OF COUNSEL

Agcaoili & Associates for petitioner.
Tumangan Payumo & Partners and *Jesus B. Roldan* for respondent Sugeco & Renato Gonzaga.

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) dated December 12, 2003 affirming with modification the Decision of the Regional Trial Court (RTC) of Makati City which ordered petitioner and Renato Gonzaga (Gonzaga) to pay, jointly and severally, respondent the amount of ₱244,500.00 plus interest; and the CA Resolution[2] dated February 18, 2004 denying petitioner's Motion for Reconsideration.

The facts, as found by the CA, are undisputed:

On October 19, 1990 at about 10:30 p.m., a Mitsubishi Lancer car with Plate Number PHD-206 owned by United Coconut Planters

[1] Penned by Associate Justice Eugenio S. Labitoria with the concurrence of Associate Justices Mercedes Gozo-Dadole and Rosmari D. Carandang, *rollo*, pp. 41-47.

[2] *Id.* at 49.

Bank was traversing the Laurel Highway, Barangay Balintawak, Lipa City. The car was insured with plantiff-appellee [UCPB General Insurance Inc.], then driven by Flaviano Isaac with Conrado Geronimo, the Asst. Manager of said bank, was hit and bumped by an 18-wheeler Fuso Tanker Truck with Plate No. PJE-737 and Trailer Plate No. NVM-133, owned by defendants-appellants PCI Leasing & Finance, Inc. allegedly leased to and operated by defendant-appellant Superior Gas & Equitable Co., Inc. (SUGECO) and driven by its employee, defendant appellant Renato Gonzaga.

The impact caused heavy damage to the Mitsubishi Lancer car resulting in an explosion of the rear part of the car. The driver and passenger suffered physical injuries. However, the driver defendant-appellant Gonzaga continued on its [sic] way to its [sic] destination and did not bother to bring his victims to the hospital.

Plaintiff-appellee paid the assured UCPB the amount of ₱244,500.00 representing the insurance coverage of the damaged car.

As the 18-wheeler truck is registered under the name of PCI Leasing, repeated demands were made by plaintiff-appellee for the payment of the aforesaid amounts. However, no payment was made. Thus, plaintiff-appellee filed the instant case on March 13, 1991.[3]

PCI Leasing and Finance, Inc., (petitioner) interposed the defense that it could not be held liable for the collision, since the driver of the truck, Gonzaga, was not its employee, but that of its co-defendant Superior Gas & Equitable Co., Inc. (SUGECO).[4] In fact, it was SUGECO, and not petitioner, that was the actual operator of the truck, pursuant to a Contract of Lease signed by petitioner and SUGECO.[5] Petitioner, however, admitted that it was the owner of the truck in question.[6]

After trial, the RTC rendered its Decision dated April 15, 1999,[7] the dispositive portion of which reads:

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[3] *Rollo*, p. 42.

[4] *Id.* at 72.

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

[6] *Id.* at 72.

[7] *Id.* at 52-56.

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff UCPB General Insurance [respondent], ordering the defendants PCI Leasing and Finance, Inc., [petitioner] and Renato Gonzaga, to pay jointly and severally the former the following amounts: the principal amount of ₱244,500.00 with 12% interest as of the filing of this complaint until the same is paid; ₱50,000.00 as attorney's fees; and ₱20,000.00 as costs of suit.

SO ORDERED.[8]

Aggrieved by the decision of the trial court, petitioner appealed to the CA.

In its Decision dated December 12, 2003, the CA affirmed the RTC's decision, with certain modifications, as follows:

WHEREFORE, the appealed decision dated April 15, 1999 is hereby AFFIRMED with modification that the award of attorney's fees is hereby deleted and the rate of interest shall be six percent (6%) per annum computed from the time of the filing of the complaint in the trial court until the finality of the judgment. If the adjudged principal and the interest remain unpaid thereafter, the interest rate shall be twelve percent (12%) per annum computed from the time the judgment becomes final and executory until it is fully satisfied.

SO ORDERED.[9]

Petitioner filed a Motion for Reconsideration which the CA denied in its Resolution dated February 18, 2004.

Hence, herein Petition for Review.

The issues raised by petitioner are purely legal:

Whether petitioner, as registered owner of a motor vehicle that figured in a *quasi-delict* may be held liable, jointly and severally, with the driver thereof, for the damages caused to third parties.

Whether petitioner, as a financing company, is absolved from liability by the enactment of Republic Act (R.A.) No. 8556, or the Financing Company Act of 1998.

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[8] *Id.* at 56.

[9] *Id.* at 47.

Anent the first issue, the CA found petitioner liable for the damage caused by the collision since under the Public Service Act, if the property covered by a franchise is transferred or leased to another without obtaining the requisite approval, the transfer is not binding on the Public Service Commission and, in contemplation of law, the grantee continues to be responsible under the franchise in relation to the operation of the vehicle, such as damage or injury to third parties due to collisions.[10]

Petitioner claims that the CA's reliance on the Public Service Act is misplaced, since the said law applies only to cases involving common carriers, or those which have franchises to operate as public utilities. In contrast, the case before this Court involves a private commercial vehicle for business use, which is not offered for service to the general public.[11]

Petitioner's contention has partial merit, as indeed, the vehicles involved in the case at bar are not common carriers, which makes the Public Service Act inapplicable.

However, the registered owner of the vehicle driven by a negligent driver may still be held liable under applicable jurisprudence involving laws on compulsory motor vehicle registration and the liabilities of employers for *quasi-delicts* under the Civil Code.

The principle of holding the registered owner of a vehicle liable for *quasi-delicts* resulting from its use is well-established in jurisprudence. *Erezo v. Jepte,*[12] with Justice Labrador as *ponente,* wisely explained the reason behind this principle, thus:

> Registration is required not to make said registration the operative act by which ownership in vehicles is transferred, as in land registration cases, because the administrative proceeding of registration does not bear any essential relation to the contract of sale between the parties (*Chinchilla vs. Rafael and Verdaguer*, 39 Phil. 888), but to permit the use and operation of the vehicle upon any public highway (Section 5 [a], Act No. 3992, as amended.) The main aim of motor

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

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

[12] 102 Phil. 103 (1957).

vehicle registration is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefor can be fixed on a definite individual, the registered owner. Instances are numerous where vehicles running on public highways caused accidents or injuries to pedestrians or other vehicles without positive identification of the owner or drivers, or with very scant means of identification. It is to forestall these circumstances, so inconvenient or prejudicial to the public, that the motor vehicle registration is primarily ordained, in the interest of the determination of persons responsible for damages or injuries caused on public highways.

> "'One of the principal purposes of motor vehicles legislation is identification of the vehicle and of the operator, in case of accident; and another is that the knowledge that means of detection are always available may act as a deterrent from lax observance of the law and of the rules of conservative and safe operation. Whatever purpose there may be in these statutes, it is subordinate at the last to the primary purpose of rendering it certain that the violator of the law or of the rules of safety shall not escape because of lack of means to discover him.' The purpose of the statute is thwarted, and the displayed number becomes a 'snare and delusion,' if courts would entertain such defenses as that put forward by appellee in this case. No responsible person or corporation could be held liable for the most outrageous acts of negligence, if they should be allowed to place a 'middleman' between them and the public, and escape liability by the manner in which they recompense their servants." (*King vs. Brenham Automobile Co.*, 145 S.W. 278, 279.)

With the above policy in mind, the question that defendant-appellant poses is: should not the registered owner be allowed at the trial to prove who the actual and real owner is, and in accordance with such proof escape or evade responsibility and lay the same on the person actually owning the vehicle? We hold with the trial court that the law does not allow him to do so; the law, with its aim and policy in mind, does not relieve him directly of the responsibility that the law fixes and places upon him as an incident or consequence of registration. Were a registered owner allowed to evade responsibility by proving who the supposed transferee or owner is, it would be easy for him, by collusion with others or otherwise, to escape said responsibility and transfer the same to an indefinite person, or to one who possesses no property with which to respond financially

for the damage or injury done. A victim of recklessness on the public highways is usually without means to discover or identify the person actually causing the injury or damage. He has no means other than by a recourse to the registration in the Motor Vehicles Office to determine who is the owner. The protection that the law aims to extend to him would become illusory were the registered owner given the opportunity to escape liability by disproving his ownership. If the policy of the law is to be enforced and carried out, the registered owner should not be allowed to prove the contrary to the prejudice of the person injured, that is, to prove that a third person or another has become the owner, so that he may thereby be relieved of the responsibility to the injured person.

The above policy and application of the law may appear quite harsh and would seem to conflict with truth and justice. We do not think it is so. A registered owner who has already sold or transferred a vehicle has the recourse to a third-party complaint, in the same action brought against him to recover for the damage or injury done, against the vendee or transferee of the vehicle. The inconvenience of the suit is no justification for relieving him of liability; said inconvenience is the price he pays for failure to comply with the registration that the law demands and requires.

In synthesis, we hold that the registered owner, the defendant-appellant herein, is primarily responsible for the damage caused to the vehicle of the plaintiff-appellee, but he (defendant-appellant) has a right to be indemnified by the real or actual owner of the amount that he may be required to pay as damage for the injury caused to the plaintiff-appellant.[13]

The case is still good law and has been consistently cited in subsequent cases.[14] Thus, there is no good reason to depart from its tenets.

For damage or injuries arising out of negligence in the operation of a motor vehicle, the registered owner may be held civilly liable with the negligent driver either 1) *subsidiarily*, if the aggrieved party seeks relief based on a *delict* or crime under

[13] *Id*. at 108-110.

[14] *Equitable Leasing Corp. v. Suyom,* 437 Phil. 244, 256 (2002); *Aguilar v. Commercial Savings Bank*, 412 Phil. 834, 841 (2001); *Spouses Hernandez v. Spouses Dolor*, 479 Phil. 593, 603 (2004).

Articles 100 and 103 of the Revised Penal Code; or 2) *solidarily,* if the complainant seeks relief based on a *quasi-delict* under Articles 2176 and 2180 of the Civil Code. It is the option of the plaintiff whether to waive completely the filing of the civil action, or institute it with the criminal action, or file it separately or independently of a criminal action;[15] his only limitation is that he cannot recover damages twice for the same act or omission of the defendant.[16]

In case a separate civil action is filed, the long-standing principle is that the registered owner of a motor vehicle is primarily and directly responsible for the consequences of its operation, including the negligence of the driver, with respect to the public and all third persons.[17] In contemplation of law, the registered owner of a motor vehicle is the employer of its driver, with the actual operator and employer, such as a lessee, being considered as merely the owner's *agent*.[18] This being the case, even if a sale has been executed before a tortious incident, the sale, if unregistered, has no effect as to the right of the public and third persons to recover from the registered owner.[19] The public

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[15] RULES OF COURT, Rule 111, Sec. 1, par. (a), sub-par. 1.

[16] CIVIL CODE, Art. 2177.

[17] *Equitable Leasing Corp. v. Suyom, supra* note 14, at 255; *First Malayan Leasing and Finance Corp. v. Court of Appeals*, G.R. No. 91378, June 9, 1992, 209 SCRA 660, 663.

[18] *Equitable Leasing Corp. v. Suyom, supra* 14, at 255, citing *First Malayan Leasing and Finance Corp. v. Court of Appeals*, *supra* note 17; *MYC-Agro-Industrial Corp. v. Camerino*, 217 Phil. 11, 17 (1984); and *Vargas v. Langcay*, 116 Phil. 478, 481-482 (1962).

The only known exception to the rule is that enunciated in *FGU Insurance Corp. v. Court of Appeals*, 351 Phil. 219, 225 (1998), where it was held that a rent-a-car company is not liable for the damages caused by the negligence of its lessee, who drove the subject vehicle. Here, it was established that between a rent-a-car company and a client who drove a leased vehicle, there was a clear absence of *vinculum juris* as employer and employee.

[19] *Equitable Leasing Corp. v. Suyom, supra*; note 14, at 255; *First Malayan Leasing and Finance Corp. v. Court of Appeals*, *supra* note 17, at 664.

has the right to conclusively presume that the registered owner is the real owner, and may sue accordingly.[20]

In the case now before the Court, there is not even a sale of the vehicle involved, but a mere lease, which remained unregistered up to the time of the occurrence of the *quasi-delict* that gave rise to the case. Since a lease, unlike a sale, does not even involve a transfer of title or ownership, but the mere use or enjoyment of property, there is more reason, therefore, in this instance to uphold the policy behind the law, which is to protect the unwitting public and provide it with a definite person to make accountable for losses or injuries suffered in vehicular accidents.[21] This is and has always been the rationale behind compulsory motor vehicle registration under the Land Transportation and Traffic Code and similar laws, which, as early as *Erezo,* has been guiding the courts in their disposition of cases involving motor vehicular incidents. It is also important to emphasize that such principles apply to all vehicles in general, not just those offered for public service or utility.[22]

The Court recognizes that the business of financing companies has a legitimate and commendable purpose.[23] In earlier cases, it considered a financial lease or financing lease a legal contract,[24] though subject to the restrictions of the so-called *Recto Law* or Articles 1484 and 1485 of the Civil Code.[25] In previous cases, the Court adopted the statutory definition of a financial lease or financing lease, as:

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[20] *First Malayan Leasing and Finance Corp. v. Court of Appeals*, *supra* note 17, at 664.

[21] *Erezo v. Jepte, supra* note 12, at 108.

[22] *Erezo v. Jepte, supra* note 12, at 107; *Equitable Leasing Corp. v. Suyom, supra* note 14, at 256; *BA Finance Corp. v. Court of Appeals*, G.R. No. 98275, November 13, 1992, 215 SCRA 715, 720.

[23] *PCI Leasing and Finance Inc. v. Giraffe-X Creative Imaging Inc.*, G.R. No. 142618, July 12, 2007, 527 SCRA 405, 420-421.

[24] *Cebu Contractors Consortium Co. v. Court of Appeals,* 454 Phil. 650, 656 (2003).

[25] *Elisco Tools Manufacturing Corp. v. Court of Appeals,* 367 Phil. 242, 255 (1999); *PCI Leasing and Finance Inc. v. Giraffe-X Creative Imaging Inc.*, *supra* note 23, at 424-426.

[A] mode of extending credit through a non-cancelable lease contract under which the lessor purchases or acquires, at the instance of the lessee, machinery, equipment, motor vehicles, appliances, business and office machines, and other movable or immovable property in consideration of the periodic payment by the lessee of a fixed amount of money sufficient to amortize at least seventy (70%) of the purchase price or acquisition cost, including any incidental expenses and a margin of profit over an obligatory period of not less than two (2) years during which the lessee has the right to hold and use the leased property, x x x but with no obligation or option on his part to purchase the leased property from the owner-lessor at the end of the lease contract.[26]

Petitioner presented a lengthy discussion of the purported trend in other jurisdictions, which apparently tends to favor absolving financing companies from liability for the consequences of *quasi-delictual* acts or omissions involving financially leased property.[27] The petition adds that these developments have been legislated in our jurisdiction in Republic Act (R.A.) No. 8556,[28] which provides:

Section 12. *Liability of lessors*. — Financing companies shall not be liable for loss, damage or injury caused by a motor vehicle, aircraft, vessel, equipment, machinery or other property leased to a third person or entity except when the motor vehicle, aircraft, vessel, equipment or other property is operated by the financing company, its employees or agents at the time of the loss, damage or injury.

Petitioner's argument that the enactment of R.A. No. 8556, especially its addition of the new Sec. 12 to the old law, is deemed to have absolved petitioner from liability, fails to convince the Court.

These developments, indeed, point to a seeming emancipation of financing companies from the obligation to compensate

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[26] Republic Act No. 5980 (1969), as amended by Republic Act No. 8556 (1998), Sec. 3 (d), quoted in *Cebu Contractors Consortium Co. v. Court of Appeals, supra* note 24, at 657; *PCI Leasing and Finance, Inc. v. Giraffe-X Creative Imaging Inc., supra* note 23, at 416.

[27] *Rollo,* pp. 29-30.

[28] Amending R.A. No. 5980, or the old Financing Company Act.

claimants for losses suffered from the operation of vehicles covered by their lease. Such, however, are not applicable to petitioner and do not exonerate it from liability in the present case.

The new law, R.A. No. 8556, notwithstanding developments in foreign jurisdictions, do not supersede or repeal the law on compulsory motor vehicle registration. No part of the law expressly repeals Section 5(a) and (e) of R.A. No. 4136, as amended, otherwise known as the Land Transportation and Traffic Code, to wit:

> Sec. 5. ***Compulsory registration of motor vehicles***. - (a) All motor vehicles and trailer of any type used or operated on or upon any highway of the Philippines must be registered with the Bureau of Land Transportation (now the Land Transportation Office, per Executive Order No. 125, January 30, 1987, and Executive Order No. 125-A, April 13, 1987) for the current year in accordance with the provisions of this Act.
>
> x x x x x x x x x
>
> (e) Encumbrances of motor vehicles. - Mortgages, attachments, and other encumbrances of motor vehicles, **in order to be valid against third parties** must be recorded in the Bureau (now the Land Transportation Office). Voluntary transactions or voluntary encumbrances shall likewise be properly recorded on the face of all outstanding copies of the certificates of registration of the vehicle concerned.
>
> Cancellation or foreclosure of such mortgages, attachments, and other encumbrances shall likewise be recorded, and in the absence of such cancellation, no certificate of registration shall be issued without the corresponding notation of mortgage, attachment and/or other encumbrances.
>
> x x x x (Emphasis supplied)

Neither is there an implied repeal of R.A. No. 4136. As a rule, repeal by implication is frowned upon, unless there is clear showing that the later statute is so irreconcilably inconsistent and repugnant to the existing law that they cannot be reconciled and made to stand together.[29] There is nothing in R.A. No. 4136 that is inconsistent and incapable of reconciliation.

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[29] *Agujetas v. Court of Appeals,* 329 Phil. 721, 745 (1996).

Thus, the rule remains the same: a sale, lease, or financial lease, for that matter, that is not registered with the Land Transportation Office, still does not bind third persons who are aggrieved in tortious incidents, for the latter need only to rely on the public registration of a motor vehicle as conclusive evidence of ownership.[30] A lease such as the one involved in the instant case is an encumbrance in contemplation of law, which needs to be registered in order for it to bind third parties.[31] Under this policy, the evil sought to be avoided is the exacerbation of the suffering of victims of tragic vehicular accidents in not being able to identify a guilty party. A contrary ruling will not serve the ends of justice. The failure to register a lease, sale, transfer or encumbrance, should not benefit the parties responsible, to the prejudice of innocent victims.

The non-registration of the lease contract between petitioner and its lessee precludes the former from enjoying the benefits under Section 12 of R.A. No. 8556.

This ruling may appear too severe and unpalatable to leasing and financing companies, but the Court believes that petitioner and other companies so situated are not entirely left without recourse. They may resort to third-party complaints against their lessees or whoever are the actual operators of their vehicles. In the case at bar, there is, in fact, a provision in the lease contract between petitioner and SUGECO to the effect that the latter shall indemnify and hold the former free and harmless from any "liabilities, damages, suits, claims or judgments" arising from the latter's use of the motor vehicle.[32] Whether petitioner would act against SUGECO based on this provision is its own option.

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[30] *First Malayan Leasing and Finance Corp. v. Court of Appeals*, *supra* note 17, at 664.

[31] *Roxas v. Court of Appeals,* G.R. No. 92245, June 26, 1991, 198 SCRA 541, 546; also *Black's Law Dictionary* (abridged 5th edition) defines an encumbrance as "any right to, or interest in, land which may subsist in another to diminution of its value, but consistent with the passing of the fee. A claim, lien, charge, or liability attached to and binding real property; *e.g.* a mortgage; judgment lien; mechanics' lien; **lease;** security interest; easement of right of way; accrued and unpaid taxes". (Emphasis supplied.)

[32] Exhibit "1-A", records, p. 359.

The burden of registration of the lease contract is minuscule compared to the chaos that may result if registered owners or operators of vehicles are freed from such responsibility. Petitioner pays the price for its failure to obey the law on compulsory registration of motor vehicles for registration is a pre-requisite for any person to even enjoy the privilege of putting a vehicle on public roads.

WHEREFORE, the petition is *DENIED*. The Decision dated December 12, 2003 and Resolution dated February 18, 2004 of the Court of Appeals are *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 163196. July 4, 2008]

FIRST MARBELLA CONDOMINIUM ASSOCIATION, INC., *petitioner, vs.* **AUGUSTO GATMAYTAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; WHEN PROPER.— Only a judgment, final order or resolution rendered by a court in the exercise of its judicial functions relative to an actual controversy is subject to an appeal to this Court by way of a Petition for Review on *Certiorari* under Rule 45 of the Rules

of Court. The January 7, 2004 Order and March 21, 2004 Order assailed herein were issued by the RTC Executive Judge in the exercise of his administrative function to supervise the ministerial duty of the Clerk of Court as *Ex-Officio* Sheriff in the conduct of an extrajudicial foreclosure sale; hence, said orders are not appealable under Rule 45. Rather, the correct mode of appeal is by petition for *mandamus* under Section 3, Rule 65 of the Rules of Court x x x .

2. ID.; PROCEDURE IN EXTRAJUDICIAL OR JUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE; EXTRAJUDICIAL FORECLOSURE; IT IS MANDATORY THAT A PETITION FOR EXTRAJUDICIAL FORECLOSURE BE SUPPORTED BY EVIDENCE THAT PETITIONER HOLDS A SPECIAL POWER OR AUTHORITY TO FORECLOSE.— Under Circular No. 7-2002, implementing Supreme Court Administrative Matter No. 99-10-05-0, it is mandatory that a petition for extrajudicial foreclosure be supported by evidence that petitioner holds a special power or authority to foreclose, thus: "Sec. 1. All applications for extra-judicial foreclosure of mortgage, whether under the direction of the Sheriff or a notary public pursuant to Art. No. 3135, as amended, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court, who is also the *Ex-Officio* Sheriff (A.M. No. 99-10-05-0, as amended, March 1, 2001). Sec. 2. Upon receipt of the application, the Clerk of Court shall: a. ***Examine the same to ensure that the special power of attorney authorizing the extra-judicial foreclosure of the real property is either inserted into or attached to the deed of real estate mortgage*** (Act No. 3135, Sec. 1, as amended) x x x." Without proof of petitioner's special authority to foreclose, the Clerk of Court as *Ex-Officio* Sheriff is precluded from acting on the application for extrajudicial foreclosure.

3. ID.; ID.; ID.; ID.; SPECIAL AUTHORITY TO FORECLOSE, NOT PRESENT IN CASE AT BAR.— In the present case, the only basis of petitioner for causing the extrajudicial foreclosure of the condominium unit of respondent is a notice of assessment annotated on CCT No. 1972 in accordance with Section 20 of R.A. No. 4726. However, neither annotation nor law vests it with sufficient authority to foreclose on the property. The notice of assessment contains no provision for the

> extrajudicial foreclosure of the condominium unit. All that it states is that the assessment of petitioner against respondent for unpaid association dues constitutes a "first lien against [the] condominium unit." Neither does Section 20 of R.A. No. 4726 grant petitioner special authority to foreclose. x x x Section 20 merely prescribes the procedure by which petitioner's claim may be treated as a superior lien – *i.e.*, through the annotation thereof on the title of the condominium unit. While the law also grants petitioner the option to enforce said lien through either the judicial or extrajudicial foreclosure sale of the condominium unit, Section 20 does not by itself, *ipso facto*, authorize judicial as extra-judicial foreclosure of the condominium unit. Petitioner may avail itself of either option only in the manner provided for by the governing law and rules. As already pointed out, A.M. No. 99-10-05-0, as implemented under Circular No. 7-2002, requires that petitioner furnish evidence of its special authority to cause the extrajudicial foreclosure of the condominium unit.

APPEARANCES OF COUNSEL

Jose A. Suing for petitioner.
Augusto Gatmaytan in his own behalf.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

From the January 7, 2004 Order[1] of the Regional Trial Court (RTC), Pasay City, denying the request of First Marbella Condominium Association, Inc. (petitioner) for extrajudicial foreclosure against Augusto Gatmaytan (respondent); and the March 31, 2004 RTC Order,[2] denying petitioner's Motion for Reconsideration, the latter filed directly with this Court a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court on this sole ground:

The Executive Judge of the Regional Trial Court of Pasay City gravely erred in dismissing the petition in view of the fact that:

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[1] *Rollo*, p. 22.

[2] *Id.* at 23.

(A) Section. 20 of Rep. Act No. 4726, as amended, otherwise known as the "Condominium Act", expressly grant the petitioner, being the acknowledged association of unit owners at Marbella I Condominium, the right to enforce its liens of unpaid dues and other assessments in the same manner provided for by law for judicial or extra-judicial foreclosure of mortgage of real property; and

(B) Such practice of auctioning the delinguent condominium unit through a petition for extra-judicial foreclosure of mortgage, as aforestated is permitted in other jurisdictions, such as in the City of Manila.[3]

The factual antecedents are as follows.

Respondent is the registered owner of Fontavilla No. 501 (condominium unit), Marbella I Condominium, Roxas Boulevard, Pasay City, under Condominium Certificate of Title No. 1972 (CCT No. 1972).[4] Inscribed on his title is a Declaration of Restrictions, to wit:

Entry No. 65370/T-20065 – DECLARATONS OF RESTRICTIONS - executed by the herein registered owner, is hereon annotated restrictions shall be deemed to run with the land, the bldg. & other improvements making up the project, shall constitute lien upon the project, and each unit and shall inure to the benefit of, and be binding upon all units owners, purchasers, interchangeably or sometimes referred to in this Master of Deed with Dec. of Restrictions as occupant, [sic] or holding any w/o [sic] or any right or interest therein or in the project, pursuant to the prov. of the condominium act or other pertinent laws. See restrictions and conditions imposed on Doc. No. 114, Page 24, Bk. I, s. of 1974 of the Not. Pub. for Rizal, M. Perez, Cardenas ***among w/c are those dealing on scope & coverage; Management Body; repair, alteration et [sic] assessment real property of restrictions & bldg. rules & waivers rights and assignee, tenants occupants of unit validity***,[sic] amendment of declaration dated March 19, 1974. Date of inscription May 9, 1979 – 3:02 p.m.[5] (Emphasis supplied.)

Also inscribed is a Notice of Assessment, which states:

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[3] *Rollo*, p. 13.

[4] *Id.* at 34.

[5] *Id*. (dorsal side).

Entry No. 96-2466/CCT No. 1972 -NOTICE OF ASSESSMENT – Executed by MILAGROS D. CUBACUB in her capacity as Vice-President/ Administrator of FIRST MARBELLA CONDOMINIUM ASSOCIATION, INC. (FMCAI) [herein petitioner], stating among other things that the condominium unit, described herein has an outstanding dues with the FMCAI in the sum of ₱775,786.17, inclusive of interests, penalties and attorney's fees, which aforementioned liabilities constitute as first lien against this condominium unit pursuant to the Master Deed of Restrictions. (Doc. No. 34; Page No. 7; Book No. III; Series of 1996 before Notary Public Jose A. Suing, Notary Public for Quezon City).

Date of Instrument – March 27, 1996.
Date of Inscription – May 3, 1996 – 2:10 p.m.[6]

On November 11, 2003, petitioner filed with the RTC, through the Office of the Clerk of Court & *Ex-Officio* Sheriff, a Petition[7] for extrajudicial foreclosure of the condominium unit of respondent, alleging that it (petitioner) is a duly organized association of the tenants and homeowners of Marbella I Condominium; that respondent is a member thereof but has unpaid association dues amounting to ₱3,229,104.89, as of June 30, 2003; and that the latter refused to pay his dues despite demand. The petition is docketed as File Case No. 03-033. Attached to it are the June 30, 2003 Statement of Account[8] and July 22, 2000 demand letter[9] issued to respondent.

In a letter dated November 21, 2003, the Clerk of Court, as *Ex-Officio* Sheriff, recommended to the RTC Executive Judge that the petition be dismissed for the following reasons:

Under the facts given, no mortgage exists between the petitioner and respondent. Evidently, it is not one of those contemplated under Act 3135 as amended by Act 4118. The allegation simply does not show a mortgagor-mortgagee relationship since respondent liability arises from his failure to pay dues, assessments and charges due to the petitioner.

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[6] *Rollo*, pp. 35, 38.

[7] *Id.* at 24.

[8] *Id.* at 29.

[9] *Id.* at 36.

As clearly stated, the authority of the Executive Judge under Administrative Matter No. 99-10-05-0, as amended dated March 1, 2001, covers extra-judicial foreclosure of real estate mortgages under R.A. No. 3135 and chattel mortgages under P.D. No. 1508. There is nothing in the above mentioned Circular which authorizes the Executive Judge and/or the *Ex-Officio* Sheriff to extra judicially foreclose properties covered by obligations other than the said mortgages. Hence, the subject petition is not proper for extra-judicial foreclosure under the supervision of the Executive Judge. Dismissal of the subject petition is recommended.[10]

Agreeing with the Clerk of Court, the RTC Executive Judge issued on January 7, 2004 the following Order:

Upon perusal of the pertinent laws and Supreme Court Resolutions, this Court concurs with the position taken by the *Ex-Officio* Sheriff that herein petition is not within the coverage of Administrative Matter No. 99-10-05-0 as amended, dated March 1, 2001 re: Procedure in Extra Judicial Foreclosure of Mortgage, paragraph 1 thereof is hereby quoted as follows:

> "1. All applications for extra-judicial foreclosure of mortgage whether under the direction of the sheriff or a notary public, pursuant to Act 3135, as amended by Act 4118, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court who is also the *Ex-Officio* Sheriff."

Hence, it is not within the authority of the Executive Judge to supervise and approve extra judicial foreclosures of mortgages.

WHEREFORE, the request for extra-judicial foreclosure of the subject condominium unit is DENIED. Consequently, the petition is DISMISSED.

SO ORDERED.[11] (Emphasis added.)

Petitioner filed a Motion for Reconsideration,[12] but the RTC Executive Judge denied it in an Order[13] dated March 31, 2004.

Hence, the present petition.

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[10] Records, p. 26.

[11] Records, p. 27.

[12] *Id.* at 37.

[13] *Id.* at 74.

Petitioner asserts that it is expressly provided under Section 20 of Republic Act (R.A.) No. 4726 that it has the right to cause the extrajudicial foreclosure of its annotated lien on the condominium unit. Its petition then is cognizable by the RTC under Administrative Matter No. 99-10-05.[14]

In his Comment,[15] Supplemental Comment[16] and Memorandum,[17] respondent objects to petitioner's direct appeal to this Court from an Order issued by the RTC on a mere administrative matter.[18] Respondent also impugns petitioner's right to file the petition for extra-judicial foreclosure, pointing out that the latter does not hold a real estate mortgage on the condominium unit or a special power of attorney to cause the extra-judicial foreclosure sale of said unit.[19] Respondent claims that there is even a pending litigation regarding the validity of petitioner's constitution as a homeowners association and its authority to assess association dues, annotate unpaid assessments on condominium titles and enforce the same through extrajudicial foreclosure sale.[20] In sum, respondent contends that petitioner has no factual or legal basis to file the petition for extrajudicial foreclosure.

The petition lacks merit.

Only a judgment, final order or resolution rendered by a court in the exercise of its judicial functions relative to an actual controversy is subject to an appeal to this Court by way of a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.[21] The January 7, 2004 Order and March 21, 2004 Order assailed herein were issued by the RTC Executive Judge in the exercise of his administrative function to supervise the

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[14] Petition, *rollo*, pp. 13-16; Memorandum, pp. 99-101.

[15] *Id*. at 46.

[16] *Id*. at 48.

[17] *Id*. at 103.

[18] *Id*. at 105.

[19] *Id*.

[20] *Id*. at 104.

[21] *Yee v. Bernabe*, G.R. No. 141393, April 19, 2006, 487 SCRA 385, 391.

ministerial duty of the Clerk of Court as *Ex-Officio* Sheriff in the conduct of an extrajudicial foreclosure sale; hence, said orders are not appealable under Rule 45. Rather, the correct mode of appeal is by petition for *mandamus*[22] under Section 3, Rule 65 of the Rules of Court, to wit:

> Sec. 3. *Petition for mandamus* — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

Although under Section 5,[23] Rule 56, an erroneous appeal may be dismissed outright, this Court shall not exercise such option; but instead, shall treat the present petition as a petition for *mandamus* to obviate further litigation between the parties.[24]

Yet, in order to avail itself of a writ of *mandamus*, petitioner must establish that it has a clear right to the extrajudicial foreclosure sale of the condominium unit of respondent. [25] Under Circular No. 7-2002,[26] implementing Supreme Court Administrative Matter

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[22] *Quelnan v. VHF Philippines, Inc.*, G.R. No. 145911, July 7, 2004, 433 SCRA 631, 635.

[23] Sec. 5. *Grounds for dismissal of appeal.* – The appeal may be dismissed *motu proprio* or on motion of the respondent on the following grounds: x x x (f) Error in the choice or mode of appeal x x x.

[24] *Chua v. Santos*, G.R. No. 132467, October 18, 2004, 440 SCRA 365, 372.

[25] *Philippine Coconut Authority v. Primex Coco Products, Inc.*, G.R. No. 163088, July 20, 2006, 495 SCRA 763, 777.

[26] Guidelines for the Enforcement of the Supreme Court Resolution of December 14, 1999 in Administrative Matter No. 99-10-05-0, as Amended by the Resolutions dated January 30, 2001 and August 7, 2001; effective April 22, 2002.

No. 99-10-05-0,[27] it is mandatory that a petition for extrajudicial foreclosure be supported by evidence that petitioner holds a special power or authority to foreclose, thus:

> Sec. 1. All applications for extra-judicial foreclosure of mortgage, whether under the direction of the Sheriff or a notary public pursuant to Art. No. 3135, as amended, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court, who is also the *Ex-Officio* Sheriff (A.M. No. 99-10-05-0, as amended, March 1, 2001).
>
> Sec. 2. Upon receipt of the application, the Clerk of Court shall:
>
> a. ***Examine the same to ensure that the special power of attorney authorizing the extra-judicial foreclosure of the real property is either inserted into or attached to the deed of real estate mortgage*** (Act No. 3135, Sec. 1, as amended) x x x.

Without proof of petitioner's special authority to foreclose, the Clerk of Court as *Ex-Officio* Sheriff is precluded from acting on the application for extrajudicial foreclosure.[28]

In the present case, the only basis of petitioner for causing the extrajudicial foreclosure of the condominium unit of respondent is a notice of assessment annotated on CCT No. 1972 in accordance with Section 20 of R.A. No. 4726. However, neither annotation nor law vests it with sufficient authority to foreclose on the property.

The notice of assessment contains no provision for the extrajudicial foreclosure of the condominium unit. All that it states is that the assessment of petitioner against respondent for unpaid association dues constitutes a "first lien against [the] condominium unit."[29]

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[27] Re: Procedure in Extrajudicial or Judicial Foreclosure of Real Estate Mortgage; effective January 15, 2000.

[28] *Office of the Court Administrator v. Pardo*, RTJ-08-2109, April 30, 2008; *Casano v. Magat*, 425 Phil. 356, 360-361 (2002); *Paguyo v. Gatbunton*, A.M. No. P-06-2135, May 25, 2007, 523 SCRA 156, 161.

[29] *Supra* at 7.

Neither does Section 20 of R.A. No. 4726[30] grant petitioner special authority to foreclose. All that the law provides is the following:

> Sec. 20. The assessment upon any condominium made in accordance with a duly registered declaration of restrictions shall be an obligation of the owner thereof at the time the assessment is made. The amount of any such assessment plus any other charges thereon, such as interest, costs (including attorney's fees) and penalties, as such may be provided for in the declaration of restrictions, ***shall be and become a lien upon the condominium to be registered with the Register of Deeds of the city or province where such condominium project is located***. The notice shall state the amount of such assessment and such other charges thereon as may be authorized by the declaration of restrictions, a description of condominium unit against which same has been assessed, and the name of the registered owner thereof. Such notice shall be signed by an authorized representative of the management body or as otherwise provided in the declaration of restrictions. Upon payment of said assessment and charges or other satisfaction thereof, the management body shall cause to be registered a release of the lien.
>
> Such lien shall be superior to all other liens registered subsequent to the registration of said notice of assessment except real property tax liens and except that the declaration of restrictions may provide for the subordination thereof to any other liens and encumbrances, ***such liens may be enforced in the same manner provided for by law for the judicial or extra-judicial foreclosure of mortgage or real property.*** Unless otherwise provided for in the declaration of the restrictions, the management body shall have power to bid at foreclosure sale. The condominium owner shall have the right of redemption as in cases of judicial or extra-judicial foreclosure of mortgages. (Emphasis supplied.)

Clearly, Section 20 merely prescribes the procedure by which petitioner's claim may be treated as a superior lien – *i.e.*, through the annotation thereof on the title of the condominium unit.[31]

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[30] An Act to Define Condominium, Establish Requirements for Its Creation and Government of Its Incidents; approved June 18, 1966.

[31] *Cardinal Building Owners Association, Inc. v. Asset Recovery and Management Corporation*, G.R. No. 149696, July 14, 2006, 495 SCRA 103, 109-110.

While the law also grants petitioner the option to enforce said lien through either the judicial or extrajudicial foreclosure sale of the condominium unit, Section 20 does not by itself, *ipso facto*, authorize judicial as extra-judicial foreclosure of the condominium unit. Petitioner may avail itself of either option only in the manner provided for by the governing law and rules. As already pointed out, A.M. No. No. 99-10-05-0, as implemented under Circular No. 7-2002, requires that petitioner furnish evidence of its special authority to cause the extrajudicial foreclosure of the condominium unit.

There being no evidence of such special authority, petitioner failed to establish a clear right to a writ of *mandamus* to compel the RTC to act on its petition for extrajudicial foreclosure.

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

Costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 163345. July 4, 2008]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PERF REALTY CORPORATION,** *respondent.*

SYLLABUS

1. TAXATION; TAX ON INCOME; CLAIM FOR REFUND; REQUISITES. — The CTA, citing *Section 10 of Revenue Regulations 6-85 and Citibank, N.A. v. Court of Appeals,*

determined the requisites for a claim for refund, thus: 1) That the claim for refund was filed within the two (2) year period as prescribed under Section 230 of the National Internal Revenue Code; 2) That the income upon which the taxes were withheld were included in the return of the recipient; 3) That the fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

2. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF TAX APPEALS, NOT DISTURBED ON APPEAL; EXCEPTION.— It is settled that findings of fact of the CTA are entitled to great weight and will not be disturbed on appeal unless it is shown that the lower courts committed gross error in the appreciation of facts.

3. TAXATION; TAX ON INCOME; SECTION 76 OF THE NATIONAL INTERNAL REVENUE CODE, EXPLAINED.— Section 76 [of the NIRC] offers two options: (1) filing for tax refund and (2) availing of tax credit. The two options are alternative and the choice of one precludes the other. However, in *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, the Court ruled that failure to indicate a choice, however, will not bar a valid request for a refund, should this option be chosen by the taxpayer later on. The requirement is only for the purpose of easing tax administration particularly the self-assessment and collection aspects.

APPEARANCES OF COUNSEL

Special Counsel (BIR) for petitioner.

Martin L. Buenaventura and *Celestino R. Miranda* for respondent.

D E C I S I O N

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

FOR Our review on *certiorari* is the Decision[1] of the Court of Appeals (CA) granting the claim for refund of respondent PERF Realty Corporation (PERF) for creditable withholding tax for the year 1997.

Facts

Petitioner Commissioner is the head of the Bureau of Internal Revenue (BIR) whose principal duty is to assess and collect internal revenue taxes. Respondent PERF is a domestic corporation engaged in the business of leasing properties to various clients including the Philippine American Life and General Insurance Company (Philamlife) and Read-Rite Philippines (Read-Rite).

On April 14, 1998, PERF filed its Annual Income Tax Return (ITR) for the year 1997 showing a net taxable income in the amount of ₱6,430,345.00 and income tax due of ₱2,250,621.00.

For the year 1997, its tenants, Philamlife and Read-Rite, withheld and subsequently remitted creditable withholding taxes in the total amount of ₱3,531,125.00.

After deducting creditable withholding taxes in the total amount of ₱3,531,125.00 from its total income tax due of ₱2,250,621.00, PERF showed in its 1997 ITR an overpayment of income taxes in the amount of ₱1,280,504.00.

On November 3, 1999, PERF filed an administrative claim with the appellate division of the BIR for refund of overpaid income taxes in the amount of ₱1,280,504.00.

On December 3, 1999, due to the inaction of the BIR, PERF filed a petition for review with the Court of Tax Appeals (CTA) seeking for the refund of the overpaid income taxes in the amount of ₱1,280,504.00.

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[1] *Rollo,* pp. 42-49. Dated July 18, 2003. Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices B. A. Adefuin Dela Cruz and Jose L. Sabio, Jr., concurring.

CTA Disposition

In a Decision dated November 20, 2001, the CTA denied the petition of PERF on the ground of insufficiency of evidence. The CTA noted that PERF did not indicate in its 1997 ITR the option to either claim the excess income tax as a refund or tax credit pursuant to Section 69[2] (now 76) of the National Internal Revenue Code (NIRC).

Further, the CTA likewise found that PERF failed to present in evidence its 1998 annual ITR. It held that the failure of PERF to signify its option on whether to claim for refund or opt for an automatic tax credit and to present its 1998 ITR left the Court with no way to determine with certainty whether or not PERF has applied or credited the refundable amount sought for in its administrative and judicial claims for refund.

PERF moved for reconsideration attaching to its motion its 1998 ITR. The motion was, however, denied by the CTA in its Resolution dated March 26, 2002.

Aggrieved by the decision of the CTA, PERF filed a petition for review with the CA under Rule 43 of the Rules of Court.

CA Disposition

In a Decision dated July 18, 2003, the CA ruled in favor of PERF, disposing as follows:

WHEREFORE, the petition is hereby GRANTED. The assailed Decision dated November 20, 2001, and Resolution of March 26, 2002

[2] Section 69. *Final Adjustment Return*. – Every corporation liable to pay tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar year or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:

(a) Pay the tax still due; or

(b) Be refunded the excess amount paid, as the case may be.

In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

of the Court of Tax Appeals are SET ASIDE. The Commissioner of Internal Revenue is ordered to REFUND to the petitioner the amount of ₱1,280,504.00 as creditable withholding tax for the year 1997.

SO ORDERED.[3]

According to the appellate court, even if the taxpayer has indicated its option for refund or tax credit in its ITR, it does not mean that it will automatically be entitled to either option since the Commissioner of Internal Revenue (CIR) must be given the opportunity to investigate and confirm the veracity of the claim. Thus, there is still a need to file a claim for refund.

As to the failure of PERF to present its 1998 ITR, the CA observed that there is no need to rule on its admissibility since the CTA already held that PERF had complied with the requisites for applying for a tax refund. The sole purpose of requiring the presentation of PERF's 1998 ITR is to verify whether or not PERF had carried over the 1997 excess income tax claimed for refund to the year 1998. The verification process is not incumbent upon PERF; rather, it is the duty of the BIR to disprove the taxpayer's claim.

The CIR filed a motion for reconsideration which was subsequently denied by the CA. Thus, this appeal to Us under Rule 45.

Issues

Petitioner submits the following assignment:

I

THE COURT OF APPEALS ERRED IN GRANTING RESPONDENT'S TAX REFUND CONSIDERING THE LATTER'S FAILURE TO SUBSTANTIALLY ESTABLISH ITS CLAIM FOR REFUND.

II

THE COURT OF APPEALS ERRED IN CONSIDERING RESPONDENT'S ANNUAL CORPORATE INCOME TAX RETURN

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[3] *Rollo,* p. 48.

FOR 1998 NOTWITHSTANDING THAT IT WAS NOT FORMALLY OFFERED IN EVIDENCE.[4] (Underscoring supplied)

Our Ruling

We rule in favor of respondent.

I. Respondent substantially complied with the requisites for claim of refund.

The CTA, citing *Section 10 of Revenue Regulations 6-85 and Citibank, N.A. v. Court of Appeals*,[5] determined the requisites for a claim for refund, thus:

1) That the claim for refund was filed within the two (2) year period as prescribed under Section 230 of the National Internal Revenue Code;

2) That the income upon which the taxes were withheld were included in the return of the recipient;

3) That the fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.[6]

We find that PERF filed its administrative and judicial claims for refund on November 3, 1999 and December 3, 1999, respectively, which are within the two-year prescriptive period under Section 230 (now 229) of the National Internal Tax Code.

The CTA noted that based on the records, PERF presented certificates of creditable withholding tax at source reflecting creditable withholding taxes in the amount of ₱4,153,604.18 withheld from PERF's rental income of ₱83,072,076.81 (Exhibits B, C, D, E, and H). In addition, it submitted in evidence the Monthly Remittance Returns of its withholding agents to prove the fact of remittance of said taxes to the BIR. Although the

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

[5] G.R. No. 107434, October 10, 1997, 280 SCRA 459.

[6] *Rollo,* p. 52.

certificates of creditable withholding tax at source for 1997 reflected a total amount of ₱4,153,604.18 corresponding to the rental income of ₱83,072,076.81, PERF is claiming only the amount of ₱3,531,125.00 pertaining to a rental income of ₱70,813,079.00. The amount of ₱3,531,125.00 less the income tax due of PERF of ₱2,250,621.00 leaves the refundable amount of ₱1,280,504.00.

It is settled that findings of fact of the CTA are entitled to great weight and will not be disturbed on appeal unless it is shown that the lower courts committed gross error in the appreciation of facts. We see no cogent reason not to apply the same principle here.

II. The failure of respondent to indicate its option in its annual ITR to avail itself of either the tax refund or tax credit is not fatal to its claim for refund.

Respondent PERF did not indicate in its 1997 ITR the option whether to request a refund or claim the excess withholding tax as tax credit for the succeeding taxable year.

Citing Section 76 of the NIRC, the CIR opines that such failure is fatal to PERF's claim for refund.

We do not agree.

In *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*,[7] the Court had occasion to trace the history of the Final Adjustment Return found in Section 69 (now 76) of the NIRC. Thus:

> The provision on the final adjustment return (FAR) was originally found in Section 69 of Presidential Decree (PD) No. 1158, otherwise known as the "National Internal Revenue Code of 1977." On August 1, 1980, this provision was restated as Section 86 in PD 1705.
>
> On November 5, 1985, all prior amendments and those introduced by PD 1994 were codified into the National Internal Revenue Code

[7] G.R. Nos. 156637 & 162004, December 14, 2005, 477 SCRA 761.

(NIRC) of 1985, as a result of which Section 86 was renumbered as Section 79.

On July 31, 1986, Section 24 of Executive Order (EO) No. 37 changed all "net income" phrases appearing in Title II of the NIRC of 1977 to "taxable income." Section 79 of the NIRC of 1985, however, was not amended.

On July 25, 1987, EO 273 renumbered Section 86 of the NIRC as Section 76, which was also rearranged to fall under Chapter of Title II of the NIRC. Section 79, which had earlier been renumbered by PD 1994, remained unchanged.

Thus, Section 69 of the NIRC of 1977 was renumbered as Section 86 under PD 1705; later, as Section 79 under PD 1994; then, as Section 76 under EO 273. Finally, after being renumbered and reduced to the chaff of a grain, Section 69 was repealed by EO 37.

Subsequently, Section 69 reappeared in the NIRC (or Tax Code) of 1997 as Section 76, which reads:

> "Section 76. *Final Adjustment Return*. – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:
>
> "(a) Pay the excess tax still due; or
>
> "(b) Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year."[8]

Section 76 offers two options: (1) filing for tax refund and (2) availing of tax credit. The two options are alternative and the choice of one precludes the other. However, in *Philam*

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[8] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue, id*. at 769-771.

Asset Management, Inc. v. Commissioner of Internal Revenue,[9] the Court ruled that failure to indicate a choice, however, will not bar a valid request for a refund, should this option be chosen by the taxpayer later on. The requirement is only for the purpose of easing tax administration particularly the self-assessment and collection aspects. Thus:

> These two options under Section 76 are alternative in nature. The choice of one precludes the other. Indeed, in *Philippine Bank of Communications v. Commissioner of Internal Revenue*, the Court ruled that a corporation must signify its intention – whether to request a tax refund or claim a tax credit – by marking the corresponding option box provided in the FAR. While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection.
>
> One cannot get a *tax refund* and a *tax credit* at the same time for the same excess income taxes paid. Failure to signify one's intention in the FAR does not mean outright barring of a valid request for a refund, should one still choose this option later on. A tax credit should be construed merely as an alternative remedy to a tax refund under Section 76, subject to prior verification and approval by respondent.
>
> The reason for requiring that a choice be made in the FAR upon its filing is to ease tax administration, particularly the self-assessment and collection aspects. A taxpayer that makes a choice expresses certainty or preference and thus demonstrates clear diligence. Conversely, a taxpayer that makes no choice expresses uncertainty or lack of preference and hence shows simple negligence or plain oversight.
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> x x x x x x x x x
>
> *Third*, there is no automatic grant of a *tax refund*. As a matter of procedure, the BIR should be given the opportunity "to investigate and confirm the veracity" of a taxpayer's claim, before it grants the refund. Exercising the option for a tax refund or a tax credit does not *ipso facto* confer upon a taxpayer the right to an immediate availment of the choice made. Neither does it impose a duty on the government to allow tax collection to be at the sole control of a taxpayer.
>
> *Fourth*, the BIR ought to have on file its own copies of petitioner's FAR for the succeeding year, on the basis of which it could rebut the assertion that there was a subsequent credit of the excess income tax

[9] *Id*. at 772.

payments for the previous year. Its failure to present this vital document to support its contention against the grant of a *tax refund* to petitioner is certainly fatal.

Fifth, the CTA should have taken judicial notice of the fact of filing and the pendency of petitioner's subsequent claim for a refund of excess creditable taxes withheld for 1998. The existence of the claim ought to be known by reason of its judicial functions. Furthermore, it is decisive to and will easily resolve the material issue in this case. If only judicial notice were taken earlier, the fact that there was no carry-over of the excess creditable taxes withheld for 1997 would have already been crystal clear.

Sixth, the Tax Code allows the refund of taxes to a taxpayer that claims it in writing within two years after payment of the taxes erroneously received by the BIR. Despite the failure of petitioner to make the appropriate marking in the BIR form, the filing of its written claim effectively serves as an expression of its choice to request a *tax refund*, instead of a tax credit. To assert that any future claim for a tax refund will be instantly hindered by a failure to signify one's intention in the FAR is to render nugatory the clear provision that allows for a two-year prescriptive period.

In fact, in *BPI-Family Savings Bank v. CA*, this Court even ordered the refund of a taxpayer's excess creditable taxes, despite the express declaration in the FAR to apply the excess to the succeeding year. When circumstances show that a choice of tax credit has been made, it should be respected. But when indubitable circumstances clearly show that another choice – a tax refund – is in order, it should be granted. "Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens."

In the present case, although petitioner did not mark the refund box in its 1997 FAR, neither did it perform any act indicating that it chose a tax credit. On the contrary, it filed on September 11, 1998, an administrative claim for the refund of its excess taxes withheld in 1997. In none of its quarterly returns for 1998 did it apply the excess creditable taxes. Under these circumstances, petitioner is entitled to a *tax refund* of its 1997 excess tax credits in the amount of ₱522,092.[10]

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[10] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue, id.* at 772-777.

In this case, PERF did not mark the refund box in its 1997 FAR. Neither did it perform any act indicating that it chose tax credit. In fact, in its 1998 ITR, PERF left blank the portion "Less: Tax Credit/ Payments." That action coupled with the filing of a claim for refund indicates that PERF opted to claim a refund. Under these circumstances, PERF is entitled to a refund of its 1997 excess tax credits in the amount of ₱1,280,504.00.

III. The failure of respondent to present in evidence the 1998 ITR is not fatal to its claim for refund.

The CIR takes the view that the CA erred in considering the 1998 ITR of PERF. It was not formally offered in evidence. Section 34, Rule 132 of the Revised Rules of Court states that the court shall consider no evidence which has not been formally offered.

The reasoning is specious.

PERF attached its 1998 ITR to its motion for reconsideration. The 1998 ITR is a part of the records of the case and clearly showed that income taxes in the amount of ₱1,280,504.00 were not claimed as tax credit in 1998.

In *Filinvest Development Corporation v. Commissioner of Internal Revenue*,[11] the Court held that the 1997 ITR attached to the motion for reconsideration is part of the records of that case and cannot be simply ignored by the CTA. Moreover, technicalities should not be used to defeat substantive rights, especially those that have been held as a matter of right. We quote:

> In the proceedings before the CTA, petitioner presented in evidence its letter of claim for refund before the BIR to show that it was made within the two-year reglementary period; its Income Tax Returns for the years 1995 and 1996 to prove its total creditable withholding tax and the fact that the amounts were declared as part of its gross income; and several certificates of income tax withheld at source

[11] G.R. No. 146941, August 9, 2007, 529 SCRA 605.

corresponding to the period of claim to prove the total amount of the taxes erroneously withheld. More importantly, petitioner attached its 1997 Income Tax Return to its Motion for Reconsideration, making the same part of the records of the case. The CTA cannot simply ignore this document.

Thus, we hold that petitioner has complied with all the requirements to prove its claim for tax refund. The CA, therefore, erred in denying the petition for review of the CTA's denial of petitioner's claim for tax refund on the ground that it failed to present its 1997 Income Tax Return.

The CA's reliance on Rule 132, Section 34 26 of the Rules on Evidence is misplaced. This provision must be taken in the light of Republic Act No. 1125, as amended, the law creating the CTA, which provides that proceedings therein shall not be governed strictly by technical rules of evidence. Moreover, this Court has held time and again that technicalities should not be used to defeat substantive rights, especially those that have been established as a matter of fact.

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We must also point out that, simply by exercising the CIR's power to examine and verify petitioner's claim for tax exemption as granted by law, respondent CIR could have easily verified petitioner's claim by presenting the latter's 1997 Income Tax Return, the original of which it has in its files. However, records show that in the proceedings before the CTA, respondent CIR failed to comment on petitioner's formal offer of evidence, waived its right to present its own evidence, and failed to file its memorandum. Neither did it file an opposition to petitioner's motion to reconsider the CTA decision to which the 1997 Income Tax Return was appended.

That no one shall unjustly enrich oneself at the expense of another is a long-standing principle prevailing in our legal system. This applies not only to individuals but to the State as well. In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. The harsh power of taxation must be tempered with evenhandedness. Hence, under the principle of *solutio indebiti*, the Government has to restore to petitioner the sums representing erroneous payments of taxes.[12]

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[12] *Filinvest Development Corporation v. Commissioner of Internal Revenue, id.* at 611-620.

Further, We sustain the CA that there is no need to rule on the issue of the admissibility of the 1998 ITR since the CTA ruled that PERF already complied with the requisites of applying for a tax refund. The verification process is not incumbent on PERF; it is the duty of the CIR to verify whether or not PERF had carried over the 1997 excess income taxes.

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

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 164919. July 4, 2008]

CHINA BANKING CORPORATION, *petitioner, vs.* **SPOUSES TOBIAS L. LOZADA and ERLINA P. LOZADA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; PROCEDURAL DUE PROCESS; EXPLAINED.— Procedural due process "refers to the method or manner by which the law is enforced." It consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal. True to the mandate of the due process clause, the basic rights of notice and hearing pervade not only in criminal and civil proceedings, but in administrative proceedings as well. Non-observance of these rights will invalidate the proceedings. Individuals are entitled to be notified of any pending case affecting their interests; and upon notice, they may claim the

right to appear therein, present their side and refute the position of the opposing parties.

2. MERCANTILE LAW; ACT NO. 3135, AS AMENDED; EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE; ISSUANCE OF WRIT OF POSSESSION ON THE *EX PARTE* APPLICATION OF THE PURCHASER OF THE FORECLOSED PROPERTY, WHEN ALLOWED.— The procedure for extrajudicial foreclosure of real estate mortgage is governed by Act No. 3135, as amended. The purchaser at the public auction sale of an extrajudicially foreclosed real property may seek possession thereof in accordance with Section 7 of Act No. 3135, as amended. x x x Section 7 of Act No. 3135, as amended, refers to a situation wherein the purchaser seeks possession of the foreclosed property during the 12-month period for redemption. Upon the purchaser's filing of the *ex parte* petition and posting of the appropriate bond, the RTC shall, as a matter of course, order the issuance of the writ of possession in the purchaser's favor. In *IFC Service Leasing and Acceptance Corporation v. Nera*, the Court reasoned that if under Section 7 of Act No. 3135, as amended, the RTC has the power during the period of redemption to issue a writ of possession on the *ex parte* application of the purchaser, there is no reason why it should not also have the same power after the expiration of the redemption period, especially where a new title has already been issued in the name of the purchaser. Hence, the procedure under Section 7 of Act No. 3135, as amended, may be availed of by a purchaser seeking possession of the foreclosed property he bought at the public auction sale after the redemption period has expired without redemption having been made.

3. ID.; ID.; ID.; ISSUANCE OF WRIT OF POSSESSION IN FAVOR OF THE PURCHASER IN THE PUBLIC AUCTION SALE OF A FORECLOSED PROPERTY, WHEN CONSIDERED MINISTERIAL UPON THE TRIAL COURT.— The Court recognizes the rights acquired by the purchaser of the foreclosed property at the public auction sale upon the consolidation of his title when no timely redemption of the property was made, to wit: "It is settled that upon receipt of the definitive deed in an execution sale, legal title over the property sold is perfected (33 *C. J. S.* 554). And this court

has also [said] and that the land bought by him and described in the deed deemed (sic) within the period allowed for that purpose, its ownership becomes consolidated in the purchaser, and the latter, "as absolute owner . . . is entitled to its possession and to receive the rents and fruits thereof." (*Powell v. Philippine National Bank*, 54 Phil., 54, 63.) x x x." It is thus settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. The buyer can in fact demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act No. 3135, as amended. No such bond is required after the redemption period if the property is not redeemed. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court. The purchaser, therefore, in the public auction sale of a foreclosed property is entitled to a writ of possession; and upon an *ex parte* petition of the purchaser, it is ministerial upon the RTC to issue such writ of possession in favor of the purchaser. However, while this is the general rule, as in all general rules, there is an exception.

4. ID.; ID.; ID.; ID.; EXCEPTION.— Where a parcel levied upon on execution is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature of said adverse possession. Similarly, in an extrajudicial foreclosure of real property, when the foreclosed property is in the possession of a third party holding the same adversely to the defaulting debtor/mortgagor, the issuance by the RTC of a writ of possession in favor of the purchaser of the said real property ceases to be ministerial and may no longer be done *ex parte*. For the exception to apply, however, the property need not only be possessed by a third party, but also held by the third party adversely to the debtor/mortgagor. x x x The exception provided under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property by adverse title or

right, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property.

5. CIVIL LAW; PRESIDENTIAL DECREE NO. 957 (REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF); RIGHT OF THE OWNER OR DEVELOPER TO MORTGAGE A SUBDIVISION LOT OR CONDOMINIUM UNIT; CONDITIONS.— Presidential Decree No. 957 cannot totally prevent the owner or developer from mortgaging the subdivision lot or condominium unit when the title thereto still resides in the owner or developer awaiting the full payment of the purchase price by the installment buyer. However, to protect the installment buyer of the subdivision lot or condominium unit under a Contract to Sell, Presidential Decree No. 957 imposed the following conditions on the right of the owner or developer to mortgage a subdivision lot or condominium unit: "Section 18. *Mortgages.* No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto."

6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; EXPLAINED.— The grounds for the issuance of a writ of *certiorari* are described below: "*Certiorari* lies where a court has acted without or in excess of jurisdiction or with grave abuse of discretion. "Without jurisdiction" means that the court acted with absolute want of jurisdiction. There is "excess of

jurisdiction" where the court has jurisdiction but has transcended the same or acted without any statutory authority. (*Leung Ben vs. O'Brien*, 38 Phil., 182; *Salvador Campos y Cia vs. Del Rosario*, 41 Phil., 45.) "Grave abuse of discretion" implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction (*Abad Santos vs. Province of Tarlac*, 38 Off. Gaz., 830), 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. (*Tavera-Luna, Inc. vs. Nable*, 38 Off. Gaz., 62.)"

7. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF PRIMARY ADMINISTRATIVE JURISDICTION; DEFINED.— Under the doctrine of primary administrative jurisdiction, in which jurisdiction is vested in an administrative body, no resort to the courts may be made before such administrative body shall have acted upon the matter.

8. REMEDIAL LAW; COURTS; NO COURT HAS THE POWER TO INTERFERE BY INJUNCTION WITH THE ISSUANCE OR ENFORCEMENT OF A WRIT OF POSSESSION ISSUED BY ANOTHER COURT OF CONCURRENT JURISDICTION HAVING THE POWER TO ISSUE SUCH WRIT.— Jurisprudence is replete with the rule that no court has the power to interfere by injunction with the issuance or enforcement of a writ of possession issued by another court of concurrent jurisdiction having the power to issue such writ.

APPEARANCES OF COUNSEL

Lim Vigilia Alcala Dumlao & Orencia for petitioner.
Laguio & Lodero Law Office for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court filed by petitioner China Banking Corporation (CBC) seeking the reversal and setting aside of the Decision[2] dated 25 March 2004 and Resolution[3] dated 10 August 2004 of the Court of Appeals in CA-G.R. SP No. 67399. The assailed Decision of the appellate court annulled and set aside: (1) the Order[4] dated 31 August 2001 of the Regional Trial Court (RTC), Branch 65, Makati City, in L.R.C. Case No. M-4184, granting the *ex parte* petition of CBC for a writ of possession over the condominium unit covered by Condominium Certificate of Title (CCT) No. 69096; (2) the Writ of Possession[5] dated 3 September 2001 issued by the RTC Branch Clerk of Court commanding the Sheriff to place CBC in possession of the said condominium unit and eject all its present occupants; and (3) the Notices to Vacate[6] dated 17 October 2001 and 22 October 2001 of the Sheriff addressed, respectively, to Primetown Property Group, Inc. (PPGI) and respondent spouses Tobias L. Lozada and Erlina P. Lozada (spouses Lozada), directing them to vacate the said property within five days from receipt of the notices.

There is hardly any dispute as to the antecedent facts of the instant Petition.

On 25 June 1995, the spouses Lozada entered into a Contract to Sell[7] with PPGI. PPGI, the developer of Makati Prime City

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[1] *Rollo*, pp. 25-52.

[2] Penned by Associate Justice Rosmari D. Carandang with Associate Justices Eugenio S. Labitoria and Mercedes Gozo-Dadole, concurring. *Rollo,* pp. 53-61.

[3] *Rollo,* pp. 62-64.

[4] Penned by Judge Salvador S. Abad-Santos. *Rollo*, p. 98.

[5] *Rollo,* p. 99.

[6] Records, pp. 90-91.

[7] *Rollo*, pp. 270-273.

Condominium Townhomes Project (Project), agreed to sell to the spouses Lozada Unit No. 402 of Cluster 1 of the Project, a two-bedroom residential unit with an area of 42.90 square meters, covered by CCT No. 34898, for the total price of ₱1,444,014.04, payable as follows:

30% Downpayment (including the Residential Fee)	₱ 402,803.92	- Payable in 15 months, beginning 2 October 1995
70% Balance	₱ 1,010,809.83	- Payable upon completion or turn-over of the unit

About six months later, or on 7 December 1995, PPGI, represented by its President Kenneth T. Yap and Treasurer Gilbert Y. Yap, and with Mortgage Clearance[8] from the Housing and Land Use Regulatory Board (HLURB), executed two Deeds of Real Estate Mortgage[9] in favor of CBC to secure the credit facilities granted by CBC to PPGI in the combined maximum amount of ₱37,000,000.00. The real estate mortgages covered 51 units of the Project, including Unit No. 402.

PPGI availed itself of the said credit facilities and incurred a total principal obligation of ₱29,067,708.10 to CBC. When PPGI failed to pay its indebtedness despite repeated demands, CBC filed with the Clerk of Court and *Ex Officio* Sheriff of the Makati City RTC a Petition for Extrajudicial Foreclosure[10] of the real estate mortgages on 31 July 1998. The Petition was docketed as Foreclosure No. 98-098. A Notice of Sheriff's Sale[11] was issued on 7 August 1998 setting the public auction of the foreclosed properties on 11 September 1998 at 10:00 a.m. The said Notice was published in Metro Profile on 11, 18 and 25 August 1998.[12] The public auction sale took place as scheduled at which CBC was the highest bidder, offering the amount of ₱30,000,000.00 for the foreclosed properties. The Certificate

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[8] *Id*. at 132.

[9] Records, pp. 8-27.

[10] *Id*. at 30-32.

[11] *Id*. at 33-40.

[12] *Id*. at 41.

of Sale[13] of the foreclosed properties was subsequently issued in favor of CBC on 15 October 1998.

On 25 April 2000, CBC Chief Executive Officer Peter S. Dee executed an Affidavit of Consolidation[14] stating that 21 of the 51 foreclosed properties had been either "released by take-out by certain buyers" or partially redeemed; the period for redemption of the remaining foreclosed properties (which included Unit No. 402) had already expired without having been redeemed; the titles to the remaining foreclosed properties had already been consolidated in the name of CBC; and for said reason, the Registry of Deeds of Makati City was requested to issue the corresponding CCTs in the name of CBC. Pursuant to the Affidavit of Consolidation, the Registry of Deeds of Makati City cancelled CCT No. 34898, covering Unit No. 402, and registered in the name of PPGI, and issued in its place CCT No. 69096[15] in the name of CBC on 12 May 2000.

It appears that a few months prior to the foreclosure of the real estate mortgages, PPGI, through its Senior Manager Salvador G. Prieto, Jr., sent a letter [16] dated 30 March 1998 to respondent Erlina P. Lozada (Erlina) in the following tenor:

> Dear Ms. Lozada:
>
> This refers to your purchase of **Unit 402, Cluster 1 of Makati Prime City**, a project of **Primetown Property Group, Inc. ("PPGI")**, the development of which has been partially financed by **China Banking Corporation**.
>
> We refer to Section 18 of Presidential Decree No. 957, otherwise known as "The Subdivision and Condominium Buyer's Protective Decree". Section 18 states:
>
> > SECTION 18. *Mortgages.* No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it

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[13] *Id*. at 42-51.

[14] *Id*. at 52-56.

[15] *Id*. at 57.

[16] *Rollo*, p. 131.

> is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto.

In view of the foregoing, we hereby direct your goodself to remit all payments under your Contract to Sell directly to **China Banking Corporation** at its Greenhills Branch located at Padilla Arcade, Greenhills, M.M. effective April 1, 1998. Attached is your Statement of Account for your guidance.

This payment arrangement shall in no way cause any amendment of the other terms and conditions, nor the cancellation of the Contract to Sell you have executed with **PPGI**.

Very truly yours,

(Signed)

Salvador G. Prieto, Jr.
Sr. Manager
Credit and Collection Department

There is nothing on record to show any immediate action taken by the spouses Lozada on the afore-quoted letter. But a year following the public auction sale of the foreclosed properties held on 11 September 1998, Erlina executed a Notice of Adverse Claim[17] dated 13 September 1999 as regards Unit No. 402, which she registered with the Registry of Deeds of Makati City.[18] Said Notice of Adverse Claim was subsequently annotated on CCT No. 69096 when it was issued in the name of CBC.

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[17] *Id.* at 279-280.

[18] The Notice of Adverse Claim of the spouses Lozada was subsequently annotated on CCT No. 69096 when it was issued in the name of CBC on 12 May 2000. Records, p. 57.

Erlina next sent a letter dated 1 December 1999[19] to both PPGI and CBC, laying down her position pertaining to Unit No. 402, to wit:

1. I have been ready, willing, and able since August 25, 1998 to pay the balance under my contract and I have tendered payment as early as then.

2. My liability is limited to the amount stated thereunder plus reasonable expenses for the transfer of title; no other liability such as for interests, penalties, charges or any other imposition is recognized. The VAT is a liability of the seller and I have never consented to accept this burden.

3. On delivery of my full payment, I have a right to demand reasonable assurance that title could be transferred to me immediately and so to require that the muniments of title and evidence of all tax payments by seller (necessary for registration) be delivered to me.

In the same letter, she advised that she was tendering payment by opening an escrow account with CBC in the amount of ₱1,010,809.83, representing the 70% balance of the purchase price of Unit No. 402 per the Contract to Sell with PPGI. Not long thereafter, Erlina sent another letter[20] dated 3 December 1999 to PPGI and CBC stating that she was unable to open an escrow account as no one had advised her on how to go about it. Instead, she opened a special account with the following details:

Account Name	:	Erlina P. Lozada
Account No.	:	103-630621-4
Bank	:	Chinabank Makati Head Office
Amount	:	₱1,010,809.83

She reiterated that the amount represented the balance of the purchase price for Unit No. 402 under the Contract to Sell, and shall be available to the party who shall establish the lawful right to the payment and deliver the muniments of title and other documents necessary for the transfer of the same.

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[19] *Rollo,* pp. 282-283.

[20] *Id.* at 284-285.

In reply, CBC sent Erlina a letter[21] dated 8 December 1999, telling her that the consideration for Unit No. 402 was ₱1,100,788.29; thus, the amount she was tendering was insufficient. CBC also informed her that all taxes including documentary stamp tax, capital gains tax, transfer tax, and all other expenses for the transfer of title to her name shall be for her exclusive account.

In another letter dated 15 May 2001 to Erlina, CBC notified her that it had already consolidated its title and ownership over Unit No. 402 which she presently occupied, and requested her to vacate and surrender the said property, including the appurtenant keys, to its duly authorized representative within 15 days from receipt of the letter.

Following the 15 May 2001 letter of CBC to Erlina, a conference was held and more letters were exchanged between the parties,[22] but, apparently, no agreement was reached.

On 27 July 2001, CBC filed an *Ex Parte* Petition for Issuance of a Writ of Possession[23] with the Makati City RTC, docketed as Land Registration Commission (L.R.C.) Case No. M-4184. CBC prayed to the court *a quo* for the following:

> WHEREFORE, it is most respectfully prayed of this Honorable Court that the corresponding Writ of Possession be issued *ex parte* by the Honorable Court in favor of petitioner [CBC] and against Erlinda [sic] Lozada and/or all persons claiming rights under her name, over the condominium unit covered by CCT No. 69096 (formerly CCT No. 34898), of the Registry of Deeds for the City of Makati, with all the improvements existing thereon.

On the other hand, on 7 August 2001, the spouses Lozada instituted a Complaint[24] with the HLURB, docketed as HLURB Case No. REM-0080701-11582, with the following prayer:

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[21] *Id.* at 286.

[22] *Id.* at 288-290.

[23] Records, pp. 1-7.

[24] *Rollo*, pp. 291-298.

WHEREFORE, [herein respondents spouses Lozada] pray of this Honorable Board to order the annulment of mortgage, foreclosure, sale, consolidation of ownership between CBC and [PPGI] insofar as they pertain to [spouses Lozada] and to order the respondent Register of Deeds of Makati City to cancel Condominium Certificate of Title No. 69096. It is likewise prayed that a Temporary Restraining Order and/or Writ of Preliminary Injunction be issued to prevent [herein petitioner] CBC from taking possession of the unit in question.

[Spouses Lozada] pray for such other relief and remedies that are just and equitable under the premises.

L.R.C. Case No. M-4184 and HLURB Case No. REM-0080701-11582 proceeded simultaneously, although it is principally the former which concerns this Court in the present Petition.

The Makati City RTC, finding that the prayer for issuance of a writ of possession of CBC in L.R.C. Case No. M-4184 needed to be substantiated by evidence, initially set the hearing on 15 August 2001 at 10:00 a.m.[25] However, on motion of CBC, the Makati City RTC issued an Order [26] dated 15 August 2001 canceling the hearing for that day and transferring the same to 31 August 2001 at 10:00 a.m. The same Order expressly directed that Erlina be notified, but the records do not show that said notice was actually sent and received by her.

The hearing on 31 August 2001 pushed through, even without the presence of the spouses Lozada, during which the CBC presented and marked its documentary evidence.

On 31 August 2001, the Makati City RTC issued an Order[27] granting the *Ex Parte* Petition of CBC, and decreeing that:

Finding the petition to be duly substantiated by the evidence presented and pursuant to the provisions of Section 7 of Act 3135 as amended by Act 4118, let a writ of possession issue in favor of the petitioner China Banking Corporation.

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[25] Order dated 27 July 2001, penned by Judge Salvador S. Abad-Santos; records, p. 59.

[26] *Id.* at 61.

[27] *Rollo,* p. 98.

In accordance with the foregoing Order, the RTC Branch Clerk of Court issued the Writ of Possession[28] dated 3 September 2001 commanding the Sheriff to place CBC in possession of Unit No. 402 and eject all its present occupants. The Sheriff, in turn, issued the Notices to Vacate[29] dated 17 October 2001 and 22 October 2001 addressed to PPGI and the spouses Lozada, respectively, directing them to vacate the said property within five days from receipt of the notices.

When the Sheriff went to Unit No. 402 on 30 October 2001, he failed to enforce the Writ of Possession because the main door of the said property was padlocked,[30] prompting CBC to file with the Makati City RTC an Urgent *Ex Parte* Motion to Break Open[31] the door to Unit No. 402 and place CBC in possession thereof.

While the afore-mentioned events were unfolding in L.R.C. Case No. M-4184, the spouses Lozada were seeking recourse elsewhere.

They were able to secure an Order[32] dated 25 October 2001 in HLURB Case No. REM-0080701-11582 directing the parties therein to maintain *status quo* awaiting the resolution of the Application for a Writ of Preliminary Injunction of the spouses Lozada.

Four days later, on 29 October 2001, the spouses Lozada filed with the Court of Appeals their Petition for *Certiorari* and Prohibition, with Application for Writ of Preliminary Injunction/Temporary Restraining Order[33] against the Makati City RTC, Sheriff, CBC, and PPGI, docketed as CA-G.R. SP No. 67399, which was anchored on the following grounds:

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[28] *Id*. at 99.

[29] Records, pp. 90-91.

[30] *Id*. at 89.

[31] *Id*. at 92-93.

[32] Penned by Housing and Land Use Arbiter Atty. Rowena C. Balasolla; *rollo*, p. 340.

[33] CA *rollo*, pp. 1-14.

I. Respondent Presiding Judge deprived your [herein respondents spouses Lozada] of due process of law and their day in court, when he unjustifiably failed to order the service of notice on [spouses Lozada] of the *ex-parte* petition of [herein petitioner] CBC;

II. The respondent Judge, contrary to law and existing jurisprudence, issued arbitrarily, without jurisdiction and in excess of jurisdiction, the Writ of Possession to the irreparable damage and [prejudice] of [spouses Lozada];

III. The respondent Judge in grave abuse of discretion, without jurisdiction and in excess of jurisdiction, without giving [spouses Lozada] the opportunity to fully ventilate their possession over the condominium unit purchased by them, he capriciously, arbitrarily and unjustifiably issued the questioned Writ of Possession intended to eject the [spouses Lozada] from the condominium unit that they purchased;

IV. The respondent Presiding Judge committed a grave abuse of discretion, amounting to lack or excess of jurisdiction, when he issued the Order of August 31, 2001 granting the Writ of Possession sought by [petitioner] CBC that will certainly interfere with the authority of [the] HLURB being exercised in HLURB Case No. REM-008070-11582.

On 30 October 2001, the Court of Appeals issued a Resolution[34] granting in favor of the spouses Lozada a temporary restraining order enjoining the Sheriff and the other respondents therein from enforcing the Writ of Possession and Notices to Vacate. The spouses Lozada, however, were directed to file an injunctive bond in the amount of ₱200,000.00.

The Court of Appeals rendered its assailed Decision[35] on 25 March 2004 ruling in favor of the spouses Lozada. According to the appellate court, the issuance of the Writ of Possession was not mandatory and ministerial on the part of the Makati City RTC, and the court *a quo* should have afforded the spouses Lozada a hearing, considering that (1) Unit No. 402 was no

[34] Penned by Associate Justice Hilarion L. Aquino with Associate Justices Edgardo P. Cruz and Alicia L. Santos, concurring. CA *rollo,* pp. 89-92.

[35] *Rollo,* pp. 53-61.

longer in the possession of the original debtor/mortgagor PPGI, but was already being enjoyed by the spouses Lozada; (2) the Makati City RTC was aware that Unit No. 402 was already in the possession of the spouses Lozada because it was so stated in the *ex parte* petition of CBC, as well as the Notice of Adverse Claim annotated on CCT No. 69096 presented by CBC as evidence before the trial court; (3) the spouses Lozada, under Section 18 of Presidential Decree No. 957, had the right to continue paying for Unit No. 402 to CBC, the purchaser thereof at the foreclosure sale, still in accordance with the tenor of the Contract to Sell; and (4) the spouses Lozada had a perfect cause of action for the annulment of the mortgage constituted by PPGI in favor of CBC since PPGI failed to comply with the requirement in *Union Bank of the Philippines v. Housing and Land Use Regulatory Board,*[36] to notify the installment buyer of the condominium unit of the mortgage constituted thereon. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, there being grave abuse of discretion on the part of the court *a quo* in issuing the herein assailed Order, the instant Petition is GRANTED. Accordingly, the August 31, 2001 Order, the Writ of Possession and the Notice to Vacate are hereby ANNULLED and SET ASIDE.[37]

In its Resolution[38] dated 10 August 2004, the Court of Appeals denied the Motion for Reconsideration of CBC, maintaining that the possession of the spouses Lozada of Unit No. 402 constituted an effective obstacle barring the Makati City RTC from issuing a writ to place CBC in possession of the same. The appellate court reiterated that there was grave abuse of discretion on the part of the Makati City RTC when it included Unit No. 402 within the coverage of the writ of possession, notwithstanding the fact that said unit was in possession of the spouses Lozada under a legitimate claim of ownership on the strength of a Contract to Sell executed in their favor by PPGI.

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[36] G.R. No. 95364, 29 June 1992, 210 SCRA 558.

[37] *Rollo,* p. 60.

[38] *Id*. at 62-64.

Comes now CBC before this Court *via* the present Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court with the following assignment of errors:

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT TOOK COGNIZANCE OF THE PETITION, STOPPED THE IMPLEMENTATION OF THE WRIT OF POSSESSION AND EVENTUALLY HAD IT ANNULLED AND SET ASIDE.

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE RESPONDENTS WERE HOLDING THE SUBJECT PROPERTY ADVERSELY TO THE JUDGMENT DEBTOR THUS THE ISSUANCE OF THE WRIT OF POSSESSION WAS IMPROPER AND UNWARRANTED, WHICH IS IN DIRECT COLLISSION (SIC) WITH APPLICABLE JURISPRUDENCE.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO APPRECIATE THE FACTUALITY THAT RESPONDENTS WERE SUBSEQUENTLY INFORMED OF THE MORTGAGE WITH AN ADVISE OF PAYMENT OF INSTALLMENTS TO HEREIN PETITIONERS [sic], BUT WHICH RESPONDENTS IGNORED, HENCE THEY MADE [sic] THEMSELVES BEYOND THE MANTLE OF PROTECTION UNDER P.D. 957.[39]

Sorting through the allegations and arguments presented by the parties, the Court ascertains that the pivotal issue for its consideration is, given the circumstances in the present case, whether the writ of possession may be granted and issued by the Makati City RTC *ex parte* or without notice to other parties.[40]

The Court answers in the affirmative.

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[39] *Id*. at 32-33.

[40] Where there is no provision made for notice, by publication or otherwise, of the application, or in this case, the petition, then the proceedings, for all intents and purposes, are *ex parte*. (See *Ramirez v. Gmur*, 42 Phil. 855 [1918].)

Procedural due process

At the outset, this Court establishes that the issue herein is one involving procedural due process. Procedural due process "refers to the method or manner by which the law is enforced."[41] It consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal. True to the mandate of the due process clause, the basic rights of notice and hearing pervade not only in criminal and civil proceedings, but in administrative proceedings as well. Non-observance of these rights will invalidate the proceedings. Individuals are entitled to be notified of any pending case affecting their interests; and upon notice, they may claim the right to appear therein, present their side and refute the position of the opposing parties.[42]

At the crux of the opposition of the spouses Lozada to the *ex parte* issuance by the Makati City RTC of the writ of possession in favor of CBC was that it supposedly deprived them of the opportunity to defend their title and right to possess; or simply, that it denied them due process.

The procedure for extrajudicial foreclosure of real estate mortgage is governed by Act No. 3135,[43] as amended. The purchaser at the public auction sale of an extrajudicially foreclosed real property may seek possession thereof in accordance with Section 7 of Act No. 3135, as amended, which provides:

SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that

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[41] *Hon. Corona v. United Harbor Pilots Association of the Philippines*, 347 Phil. 333, 340 (1997).

[42] *Secretary of Justice v. Hon. Lantion*, 379 Phil. 165, 203 (2000).

[43] An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real Estate Mortgages.

the sale was made without violating the mortgage or without complying with the requirements of this Act. **Such petition shall be made under oath and filed in form or 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 court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately. (Emphasis supplied.)

The Court expounded on the application of the foregoing provision in *De Gracia v. San Jose*,[44] thus:

As may be seen, the law expressly authorizes the purchaser to petition for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title; and upon the filing of such motion and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession. Under the legal provisions above copied, the order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. **No discretion is left to the court.** And any question regarding the regularity and validity of the sale (and the consequent cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in Section 8. Such question is not to be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding for this is *ex parte*. (Emphasis supplied.)

Strictly, Section 7 of Act No. 3135, as amended, refers to a situation wherein the purchaser seeks possession of the foreclosed property during the 12-month period for redemption. Upon the

[44] 94 Phil. 623, 625-626 (1954).

purchaser's filing of the *ex parte* petition and posting of the appropriate bond, the RTC[45] shall, as a matter of course, order the issuance of the writ of possession in the purchaser's favor.

In *IFC Service Leasing and Acceptance Corporation v. Nera*,[46] the Court reasoned that if under Section 7 of Act No. 3135, as amended, the RTC has the power during the period of redemption to issue a writ of possession on the *ex parte* application of the purchaser, there is no reason why it should not also have the same power after the expiration of the redemption period, especially where a new title has already been issued in the name of the purchaser. Hence, the procedure under Section 7 of Act No. 3135, as amended, may be availed of by a purchaser seeking possession of the foreclosed property he bought at the public auction sale after the redemption period has expired without redemption having been made.

The Court recognizes the rights acquired by the purchaser of the foreclosed property at the public auction sale upon the consolidation of his title when no timely redemption of the property was made, to wit:

> It is settled that upon receipt of the definitive deed in an execution sale, legal title over the property sold is perfected (33 *C. J. S.* 554). And this court has also [said] and that the land bought by him and described in the deed deemed (sic) within the period allowed for that purpose, its ownership becomes consolidated in the purchaser, and the latter, "as absolute owner . . . is entitled to its possession and to receive the rents and fruits thereof." (*Powell v. Philippine National Bank*, 54 Phil., 54, 63.) x x x.[47]

It is thus settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of

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[45] In place of the Court of First Instance.

[46] 125 Phil. 595 (1967).

[47] *Belleza v. Zandaga*, 98 Phil. 702, 703 (1956).

title. The buyer can in fact demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act No. 3135, as amended. No such bond is required after the redemption period if the property is not redeemed. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.[48]

The purchaser, therefore, in the public auction sale of a foreclosed property is entitled to a writ of possession; and upon an *ex parte* petition of the purchaser, it is ministerial upon the RTC to issue such writ of possession in favor of the purchaser. However, while this is the general rule, as in all general rules, there is an exception. The exception and its basis were summarized by the Court in *Roxas v. Buan*,[49] thus:

> In the extrajudicial foreclosure of real estate mortgages, possession of the property may be awarded to the purchaser at the foreclosure sale during the pendency of the period of redemption under the terms provided in Sec. 6 of Act 3135, as amended (An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages), or after the lapse of the redemption period, without need of a separate and independent action [*IFC Service Leasing and Acceptance Corp. v. Nera*, G.R. No. L-21720, January 30, 1967, 19 SCRA 181). This is founded on his right of ownership over the property which he purchased at the auction sale and his consequent right to be placed in possession thereof.
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> This rule is, however, not without exception. Under Sec. 35, Rule 39 of the Revised Rules of Court, which was made applicable to the extrajudicial foreclosure of real estate mortgages by Sec. 6 Act No. 3135, the possession of the mortgaged property may be awarded to a purchaser in extrajudicial foreclosures "unless a third party is actually holding the property adversely to the judgment debtor." (*Clapano v. Gapultos*, G.R. Nos. 51574-77, September 30, 1984, 132 SCRA 429, 434; *Philippine National Bank v. Adil*, G.R.

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[48] *F. David Enterprises v. Insular Bank of Asia and America*, G.R. No. 78714, 21 November 1990, 191 SCRA 516, 523.

[49] G.R. No. 53798, 8 November 1988, 167 SCRA 43, 48-49.

No. 52823, November 2, 1982, 118 SCRA 110; *IFC Service Leasing and Acceptance Corp. v. Nera*, *supra*.) As explained by the Court in *IFC Service Leasing and Acceptance Corp. v. Nera*, *supra*:

> x x x The applicable provision of Act No. 3135 is Section 6 which provides that, in cases in which an extrajudicial sale is made, "redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure in so far as these are not inconsistent with the provisions of this Act." Sections 464-466 of the Code of Civil Procedure were superseded by Sections 25-27 and Section 31 of Rule 39 of the Rules of Court which in turn were replaced by Sections 29-31 and Section 35 of Rule 39 of the Revised Rules of Court. Section 35 of the Revised Rules of Court expressly states that "If no redemption be made within twelve (12) months after the sale, the purchaser, or his assignee, is entitled to a conveyance and possession of the property x x x." The possession of the property shall be given to the purchaser or last redemptioner by the officer unless a party is actually holding the property adversely to the judgment debtor, [*Id*. at 184-185; Emphasis in the original.]

After further revision of the Rules of Court, Section 35 of Rule 39 referred to above is now Section 33 of Rule 39, which reads:

> SEC. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* – If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; x x x.
>
> Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer **unless a third party is actually holding the property adversely to the judgment obligor.** (Emphasis supplied.)

Where a parcel levied upon on execution is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature of said adverse

possession.[50] Similarly, in an extrajudicial foreclosure of real property, when the foreclosed property is in the possession of a third party holding the same adversely to the defaulting debtor/mortgagor, the issuance by the RTC of a writ of possession in favor of the purchaser of the said real property ceases to be ministerial and may no longer be done *ex parte*. For the exception to apply, however, the property need not only be possessed by a third party, but also held by the third party adversely to the debtor/mortgagor.

General rule v. exception

While CBC invokes the general rule in the Petition at bar, the spouses Lozada assert the exception.

The spouses Lozada aver that they are holding Unit No. 402 adversely to the debtor/mortgagor PPGI, and that their possession is sufficient obstacle to the *ex parte* issuance of a writ of possession in favor of CBC. CBC, however, counters that the spouses Lozada are mere successors-in-interest of PPGI who only stepped into the latter's shoes and may not claim the defense of possession by third persons.

It is thus incumbent upon this Court to scrutinize the nature of the spouses Lozada's possession of Unit No. 402.

The spouses Lozada acquired possession of Unit No. 402 pursuant to the Contract to Sell executed in their favor by PPGI. According to the Contract to Sell, PPGI shall deliver Unit No. 402 to the spouses Lozada upon the completion thereof, and the spouses Lozada, in turn, shall already be bound at that point to pay the 70% balance of the purchase price for the said property. The records do not establish the date when the spouses Lozada actually entered into possession of Unit No. 402. However, it is undisputed that they were already in possession thereof at the time CBC filed its *Ex Parte* Petition for the Issuance of a Writ of Possession with the Makati City RTC on July 2001.

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[50] *Saavedra v. Siari Valley Estates, Inc.*, 106 Phil. 432, 436 (1959).

Given the foregoing, it is apparent that the spouses Lozada's possession of Unit No. 402 cannot be considered adverse to that of PPGI. Their right to possess the said property was derived from PPGI under the terms of the Contract to Sell executed by the latter in their favor. It was because PPGI contractually agreed to deliver Unit No. 402 to them even prior to the transfer of ownership and title over the same that they came into its possession. They cannot assert that said right of possession is adverse or contrary to that of PPGI when they have no independent right of possession other than what they acquired from PPGI. The spouses Lozada can be more appropriately considered the transferee of or successor to the right of possession of PPGI over Unit No. 402.

Again relevant herein is the Court's ruling in *Roxas v. Buan,*[51] which involved factual circumstances akin to the instant Petition. Valentin executed a Deed of Real Estate Mortgage over a house and lot in favor of Buan to secure a loan granted by the latter to the former. When Valentin failed to pay his loan when it matured, Buan caused the extrajudicial foreclosure of the real estate mortgage and was the winning bidder at the auction sale of the foreclosed property. Upon the expiration of the period for redemption without Valentin redeeming the foreclosed property, a Final Bill of Sale was issued by the Sheriff in Buan's favor. Buan then filed a petition for the issuance of a writ of possession, which, being uncontested, was granted by the trial court. However, the Sheriff was unable to execute the writ of possession because the foreclosed property was occupied by Roxas and the spouses De Guia. Roxas allegedly bought the foreclosed property from Valentin and leased the same to the spouses De Guia. Roxas and the spouses De Guia argued that the writ of possession was ineffective as against them, being third parties. They also insisted that Buan should file an independent action to recover the property, otherwise, their right to due process of law would be violated since they were not given their day in court to prove their adverse claim.

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[51] *Supra* note 49.

In the said case, the character of Roxas' possession was directly put in issue. The Court determined that Roxas was the successor-in-interest of the mortgagor Valentin, and not a third party holding the property adversely to the latter. The Court ratiocinated as follows:

> Contending that petitioner Roxas is a party actually holding the property adversely to the debtor, Arcadio Valentin, petitioners argue that under the provisions of Act No. 3135 they cannot be ordered to vacate the property. Hence, the question of whether, under the circumstances, petitioner Roxas indeed is a party actually holding the property adversely to Valentin.
>
> It will be recalled that Roxas' possession of the property was premised on its **alleged sale** to him by Valentin for the amount of ₱100,000.00. Assuming this to be true, it is readily apparent that Roxas holds title to and possesses the property as Valentin's transferee. Any right he has to the property is necessarily derived from that of Valentin. As transferee, he steps into the latter's shoes. Thus, in the instant case, considering that the property had already been sold at public auction pursuant to an extrajudicial foreclosure, the only interest that may be transferred by Valentin to Roxas is the right to redeem it within the period prescribed by law. Roxas is therefore the **successor-in-interest** of Valentin, to whom the latter had conveyed his interest in the property for the purpose of redemption [Rule 39, Sec. 29 (a) of the Revised Rules of Court; *Magno v. Viola*, 61 Phil. 80 (1934); *Rosete v. Prov. Sheriff of Zambales*, 95 Phil. 560 (1954).] Consequently, Roxas' occupancy of the property cannot be considered adverse to Valentin.
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> x x x x x x x x x
>
> It does not matter that petitioner Roxas was not specifically named in the writ of possession, as he merely stepped into the shoes of Valentin, being the latter's successor-in-interest. On the other hand, petitioner de Guia was occupying the house as Roxas' alleged tenant [*Rollo*, p. 24]. Moreover, respondent court's decision granting private respondent Buan's petition for the issuance of a writ of possession ordered the Provincial Sheriff of Zambales or any of his deputies to remove Valentin "or any person claiming interest under him" from the property [*Rollo*, p. 16]. Undeniably, petitioners fell under this category.[52]

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

In contrast, *China Banking Corporation v. Spouses Ordinario*,[53] cited by the spouses Lozada, finds no application to the present Petition.

In said case, CBC granted loans to the company TransAmerican which executed real estate mortgages to secure the same. When TransAmerican failed to pay its loans, CBC foreclosed the real estate mortgages. At the public auction sale, CBC was the highest bidder for the foreclosed properties. During the period of redemption, CBC filed with the Quezon City RTC an *ex parte* petition for the issuance of a writ of possession, which was granted by the trial court upon the posting of a surety bond by CBC. The spouses Ordinario filed a motion for reconsideration with the Quezon City RTC claiming to have bought one of the foreclosed properties on which they built their townhouse; and praying for the exclusion of said property from the writ of possession, since they did not receive notice of CBC's petition.

In its Decision, the Court did not directly resolve the nature of the possession of the foreclosed property by the spouses Ordinario. The Court merely presented therein the remedies available to the spouses Ordinario, **assuming *arguendo*** that they were adverse third parties, namely: (1) a *terceria* to determine whether the Sheriff had rightly or wrongly taken hold of the property not belonging to the judgment debtor or obligor; and (2) an independent "separate action" to vindicate their claim of ownership and/or possession over the foreclosed property. Since the spouses Ordinario did not avail themselves of either remedy and, instead, filed a motion for reconsideration before the Quezon City RTC, which granted CBC's *ex parte* petition for issuance of a writ of possession, the Court affirmed the trial court's denial of their motion for reconsideration.

The exception provided under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary.[54] The

[53] 447 Phil. 557 (2003).

[54] *St. Dominic Corp. v. The Intermediate Appellate Court*, G.R. No. 70623, 30 June 1987, 151 SCRA 577, 590.

co-owner,[55] agricultural tenant,[56] and usufructuary[57] possess the property in their own right, and they are not merely the

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[55] In co-ownership, each co-owner owns the whole, and over it he exercises rights of dominion, but at the same time he is the owner of a share which is really abstract because until the division is effected, such share is not concretely determined. While there is co-ownership, a co-owner's possession of his share is co-possession which is linked to the possession of the other co-owners. (*Gatchalian v. Judge Arlegui*, 166 Phil. 236, 248 [1977].)

[56] Agricultural tenants are protected by Presidential Decree No. 1038, which provides that no tenant-tiller of private agricultural lands devoted to crops other than rice and/or corn, including but not limited to abaca, banana, coconut, coffee, mongo, durian and other permanent crops shall be removed, ejected, ousted or excluded from his farmholding unless for causes provided by law and directed by a final decision or order of the court. Sale of the land is not included as one of the just causes for removal of tenants. (See *Clapano v. Hon. Gapultos*, 217 Phil. 409, 414-415 [1984].)

[57] Relevant provisions of the Civil Code on usufructuary are reproduced below:

Art. 562. Usufruct gives a right to enjoy the property of another with the obligation of preserving its form and substance, unless the title constituting it or the law otherwise provides.

Art. 581. The owner of property the usufruct of which is held by another, may alienate it, but he cannot alter its form or substance, or do anything thereon which may be prejudicial to the usufructuary.

Art. 603. Usufruct is extinguished:

(1) By the death of the usufructuary, unless a contrary intention clearly appears;

(2) By the expiration of the period for which it was constituted, or by the fulfillment of any resolutory condition provided in the title creating the usufruct;

(3) By merger of the usufruct and ownership in the same person;

(4) By renunciation of the usufructuary;

(5) By the total loss of the thing in usufruct;

(6) By the termination of the right of the person constituting the usufruct;

(7) By prescription.

Art. 612. Upon the termination of the usufruct, the thing in usufruct shall be delivered to the owner, without prejudice to the right of retention pertaining to the usufructuary or his heirs for taxes and extraordinary expenses which should be reimbursed. After the delivery has been made, the security or mortgage shall be cancelled.

successor or transferee of the right of possession of another co-owner or the owner of the property. The spouses Lozada cannot claim that their right of possession over Unit No. 402 is analogous to any of these.

It is true that in the case presently before this Court, PPGI executed in favor of the spouses Lozada the Contract to Sell covering Unit No. 402 before it constituted in favor of CBC the real estate mortgages on 51 Project units including Unit No. 402. Nonetheless, it must be emphasized that what PPGI executed in favor of the spouses Lozada was a Contract to Sell,[58] a mere promise to sell,[59] which, at the moment of its execution, did not yet transfer possession, much less, title to Unit No. 402 from PPGI to the spouses Lozada. When PPGI constituted the real estate mortgage on Unit No. 402 in favor of CBC six months later, possession of and title to the property still resided in PPGI. And when PPGI subsequently ceded possession of Unit No. 402, upon its completion, to the spouses Lozada, such right was already burdened by the terms and conditions of the mortgage constituted thereon. By merely stepping into the shoes of PPGI, the spouses Lozada's right of possession to Unit No. 402 cannot be less or more than PPGI's.

For the same reasons, Presidential Decree No. 957[60] cannot totally prevent the owner or developer from mortgaging the subdivision lot or condominium unit when the title thereto still resides in the owner or developer awaiting the full payment of the purchase price by the installment buyer. However, to protect the installment buyer of the subdivision lot or condominium unit under a Contract to Sell, Presidential Decree No. 957 imposed

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[58] A contract to sell is one wherein ownership shall be transferred only after the full payment of the installments of the purchase price or the fulfillment of the condition and the execution of a definite or absolute deed of sale. (*Joseph & Sons Enterprises, Inc. v. Court of Appeals*, 227 Phil. 625 [1986].)

[59] *Visayan SawMill Company, Inc. v. Court of Appeals*, G.R. No. 83851, 3 March 1993, 219 SCRA 378, 389.

[60] Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties for Violations Thereof.

the following conditions on the right of the owner or developer to mortgage a subdivision lot or condominium unit:

> Section 18. *Mortgages*. No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto.

The spouses Lozada persistently allege herein that PPGI did not comply with the foregoing requirements; thus, the mortgage it constituted on Unit No. 402 was null and void. This Court, though, will not rule on the matter, for it is not significant to the case at hand. It bears to stress that the issue herein is purely procedural, on whether the Makati City RTC can issue the writ of possession in favor of CBC *ex parte*, the resolution of which hinges on the nature of the spouses Lozada's possession of Unit No. 402, whether it is adverse to or as successor of PPGI. The Court already made a determination that the spouses Lozada possessed Unit No. 402 as the successors or transferees of PPGI. The annulment of the real estate mortgage will have no bearing on this Court's determination, for it will not change the nature of the spouses Lozada's possession as to make it adverse to that of PPGI. Still, the spouses Lozada only acquired the right of possession of PPGI over Unit No. 402; hence, their possession can never be adverse or contrary to that of PPGI. Moreover, the issue of whether the real estate mortgages constituted by PPGI in favor of CBC are valid or void is squarely raised by the spouses Lozada before the HLURB in HLURB Case No. REM-0080701-11582.

The spouses Lozada, having succeeded PPGI in the possession of Unit No. 402, cannot be considered a third party holding the

said property adversely to PPGI, the defaulting debtor/mortgagor. Resultantly, the general rule, and not the exception, applies to the instant Petition. It was the mandatory and ministerial duty of the Makati City RTC to grant the *ex parte* petition of CBC and order the issuance of a writ of possession in the latter's favor over Unit No. 402. It was likewise mandatory and ministerial for the Clerk of Court to comply with the Makati City RTC order by issuing the writ of possession, and for the Sheriff to implement the writ by first issuing a notice to vacate to the occupants of Unit No. 402. As this Court ruled in *St. Dominic Corp. v. The Intermediate Appellate Court*:[61]

> The right of the respondent to the possession of the property is clearly unassailable. It is founded on the right of ownership. As the purchaser of the properties in the foreclosure sale, and to which the respective titles thereto have already been issued, the petitioner's rights over the property has become absolute, vesting upon it the right of possession of the property which the court must aid in affecting its delivery. After such delivery, the purchaser becomes the absolute owner of the property. As we said in *Tan Soo Huat v. Ongwico* (63 Phil., 746), the deed of conveyance entitled the purchaser to have and to hold the purchased property. This means, that the purchaser is entitled to go immediately upon the real property, and that it is the sheriff's inescapable duty to place him in such possession. (*Philippine National Bank v. Adil,* 118 SCRA 110).

Writ of certiorari

In consideration of the foregoing discussion, it is evident that the Court of Appeals erred in finding that the Makati City RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ordered *ex parte* the issuance of a writ of possession in favor of CBC.

The grounds for the issuance of a writ of *certiorari* are described below:

> *Certiorari* lies where a court has acted without or in excess of jurisdiction or with grave abuse of discretion. "Without jurisdiction" means that the court acted with absolute want of jurisdiction. There

[61] *Supra* note 54 at 290.

is "excess of jurisdiction" where the court has jurisdiction but has transcended the same or acted without any statutory authority. (*Leung Ben vs. O'Brien*, 38 Phil., 182; *Salvador Campos y Cia vs. Del Rosario*, 41 Phil., 45.) "Grave abuse of discretion" implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction (*Abad Santos vs. Province of Tarlac*, 38 Off. Gaz., 830), 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. (*Tavera-Luna, Inc. vs. Nable*, 38 Off. Gaz., 62.)[62]

Since there is sufficient legal basis for the Makati City RTC to issue its Order dated 31 August 2001 granting the *ex parte* petition of CBC and ordering the issuance in the latter's favor of a writ of possession over Unit No. 402, it could not be said that the trial court acted in grave abuse of discretion warranting the issuance of a writ of *certiorari* to annul its said Order. Accordingly, no grave abuse of discretion can also be attributed to the RTC Branch Clerk of Court and Sheriff who issued, respectively, the Writ of Possession dated 3 September 2001 and the Notices to Vacate dated 17 October 2001 and 22 October 2001, since they were only acting in accordance with and in execution of a valid order of the Makati City RTC.

HLURB Case No. REM-0080701-11582

The spouses Lozada already filed a complaint with the HLURB, docketed as HLURB Case No. REM-0080701-11582, praying for the annulment of real estate mortgage, foreclosure, public auction sale, and consolidation of title, and the cancellation of CCT, chiefly grounded on the argument that the real estate mortgage on Unit No. 402 constituted by PPGI in favor of CBC did not comply with Section 18 of Presidential Decree No. 957. The spouses Lozada instituted said case before the HLURB invoking the jurisdiction of the Board over the following cases, enumerated under Presidential Decree No. 1344:[63]

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[62] *Alafriz v. Nable,* 72 Phil. 278, 280 (1941).

[63] Empowering the National Housing Authority to Issue Writ of Execution in the Enforcement of Its Decision under Presidential Decree No. 957.

Sec. 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 [now the HLURB] 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.

It is but proper for this Court to refrain from making any pronouncements that may predetermine the issues raised in HLURB Case No. REM-0080701-11582. Under the doctrine of primary administrative jurisdiction, in which jurisdiction is vested in an administrative body, no resort to the courts may be made before such administrative body shall have acted upon the matter.[64]

Also based on the doctrine of primary jurisdiction, this Court pronounces that the findings of the Court of Appeals in its assailed Decision as regards the non-compliance by PPGI with the requirements for a valid mortgage, as provided in Section 18 of Presidential Decree No. 957 and *Union Bank of the Philippines v. Housing and Land Use Regulatory Board,*[65] were rendered prematurely and in excess of its jurisdiction, considering that the said issue was the one primarily raised before the HLURB in HLURB Case No. REM-0080701-11582; and as the Court previously discussed, it is not even significant for the resolution of the Petition at bar. Therefore, the HLURB, in resolving HLURB Case No. REM-0080701-11582, must not be bound by the said findings of the Court of Appeals, allowing it to freely proceed in making its own determination thereof based on the arguments and evidence presented before it by the parties.

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[64] *Cristobal v. Court of Appeals*, 353 Phil. 318, 330 (1998).

[65] *Supra* note 36 at 564.

Another point that needs to be addressed is the fact that the HLURB issued in HLURB Case No. REM-0080701-11582 a *Status Quo* Order[66] dated 25 October 2001. Can the said HLURB Order stay the execution of the writ of possession issued by the Makati City RTC in L.R.C. Case No. M-4184? The Court rules in the negative. Jurisprudence is replete with the rule that no court has the power to interfere by injunction with the issuance or enforcement of a writ of possession issued by another court of concurrent jurisdiction having the power to issue such writ.[67] If such is the rule among courts of concurrent jurisdiction, then the HLURB, an administrative body exercising quasi-judicial powers, would neither have the power to interfere by an injunction, or in this case, a *status quo* order, with the issuance or enforcement of the writ of possession issued by the Makati City RTC.

WHEREFORE, premises considered, the instant Petition for Review is *GRANTED*. The Decision dated 25 March 2004 and Resolution dated 10 August 2004 of the Court of Appeals in CA-G.R. SP No. 67399 are *REVERSED AND SET ASIDE*. The following issuances in L.R.C. Case No. M-4184: (1) the Order[68] dated 31 August 2001 of the Regional Trial Court, Branch 65, Makati City; (2) the Writ of Possession[69] dated 3 September 2001; and (3) the Notices to Vacate[70] dated 17 October 2001 and 22 October 2001, are hereby *REINSTATED*. No costs.

SO ORDERED.

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

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[66] *Rollo,* p. 340.

[67] *Penson v. Spouses Maranan*, G.R. No. 148630, 20 June 2006, 491 SCRA 396.

[68] Penned by Judge Salvador S. Abad-Santos; *rollo*, p. 98.

[69] *Id*. at 99.

[70] Records, pp. 90-91.

THIRD DIVISION

[G.R. No. 166802. July 4, 2008]

SPS. ALBERTO GUTIERREZ and EPIFANIA GUTIERREZ, *petitioners, vs.* **SPS. ROGELIO and JOSEPHINE VALIENTE, HON. ALEXANDER TAMAYO, Presiding Judge, Branch 15, Regional Trial Court of Malolos, Bulacan and SHERIFF IV PABLO R. GLORIOSO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; REQUIREMENT ON VERIFICATION; NON-COMPLIANCE THEREWITH DOES NOT NECESSARILY RENDER THE PLEADING FATALLY DEFECTIVE.— Section 4, Rule 7 of the Rules of Court states that a pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct, based on his personal knowledge or based on authentic records. This Court has consistently held that this requirement is formal, not jurisdictional. It is a condition affecting the form of the pleading; non-compliance with this requirement does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith.

2. ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ATTACHMENTS TO A PETITION FOR *CERTIORARI*; EXPLAINED.— Section 1 of Rule 65 of the Rules of Court requires that petition for *certiorari* shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the records as are referred to therein, and other documents relevant or pertinent thereto; and failure of compliance shall be sufficient ground for the dismissal of the petition. x x x In *Air Philippines Corporation v. Zamora,* the Court clarified that not all pleadings and parts of case records

are required to be attached to the petition; only those pleadings, parts of case records and documents which are material and pertinent, in that they may provide the basis for a determination of a *prima facie* case of abuse of discretion, are required to be attached to a petition for *certiorari,* and omission to attach such documents may be rectified by the subsequent submission of the documents required.

3. ID.; ID.; COMMENCEMENT OF ACTIONS; PAYMENT OF DOCKET FEES; ELUCIDATED.— In *Sun Insurance Office, Ltd. v. Asuncion,* the Court held that the strict regulation set in *Manchester Development Corporation v. Court of Appeals* that a court acquires jurisdiction over any case only upon payment of the prescribed docket fees does not apply where the party does not deliberately intend to defraud the court in the payment of docket fees, and manifests its willingness to abide by the rules by paying additional docket fees when required by the court. The liberal doctrine in *Sun Insurance* has been repeatedly reiterated in *Heirs of Bertuldo Hinog v. Melicor, Proton Pilipinas Corporation v. Banque Nationale de Paris* and *Intercontinental Broadcasting Corporation v. Alonzo-Legasto*, and continues to be the controlling doctrine.

4. ID.; ID.; JUDGMENTS OR ORDERS; INTERLOCUTORY ORDER; DEFINED.— The word "interlocutory" refers to something intervening between the commencement and the end of the suit which decides some point or matter but is not a final decision of the whole controversy.

5. ID.; ID.; PLEADINGS; RELIEF; THE GENERAL PRAYER IS BROAD ENOUGH TO JUSTIFY EXTENSION OF A REMEDY DIFFERENT FROM OR TOGETHER WITH THE SPECIFIC REMEDY SOUGHT.— In *BPI Family Bank v. Buenaventura*, this Court ruled that the general prayer is broad enough "to justify extension of a remedy different from or together with the specific remedy sought." Even without the prayer for a specific remedy, proper relief may be granted by the court if the facts alleged in the complaint and the evidence introduced so warrant. The court shall grant relief warranted by the allegations and the proof, even if no such relief is prayed for. The prayer in the complaint for other reliefs equitable

and just in the premises justifies the grant of a relief not otherwise specifically prayed for.

6. ID.; ID.; EXECUTION OF JUDGMENTS; MOTION TO QUASH EXECUTION, WHEN PROPER.— A motion to quash execution is only proper where: (a) the writ of execution varies the judgment; (b) there has been a change in the situation of the parties making execution inequitable or unjust; (c) execution is sought to be enforced against property exempt from execution; (d) it appears that the controversy has never been submitted to the judgment of the court; (e) the terms of the judgment are not clear enough and there remains room for interpretation thereof; or (f) it appears that the writ of execution has been improvidently issued, or that it is defective in substance or is issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority.

7. ID.; ID.; A MOTION TO QUASH EXECUTION AND A PETITION FOR *CERTIORARI* AND PROHIBITION ARE NOT SUBSTITUTES FOR A LOST APPEAL.— A motion to quash execution and a petition for *certiorari* and prohibition, are not and should not be substitutes for a lost appeal. They are not procedural devises to deprive the winning party of the fruits of the judgment in his or her favor. Courts should frown upon any scheme to prolong litigations. A judgment which has acquired finality becomes immutable and unalterable, hence, may no longer be modified in any respect except only to correct clerical errors or mistakes. Once a judgment or order becomes final, all the issues between the parties are deemed resolved and laid to rest.

APPEARANCES OF COUNSEL

People's Law Office for petitioners.
Law Office of Pablo Cruz for private respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Resolution[1] dated October 22, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 86957, which dismissed outright the Petition for *Certiorari* and Prohibition of petitioners Spouses Alberto and Epifania Gutierrez (Spouses Gutierrez) for being deficient in form, and the CA Resolution[2] dated January 20, 2005 denying their Motion for Reconsideration with Motion to Admit Annexes and to Allow Payment of Additional Docket Fees.

The present controversy involves a boundary dispute between owners of adjoining Lot 6098-D and Lot 6098-E situated in Banga, Meycauayan, Bulacan. Lot 6098-D is a 250-square meter parcel of land owned by Spouses Gutierrez under Transfer Certificate of Title (TCT) No. T-5728 (M). Lot 6098-E is a 425-square meter parcel of land owned by respondents Rogelio and Josephine Valiente (Spouses Valiente) under TCT No. T-26901 (M).

Lot 6098-E was previously owned by Crispin Gutierrez, the brother of petitioner Alberto Gutierrez, under TCT No. 5729 (M). On January 28, 1997, Spouses Valiente bought said Lot 6098-E thru a Deed of Extra-judicial Settlement of Estate with Sale from the surviving heirs of Crispin Gutierrez, namely, his widow Milagros, and daughters Maricris and Marissa. The vendors told the vendees that a portion of the lot was occupied by Spouses Gutierrez at the mere tolerance of the vendees. Sometime in April 1997, Spouses Valiente conducted a relocation survey to verify the boundaries of their lot. The relocation survey revealed that Spouses Gutierrez occupied a 99-square meter portion

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[1] Penned by Associate Justice Mariano C. Del Castillo and concurred in by Associate Justices Romeo A. Brawner and Magdangal M. de Leon, CA *rollo*, p. 41.

[2] *Id*. at 94.

of the lot of Spouses Valiente. When Spouses Valiente demanded the return of the encroached area, Spouses Gutierrez refused, claiming ownership of the occupied portion under their title.

Thus, on May 23, 1997, Spouses Valiente filed a complaint[3] against Spouses Gutierrez for Quieting of Title and Recovery of Possession with Damages before the Regional Trial Court (RTC), Branch 15, Malolos, Bulacan, docketed as Civil Case No. 355-M-97.

On August 8, 1997, Spouses Gutierrez filed a Motion to Dismiss.[4] On October 30, 1997, the RTC issued an Order[5] denying the Motion to Dismiss and required Spouses Gutierrez to submit their Answer.

Instead of filing an Answer, Spouses Gutierrez filed on November 7, 1997 a Motion for Reconsideration.[6] On November 19, 1997, Spouses Valiente filed an Opposition to the Motion for Reconsideration with Motion to Declare Defendants in Default and Render Judgment.[7] On November 21, 1997, the RTC issued an Order[8] denying the Motion for Reconsideration of Spouses Gutierrez and reset the hearing to December 11, 1997.

At the scheduled hearing of December 11, 1997, Spouses Gutierrez and their counsel failed to appear.[9] Thereupon, Spouses Valiente moved that their Motion to Declare Defendants in Default and to Render Judgment be granted, considering that Spouses Gutierrez have not filed their answer within the allowable period given them.[10] Finding merit in the motion, the RTC issued an

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[3] *Id*. at 30.

[4] *Id*. at 50.

[5] *Id*. at 55.

[6] *Id*. at 56.

[7] *Id*. at 60.

[8] *Id*. at 59.

[9] *Rollo*, p. 144.

[10] *Id*.

Order[11] declaring Spouses Gutierrez in default and allowed Spouses Valiente to present their evidence *ex-parte*.

On December 17 and 18, 1997, Spouses Valiente presented their evidence *ex-parte*. Upon the submission of their evidence, Spouses Valiente rested their case and submitted it for decision. On February 12, 1998, Spouses Gutierrez filed a Motion to Set Aside Order of Default.[12] However, the records do not show that the RTC acted on the motion.

On August 17, 1999, Spouses Valiente filed a Manifestation with Motion to Render Judgment[13] since no decision had been rendered 18 months from submission of the case for decision. On March 13, 2000, Spouses Valiente filed an *Ex-Parte* Manifestation[14] reiterating their motion to render judgment.

On May 15, 2000, the RTC, now acting through a different judge, issued an Order[15] directing the verification and relocation survey of Lots 6098-D and 6098-E by the government Geodetic Engineer to determine the exact description, monuments and areas, as appearing on both titles of the lots, for the reconveyance of the encroached portion to the party entitled thereto. The relocation survey, however, was delayed several times due to the interference of Spouses Gutierrez.[16]

Two years later, or on May 17, 2002, Geodetic Engineer Joel Atienzo (Engr. Atienzo) submitted his Surveyor's Report[17] with a Sketch Plan.[18] He stated in his report that an existing alley with an area of 45 square meters was within the boundary of Lot 6098-E.

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[11] *Id*.

[12] CA *rollo*, p. 63.

[13] *Rollo*, p. 145.

[14] *Id*. at 147.

[15] CA *rollo*, p. 23.

[16] *Rollo*, pp. 148-157.

[17] *Id*. at 159.

[18] *Id*. at 161.

On July 3, 2002, Spouses Valiente filed their Comments on the Surveyor's Report[19] seeking clarification of the Surveyor's Report since the Sketch Plan delineated two other portions apparently encroached in Lot 6098-E, with areas of 17.95 square meters and 44 square meters, but Engr. Atienzo did not state them as encroached upon in his Surveyor's Report.

At the hearing on September 20, 2002, the parties manifested in open court their agreement to the Surveyor's Report and intimated that Spouses Gutierrez were willing to negotiate with respect to the payment of the property encroached upon per Surveyor's Report.[20]

During the November 20, 2002 hearing attended by both parties, Engr. Atienzo clarified in open court that the 17.95-square meter, 45-square meter and 44-square meter portions delineated in the Sketch Plan were also encroachments on Lot 6098-E.[21] On the same day, the RTC issued an Order[22] directing the parties to submit their joint commitments on the issues of encroachment and/or payment, considering that there were three encroached portions of the subject lot but only one was reported to be within the boundary of Lot 6098-E.

On March 7, 2003, Spouses Valiente filed a Manifestation[23] stating that the parties could no longer submit any commitment on the issues on encroachment and/or payment thereof because no agreement was arrived at between the parties regarding said issues. They also manifested that with the declaration in open court of Engr. Atienzo that the 17.95-square meter, 45-square meter and 44-square meter portions delineated in his Sketch Plan where the encroached areas in Lot 6098-E, then the RTC may finally dispose of the case *sans* the parties' joint commitments. No other pleading was filed by the parties.

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[19] *Id*. at 163.

[20] *Id*. at 168.

[21] *Id*. at 171.

[22] *Supra* note 20.

[23] *Id*. at 169.

Thus, on June 23, 2003, the RTC issued an Order[24] approving the Surveyor's Report and directing Spouses Gutierrez to reconvey to Spouses Valiente the 17.95-square meter, 45-square meter and 44-square meter encroached portions of Lot 6098-E. No motion for reconsideration or appeal from said Order was filed by Spouses Gutierrez.

On August 11, 2003, Spouses Valiente filed a Motion for Execution,[25] which was granted by the RTC in an Order[26] dated February 5, 2004. On May 25, 2004, respondent Sheriff gave Notice to Spouses Gutierrez of the Writ of Execution.

On May 28, 2004, Spouses Gutierrez filed their Urgent Motion to Quash Writ of Execution and to Stay Notice on May 25, 2004[27] on the ground that the Orders dated May 15, 2000 and June 23, 2003 directing reconveyance of the encroached portions exceeded the nature of the reliefs prayed for in the complaint.

On June 9, 2004, the RTC issued an Order[28] denying the motion to quash of Spouses Gutierrez. It held that the May 15, 2000 Order had long attained finality, and that the order for reconveyance in the June 23, 2003 Order was related to the reliefs prayed for in the complaint. Spouses Gutierrez filed a Motion for Reconsideration,[29] but it was denied by the RTC in an Order[30] dated September 9, 2004.

On October 14, 2004, Spouses Gutierrez filed a Petition for *Certiorari* and Prohibition[31] in the CA assailing the RTC Orders dated May 15, 2000, June 23, 2003, June 9, 2004 and September 9, 2004.

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[24] *Id*. at 39.

[25] CA *rollo*, p. 71.

[26] *Id*. at 26.

[27] *Id*. at 35.

[28] *Id*. at 28.

[29] *Id*. at 73.

[30] *Id*. at 29.

[31] *Id*. at 2.

On October 22, 2004, the CA issued a Resolution[32] dismissing outright the petition for: (a) defective verification, because it did not give the assurance that the allegations of the petition were true and correct based on authentic records; (b) failure to attach material portions of the record, to wit:

> Motion to Dismiss Complaint, Order dated October 30, 1997 and the Motion for Reconsideration thereto, Order dated November 21, 1997, Motion to Declare Defendants in Default, Order dated December 11,1997, Motion to Set Aside Order of Default, Motion to Require the Acting Chief, Survey Party of CENRO, Tabang Guiguinto, Bulacan to Submit Verification/Relocation, Orders dated April 26, 2001 and November 20, 2002, Motion for Writ of Execution dated August 11, 2003, Motion for Reconsideration dated July 1, 2004 and the Opposition thereto and Reply.[33]

and (c) insufficient payment of docket fees.

On November 22, 2004, Spouses Gutierrez filed their Motion for Reconsideration with Motion to Admit Annexes and to Allow Payment of Additional Docket Fees,[34] attaching thereto (a) an amended verification, (b) copies of the required documents and portions of the record, and (c) a postal money order for ₱680.00.

In a Resolution[35] dated January 20, 2005, the CA denied the Motion for Reconsideration of Spouses Gutierrez, holding that strict compliance with the rules of Court was indispensable for the prevention of needless delays or for the orderly expeditious dispatch of judicial business. It also found no merit to the claim of Spouses Gutierrez that the RTC committed grave abuse of discretion in issuing the assailed orders.

Hence, the present petition with the following assigned errors:

> A. THE COURT OF APPEALS GRAVELY ERRED IN NOT ALLOWING THE SUBMISSION AND/OR AMENDMENT OF THE VERIFICATION AND CERTIFICATION ON NON-

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[32] *Id*. at 41.

[33] *Id.* at 41-42.

[34] *Id*. at 43.

[35] *Id*. at 94.

FORUM AND THE SUBMISSION OF THE ALLEGED MATERIAL PORTIONS OF THE RECORD; AND THE FULL PAYMENT OF THE BALANCE OF THE APPELLATE DOCKET FEE OF ₱680.00;[36]

B. THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION IN AFFIRMING THE TRIAL COURT'S DEPARTURE FROM THE USUALLY ACCEPTED JUDICIAL PROCEDURE WHEN THE LATTER AWARDED RELIEFS IN THE JUDGMENT OF DEFAULT NOT PRAYED FOR IN THE COMPLAINT; AND IN ISSUING A WRIT OF EXECUTION OF A JUDGMENT/ORDER THAT WAS CONDITIONAL AND WHICH COULD NOT BECOME FINAL AND EXECUTORY.[37]

Spouses Gutierrez invoke liberality and the primordial interest of substantial justice over the strict enforcement of the rules of technicality. They submit that the CA should have resolved the petition on the merits, instead of indulging in strict technicalities. They contend that the RTC gravely abused its discretion when it did not quash the Writ of Execution, because the Orders dated May 15, 2000 and June 23, 2003 cannot be the basis of the Writ of Execution, the May 15, 2000 Order as was an interlocutory order and the June 23, 2003 Order exceeded the reliefs prayed for in the complaint.

On the other hand, Spouses Valiente submit that the CA correctly dismissed the petition for procedural and substantive infirmities, since Spouses Gutierrez not only failed to comply with the procedural requirements of the rules, but also failed to show that the RTC committed grave abuse of discretion in issuing the assailed orders.

On the procedural aspect of the case, the Court finds in favor of Spouses Gutierrez.

On the matter of defective verification, Section 4, Rule 7 of the Rules of Court states that a pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are

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[36] *Rollo*, p. 16.

[37] *Id*. at 18.

true and correct, based on his personal knowledge or on authentic records. This Court has consistently held that this requirement is formal, not jurisdictional.[38] It is a condition affecting the form of the pleading; non-compliance with this requirement does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith.[39] Thus, the appellate court could have simply ordered the correction of the pleading or acted on the unverified pleading, if the attendant circumstances were such that strict compliance with the rule may be dispensed with in order to serve the ends of justice.[40] Besides, there appears to be no intention to circumvent the need for proper verification, since Spouses Gutierrez submitted an amended verification, in their Motion for Reconsideration.

With regard to the failure to attach material portions of the record in support of the petition, Section 1 of Rule 65 of the Rules of Court requires that petition for *certiorari* shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the records as are referred to therein, and other documents relevant or pertinent thereto; and failure of compliance shall be sufficient ground for the dismissal of the petition.

In the present case, the CA dismissed the petition for failure to attach the following documents:

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[38] *Gordoland Development Corp. v. Republic of the Philippines,* G.R. No. 163757, November 23, 2007, 538 SCRA 425, 433; *Benguet Corporation v. Cordillera Caraballo Mission, Inc*., G.R. No. 155343, September 2, 2005, 469 SCRA 381, 384.

[39] *Gordoland Development Corp. v. Republic of the Philippines, supra* note 38; *Benguet Corporation v. Cordillera Caraballo Mission, Inc*., *supra* note 38; *Shipside Inc. v. Court of Appeals*, 404 Phil. 981, 995 (2001).

[40] *Ballao v. Court of Appeals,* G.R. No. 162342, October 11, 2006, 504 SCRA 227, 233; *Pfizer, Inc. v. Galan*, 410 Phil. 483, 492 (2001).

Motion to Dismiss Complaint, Order dated October 30, 1997 and the Motion for Reconsideration thereto, Order dated November 21, 1997, Motion to Declare Defendants in Default, Order dated December 11,1997, Motion to Set Aside Order of Default, Motion to Require the Acting Chief, Survey Party of CENRO, Tabang Guiguinto, Bulacan to Submit Verification/Relocation, Orders dated April 26, 2001 and November 20, 2002, Motion for Writ of Execution dated August 11, 2003, Motion for Reconsideration dated July 1, 2004 and the Opposition thereto and Reply,[41]

These documents, however, are not at all relevant to the petition for *certiorari*. Since the issue of whether the RTC committed grave abuse of discretion pertained only to the Orders dated May 15, 2000, June 23, 2003, June 9, 2004 and September 9, 2004, copies of said Orders would have sufficed as basis for the CA to resolve the issue. It was in these Orders that the RTC supposedly made questionable rulings. Thus, the attachment of these Orders to the petition was already sufficient even without the other pleadings and portions of the case record. Moreover, Spouses Gutierrez corrected the purported deficiency by submitting the required documents in their Motion for Reconsideration.

In *Air Philippines Corporation v. Zamora,*[42] the Court clarified that not all pleadings and parts of case records are required to be attached to the petition; only those pleadings, parts of case records and documents which are material and pertinent, in that they may provide the basis for a determination of a *prima facie* case for abuse of discretion, are required to be attached to a petition for *certiorari,* and omission to attach such documents may be rectified by the subsequent submission of the documents required.[43]

As to the shortage of payment of the docketing fee, the same cannot be used as a ground for dismissing the petition. In *Sun Insurance Office, Ltd. v. Asuncion,*[44] the Court held that

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[41] *Supra* note 33.

[42] G.R. No. 148247, August 7, 2006, 498 SCRA 59.

[43] *Id*. at 69-70.

[44] G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274, 285.

the strict regulations set in *Manchester Development Corporation v. Court of Appeals*[45] that a court acquires jurisdiction over any case only upon payment of the prescribed docket fees does not apply where the party does not deliberately intend to defraud the court in payment of docket fees, and manifests its willingness to abide by the rules by paying additional docket fees when required by the court. The liberal doctrine in *Sun Insurance* has been repeatedly reiterated in *Heirs of Bertuldo Hinog v. Melicor,*[46] *Proton Pilipinas Corporation v. Banque Nationale de Paris*[47] and *Intercontinental Broadcasting Corporation v. Alonzo-Legasto*,[48] and continues to be the controlling doctrine. Since the deficiency in payment was not at all intentional, as there was a willingness to comply with the rules when Spouses Gutierrez remitted the deficiency by postal money order in their Motion for Reconsideration, the *Sun Insurance* doctrine applies.

It cannot be gainsaid that the emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.[49] Technicality and procedural imperfection should thus not serve as basis of decisions.[50] As has often been stated, it is far better to dispose of a case on the merits which is a primordial end, rather than on a technicality, if it be the case, that may result in injustice.[51]

In any event, the contentions of Spouses Gutierrez on the substantive aspect of the case fail to invite judgment in their favor.

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[45] G.R. No. 75919, May 7, 1987, 149 SCRA 562.

[46] G.R. No. 140954, April 12, 2005, 455 SCRA 460, 475.

[47] G.R. No. 151242, June 15, 2005, 460 SCRA 260, 274-276.

[48] G.R. No. 169108, April 18, 2006, 487 SCRA 339, 347.

[49] *Peñoso v. Dona,* G.R. No. 154018, April 3, 2007, 520 SCRA 232, 240; *Ginete v. Court of Appeals*, 357 Phil. 36, 53 (1998).

[50] *Composite Enterprises, Inc. v. Caparoso,* G.R. No. 159919, August 8, 2007, 529 SCRA 470, 480; *Crystal Shipping, Inc. v. Natividad*, G.R. No. 154798, October 20, 2005, 473 SCRA 559, 566.

[51] *Tan v. Dumarpa,* G.R. No. 138777, September 22, 2004, 438 SCRA 659, 665; *Serrano v. Galant Maritime Services, Inc.*, 455 Phil. 992, 998 (2003).

On the matter of whether the May 15, 2000 Order is final or interlocutory, it must be clarified that since the May 15, 2000 Order merely directed the conduct of a verification and relocation survey to determine the metes and bounds of the parties' respective lots to find out which lot was encroached upon, such May 15, 2000 Order did not finally dispose of the case. It awaited the results and submission of the Surveyor's Report for the final adjudication on the boundary dispute; thus the May 15, 2000 Order was merely interlocutory in nature. The word "interlocutory" refers to something intervening between the commencement and the end of the suit which decides some point or matter but is not a final decision of the whole controversy.[52] In that sense, it does not attain finality since it leaves something else to be done by the RTC with respect to the merits of the case.

It was the June 23, 2003 Order which finally disposed of the case, having settled the parties' respective rights and liabilities by ordering the reconveyance of the encroached portions of Lot 6098-E.

There is no merit to petitioners' argument that the RTC, by ordering reconveyance, exceeded the reliefs prayed for in the complaint. Spouses Valiente prayed for the following reliefs in their complaint:

a) The verification and relocation survey of the spouses-plaintiffs' subject parcel of land (Lot 6098-E) and that of the spouses-defendants (Lot 6098-D) (at the expense of the losing party or if to be advanced by either party, to be reimbursed later on by the parties concerned by order of the Honorable Court) **to settle once and for all who is correct in the parties respective claims;**

b) The spouses-defendants to pay to the spouses-plaintiffs the following sum: ₱25,000.00 as actual damages; ₱25,000.00 as attorney's fees plus the sum of ₱1,000.00 as court appearance fee for the latter's counsel every appearance and attendance in court;

c) The Cost of Suit.

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[52] *Pobre v. Court of Appeals,* G.R. No. 141805, July 8, 2005, 463 SCRA 50, 60; *Ramiscal, Jr. v. Sandiganbayan,* G.R. Nos. 140576-99, December 13, 2004, 446 SCRA 166, 177.

Plaintiffs further pray for such other reliefs and remedies as the Honorable Court may deem just and equitable in the premises.[53] (Emphasis supplied).

While the complaint does not categorically state reconveyance as the specific relief desired, it does contain a general prayer "for such other reliefs and remedies as the Honorable Court may deem just and equitable in the premises." In *BPI Family Bank v. Buenaventura*,[54] this Court ruled that the general prayer is broad enough "to justify extension of a remedy different from or together with the specific remedy sought."[55] Even without the prayer for a specific remedy, proper relief may be granted by the court if the facts alleged in the complaint and the evidence introduced so warrant.[56] The court shall grant relief warranted by the allegations and the proof, even if no such relief is prayed for.[57] The prayer in the complaint for other reliefs equitable and just in the premises justifies the grant of a relief not otherwise specifically prayed for.

In the present case, this general prayer should be interpreted to include the prayer for reconveyance of the encroached portions, since this is already evident from the allegations contained in the body of the Complaint and in the prayer of Spouses Valiente that the respective claims of the parties should be settled once and for all.

At any rate, the issues raised by Spouses Gutierrez refer to the validity of the Orders dated May 15, 2000 and June 23, 2003 which are not proper grounds in a motion to quash execution.

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[53] CA *rollo,* p. 34.

[54] G.R. Nos. 148196 & 148259, September 30, 2005, 471 SCRA 431.

[55] *Id*. at 445. See also *Morales v. Court of Appeals*, G.R. No. 112140, June 23, 2005, 461 SCRA 34; *First Metro Investment Corporation v. Este Del Sol Mountain Reserve, Inc.,* 420 Phil. 902 (2001).

[56] *Eugenio, Sr. v. Velez*, G.R. No. 85140, May 17, 1990, 185 SCRA 425, 432-433.

[57] *Arroyo, Jr. v. Taduran,* 466 Phil. 173, 180 (2004); *Banco Filipino Savings and Mortgage Bank v. Court of Appeals,* 388 Phil. 27, 41 (2000).

A motion to quash execution is only proper where: (a) the writ of execution varies the judgment; (b) there has been a change in the situation of the parties making execution inequitable or unjust; (c) execution is sought to be enforced against property exempt from execution; (d) it appears that the controversy has never been submitted to the judgment of the court; (e) the terms of the judgment are not clear enough and there remains room for interpretation thereof; or (f) it appears that the writ of execution has been improvidently issued, or that it is defective in substance or is issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority.[58] None of these instances applies here.

Spouses Gutierrez should have addressed the issues regarding the validity of the Order dated June 23, 2003 in the motion for reconsideration or appeal. Since no motion for reconsideration or appeal was filed by Spouses Gutierrez within the reglementary period, the order for reconveyance had become final and executory. Having lost the right to appeal, they can no longer assail the validity of June 23, 2003 in a motion to quash or a petition for *certiorari* and prohibition in the CA.

A motion to quash execution and a petition for *certiorari* and prohibition, are not and should not be substitutes for a lost appeal.[59] They are not procedural devises to deprive the winning party of the fruits of the judgment in his or her favor. Courts should frown upon any scheme to prolong litigations. A judgment which has acquired finality becomes immutable and unalterable, hence, may no longer be modified in any respect except only to correct clerical errors or mistakes. Once a judgment or order becomes final, all the issues between the parties are deemed resolved and laid to rest.[60]

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[58] *Reburiano v. Court of Appeals*, 361 Phil. 294, 302 (1999); *Limpin, Jr. v. Intermediate Appellate Court*, G.R. No. 70987, January 30, 1987, 147 SCRA 516, 522-23.

[59] *Cf Conejos v. Court of Appeals,* 435 Phil. 849, 855 (2002); *Del Mar v. Court of Appeals,* 429 Phil. 19, 30 (2002).

[60] *Cf Salva v. Court of Appeals,* 364 Phil. 281, 294 (1999).

The Court stresses once again that it is an important fundamental principle in the judicial system that every litigation must come to an end. Access to the courts is guaranteed. But there must be a limit thereto. Once a litigant's rights have been adjudicated in a valid final judgment of a competent court, he should not be granted an unbridled license to come back for another try. The prevailing party should not be harassed by subsequent suits. For if endless litigations were to be encouraged, then unscrupulous litigants will multiply in number to the detriment of the administration of justice.[61]

Thus, litigation of this case must now cease.

WHEREFORE, the petition is *DENIED*. Except for the procedural aspect, the dismissal of the Petition for *Certiorari* and Prohibition in CA-G.R. SP No. 86957 for lack of merit is *AFFIRMED*. The Order dated June 9, 2004 denying petitioners' Motion to Quash and the Order dated September 9, 2004 denying petitioners' Motion for Reconsideration, issued by the Regional Trial Court, Branch 14, Malolos, Bulacan, stand.

SO ORDERED.

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

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[61] *Aguilar v. Manila Banking Corporation*, G.R. No.157911, September 19, 2006, 502 SCRA 354, 381; *Ferinion v. Sta. Romana*, 123 Phil. 191, 195 (1966).

THIRD DIVISION

[G.R. No. 168111. July 4, 2008]

ANTONIO TAN, DANILO DOMINGO and ROBERT LIM, *petitioners, vs.* **AMELITO BALLENA, ZENAIDA BORLONGAN, ANNALYN VILLAFUERTE, ROGELIO VELASQUEZ, EDMONDO VILLAMOR, MERCY SANTOMIN, REYNALDO RAMOS, THESS GONZALES, FORTUNATO GATACILO, RONALDO NICOL, MARIVIC NICOL, RUEL DISTOR, MARYJEAN GRANADA, ARNOLD AGUSTIN, JR., MALOU SALAPONG, THERESA JALMASCO (SIC), ANTIOCO MARAGANAS, ROLAND LAROCO, WILFREDO DICHOSO, JOSEPH FERRER, GUILLERMO PACSON, JR., ROMEO JALAMASCO, LINO CAGAS, DIANA DE LA CRUZ, JERRY ARCA, JAIME SANTOS, MANUEL REGALA, JUANITO GALONIA, RUSSEL BORADO, RODY VILLAGFUERTE (SIC), MA. CRISTINA MADRIDEO, VON MADRIDEO, AMELIA CUEVILLAS, EVANGELINE DOMINGO, FELIMAR VILLAFUERTE, ANTONIO SALAPONG, ELINO MALAQUE, JR., EMILIO TRINIDAD, MA. ELENA HERNANDEZ, JHONNY GRAJO, EDITHA FLORESTA, ORLANDO MENDOZA, SONIA ALONZO, GREGORIO MARIANO, LIPA ALDRIN, FRANCO SEVILLA, MYRISIA NARCISO, JOSEPHINE GERONIMO, MARILOU BORDADO, ELISA FRANCISCO, LOLITA NARCISO, ANGELITA DOMINGO, MA. THERESA TORRES, IRERIA CRUZ, APOLINARIO TRINIDAD, ROMULO BULAONG, FELEXBERTO (SIC) SANTIAGO, MARICEL MENDOZA, JUANITO CRUZ, FIDEL PASCUAL, ROWENA DE LA CRUZ, DIVINA PAGTALUNAN, PACENCIA DOMINGO, MARILOU VICTORIA, GUILLERMO CRISOSTOMO, JR., ANITA CRISOSTOMO, ELIZABETH CASTRO, ENRIQUE BUGARIN, AUGUST BULAONG, ELMER VILLAMOR, ROMEO UDIONG, NICK OTARA, ERLANDO**

RICOHERMOSO, RIZALINA DE LA CRUZ, ANTONIO JAO, JR., ROSALIE JINGCO, ALFREDO SINGUELAS, RONALD SANDIL, ALMA ENRIQUEZ, MICHAEL RITCHIE DE LA CRUZ, JANE JAVIER, TERESITA SACDALAN, MARCELINO ESTRELLA, ARTUADOR JUANITO (SIC), JR., LYDIA PAGTALUNAN, ROSINDO MARAGAÑAS, DANILO SEGUNDO, ROMEO CRUZ, ANNALIZA SELENCIO, ELLEN LABAJO, MA. ELENA SANTIAGO, ARNULFO SANTIAGO, MA. LUISA SANTOS, SERGELIO PAGDANGANAN, DANTE VICTORIA, FELIPINAS (SIC) EMPHACIS (SIC), NOEL OLIVERA, JOEY AUSTRIA, PHILIP MONSUYAC, RONALD PASCUAL, ZENAIDA SAKAY, PAULO SOTTO, MA. LEDY MANLAPIG, RODOLFO JUNTO, ALDWIN CALALANG, CHARITO REYES, PAULINA CASTOR, VICTOR MARCELINO, CARINA RAUZA, VICTOR DELOS SANTOS, EVANGELINE PAULINO, RENAN LAYSON, RUDY DONOR, REBECCA PASOQUIN, EMETERIA PAGTALUNAN, FERDINAND MANANSALA, JOCELYN BRINGAS, JESUS GATACILO, IMELDA VALENCIA, MACARIO RICABO, ISID NICASIO, CHRISTOPHER DELA CRUZ, ERNESTO FOMBO, ANGELO GIANAN, CRISTINA STA. ANA, DANTE SEMBILLO, MARILOU AGCAOILI, CRISTINA SANTOS, CARMELITA GARSUTA, LOURDES MATOTE, SONNY DE LA CRUZ, ANGELITA VILLAFUERTE, MARIO SANTOS, ALBERTO NAVARRO, RITA DELA CRUZ, ARMANDO CASTRO, ERWIN CASTRO, ALFREDO NATIVIDAD, PURISIMA TRINIDAD, ROBERTO PARAISO, GREGORIO BUMA-AT, MARIA TRINIDAD, EMMA SEGUNDO, FREDDIE SEGUNDO, NARCISO HERERO (SIC), EMILIANO NUÑEZ, VIOLETA AVILA, RIZA REAL, CHITO ANG, MARIANO MANOLITA, JOVENCIO UNDALOK, NILDA NELIA DEL ROSARIO, ERNESTO MARCELINO, EMELITA ALBERTO, YOLANDA AGUSTIN, ARNOLD ALVERO, NENITA DIGA, MICHELLE DIGA, MA. ARA PALELEO, FLORA

MORALES, ROBERRO (SIC) RAMOS, JR., JOJO GADO, FLORA PAGDANGANAN, ESTRELITA MAPILISAN, FLORENCIO BIHASA, MILAGROS SAN PEDRO, JONATHAN LOPEZ, LANI MEDALLA, MARIVIC ENRIQUEZ, CHONA MANUMBAS, LEILANI LOPEZ, FELIX ENRIQUEZ, ANECITO MEDALLA, FRANCIS BULAONG, CARLOS DELA CRUZ, CRISANTA ASPIRAS, ARNOLD ALMERO, ADELIA SURIO, CRISANTO CRUZ, and ANALYN BERNABE, *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; EXPLAINED.— It is a well-settled principle that rules of procedure are mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. In deciding a case, the appellate court has the discretion whether or not to dismiss the same, which discretion must be exercised soundly and in accordance with the tenets of justice and fair play, taking into account the circumstances of the case. It is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.

2. ID.; CIVIL PROCEDURE; PLEADINGS; VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING; PURPOSE.— Under justifiable circumstances, we have already allowed the relaxation of the requirements of verification and certification so that the ends of justice may be better served. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith; while the purpose of the aforesaid certification is to prohibit and penalize the evils of forum shopping.

3. ID.; ID.; ID.; CERTIFICATION OF NON-FORUM SHOPPING; MUST BE SIGNED BY ALL THE PETITIONERS; EXCEPTION.— On the requirement of a certification of non-forum shopping, the well-settled rule is that all the petitioners must sign the certification of non-forum shopping. The reason for this is that the persons who have signed the certification cannot be presumed to have the personal knowledge of the other non-signing petitioners with respect to the filing or non-filing of any action or claim the same as or similar to the current petition. The rule, however, admits of an exception and that is when the petitioners show reasonable cause for failure to personally sign the certification. The petitioners must be able to convince the court that the outright dismissal of the petition would defeat the administration of justice.

4. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; EXPLAINED.— Probable cause is defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. It is a reasonable ground of presumption that a matter is, or may be, well-founded, such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief.

5. ID.; ID.; ID.; ID.; THE DETERMINATION THEREOF IS A FUNCTION THAT BELONGS TO THE PUBLIC PROSECUTOR.— The determination of probable cause is a function that belongs to the public prosecutor, one that, as far as crimes cognizable by the RTC are concerned, and notwithstanding that it involves an adjudicative process of a sort, exclusively pertains, by law, to said executive officer, the public prosecutor. This broad prosecutorial power is, however, not unfettered, because just as public prosecutors are obliged to bring forth before the law those who have transgressed it, they are also constrained to be circumspect in filing criminal charges against the innocent. Thus, for crimes cognizable by the regional trial courts, preliminary investigations

are usually conducted. As defined under the law, a preliminary investigation is an inquiry or a proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and the respondent is probably guilty thereof and should be held for trial.

6. ID.; ID.; ID.; ID.; ID.; POWER OF REVIEW; ELUCIDATED.— The findings of the prosecutor with respect to the existence or non-existence of probable cause is subject to the power of review by the DOJ. Indeed, the Secretary of Justice may reverse or modify the resolution of the prosecutor, after which he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. This power of review, however, does not preclude this Court and the Court of Appeals from intervening and exercising our own powers of review with respect to the DOJ's findings. In the exceptional case in which grave abuse of discretion is committed, as when a clear sufficiency or insufficiency of evidence to support a finding of probable cause is ignored, the Court of Appeals may take cognizance of the case *via* a petition under Rule 65 of the Rules of Court.

7. ID.; ID.; ID.; EXPLAINED.— In a preliminary investigation, a full and exhaustive presentation of the parties' evidence is not required, but only such as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. Certainly, it does not involve the determination of whether or not there is evidence beyond reasonable doubt pointing to the guilt of the person. Only *prima facie* evidence is required; or that which is, on its face, good and sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense; and which, if not rebutted or contradicted, will remain sufficient. Therefore, matters of evidence are more appropriately presented and heard during the trial.

8. CRIMINAL LAW; ACTS *MALA IN SE* AND ACTS *MALA PROHIBITA*, DISTINGUISHED.— The law has long divided crimes into acts wrong in themselves called acts *mala in se*; and acts which would not be wrong but for the fact that positive law forbids them, called acts *mala prohibita*. This distinction

is important with reference to the intent with which a wrongful act is done. The rule on the subject is that in acts *mala in se,* the intent governs; but in acts *mala prohibita*, the only inquiry is, has the law been violated? When an act is illegal, the intent of the offender is immaterial.

APPEARANCES OF COUNSEL

Agcaoili Law Offices for petitioners.
Nenita C. Mahinay for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] and Resolution[3] of the Court of Appeals dated 30 September 2004 and 9 May 2005, respectively, in CA-G.R. SP No. 79101. The appellate court's Decision set aside the Resolutions[4] of the Department of Justice (DOJ) dated 19 March 2002 and 9 August 2002, and reinstated the Final Resolution[5] of the Provincial Prosecutor in I.S. Nos. 01-03-1007, 01-04-1129 and 01-04-1130, which ordered the filing of two (2) informations against petitioners Antonio Tan, Danilo Domingo and Robert Lim. The appellate court's Resolution denied petitioners' Motion for Reconsideration.

The factual and procedural antecedents of the case are as follows:

Petitioners Antonio Tan, Danilo Domingo and Robert Lim were officers of Footjoy Industrial Corporation (Footjoy), a

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[1] *Rollo*, pp. 3-36.

[2] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Godardo A. Jacinto and Jose C. Mendoza concurring; *rollo*, pp. 38-46.

[3] *Rollo*, p. 48.

[4] *Rollo*, pp. 117-120; records, pp. 122-124.

[5] *Rollo*, pp. 101-103.

domestic corporation engaged in the business of manufacturing shoes and other kinds of footwear, prior to the cessation of its operations sometime in February 2001.

On 19 March 2001, respondent Amelito Ballena,[6] and one hundred thirty-nine (139) other employees of Footjoy, filed a Joint Complaint-Affidavit[7] before the Office of the Provincial Prosecutor of Bulacan against the company and petitioners Tan and Domingo in their capacities as owner/president and administrative officer, respectively.[8]

The Complaint-Affidavit alleged that the company did not regularly report the respondent employees for membership at the Social Security System (SSS) and that it likewise failed to remit their SSS contributions and payment for their SSS loans, which were already deducted from their wages.

According to respondents, these acts violated Sections 9, 10, 22 and 24, paragraph (b) of Republic Act No. 1161, as amended by Republic Act No. 8282;[9] as well as Section 28, paragraphs (e), (f), and (h) thereof, in relation to Article 315 of the Revised Penal Code, the pertinent portions of which read:

SEC. 9. *Coverage.* - (a) Coverage in the SSS shall be compulsory upon all employees not over sixty (60) years of age and their employers: x x x *Provided, finally,* That nothing in this Act shall be construed as a limitation on the right of employers and employees to agree on and adopt benefits which are over and above those provided under this Act.

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[6] In the pleadings filed before the Court of Appeals, the Decision of the appellate court dated 30 September 2004 and in the Respondent's Memorandum (*Rollo*, pp. 612-625), the name of respondent Ballena was written as *Angelito Ballena*.

[7] *Rollo*, pp. 64-75.

[8] In the Petition for *Certiorari* filed before the Court of Appeals, the appellate court's Decision dated 30 September 2004 and the Respondents' Memorandum (*Rollo*, pp. 612-625), the figure stated as the number of employees who filed the Complaint-Affidavit was **two hundred forty (240)**. However, in the Complaint-Affidavit itself, there were only **one hundred forty (140)** signatory employees.

[9] The *Social Security Act of 1997.*

SEC. 10. *Effective Date of Coverage.* - Compulsory coverage of the employer shall take effect on the first day of his operation and that of the employee on the day of his employment: x x x.

SEC. 22. *Remittance of Contributions.* — (a) The contribution imposed in the preceding section shall be remitted to the SSS within the first ten (10) days of each calendar month following the month for which they are applicable or within such time as the Commission may prescribe. Every employer required to deduct and to remit such contributions shall be liable for their payment and if any contribution is not paid to the SSS as herein prescribed, he shall pay besides the contribution a penalty thereon of three percent (3%) per month from the date the contribution falls due until paid. If deemed expedient and advisable by the Commission, the collection and remittance of contributions shall be made quarterly or semi-annually in advance, the contributions payable by the employees to be advanced by their respective employers: *Provided,* That upon separation of an employee, any contribution so paid in advance but not due shall be credited or refunded to his employer.

(b) The contributions payable under this Act in cases where an employer refuses or neglects to pay the same shall be collected by the SSS in the same manner as taxes are made collectible under the National Internal Revenue Code, as amended. Failure or refusal of the employer to pay or remit the contributions herein prescribed shall not prejudice the right of the covered employee to the benefits of the coverage.

The right to institute the necessary action against the employer may be commenced within twenty (20) years from the time the delinquency is known or the assessment is made by the SSS, or from the time the benefit accrues, as the case may be.

(c) Should any person, natural or juridical, defaults in any payment of contributions, the Commission may also collect the same in either of the following ways:

1. By an action in court, which shall hear and dispose of the case in preference to any other civil action; x x x.

SEC. 24. *Employment Records and Reports.* –

x x x x x x x x x

(b) Should the employer misrepresent the true date of employment of the employee member or remit to the SSS contributions which are less than those required in this Act or fail to remit any contribution due prior to the date of contingency, resulting in a reduction of benefits, the employer shall pay to the SSS damages equivalent to the difference between the amount of benefit to which the employee member or his beneficiary is entitled had the proper contributions been remitted to the SSS and the amount payable on the basis of the contributions actually remitted: x x x.

SEC. 28. *Penal Clause.* –

x x x x x x x x x

(e) Whoever fails or refuses to comply with the provisions of this Act or with the rules and regulations promulgated by the Commission, shall be punished by a fine of not less than Five thousand pesos (₱5,000.00) nor more than Twenty thousand pesos (₱20,000.00), or imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years, or both, at the discretion of the court: *Provided,* That, where the violation consists in failure or refusal to register employees or himself, in case of the covered self-employed, or to deduct contributions from the employees' compensation and remit the same to the SSS, the penalty shall be a fine of not less Five thousand pesos (₱5,000.00) nor more than Twenty thousand pesos (₱20,000.00) and imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years.

(f) If the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable to the penalties provided in this Act for the offense.

x x x x x x x x x

(h) Any employer who after deducting the monthly contributions or loan amortizations from his employee's compensation, fails to remit the said deductions to the SSS within thirty (30) days from the date they became due shall be presumed to have misappropriated such contributions or loan amortizations and shall suffer the penalties provided in Article Three hundred fifteen of the Revised Penal Code.

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

x x x x x x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

Respondents also alleged their entitlement to actual and exemplary damages and attorney's fees.

In their Joint Counter-Affidavit,[10] petitioners Tan and Domingo blamed the economic distress that beset their company for their failure to timely pay and update the monthly SSS contributions of the employees. They alleged that the company's dire situation became even more aggravated when the buildings and equipment of Footjoy were destroyed by fire on 4 February 2001.[11] This incident eventually led to the cessation of the company's operations. Because of this, some of the company's employees tried to avail themselves of their SSS benefits but failed to do so. It was then that the employees filed their complaint.

Petitioners Tan and Domingo thereafter underlined their good faith and lack of criminal culpability when they acknowledged their fault and demonstrated their willingness to pay their obligations by executing a memorandum of agreement with the SSS on 10 April 2001, the pertinent portions of which read:

April 10, 2001

FOOTJOY INDUSTRIAL CORPORATION
Antonio Tan
President
Mercado St., Guiguinto, Bulacan

Dear Mr. Antonio Tan,

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[10] *Rollo*, pp. 85-87.

[11] *Id*. at 88.

Pursuant to Office Order No. 141-V dated February 2, 1995, your application to pay on installment the amount of ₱5,227,033.66 representing SS premium contribution and penalties for the period August 2000 up to January 2001 is hereby approved subject, however, to the following terms and conditions:

1. That the amount of ₱5,227,033.66 be paid in twenty-four (24) monthly installment (sic):

   x x x x x x x x x

2. Upon payment, you are hereby directed to submit to us within three days the official receipt as proof of payment of the monthly installment; and,

3. That in the event of default in the payment of at least two (2) monthly installments or non-compliance with the payment plan, the employer's total outstanding obligations shall become due and demandable without need of further notice otherwise, we will pursue legal action against you.

Please be guided accordingly.

Very truly yours,

(Signed) Maylene M. Sanchez
Branch Head

CONFORME:

(Signed) Antonio Tan[12]

On 17 May 2001, the Assistant Provincial Prosecutor issued a Joint Resolution,[13] which found probable cause to charge Footjoy, Antonio Tan, and Danilo Domingo with violations of Sections 9, 10 and 24, paragraph (b) in relation to Section 28, paragraphs (e), (f) and (h) of the Social Security Law. On the other hand, the charge for the violation of Article 315, paragraph 1(b) of the Revised Penal Code was dismissed, as the same was deemed absorbed by the violations under the SSS Law, but the penalty imposed by the former law would be applied whenever appropriate. The Provincial Prosecutor approved the

[12] *Id*. at 89.

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

above Resolution on 29 May 2001 and affirmed the filing of informations against petitioners Tan and Domingo.

On 14 June 2001, respondents filed a Motion[14] to implead five additional party respondents purportedly for being "owners and/or responsible officers" of Footjoy, in accordance with the above-mentioned Section 28 paragraph (f) of the SSS Law.

Meanwhile, on 29 June 2001, petitioners filed a Motion for Reconsideration[15] of the above Joint Resolution.

The Assistant Provincial Prosecutor issued a Final Resolution[16] on 20 August 2001, the dispositive portion of which provides:

> Accordingly, the original resolution is modified by impleading therein as additional respondent Robert Lim.[17] On the other hand, two informations (one count each) for violation of Sec. 9 in relation to Sec. 10 and, Sec. 24(b) should be prepared for filing in court. All the rest found in the original resolution are maintained.

On 20 September 2001, the Provincial Prosecutor issued a Supplementary Resolution,[18] which clarified the last statement in the Final Resolution, stating that:

> Let it, therefore, be understood and for which this supplementary resolution is being issued, that the last recommendation of Pros. F. F. Malapit was approved as [to] the filing of two informations as contained in his approved original resolution, that is, violations of Sec. 9, 10 & 24(b) in relation to Sec. 28, pars. (e) (f) and (h) of R.A. 1161, as amended.

Thus, on 28 September 2001, the Provincial Prosecutor filed two informations against petitioners Tan, Domingo and Lim in Branch 18 of the Regional Trial Court (RTC) of Bulacan. Criminal

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[14] *Id*. at 101.

[15] *Id*. at 101.

[16] *Id*. at 101-103.

[17] The Assistant Prosecutor resolved to implead petitioner Lim in light of the testimony of one of the complainants that Lim acted as the general manager of one of the Annex buildings of Footjoy and that he failed to dispute the said description. (*Rollo*, p. 102)

[18] *Rollo*, p. 104.

Case No. 2592-M-2001[19] charged petitioners Tan, Domingo and Lim with violation of Section 9 in relation to Section 10 and Section 28, paragraph (e) of the Social Security Law. On the other hand, Criminal Case No. 2593-M-2001 charged petitioners with violation of Section 24 paragraph (b) in relation to Section 28, paragraph (h) of said law.

On 13 November 2001, petitioners filed a Petition for Review[20] with the DOJ, alleging, *inter alia*, that the Assistant Prosecutor committed grave and manifest error when he found probable cause to charge them with the alleged offenses.

Due to the pendency of the above petition, petitioners filed with the RTC of Bulacan a motion for the suspension of their scheduled arraignment[21] in the criminal cases, in accordance with Section 11, paragraph (c) of Rule 116[22] of the Revised Rules of Criminal Procedure.[23]

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[19] The accusatory portion provides:

That [on] or about and during the period from October, 1981 up to April 2001, in the municipality of Guiguinto, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the President, Administrative Officer and General Manager of Annex Building C, respectively, of Footjoy Industrial Corporation, a member of the Social Security System with Employer I.D. No. 03-9007996-1, in conspiracy with one another, did then and there willfully, unlawfully and feloniously fail to register and report for coverage to the SSS the employees of said corporation whose names are contained in Annex "A" hereof, to the damage and prejudice of said employees. (CA *rollo*, pp. 83-84.)

[20] *Rollo*, pp. 105-113.

[21] *Id*. at 87-89.

[22] Section 11, paragraph (c) of Rule 116 provides:

SEC. 11. *Suspension of arraignment*. – Upon motion by the proper party, the arraignment shall be suspended in the following cases:

x x x x x x x x x

(c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; provided, that the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office.

[23] On 5 February 2002, the RTC denied the petitioners' Motion to Defer/ Suspend Arraignment and the accompanying Motion to Recall *Alias* Witness. (Records, pp. 101-102).

On 19 March 2002, the DOJ resolved to grant the petition for review,[24] stating:

> WHEREFORE, the assailed resolution is REVERSED. The Provincial Prosecutor of Bulacan is hereby directed to cause the withdrawal of the informations for violation of the Social Security Law earlier filed against respondents Antonio Tan, Danilo Domingo, and Robert Lim and to report the action thereon within ten (10) days from receipt thereof.

Respondents filed a Motion for Reconsideration[25] of the DOJ resolution, but the same was denied in a Resolution[26] dated 9 August 2002.

On 16 October 2002, respondents filed with the Court of Appeals a Petition for *Certiorari*[27] under Rule 65 of the Revised Rules of Court, which was docketed as CA-G.R. SP No. 79101. Respondents claimed that the DOJ committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding that no probable cause existed to charge petitioners Tan, Domingo and Lim with violations of the SSS Law; that the allegation of petitioners' failure to report respondents to the SSS for coverage is not supported by evidence; and that charges [for the violation] of a special law such as the Social Security Act can be overcome by a show of good faith and lack of intent to commit the same.

In a Resolution[28] issued on 29 November 2002, the Court of Appeals dismissed outright the above petition because only respondents Zenaida Borlongan and Francis Bulaong, who did not possess a special power of attorney empowering them to sign on behalf of the other respondents, signed the certification of non-forum shopping. The petition was also filed only on 16 October 2002 or one day beyond the reglementary period, which ended on 15 October 2002.

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[24] *Rollo*, pp. 117-120.

[25] Records, pp. 111-121.

[26] *Id*. at 122-124.

[27] *Rollo*, pp. 121-136.

[28] *Id*. at 137.

Respondents then filed a Motion for Reconsideration[29] of the appellate court's resolution, contending that the procedural lapses committed by their counsel were honest and excusable mistakes and that the same should give way to their meritorious case. They, likewise, prayed for the admission of a Special Power of Attorney[30] that authorized Mercy Santomin, Zenaida Borlongan and Ronaldo Nicol to sign court pleadings and documents on their behalf.

Before resolving the respondents' motion, the Court of Appeals directed the respondents to amend their petition by impleading as party petitioners the two hundred thirty-eight (238) other employees of Footjoy, whose names were not included in the title of the original petition, but were merely contained in an annexed document.[31] On 13 March 2003, respondents filed their amended petition, which was signed by only one hundred eighty employees.[32]

On 2 June 2003, the Court of Appeals rendered a Resolution[33] which granted the respondents' Motion for Reconsideration of the 29 November 2002 resolution and admitted the amended petition.

After requiring the parties to comment, the Court of Appeals issued the assailed Decision dated 30 September 2004, the dispositive portion of which reads:

WHEREFORE, premises considered, the resolutions of the Department of Justice dated March 19, 2002 and August 9, 2002 are **VACATED** and **SET ASIDE**, while the final resolution of the Provincial Prosecutor of Bulacan dated August 20, 2001 is **REINSTATED**.[34]

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[29] *Id*. at 138-146.

[30] *Id*. at 176-220.

[31] Records, p. 324.

[32] *Id*. at 332-368.

[33] *Rollo*, pp. 147-148.

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

In reversing the DOJ resolutions, the Court of Appeals ruled that the agency acted with grave abuse of discretion when it committed a palpable mistake in dismissing the charges against petitioners. The appellate court found that petitioners were indeed remiss in their duty to remit the respondents' SSS contributions in violation of Section 28(h) of the Social Security Law. The petitioners' claim of good faith and the absence of criminal intent should not have been considered, as these were evidentiary in nature and should thus be more properly proved in a trial. Furthermore, the appellate court declared that said defenses are unavailing in crimes punishable by a special law, which are characterized as *mala prohibita*. In these crimes, it is enough that they were done freely and consciously and that the intent to commit the same need not be proved.

Petitioners moved for a reconsideration[35] of the above decision, but the same was denied by the Court of Appeals in a Resolution[36] dated 9 May 2005, the dispositive portion of which reads:

WHEREFORE, for lack of merit, the motion for reconsideration is **DENIED**.

Petitioners now come before us, pleading that we reverse the assailed decision and resolution of the Court of Appeals as we rule on the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRIEVOUS ERROR AND ACTED WITHOUT JURISDICTION WHEN IT GAVE DUE COURSE TO THE RESPONDENTS' PETITION FOR *CERTIORARI* DESPITE THE FACT THAT IT WAS FILED OUT [OF] TIME.

II.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRIEVOUS ERROR WHEN IT GAVE DUE COURSE TO THE RESPONDENTS' PETITION FOR *CERTIORARI* DESPITE THE FACT

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[35] *Id*. at 49-60.

[36] *Id*. at 48.

THAT THE TWO (2) SIGNATORIES THEREAT WERE NOT ABLE TO SHOW THAT THEY WERE DULY AUTHORIZED BY THE OTHER PETITIONERS TO FILE THE PETITION ON THEIR BEHALF.

III.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED SERIOUS ERROR WHEN IT REVERSED THE RESOLUTION OF THE DOJ WHICH FOUND OUT THAT THE PETITIONERS COULD NOT BE INDICTED FOR ANY VIOLATION OF THE SSS LAW FOR WANT OF PROBABLE CAUSE.[37]

Petitioners' case centers on the alleged error of the Court of Appeals in giving due course to a formally defective petition. Respondents, on the other hand, pray for a liberal interpretation of the rules in pleading for their cause.

We find that the petition lacks merit.

Procedurally, petitioners argue that the Court of Appeals gravely erred in taking cognizance of the respondents' Petition for *Certiorari* even if the original petition was filed one day beyond the reglementary period allowed by the rules, and the two signatories therein were not shown to have been properly authorized by their co-petitioners to file the petition.

Section 1, Rule 65 of the Rules of Court provides for the requirements for filing a Petition for *Certiorari*, namely:

> Section 1. *Petition for certiorari.* When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a **verified** petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a **sworn**

[37] *Id.* at 575.

certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (Emphases ours.)

Specifically, the requirement of verification is contained in Section 4, Rule 7 of the Rules of Court, to wit:

Sec. 4. *Verification*. Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

On the other hand, the fourth paragraph of Section 3, Rule 46 of the Rules of Court provides:

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

Finally, the reglementary period within which a Petition for *Certiorari* must be filed is provided for under the first paragraph of Section 4, Rule 65,[38] to wit:

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[38] As amended by A.M. No. 07-7-12-SC, which took effect on 27 December 2007. This amendment may already be applied to the present case, as it is already a settled principle that procedural rules may be given retroactive effect to 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, inasmuch as there is no vested rights in rules of procedure. (*Republic v. Court of Appeals*, 447 Phil. 385 [2003].)

The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed **not later than sixty (60) days** counted from the notice of the denial of the motion. (Emphasis ours.)

In the present case, only two employees signed the original Petition's verification and certification of non-forum shopping and the same was filed one day beyond the period allowed by the rules. The appellate court initially resolved to dismiss the original petition precisely for these reasons in a Resolution dated 29 November 2002. When asked to reconsider, the appellate court ordered the filing of an amended petition in order to include all the original complainants. An amended petition was then filed in compliance with the said order, but only one hundred eighty (180) of the two hundred forty (240) original complainants signed the verification and certification of non-forum shopping. The Court of Appeals then granted the motion for reconsideration and resolved to reinstate the petition. Thereafter, on 30 September 2004, the assailed decision that upheld the filing of the informations against the petitioners was issued.

This Court finds no fault in the assailed actions of the Court of Appeals.

It is a well-settled principle that rules of procedure are mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed.[39] In deciding a case, the appellate court has the discretion whether or not to dismiss the same, which discretion must be exercised soundly and in accordance with the tenets of justice and fair play, taking into account the circumstances of the case.[40] It is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of

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[39] *Ginete v. Court of Appeals*, 357 Phil. 36, 51 (1998).

[40] *Aguam v. Court of Appeals*, 388 Phil. 587, 593 (2000), cited in *Vallejo v. Court of Appeals*, G.R. No. 156413, 14 April 2004, 427 SCRA 658, 668.

justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[41]

The Court of Appeals committed no reversible error when it gave due course to the amended petition despite the signing of the verification and certification of non-forum shopping of only some, and not all, of the original complainants.

Under justifiable circumstances, we have already allowed the relaxation of the requirements of verification and certification so that the ends of justice may be better served.[42] Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith; while the purpose of the aforesaid certification is to prohibit and penalize the evils of forum shopping.[43]

In *Torres v. Specialized Packaging Development Corporation*,[44] we ruled that the verification requirement had been substantially complied with despite the fact that only two (2) out of the twenty-five (25) petitioners have signed the petition for review and the verification. In that case, we held that the two signatories were unquestionably real parties-in-interest, who undoubtedly had sufficient knowledge and belief to swear to the truth of the allegations in the Petition.

In *Ateneo de Naga University v. Manalo*,[45] we also ruled that there was substantial compliance with the requirement of verification when only one of the petitioners, the President of the University, signed for and on behalf of the institution and its officers.

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[41] *Id*.

[42] *Sy Chin v. Court of Appeals*, 399 Phil. 442, 454 (2000).

[43] *Bank of the Philippine Islands v. Court of Appeals*, 450 Phil. 532, 540 (2003).

[44] G.R. No. 149634, 6 July 2004, 433 SCRA 455, 464.

[45] G.R. No. 160455, 9 May 2005, 458 SCRA 325, 334.

Similarly, in *Bases Conversion and Development Authority v. Uy*,[46] we allowed the signature of only one of the principal parties in the case despite the absence of a Board Resolution which conferred upon him the authority to represent the petitioner BCDA.

In the present case, the circumstances squarely involve a verification that was not signed by all the petitioners therein. Thus, we see no reason why we should not uphold the ruling of the Court of Appeals in reinstating the petition despite the said formal defect.

On the requirement of a certification of non-forum shopping, the well-settled rule is that all the petitioners must sign the certification of non-forum shopping. The reason for this is that the persons who have signed the certification cannot be presumed to have the personal knowledge of the other non-signing petitioners with respect to the filing or non-filing of any action or claim the same as or similar to the current petition.[47] The rule, however, admits of an exception and that is when the petitioners show reasonable cause for failure to personally sign the certification. The petitioners must be able to convince the court that the outright dismissal of the petition would defeat the administration of justice.[48]

In the case at bar, counsel for the respondents disclosed that most of the respondents who were the original complainants have since sought employment in the neighboring towns of Bulacan, Pampanga and Angeles City. Only the one hundred eighty (180) signatories were then available to sign the amended Petition for *Certiorari* and the accompanying verification and certification of non-forum shopping.[49] Considering the total number of respondents in this case and the elapsed period of

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[46] G.R. No. 144062, 2 November 2006, 506 SCRA 524, 535.

[47] See *Docena v. Lapesura*, 407 Phil. 1007, 1017 (2001).

[48] *Spouses Ortiz v.Court of Appeals*, 360 Phil. 95, 101 (1998), cited in *Digital Microwave Corporation v. Court of Appeals*, 384 Phil. 842, 847 (2000).

[49] Records, p. 330.

almost two years since the filing of the Joint Complaint Affidavit on 19 March 2001 and the filing of the amended petition on 13 March 2003, we hold that the instant case sufficiently falls under the exception to the aforesaid rule. Thus, the Court of Appeals cannot be said to have erred in overlooking the above procedural error.

We also cannot fault the act of the Court of Appeals in ordering submission of an amended petition and the reinstatement of the same despite the original petition's late filing, considering the obvious merits of the case.

In *Vallejo v. Court of Appeals*,[50] the Court of Appeals initially dismissed the Petition for *Certiorari* for having been filed beyond the reglementary period, but on appeal, we reversed the appellate court's ruling, as petitioner had presented a good cause for the proper determination of his case.

Petitioners claim that the Court of Appeals committed serious error when it reversed the DOJ resolution, which found that there was no probable cause to indict petitioners for any violation of the SSS Law. They argue that the DOJ is the highest agency and the ultimate authority to decide the existence or non-existence of probable cause, and that the Court of Appeals does not have the authority to reverse such findings.

This argument is utterly misguided.

Probable cause is defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[51] It is a reasonable ground of presumption that a matter is, or may be, well-founded, such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The term does not mean "actual and positive

[50] *Supra* note 40.

[51] *Cruz, Jr. v. People*, G.R. No. 110436, 27 June 1994, 233 SCRA 439, 453-454, cited in *Ladlad v. Velasco*, G.R. Nos. 172070-72, 1 June 2007, 523 SCRA 318, 335.

cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief.[52]

The determination of probable cause is a function that belongs to the public prosecutor, one that, as far as crimes cognizable by the RTC are concerned, and notwithstanding that it involves an adjudicative process of a sort, exclusively pertains, by law, to said executive officer, the public prosecutor.[53] This broad prosecutorial power is, however, not unfettered, because just as public prosecutors are obliged to bring forth before the law those who have transgressed it, they are also constrained to be circumspect in filing criminal charges against the innocent. Thus, for crimes cognizable by the regional trial courts, preliminary investigations are usually conducted.[54] As defined under the law, a preliminary investigation is an inquiry or a proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and the respondent is probably guilty thereof and should be held for trial.[55]

The findings of the prosecutor with respect to the existence or non-existence of probable cause is subject to the power of review by the DOJ. Indeed, the Secretary of Justice may reverse or modify the resolution of the prosecutor, after which he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties.[56]

This power of review, however, does not preclude this Court and the Court of Appeals from intervening and exercising our own powers of review with respect to the DOJ's findings. In

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[52] *Pilapil v. Sandiganbayan*, G.R. No. 101978, 7 April 1993, 221 SCRA 349, 360.

[53] *People v. Court of Appeals*, 361 Phil. 492, 498 (1999), citing the Separate (Concurring) Opinion of former Chief Justice Narvasa in *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568, 620 (1996).

[54] *People v. Court of Appeals*, *id*.

[55] RULES OF COURT, Rule 112, Section 1, first paragraph.

[56] *Id*., Section 4, last paragraph.

the exceptional case in which grave abuse of discretion is committed, as when a clear sufficiency or insufficiency of evidence to support a finding of probable cause is ignored, the Court of Appeals may take cognizance of the case *via* a petition under Rule 65 of the Rules of Court.[57]

This is precisely the situation in the case at bar. In deciding the respondents' Petition for *Certiorari*, the Court of Appeals ruled that the DOJ committed palpable mistake in reversing the Final Resolution of the Provincial Prosecutor and, in so doing, acted with grave abuse of discretion.

In the assailed decision, the Court of Appeals declared that the DOJ's dismissal of the charges against petitioners, on the ground that the evidence on record did not support the same, was incorrect. Furthermore, the appellate court held that the defenses of petitioners of good faith and lack of criminal intent should not have been considered, inasmuch as the offenses charged were for violations of a special law and are therefore characterized as *mala prohibita*, in which the intent to commit is immaterial.

After carefully reviewing the records of this case, we agree with the Court of Appeals' findings that there was indeed probable cause to indict petitioners for the offenses charged.

In a preliminary investigation, a full and exhaustive presentation of the parties' evidence is not required, but only such as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.[58] Certainly, it does not involve the determination of whether or not there is evidence beyond reasonable doubt pointing to the guilt of the person. Only *prima facie* evidence is required; or that which is, on its face, good and sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense; and which, if not rebutted or contradicted,

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[57] See *Ladlad v. Velasco*, *supra* note 51, citing *Allado v. Diokno*, G.R. No. 113630, 5 May 1994, 232 SCRA 192, 208 and *Salonga v. Cruz-Paño*, G.R. No. 59524, 18 February 1985, 134 SCRA 438.

[58] *People v. Court of Appeals*, *supra* note 53, citing *Ledesma v. Court of Appeals*, 344 Phil. 207, 226 (1997).

will remain sufficient.[59] Therefore, matters of evidence are more appropriately presented and heard during the trial.[60]

In the present case, petitioners were charged with violations of the SSS Law for their failure to either promptly report some of the respondents for compulsory coverage/membership with the SSS or remit their SSS contributions and loan amortizations. In support of their claims, respondents have attached unto their Joint Complaint-Affidavit a summary of their unreported and unremitted SSS contributions,[61] as gathered from the SSS Online Inquiry System, and a computation of their unreported and unremitted SSS contributions.[62]

On the part of the petitioners, they have not denied their fault in not remitting the SSS contributions and loan payments of the respondents in violation of Section 28, paragraphs (e), (f) and (h) of the SSS Law. Instead, petitioners interposed the defenses of lack of criminal intent and good faith, as their failure to remit was brought about by alleged economic difficulties, and they have already agreed to settle their obligations with the SSS through a memorandum of agreement to pay in installments.

As held by the Court of Appeals, the claims of good faith and absence of criminal intent for the petitioners' acknowledged non-remittance of the respondents' contributions deserve scant consideration. The violations charged in this case pertain to the SSS Law, which is a special law. As such, it belongs to a class of offenses known as *mala prohibita.*

The law has long divided crimes into acts wrong in themselves called acts *mala in se*; and acts which would not be wrong but for the fact that positive law forbids them, called acts *mala prohibita*. This distinction is important with reference to the intent with which a wrongful act is done. The rule on the subject is that in acts *mala in se,* the intent governs; but in acts *mala*

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[59] *Wa-acon v. People*, G.R. No. 164575, 6 December 2006, 510 SCRA 429, 439.

[60] *People v. Court of Appeals*, *supra* note 53.

[61] *Rollo*, pp. 76-78.

[62] *Id*. at 79-84.

prohibita, the only inquiry is, has the law been violated?[63] When an act is illegal, the intent of the offender is immaterial.[64]

Thus, the petitioners' admission in the instant case of their violations of the provisions of the SSS Law is more than enough to establish the existence of probable cause to prosecute them for the same.

WHEREFORE, in light of the foregoing, the Petition for Review under Rule 45 of the Rules of Court is hereby *DENIED*. The assailed Decision dated 30 September 2004 of the Court of Appeals in CA-G.R. SP No. 79101 and the Resolution dated 9 May 2005 are hereby *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 173002. July 4, 2008]

BENJAMIN BAUTISTA, *petitioner, vs.* **SHIRLEY G. UNANGST and OTHER UNKNOWN PERSONS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE RIGHT TO APPEAL IS A PURELY STATUTORY RIGHT.—

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[63] *Dunlao, Sr. v. Court of Appeals*, 329 Phil. 613, 619 (1996).

[64] *Id*.

* Justice Antonio T. Carpio was designated to sit as additional member replacing Justice Ruben T. Reyes per Raffle dated 28 May 2008.

The right to appeal is a purely statutory right. Not being a natural right or a part of due process, the right to appeal may be exercised only in the manner and in accordance with the rules provided therefor.

2. ID.; ID.; COMMENCEMENT OF ACTIONS; DOCKET AND OTHER LAWFUL FEES; PAYMENT OF THE FULL AMOUNT THEREOF WITHIN THE REGLEMENTARY PERIOD IS MANDATORY AND JURISDICTIONAL; EXCEPTION.— [P]ayment of the full amount of the appellate court docket and other lawful fees within the reglementary period is mandatory and jurisdictional. Nevertheless, as this Court ruled in *Aranas v. Endona*, the strict application of the jurisdictional nature of the above rule on payment of appellate docket fees may be mitigated under exceptional circumstances to better serve the interest of justice. It is always within the power of this Court to suspend its own rules, or to except a particular case from their operation, whenever the purposes of justice require it. In not a few instances, the Court relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merits. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. For, it is far better to dispose of a case on the merit which is a primordial end, rather than on a technicality, if it be the case, that may result in injustice. The emerging trend in the rulings of this Court is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. x x x Technicality and procedural imperfections should thus not serve as bases of decisions. In that way, the ends of justice would be better served. For, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; SALES; EXTINGUISHMENT OF SALE; EQUITABLE MORTGAGE; WHEN PRESENT.— Article 1602 of the New Civil Code provides that the contract is presumed to be an equitable mortgage in any of the following cases: "(1) When

the price of a sale with right to repurchase is unusually inadequate; (2) **When the vendor remains in possession as lessee or otherwise;** (3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed; (4) When the purchaser retains for himself a part of the purchase price; (5) When the vendor binds himself to pay the taxes on the thing sold; (6) **In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.** In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws."

4. ID.; ID.; ID.; ID.; ID.; WHERE IN A CONTRACT OF SALE WITH *PACTO DE RETRO*, THE VENDOR REMAINS IN POSSESSION, AS LESSEE OR OTHERWISE, THE CONTRACT SHALL BE PRESUMED TO BE AN EQUITABLE MORTGAGE.— Where in a contract of sale with *pacto de retro*, the vendor remains in possession, as a lessee or otherwise, the contract shall be presumed to be an equitable mortgage. The reason for the presumption lies in the fact that in a contract of sale with *pacto de retro*, the legal title to the property is immediately transferred to the vendee, subject to the vendor's right to redeem. Retention, therefore, by the vendor of the possession of the property is inconsistent with the vendee's acquisition of the right of ownership under a true sale. It discloses, in the alleged vendee, a lack of interest in the property that belies the truthfulness of the sale *a retro*.

5. ID.; ID.; ID.; ID.; ID.; WHENEVER IT IS CLEARLY SHOWN THAT A DEED OF SALE WITH *PACTO DE RETRO* IS GIVEN AS A SECURITY FOR A LOAN, IT MUST BE REGARDED AS AN EQUITABLE MORTGAGE.— The rule is firmly settled that whenever it is clearly shown that a deed of sale with *pacto de retro*, regular on its face, is given as security for a loan, it must be regarded as an equitable mortgage.

6. ID.; ID.; ID.; SALES WITH RIGHTS TO REPURCHASE; EXPLAINED.— Sales with rights to repurchase, as defined by the Civil Code, are not favored. We will not construe instruments to be sales with a right to repurchase, with the

> stringent and onerous effects which follow, unless the terms of the document and the surrounding circumstances require it. Whenever, under the terms of the writing, any other construction can fairly and reasonably be made, such construction will be adopted and the contract will be construed as a mere loan unless the court can see that, if enforced according to its terms, it is not an unconscionable one. Article 1602 of the Civil Code is designed primarily to curtail the evils brought about by contracts of sale with right of repurchase, such as the circumvention of the laws against usury and *pactum commissorium*.

APPEARANCES OF COUNSEL

Estanislao L. Cesa & Marc Raymund S. Cesa and *Maria Rosario S. Cesa* for petitioner.

Lourdes I. de Dios and *Alreuela Bundang-Ortiz* for respondent.

D E C I S I O N

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

THE presumption of equitable mortgage imposes a burden on the buyer to present clear evidence to rebut it. He must overthrow it, lest it persist.[1] To overturn that *prima facie* presumption, the buyer needs to adduce substantial and credible evidence to prove that the contract was a bona fide deed of sale with right to repurchase.

This petition for review on *certiorari* impugns the Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 85942[3] which

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[1] *Ramos v. Sarao,* G.R. No. 149756, February 11, 2005, 451 SCRA 103, 116; *Tison v. Court of Appeals,* G.R. No. 121027, July 31, 1997, 276 SCRA 582, 593.

[2] *Rollo,* pp. 35-47. Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Mariano C. Del Castillo and Magdangal M. De Leon, concurring.

[3] Entitled "*Benjamin Bautista v. Shirley G. Unangst and Other Unknown Persons*."

reversed and set aside that[4] of the Regional Trial Court (RTC) in an action for specific performance or recovery of possession, for sum of money, for consolidation of ownerships and damages.

The Facts

On November 15, 1996, Hamilton Salak rented a car from GAB Rent-A-Car, a car rental shop owned by petitioner Benjamin Bautista. The lease was for three (3) consecutive days at a rental fee of ₱1,000.00 per day.[5] However, Salak failed to return the car after three (3) days prompting petitioner to file a complaint against him for *estafa*, violation of Batas Pambansa Blg. 22 and carnapping.[6]

On February 2, 1997, Salak and his common-law wife, respondent Shirley G. Unangst, were arrested by officers of the Criminal Investigation Service Group (CISG) of the Philippine National Police while riding the rented car along Quezon City. The next day, petitioner demanded from Salak at the CISG Office the sum of ₱232,372.00 as payment for car rental fees, fees incurred in locating the car, attorney's fees, capital gains tax, transfer tax, and other incidental expenses.[7]

Salak and respondent expressed willingness to pay but since they were then short on cash, Salak proposed to sell to petitioner a house and lot titled in the name of respondent. Petitioner welcomed the proposal after consulting his wife, Cynthia. Cynthia, on the other hand, further agreed to pay the mortgage loan of respondent over the subject property to a certain Jojo Lee in the amount of ₱295,000.00 as the property was then set to be publicly auctioned on February 17, 1997.[8]

To formalize their amicable settlement, Cynthia, Salak and respondent executed a written agreement.[9] They stipulated that

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[4] *Rollo,* pp. 48-56. Penned by Judge Eliodoro G. Ubadias.

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

[6] *Id*. at 36.

[7] *Id*.

[8] *Id*.

[9] *Id*. at 62-63; records, p. 82.

respondent would sell, subject to repurchase, her residential property in favor of Cynthia for the total amount of ₱527,372.00 broken down, as follows: (1) ₱295,000.00 for the amount paid by Cynthia to Lee to release the mortgage on the property; and (2) ₱232,372.00, which is the amount due to GAB Rent-A-Car. Cynthia also agreed to desist from pursuing the complaint against Salak and respondent.[10]

Respondent and petitioner also executed a separate deed of sale with right to repurchase,[11] specifying, among others, that: (1) respondent, as vendor, shall pay capital gains tax, current real estate taxes and utility bills pertaining to the property; (2) if respondent fails to repurchase the property within 30 days from the date of the deed, she and her assigns shall immediately vacate the premises and deliver its possession to petitioner without need of a judicial order; and (3) respondent's refusal to do so will entitle petitioner to take immediate possession of the property.[12]

Respondent failed to repurchase the property within the stipulated period. As a result, petitioner filed, on June 5, 1998, a complaint for specific performance or recovery of possession, for sum of money, for consolidation of ownership and damages against respondent and other unnamed persons before the RTC of Olongapo City.

In his complaint,[13] petitioner alleged, among others, that after respondent failed to repurchase the subject realty, he caused the registration of the deed of sale with the Register of Deeds and the transfer of the tax declarations in his name; that respondent failed to pay the capital gains taxes and update the real estate taxes forcing him to pay said amounts in the sum of ₱71,129.05 and ₱11,993.72, respectively; and that respondent violated the terms of the deed when she, as well as the other unnamed

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[10] *Id*. at 36-37.

[11] *Id*. at 57-58; records, p. 84.

[12] *Id*. at 37.

[13] Records, p. 1.

persons, refused to vacate the subject property despite repeated demands.[14]

Petitioner prayed before the RTC that an order be issued in his favor directing respondents to: (1) surrender the possession of the property; (2) pay ₱150,000.00 for the reasonable compensation for its use from March 7, 1997 to June 7, 1998, plus ₱10,000.00 per month afterward; (3) pay the amount advanced by petitioner, to wit: ₱71,129.05 and ₱11,993.72 for the payment of capital gains tax and real estate taxes, respectively; and ₱70,000.00 for attorney's fees.[15]

On June 16, 1998, petitioner filed an amended complaint,[16] reiterating his previous allegations but with the added prayer for consolidation of ownership pursuant to Article 1607 of the Civil Code.[17]

On the other hand, respondents controverted the allegations in the complaint and averred in their Answer,[18] among others, that plaintiff had no cause of action inasmuch as respondent Unangst signed the subject deed of sale under duress and intimidation employed by petitioner and his cohorts; that, assuming that her consent was freely given, the contract of sale was simulated and fictitious since the vendor never received the stipulated consideration; that the sale should be construed as an equitable mortgage pursuant to Articles 1602 and 1604 of the Civil Code because of its onerous conditions and shockingly low consideration; that their indebtedness in the form of arrears in car rentals merely amounts to ₱90,000.00; and that the instant action was premature as plaintiff had not yet consolidated ownership over the property. Defendants counterclaimed for moral damages in the amount of ₱500,000.00 and attorney's fees in the amount of ₱50,000.00, plus ₱500.00 per appearance.[19]

[14] *Rollo,* p. 37.

[15] *Id*. at 37-38.

[16] Records, p. 28.

[17] *Rollo,* p. 38.

[18] Records, p. 41.

[19] *Rollo,* p. 38.

On July 29, 2004, after due proceedings, the RTC rendered a decision in favor of petitioner, disposing as follows:

> WHEREFORE, judgment is rendered finding the Deed of Sale with Right to Repurchase (Exh. "C") as, indeed, a document of sale executed by the defendant in favor of the plaintiff covering the parcel of land house (*sic*) situated at Lot 3-B, Blk. 10, Waterdam Road, Gordon Heights, Olongapo City, declared under Tax Declaration Nos. 004-7756R and 7757R (Exhs. "I" and "I-1"). The defendant and any person taking rights from her is (*sic*) ordered to immediately vacate from the place and turn over its possession to the plaintiff. They are likewise directed not to remove any part of the building on the lot.
>
> The ownership of the said property is properly consolidated in the name of the plaintiff.
>
> The defendant is further ordered to pay to the plaintiff the amount of ₱10,000.00 a month from March 7, 1997 up to the time possession of the lot and house is restored to the plaintiff representing the reasonable value for the use of the property; the amount of ₱71,129.05 representing the payment made by the plaintiff on the capital gain taxes and the further amount of ₱70,000.00 for attorney's fees and the costs of suit.
>
> SO ORDERED.[20]

Respondents failed to interpose a timely appeal. However, on September 10, 2004, respondent Unangst filed a petition for relief pursuant to Section 38 of the 1997 Rules on Civil Procedure. She argued that she learned of the decision of the RTC only on September 6, 2004 when she received a copy of the motion for execution filed by petitioner.[21]

Petitioner, on the other hand, moved for the dismissal of respondent's petition on the ground that the latter paid an insufficient sum of ₱200.00 as docket fees.[22]

It appears that respondent Unangst initially paid ₱200.00 as docket fees as this was the amount assessed by the Clerk of

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[20] Records, pp. 264-265.

[21] *Rollo,* pp. 39-40.

[22] Records, p. 284.

Court of the RTC.[23] Said amount was insufficient as the proper filing fees amount to ₱1,715.00. Nevertheless, the correct amount was subsequently paid by said respondent on February 22, 2005.[24]

In their comment,[25] respondents countered that they should not be faulted for paying deficient docket fees as it was due to an erroneous assessment of the Clerk of Court.[26]

The RTC granted the petition for relief. Subsequently, it directed respondents to file a notice of appeal within twenty-four (24) hours from receipt of the order.[27] Accordingly, on February 23, 2005, respondents filed their notice of appeal.[28]

Respondents contended before the CA that the RTC erred in: (1) not annulling the deed of sale with right to repurchase; (2) declaring that the deed of sale with right to repurchase is a real contract of sale; (3) ordering the consolidation of ownership of the subject property in the name of petitioner.[29] They argued that respondent Unangst's consent to the deed of sale with right to repurchase was procured under duress and that even assuming that her consent was freely given, the contract partakes of the nature of an equitable mortgage.[30]

On the other hand, petitioner insisted, among others, that although the petition for relief of respondents was filed on time, the proper filing fees for said petition were paid beyond the 60-day reglementary period. He posited that jurisdiction is acquired by the court over the action only upon full payment of prescribed docket fees.[31]

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[23] *Rollo,* p. 42.

[24] *Id*.

[25] Records, p. 290.

[26] *Rollo,* p. 40.

[27] Records, p. 308.

[28] *Id*. at 312.

[29] *Rollo,* p. 41; CA *rollo,* p. 32.

[30] *Id*. at 43.

[31] *Id*. at 41.

CA Disposition

In a Decision[32] dated April 7, 2006, the CA reversed and set aside the RTC judgment.[33] The dispositive part of the appellate court's decision reads, thus:

> IN VIEW OF ALL THE FOREGOING, the instant appeal is hereby GRANTED, the challenged Decision dated July 29, 2004 hereby (*sic*) REVERSED and SET ASIDE, and a new one entered declaring the Deed of Sale With Right Of Repurchase dated February 4, 1997 as an equitable mortgage. No cost.
>
> SO ORDERED.[34]

The CA declared that the Deed of Sale with Right of Repurchase executed by the parties was an equitable mortgage. On the procedural aspect pertaining to the petition for relief filed by respondent Unangst, the CA ruled that "the trial court, in opting to apply the rules liberally, cannot be faulted for giving due course to the questioned petition for relief which enabled appellants to interpose the instant appeal."[35] It ratiocinated:

> Appellee recognizes the timely filing of appellants' petition for relief to be able to appeal judgment but nonetheless points out that the proper filing fees were paid beyond the 60-day reglementary period. Arguing that the court acquires jurisdiction over the action only upon full payment of the prescribed docket fees, he submits that the trial court erred in granting appellants' petition for relief despite the late payment of the filing fees.
>
> While this Court is fully aware of the mandatory nature of the requirement of payment of appellate docket fee, the High Court has recognized that its strict application is qualified by the following: first, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; second, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all

[32] *Id*. at 35-47.

[33] *Id*. at 48-56.

[34] *Id*. at 46.

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

attendant circumstances (*Meatmasters International Corporation v. Lelis Integrated Development Corporation,* 452 SCRA 626 [2005], citing *La Salette College v. Pilotin,* 418 SCRA 380 [2003]).

Applied in the instant case, the docket fees were admittedly paid only on February 22, 2005, or a little less than two (2) months after the period for filing the petition lapsed. Yet, this matter was sufficiently explained by appellants. The records bear out that appellants initially paid ₱200.00 as docket fees because this was the amount assessed by the Clerk of Court of the RTC of Olongapo City (p. 273, Records). As it turned out, the fees paid was insufficient, the proper filing fees being ₱1,715.00, which was eventually paid by appellants on February 1, 2005 (p. 296, Records). As such, appellants cannot be faulted for their failure to pay the proper docket fees for, given the prevailing circumstances, such failure was clearly not a dilatory tactic nor intended to circumvent the Rules of Court. On the contrary, appellants demonstrated their willingness to pay the docket fees when they subsequently paid on the same day they were assessed the correct fees (p. 299, Records). Notably, in *Yambao v. Court of Appeals* (346 SCRA 141 [2000]), the High Court declared therein that "the appellate court may extend the time for the payment of the docket fees if appellants is able to show that there is a justifiable reason for his failure to pay the correct amount of docket fees within the prescribed period, like fraud, accident, mistake, excusable negligence, or a similar supervening casualty, without fault on the part of appellant." Verily, the trial court, in opting to apply the rules liberally, cannot be faulted for giving due course to the questioned petition for relief which enabled appellants to interpose the instant appeal.[36]

On the substantial issues, the CA concluded that "While the records is bereft of any proof or evidence that appellee employed unlawful or improper pressure against appellant Unangst to give her consent to the contract of sale, there is, nevertheless, sufficient basis to hold the subject contract as one of equitable mortgage."[37] It explained:

Jurisprudence has consistently held that the nomenclature used by the contracting parties to describe a contract does not determine its nature. The decisive factor in determining the true nature of the

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

[37] *Id*. at 43.

transaction between the parties is the intent of the parties, as shown not necessarily by the terminology used in the contract but by all the surrounding circumstances, such as the relative situations of the parties at that time; the attitudes, acts, conduct, and declarations of the parties; the negotiations between them leading to the deed; and generally, all pertinent facts having a tendency to fix and determine the real nature of their design and understanding *(Legaspi v. Ong,* 459 SCRA 122 [2005]).

It must be stressed, however, that there is no conclusive test to determine whether a deed absolute on its face is really a simple loan accommodation secured by a mortgage. In fact, it is often a question difficult to resolve and is frequently made to depend on the surrounding circumstances of each case. When in doubt, courts are generally inclined to construe a transaction purporting to be a sale as an equitable mortgage, which involves a lesser transmission of rights and interests over the property in controversy (*Legaspi, ibid*.).

Article 1602 of the Civil Code enumerates the instances where a contract shall be presumed to be an equitable mortgage when – (a) the price of a sale with right to repurchase is unusually inadequate; (b) the vendor remains in possession as lessee or otherwise; (c) upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed; (d) the purchaser retains for himself a part of the purchase price; (e) the vendor binds himself to pay taxes on the thing sold; and, (f) in any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation (*Legaspi, supra*; *Martinez v. Court of Appeals,* 358 SCRA 38 [2001]).

For the presumption of an equitable mortgage to arise under Article 1602, two (2) requisites must concur: (a) that the parties entered into a contract denominated as a contract of sale; and, (b) that their intention was to secure an existing debt by way of a mortgage. Any of the circumstance laid out in Article 1602, not the concurrence nor an overwhelming number of the circumstances therein enumerated, suffices to construe a contract of sale to be one of equitable mortgage (*Lorbes v. Court of Appeals,* 351 SCRA 716 [2001]).

Applying the foregoing considerations in the instant case, there is hardly any doubt that the true intention of the parties is that the transaction shall secure the payment of a debt. It is not contested that before executing the subject deed, Unangst and Salak were under

police custody and were sorely pressed for money. Such urgent prospect of prolonged detention helps explain why appellants would subscribe to an agreement like the deed in the instant case. This might very well explain appellants' insistence that Unangst was not truly free when she signed the questioned deed. Besides, there is no gainsaying that when appellee allowed appellants to retain possession of the realty sold for 30 days, as part of the agreement, that period of time surely signaled a time allotted to Salak and Unangst, as debtors, within which to pay their mortgage indebtedness.

The High Court, in several cases involving similar situations, has declared that "while it was true that plaintiffs were aware of the contents of the contracts, the preponderance of the evidence showed, however, that they signed knowing that said contracts did not express their real intention, and if they did so notwithstanding this, it was due to the urgent necessity of obtaining funds. Necessitous men are not, truly speaking, free men; but to answer a present emergency, will submit to any terms that the crafty may impose upon them" (*Lorbes, ibid.*; *Reyes v. Court of Appeals,* 339 SCRA 97 [2000]; *Lao v. Court of Appeals,* 275 SCRA 237 [1997]; *Zamora v. Court of Appeals,* 260 SCRA 10 [1996]; *Labasan v. Lacuesta,* 86 SCRA 16 [1978]).

After all, Article 1602(6) provides that a contract of sale with right to repurchase is presumed to be an equitable mortgage in any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any obligation. In fine, a careful review of the records convincingly shows that the obtaining facts in this case qualify the controversial agreement between the parties as an equitable mortgage under Article 1602 of the New Civil Code.[38]

Issues

Petitioner has resorted to the present recourse under Rule 45, assigning to the CA the following errors:

(a) The Honorable Court of Appeals committed grave error in finding that the respondent perfected an appeal via Petition for Relief To Be Able To Appeal Judgment even when the proper docket fees were paid beyond the period prescribed to bring such action under Section 3 of Rule 38 of the 1997 Rules of Civil Procedure in relation

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[38] *Id.* at 43-46.

to the pronouncements by the Honorable Court in the cases of *Philippine Rabbit Bus Lines, Inc. v. Arciaga* [148 SCRA 433], *Philippine Pryce Assurance Corp. v. Court of Appeals* [148 SCRA 433] and *Sun Insurance Office, Ltd. v. Asuncion* [170 SCRA 274].

(b) The Honorable Court of Appeals erred on a question of law in reversing the Decision of the Court *a quo* finding the Deed of Sale with Right to Repurchase a document of sale executed by the respondent in favor of the petitioner and in further holding such contract as one of equitable mortgage.[39]

Our Ruling

On the first issue, petitioner contends that respondents' "Petition for Relief to Be Able to Appeal Judgment," which paved the way for the allowance of respondents' appeal of the RTC decision, was filed within the prescriptive period but the proper docket fees for it were belatedly paid.[40] He thus posits that the RTC did not acquire jurisdiction over said petition. Having no jurisdiction, the RTC could not have allowed respondents to appeal.

On this issue, respondent counters that the belated payment of proper docket fees was not due to their fault but to the improper assessment by the Clerk of Court. Respondent asserts the ruling of the CA that the court may extend the time for the payment of the docket fees if there is a justifiable reason for the failure to pay the correct amount. Moreover, respondent argues that petitioner failed to contest the RTC Order dated February 21, 2004 that allowed the payment of supplementary docket fees. Petitioner failed to file a motion for reconsideration or a petition for *certiorari* to the higher court to question said order.

We agree with respondents. Their failure to pay the correct amount of docket fees was due to a justifiable reason.

The right to appeal is a purely statutory right. Not being a natural right or a part of due process, the right to appeal may

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

[40] *Id*. at 21-23.

be exercised only in the manner and in accordance with the rules provided therefor.[41] For this reason, payment of the full amount of the appellate court docket and other lawful fees within the reglementary period is mandatory and jurisdictional.[42] Nevertheless, as this Court ruled in *Aranas v. Endona*,[43] the strict application of the jurisdictional nature of the above rule on payment of appellate docket fees may be mitigated under exceptional circumstances to better serve the interest of justice. It is always within the power of this Court to suspend its own rules, or to except a particular case from their operation, whenever the purposes of justice require it.[44]

In not a few instances, the Court relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merits. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses.[45] For, it is far better to dispose of a case on the merit

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[41] *Republic v. Luriz,* G.R. No. 158992, January 26, 2007, 513 SCRA 140, 143, 148; *Ciudad Fernandina Food Corporation Employees Union-Associated Labor Unions v. Court of Appeals,* G.R. No. 166594, July 20, 2006, 495 SCRA 807, 823, citing *Ginete v. Court of Appeals,* 357 Phil. 36 (1998); *Corporate Inn Hotel v. Lizo,* G.R. No. 148279, May 27, 2004, 429 SCRA 573, 577; *Videogram Regulatory Board v. Court of Appeals,* G.R. No. 106564, November 28, 1996, 265 SCRA 50.

[42] *Ayala Land, Inc. v. Carpo,* G.R. No. 140162, November 22, 2000, 345 SCRA 579, 584; *Lazaro v. Court of Appeals,* G.R. No. 137761, April 6, 2000, 330 SCRA 208, 213.

[43] G.R. No. L-32719, October 23, 1982, 117 SCRA 753, 758; see *Bank of America, NT & SA v. Gerochi,* G.R. No. 73210, February 10, 1994, 230 SCRA 9, 15.

[44] *Chronicle Securities Corporation v. National Labor Relations Commission,* G.R. No. 157907, November 25, 2004, 444 SCRA 342, 348-349; *Equitable PCI Bank v. Ku,* G.R. No. 142950, March 26, 2001, 355 SCRA 309, 316; *Philippine National Bank v. Court of Appeals,* G.R. No. 108870, July 14, 1995, 246 SCRA 304, 316-317.

[45] *Eastland Construction & Development Corporation v. Mortel,* G.R. No. 165648, March 23, 2006, 485 SCRA 203, 213; *El Reyno Homes, Inc. v. Ong,* G.R. No. 142440, February 17, 2003, 397 SCRA 563, 570; *Republic v. Court of Appeals,* G.R. No. 130118, July 9, 1998, 292 SCRA 243, 251-252.

which is a primordial end, rather than on a technicality, if it be the case, that may result in injustice.[46] The emerging trend in the rulings of this Court is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.[47]

As early as 1946, in *Segovia v. Barrios*,[48] the Court ruled that where an appellant in good faith paid less than the correct amount for the docket fee because that was the amount he was required to pay by the clerk of court, and he promptly paid the balance, it is error to dismiss his appeal because "(e)very citizen has the right to assume and trust that a public officer charged by law with certain duties knows his duties and performs them in accordance with law. To penalize such citizen for relying upon said officer in all good faith is repugnant to justice."[49]

Technicality and procedural imperfections should thus not serve as bases of decisions.[50] In that way, the ends of justice would be better served. For, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.[51]

We go now to the crux of the petition. Should the deed of sale with right to repurchase executed by the parties be construed as an equitable mortgage? This is the pivotal question here.

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[46] *Gutierrez v. Secretary of the Department of Labor and Employment,* G.R. No. 142248, December 16, 2004, 447 SCRA 107, 120; *Serrano v. Galant Maritime Services, Inc.,* G.R. No. 151833, August 7, 2003, 408 SCRA 523, 528.

[47] *Id*.; *Añonuevo, Jr. v. Court of Appeals,* G.R. No. 152998, September 23, 2003, 411 SCRA 621, 626.

[48] 75 Phil. 764, 767 (1946).

[49] *Id*. at 767; *Ayala Land, Inc. v. Carpo, supra* note 42.

[50] *Crystal Shipping, Inc. v. Natividad,* G.R. No. 154798, October 20, 2005, 473 SCRA 559, 566.

[51] *Asian Spirit Airlines v. Bautista,* G.R. No. 164668, February 14, 2005, 451 SCRA 294, 301; *El Reyno Homes, Inc. v. Ong, supra*; *Chronicle Securities Corporation v. National Labor Relations Commission, supra* note 44.

According to petitioner, the deed should not be construed as an equitable mortgage as it does not fall under any of the instances mentioned in Article 1602 of the Civil Code where the agreement can be construed as an equitable mortgage. He added that the "language and terms of the Deed of Sale with Right to Repurchase executed by respondent in favor of the petition are clear and unequivocal. Said contract must be construed with its literal sense."[52]

We cannot agree.

Respondent is correct in alleging that the deed of sale with right to repurchase qualifies as an equitable mortgage under Article 1602. She merely secured the payment of the unpaid car rentals and the amount advanced by petitioner to Jojo Lee.

The transaction between the parties is one of equitable mortgage and not a sale with right to purchase as maintained by petitioners. Article 1602 of the New Civil Code provides that the contract is presumed to be an equitable mortgage in any of the following cases:

(1) When the price of a sale with right to repurchase is unusually inadequate;

(2) **When the vendor remains in possession as lessee or otherwise;**

(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

(4) When the purchaser retains for himself a part of the purchase price;

(5) When the vendor binds himself to pay the taxes on the thing sold;

(6) **In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.**

In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered

[52] *Rollo,* p. 30.

as interest which shall be subject to the usury laws.[53] (Emphasis ours)

The conclusion that the deed of sale with right to repurchase is an equitable mortgage is buttressed by the following:

First, before executing the deed, respondent and Salak were under police custody due to the complaint lodged against them by petitioner. They were sorely pressed for money, as they would not be released from custody unless they paid petitioner. It was at this point that respondent was constrained to execute a deed of sale with right to repurchase. Respondent was in no position whatsoever to bargain with their creditor, petitioner. *Nel consensui tam contrarium est quam vis atqui metus*. There can be no consent when under force or duress. ***Bale wala ang pagsang-ayon kung ito'y nakuha sa pamimilit o paraang di malaya.***

It is established that respondent signed the deed only because of the urgent necessity of obtaining funds. When the vendor is in urgent need of money when he executes the sale, the alleged sale with *pacto de retro* will be construed as an equitable mortgage.[54] "Necessitous men are not, truly speaking, free men; but to answer a present emergency will submit to any terms that the crafty may impose upon them."[55]

Second, petitioner allowed respondent and Salak to retain the possession of the property despite the execution of the deed. In fact, respondent and Salak were not bound to deliver the

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[53] See *Lopez v. Sarabia,* G.R. No. 140357, September 24, 2004, 439 SCRA 35, 44-45.

[54] Tolentino, A.M., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. V, 1992 *ed*., p. 160, citing *Labasan v. Lacuesta,* G.R. No. 25931, October 30, 1978, 86 SCRA 16; *Bundalian v. Court of Appeals,* G.R. No. 55739, June 22, 1984, 129 SCRA 645.

[55] *Agas v. Sabico,* G.R. No. 156447, April 26, 2005, 457 SCRA 263, 279; *Serrano v. Court of Appeals,* G.R. No. L-46307, October 9, 1985, 139 SCRA 179, 189; *Cuyugan v. Santos,* 34 Phil. 100, 111 (1916).

possession of the property to petitioner if they would pay him the amount he demanded.[56]

Where in a contract of sale with *pacto de retro*, the vendor remains in possession, as a lessee or otherwise, the contract shall be presumed to be an equitable mortgage.[57] The reason for the presumption lies in the fact that in a contract of sale with *pacto de retro*, the legal title to the property is immediately transferred to the vendee, subject to the vendor's right to redeem. Retention, therefore, by the vendor of the possession of the property is inconsistent with the vendee's acquisition of the right of ownership under a true sale.[58] It discloses, in the alleged vendee, a lack of interest in the property that belies the truthfulness of the sale *a retro*.[59]

Third, it is likewise undisputed that the deed was executed by reason of: (1) the alleged indebtedness of Salak to petitioner, that is, car rental payments; and (2) respondent's own obligation to petitioner, that is, reimbursement of what petitioner paid to the mortgagee, Jojo Lee. Fact is, the purchase price stated in the deed was the amount of the indebtedness of both respondent and Salak to petitioner.[60]

Apparently, the deed purports to be a sale with right to purchase. However, since it was executed in consideration of the aforesaid loans and/or indebtedness, said contract is indubitably an equitable mortgage. The rule is firmly settled that whenever it is clearly shown that a deed of sale with *pacto de retro*, regular on its face, is given as security for a loan, it must be regarded as an equitable mortgage.[61]

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[56] *Rollo,* pp. 45, 57.

[57] See note 54, at 158-159.

[58] *Id.* at 159.

[59] Padilla, A., *Civil Law, Civil Code Annotated*, Vol. V, 1987 ed., p. 454.

[60] *Rollo,* pp. 35-37.

[61] *Ramos v. Court of Appeals,* G.R. No. L-42108, December 29, 1989, 180 SCRA 635, 645.

The above-mentioned circumstances preclude the Court from declaring that the parties intended the transfer of the property from one to the other by way of sale. They are more than sufficient to show that the true intention of the parties is to secure the payment of said debts. Verily, an equitable mortgage under paragraphs 2 and 6 of Article 1602 exists here. Settled is the rule that to create the presumption enunciated by Article 1602, the existence of one circumstance is enough.[62]

Moreover, under Article 1603 of the Civil Code it is provided that: "(i)n case of doubt, a contract purporting to be a sale with right to repurchase shall be construed as an equitable mortgage." In this case, We have no doubt that the transaction between the parties is that of a loan secured by said property by way of mortgage.

In *Lorbes v. Court of Appeals*,[63] the Court held that:

> The decisive factor in evaluating such agreement is the intention of the parties, as shown not necessarily by the terminology used in the contract but by all the surrounding circumstances, such as the relative situation of the parties at that time, the attitude, acts, conduct, declarations of the parties, the negotiations between them leading to the deed, and generally, all pertinent facts having a tendency to fix and determine the real nature of their design and understanding. As such, documentary and parol evidence may be submitted and admitted to prove the intention of the parties.

Sales with rights to repurchase, as defined by the Civil Code, are not favored. We will not construe instruments to be sales with a right to repurchase, with the stringent and onerous effects which follow, unless the terms of the document and the surrounding circumstances require it. Whenever, under the terms of the writing, any other construction can fairly and reasonably be made, such construction will be adopted and the contract will be construed as a mere loan unless the court can see that,

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[62] *Id*., citing *Santos v. Duata,* G.R. No. L-20901, August 31, 1965, 14 SCRA 1041, and *Capulong v. Court of Appeals,* G.R. No. 61337, June 29, 1984, 130 SCRA 245.

[63] G.R. No. 139884, February 15, 2001, 351 SCRA 716, 726.

if enforced according to its terms, it is not an unconscionable one.[64]

Article 1602 of the Civil Code is designed primarily to curtail the evils brought about by contracts of sale with right of repurchase, such as the circumvention of the laws against usury and *pactum commissorium*.[65]

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

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 173566. July 4, 2008]

SOLAR RESOURCES, INC., *petitioner, vs.* **INLAND TRAILWAYS, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; MOTION TO LIFT LEVY OR ATTACHMENT; A CONTENTIOUS MOTION THAT NEEDS TO COMPLY WITH THE REQUIRED NOTICE AND HEARING AND SERVICE TO THE ADVERSE PARTY; CASE AT BAR.— Respondent's filing of its *ex parte* motion for the lifting of the levy on its real properties violated the general rule that every motion shall be set for hearing since a motion to lift

[64] *Ramos v. Court of Appeals, supra* note 61, at 646, citing *Padilla v. Linsangan,* 19 Phil. 65 (1911) and *Aquino v. Deala,* 63 Phil. 582 (1936).

[65] *Id.* at 649, citing *Balatero v. Intermediate Appellate Court,* G.R. No. 73889, September 30, 1987, 154 SCRA 530.

levy is not one of those which the court can act upon without possibly prejudicing the rights of the other party. The motion to lift levy or attachment is a contentious motion that needs to comply with the required notice and hearing and service to the adverse party as mandated by the following provisions of Rule 15 of the Revised Rules of Court: "SEC. 4. *Hearing of motion.* – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant. Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice. SEC. 5. *Notice of hearing*. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion. SEC. 6. *Proof of service necessary*. – No written motion set for hearing shall be acted upon by the court without proof of service thereof."

2. ID.; ID.; EXECUTION OF JUDGMENTS; EXECUTION OF JUDGMENTS FOR MONEY; IN THE EVENT THAT THE JUDGMENT OBLIGOR CANNOT PAY THE MONETARY JUDGMENT IN CASH, THE COURT, THROUGH THE SHERIFF, MAY LEVY OR ATTACH PROPERTIES BELONGING TO THE JUDGMENT OBLIGOR TO SECURE THE JUDGMENT. — Every prevailing party to a suit enjoys the corollary right to the fruits of the judgment and, thus, court rules provide a procedure to ensure that every favorable judgment is fully satisfied. This procedure can be found in Rule 39 of the Revised Rules of Court on execution of judgment. The said Rule provides that in the event that the judgment obligor cannot pay the monetary judgment in cash, the court, through the sheriff, may levy or attach properties belonging to the judgment obligor to secure the judgment. x x x It is almost trite to say that execution is the fruit and end of the suit. Hailing it as the "life of the law," *ratio legis est anima*, this Court has zealously guarded against any attempt to thwart the rigid rule and deny the prevailing litigant his right to savour the fruit of his victory. A judgment, if left unexecuted, would be nothing but an empty triumph for the prevailing party.

3. ID.; ID.; ID.; ID.; SATISFACTION BY LEVY; THE JUDGMENT OBLIGOR SHOULD COMMUNICATE TO THE SHERIFF ITS CHOICES BEFORE THE SHERIFF IMPLEMENTS THE LEVY.— The option under Section 9(b), Rule 39 of the Revised Rules of Court is granted to a judgment obligor **before** the sheriff levies its properties and not after. Hence, the judgment obligor should communicate to the sheriff its choices before the sheriff implements the levy. The judgment obligor's failure to seasonably exercise such option, either by deliberate inaction or mere oversight, cannot be countenanced by this Court. To allow the judgment obligor to substitute the levied properties according to its whims dissipates court officers' precious time and effort and thereby unduly delays the execution of the judgment to the damage and prejudice of the prevailing party. Technicalities cannot be invoked to defeat the execution of a judgment, which as we held, is the fruit and end of the suit and is the life of the law.

4. ID.; ID.; MOTIONS; A MOTION, WITHOUT NOTICE AND HEARING, *IS PRO FORMA* AND A MOTION THAT DOES NOT CONTAIN PROOF OF SERVICE AND NOTICE TO THE ADVERSE PARTY IS NOT ENTITLED TO JUDICIAL COGNIZANCE; RATIONALE.— [I]t is an elementary doctrine that a motion, without notice and hearing, is *pro forma,* a mere scrap of paper that cannot be acted upon by the court. It presents no question which the court can decide. The court has no reason to consider it, and the clerk has no right to receive it. Indisputably, any motion that does not contain proof of service and notice to the adverse party is not entitled to judicial cognizance. x x x The rationale behind the rule is plain: unless the movant sets the time and place of hearing, the court will be unable to determine whether the adverse party agrees or objects to the motion; and if he objects, to hear him on his objection. Harsh as they may seem, these rules were introduced to avoid a capricious change of mind in order to provide due process to both parties and to ensure impartiality in the trial. It is important, however, to note that these doctrines refer exclusively to a motion, since a motion invariably contains a prayer, which the movant makes to the court, and which is usually in the interest of the adverse party to oppose. The notice of hearing to the adverse party is therefore a form of due process; it gives the other party the opportunity to properly vent his

opposition to the prayer of the movant. In keeping with the principles of due process, therefore, a motion which does not afford the adverse party the chance to oppose it should simply be disregarded.

5. ID.; ID.; ID.; FAILURE TO COMPLY WITH THE REQUIRED NOTICE AND HEARING IS A FATAL DEFECT.— Failure to comply with the required notice and hearing is a fatal defect that is deleterious to respondent's cause. As this court declared in *New Japan Motors, Inc. v. Perucho*: "Under Sections 4 and 5 of Rule 15 of the Rules of Court, x x x a motion is required to be accompanied by a notice of hearing which must be served by the applicant on all parties concerned at least three (3) days before the hearing thereof. Section 6 of the same rule commands that '(n)o motion shall be acted upon by the Court, without proof of service of the notice thereof x x x.' It is therefore patent that the motion for reconsideration in question is fatally defective for it did not contain any notice of hearing. We have already consistently held in a number of cases that the requirements of Sections 4, 5 and 6 of Rule 15 of the Rules of Court are mandatory and that failure to comply with the same is fatal to movant's cause."

APPEARANCES OF COUNSEL

Rico and Associates for petitioner.
M.M. Lazaro & Associates for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, filed by petitioner Solar Resources Inc., seeking the reversal and the setting aside of the Decision,[1] dated 27 April 2006, and the Resolution,[2]

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[1] Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Rosmari D. Carandang and Japar B. Dimaampao, concurring. *Rollo*, pp. 51-61.

[2] *Rollo*, p. 63.

dated 13 July 2006 of the Court of Appeals in CA-G.R. SP No. 90176. The appellate court, in its assailed Decision and Resolution, reversed the Order[3] dated 21 February 2005 of the Regional Trial Court (RTC) of Parañaque, Branch 274 in Civil Case No. 98-0406, striking down the Orders dated 22 October 1997 and 23 October 1997 issued by the Metropolitan Trial Court (MTC) of Parañaque, Branch 77, in Docket No. 8778 which lifted the entry of levy on Transfer Certificates of Title (TCTs) No. 128152 and No. 128153.

The present controversy stems from an action for ejectment filed by petitioner against respondent Inland Trailways, Inc., before the MTC, docketed as Civil Case No. 8778.[4] Petitioner alleged in its complaint that on 17 August 1991, it entered into a lease agreement with respondent, whereby it agreed to lease to respondent two parcels of land covered by TCTs No. 39817 and No. 39818 located at Multinational Village, Parañaque, Metro Manila [leased properties],[5] for a monthly rental starting at ₱51,104.20, which shall be due every fifth day of the month, and shall subsequently be increased every year.[6]

Respondent failed to pay its rent from August 1993 until January 1994 amounting to ₱347,405.00. Despite repeated demands from petitioner, respondent still failed or refused to comply with its obligation. This prompted petitioner to exercise its option provided under the lease agreement to rescind the contract in the event that the other party violated the provisions. Thus, petitioner demanded that respondent vacate the leased properties. Respondent refused to surrender possession of the leased properties notwithstanding several demands from petitioner.[7]

Respondent countered that it was petitioner who first breached the agreement, forcing respondent to withhold its rental payment.

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[3] Penned by Presiding Judge Fortunito L. Madrona. *Rollo*, pp. 59-60.

[4] *Rollo*, pp. 64-69.

[5] *Id.* at 70-74.

[6] *Id.* at 64-69.

[7] *Id.*

Under the lease agreement, petitioner is under obligation to (1) secure from the Air Transportation Office (ATO) the Heights Clearance Permit, (2) land-fill the leased properties, and (3) deliver to respondent the TCTs, location plans and the technical descriptions of the leased lots. The contract was already in force for several months and respondent was already religiously paying its rent, but petitioner never complied with its obligations resulting in the failure of the respondent to derive economic benefit from the leased properties.[8]

On 26 May 1994, the MTC rendered a Decision[9] favoring the petitioner and ordering the respondent to vacate the leased lots and pay petitioner the sum of ₱1,095,000.40 as unpaid rentals, penalty and liquidated damages pursuant to the stipulations embodied in their lease agreement.

Respondent appealed the adverse MTC Decision to the RTC where its appeal was docketed as Civil Case 94-0089.[10]

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[8] *Id.* at 86-98.

[9] *Id.* at 110-113.

[10] In a Decision dated 3 June 1997, the RTC affirmed with modification the MTC Decision in Civil Case 8778. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, the decision appealed being in accordance with law is hereby affirmed with the following modifications:

1. Ordering defendant-appellant and all persons claiming rights under it to immediately vacate the premises described as Lot No. 3353 and portion of Lot 2657 and peacefully surrender possession thereof to the plaintiff;
2. Ordering defendant-appellant to pay plaintiff-appellee for the unpaid rentals as stipulated under the lease agreement dated February 18, 1992 and carried over and incorporated by reference in the Agreement dated 27 May 1993, the sum of ₱8,802.60 broken down as follows:

a) ₱393,500.80 (for period of August 1993 to February 1994)

b) ₱742,030.20 (for period of March 1994 to February 1995)

c) ₱816,386.40 (for period of March 1995 to February 1996)

d) ₱896,875.20 (for period of March 1996 to March 1997)

e) ₱85,463.67 (for the 3% interest per month on delay of unpaid rentals)

₱2,934,255.20 - Sub-total

During the pendency of respondent's appeal before the RTC, petitioner moved for the execution of the 26 May 1994 MTC Decision, which was granted by the MTC in its Order[11] dated 28 June 1994. Accordingly, a Writ of Execution[12] was issued by the MTC on 30 June 1994 directing the Sheriff to satisfy the Judgment dated 26 May 1994.

Since the monetary award was not fully satisfied, petitioner filed with the MTC a Motion for *Alias* Writ of Execution[13] stating that the amount of the personal properties levied pursuant to the 30 June 1994 Writ of Execution and sold at the public auction did not fully cover the monetary judgment of the MTC. While the total amount of obligation as of June 1996 amounted to ₱2,318,402.05, the levied tourist buses of respondent were sold at the public auction for only ₱801,000.00, thereby leaving a balance of ₱1,517,402.05.

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x 3 - Liquidated Damages Stipulated in par. 15 of Lease Agreement

₱8,802,765.60 – Total Amount Due

3. Appellant to further pay plaintiff-appellee reasonable value for the use and occupation of the premises at the rate previously stipulated until appellant fully vacates the premises;
4. ₱20,000.00 for and as attorney's fees;
5. To pay the costs. (*Rollo*, pp. 147-148.)

On appeal before the Court of Appeals, the appellate court affirmed the RTC Decision dated 3 June 1997in its Decision dated 30 August 2004.

The Petition for *Certiorari* filed by respondent before this Court and docketed as G.R. No. 165946 was likewise denied in a Resolution dated 21 February 2005.

The Petition for Review on *Certiorari* docketed as G.R. No. 165946 filed before this Court was denied in a Resolution dated 21 February 2005 for failure to attach proof of authority of Evelyn Castro to cause the preparation of the petition. On 1 August 2005, this Court's Resolution dated 21 February 2005 become final and executory and is recorded in the Book of Entries of Judgment.

[11] *Rollo*, pp. 118-119.

[12] *Id.* at 120-121.

[13] *Id.* at 125-126.

Acting on the petitioner's Motion, the MTC, on 10 July 1996, issued an *Alias* Writ of Execution directing the Sheriff to further levy the properties belonging to the respondent and sell the same at a public auction in the manner provided by law.[14]

In compliance with the 10 July 1996 *Alias* Writ of Execution, the Sheriff levied two parcels of land registered in respondent's name and covered by TCTs No. 128152 and 128153 registered with the Registry of Deeds of Pasay City [levied real properties].

Respondent, exercising the option granted to a judgment debtor to choose which property or part thereof may be levied upon to satisfy the judgment,[15] filed an *Ex Parte* Motion to Lift Levy/ Attachment on Real Properties.[16] Respondent sought for the substitution of its levied real properties with its following personal properties:

Make	Model	Motor No.	Serial No.
Isuzu	1994	10 PAI-815971	CRA650-2602098
Isuzu	1994	10 PBI-320673	CSA580-2602730

After the MTC ascertained that the personal properties offered by respondent as substitute for the levied real properties were more than sufficient to satisfy the judgment, an Order[17] was

[14] *Id*.

[15] Revised Rules of Court, Rule 39, Section 9(b). *Satisfaction by levy*. – If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

[16] *Rollo*, pp. 162-163.

[17] *Id*. at 164.

issued on 22 October 1997 [First MTC Order] directing the replacement of the levied real properties upon surrender of the substituted personal properties the custody of the Sheriff together with their corresponding Certificates of Registration and Official Receipts, subject to the condition that the previously levied real properties shall not be sold by respondent until the judgment against it has been satisfied.

Upon respondent's surrender of its personal properties as substitutes for the levied real properties, the MTC, on 23 October 2007, issued another Order [Second MTC Order][18] directing the Registry of Deeds of Pasay City to cancel and/or Lift the Entry of Levy made by the Sheriff on TCTs No. 128152 and No. 128153. The MTC declared the Second MTC Order final and executory in an Order dated 28 October 1997 [Third MTC Order].[19]

On the ground that the Motion to Lift Levy/Attachment on Real Properties[20] is a contentious motion and respondent failed to comply with the three-day notice rule as required by Section 4, Rule 15 of the Revised Rules of Court,[21] petitioner moved for the nullification of the First, Second and Third MTC Orders.

On 10 August 1998, the MTC issued an Order[22] [Fourth MTC Order] denying petitioner's motion for nullification of its

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[18] *Id.* at 165.

[19] *Id.* at 166.

[20] *Id.* at 168-173.

[21] Rule 15, SEC. 4. *Hearing of motion.* – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

SEC. 5. *Notice of hearing.* – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

[22] *Rollo,* p. 202.

three earlier orders, thus, upholding the lifting of the levy on respondent's real properties given that they were substituted with personal properties. According to the MTC, its previous orders were sanctioned by procedural laws.

Arguing that the MTC gravely abused its discretion in issuing its Orders dated 22 October 1997, 23 October 1997, 28 October 1997 and 10 August 1998, petitioner filed a Petition for *Certiorari*[23] before the RTC, docketed as Civil Case No. 98-0406.

In its Order[24] issued on 14 June 2000, the RTC affirmed the allowance by the MTC of the substitution of respondent's levied real properties with personal properties. The RTC reasoned that even granting that the offered personal properties were not sufficient to satisfy the judgment against respondent, petitioner can always file a Motion for the Issuance of *Alias* Writ of Execution so the court can order the levy of additional properties belonging to respondent. The RTC, however, did nullify the Third MTC Order, for orders shall only become final and executory after the lapse of time prescribed by law and not by mere declaration of the court.

Dissatisfied, the petitioner filed a Partial Motion for Reconsideration[25] with the RTC.

Finding merit in petitioner's motion, the RTC reconsidered its earlier order. In an Order dated 21 February 2005, the RTC decreed that respondent's *Ex Parte* Motion to Lift Levy/ Attachment on Real Properties, which precipitated the assailed MTC Orders, was a mere scrap of paper for failure to comply with the three-day notice rule.[26] Resultantly, the MTC Orders

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[23] *Id.* at 203-228.

[24] *Id.* at 242-246.

[25] *Id.* at 247-258.

[26] Rule 15, SEC. 4. *Hearing of motion.* – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

issued pursuant to respondent's defective motion were null and void. The dispositive portion of the 21 February 2005 RTC Order reads:

> WHEREFORE, the foregoing duly considered, the motion for partial reconsideration being well taken, the same is granted.
>
> Accordingly, therefore, the Orders dated October 22, 1997 and October 23, 1997 both issued by the court *a quo*, are hereby ordered set aside for being null and void and without force and effect.[27]

Aggrieved, respondent raised the matter before the Court of Appeals *via* Petition for *Certiorari*[28] under Rule 65 of the Revised Rules of Court, docketed as CA-G.R. SP No. 90716. In its Petition, respondent argued that the RTC gravely abused its discretion in nullifying the MTC Orders directing the lifting of levy on respondent's real properties. Respondent asserted that its filing of the Motion to Lift Levy/Attachment was in the exercise of its legal option under Section 9(b) of Rule 39 of the Revised Rules of Court without need for complying with the three-day notice rule.

On 27 April 2006, the Court of Appeals rendered a Decision[29] granting respondent's petition and reversing the RTC Order dated 21 February 2005. The appellate court recognized respondent's prerogative to choose which property or part thereof it wanted to be levied as sanctioned by the Revised Rules of Court. Consequently, respondent's failure to comply with the three-day notice rule in moving for the substitution of its levied real properties with personal properties was not a serious transgression of petitioner's right to due process.

Petitioner's Motion for Reconsideration was denied by the Court of Appeals in its Resolution[30] dated 13 July 2006.

SEC. 5. *Notice of hearing.* – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

[27] *Rollo,* p. 260.

[28] *Id.* at 285-312.

[29] *Id.* at 51-61.

[30] *Id.* at 63.

Hence, this instant Petition for Review on *Certiorari*[31] filed by petitioner. For the resolution of this Court, then, is the sole issue of whether the Motion to Lift Levy/Attachment is a contentious motion that needs to comply with the three-day notice rule.

Petitioner maintains that the *Ex Parte* Motion to Lift Levy/Attachment was a mere scrap of paper that could not be acted upon by the MTC without compliance with the required notice and hearing. Petitioner, thus, assail the First, Second and Fourth Orders of the MTC.

Harping on the disquisition of the Court of Appeals, respondent argues that its *Ex Parte* Motion to Lift Levy/Attachment filed before the MTC was only an exercise of its prerogative, as a judgment obligor, to choose which property or part thereof may be levied, and to convey such preference to the court, even in the absence of the judgment obligee's participation.

There is no dispute that the petitioner did not receive a copy of the assailed motion since it was filed and granted *ex parte* by the MTC. Respondent's bone of contention is that there is no more need to comply with the required notice and hearing since its motion was non-litigious, the allowance or disallowance of which would not prejudice petitioner's right.

There is merit in the present Petition.

Respondent's filing of its *ex parte* motion for the lifting of the levy on its real properties violated the general rule that every motion shall be set for hearing since a motion to lift levy is not one of those which the court can act upon without possibly prejudicing the rights of the other party. The motion to lift levy or attachment is a contentious motion that needs to comply with the required notice and hearing and service to the adverse party as mandated by the following provisions of Rule 15 of the Revised Rules of Court:

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[31] *Id*. at 22-47.

SEC. 4. *Hearing of motion.* – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

SEC. 5. *Notice of hearing*. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

SEC. 6. *Proof of service necessary*. – No written motion set for hearing shall be acted upon by the court without proof of service thereof.

Every prevailing party to a suit enjoys the corollary right to the fruits of the judgment and, thus, court rules provide a procedure to ensure that every favorable judgment is fully satisfied. This procedure can be found in Rule 39 of the Revised Rules of Court on execution of judgment. The said Rule provides that in the event that the judgment obligor cannot pay the monetary judgment in cash, the court, through the sheriff, may levy or attach properties belonging to the judgment obligor to secure the judgment.

Thus, when the sheriff levied TCTs No. 128152 and No. 128153 in satisfaction of the 26 May 1994 MTC Decision, petitioner already acquired right over such levied real properties as the prevailing party in Civil Case No. 8778. To discharge such properties, therefore, without hearing or even at the least, notice to petitioner, constitutes a serious violation of petitioner's right to due process and should be struck down by this Court.

Petitioner's right to these levied properties is founded on its right, as a prevailing party, to enjoy the finality of the decision by execution and satisfaction of the judgment. It is almost trite to say that execution is the fruit and end of the suit. Hailing it as the "life of the law," *ratio legis est anima*,[32] this Court has

[32] The reason of the law is its soul.

zealously guarded against any attempt to thwart the rigid rule and deny the prevailing litigant his right to savour the fruit of his victory. A judgment, if left unexecuted, would be nothing but an empty triumph for the prevailing party.[33]

Respondent argues that it was merely exercising its legal right to choose which among its properties it wanted to be levied, in accordance with Section 9(b), Rule 39 of the Revised Rules of Court, which provides:

> Section 9(b) *Satisfaction by levy*. – If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.
>
> The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.
>
> When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

and, therefore, cannot be intruded upon by anyone.

Respondent's contention cannot be given credence. The option under Section 9(b), Rule 39 of the Revised Rules of Court is granted to a judgment obligor **before** the sheriff levies its properties and not after. Hence, the judgment obligor should communicate to the sheriff its choices before the sheriff implements the levy. The judgment obligor's failure to seasonably exercise such option, either by deliberate inaction or mere oversight, cannot be

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[33] *Florentino v. Rivera*, G.R. No. 167968, 23 January 2006, 479 SCRA 522, 532.

countenanced by this Court. To allow the judgment obligor to substitute the levied properties according to its whims dissipates court officers' precious time and effort and thereby unduly delays the execution of the judgment to the damage and prejudice of the prevailing party. Technicalities cannot be invoked to defeat the execution of a judgment, which as we held, is the fruit and end of the suit and is the life of the law.

Neither can this Court find merit in respondent's excuse that it was not able to promptly exercise its legal option to choose which of its properties should be levied upon because the sheriff prevented it from doing so. It is not only weak, but is obviously a mere afterthought. We have perused its *Ex Parte* Motion to Lift Levy/Attachment of Real Properties and it was never alleged therein that the reason for the filing of such motion was that it was prevented by the sheriff from exercising its legal prerogative prior to the levy. In the absence of evidence to the contrary, it is presumed that official duty has been regularly performed.[34]

Evidently, the MTC erroneously acted on respondent's *Ex Parte* Motion to Lift Levy/Attachment of Real Properties, for it is an elementary doctrine that a motion, without notice and hearing, is *pro forma*, a mere scrap of paper that cannot be acted upon by the court. It presents no question which the court can decide. The court has no reason to consider it, and the clerk has no right to receive it.[35] Indisputably, any motion that does not contain proof of service and notice to the adverse party is not entitled to judicial cognizance.[36]

This Court never failed to stress the mandatory nature of the foregoing requirement. As we have ruled in *Pallada v. Regional Trial Court of Kalibo, Branch 1*:[37]

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[34] *Cristobal v. Court of Appeals*, 384 Phil. 807, 815 (2000).

[35] *Balagtas v. Sarmiento, Jr.*, A.M. No. MTJ-01-1377, 17 June 2004, 432 SCRA 343, 349.

[36] *Cui v. Hon. Madayag*, 314 Phil. 846, 859 (1995).

[37] 364 Phil. 81, 88-89 (1999).

Anent the second error, there is tenability in petitioners' contention that the Writ of Execution was irregularly issued insofar as the *Ex-Parte* Motion for Execution of private respondents did not contain a notice of hearing to petitioners. Sections 4 and 5 of Rule 15 of the Revised Rules of Court, read:

x x x x x x x x x

The foregoing requirements — that the notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion — are mandatory, and if not religiously complied with, the motion becomes *pro forma*. A motion that does not comply with the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is a worthless piece of paper which the clerk of court has no right to receive and which the court has no authority to act upon. (Emphasis supplied.)

The rationale behind the rule is plain: unless the movant sets the time and place of hearing, the court will be unable to determine whether the adverse party agrees or objects to the motion; and if he objects, to hear him on his objection.[38] Harsh as they may seem, these rules were introduced to avoid a capricious change of mind in order to provide due process to both parties and to ensure impartiality in the trial.[39]

It is important, however, to note that these doctrines refer exclusively to a motion, since a motion invariably contains a prayer, which the movant makes to the court, and which is usually in the interest of the adverse party to oppose. The notice of hearing to the adverse party is therefore a form of due process; it gives the other party the opportunity to properly vent his opposition to the prayer of the movant. In keeping with the principles of due process, therefore, a motion which does not afford the adverse party the chance to oppose it should simply be disregarded.[40]

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[38] *Balagtas v. Sarmiento, Jr.*, *supra* note 35 at 349.

[39] *Meris v. Ofilada*, 355 Phil. 353, 362 (1998).

[40] *Neri v. De la Peña*, A.M. No. RTJ-05-1896, 29 April 2005, 457 SCRA 538, 546.

Failure to comply with the required notice and hearing is a fatal defect that is deleterious to respondent's cause. As this court declared in *New Japan Motors, Inc. v. Perucho*:[41]

> Under Sections 4 and 5 of Rule 15 of the Rules of Court, x x x a motion is required to be accompanied by a notice of hearing which must be served by the applicant on all parties concerned at least three (3) days before the hearing thereof. Section 6 of the same rule commands that '(n)o motion shall be acted upon by the Court, without proof of service of the notice thereof x x x.' It is therefore patent that the motion for reconsideration in question is fatally defective for it did not contain any notice of hearing. We have already consistently held in a number of cases that the requirements of Sections 4, 5 and 6 of Rule 15 of the Rules of Court are mandatory and that failure to comply with the same is fatal to movant's cause.

Since the assailed motion of the respondent failed to comply with Sections 4 and 5 of Rule 15 of the Revised Rules of Court, the MTC, therefore, had no jurisdiction to act upon it. Such motion is nothing but a piece of paper unworthy of judicial cognizance. Hence, the MTC, in receiving and granting such motion, committed patent errors that must accordingly be rectified. Thus, the Orders dated 22 October 1997, 23 October 1997, and 10 August 1998 issued by the MTC are null and void and must be set aside.

WHEREFORE, premises considered, the instant Petition is *GRANTED*. The Decision dated 27 April 2006 and Resolution dated 13 July 2006 of the Court of Appeals in CA-G.R. SP No. 90176 are hereby *REVERSED AND SET ASIDE*. The Order dated 21 February 2005 of the Regional Trial Court of Parañaque, Branch 274 in Civil Case No. 98-0406 is hereby *REINSTATED*. No cost.

SO ORDERED.

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

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[41] *New Japan v. Perucho*, 165 Phil. 636, 641 (1976), as cited in *De la Peña v. De la Peña*, 327 Phil. 936, 941 (1996).

SECOND DIVISION

[G.R. No. 176062. July 4, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EFREN CUSTODIO *y* ESTEBAN,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; INFORMATION THAT FAILS TO ALLEGE THE USE OF FORCE AND INTIMIDATION IN A RAPE CASE, HOW CURED.— *People v. Galido* is instructive: "An information that fails to allege the use of force and intimidation in a rape [case] is cured by the **failure** of the accused **to question** before the trial court the sufficiency of that information; by the **allegation** in the **original complaint** that the accused is being charged with rape through force and intimidation; and by **unobjected** competent **evidence** proving that the rape was indeed committed through such means."

2. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.— AAA is x x x entitled to an award of exemplary damages which jurisprudence pegs at ₱25,000 for each count as it was proven, although not alleged in the informations, during the trial that the use of deadly weapon attended the commission of each of the crimes. It bears stating that while such circumstance cannot be appreciated for the purpose of fixing a heavier penalty, it can be considered as basis for an award of exemplary damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

On appeal is the March 31, 2006 Decision[1] of the Court of Appeals in CA-GR CR-HC No. 01756 which affirmed with modification the September 27, 2000 Decision[2] of Branch 21 of the Regional Trial Court in Malolos, Bulacan finding appellant guilty of three counts of simple rape in Crim. Case Nos. 333-M-2000, 334-M-2000, and 335-M-2000.

Except for the dates of commission of the three offenses charged – November 5, 1999, November 6, 1999 and November 7, 1999, the three Informations[3] uniformly read as follows:

> That on or about the __th day of November, 1999, in the [M]unicipality of Plaridel, province of Bulacan Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously, with lewd designs, have carnal knowledge of the said [AAA], his niece, 19 years old, against her will and consent.[4] (Underscoring supplied)

Appellant, an ambulant cigarette vendor, is the uncle of the victim AAA, he being the younger brother of her father.

From the records of the cases, the following version was established by the prosecution:

In the afternoon of November 4, 1999 at around 2:00 p.m., the then 19 years old high school graduate private complainant AAA met by chance the then 37 years old widower-uncle-appellant

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[1] CA *rollo*, pp. 113-127. Penned by Associate Justice Portia Aliño-Hormachuelos with the concurrence of Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso.

[2] Records, pp. 86-93.

[3] Crim. Case No. 333-M-2000, Crim. Case No. 334-M-2000, Crim. Case No. 335-M-2000, *id*. At 1-2, 9-10, 12-13.

[4] Records, p. 1.

along the public market of Malolos, Bulacan. On being told that AAA was scouting for a job, appellant told her that he could help her as he knew of an employer in Capalangan, Apalit, Pampanga.[5]

On appellant's invitation, AAA at once went with him to Capalangan, arriving there at around 2:45 p.m. Claiming that he forgot the address of the employer, appellant and AAA wandered around the place for more than one and a half hours until it was already dark, drawing AAA to indicate her desire to go home which appellant restrained. At the point of a *balisong*, appellant warned AAA not to shout as they boarded a tricycle and repaired to the house of his friend. He instructed AAA to carry the name "Maritess dela Cruz." On reaching his friend's house, appellant introduced AAA as his wife and claimed that they were married in civil rites three months earlier.[6]

The next day, or on November 5, 1999, they left Capalangan and proceeded to Plaridel, Bulacan. They arrived at around 6:00 a.m. at the house of appellant's friend identified as Asing, a tricycle driver, and his wife Wena, an employee at a "feria." Appellant, again introducing AAA as his wife whose parents "did not want him to be her husband," sought Asing's permission, which the latter granted, to let them temporarily stay in his house.[7]

While at the house of Asing, appellant took AAA's money, telling her that he did it so she would not escape or go home.[8] AAA did not reveal to the couple her predicament as "the way she look[ed] at them they were like close friends."

At nightfall, while Asing and his wife were away leaving them to themselves, appellant undressed AAA at the point of a *balisong,* Appellant removed his own clothes and had sexual intercourse with AAA, warning her not to report the matter to anyone lest she would be killed.[9] This was the incident subject of the first Information.

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[5] TSN, April 1, 2000, p. 2.

[6] *Id*. at 3-4.

[7] TSN, May 22, 2000, pp. 2-3.

[8] *Id*. at 4.

[9] *Id*. at 3-5.

The second incident of rape occurred also at the house of Asing on November 6, 1999 before midnight and, just like the first incident, appellant threatened AAA with "the same '*balisong*' poked on [her] on November 5, 1999."[10]

The third incident of rape also still occurred in Plaridel on November 7, 1999 before Asing and his wife returned at around 11:30 p.m. While AAA cried and pleaded for mercy, appellant remained unmoved.[11]

AAA wanted to escape, but she could not as appellant was closely guarding her; and while appellant slept, he was a "light sleeper," always moving and he even locked the door and placed a chair behind it. Besides, AAA did not know how she could leave as that was her "first time" to be in Plaridel.[12]

On November 8, 1999, at past noon, AAA's brother CCC who, along with other family members, appear to have conducted a search on her whereabouts and eventually got wind of where she was, repaired to Asing's house together with appellant's brother-in-law tricycle driver DDD. At Asing's house, appellant told CCC that he arranged for AAA's employment as a maid. Fearing for her safety and that of her brother, AAA kept silent as she was fetched.[13]

Upon reaching their house on even date, November 8, 1999, AAA narrated her ordeal to her parents and siblings. AAA and her parents at once proceeded to the Municipal Hall where she executed a sworn statement[14] and filed complaints[15] for rape against appellant.[16]

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[10] *Id*. at 7.

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

[12] TSN, May 26, 2000, p. 4.

[13] TSN, May 22, 2000, p. 2.

[14] Records, pp. 64-66.

[15] The complaints were docketed as Criminal Cases No. 99-1184, 99-1185, 99-1186, and 99-1187 but only three charges were filed before the Regional Trial Court in Bulacan as the other charge happened in Pampanga.

[16] TSN, May 24, 2000, pp. 2-5.

The following day, or on November 9, 1999, AAA was examined by Dr. Ivan Richard A. Viray, Medico-Legal Officer at the PNP Bulacan Provincial Crime Laboratory in Malolos, Bulacan who came out with the following

FINDINGS:

GENERAL AND EXTRAGENITAL:

PHYSICAL BUILT: Light Built

MENTAL STATUS: Coherent female subject

BREAST: Conical in shape, with pinkish brown areola and nipples from which no secretions could be pressed out

ABDOMEN: flat and soft

PHYSICAL INJURIES: No injuries noted

GENITAL:

PUBIC HAIR: Moderate growth

LABIA MAJORA: full convex and coaptated

LABIA MINORA: in between labia majora, dark brown in color

HYMEN: classic fleshytype with the presence of shallow healed laceration at 3 & 9 o'clock position and deep healing laceration at 5 o'clock position

POSTERIOR FOURCHETTE: v shape

EXTERNAL VAGINAL ORIFICE: offers moderate resistance to examining index finger

VAGINAL CANAL: with slightly flattened nigosities

CERVIX: firm and closed

PERI-URETHRAL AND VAGINAL SMEARS: negative for both spermatozoa and gram(-) diplococci

CONCLUSION:

> Subject is in Non-virgin state
> There are no external signs of application of any form of trauma.

x x x[17] (Emphasis in the original).

Appellant did not deny having sexual intercourse with AAA in Plaridel. He advanced the "sweetheart theory," however. He claimed that AAA called him "Love" and gave him a handkerchief[18] as a token of their love for each other. In return, he gave her a T-shirt, a pair of shorts, and an underwear.[19]

Appellant went on to claim as follows:

At the time he was staying with AAA's family after he was widowed, she would give hints that she liked him but he ignored them as she is his niece. AAA would always see him in front of Jollibee in Malolos where he was peddling cigarettes.[20]

On November 4, 1999, AAA went to see him again and told him that she was looking for a job. On his move, they went to Apalit to see a movie following which AAA suggested that they elope. Appellant agreed and they went to the house of his former employer named Jerry in Calumpit, Bulacan where he introduced AAA as his wife and they were allowed to stay overnight.[21]

In the morning of the following day, November 5, 1999, as AAA wanted to look for a house to rent, they left Calumpit for Plaridel where they rented a house together with another couple.[22]

The trial court convicted appellant of three counts of simple rape, even if the use of a deadly weapon attended their commission was established, the prosecution having failed to allege the same in each of the Informations.

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[17] Records, p. 67.

[18] The handkerchief is attached at page 95 of the records.

[19] TSN, September 18, 2000, pp. 8-9.

[20] TSN, September 13, 2000, pp. 3-4.

[21] *Ibid*.

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

Thus, the trial court disposed in its Decision of September 27, 2000:

> WHEREFORE, all premises considered, this Court finds and so resolves that the prosecution was able to discharge its procedural undertaking. Accordingly, the accused Efren Custodio *y* Esteban is hereby found GUILTY beyond reasonable doubt of simple RAPE on three counts. Forthwith, in the absence of any mitigating or aggravating circumstances and since the Indeterminate Sentence Law is inapplicable, he is hereby ordered to suffer the penalties of *Reclusion Perpetua* in all three (3) Criminal Cases No. 333-M-2000, 334-M-2000 and 335-M-2000. In line with recent decisions, he is further condemned to *indemnify [AAA] in the sum of ₱75,000.00 each* of all said three (3) cases and to pay her *moral damages in the amounts of ₱100,000.00 in each* of all said three (3) cases.
>
> With costs against the accused.[23] (Underscoring in the original; italics supplied)

The records of the cases were forwarded to this Court in view of the Notice of Appeal[24] filed by appellant. Per *People v. Mateo*,[25] this Court referred the cases to the Court of Appeals by Resolution of September 29, 2004.[26]

The appellate court affirmed the factual findings of the trial court. It modified the decision, however, by reducing the amount of civil indemnity in each count, from ₱75,000 to ₱50,000, consistent with prevailing jurisprudence. And it likewise reduced the amount of moral damages in each count from ₱100,000 to ₱50,000.

The appellate court thus disposed:

> WHEREFORE, the appealed judgment is hereby **AFFIRMED with the MODIFICATION** that the adjudged civil indemnity against appellant is reduced from ₱75,000.00 to ₱50,000 for each count of

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[23] Records, pp. 92-93.

[24] *Id*. at 96.

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

[26] CA *rollo*, p. 111.

rape or a total of ₱150,000.00. The award for moral damages is reduced from ₱100,00.00 to ₱50,000.00 for each count of rape or a total of ₱150,000.00.[27] (Emphasis in the original)

After the records of the cases were forwarded to this court following appellant's filing of a Notice of Appeal,[28] the Court, by Resolution[29] of March 12, 2007, required the parties to submit Supplemental Briefs, if they so desired, within thirty days from notice. The *People*, through the Office of the Solicitor General, filed a Manifestation[30] stating that a supplemental brief would no longer be filed as the arguments for the *People* had been exhaustively discussed in an earlier brief.

In his original Appellant's Brief,[31] appellant faulted the trial court

I.

. . . IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

II.

. . . IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF PRIVATE COMPLAINANT [AAA].

III.

. . . IN REJECTING THE "SWEETHEART" THEORY INTERPOSED BY ACCUSED-APPELLANT.

IV.

. . . IN NOT ACQUITTING ACCUSED-APPELLANT AS THE INFORMATIONS UNDER WHICH HE WAS ARRAIGNED ARE DEFECTIVE.[32] (Underscoring supplied)

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[27] *Id*. at 127.

[28] *Id*. at 130-131.

[29] *Rollo*, p. 18.

[30] *Id*. at 19-20.

[31] CA *rollo*, pp. 54-66.

[32] *Id*. at 54-55.

In his Supplemental Brief,[33] appellant, reiterates his contention that the Informations are defective for failure to allege that he employed force and intimidation in committing the alleged rapes. Hence, he maintains that his constitutional right to be informed of the nature and cause of the accusation against him as provided for under Article III, Section 14 (2) of the 1987 Constitution was infringed. The contention is devoid of merit. *People v. Galido*[34] is instructive:

> An information that fails to allege the use of force and intimidation in a rape [case] is cured by the **failure** of the accused **to question** before the trial court the sufficiency of that information; by the **allegation** in the **original *complaint*** that the accused is being charged with rape through force and intimidation; and by **unobjected** competent **evidence** proving that the rape was indeed committed through such means.[35] (Italics in the original; emphasis and underscoring supplied)

All of these circumstances obtain in the case at bar.

Appellant was arraigned and pleaded not guilty to each of the Informations. There was no showing that he did not understand the import of his plea. He did not raise the issue of defect in the Informations prior to his arraignment by filing either a motion to quash under then Section 8[36] (now Section 9), Rule 117 or a motion for a bill of particulars under then Section 10[37] (now Section 9), Rule 116 of the Rules of Criminal Procedure.

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[33] *Rollo,* pp. 32-35.

[34] G.R. Nos. 148689-92, March 30, 2004, 426 SCRA 502.

[35] *Id*. at 504. *Vide Olivarez v. Court of Appeals,* G.R. No. 163866, July 29, 2005, 465 SCRA 465*; People v. Cadampog,* G.R. No. 148144, April 30, 2004, 428 SCRA 536; *People v. Navarro,* 460 Phil. 565 (2003).

[36] Sec. 8. *Failure to move to quash or to allege any ground therefore.* – The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of the grounds of a motion to quash, except the grounds of no offense charged, extinction of the offense or penalty and jeopardy, as provided for in paragraphs (a), (b), (f) and (h) of Section 3 of this Rule.

[37] Sec. 10. *Bill of Particulars*. – Accused may, at or before arraignment, move for a bill of particulars to enable him properly to plead and to prepare for trial. The motion shall specify the alleged defects and the details desired.

The trial court's Order of March 6, 2000 records show the arraignment was carried out:

> The accused Efren Custodio *y* Esteban, assisted by PAO lawyer Atty. Benjamin Medrano[,] having been furnished a copy of the Informations, was arraigned by reading in open Court the Informations specifying the nature and cause of the accusation against him in Tagalog, which is the dialect understood by him, and knowing fully well its import and significance, he pleaded "Not Guilty" to all the offense[s] charged.[38]

The complaints filed before the Municipal Trial Court of Malolos, Bulacan,[39] except for the dates of commission of the offenses, uniformly alleged "force and intimidation" as follows:

> That on or about starting on the 5th day of November 1999 by means of fraudulent machination and grave abuse of authority in the [M]unicipality of Malolos, Province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above named accused [had] succeeded taking away his niece, one [AAA], 19 years old while walking along Public Market of Malolos, Bulacan[,] daughter of his brother [BBB], and with lewd design and **with the use of force and intimidation**, threaten to kill the undersigned and have a carnal knowledge on November 5, 1999 with the latter without her con[s]ent in Plaridel, Bulacan.[40] (Emphasis and underscoring supplied)

Appellant participated in the trial. He claimed that the acts of sexual intercourse were consensual as even AAA hatched the idea for the two of them to elope.

Significantly, the trial court made the following observations:

> As to the other circumstance, constitutive of rape, we cannot adopt the same attitude. That is so because the Court seems to be impressed that there is a flaw in the drafting of the Informations. Firstly, there is

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[38] Records, p. 20.

[39] *Id*. at 68-70.

[40] *Id*. at 68. *Vide People v. Mendez,* 390 Phil. 449, 459 (2000) where this Court ruled: "The failure of the information to state that ROSENDO raped VIRGINITA "through force and intimidation" is not a fatal omission in this case because the complaint alleged the ultimate fact that ROSENDO raped VIRGINITA "by means of force." So, at the outset, ROSENDO could have readily ascertained that he was being accused of rape committed through force . . ."

no mention that [appellant] had carnal knowledge of [AAA] under any of the circumstances enumerated. While the law makes use of the words "a) through force, threat or intimidation", what the public prosecutor alleged were "against her will and consent"; commenting on this matter, an authority stated that in a case of Rape the allegations of carnal knowledge "all against h[er] will and/or without her consent renders the Information to be insufficient to warrant conviction for the simple reason that such allegations do not correctly describe the crime of Rape in any of its forms. (Francisco, Criminal Procedure, p. 97 citing *People vs. Oso*, 62 Phil. 297).

However, fortunately for the People, the procedural infirmity which could result to embarrassing consequences, may have been cured by the **failure on the part of the defense to object or to move to quash the Information under Section 8, Rule 117, and such deficiency was supplied by competent proof.** (*People vs. Belga*, 100 Phil. 996) . . .[41] (Emphasis and underscoring supplied)

As for the merits of appellant's sweetheart theory, the same fails. Asing and Wena in whose house appellant and AAA stayed for three and a half days, could have been the best witnesses to prove such theory. Appellant failed to present them, however. Appellant's claim that AAA hatched the idea of eloping fails too, given that AAA carried no dress and underwear except those she was wearing at the time she was inveigled by appellant to look for an employer. And so does appellant's claim that AAA wanted to look for a house for them to rent. His income as a cigarette vendor could not have sufficed to pay of rent of a house for him and the jobless AAA.

AAA is also entitled to an award of exemplary damages which jurisprudence pegs at ₱25,000 for each count as it was proven, although not alleged in the informations, during the trial that the use of deadly weapon attended the commission of each of the crimes. It bears stating that while such circumstance cannot be appreciated for the purpose of fixing a heavier penalty, it can be considered as basis for an award of exemplary damages.[42]

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[41] *Id*. at 89-90.

[42] *Vide People v. Dagami*, 461 Phil. 139 (2003); *People v. Roa*, 453 Phil. 501 (2003); *People v. Durohom*, 440 Phil. 944 (2002); *People v. Victor*, 441 Phil. 798 (2002); *People v. Del Ayre*, 439 Phil. 73 (2002).

WHEREFORE, the appeal is *DISMISSED*. The assailed Decision of the Court of Appeals in CA-GR CR-HC No. 01756 is *AFFIRMED*, with the *MODIFICATION* that Efren Custodio *y* Esteban is *ORDERED* to pay the private complainant the sum of Twenty-Five Thousand Pesos (₱25,000) in each of the three counts of rape as exemplary damages.

SO ORDERED.

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

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THIRD DIVISION

[G.R. No. 176929. July 4, 2008]

INOCENCIO Y. LUCASAN for himself and as the Judicial Administrator of the Intestate Estate of the late JULIANITA SORBITO LUCASAN, *petitioner, vs.* **PHILIPPINE DEPOSIT INSURANCE CORPORATION (PDIC) as receiver and liquidator of the defunct PACIFIC BANKING CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; PROPERTY; OWNERSHIP; QUIETING OF TITLE; ELEMENTS.— Quieting of title is a common law remedy for the removal of any cloud of doubt or uncertainty with respect to real property. x x x To avail of the remedy of quieting of title, two (2) indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance or proceeding claimed to be casting a cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance

of validity or legal efficacy. Stated differently, the plaintiff must show that he has a legal or at least an equitable title over the real property in dispute, and that some deed or proceeding beclouds its validity or efficacy.

2. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; REDEMPTION BY JUDGMENT DEBTOR; FAILURE TO REDEEM THE PROPERTY FROM THE PURCHASER WITHIN TWELVE MONTHS FROM REGISTRATION OF THE CERTIFICATE OF SALE, THE JUDGMENT DEBTOR OR REDEMPTIONER LOST HIS RIGHT OVER THE PROPERTY.— Under the 1964 Rules of Court, which were in effect at that time, the judgment debtor or redemptioner had the right to redeem the property from PBC within twelve (12) months from the registration of the certificate of sale. With the expiration of the twelve-month period of redemption and no redemption having been made, as in this case, the judgment debtor or the redemptioner lost whatever right he had over the land in question.

3. ID.; ID.; ID.; ID.; REDEMPTION AND REPURCHASE, DISTINGUISHED; OFFER TO REDEEM PROPERTY MADE AFTER THE EXPIRY OF THE REDEMPTION PERIOD IS ONE FOR REPURCHASE, NOT FOR REDEMPTION.— Lucasan's right to redeem the subject properties had elapsed on June 5, 1982. His offer to redeem the same in 1997 or long after the expiration of the redemption period is not really one for redemption but for repurchase. Thus, PBC and PDIC, its receiver and liquidator, are no longer bound by the bid price. It is entirely within their discretion to set a higher price. As we explained in *De Robles v. Court of Appeals*: The right to redeem becomes *functus officio* on the date of its expiry, and its exercise after the period is not really one of redemption but a repurchase. Distinction must be made because redemption is by force of law; the purchaser at public auction is bound to accept redemption. Repurchase however of foreclosed property, after redemption period, imposes no such obligation. After expiry, the purchaser may or may not re-sell the property but no law will compel him to do so. And, he is not bound by the bid price; it is entirely within his discretion to set a higher price, for after all, the property already belongs to him as owner.

4. ID.; ID.; ID.; ID.; REDEMPTION NOT VALID, AS IT WAS MADE BEYOND THE REDEMPTION PERIOD; CASE AT BAR.— [I]n several cases, this Court allowed redemption even after the lapse of the redemption period. But in those cases a valid tender was made by the original owners within the redemption period. Even in *Cometa*, the redemption was allowed beyond the redemption period because a valid tender of payment was made within the redemption period. The same is not true in the case before us.

APPEARANCES OF COUNSEL

Jose H. Las Piñas for petitioner.
Office of the General Counsel for respondent.

D E C I S I O N

NACHURA, *J.*:

On appeal is the March 23, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 81518, affirming the July 24, 2003 Order[2] of the Regional Trial Court (RTC) of Bacolod City, Branch 43, granting respondent's motion to dismiss, as well as its subsequent Resolution[3] denying petitioner's motion for reconsideration.

The factual antecedents are as follows.

Petitioner Inocencio Y. Lucasan (Lucasan) and his wife Julianita Sorbito (now deceased) were the owners of Lot Nos. 1500-A and 229-E situated in Bacolod City, respectively covered by TCT Nos. T-68115 and T-13816.

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[1] Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Enrico A. Lanzanas and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 28-35.

[2] *Rollo*, pp. 21-29.

[3] *Id.* at 36-37.

On August 3, 1972, Pacific Banking Corporation (PBC) extended a ₱5,000.00 loan to Lucasan, with Carlos Benares as his co-maker. Lucasan and Benares failed to pay the loan when it became due and demandable. Consequently, PBC filed a collection case with the RTC of Bacolod City, docketed as Civil Case No. 12188.

On April 30, 1979, the RTC rendered a decision ordering Lucasan and Benares to jointly and severally pay PBC ₱7,199.99 with interest at 14% per annum computed from February 7, 1979, until the full payment of the obligation. Lucasan failed to pay the monetary award; thus, to satisfy the judgment, the RTC issued a writ of execution directing the sheriff to effect a levy on the properties owned by Lucasan and sell the same at public auction.

In compliance with the writ, the City Sheriff of Bacolod issued a Notice of Embargo on January 8, 1981, which was annotated on Lucasan's TCT Nos. T-68115 and T-13816 as Entry No. 110107. Annotated as prior encumbrances on the same titles were the mortgages in favor of Philippine National Bank (PNB) and Republic Planter's Bank (RPB) executed to secure Lucasan's loans with the banks.

On May 13, 1981, the lots were sold at public auction and were awarded to PBC as the highest bidder. A certificate of sale was executed in its favor and was registered and annotated on TCT Nos. T- 68115 and T-13816 as Entry No. 112552 on June 5, 1981. Neither PNB nor RPB, the mortgagees, assailed the auction sale.

Lucasan, as well as the mortgagee banks, PNB and RPB, did not redeem the properties within the redemption period. Nevertheless, PBC did not file a petition for consolidation of ownership.

In January 1997, Lucasan, through counsel, wrote a letter to the Philippine Deposit Insurance Corporation (PDIC), PBC's receiver and liquidator seeking the cancellation of the certificate of sale and offering to pay PBC's claim against Lucasan.[4]

[4] RTC records, p. 28.

Not long thereafter, Lucasan paid his loans with the PNB and RPB. Consequently, the mortgagee banks executed their respective releases of mortgage, resulting in the cancellation of the prior encumbrances in favor of PNB and RPB.

On August 13, 2001, PDIC denied Lucasan's request for the cancellation of the certificate of sale stating:

> Please be informed that based on our records, TCT Nos. T-68115 and T-13816 have already become part of the acquired assets of Pacific Banking Corporation by virtue of a Certificate of Sale dated May 13, 1981 executed by the City Sheriff of Bacolod. Subsequently, this document was registered on the titles on June 5, 1981 so that the last day of the redemption period was June 5, 1982.
>
> With regard to your request, we regret to inform you that reacquisition of the subject properties have to be through sale following PDIC's policy on disposal. Accordingly, these properties can be disposed through public bidding using the latest appraised value in the total amount of ₱2,900,300.00 as of March 29, 2000 as a minimum bid. If you are still interested to acquire the properties, please get in touch with our Asset Management Group x x x.[5]

Lucasan then filed a petition denominated as *declaratory relief* with the RTC of Bacolod City docketed as Civil Case No. 02-11874.[6] He sought confirmation of his rights provided in the second paragraph of Section 1, Rule 63 of the Rules of Court in relation to Section 75 of Presidential Decree (P.D.) No. 1529. Lucasan also pleaded for the lifting and/or cancellation of the notice of embargo and the certificate of sale annotated on TCT Nos. T-68115 and T-13816, and offered to pay ₱100,000.00 or such amount as may be determined by the RTC, as consideration for the cancellation.

PDIC moved to dismiss the complaint for lack of cause of action. It averred that an action to quiet title under Section 1 of Rule 63 may only be brought when there is a cloud on, or to prevent a cloud from being cast upon, the title to real property. It asseverated that a cloud on the title is an outstanding instrument

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[5] *Id*. at 31.

[6] *Id*. at 1-12.

record, claim, encumbrance or proceeding which is actually invalid or inoperative, but which may nevertheless impair or affect injuriously the title to property. PDIC claimed that the notice of embargo was issued pursuant to a writ of execution in Civil Case No. 12188, while the certificate of sale was executed as a result of a public bidding. Thus, their annotations on the titles were valid, operative or effective. PDIC asserted that Lucasan's petition is nothing but a disguised attempt to compel PDIC to resell the properties at a reduced price of ₱100,000.00. Accordingly, it prayed for the dismissal of the petition.[7]

Lucasan opposed the motion.[8] He countered that the subject properties were still in his possession, and neither PBC nor PDIC instituted an action for consolidation of ownership. Since the certificate of title was still in his name, he contended that he could pursue all legal and equitable remedies, including those provided for in Section 1, Rule 63 of the Rules of Court to reacquire the properties. He also claimed that PDIC's policy of disposing the subject properties through public bidding at the appraised value of ₱2,900,300.00 was unjust, capricious and arbitrary, considering that the judgment debt amounted only to ₱7,199.99 with interest at 14% per annum. Lucasan urged the RTC to apply the liberal construction of the redemption laws stressed in *Cometa v. Court of Appeals*.[9]

In its Order[10] dated July 24, 2003, the RTC granted PDIC's motion to dismiss, thus:

> The clouds contemplated by the provision of law under Article 476 of the Civil Code is one where the instrument, record, claim, encumbrance or proceeding is apparently valid or effective on its face that nothing appears to be wrong, but in reality, is null and void. Hence, the petition filed by [Lucasan] pursuant to the said article is equivalent to questioning the validity of the subsequent annotation of Entry No. 110107 and Entry No. 112522 in TCT Nos. T-13816 and T-68115.

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[7] *Id.* at 64-73.

[8] *Id.* at 84-88.

[9] 404 Phil. 107 (2001).

[10] RTC records, pp. 113-119.

Records disclose that Entry No. 110107 which is a Notice of Embargo was issued by virtue of a valid judgment rendered in Civil Case No. 12188 entitled "*Pacific Banking Corporation vs. [Inocencio] Lucasan, et al.,*" whereby the Court found [Lucasan] liable in favor of [PBC] the sum of ₱7,199.99 with 14% interest per annum to be computed from February 7, 1979 until fully paid.

As mandated in Sec. 12, Rule 39 of the Revised Rules of Court, such levy on execution create a lien in favor of [PBC] over the right, title and interest of [Lucasan] over the two (2) subject parcels of land covered by TCT Nos. T-13816 and T-68115, subject to liens and encumbrances then existing. The fact that [Lucasan] has redeemed the mortgage properties from the first mortgages (sic), PNB and PNB (sic) Republic Bank, does not vest him any title free from the lien of [PBC].

While the law requires that the judgment debtor, [Lucasan] must be served with a notice of levy and even if not served therewith, the defect is cured by service on him of the notice of sale prior to the sale, nowhere in the petition which alleges that [Lusasan] refutes the validity of the execution sale. Thus, he is deemed to have received and recognized the same.

As support for his thesis, [Lucasan] cites the case of *Balanga vs. Ca., et al.* (*supra*). However this Court is unable to agree that it is applicable to the present case. As correctly argued by [PDIC], in that case the proceedings under execution suffered infirmity from the very start as the levy and sale made by the sheriff of the land of petitioner Balanga included the house erected on the land [and] constituted as a family home which, under the law, exempt from execution. In the case at bar, no objection was interposed by [Lucasan] as a valid levy has been made pursuant to Sec. 7, Rule 57 of the Revised Rules of Court, as a consequence of which, the sale made pursuant to Sec. 11 of the same rule is also valid and effective.[11]

The dispositive portion of the RTC Order reads:

WHEREFORE, finding the claim of any cloud over the titles of [Lucasan] to be bereft of basis in fact and in law, the Motion to Dismiss filed by [PDIC] is granted. Accordingly, this is hereby ordered **DISMISSED**.

SO ORDERED.[12]

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[11] *Id.* at 118-119.

[12] *Id.* at 119.

Lucasan filed a motion for reconsideration, but the RTC denied it on October 20, 2003.[13]

On appeal, the CA affirmed *in toto* the RTC ruling. It declared that Lucasan already lost his right to redeem the properties when he failed to exercise it within the prescribed period. The effect of such failure was to vest in PBC absolute ownership over the subject properties.[14]

The CA disposed, thus:

> WHEREFORE, in view of all the foregoing premises, the appeal is hereby **DENIED**. Accordingly, the assailed Order of the Regional Trial Court of Bacolod City, Branch 43 dated 24 July 2003 dismissing [Lucasan's] Petition for Declaratory Relief and the subsequent Order of the same Court dated 20 October 2003 denying [Lucasan's] motion for reconsideration from the Order of Denial (sic) are hereby affirmed *in toto*. No costs.
>
> SO ORDERED.[15]

Lucasan sought a reconsideration of the CA Decision, but the same was denied on February 7, 2007.[16]

Before us, Lucasan impugns the CA Decision on the following grounds:

> 1- THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN AFFIRMING THE ORDER OF DISMISSAL OF THE PETITIONER'S PETITION IN THE REGIONAL TRIAL COURT WHEN IT DISREGARDED THE CLEAR PROVISION OF SECTION 75 OF PRESIDENTIAL DECREE NO. 1529 AND PUT TO NAUGHT THE APPLICABLE JURISPRUDENCE IN *ZACARIAS COMETA* x x x AND THE CASES CITED THEREIN, INSPITE (sic) OF THE CLEAR AND OUTSTANDING SIMILARITY OF FACTS WITH THE CASE UNDER CONSIDERATION.
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> 2- THE COURT OF APPEALS ALSO ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT FAILED TO CONSIDER THAT

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[13] *Id.* at 142.

[14] *Rollo*, pp. 28-35.

[15] *Id.* at 35.

[16] *Id.* at 36-37.

THE NOTICE OF EMBARGO AND CERTIFICATE OF SALE ISSUED BY THE CITY SHERIFF WERE ONLY LEVY ON THE INTEREST OF THE PETITIONER ON THE TWO (2) SUBJECT LOTS, AS DECREED IN *QUEZON BEARING & PARTS CORPORATION*, x x x, WHICH IS LIKEWISE APPLICABLE TO THE CASE AT BAR.[17]

Lucasan posits that he has sufficient cause of action against PDIC; thus, he chides the RTC for dismissing his complaint, and the CA for affirming the dismissal. In support of his thesis, he cites Section 75 of Presidential Decree (PD) No. 1529, or *the Property Registration Decree*[18] and *Cometa v. Court of Appeals*.[19]

As gleaned from the averments of the complaint, Lucasan's action was one for *quieting of title* under Rule 63 of the Rules of Court. Essentially, he sought the cancellation of the notice of embargo and the certificate of sale annotated on TCT Nos. T-68115 and T-13816 claiming that the said annotations beclouded the validity and efficacy of his title. The RTC, however, dismissed his complaint for lack of cause of action which was affirmed by the CA in its assailed Decision. Thus, the key issue for our consideration is whether the dismissal of Lucasan's complaint was proper.

Quieting of title is a common law remedy for the removal of any cloud of doubt or uncertainty with respect to real property. The Civil Code authorizes the said remedy in the following language:

ART. 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim,

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[17] *Id*. at 11.

[18] SEC. 75. Application for new certificate upon expiration of redemption period. – Upon the expiration of the time, if any, allowed by law for redemption after the registered land has been sold on execution taken or sold for the enforcement of a lien of any description, except a mortgage lien, the purchaser at such sale or anyone claiming under him may petition the court for the entry of a new certificate of title to him.

Before the entry of new certificate of title, the registered owner may pursue all legal and equitable remedies to impeach or annul such proceedings.

[19] *Supra* note 9.

encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

ART. 477. The plaintiff must have legal or equitable title to, or interest in the real property which is the subject-matter of the action. He need not be in possession of said property.

To avail of the remedy of quieting of title, two (2) indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance or proceeding claimed to be casting a cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.[20] Stated differently, the plaintiff must show that he has a legal or at least an equitable title over the real property in dispute, and that some deed or proceeding beclouds its validity or efficacy.

Unfortunately, the foregoing requisites are wanting in this case.

Admittedly, the subject parcels of land were levied upon by virtue of a writ of execution issued in Civil Case No. 12188. On May 13, 1981, a public auction of the subject parcels of land was held and the lots were awarded to PBC as the highest bidder. A certificate of sale in favor of PBC was issued on the same day, and was registered and annotated on TCT Nos. T-68115 and T-13816 as Entry No. 112552 on June 5, 1981.

Under the 1964 Rules of Court, which were in effect at that time, the judgment debtor or redemptioner had the right to redeem the property from PBC within twelve (12) months from the registration of the certificate of sale.[21] With the expiration of the twelve-month period of redemption and no redemption having

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[20] *Calacala v. Republic*, G.R. No. 154415, July 28, 2005, 464 SCRA 438, 444.

[21] See *DBP v. Leonor Vda. de Moll*, 150 Phil. 101 (1972).

been made, as in this case, the judgment debtor or the redemptioner lost whatever right he had over the land in question.[22]

Lucasan admitted that he failed to redeem the properties within the redemption period, on account of his then limited financial situation.[23] It was only in January 1997 or fifteen (15) years later that he manifested his desire to reacquire the properties. Clearly thus, he had lost whatever right he had over Lot Nos. 1500-A and 229-E.

The payment of loans made by Lucasan to PNB and RPB in 1997 cannot, in any way, operate to restore whatever rights he had over the subject properties. Such payment only extinguished his loan obligations to the mortgagee banks and the liens which Lucasan claimed were subsisting at the time of the registration of the notice of embargo and certificate of sale.

Neither can Lucasan capitalize on PBC's failure to file a petition for consolidation of ownership after the expiration of the redemption period. As we explained in *Calacala v. Republic*:[24]

> [P]etitioners' predecessors-in-interest lost whatever right they had over [the] land in question from the very moment they failed to redeem it during the 1-year period of redemption. Certainly, the Republic's failure to execute the acts referred to by the petitioners within ten (10) years from the registration of the Certificate of Sale cannot, in any way, operate to restore whatever rights petitioners' predecessors-in-interest had over the same. For sure, petitioners have yet to cite any provision of law or rule of jurisprudence, and we are not aware of any, to the effect that the failure of a buyer in a foreclosure sale to secure a Certificate of Final Sale, execute an Affidavit of Consolidation of Ownership and obtain a writ of possession over the property thus acquired, within ten (10) years from the registration of the Certificate of Sale will operate to bring ownership back to him whose property has been previously foreclosed and sold.
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> x x x x x x x x x

[22] See *Calacala v. Republic*, *supra* note 20, at 445.

[23] Letter dated October 30, 2001, RTC records, pp. 32-33.

[24] *Supra*, at 445-447.

Moreover, with the rule that the expiration of the 1-year redemption period forecloses the obligor's right to redeem and that the sale thereby becomes absolute, the issuance thereafter of a final deed of sale is at best a mere formality and mere confirmation of the title that is already vested in the purchaser. As this Court has said in *Manuel vs. Philippine National Bank, et al.*:

> Note must be taken of the fact that under the Rules of Court the expiration of that one-year period forecloses the owner's right to redeem, thus making the sheriff's sale absolute. **The issuance thereafter of a final deed of sale becomes a mere formality, an act merely confirmatory of the title that is already in the purchaser and constituting official evidence of that fact**. (Emphasis supplied.)

Certainly, Lucasan no longer possess any legal or equitable title to or interest over the subject parcels of land; hence, he cannot validly maintain an action for *quieting of title*.

Furthermore, Lucasan failed to demonstrate that the notice of embargo and the certificate of sale are invalid or inoperative. In fact, he never put in issue the validity of the levy on execution and of the certificate of sale duly registered on June 5, 1981. It is clear, therefore, that the second requisite for an action to *quiet title* is, likewise, absent.

Concededly, Lucasan can pursue all the legal and equitable remedies to impeach or annul the execution sale prior to the issuance of a new certificate of title in favor of PBC. Unfortunately, the remedy he had chosen cannot prosper because he failed to satisfy the requisites provided for by law for an action to *quiet title*. Hence, the RTC rightfully dismissed Lucasan's complaint.

Lucasan tries to find solace in our ruling in *Cometa v. Court of Appeals*. Sadly for him, that case is not on all fours with his case, for it was not for *quieting of title* but a petition for issuance of a writ of possession and cancellation of *lis pendens*. Likewise, in *Cometa* the registered owner assailed the validity of the levy and sale, which Lucasan failed to do.

Undoubtedly, Lucasan's right to redeem the subject properties had elapsed on June 5, 1982. His offer to redeem the same in 1997 or long after the expiration of the redemption period is not really one for redemption but for repurchase. Thus, PBC and PDIC, its receiver and liquidator, are no longer bound by the bid price. It is entirely within their discretion to set a higher price. As we explained in *De Robles v. Court of Appeals*:[25]

> The right to redeem becomes *functus officio* on the date of its expiry, and its exercise after the period is not really one of redemption but a repurchase. Distinction must be made because redemption is by force of law; the purchaser at public auction is bound to accept redemption. Repurchase however of foreclosed property, after redemption period, imposes no such obligation. After expiry, the purchaser may or may not re-sell the property but no law will compel him to do so. And, he is not bound by the bid price; it is entirely within his discretion to set a higher price, for after all, the property already belongs to him as owner.

Accordingly, the condition imposed by the PDIC for the re-acquisition of the property cannot be considered unjust or unreasonable.

Verily, in several cases,[26] this Court allowed redemption even after the lapse of the redemption period. But in those cases a valid tender was made by the original owners within the redemption period. Even in *Cometa,* the redemption was allowed beyond the redemption period because a valid tender of payment was made within the redemption period. The same is not true in the case before us.

In fine, we find that the RTC correctly dismissed Lucasan's complaint for *quieting of title*. Thus, the CA committed no reversible error in sustaining the RTC.

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[25] G.R. No. 128053, June 10, 2004, 431 SCRA 566, 570, citing *Natino v. Intermediate Appellate Court*, 197 SCRA 323 (1991).

[26] *Delos Reyes v. Intermediate Appellate Court*, G.R. No. 74768, August 11, 1989, 176 SCRA 394; *Tolentino v. Court of Appeals*, 193 Phil. 663 (1981); *Doronila v. Vasquez*, 72 Phil. 572 (1941).

WHEREFORE, the petition is *DENIED*. The Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 81518, are *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 177526. July 4, 2008]

PHILIPPINE SAVINGS BANK, *petitioner, vs.* **CHOWKING FOOD CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ESTOPPEL IN *PAIS*; ELEMENTS. — The equitable doctrine of estopel was explained by this Court in *Caltex (Philippines), Inc. v. Court of Appeals:* "Under the doctrine of estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. A party may not go back on his own acts and representations to the prejudice of the other party who relied upon them. In the law of evidence, whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, to act upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it." The principle received further elaboration in *Maneclang v. Baun:* "In estoppel by *pais*, as related to the party sought to be estopped, it is necessary that there be a concurrence of the following requisites: (a) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression

that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (b) intent, or at least expectation that this conduct shall be acted upon, or at least influenced by the other party; and (c) knowledge, actual or constructive of the actual facts." Estoppel may vary somewhat in definition, but all authorities agree that a party invoking the doctrine must have been misled to one's prejudice. That is the final and, in reality, most important of the elements of equitable estoppel.

2. ID.; ID.; ESTOPPEL; ELEMENTS.— In *Kalalo v. Luz,* the Court enumerated the elements of estoppel in this wise: "x x x As related to the party claiming the estoppel, the essential elements are (1) lack of knowledge and of the means of knowledge of the truth as the facts in question; (2) reliance, in good faith, upon the conduct and statements of the party to be estopped; (3) action or inaction based thereon of such character as to change the position or status of the party claiming the estoppel, to his injury, detriment or prejudice."

3. ID.; ID.; ID.; CANNOT BE SUSTAINED IN DOUBTFUL INFERENCE.— It is elementary that estoppel cannot be sustained in doubtful inference. Absent the conclusive proof that its essential elements are present, estoppel must fail. Because estoppel, when misapplied, becomes a most effective weapon to accomplish an injustice, inasmuch as it shuts a man's mouth from speaking the truth.

4. MERCANTILE LAW; GENERAL BANKING LAW OF 2000; BANKS; THE DILIGENCE REQUIRED OF BANKS IS THE HIGHEST DEGREE OF DILIGENCE.— It cannot be over emphasized that the banking business is impressed with public interest. Of paramount importance is the trust and confidence of the public in general in the banking industry. Consequently, the diligence required of banks is more than of a Roman *Pater familias* or a good father of a family. The highest degree of diligence is expected. In its declaration of policy, the General Banking Law of 2000 requires of banks the highest standards of integrity and performance. Needless to say, a bank is "under obligation to treat the accounts of its depositors with meticulous care." The fiduciary nature of the relationship between the bank and the depositors must always be of paramount concern.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; PROXIMATE CAUSE; DEFINED.— Proximate cause is determined by the facts of the case. It is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.

APPEARANCES OF COUNSEL

Perez Calima Suratos Maynigo & Roque Law Office for petitioner.

Agabin Verzola Hermoso & Layaoen Law Offices for respondent.

Lucas C. Carpio, Jr. for Erlinda Santos.

D E C I S I O N

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

IT is the peculiar quality of a fool to perceive the fault of others and to forget his own. ***Ang isang kakatuwang katangian ng isang hangal ay punahin ang kamalian ng iba at kalimutan naman ang sa kanya***.

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) reinstating the Decision of the Regional Trial Court (RTC), Manila, Branch 5. The RTC ordered petitioner Philippine Savings Bank (PSBank) and its Bustos Branch Head, Erlinda O. Santos, to reimburse respondent Chowking Food Corporation (Chowking) the amount corresponding to five (5) illegally encashed checks.

The Facts

Between March 15, 1989 and August 10, 1989, Joe Kuan Food Corporation issued in favor of Chowking five (5) PSBank

[1] *Rollo*, pp. 39-55. Dated January 31, 2007. Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Bienvenido L. Reyes and Aurora Santiago-Lagman, concurring.

checks with the following numbers, dates and denominations:

Check No.	Amount	Date
017069	₱ 44,120.00	15 March 1989
053528	₱ 135,052.87	09 May 1989
074602	₱ 160,138.12	08 August 1989
074631	₱ 159,634.13	08 August 1989
017096	₱ 60,036.74	10 August 1989[2]

The total amount of the subject checks reached ₱556,981.86.

On the respective due dates of each check, Chowking's acting accounting manager, Rino T. Manzano, endorsed and encashed said checks with the Bustos branch of respondent PSBank.[3]

All the five checks were honored by defendant Santos, even with only the endorsement of Manzano approving them. The signatures of the other authorized officers of respondent corporation were absent in the five (5) checks, contrary to usual banking practice.[4] Unexpectedly, Manzano absconded with and misappropriated the check proceeds.[5]

When Chowking found out Manzano's scheme, it demanded reimbursement from PSBank.[6] When PSBank refused to pay, Chowking filed a complaint[7] for a sum of money with damages before the RTC. Likewise impleaded were PSBank's president, Antonio S. Abacan, and Bustos branch head, Santos.[8]

Both PSBank and Santos filed cross claims and third party complaints against Manzano.[9] Despite all diligent efforts,

[2] *Id.* at 58.

[3] *Id.*

[4] *Id.* at 40.

[5] *Id.* at 58.

[6] *Id.* at 58-59.

[7] Docketed as Civil Case No. 94-50776.

[8] *Rollo,* p. 57.

[9] *Id.*

summonses were not served upon third party defendant Manzano. Santos did not take any further action and her third party complaint was archived.[10]

Meanwhile, petitioner caused the service of its summons on the cross-claim and third party complaints through publication. On its subsequent motion, Manzano was declared in default for failure to file a responsive pleading.[11]

Respondent filed a motion for summary judgment. Petitioner opposed the motion. On February 1, 1995, the trial court denied the motion via an order of even date.[12]

In its Answer, petitioner did not controvert the foregoing facts, but denied liability to respondent for the encashed checks.[13] Petitioner bank maintained it exercised due diligence in the supervision of all its employees. It even dismissed defendant Santos after she was found guilty of negligence in the performance of her duties.[14]

Defendant Santos, on the other hand, denied that she had been negligent in her job. She averred that she merely followed the bank's practice of honoring respondent's checks even if accompanied only by Manzano's endorsement.[15]

Defendant Abacan likewise denied any liability to respondent. He alleged that, as president and officer of petitioner bank, he played no role in the transactions complained of.[16] Thus, respondent has no cause of action against him.

Petitioner, Santos and Abacan were unanimous in asserting that respondent is estopped from claiming reimbursement and damages since it was negligent in allowing Manzano to take hold, endorse, and encash its checks. Petitioner pointed out

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[10] *Id*.

[11] *Id*. at 58.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*.

that the proximate cause of respondent's loss was its own negligence.[17]

RTC Disposition

On August 24, 1998, the RTC rendered judgment in favor of respondent, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and as against defendant Philippine Savings Bank and Erlinda O. Santos ordering the said defendants to pay plaintiff, jointly and severally:
>
> 1. The amount of ₱556,981.86 plus interest at the rate of 12% per annum from August 15, 1989 until said amount shall have been paid;
>
> 2. 20% of the total amount due plaintiff as attorney's fees;
>
> 3. The sum of ₱100,000.00 as exemplary damages;
>
> 4. The sum of ₱1,000,000.00 for plaintiff's unrealized profits.
>
> The complaint with respect to defendant Antonio Abacan, Jr. as well as his counterclaim and cross claim are hereby DISMISSED.
>
> With respect to the cross claim of defendant PSBank against Erlinda Santos and its third-party complaint against Rino T. Manzano, both Santos and Manzano are hereby ordered to jointly and severally, reimburse defendant PSBank whatever amount the latter shall be constrained to pay plaintiff in connection with this case.
>
> SO ORDERED.[18]

Aggrieved, petitioner filed a motion for reconsideration. Through an Order dated January 11, 1999, the RTC reversed its earlier ruling and held that it was respondent's own negligence that was the proximate cause of the loss. The *fallo* of the amended RTC decision now reads:

> In light of the foregoing grounds and observations, the Decision of August 24, 1998, by this Court is accordingly modified as follows:

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[17] *Id*. at 41.

[18] *Id*. at 42.

1. Ordering the dismissal of the complaint by the plaintiff Chowking Food Corporation against the defendants, Philippine Savings Bank (PSBank) and Erlinda Santos for lack of basis in fact and law;

2. Ordering the third party defendant, Regino or Rino T. Manzano to pay the plaintiff Chowking Food Corporation, the following:

   a. To reimburse the plaintiff the amount of ₱556,981.86 plus interest at the rate of 12% per annum from August 15, 1989, until said amount has been fully satisfied;

   b. To pay an attorney's fee equivalent to 20% of the total amount due the plaintiff;

   c. To pay an amount of ₱100,000.00 the plaintiff for actual and compensatory damages, plus the costs of this suit.

SO ORDERED.[19]

Dissatisfied with the modified ruling of the RTC, respondent appealed to the CA.

CA Disposition

In its appeal, respondent Chowking contended, *inter alia*, that the RTC erred in ruling that the proximate cause of the loss was its own negligence; and that its claim was barred by estoppel.

On January 31, 2007, the CA granted the appeal, disposing as follows:

WHEREFORE, the instant appeal is GRANTED. The order appealed from is hereby SET ASIDE and the 24 August 1998 decision is consequently REINSTATED with modification that the awards of attorney's fees, exemplary damages, and alleged ₱1,000,000.00 unrealized profits of the appellant are DELETED.

IT IS SO ORDERED.[20]

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[19] *Id*. at 43.

[20] *Id*. at 54.

The CA held that both petitioner PSBank and Santos should bear the loss. Said the appellate court:

> It is admitted that PSB cashed, over the counter, the checks of the appellant indorsed by Manzano alone. Since there is no more dispute on the negligent act of Santos in honoring the appellant's checks, over the counter, despite the proper indorsements, the categorical finding of negligence against her, remaining unrebutted, is deemed established. This in effect warrants a finding that Santos is liable for damages to the appellant. The lower court therefore erred in dismissing the complaint against her.[21]

Further, the CA held that:

> Contrary to PSB's contention that it should not be held liable because it neither consented to nor had knowledge of Santos' (*sic*) violations, such liability of Santos is solidary with PSB pursuant to Article 2176 in relation to Article 2180 of the Civil Code which states:
>
> "Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done....
>
> Art. 2180. The obligation imposed by Art. 2176 is demandable not only for one's own acts or omissions but also for those of persons for whom one is responsible.
>
> x x x x x x x x x
>
> Employers shall be liable for the damage caused by their employees and household helpers acting within the scope of their assigned tasks even though the former are not engaged in any business or activity.
>
> x x x x x x x x x
>
> The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage."
>
> x x x However, with banks like PSB, the degree of diligence required is more than that of a good father of a family considering that the business of banking is imbued with public interest due to

[21] *Id.* at 44.

the nature of its functions. Highest degree of diligence is needed which PSB, in this case, failed to observe.

x x x Its argument that it should no (sic) be held responsible for the negligent acts of Santos because those were independent acts x x x perpetrated without its knowledge and consent is without basis in fact and in law. Assuming that PSB did not err in hiring Santos for her position, its lack of supervision over her made it solidarily liable for the unauthorized encashment of the checks involved. In the supervision of employees, the employer must formulate standard operating procedures, monitor their implementation and impose disciplinary measures for the breach thereof. The appellee, in this case, presented no evidence that it formulated rules/guidelines for the proper performance of functions of its employees *and* that it strictly implemented and monitored compliance therewith. x x x[22]

The CA also disagreed with petitioner's contention that respondent's own negligence was the proximate cause of its loss. The CA opined that even assuming that respondent was also negligent in allowing Manzano to encash its checks, petitioner had the last clear chance to avert injury and loss to respondent. This could have been done if petitioner, through Santos, faithfully and carefully observed its encashment rules and procedures.

The CA ratiocinated:

x x x Had Santos not been remiss in verifying the indorsements of the checks involved, she would not have cashed the same because Manzano, whose only signature appears therein, is apparently not an authorized signatory of the appellant x x x had every means to determine the validity of those indorsements but for one reason or another she was neglectful of her duty x x x as admitted by PSB, such over the counter encashments are not even sanctioned by its policies but Santos simply ignored the same. It appears clear that Santos let the opportunity slip by when an exercise of ordinary prudence expected of bank employees would have sufficed to prevent the loss.[23]

Issues

Petitioner has resorted to the present recourse and assigns to the CA the following errors:

[22] *Id*. at 44-46.

[23] *Id*. at 51-52.

I

THE HONORABLE COURT OF APPEALS ERRED IN NOT RULING THAT RESPONDENT WAS ESTOPPED FROM ASSERTING ITS CLAIM AGAINST PETITIONER.

II

THE HONORABLE COURT OF APPEALS ERRED WHEN IT DID NOT RULE THAT RESPONDENT'S NEGLIGENCE WAS THE PROXIMATE CAUSE OF ITS OWN LOSS. (Underscoring supplied)

Our Ruling

The doctrine of equitable estoppel or estoppel *in pais* finds no application in the present case. The equitable doctrine of estoppel was explained by this Court in *Caltex (Philippines), Inc. v. Court of Appeals*:[24]

> Under the doctrine of estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. A party may not go back on his own acts and representations to the prejudice of the other party who relied upon them. In the law of evidence, whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, to act upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it.[25]

The principle received further elaboration in *Maneclang v. Baun*:[26]

> In estoppel by *pais*, as related to the party sought to be estopped, it is necessary that there be a concurrence of the following requisites: (a) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (b) intent, or at least expectation that this conduct shall be acted upon, or at least influenced by the other party; and (c) knowledge, actual or constructive of the actual facts.[27]

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[24] G.R. No. 97753, August 10, 1992, 212 SCRA 448.

[25] *Caltex (Philippines), Inc. v. Court of Appeals, id.* at 457.

[26] G.R. No. 27876, April 22, 1992, 208 SCRA 179.

[27] *Maneclang v. Baun*, *id.* at 192.

Estoppel may vary somewhat in definition, but all authorities agree that a party invoking the doctrine must have been misled to one's prejudice. That is the final and, in reality, most important of the elements of equitable estoppel.[28] It is this element that is lacking here.

We agree with the CA that Chowking did not make any false representation or concealment of material facts in relation to the encashments of the previous checks. As adverted to earlier, respondent may have allowed Manzano to previously encash its checks, but it has always been accompanied with the endorsements of the other authorized signatories. Respondent did not allow petitioner to have its checks encashed without the signature of all of its authorized signatories.

The CA pointed out:

> We find at the back of those checks, whereon indorsement usually appears, the signature of Manzano *together with other signature/signatures* though mostly are illegible. It appears then that, assuming the appellant impliedly tolerated the act of Manzano in indorsing the checks, it did not allow Manzano "alone" to indorse its checks as what actually happened in this case because his previous indorsements were **coupled with other indorsements of the appellant's signatories**. There is, therefore, no sufficient evidence to sustain PSB's submission. On this score alone, the defense of estoppel must fail.[29] (Underscoring and emphasis supplied)

Neither can estoppel be appreciated in relation to petitioner itself. In *Kalalo v. Luz*,[30] the Court enumerated the elements of estoppel in this wise:

> x x x As related to the party claiming the estoppel, the essential elements are (1) lack of knowledge and of the means of knowledge of the truth as the facts in question; (2) reliance, in good faith, upon the conduct and statements of the party to be estopped; (3) action or inaction based thereon of such character as to change the position

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[28] *Vega v. San Carlos Milling Company Limited,* G.R. No. L-21549, October 22, 1924.

[29] *Rollo,* p. 49.

[30] G.R. No. L-27782, July 31, 1970, 34 SCRA 337.

or status of the party claiming the estoppel, to his injury, detriment or prejudice.[31]

Here, the first two elements are wanting. Petitioner has knowledge of the truth and the means to it as to the proper endorsements necessary in encashing respondent's checks. Respondent has an account with petitioner bank and, as such, is privy to the proper signatories to endorse respondent's checks.

Neither can petitioner claim good faith.

It is elementary that estoppel cannot be sustained in doubtful inference. Absent the conclusive proof that its essential elements are present, estoppel must fail. Because estoppel, when misapplied, becomes a most effective weapon to accomplish an injustice, inasmuch as it shuts a man's mouth from speaking the truth.[32]

Petitioner failed to prove that it has observed the due diligence required of banks under the law. Contrary to petitioner's view, its negligence is the proximate cause of respondent's loss.

It cannot be over emphasized that the banking business is impressed with public interest. Of paramount importance is the trust and confidence of the public in general in the banking industry. Consequently, the diligence required of banks is more than that of a Roman *pater familias* or a good father of a family.[33] The highest degree of diligence is expected.[34]

In its declaration of policy, the General Banking Law of 2000[35] requires of banks the highest standards of integrity and

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[31] *Kalalo v. Luz*, *id.* at 347.

[32] 28 Am. Jur. 2d, pp. 601-602.

[33] *Bank of the Philippine Islands v. Court of Appeals,* 383 Phil. 538 (2000); *Philippine Bank of Commerce v. Court of Appeals,* 336 Phil. 667 (1997).

[34] *Philippine Commercial International Bank v. Court of Appeals,* G.R. No. 121413, January 29, 2000, 350 SCRA 446.

[35] Republic Act No. 8791.

performance. Needless to say, a bank is "under obligation to treat the accounts of its depositors with meticulous care."[36] The fiduciary nature of the relationship between the bank and the depositors must always be of paramount concern.[37]

Petitioner, through Santos, was clearly negligent when it honored respondent's checks with the lone endorsement of Manzano. In the similar case of *Philippine Bank of Commerce v. Court of Appeals*,[38] an employee of Rommel's Marketing Corporation (RMC) was able to illegally deposit in a different account the checks of the corporation. This Court found that it was the bank teller's failure to exercise extraordinary diligence to validate the deposit slips that caused the crime to be perpetrated.

The Court held thus:

Negligence here lies not only on the part of Ms. Mabayad but also on the part of the bank itself in its lackadaisical selection and supervision of Ms. Mabayad. This was exemplified in the testimony of Mr. Romeo Bonifacio, then Manager of the Pasig Branch of the petitioner bank and now its Vice-President, to the effect that, while he ordered the investigation of the incident, he never came to know that blank deposit slips were validated in total disregard of the bank's validation procedures, *viz.*:

Q: Did he ever tell you that one of your cashiers affixed the stamp mark of the bank on the deposit slips and they validated the same with the machine, the fact that those deposit slips were unfilled up, is there any report similar to that?

A: No, it was not the cashier but the teller.

Q: The teller validated the blank deposit slip?

A: No it was not reported.

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[36] *Westmont Bank v. Ong,* G.R. No. 132560, January 30, 2002, 375 SCRA 212; citing *Citytrust Banking Corp. v. Intermediate Appellate Court,* G.R. No. 84281*,* May 27, 1994, 232 SCRA 559.

[37] *Simex International (Manila), Inc. v. Court of Appeals,* G.R. No. 88013, March 14, 1997, 183 SCRA 360.

[38] G.R. No. 97626, March 14, 1997, 269 SCRA 695.

Q: *You did not know that any one in the bank tellers or cashiers validated the blank deposit slip?*

A: *I am not aware of that.*

Q: *It is only now that you are aware of that?*

A: *Yes, Sir.*

x x x x x x x x x

It was this negligence x x x coupled by the negligence of the petitioner bank in the selection and supervision of its bank teller, which was the proximate cause of the loss suffered by private respondent, and not the latter's act of entrusting cash to a dishonest employee, as insisted by the petitioners.[39]

Proximate cause is determined by the facts of the case. It is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.[40]

Measured by the foregoing yardstick, the proximate cause of the loss is not respondent's alleged negligence in allowing Manzano to take hold and encash respondent's checks. The proximate cause is petitioner's own negligence in the supervision of its employees when it overlooked the irregular practice of encashing checks even without the requisite endorsements.

In *Bank of the Philippine Islands v. Casa Montessori Internationale*,[41] this Court similarly held:

> For allowing payment on the checks to a wrongful and fictitious payee, BPI – the drawee bank – becomes liable to its depositor-drawer. Since the encashing bank is one of its branches, BPI can easily go after it and hold it liable for reimbursement. x x x In both law and equity, when one of two innocent persons "must suffer by the wrongful act of a third person, the loss must be

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[39] *Philippine Bank of Commerce v. Court of Appeals, id.* at 705-706.

[40] *Bataclan v. Medina,* 109 Phil. 181 (1960).

[41] G.R. No. 149454, May 28, 2004, 430 SCRA 261.

borne by the one whose negligence was the proximate cause of the loss or who put it into the power of the third person to perpetrate the wrong."[42]

Further, the Court ruled:

Pursuant to its prime duty to ascertain well the genuineness of the signatures of its client-depositors on checks being encashed, BPI is "expected to use reasonable business prudence." In the performance of that obligation, it is bound by its internal banking rules and regulations that form part of the contract it enters into with its depositors.

Unfortunately, it failed in that regard. x x x Without exercising the required prudence on its part, BPI accepted and encashed the eight checks presented to it. **As a result, it proximately contributed to the fraud and should be held primarily liable for the "negligence of its officers or agents when acting within the course and scope of their employment." It must bear the loss**.[43]

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

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 178907. July 4, 2008]

FLORA N. FLORES, represented by her Attorneys-In-Fact, JOSE NAVARRO and ERLINDA NAVARRO, *petitioner, vs.* **SPOUSES LUCAS and ZENAIDA QUITALIG,** *respondents.*

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[42] *Bank of the Philippine Islands v. Casa Montessori Internationale, id*. at 287.

[43] *Id*. at 288.

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; NATURE.— An action for forcible entry is summary in nature. It is designed to recover physical possession through prompt proceedings that are restrictive in nature, scope, and time limits. In such action, the plaintiff must prove that he was in prior possession of the land or building and that he was deprived thereof by means of force, intimidation, threat, strategy, or stealth. Owing to the summary nature of forcible entry cases, courts should expeditiously resolve the issue of possession, eschewing, as a rule, the issue of ownership since such cases proceed independently of any claim of ownership and the plaintiff needs merely to prove prior possession *de facto* and the undue deprivation thereof.

APPEARANCES OF COUNSEL

Rodel T. Lopico for petitioners.
Fariñas and Associates Law Office for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

This petition under Rule 45 arose from a complaint for forcible entry and damages filed by Flora N. Flores against spouses Lucas and Zenaida Quitalig before the Municipal Trial Court (MTC) in Bauang, La Union and which was docketed as Civil Case No. 1013.

The property subject of the case is an untitled lot with an area of 200 sq.m. located in Taberna, Bauang, La Union Cadastre and lies between Lot No. 4834, owned by the spouses Quitalig, and Lot No. 4835, owned by Flores. In her complaint, Flores alleged that in 2004, the spouses Quitalig, in the belief that the subject lot is part of their Lot No. 4834, entered, occupied, and constructed a fence around the subject lot. Both parties claimed ownership and prior possession of the said property.

The complaint was, however, dismissed by the MTC in its April 6, 2005 Decision.[1] According to the MTC, the spouses Quitalig were able to prove their prior possession and ownership of the subject lot through documentary and testamentary evidence. On the other hand, Flores was not able to prove her claim of ownership since her title to the subject lot is tainted with irregularity. The court found that Flores derived title to the subject lot through a Deed of Absolute Sale executed by Macario Navarro in 1995 who, as it turned out, died on April 22, 1986.

Unperturbed by the unfavorable MTC decision, Flores appealed to the Regional Trial Court (RTC), Branch 33 in Bauang, La Union, the appeal docketed as Civil Case No. 1600-BG. In its September 6, 2005 Decision,[2] the RTC found for Flores and accordingly set aside that of the MTC. The RTC held that Flores was able to prove that she and her predecessors-in-interest have been in possession of the subject lot since 1950, through tax declarations under the names of her predecessors-in-interest. In stark contrast thereto, the RTC doubted the spouses Quitalig's claim of prior possession, because their documentary evidence to prove their prior possession over the subject property being dated 2004, at the earliest, was apparently prepared after the complaint was filed. The RTC also held that the issue on Flores' ownership cannot be properly appreciated in a case for forcible entry and should, therefore, be resolved in a separate action for the annulment of the adverted deed of sale.

Aggrieved, the spouses Quitalig filed a petition for review with the Court of Appeals (CA), which, on January 31, 2007, rendered a Decision[3] ruling in favor of the spouses Quitalig. The CA ruled that Flores failed to sufficiently show that the subject lot is within the boundaries of her claimed property, Lot No. 4835. This failure, according to the CA, precluded it

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[1] *Id*. at 82-86. Penned by Judge Romeo V. Perez.

[2] *Id*. at 67-72. Penned by Judge Rose Mary R. Molina-Alim.

[3] *Id*. at 23-31. Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Conrado M. Vasquez, Jr. (now Presiding Justice) and Lucenito N. Tagle.

from properly determining whether or not there was forcible entry. Accordingly, the CA reversed the decision of the RTC and dismissed Flores' complaint for forcible entry.

Flores accordingly moved for the reconsideration of the CA's decision but the same was denied in the CA's July 26, 2007 Resolution.

Flores now comes before this Court setting forth this issue, summarized as follows: Whether the CA erred in holding that petitioner failed to present adequate proof to establish the identity of the subject lot and, thus, also failed to show that the subject lot is within the metes and bounds of her land, thereby precluding the CA from determining the issue of forcible entry.

Flores maintains that she, her attorneys-in-fact, and her predecessors-in-interest have been in peaceful possession of the subject property since 1950 until the possession was interrupted by the spouses Quitalig in 2004 when they abruptly entered the property and fenced its perimeter.

The spouses Quitalig, on the other hand, claim that the subject property belongs to them as it is part of the lot they had purchased from Cresencio and Jose Madayag in 1982 and had been in their possession ever since.

The petition has merit.

An action for forcible entry is summary in nature. It is designed to recover physical possession through prompt proceedings that are restrictive in nature, scope, and time limits.[4] In such action, the plaintiff must prove that he was in prior possession of the land or building and that he was deprived thereof by means of force, intimidation, threat, strategy, or stealth.[5]

Owing to the summary nature of forcible entry cases, courts should expeditiously resolve the issue of possession, eschewing, as a rule, the issue of ownership since such cases proceed

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[4] *Buduhan v. Pakurao*, G.R. No. 168237, February 22, 2006, 483 SCRA 116, 122.

[5] *Sampayan v. Court of Appeals*, G.R. No. 156360, January 14, 2005, 448 SCRA 220, 228.

independently of any claim of ownership and the plaintiff needs merely to prove prior possession *de facto* and the undue deprivation thereof.[6] Here, the MTC clearly erred when it delved into the issue of ownership and focused on Flores' seemingly flawed title over the property. The MTC failed to appreciate that, in spite of this flaw in Flores' title to the subject property, there is preponderance of evidence to reasonably conclude that Flores and her predecessors-in-interest were in actual possession of the subject property until 2004 when respondents, through stealth or strategy, entered and claimed it as part of their land. It is clear though that the spouses Quitalig almost succeeded in muddling the core issue by inserting the collateral issue of ownership.

The CA, too, erred when it held that Flores failed to particularly identify the location of the subject property, which thereby precluded it from determining whether or not the spouses Quitalig indeed dispossessed her of the subject property. It is clear from the records before us that the lot in question is between Lot No. 4834, owned by the spouses Quitalig, and Lot No. 4835, owned by Flores and her predecessors-in-interest. It is also clear that Flores, through her attorneys-in-fact, was in physical possession of the subject lot before the spouses Quitalig entered and fenced it in 2004. The CA could have easily and should have determined from the other evidence presented who between the parties exercised prior possession over the subject property since what is important in this type of cases is determining who is entitled to the physical possession of the property.[7] Indeed, any of the parties who can prove prior possession *de facto* may recover such possession even from the owner himself.[8] In any case, the RTC correctly ruled that the issue of ownership can be properly resolved in another proceeding and in a more appropriate forum.

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[6] *Bañes v. Lutheran Church in the Philippines*, G.R. No. 142308, November 15, 2005, 475 SCRA 13, 34; citing *Bongato v. Malvar*, G.R. No. 141616, August 14, 2002, 387 SCRA 327.

[7] *Id.*; citing *Solanda Enterprises v. Court of Appeals*, G.R. No. 123479, April 14, 1999, 305 SCRA 645, 646.

[8] *Id.*; citing *Gener v. Faustino*, G.R. No. 130730, October 19, 2001, 367 SCRA 631, 643.

WHEREFORE, premises considered, the CA's January 31, 2007 Decision and its July 26, 2007 Resolution in CA-G.R. SP No. 91823 are hereby *REVERSED* and *SET ASIDE*. The RTC's September 6, 2005 Decision in Civil Case No. 1600-BG is hereby *REINSTATED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 119033. July 9, 2008]

EK LEE STEEL WORKS CORPORATION, *petitioner, vs.* **MANILA CASTOR OIL CORPORATION, ROMY LIM, and THE COURT OF APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW; THE SUPREME COURT DOES NOT RESOLVE QUESTIONS OF FACTS; EXCEPTION; PRESENT IN CASE AT BAR.— The resolution of the issues in this case requires a re-examination of the evidence presented by the contending parties during the trial. Generally, the Court does not resolve questions of facts. However, this rule admits of several exceptions. The instant case falls under one of the recognized exceptions, which is, when the findings of facts of the trial court and the Court of Appeals are conflicting. Therefore, a review of the facts and the pieces of evidence is proper.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; 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; CASE AT BAR.— [T]here is no doubt that petitioner failed to comply with its undertaking to complete the project, except the office building, on 15 June 1988. Consequently, respondent's obligation to pay the ₱200,000 did not arise. Respondent could not be considered in delay when it failed to pay petitioner at that time. According to the last paragraph of Article 1169 of the Civil Code, "[i]n 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."

3. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; THE PLAINTIFF MUST RELY ON THE STRENGTH OF ITS OWN EVIDENCE AND NOT UPON THE WEAKNESS OF THAT OF THE DEFENDANTS.— The plaintiff must rely on the strength of its own evidence and not upon the weakness of that of the defendants.

APPEARANCES OF COUNSEL

Crisanto Salvador Calderon and Associates for petitioner.
Tan Ventura Law Offices for R. Lim.
Tomas Carmelo T. Araneta for Manila Castor Oil Corp.

D E C I S I O N

CARPIO, *J.*:

The Case

Before this Court is a petition for review[1] of the Decision[2] dated 7 February 1995 of the Court of Appeals in CA-G.R. CV No. 34743. The Court of Appeals reversed the decision[3] of the

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

[2] *Rollo*, pp. 41-54. Penned by Associate Justice Cezar D. Francisco with Associate Justices Delilah Vidallon Magtolis and Celia Lipana-Reyes, concurring.

[3] *Id*. at 55-67. Penned by Judge Mauro T. Allarde.

Regional Trial Court, Branch 123, Kalookan City in a collection suit filed by Ek Lee Steel Works Corporation against Manila Castor Oil Corporation and Romy Lim.

The Antecedents

Ek Lee Steel Works Corporation (petitioner) is engaged in the construction business while Manila Castor Oil Corporation (respondent) claims to be a pioneer in the castor oil industry with Romy Lim (Lim) as its President.

In November 1987, respondent contracted petitioner for the construction of respondent's castor oil plant and office complex in Sasa, Davao City. Petitioner agreed to undertake the construction of the following structures with their respective costs:

Project	Price
I. Office Building (Building I) and Boiler Room	₱2,000,000
II. Concrete Fence 10-feet-high on three sides of the factory site	₱ 283,662[4]
III. 20-meter x 52-meter Concrete Pavement	₱ 318,800
IV. 90,000-gallon Steel Oil Tank with Stand	₱ 472,500
V. 40-feet-high 10,000-gallon Water Tank	₱103,556.60
VI. Steel Oil Tank Foundation	₱ 175,650
VII. 40-ton Oil Tank	₱ 88,837

Under the seven letter-agreements, respondent would make various stipulated down payments upon approval of petitioner's proposals. The remaining balance of the contract prices was payable to petitioner through progress billings.

In April 1988, petitioner alleged that respondent verbally agreed to have another building (Building II-Warehouse) constructed

[4] A handwritten figure was superimposed on the letter-contract signifying that the contract price is only ₱283,662 instead of ₱387,280. Based on Section 15, Rule 130 of the Rules of Court, when an instrument consists partly of written words and partly of a printed form, and the two are inconsistent, the former controls the latter.

on the project site worth ₱349,249.25. Respondent denied the existence of this contract because it never approved such contract. Therefore, petitioner discontinued its construction of Building II-Warehouse after finishing its foundation and two side walls.

On 16 May 1988, petitioner submitted a Statement of Account to respondent showing respondent's accumulated payables totaling ₱764,466.[5] Respondent paid ₱500,000 as shown in a letter of even date. In the same letter, respondent promised to pay certain amounts thereafter upon the completion of specific portions of the project. The full text of the letter dated 16 May 1988[6] reads:

May 16, 1988

MR. DANNY ANG
General Manager
Ek Lee Steel Works Corp.
#171 5th St., 8th Avenue
Caloocan City, M.M.

SUBJECT: FIFTH PARTIAL PAYMENT OF ₱500,000.00

Dear Danny,

This is to confirm that upon payment of the subject above, the fifth (5) partial payment which represent 70.5% of the total project cost of 3.4 Million, you will have to accomplished [sic] all the contracted work by June 15, 1988, except the office building. Thereafter, we will pay you the 6th partial payment with the amount of ₱200,000.00. And upon the completion of the office building we will then pay you the amount of ₱460,000.00 which will represent 90% of the contracted work. As per the terms of our contract we will keep the ₱340,000.00 which represent the 10% retention.

Yours truly,

R.T. LIM
President

Conforme:

Mr. Danny Ang

Date: signed

[5] Exhibit "K", Folder of Exhibits, Vol. I, p. 32.

[6] Exhibit "J", *id.* at 31.

On 5 July 1988, respondent paid petitioner ₱70,000.

Sometime thereafter, petitioner allegedly demanded payment of respondent's remaining balance, but to no avail. Hence, petitioner stopped its construction in the project site. Thereafter, petitioner requested the Office of the City Engineer of Davao City to conduct an ocular inspection of the project site to determine the percentage of its finished work. Engineer Demetrio C. Alindada of the Davao Engineering Office reported that most of the scope of the work items were 100% completed.

On 4 November 1988, petitioner filed a collection suit against respondent and Lim, with an application for a writ of preliminary attachment. The complaint prayed, among others, that respondent and Lim be held jointly and severally liable for the amount of ₱1,623,013.81 with interest.

In their answer filed on 23 December 1988, respondents jointly alleged, as an affirmative defense, that as of 16 May 1988, petitioner was already in delay. They claimed that petitioner abandoned the project on 16 July 1988. Respondents further alleged that certain portions of the construction work did not conform to the specifications agreed upon by the parties.

Then, on 8 May 1990, respondents filed a Supplemental Answer, alleging that sometime in July 1989, the 90,000-gallon capacity oil tank tilted towards the sea resulting in the stoppage of respondent's operations. Consequently, respondents were constrained to hire a contractor to remedy the damage caused by the poor and substandard installation of the oil tank. Respondents prayed for the payment of surveyor's fee, contractor's fee, operating expenses, and unrealized income during the shut-down period.

During the trial, respondents presented as evidence a Technical Verification Report submitted by Engineer Raul D. Moralizon to prove that the project was incomplete and had no utility value at the time petitioner abandoned the project.

The Ruling of the Trial Court

The trial court ruled in favor of petitioner. The trial court held that petitioner was justified in abandoning its construction of the project. As of 5 July 1988, when respondent paid ₱70,000, petitioner's billings reached ₱3,895,872.85, while payments totaled only ₱2,505,534, or short by ₱1,390,338.85, exclusive of other charges. Considering respondent's non-payment of this remaining balance, petitioner was understandably unwilling to proceed with the construction of the project. Respondent's non-payment was a clear violation of the stipulated progress billings.

The trial court likewise noted petitioner's request for an inspection from the Engineering Office of Davao City prior to the issuance of an occupancy permit. The trial court declared that "no contractor who has unreasonably abandoned a job ever bothered itself making such a request; an abandoning contractor just packs up and goes." In addition, the trial court found that respondent never reported the supposed "abandonment" to the Engineering Office of Davao City. Neither did respondent send a notice or letter demanding the completion of the project. Had there been abandonment, respondent would have filed a suit against petitioner.

On the "modifying" agreement dated 16 May 1988, the trial court found the parties' diametrically-opposed versions equally true. Respondent claimed that it gave petitioner an extension of the deadline until 15 June 1988. On the other hand, petitioner insisted that it gave respondent an equivalent extension to raise enough funds to meet the accumulated bills. However, the trial court held that this particular agreement is not crucial in this case.

The trial court also gave the Report of Engineer Demetrio C. Alindada of the Davao Engineering Office (Alindada Report) a higher probative value than the Technical Verification Report submitted by respondent's hired Civil Engineer, Raul D. Moralizon (Moralizon Report). The trial court found the Moralizon Report self-serving. Based on the Alindada Report, most of the items contracted for construction were 100% completed. Hence, the trial court applied Article 1234 of the Civil Code which states that "[i]f the obligation has been substantially performed in good

faith, the obligor may recover as though there had been a strict and complete fulfillment, less the damages suffered by the obligee."

The trial court disposed of the collection case, as follows:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the latter, jointly and severally, as follows:

1. To pay the plaintiff the amount of ₱1,426,176.45 with legal interest to be computed from the date of the filing of the complaint until fully paid;
2. To pay the plaintiff the amount of ₱154,883.33 representing actual damages in the form of interest payment for loans;
3. To pay the amount of ₱100,000.00 as and for attorney's fees; and
4. Costs of the suit.

Defendants' counterclaims are hereby dismissed for lack of merit.

SO ORDERED.[7]

The Ruling of the Court of Appeals

The Court of Appeals reversed the decision of the trial court. The appellate court ruled that the 16 May 1988 letter novated all the earlier agreements between the parties. It held that the letter specified the scope of the remaining construction work, the amounts payable by respondent, and the schedules for the completion of the remaining work and for the corresponding payments.

The Court of Appeals stated that petitioner was not entitled to further payments from respondent because petitioner failed to comply with its obligation of finishing all the contracted work, except the office building, on 15 June 1988 as clearly stipulated in the 16 May 1988 letter.

The Court of Appeals found that the petitioner's failure to complete the project rendered the same useless for the object

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

which the parties had intended it to be, specifically, an office, plant, and warehouse complex.

The Court of Appeals disagreed with the trial court's reliance on the Alindada Report. The appellate court stated that the Alindada Report should rather have indicated the scope of work items enumerated in the parties' seven letters-contracts and the percentage of work accomplished in each of these items, instead of enumerating merely the scope of work items which Alindada found completed. The Alindada Report was therefore not a reliable evidence in determining the percentage of accomplishment in the project.

The Court of Appeals went on to say that even assuming that Article 1234 of the Civil Code applies to this case, the trial court should have correspondingly decreased the amount to be recovered by petitioner by the amount of damages suffered by respondent, as stated in the same provision.

However, the Court of Appeals faulted respondent for the trial court's failure to correspondingly reduce the amount recoverable by petitioner. There was no showing that respondent demanded that petitioner should finish the project; otherwise, respondent would hire another contractor to complete it. Respondent did not report petitioner's abandonment of the project to the Office of the Building Official of Davao City. Respondent simply hired another contractor to complete the unfinished job left by petitioner. In addition, the building permits obtained for the supposed continuation of the works indicated that they were for "new construction" instead of "addition," "repair," "renovation," or "others."

The Court of Appeals ordered petitioner to reimburse ₱70,000 as overpayment by respondent.

The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, and for all the foregoing considerations, the Decision appealed from is hereby REVERSED and SET ASIDE, and another one entered:

1. Dismissing the complaint;
2. Ordering the plaintiff:
   (a) To reimburse the defendants the amount of ₱70,000.00;
   (b) To pay defendant Manila Castor Oil Corporation the sum of ₱50,000.00 as damages for besmirched reputation;
   (c) To pay defendant Romy Lim the amount of ₱50,000.00 for moral damages;
   (d) To pay defendants their attorney's fees in the amount of ₱10,000.00.

With costs in this instance against the plaintiff-appellee.

SO ORDERED.[8]

Hence, this petition.

The Issues

The issues in this case are:

1. Whether the 16 May 1988 letter novated the previous agreements of the parties;
2. Whether petitioner can validly collect from respondent the remaining balance of the total contract price;
3. Whether respondent is entitled to ₱70,000 allegedly as overpayment; and
4. Whether Lim is solidarily liable to petitioner for the alleged remaining balance.

The Ruling of the Court

The petition has no merit.

The resolution of the issues in this case requires a re-examination of the evidence presented by the contending parties during the trial. Generally, the Court does not resolve questions of facts. However, this rule admits of several exceptions. The instant case falls under one of the recognized exceptions, which is, when the findings of facts of the trial court and the Court of

[8] *Id*. at 53.

Appeals are conflicting.[9] Therefore, a review of the facts and the pieces of evidence is proper.

We shall discuss jointly the first two issues as they are interrelated.

Respondent contends that the 16 May 1988 letter novated the parties' previous agreements, thereby scrapping the system of progress billings. Respondent posits that its obligation to pay petitioner the remaining balance of the contract price arises only upon the completion of the entire project, except the office building, on 15 June 1988, pursuant to the terms of the 16 May 1988 letter. Since petitioner failed to finish this portion of the project on 15 June 1988, its claim is not yet due and demandable.

The Court finds no novation of the previous agreements between the parties considering that the 16 May 1988 letter did not expressly extinguish the parties' obligations under their previous contracts. On the contrary, it expressly recognized the parties' reciprocal obligations.[10]

It must be pointed out that as of 16 May 1988, respondent's accumulated payables reached ₱764,466, but only ₱500,000 was paid. Respondent was therefore not up to date with its payments. Petitioner, on the other hand, was behind schedule in its construction work because the project should be fully operational by April 1988.[11]

To remedy the situation, the 16 May 1988 letter fixed a period for the completion of the other structures of the project, except the office building.[12] Petitioner was given a month to finish this portion of the project and the records show that it was aware of this deadline. Danny Ang testified on this matter.

ATTY. GUNO

Can you stipulate as manifested by counsel then the new deadline for all the project on [sic] June 15 as indicated in the contract.

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[9] *Ong v. Bogñalbal*, G.R. No. 149140, 12 September 2006, 501 SCRA 490; *Yao v. Matela*, G.R. No. 167767, 29 August 2006, 500 SCRA 136.

[10] See *Zapanta v. De Rotaeche*, 21 Phil. 154, 159 (1912).

[11] See TSN, 6 October 1989, p. 8.

[12] *Rollo*, p. 222.

ATTY. SALVADOR

It is stated here in Exhibit 1, the complaint [sic] here has to finish not later June 15 of 1988.

ATTY. GUNO

We agree on that.

Q: And you were also informed by the defendants that they had to be operated [sic] by April 1988?

A: Yes, sir.[13]

At the same time, the 16 May 1988 letter specified the amounts still payable to petitioner conditioned upon the accomplishment of certain portions of the project. The amount of ₱200,000 was payable on 15 June 1988 if petitioner finished the project, excluding the office building; and ₱460,000 was payable after the completion of the office building. Thus, while the 16 May 1988 letter did not extinguish the parties' obligations under their previous contracts, it modified the manner of payment from the system of progress billings to a specific schedule of payments.

The question now is whether petitioner complied with its obligation of finishing the project, except the office building, on 15 June 1988 to be entitled to ₱200,000.

Contrary to petitioner's claim of project completion, there is sufficient evidence on record showing peitioner's failure to finish the project on 15 June 1988. Petitioner admitted in its complaint that Contracts I and III "failed to reach full accomplishment": Contract I – 97% for Building I, 95% for Office Building, and 99% for Boiler Room, and Contract III – 90%.[14]

The photographs[15] presented by respondent show various areas of the construction which were not completed. Danny Ang, petitioner's General Manager, confirmed on the witness

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[13] TSN, 6 October 1989, p. 8.

[14] Records, pp. 7-8.

[15] Exhibits "1", "1-A", "4" to "4-V", Folder of Exhibits, Vol. II, pp. 48, 53-70.

stand that the images in the photographs showed the incomplete status of the project, thus:

Q: Now Mr. Witness please tell us the date when you left the job site or you pulled out of the job site?

A: It could be in July 1988, sir.

Q: **And during the direct testimony last July 17 you testified that the pictures attached in the answer of the defendants were the pictures of unfinished portion of the project, is that correct?**

A: **Yes, sir.**

Q: And these are the pictures after you had pulled out of the job site?

A: Yes, sir.

Q: These are the pictures on July 1988 when you pulled out of the construction?

A: I don't know when those pictures...

x x x x x x x x x

Q: Please tell us if these are the pictures?

A: **This is the picture of the project which we were not able to finish, sir.**[16] (Emphasis supplied)

Further, the Moralizon Report found deficiencies in three construction contracts and concluded that petitioner abandoned the project. Significantly, petitioner did not rebut the Moralizon Report.

Petitioner relied on the Alindada Report to support its claim of completion. The Alindada Report concluded that almost all the work items are 100% completed and that only two pieces of steel sliding doors in Building I were not yet installed.[17] However, petitioner's admissions and respondent's evidences clearly contradict the Alindada Report. This contradiction

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[16] TSN, 6 October 1989, pp. 31-32.

[17] Exhibit "I", Folder of Exhibits, Vol. I, p. 29.

effectively destroyed the disputable presumption of the regular issuance of the Alindada Report.[18]

The fact that the building permits obtained by respondent after petitioner stopped its construction were for "new construction" instead of "addition," "repair," "renovation," or "others" does not conclusively prove that petitioner finished the project.

Considering the foregoing, there is no doubt that petitioner failed to comply with its undertaking to complete the project, except the office building, on 15 June 1988. Consequently, respondent's obligation to pay the ₱200,000 did not arise. Respondent could not be considered in delay when it failed to pay petitioner at that time. According to the last paragraph of Article 1169 of the Civil Code, "[i]n 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."

Furthermore, the loss of the probative value of the Alindada Report due to petitioner's admissions and respondent's unrefuted evidences, as discussed above, renders petitioner's claim for the remaining balance of the contract price unsubstantiated. Without any corroborating evidence, petitioner's allegations are plainly without weight. The plaintiff must rely on the strength of its own evidence and not upon the weakness of that of the defendants.[19] Hence, for its failure to discharge the burden of proof[20] required in this case,[21] petitioner's complaint must be dismissed.

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[18] See *Yao v. Matela*, *supra* note 9.

[19] See *Quinto v. Andres*, G.R. No. 155791, 16 March 2005, 453 SCRA 511, 523.

[20] Section 1 of Rule 131 defines burden of proof as the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

[21] In civil cases, the burden of proof is on the plaintiff to establish his case by preponderance of evidence. Preponderance of evidence means evidence which is of greater weight, or more convincing than that which is offered in opposition to it. (See *Condes v. Court of Appeals*, G.R. No. 161304, 27 July 2007, 528 SCRA 339, 352.)

As regards the reimbursement of ₱70,000, suffice it to state that this figure was never specifically pleaded as an overpayment in the answer filed by respondent before the trial court. Therefore, wanting any basis, the Court of Appeals erred in ordering the return of this particular amount to respondent.

The foregoing discussion renders unnecessary the resolution of the last issue raised by petitioner.

WHEREFORE, we *DENY* the petition. We *MODIFY* the assailed Decision of the Court of Appeals by deleting the reimbursement of ₱70,000 in favor of respondent Manila Castor Oil Corporation. Costs against petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 141820. July 9, 2008]

JOSE LUIS HAURIE, JOSE R. EBRO, JR., and TREASURE LAND DEVELOPERS, INC., *petitioners, vs.* **MERIDIEN RESOURCES, INC., CENTURY PROPERTIES, INC., PIO MARTIN T. LAUENGCO, and LE GRAND CONDOMINIUM CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; CONTENTS OF PETITION; WHEN FAILURE TO COMPLY WITH THE REQUIREMENTS WARRANTS DISMISSAL OF PETITION.— Petitioners' failure to attach to their petition the required various documents in support of their allegations

violates Section 6, Rule 43 of the Rules of Court, which provides: **SEC. 6.** *Contents of the petition*. — The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; **(c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers;** and (d) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein. Pursuant to Section 7 of the same Rule, failure to comply with the requirements under Section 6 warrants the dismissal of the petition, thus: **SEC. 7.** *Effect of failure to comply with requirements*. – **The failure of the petitioner to comply with any of the foregoing requirements regarding** the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and **the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.**

2. ID.; ID.; WHEN LIBERAL CONSTRUCTION OF THE RULES OF COURT IS ALLOWED.— Indeed, the Court had allowed liberal construction of the Rules of Court in the following cases: (1) where a rigid application will result in manifest failure or miscarriage of justice, especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein; (2) where the interest of substantial justice will be served; (3) where the resolution of the motion is addressed solely to the sound and judicious discretion of the court; and (4) where the injustice to the adverse party is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Here, petitioners have not shown any cogent reason for a less stringent interpretation of the rules.

APPEARANCES OF COUNSEL

Jose R. Erbo for petitioners.
Efren L. Cordero for Le Grand Condominium Corp.
Cayanga Zuñiga & Angel for Meridien Resources, Inc.
Singson Valdez & Associates for Century Properties, Inc. & P. M. T. Lauengco.

D E C I S I O N

QUISUMBING, *J.*:

Assailed in this petition for review under Rule 45 of the Rules of Court are the Resolutions dated September 6, 1999[1] and January 31, 2000,[2] of the Court of Appeals in CA-G.R. SP No. 52471. The appellate court had dismissed petitioners' appeal from the Decision[3] dated April 6, 1999, of the Office of the President.

The pertinent facts are as follows:

Respondent Meridien Resources, Inc. (MRI) is the owner-developer of a condominium project known as the *Le Grand Condominium* located at No. 126 Valero Street, Salcedo Village, Makati City. Under the Master Deed with Declaration of Restrictions, the condominium project was described as an 11-storey building with a total of 49 residential units and two commercial/office units.

Before selling the units, MRI decided to convert the administration office into a commercial unit and the maintenance room into an administration office. On December 16, 1987, the Housing and Land Use Regulatory Board (HLURB) issued an Alteration of Plan Approval[4] approving the conversion. In the

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[1] *Rollo*, p. 42. Penned by Associate Justice Angelina Sandoval-Gutierrez (now a retired member of this Court), with Associate Justices Romeo A. Brawner and Martin S. Villarama, Jr. concurring.

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

[3] CA *rollo*, pp. 94-105.

[4] *Rollo*, p. 199.

meantime, petitioner Jose Luis Haurie bought two units in the condominium project.

On December 23, 1987, MRI amended the master deed which increased the commercial/office units from two to three. The new commercial unit was identified as Unit No. 103.

In 1988, MRI executed a Deed of Absolute Sale[5] in favor of Haurie. Haurie in turn sold one of his units to petitioner Treasure Land Developers, Inc. (TLDI). On later dates, petitioner Jose R. Ebro, Jr. bought a unit while respondent Pio Martin T. Lauengco acquired Unit No. 103.

On December 22, 1989, petitioners and respondent Le Grand Condominium Corporation (LGCC) filed a complaint with the Office of Appeals, Adjudication and Legal Affairs (OAALA)-HLURB for the cancellation of the Amended Master Deed with Declaration of Restrictions and the Deed of Absolute Sale in favor of Lauengco. They contended that the conversion of the administration office into a commercial unit was void since it was made without their consent.

On April 1, 1993, the OAALA-HLURB dismissed the complaint, as follows:

PREMISES CONSIDERED, judgment is hereby rendered DISMISSING this case for lack of cause of action. Accordingly, respondent Pio Martin Lauengco is hereby declared as the lawful owner of Condominium Unit No. 103 of Le Grand Condominium Project.

On the counterclaim, judgment is hereby rendered ORDERING complainants to pay [respondents] Century Properties, Inc. and Pio Martin Lauengco jointly and severally the sum of ₱100,000.00 as and for moral and exemplary damages and the sum of ₱50,000.00 as and for attorney's [fees].[6]

Petitioners appealed to the Board of Commissioners-HLURB which affirmed the Decision of the OAALA-HLURB:

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[5] *Id*. at 513-515.

[6] CA *rollo*, pp. 98-99.

WHEREFORE, premises considered, Meridien Resources, Inc. [MRI] is hereby pronounced as entitled to the award of damages and attorney's fees, all other aspects of the decision of the Office of Appeals, Adjudication and Legal Affairs dated 01 April 1993 are hereby AFFIRMED.[7]

Upon elevation of the case to the Office of the President, the decision was also affirmed. The Office of the President noted that there were still no unit owners at the time MRI decided to alter the plans of the condominium project. Furthermore, the amended master deed was in consonance with the Alteration of Plan Approval issued by the HLURB. Absent any proof to the contrary, such approval is presumed to have been regularly issued and to be valid.

Haurie, Ebro, and TLDI filed a petition docketed as CA-G.R. SP No. 52471 with the Court of Appeals where they impleaded LGCC as one of the respondents. However, the appellate court dismissed the appeal for failure of petitioners to attach certified true copies of the following documents: (1) verified complaint; (2) respondents' answers thereto; (3) decision of the OAALA-HLURB; (4) decision of the Board of Commissioners-HLURB; and (5) petitioners' appeal memorandum and respondents' reply memorandum in the Office of the President.

Petitioners filed an Alternative Motion for Reconsideration or Motion for Time to File Required Papers or Motion for Transmittal or Elevation of Originals of Required Papers or Entire Record of Proceedings[8] dated October 13, 1999. Said motion was also denied by the appellate court. Hence, this petition.

During the pendency of CA-G.R. SP No. 52471, Haurie, Ebro, TLDI, and LGCC filed another petition docketed as CA-G.R. SP No. 53254 which the Court of Appeals dismissed. The appellate court upheld the legality of the conversion and sale of the administration office since (1) there were still no unit owners at the time MRI decided to alter the plans of the

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[7] *Id*. at 94.

[8] *Id*. at 128-143.

condominium project; (2) the amended master deed, stating that there were 3 commercial/office units in the ground floor, was annotated in LGCC's title; (3) the amended master deed was in consonance with the Alteration of Plan Approval issued by the HLURB.[9]

Reconsideration having been denied, petitioners filed a petition docketed as G.R. No. 164999 with this Court. On December 1, 2004, the Court denied the petition since: (1) only one of the petitioners signed the verification; and (2) the petitioners failed to show that the Court of Appeals committed any reversible error in the appealed decision.[10]

In this petition filed on March 22, 2000, petitioners raise the following issues:

I.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN DECIDING ON A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW OR WITH APPLICABLE DECISIONS OF THE SUPREME COURT, WHEN IT HELD THAT THE FAILURE TO ATTACH CERTIFIED TRUE COPIES OF THE COMPLAINT, THE ANSWERS THERETO, THE DECISIONS OF THE HOUSING AND LAND USE ARBITER AND THE BOARD OF COMMISSIONERS OF THE HOUSING AND LAND USE REGULATORY BOARD, PETITIONERS' APPEAL MEMORANDUM AND RESPONDENTS' REPLY MEMORANDUM IN THE OFFICE OF THE PRESIDENT CONSTITUTED SUFFICIENT GROUND FOR THE DISMISSAL OF THE PETITION FOR REVIEW.

II.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN DISMISSING PETITIONERS' APPEAL FROM THE DECISION OF THE OFFICE OF THE PRESIDENT BASED ON PURE TECHNICALITY, IN UTTER DISREGARD OF THE CARDINAL PRINCIPLE OF CONSTRUCTION THAT THE RULES OF PROCEDURE ARE NOT TO BE APPLIED IN SUCH A RIGID OR TECHNICAL SENSE AS TO FRUSTRATE AND DEFEAT SUBSTANTIAL JUSTICE.[11]

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[9] *Rollo*, pp. 345-352.

[10] *Id*. at 342.

[11] *Id*. at 19-20.

Simply put, the issue is: Did the Court of Appeals err in dismissing the petition based on technicality?

The Court of Appeals, in our view, did not err in dismissing the petition in CA-G.R. SP No. 52471. Petitioners' failure to attach to their petition the required various documents in support of their allegations violates Section 6, Rule 43 of the Rules of Court, which provides:

> **SEC. 6**. *Contents of the petition*. — The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; **(c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers**; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein. (Emphasis supplied.)

Pursuant to Section 7 of the same Rule, failure to comply with the requirements under Section 6 warrants the dismissal of the petition, thus:

> **SEC. 7.** *Effect of failure to comply with requirements*. – **The failure of the petitioner to comply with any of the foregoing requirements regarding** the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and **the documents which should accompany the petition shall be sufficient ground for the dismissal thereof**. (Emphasis supplied.)

We observe that the only attachment to the petition was a certified true copy of the April 6, 1999 Decision of the Office of the President from which the appeal had been made.[12] Yet, petitioners precisely disputed the factual findings and legal conclusions made by the Office of the President. More specifically, they alleged that said office erred:

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[12] *Supra* note 3.

I.

…IN DISREGARDING COMPLETELY THE UNDISPUTED FACT THAT ON DECEMBER 19, 1987, RESPONDENT MRI, THROUGH RESPONDENT CPI, AS EXCLUSIVE MARKETING [MANAGER], SOLD UNIT 1001 AND UNIT 1102, TOGETHER WITH THEIR CORRESPONDING .0354925 AND .032946 UNDIVIDED INTERESTS IN THE COMMON AREAS OF LE GRAND CONDOMINIUM PROJECT, TO PETITIONER JOSE LUIS HAURIE.

II.

…IN REFUSING TO DECLARE THE AMENDMENT BY RESPONDENT MRI OF THE ORIGINAL MASTER DEED WITH DECLARATION OF RESTRICTIONS OF LE GRAND CONDOMINIUM PROJECT AS ILLEGAL AND FRAUDULENT.

III.

… IN REFUSING TO FIND AND HOLD RESPONDENT MRI GUILTY OF FRAUD IN CONVERTING THE ADMINISTRATION ROOM, WHICH FORMS PART OF THE COMMON AREAS OF LE GRAND CONDOMINIUM PROJECT, INTO ANOTHER COMMERCIAL UNIT, AND IN SECURING CONDOMINIUM CERTIFICATE OF TITLE NO. 12041 FOR SAID ADMINISTRATION ROOM AND THEREAFTER SELLING THE SAME TO RESPONDENT PIO MARTIN T. LAUENGCO.

IV.

…IN REFUSING AND FAILING TO FIND AND HOLD RESPONDENTS CPI AND PIO MARTIN T. LAUENGCO EQUALLY GUILTY OF FRAUD IN EFFECTING THE SALE OF THE ADMINISTRATION ROOM (CONVERTED TO CONDOMINIUM UNIT NO. 103) TO RESPONDENT PIO MARTIN T. LAUENGCO.

V.

…IN REFUSING TO HOLD RESPONDENT MRI LIABLE TO DELIVER WHAT ITS AGENTS PROMISED AND REPRESENTED IN ITS SALES BROCHURES AND OTHER PROPAGANDA AS PART OF THE AMENITIES AND FACILITIES OF LE GRAND CONDOMINIUM PROJECT, EVEN ASSUMING FOR THE SAKE OF ARGUMENT THAT ITS CONVERSION OF THE ADMINISTRATION ROOM WAS MADE LEGALLY AND REGULARLY.

VI.

…IN SUSTAINING THE DECISION OF HOUSING AND LAND USE ARBITER [ABRAHAM N. VERMUDEZ] DATED APRIL 1, 1993 WHICH HELD THAT THE PRESENT ACTION WAS INSTITUTED IN THE WRONG VENUE, WHILE AT THE SAME TIME DECLARING RESPONDENT PIO MARTIN T. LAUENGCO THE LAWFUL OWNER OF THE PROPERTY IN LITIGATION.

VII.

…IN REFUSING TO SET ASIDE OR NULLIFY THE DECISION DATED APRIL 1, 1993 OF HOUSING AND LAND USE ARBITER ABRAHAM N. VERMUDEZ, DESPITE HIS FAILURE TO DISMISS OR STRIKE OUT RESPONDENTS' ANSWERS TO THE COMPLAINT, OR HIS FAILURE TO LIMIT THE FILING OF POSITION PAPERS TO PETITIONERS ONLY, OR HIS FAILURE TO SET THE CASE FOR HEARING FOR THE RECEPTION OF PETITIONERS' EVIDENCE, INCLUDING THEIR PROOF OF DAMAGES, IN VIOLATION OF PETITIONERS' RIGHT TO DUE PROCESS.

VIII.

…IN REFUSING TO REVERSE OR SET ASIDE THE DECISION OF THE BOARD OF COMMISSIONERS IN TAKING COGNIZANCE OF THE APPEAL OF RESPONDENT MRI FROM THE DECISION DATED APRIL 1, 1993 OF HOUSING AND LAND USE ARBITER ABRAHAM N. VERMUDEZ, DESPITE THE FACT THAT SAID BOARD OF COMMISSIONERS DID NOT ACQUIRE JURISDICTION OVER SAID APPEAL DUE TO RESPONDENT MRI'S FAILURE TO PAY THE REQUIRED APPEAL OR REVIEW FEE WITHIN THE PERIOD FIXED FOR THAT PURPOSE.

IX.

…IN AFFIRMING THE AWARD OF MORAL AND EXEMPLARY DAMAGES TO RESPONDENTS CPI AND PIO MARTIN T. LAUENGCO, AND IN PRONOUNCING THAT RESPONDENT MRI IS ENTITLED "TO THE AWARD OF DAMAGES AND ATTORNEY'S FEES," DESPITE LACK OF ANY LEGAL OR FACTUAL BASIS.[13]

Without doubt, these issues made it necessary for the appellate court to evaluate other documents, *i.e.*, (1) verified complaint; (2) respondents' answers thereto; (3) decision of the OAALA-

[13] *Id*. at 33-35.

HLURB; (4) decision of the Board of Commissioners-HLURB; and (5) petitioners' appeal memorandum and respondents' reply memorandum in the Office of the President, on which to base the disposition of this case.

Indeed, the Court had allowed liberal construction of the Rules of Court in the following cases: (1) where a rigid application will result in manifest failure or miscarriage of justice, especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein; (2) where the interest of substantial justice will be served; (3) where the resolution of the motion is addressed solely to the sound and judicious discretion of the court; and (4) where the injustice to the adverse party is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[14] Here, petitioners have not shown any cogent reason for a less stringent interpretation of the rules.

Even assuming that the procedural errors may be overlooked, the issues raised by petitioners on the merits of its appeal are questions that have been addressed by the Court of Appeals in CA-G.R. SP No. 53254 which we have affirmed with finality in G.R. No. 164999.[15] We do not see any compelling reason to allow the same issues to be opened anew in the instant petition. A decision that has become final and executory can no longer be disturbed.[16]

WHEREFORE, the instant petition is *DENIED*. The Resolutions dated September 6, 1999 and January 31, 2000, of the Court of Appeals in CA-G.R. SP No. 52471 are *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

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[14] *Manila Hotel Corporation v. Court of Appeals*, G.R. No. 143574, July 11, 2002, 384 SCRA 520, 524.

[15] *Rollo*, pp. 481-485.

[16] *Tan v. Court of Appeals*, G.R. No. 157194, June 20, 2006, 491 SCRA 452, 463.

SECOND DIVISION

[G.R. No. 156571. July 9, 2008]

INTRA-STRATA ASSURANCE CORPORATION and PHILIPPINE HOME ASSURANCE CORPORATION, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES, represented by the BUREAU OF CUSTOMS,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; INSURANCE; CONTRACT OF SURETYSHIP; DEFINED.— Section 175 of the Insurance Code defines a contract of suretyship as an agreement whereby a party called the surety guarantees the performance by another party called the principal or obligor of an obligation or undertaking in favor of another party called the obligee, and includes among its various species bonds such as those issued pursuant to Section 1904 of the Code. Significantly, "pertinent provisions of the Civil Code of the Philippines shall be applied in a suppletory character whenever necessary in interpreting the provisions of a contract of suretyship." By its very nature under the terms of the laws regulating suretyship, the liability of the surety is joint and several but limited to the amount of the bond, and its terms are determined strictly by the terms of the contract of suretyship in relation to the principal contract between the obligor and the obligee.

2. ID.; ID.; ID.; NATURE THEREOF.— The definition and characteristics of a suretyship bring into focus the fact that a surety agreement is an accessory contract that introduces a third party element in the fulfillment of the principal obligation that an obligor owes an obligee. In short, there are effectively two (2) contracts involved when a surety agreement comes into play – a principal contract and an accessory contract of suretyship. Under the accessory contract, the surety becomes directly, primarily, and equally bound with the principal as the original promissor although he possesses no direct or personal interest over the latter's obligations and does not receive any benefit therefrom.

3. ID.; ID.; ID.; THE APPLICABLE LAWS FORM PART OF AND ARE READ INTO THE CONTRACT WITHOUT NEED FOR ANY EXPRESS REFERENCE.— A feature of the petitioners' bonds, not stated expressly in the bonds themselves but one that is true in every contract, is that applicable laws form part of and are read into the contract without need for any express reference. This feature proceeds from Article 1306 of the Civil Code pursuant to which we had occasion to rule: It is to be recognized that a large degree of autonomy is accorded the contracting parties. Not that it is unfettered. They may, according to Article 1306 of the Civil Code "establish such stipulations, clauses, terms, and conditions as they may deem convenient, provided that they are not contrary to law, morals, good customs, public order, or public policy." The law thus sets limits. **It is a fundamental requirement that the contract entered into must be in accordance with, and not repugnant to, an applicable statute. Its terms are embodied therein. The contracting parties need not repeat them. They do not even have to be referred to. Every contract thus contains not only what has been explicitly stipulated but also the statutory provisions that have any bearing on the matter."**

4. ID.; ID.; ID.; LAWS APPLICABLE TO SURETY BONDS, SPECIFIED.— Two of the applicable laws, **principally pertaining to the importer,** are Sections 101 and 1204 of the Tariff and Customs Code which provide that: Sec 101. *Imported Items Subject to Duty* – All articles when imported from any foreign country into the Philippines shall be subject to duty upon such importation even though previously exported from the Philippines, except as otherwise specifically provided for in this Code or in clear laws. x x x Sec. 1204. *Liability of Importer for Duties* – Unless relieved by laws or regulations, the liability for duties, taxes, fees, and other charges attaching on importation constitutes a personal debt due from the importer to the government which can be discharged only by payment in full of all duties, taxes, fees, and other charges legally accruing. It also constitutes a lien upon the articles imported which may be enforced which such articles are in custody or subject to the control of the government. The obligation to pay, principally by the importer, is shared by the latter with a willing third party under a suretyship agreement under Section 1904 of the Code which itself provides: Section 1904. *Irrevocable Domestic*

Letter of Credit or Bank Guarantee or Warehousing Bond – After articles declared in the entry of warehousing shall have been examined and the duties, taxes, and other charges shall have been determined, the Collector shall require from the importer, an irrevocable domestic letter of credit, bank guarantee, or bond equivalent to the amount of such duties, taxes, and other charges conditioned upon the withdrawal of the articles within the period prescribed by Section 1908 of this Code and for payment of any duties, taxes, and other charges to which the articles shall then be subject and upon compliance with all legal requirements regarding their importation. We point these out to stress the legal basis for the submission of the petitioners' bonds and the conditions attaching to these bonds. As heretofore mentioned, there is, *firstly*, a principal obligation belonging to the importer-obligor as provided under Section 101; *secondly*, there is an accessory obligation, assumed by the sureties pursuant to Section 1904 which, by the nature of a surety agreement, directly, primarily, and equally bind them to the obligee to pay the obligor's obligation. Considered in relation with the underlying laws that are deemed read into these bonds, it is at once clear that the bonds **shall subsist** – that is, "*shall remain in full force and effect*" – **unless** the imported articles are "*regularly and lawfully withdrawn x x x on payment of the legal customs duties, internal revenue taxes, and other charges to which they shall be subject x x x"* Fully fleshed out, the obligation to pay the duties, taxes, and other charges primarily rested on the principal Grand Textile; it was allowed to warehouse the imported articles without need for prior payment of the amounts due, *conditioned on the filing of a bond that shall remain in full force and effect until the payment of the duties, taxes, and charges due.* Under these terms, the fact that a withdrawal has been made and its circumstances are not material to the sureties' liability, *except to signal both the principal's default and the elevation to a due and demandable status of the sureties' solidary obligation to pay.* Under the bonds' plain terms, this solidary obligation subsist for as long as the amounts due on the importations have not been paid. Thus, it is completely erroneous for the petitioners to say that they were released from their obligations under their bond when Grand Textile withdrew the imported goods without payment of taxes, duties, and charges.

5. ID.; ID.; ID.; AS A RULE, THE SURETY IS RELEASED FROM ITS OBLIGATION WHEN THERE IS A MATERIAL ALTERATION OF THE CONTRACT IN CONNECTION WITH WHICH THE BOND IS GIVEN; NOT PRESENT IN CASE AT BAR.— We note in this regard the rule that a surety is released from its obligation when there is a material alteration of the contract in connection with which the bond is given, such as a change which imposes a new obligation on the promising party, or which takes away some obligation already imposed, or one which changes the legal effect of the original contract and not merely its form. A surety, however, is not released by a change in the contract which does not have the effect of making its obligation more onerous. We find under the facts of this case no significant or material alteration in the principal contract between the government and the importer, nor in the obligation that the petitioners assumed as sureties. Specifically, the petitioners never assumed, nor were any additional obligation imposed, due to any modification of the terms of importation and the obligations thereunder. The obligation, and one that never varied, is – **on the part of the importer,** to pay the customs duties, taxes, and charges due on the importation, and **on the part of the sureties,** to be solidarily bound to the payment of the amounts due on the imported goods upon their withdrawal or upon expiration of the given terms. The petitioners' lack of consent to the withdrawal of the goods, if this is their complaint, is a matter between them and the principal Grand Textile; it is a matter outside the concern of government whose interest as creditor-obligee in the importation transaction is the payment by the importer-obligor of the duties, taxes, and charges due before the importation process is concluded. With respect to the sureties who are there as third parties to ensure that the amounts due are paid, the creditor-obligee's active concern is to enforce the sureties' solidary obligation that has become due and demandable.

6. ID.; ID.; ID.; DEMAND ON THE SURETY IS NOT NECESSARY BEFORE BRINGING THE SUIT AGAINST THEM; RATIONALE.— The contract of surety simply gives rise to an obligation on the part of the surety in relation with the creditor and is a one-way relationship for the benefit of the latter. In other words, the surety does not, by reason of the surety agreement, earn the right to intervene in the principal creditor-debtor relationship; its role becomes alive only upon the debtor's

default, at which time it can be directly held liable by the creditor for payment as a solidary obligor. A surety contract is made principally for the benefit of the creditor-obligee and this is ensured by the solidary nature of the sureties' undertaking. Under these terms, the surety is not entitled as a rule to a separate notice of default, nor to the benefit of excussion, and may be sued separately or together with the principal debtor. The words of this Court in *Palmares v. CA* are worth noting: **Demand on the surety is not necessary before bringing the suit against them.** On this point, it may be worth mentioning that **a surety is not even entitled, as a matter of right, to be given notice of the principal's default.** Inasmuch as the creditor owes no duty of active diligence to take care of the interest of the surety, his mere failure to voluntarily give information to the surety of the default of the principal cannot have the effect of discharging the surety. The surety is bound to take notice of the principal's default and to perform the obligation. He cannot complain that the creditor has not notified him in the absence of a special agreement to that effect in the contract of suretyship. Significantly, nowhere in the petitioners' bonds does it state that prior notice is required to fix the sureties' liabilities. Without such express requirement, the creditor's right to enforce payment cannot be denied as the petitioners became bound as soon as Grand Textile, the principal debtor, defaulted. Thus, the filing of the collection suit was sufficient notice to the sureties of their principal's default.

7. CIVIL LAW; ESTOPPEL; THE GOVERNMENT IS NOT BOUND BY THE ERRORS COMMITTED BY ITS AGENTS.— It has long been a settled rule that the government is not bound by the errors committed by its agents. Estoppel does not also lie against the government or any of its agencies arising from unauthorized or illegal acts of public officers. This is particularly true in the collection of legitimate taxes due where the collection has to be made whether or not there is error, complicity, or plain neglect on the part of the collecting agents. In *CIR v. CTA,* we pointedly said: It is axiomatic that the government cannot and must not be estopped particularly in matters involving taxes. Taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents. Thus, it should be collected without unnecessary hindrance or delay.

APPEARANCES OF COUNSEL

T.J. Sumawang & Associates for petitioners.
Romulo Mabanta Buenaventura Sayoc & Delos Angeles for Phil. Home Assurance Corp.
The Solicitor General for respondent.

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 filed by Intra-Strata Assurance Corporation (*Intra-Strata*) and Philippine Home Assurance Corporation (*PhilHome*), collectively referred to as *"petitioners."*

The petition seeks to set aside the decision dated November 26, 2002 of the Court of Appeals[1] (*CA*) that in turn affirmed the ruling of the Regional Trial Court (*RTC*), Branch 20, Manila in Civil Case No. 83-15071.[2] In its ruling, the RTC found the petitioners liable as sureties for the customs duties, internal revenue taxes, and other charges due on the importations made by the importer, Grand Textile Manufacturing Corporation (*Grand Textile*).[3]

BACKGROUND FACTS

Grand Textile is a local manufacturing corporation. In 1974, it imported from different countries various articles such as dyestuffs, spare parts for textile machinery, polyester filament yarn, textile auxiliary chemicals, trans open type reciprocating compressor, and trevira filament. Subsequent to the importation, these articles were transferred to Customs Bonded Warehouse No. 462. As computed by the Bureau of Customs, the customs

[1] In CA G.R. CV. No. 54346, penned by Associate Justice Elvi John Asuncion (dismissed) with Associate Justices Conrado Vasquez and Sergio Pestaño, concurring; *rollo,* pp. 24-30.

[2] *Id.*, pp. 31-44.

[3] *Id.*, p. 44.

duties, internal revenue taxes, and other charges due on the importations amounted to ₱2,363,147.00. To secure the payment of these obligations pursuant to Section 1904 of the Tariff and Customs Code (*Code*),[4] Intra-Strata and PhilHome each issued general warehousing bonds in favor of the Bureau of Customs. These bonds, the terms of which are fully quoted below, commonly provide that the goods shall be withdrawn from the bonded warehouse *"on payment of the legal customs duties, internal revenue, and other charges to which they shall then be subject."*[5]

Without payment of the taxes, customs duties, and charges due and for purposes of domestic consumption, Grand Textile withdrew the imported goods from storage.[6] The Bureau of Customs demanded payment of the amounts due from Grand Textile as importer, and from Intra-Strata and PhilHome as sureties. All three failed to pay. The government responded on January 14, 1983 by filing a collection suit against the parties with the RTC of Manila.

LOWER COURT DECISIONS

After hearing, the RTC rendered its January 4, 1995 decision finding Grand Textile (as importer) and the petitioners (as sureties) liable for the taxes, duties, and charges due on the imported articles. The dispositive portion of this decision states:[7]

WHEREFORE, premises considered, the Court RESOLVES directing:

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[4] Section 1904. *Irrevocable Domestic Letter of Credit or Bank Guarantee or Warehousing Bonds.* – After articles declared in the entry for warehousing shall have been determined, the Collector shall require from the importer, an irrevocable domestic letter of credit, bank guarantee or bond equivalent to the amount of such duties, taxes and other charges conditioned upon the withdrawal of the articles within the period prescribed by section nineteen hundred eight of this Code and for payment of any duties, taxes and other charges to which the articles shall be then subject and upon compliance with all legal requirements regarding their importation.

[5] Fully quoted at pages 7 and 8; *infra*, at note 15.

[6] *Rollo,* p. 25.

[7] *Id*., p. 44.

(1) the defendant Grand Textile Manufacturing Corporation to pay plaintiff, the sum of ₱2,363,174.00, plus interests at the legal rate from the filing of the Complaint until fully paid;

(2) the defendant Intra-Strata Assurance Corporation to pay plaintiff, jointly and severally, with defendant Grand, the sum of ₱2,319,211.00 plus interest from the filing of the Complaint until fully paid; and the defendant Philippine Home Assurance Corporation to pay plaintiff the sum of ₱43,936.00 plus interests to be computed from the filing of the Complaint until fully paid;

(3) the forfeiture of all the General Warehousing Bonds executed by Intra-Strata and PhilHome; and

(4) all the defendants to pay the costs of suit.

SO ORDERED.

The CA fully affirmed the RTC decision in its decision dated November 26, 2002. From this CA decision, the petitioners now come before this Court through a petition for review on *certiorari* alleging that the CA decided the presented legal questions in a way not in accord with the law and with the applicable jurisprudence.

ASSIGNED ERRORS

The petitioners present the following points as the conclusions the CA should have made:

1. that they were released from their obligations under their bonds when Grand Textile withdrew the imported goods without payment of taxes, duties, and other charges; and
2. that their non-involvement in the active handling of the warehoused items from the time they were stored up to their withdrawals substantially increased the risks they assumed under the bonds they issued, thereby releasing them from liabilities under these bonds.[8]

In their arguments, they essentially pose the legal issue of ***whether the withdrawal of the stored goods, wares, and***

[8] *Id.*, p. 11.

merchandise – without notice to them as sureties – released them from any liability for the duties, taxes, and charges they committed to pay under the bonds they issued. They additionally posit that they should be released from any liability because the Bureau of Customs, through the fault or negligence of its employees, allowed the withdrawal of the goods without the payment of the duties, taxes, and other charges due.

The respondent, through the Solicitor General, maintains the opposite view.

THE COURT'S RULING

We find no merit in the petition and consequently affirm the CA decision.

Nature of the Surety's Obligations

Section 175 of the Insurance Code defines a contract of suretyship as an agreement whereby a party called the surety guarantees the performance by another party called the principal or obligor of an obligation or undertaking in favor of another party called the obligee, and includes among its various species bonds such as those issued pursuant to Section 1904 of the Code.[9] Significantly, "pertinent provisions of the Civil Code of the Philippines shall be applied in a suppletory character whenever necessary in interpreting the provisions of a contract of suretyship."[10] By its very nature under the terms of the laws regulating suretyship, the liability of the surety is joint and several but limited to the amount of the bond, and its terms are determined strictly by the terms of the contract of suretyship in relation to the principal contract between the obligor and the obligee.[11]

The definition and characteristics of a suretyship bring into focus the fact that a surety agreement is an accessory contract that introduces a third party element in the fulfillment of the principal obligation that an obligor owes an obligee. In short, there are effectively two (2) contracts involved when a surety

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[9] *Supra,* at note 4.

[10] INSURANCE CODE, Section 178.

[11] CIVIL CODE, Article 2047.

agreement comes into play – a principal contract and an accessory contract of suretyship. Under the accessory contract, the surety becomes directly, primarily, and equally bound with the principal as the original promissor although he possesses no direct or personal interest over the latter's obligations and does not receive any benefit therefrom.[12]

The Bonds Under Consideration

That the bonds under consideration are surety bonds (and hence are governed by the above laws and rules) is not disputed; the petitioners merely assert that they should not be liable for the reasons summarized above. Two elements, both affecting the suretyship agreement, are material in the issues the petitioners pose. The first is the effect of the law on the suretyship agreement; the terms of the suretyship agreement constitute the second.

A feature of the petitioners' bonds, not stated expressly in the bonds themselves but one that is true in every contract, is that applicable laws form part of and are read into the contract without need for any express reference. This feature proceeds from Article 1306 of the Civil Code pursuant to which we had occasion to rule:

> It is to be recognized that a large degree of autonomy is accorded the contracting parties. Not that it is unfettered. They may, according to Article 1306 of the Civil Code "establish such stipulations, clauses, terms, and conditions as they may deem convenient, provided that they are not contrary to law, morals, good customs, public order, or public policy." The law thus sets limits. **It is a fundamental requirement that the contract entered into must be in accordance with, and not repugnant to, an applicable statute. Its terms are embodied therein. The contracting parties need not repeat them. They do not even have to be referred to. Every contract thus contains not only what has been explicitly stipulated but also the statutory provisions that have any bearing on the matter**."[13]

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[12] *Garcia v. CA and Lasal Development Corporation*, G.R. No. 80201, November 20, 1990, 191 SCRA 493.

[13] *Maritime Company of the Philippines v. Reparations Commission*, G.R. No. L-29203, July 26, 1971, 40 SCRA 70.

Two of the applicable laws, **principally pertaining to the importer**, are Sections 101 and 1204 of the Tariff and Customs Code which provide that:

Sec 101. *Imported Items Subject to Duty* – All articles when imported from any foreign country into the Philippines shall be subject to duty upon such importation even though previously exported from the Philippines, except as otherwise specifically provided for in this Code or in clear laws.

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Sec. 1204. *Liability of Importer for Duties* – Unless relieved by laws or regulations, the liability for duties, taxes, fees, and other charges attaching on importation constitutes a personal debt due from the importer to the government which can be discharged only by payment in full of all duties, taxes, fees, and other charges legally accruing. It also constitutes a lien upon the articles imported which may be enforced which such articles are in custody or subject to the control of the government.

The obligation to pay, principally by the importer, is shared by the latter with a willing third party under a suretyship agreement under Section 1904 of the Code which itself provides:

Section 1904. *Irrevocable Domestic Letter of Credit or Bank Guarantee or Warehousing Bond* – After articles declared in the entry of warehousing shall have been examined and the duties, taxes, and other charges shall have been determined, the Collector shall require from the importer, an irrevocable domestic letter of credit, bank guarantee, or bond equivalent to the amount of such duties, taxes, and other charges conditioned upon the withdrawal of the articles within the period prescribed by Section 1908 of this Code and for payment of any duties, taxes, and other charges to which the articles shall then be subject and upon compliance with all legal requirements regarding their importation.

We point these out to stress the legal basis for the submission of the petitioners' bonds and the conditions attaching to these bonds. As heretofore mentioned, there is, *firstly*, a principal obligation belonging to the importer-obligor as provided under Section 101; *secondly*, there is an accessory obligation, assumed by the sureties pursuant to Section 1904 which, by the nature

of a surety agreement, directly, primarily, and equally bind them to the obligee to pay the obligor's obligation.

The second element to consider in a suretyship agreement relates to the terms of the bonds themselves, under the rule that the terms of the suretyship are determined by the suretyship contract itself.[14] The General Warehousing Bond[15] that is at the core of the present dispute provides:

KNOW ALL MEN BY THESE PRESENTS:

That I/we GRAND TEXTILE MANUFACTURING CORPORATION – Km. 21, Marilao, Bulacan, as Principal, and PHILIPPINE HOME ASSURANCE as the latter being a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, as Surety, are **held and firmly bound unto the Republic of the Philippines, in the sum of PESOS TWO MILLION ONLY (₱2,000,000.00), Philippine Currency, to be paid to the Republic of the Philippines, for the payment whereof, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents:**

WHEREAS, the above-bounden Principal will from time to time make application to make entry for storing in customs-internal revenue bonded warehouse certain goods, wares, and merchandise, subject to customs duties and special import tax or internal revenue taxes or both;

WHEREAS, the above principal in making application for storing merchandise in customs-internal revenue bonded warehouse as above stated, will file this in his name as principal, which bond shall be approved by the Collector of Customs or his Deputy; and

WHEREAS, **the surety hereon agrees to accept all responsibility jointly and severally for the acts of the principal done in accordance with the terms of this bond**.

NOW THEREFORE, the condition of this obligation is such that if within six (6) months from the date of arrival of the importing vessel in any case, the goods, wares, and merchandise shall be **regularly and lawfully withdrawn from public stores or bonded**

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[14] *Umali v. Court of Appeals*, G.R. No. 89561, September 13, 1960, 189 SCRA 529.

[15] OIC Bond No. C (12) – 00563, Exh. "W" of the Plaintiff, Record, p. 484.

warehouse on payment of the legal customs duties, internal revenue taxes, and other charges to which they shall then be subject; or if at any time within six (6) months from the said date of arrival, or within nine (9) months if the time is extended for a period of three (3) months, as provided in Section 1903 of the Tariff and Customs Code of the Philippines, said importation shall be so withdrawn for consumption, **then the above obligation shall be void, otherwise, to remain in full force and effect**.

Obligations hereunder may only be accepted during the calendar year 1974 and the right to reserve by the corresponding Collector of Customs to refuse to accept further liabilities under this general bond, whenever, in his opinion, conditions warrant doing so.

IN WITNESS WHEREOF, we have signed our names and affixed our seals on this 20th day of September, 1974 at Makati, Rizal, Philippines.

Considered in relation with the underlying laws that are deemed read into these bonds, it is at once clear that the bonds **shall subsist** – that is, *"shall remain in full force and effect"* – **unless** the imported articles are *"regularly and lawfully withdrawn. . .on payment of the legal customs duties, internal revenue taxes, and other charges to which they shall be subject...."* Fully fleshed out, the obligation to pay the duties, taxes, and other charges primarily rested on the principal Grand Textile; it was allowed to warehouse the imported articles without need for prior payment of the amounts due, *conditioned on the filing of a bond that shall remain in full force and effect until the payment of the duties, taxes, and charges due.* Under these terms, the fact that a withdrawal has been made and its circumstances are not material to the sureties' liability, *except to signal both the principal's default and the elevation to a due and demandable status of the sureties' solidary obligation to pay*. Under the bonds' plain terms, this solidary obligation subsists for as long as the amounts due on the importations have not been paid. Thus, it is completely erroneous for the petitioners to say that they were released from their obligations under their bond when Grand Textile withdrew the imported goods without payment of taxes, duties, and charges. From a commonsensical perspective, it may well be asked: why else

would the law require a surety when such surety would be bound only if the withdrawal would be regular due to the payment of the required duties, taxes, and other charges?

We note in this regard the rule that a surety is released from its obligation when there is a material alteration of the contract in connection with which the bond is given, such as a change which imposes a new obligation on the promising party, or which takes away some obligation already imposed, or one which changes the legal effect of the original contract and not merely its form. A surety, however, is not released by a change in the contract which does not have the effect of making its obligation more onerous.[16]

We find under the facts of this case no significant or material alteration in the principal contract between the government and the importer, nor in the obligation that the petitioners assumed as sureties. Specifically, the petitioners never assumed, nor were any additional obligation imposed, due to any modification of the terms of importation and the obligations thereunder. The obligation, and one that never varied, is – **on the part of the importer**, to pay the customs duties, taxes, and charges due on the importation, and **on the part of the sureties,** to be solidarily bound to the payment of the amounts due on the imported goods upon their withdrawal or upon expiration of the given terms. The petitioners' lack of consent to the withdrawal of the goods, if this is their complaint, is a matter between them and the principal Grand Textile; it is a matter outside the concern of government whose interest as creditor-obligee in the importation transaction is the payment by the importer-obligor of the duties, taxes, and charges due before the importation process is concluded. With respect to the sureties who are there as third parties to ensure that the amounts due are paid, the creditor-obligee's active concern is to enforce the sureties' solidary obligation that has become due and demandable. This matter is further and more fully explored below.

The Need for Notice to Bondsmen

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[16] *NASSCO v. Torrento*, G.R. No. L-21109, June 26, 1967, 20 SCRA 427.

To support the conclusion that they should be released from the bonds they issued, the petitioners argue that upon the issuance and acceptance of the bonds, they became direct parties to the bonded transaction entitled to participate and actively intervene, as sureties, in the handling of the imported articles; that, as sureties, they are entitled to notice of any act of the bond obligee and of the bond principal that would affect the risks secured by the bond; and that otherwise, the door becomes wide open for possible fraudulent conspiracy between the bond obligee and principal to defraud the surety.[17]

In taking these positions, the petitioners appear to misconstrue the nature of a surety relationship, particularly the fact that two types of relationships are involved, that is, the underlying principal relationship between the creditor (government) and the debtor (importer), and the accessory surety relationship whereby the surety binds itself, for a consideration paid by the debtor, to be jointly and solidarily liable to the creditor for the debtor's default. The creditor in this latter relationship accepts the surety's solidary undertaking to pay if the debtor does not pay. [18] Such acceptance, however, does not change in any material way the creditor's relationship with the principal debtor nor does it make the surety an *active party* to the principal creditor-debtor relationship. The contract of surety simply gives rise to an obligation on the part of the surety in relation with the creditor and is a one-way relationship for the benefit of the latter.[19]

In other words, the surety does not, by reason of the surety agreement, earn the right to intervene in the principal creditor-debtor relationship; its role becomes alive only upon the debtor's default, at which time it can be directly held liable by the creditor for payment as a solidary obligor. A surety contract is made principally for the benefit of the creditor-obligee and this is

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[17] Par. 20 of the Petitioners' Memorandum; *rollo*, p. 142.

[18] See: *Government v. Marcelino Tizon, et al.*, G.R. No. L-22108, August 30, 1967, 20 SCRA 1182.

[19] De Leon, H., *Comments and Cases on Credit Transaction,* 2002 ed., p. 234.

ensured by the solidary nature of the sureties' undertaking.[20] Under these terms, the surety is not entitled as a rule to a separate notice of default,[21] nor to the benefit of excussion,[22] and may be sued separately or together with the principal debtor.[23] The words of this Court in *Palmares v. CA*[24] are worth noting:

> **Demand on the surety is not necessary before bringing the suit against them.** On this point, it may be worth mentioning that **a surety is not even entitled, as a matter of right, to be given notice of the principal's default.** Inasmuch as the creditor owes no duty of active diligence to take care of the interest of the surety, his mere failure to voluntarily give information to the surety of the default of the principal cannot have the effect of discharging the surety. The surety is bound to take notice of the principal's default and to perform the obligation. He cannot complain that the creditor has not notified him in the absence of a special agreement to that effect in the contract of suretyship.

Significantly, nowhere in the petitioners' bonds does it state that prior notice is required to fix the sureties' liabilities. Without such express requirement, the creditor's right to enforce payment cannot be denied as the petitioners became bound as soon as Grand Textile, the principal debtor, defaulted. Thus, the filing of the collection suit was sufficient notice to the sureties of their principal's default.

The petitioners' reliance on *Visayan Surety and Insurance Corporation v. Pascual*[25] and *Aguasin v. Velasque*z[26] does not appear to us to be well taken as these cases do not squarely apply to the present case. These cases relate to bonds issued as a requirement for the issuance of writs of replevin. The Rules

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[20] CIVIL CODE, Article 1216.

[21] 74 Am. Jur. §35.

[22] *Manila Surety & Fidelity Co, Inc. v. Batu Construction & Co.*, 101 Phil. 494 (1957).

[23] *Supra,* notes 16 and 20.

[24] G.R. No. 126490, March 31, 1998, 288 SCRA 422, 439.

[25] 85 Phil. 779 (1950).

[26] 88 Phil. 357 (1951).

of Court expressly require that before damages can be claimed against such bonds, notice must be given to the sureties to bind them to the award of damages. No such requirement is evident in this case as neither the Tariff and Customs Code nor the issued bonds require prior notice to sureties.

The petitioners' argument focusing on the additional risks they incur if they cannot intervene in the handling of the warehoused articles must perforce fail in light of what we have said above regarding the nature of their obligation as sureties and the relationships among the parties where a surety agreement exists. We add that the petitioners have effectively waived as against the creditor (the government) any such claim in light of the provision of the bond that *"the surety hereon agrees to accept all responsibility jointly and severally for the acts of the principal done in accordance with the terms of this bond."*[27] Any such claim including those arising from the withdrawal of the warehoused articles without the payment of the requisite duties, taxes and charges is for the principal and the sureties to thresh out between or among themselves.

Government is Not Bound by Estoppel

As its final point, the petitioners argue that they cannot be held liable for the unpaid customs duties, taxes, and other charges because it is the Bureau of Customs' duty to ensure that the duties and taxes are paid before the imported goods are released from its custody and they cannot be made to pay for the error or negligence of the Bureau's employees in authorizing the unlawful and irregular withdrawal of the goods.

It has long been a settled rule that the government is not bound by the errors committed by its agents. Estoppel does not also lie against the government or any of its agencies arising from unauthorized or illegal acts of public officers.[28] This is particularly true in the collection of legitimate taxes due where

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[27] PhilHome Bond No. 7415378, Exhibit "1" of Defendant, Record, p. 555; OIC Bond No. C(12)-00563, Exhibit "W" of Plaintiff, Record, p. 484.

[28] *Republic of the Philippines v. Heirs of Felix Caballero*, G.R. No. L-27473, September 30, 1977, 208 SCRA 726.

the collection has to be made whether or not there is error, complicity, or plain neglect on the part of the collecting agents.[29] In *CIR v. CTA,*[30] we pointedly said:

> It is axiomatic that the government cannot and must not be estopped particularly in matters involving taxes. Taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents. Thus, it should be collected without unnecessary hindrance or delay.

We see no reason to deviate from this rule and we shall not do so now.

WHEREFORE, premises considered, we hereby *DENY* the petition and *AFFIRM* the Decision of the Court of Appeals. Costs against the petitioners.

SO ORDERED.

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

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[29] *Caltex Philippines v. COA*, G.R. No. 92585, May 8, 1992, 208 SCRA 726.

[30] G.R. No. 106611, July 21, 1994, 243 SCRA 348.

[*] 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. 160474. July 9, 2008]

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC., *petitioner, vs.* **ANTONIO T. REUS,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; JUDGMENT; LITIGATION MUST SOME TIME BE TERMINATED EVEN AT THE RISK OF OCCATIONAL ERRORS; PRESENT IN CASE AT BAR.— The 1993 NLRC decision whose execution is disputed has long been final and executory. This case is now almost eighteen (18) years old counted from the filing of the original complaint before the Labor Arbiter. It has gone to this Court once before and has been acted upon with finality. Thus, the termination of the present controversy is now long overdue. In the words of the CA Decision: Litigation must at some time be terminated, even at the risk of occasional errors, for public policy dictates that once a judgment becomes final, executory, and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. x x x To our mind, the only question now before us is the interpretation of the 1993 NLRC decision, that is, how this decision should be read and implemented in order to finally lay this long drawn out labor dispute to rest. A critical point in appreciating the 1993 NLRC decision is the fact that it MODIFIED the Linsangan decision directing the petitioner to pay complainant Php 2,000.00 as indemnity and any retirement benefit he may be entitled to under the company's retirement plan. An undisputed modification that the 1993 NLRC decision decreed is the deletion of the order for the payment of indemnity and attorney's fees. The deletion is based apparently on the lack of finding relating to any due process violation or to any ground for entitlement to attorney's fees. A second obvious change, *and the one most material to the present dispute,* is the removal of the order for payment of retirement benefits that the complainant "*may be entitled*" to under the company's retirement plan. The NLRC simply ordered *"the respondent*

> *to pay complainant benefits under its company retirement plan, less the amount of the lost collection and other outstanding obligations of the complainant with the company as of date"*; thus, removing the condition of "entitlement" found in the Labor Arbiter's decision. x x x Significantly, whether such equitable grant is justified or not, legally correct or in error, or whether it is wise or unwise, are issues that are beyond the parties' reach at this time. We hasten to add that the NLRC decision and our affirmation of this decision cannot and should not be used as authority for issues relating to the terms of the company retirement plan; what we hereby affirm is the finality of the NLRC's equitable award and its terms, not any issue on the interpretation or application of, or the entitlement under, the terms of the plan. With the NLRC decision now fully implemented through the garnishment of the *supersedeas* bond posted by the petitioner and the release of the proceeds to the respondent, this case is ready to be declared fully closed and terminated upon the finality of this Decision.

APPEARANCES OF COUNSEL

De La Rosa Tejeros Nograles for petitioner.
M.A. Aguinaldo and Associates for respondent.

D E C I S I O N

BRION, *J.*:

Before us is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by the Philippine Long Distance Telephone Company, Inc. (*petitioner*). It seeks to set aside:

(a) the decision of the Court of Appeals (*CA*) dated March 28, 2003 which granted Antonio T. Reus' (*respondent*) petition for *mandamus* and ordered the execution of the decision of the Labor Arbiter dated July 24, 1991, as modified by the decision of the National Labor Relations Commission (*NLRC*) dated October 7, l993; and,

(b) the CA Resolution dated October 17, 2003 denying the motion for reconsideration that the petitioner subsequently filed.

THE ANTECEDENTS

The dispute has its roots in a complaint for illegal dismissal with claims for moral and exemplary damages filed in 1990 by the respondent against the petitioner. The respondent had been in the petitioner's employ for sixteen (16) years and three (3) months when he was dismissed from employment on October 31, 1990 for shortages in his collections.[1] He was at that time a long distance booth attendant assigned to the petitioner's Taft Avenue Office.

On July 24, 1991, Labor Arbiter Cornelio L. Linsangan upheld the respondent's dismissal, but required the petitioner to pay the respondent Php 2,000.00 as indemnity for the failure to afford the respondent a hearing. While he sustained the dismissal, the Labor Arbiter noted that the petitioner had an existing retirement plan and ordered the petitioner to pay the respondent *"any retirement benefit complainant may be entitled under the plan."*[2]

Both the petitioner and the respondent appealed to the NLRC. On October 7, 1993, the NLRC promulgated its decision (*1993 NLRC decision*) modifying the decision of Arbiter Linsangan (*Linsangan decision*). It affirmed the respondent's dismissal, but ordered him paid benefits under the petitioner's retirement plan, less the amount of the lost collection and other outstanding obligations of respondent.[3]

The parties' attempt to secure a reconsideration of the 1993 NLRC decision both proved fruitless, prompting them to elevate the case to this Court through their respective petitions for *certiorari*. We dismissed the respondent's petition – G.R. No. 113737 – for nonpayment of sheriff's fees and clerk's commission as required by Revised Circular 1-88 and for the petition's failure to show that the NLRC gravely abused its discretion in its ruling.[4] We likewise dismissed the petitioner's

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[1] *Rollo,* p. 33.

[2] *Id.,* pp. 58-62.

[3] *Id.*, pp. 63-72.

[4] *Id.*, p. 46.

petition – G.R. No. 113335 –for its own failure to establish that the assailed decision was tainted with grave abuse of discretion. The Court's resolutions of dismissal became final on March 15, 1995 and were entered in the Book of Entry of Judgment.[5]

The respondent forthwith moved for the execution of the 1993 NLRC decision. On November 2, 1995, Arbiter Linsangan issued an order directing the petitioner to pay the respondent retirement benefits in the amount of Php 158,849.60 based on the computation made by the Research and Information Unit of the NLRC.[6] In issuing the order, Arbiter Linsangan relied on the 1993 NLRC decision that he had found to have become final and executory. The respondent moved for the issuance of a writ of execution which the petitioner opposed on the contention that it had not received a copy of Arbiter Linsangan's November 2, 1995 Order.

Arbiter Linsangan issued the requested writ on December 12, 1995[7] while Labor Arbiter Ramon Reyes (who took over the case upon the retirement of Arbiter Linsangan) issued on May 14, 1996 an order directing the sheriff of the NLRC to proceed with the execution of the award.[8] On September 27, 1996, Sheriff Conrado O. Gaddi issued a Notice of Garnishment to the PCI Bank, Makati Branch.

On May 28, l996, the petitioner appealed Arbiter Reyes' order to the NLRC with the submission that it never received a copy of the November 2, 1995 Order of Arbiter Linsangan, and that the respondent was not entitled to the benefits program of the company because he was only 36 years old and had rendered only 16 years of service at the time of his dismissal.[9]

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[5] *Id.*

[6] *Id.,* pp. 138-140.

[7] *Id*., pp. 141-143.

[8] *Id*., pp. 144-147.

[9] *Id.*, pp. 148-156.

The NLRC found merit in the petitioner's appeal and resolved on July 29, 1998 to vacate Arbiter Linsangan's Order of November 2, 1995. It ordered that the records of the case be remanded for the computation of the respondent's benefits under the retirement plan and that a Writ of Execution be issued if he is entitled to benefits thereunder.[10] The respondent did not question this July 29, 1998 NLRC decision (the *1998 NLRC decision*).

On October 27, 1998, the respondent filed a motion for the issuance of a third *alias* writ of execution of the 1993 NLRC decision.[11] After the parties' submissions, Arbiter Reyes granted the motion on September 3, 1999 and ordered the petitioner to pay the respondent retirement benefits as computed by the NLRC. He declared as null and void the 1998 NLRC decision.

On February 14, 2000, the petitioner appealed the Order of Arbiter Reyes to the NLRC, contending that Arbiter Reyes had acted in excess of authority and without jurisdiction in declaring the 1998 NLRC decision null and void; had committed palpable error in granting the motion for issuance of the third *alias* writ; and had gravely erred in ordering the petitioner to pay the respondent retirement benefits.[12]

Again, the respondent moved for the execution of the 1993 NLRC decision and the September 3, 1999 Order of Arbiter Reyes. The Labor Arbiter this time refused to issue the writ, consequently forcing the respondent to seek relief from the CA *via* a petition for *mandamus* and prohibition.[13]

On December 14, 2001, while the respondent's petition for *mandamus* was pending before the CA, the NLRC granted the petitioner's appeal and annulled the September 3, 1999 Order of Arbiter Reyes.[14] The NLRC reiterated the modifications it

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[10] *Id.*, pp. 168-177.

[11] *Id.*, pp. 178-181.

[12] *Id.*, pp. 211-226.

[13] CA-G.R. SP No. 58629, *id.*, pp. 232-243.

[14] *Id.*, pp. 244-247.

made in its 1993 NLRC decision, clarifying that the respondent's retirement benefits are to be paid after determination of his qualification to receive these benefits under the company retirement plan. Again, the respondent did not appeal.

In the meantime, the CA, in a Decision dated March 28, 2003, granted the respondent's petition for *mandamus*.[15] It directed the Labor Arbiter to execute the Linsangan decision as modified by the 1993 NLRC decision. The petitioner moved for the reconsideration of the CA Decision, but the CA denied this motion.[16]

On July 18, 2003, the respondent filed a motion for the issuance of a writ of execution[17] which Labor Arbiter Joselito C. Villarosa granted in an Order dated September 2, 2003.[18] On September 23, 2003, Arbiter Ramon Reyes issued a third *alias* writ of execution.[19] The sheriffs of the NLRC garnished on October 13, 2003 the petitioner's *supersedeas* bond corresponding to the computed award of Php 158,849.40.[20] On October 16, 2003, the petitioner moved to quash the writ.

The surety company issued and deposited in the NLRC's account RCBC Check No. 000711787 dated November 3, 2003 for the full awarded amount.[21] In an Order dated December 16, 2003, Arbiter Reyes directed the Cashier of the NLRC to release to the respondent the garnished award.[22] On January 26, 2004, respondent manifested before this Court[23] that pursuant to the Order of Arbiter Reyes, the NLRC released to him (the respondent) the check representing the awarded benefits.

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[15] *Id.*, pp. 44-55.

[16] *Id.*, pp. 248-265.

[17] *Id.*, pp. 266-269.

[18] *Id.*, pp. 271-276.

[19] *Id.*, pp. 333-337.

[20] *Id.*, p. 341.

[21] *Id.*, p. 342.

[22] *Id.*, pp. 357-360.

[23] *Id.*, pp. 389-393.

THE PETITION

Petitioner submits that in the absence of a showing that the respondent had a clear right to the payment of retirement benefits, the CA seriously erred in granting the respondent's petition for *mandamus* and in ordering the Labor Arbiter to issue a writ of execution. It contends that the respondent is clearly not entitled to benefits under the plan and hence should not be paid benefits thereunder.

The petitioner likewise argues that the assailed CA Decision and Resolution are null and void for having been issued in excess of the Linsangan decision, as modified by the 1993 NLRC decision. It admits though that the 1993 NLRC decision had already attained finality and the CA Decision of March 28, 2003, as well as the subsequent Orders of the Labor Arbiter, was mainly intended to implement the 1993 NLRC decision. It posits that the execution of the judgment should conform strictly with the decision being implemented[24] and asks the question "what is the decision to be executed and how should it be implemented?"

In answering this question, the petitioner points out that the Linsangan decision ordered payment under the retirement plan if the respondent is entitled to benefits under the plan, while the 1993 NLRC decision modified this aspect of the Linsangan decision by simply ordering the petitioner to pay the respondent benefits under the company retirement plan.[25] Under this reading, the petitioner claims that the respondent must be qualified for retirement benefits under the plan in order to be entitled to payment. It then proceeds to show that the respondent, who was 36 years old and had served for 16 years, was not qualified under the plan which required that an employee be 65 years of age for compulsory retirement, or at least 50 years of age or has completed 30 years of service for optional retirement.

The petitioner adds that the writ of execution issued by the Labor Arbiter pursuant to the March 28, 2003 CA Decision

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[24] *Supra*, note 1, p. 30.

[25] *Id.*, pp. 30-31.

should not be allowed because it was issued in excess of the terms of the decision being implemented; otherwise, the CA would have effectively amended or reversed the Linsangan decision that had lapsed to finality.

Finally, the petitioner submits that the anomalous situation could have been avoided had the CA simply considered the two (2) final Resolutions of the NLRC dated July 29, 1998 and December 14, 2001 which both ruled that the respondent is not entitled to a writ of execution because his right to payment of retirement benefits has yet to be determined in accordance with the petitioner's retirement plan. The petitioner stresses that the two Resolutions became final when the respondent did not question them before the NLRC or the higher courts.

In its Comment with Motion to Dismiss the Petition dated January 15, 2004,[26] the respondent points out that this Court has long ruled on the 1993 NLRC decision, and that this Court's Decision of February 6, 1995 had long become final and executory as evidenced by the Entry of Judgment dated March 15, 1995. He thus insists that his legal right to the benefits under the petitioner's retirement plan has been clearly recognized by this Court. He contends that the 1998 NLRC decision that modified the 1993 NLRC decision is null and void and should have no legal effect.

The respondent bewails that the NLRC took cognizance of the petitioner's appeal from the Order of Labor Arbiter Ramon Reyes of May 14, 1996 when this order was interlocutory and was therefore not an appealable ruling. He points out that the only issue raised in the appeal was whether Labor Arbiter Ramon Reyes gravely abused his discretion in holding that petitioner actually and physically received the Order of Arbiter Linsangan dated November 2, 1995.

OUR RULING

We deny the petition as the CA committed no reversible error in granting the respondent's petition for *mandamus*. The execution of the 1993 NLRC decision has long been overdue;

[26] *Id.*, pp. 363-378.

it became final and executory more than a decade ago when this Court dismissed the petitions for *certiorari* filed by both the petitioner and the respondent to assail this decision. To reiterate, this Court's own resolutions of dismissal that upheld the 1993 NLRC decision were entered in the Book of Entry of Judgment on March 15, 1995 or more than thirteen (13) years ago.

We find it significant that the petitioner itself admits that the 1993 NLRC decision to be implemented in this case is already final. The petition itself states:

> There is no dispute that the October 7, 1993 Resolution of the NLRC is already final. It is likewise clear that the assailed Decision of the Court of Appeals dated March 28, 2003, as well as the implementing Order of Labor Arbiter Villarosa dated September 2, 2003, is mainly intended to implement the aforementioned Resolution (October 07, 1993) of the NLRC. Such being the case, the execution of the judgment should conform strictly with the October 7, 1993 Resolution of the NLRC.[27]

Thus, the only question to be resolved is: how should this Decision be implemented? The dispositive portion of this decision decreed:

> WHEREFORE, in view thereof, **the assailed decision is hereby modified**, ordering the respondent to pay complainant benefits under its company retirement plan, less the amount of the loss collection and other outstanding obligations of the complainant with the company as of date, and the appeals are hereby dismissed for lack of merit x x x.[28] [emphasis supplied]

The modification it adverts to is in turn based on the Linsangan decision which provided:

> WHEREFORE, for lack of merit, the complaint for illegal dismissal should be, as it is hereby DISMISSED. Respondent is, however, ordered to pay complainant the amount of Php 2,000.00 as indemnity, any retirement benefit complainant may be entitled to under the company's retirement plan and attorney's fees of 10% of the monetary award x x x.[29]

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[27] *Id.,* p. 30.

[28] *Id.*, p. 71.

[29] *Id.*, p. 62.

Petitioner reads the decretal portion of the 1993 NLRC Decision to mean that the respondent should be entitled to benefits *under the terms of the plan* in order to be paid under the decision. Interestingly, the petitioner is not alone in this view as the public respondent NLRC, through the OSG, in G.R. No. 113335 explained to the Court that "x x x it is but just and equitable, as respondent NLRC and the Labor Arbiter correctly pointed out, to award retirement benefits to said employee, if qualified under the retirement plan of petitioner."[30] Petitioner then points out that since respondent was only 36 years old and had rendered only 16 years of service, he was not qualified to receive retirement benefits under the company's retirement plan. It thus concludes that the March 28, 2003 Decision of the CA, as well as the Order of Labor Arbiter Villarosa dated September 2, 2003 that granted the respondent's motion for execution, is null and void for having been issued beyond and in excess of what is mandated under the 1993 NLRC decision.

We disagree with these submissions.

The 1993 NLRC decision whose execution is disputed has long been final and executory. This case is now almost eighteen (18) years old counted from the filing of the original complaint before the Labor Arbiter. It has gone to this Court once before and has been acted upon with finality. Thus, the termination of the present controversy is now long overdue. In the words of the CA Decision:

> Litigation must at some time be terminated, even at the risk of occasional errors, for public policy dictates that once a judgment becomes final, executory, and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party.[31]

All these we emphasize at the outset as we will not be diverted by arguments that will effectively reopen the 1993 NLRC decision to further litigation unless this is the only clear way to do justice

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[30] *Id.*, p. 119.

[31] *Nasser v. Court of Appeals*, G.R. No. 115829, June 5, 1995, 245 SCRA 20.

to the parties. One such mode of reopening the case to further litigation is to recognize and put into issue the eligibility terms of the petitioner's retirement plan as done in the 1998 NLRC decision that attempted to correct the 1993 NLRC decision long after the latter had lapsed to finality. Fortunately, the CA laid this question to rest when it ruled in CA-G.R. SP No. 58629 that:

> We note that the NLRC was in error in rendering the resolution dated July 29, 1998, correcting an already final judgment. Worse, they were trying to correct the already final judgment by using, as basis, the decision of Labor Arbiter Linsangan which they have previously modified. Worst, it was never prayed for by private respondent in its appeal dated May 28, 1996. Private respondent merely prayed that the Order dated May 14, 1996 of Labor Arbiter Reyes be set aside and a new on entered declaring that no valid service of the Order dated November 02, 1995 was made upon respondent PLDT. Thus, we rule that the decision dated July 29, 1998 of the NLRC was rendered with grave abuse of discretion in excess of its jurisdiction, hence null and void and without legal effect.[32]

To our mind, the only question now before us is the interpretation of the 1993 NLRC decision, that is, how this decision should be read and implemented in order to finally lay this long drawn out labor dispute to rest.

A critical point in appreciating the 1993 NLRC decision is the fact that it MODIFIED the Linsangan decision directing the petitioner to pay complainant Php 2,000.00 as indemnity and any retirement benefit he may be entitled to under the company's retirement plan.

An undisputed modification that the 1993 NLRC decision decreed is the deletion of the order for the payment of indemnity and attorney's fees. The deletion is based apparently on the lack of finding relating to any due process violation or to any ground for entitlement to attorney's fees.

A second obvious change, *and the one most material to the present dispute,* is the removal of the order for payment of

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[32] *Rollo*, pp. 50-51.

retirement benefits that the complainant "*may be entitled*" to under the company's retirement plan. The NLRC simply ordered *"the respondent to pay complainant benefits under its company retirement plan, less the amount of the lost collection and other outstanding obligations of the complainant with the company as of date"*; thus, removing the condition of "entitlement" found in the Labor Arbiter's decision. Why the NLRC so worded the dispositive portion of its decision is clarified by its own penultimate paragraph where the NLRC explained the basis for the modification, thus:

> Mindful however of the length of service of herein complainant with respondent company and considering further that the proximate cause of the loss of the collection is not solely attributable to him, the ***equitable solution*** would be for Mr. Reus to be entitled to the retirement benefits under the retirement plan.[33]

With this explanation, it immediately becomes clear that the NLRC was not ordering the payment of benefits under the plan because the respondent was entitled thereto *under the terms of the plan*, or that it entertained doubts about entitlement and was ordering payment if entitlement could be established. The NLRC apparently had other thoughts in mind; it wanted to order payment – not strictly based on the law for there was a cited cause for dismissal, nor on the eligibility terms of the company's retirement plan for he was not being retired – but on the basis of equity; it was simply applying the benefits of the plan as *a measure of what should be paid as "equitable solution,"* to quote directly from the words of the 1993 NLRC decision. Thus, its order for payment was clear, direct, and unfettered by any condition of entitlement or eligibility.

Significantly, whether such equitable grant is justified or not, legally correct or in error, or whether it is wise or unwise, are issues that are beyond the parties' reach at this time. We hasten to add that the NLRC decision and our affirmation of this decision cannot and should not be used as authority for issues relating to the terms of the company retirement plan; what we hereby affirm is the finality of the NLRC's equitable award and its

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[33] *Id.,* p. 71.

terms, not any issue on the interpretation or application of, or the entitlement under, the terms of the plan. With the NLRC decision now fully implemented through the garnishment of the *supersedeas* bond posted by the petitioner and the release of the proceeds to the respondent, this case is ready to be declared fully closed and terminated upon the finality of this Decision.

WHEREFORE, premises considered, we hereby *DENY* the petition for its failure to show any reversible error in the assailed Court of Appeals Decision of March 28, 2003 and Resolution of October 17, 2003, both of which are hereby declared *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 162089. July 9, 2008]

SILVESTRE P. ILAGAN doing business under the name and style "Infantry Surveillance Investigation Security Agency," *petitioner, vs.* **HON. COURT OF APPEALS (12th Division), NATIONAL LABOR RELATIONS COMMISSION (3rd Division), and PETER B. ORIAS, DOLORES PEREGRINO AND ROMELITO PUEBLO, SR.,** *respondents.*

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[*] 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.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATION COMMISSION; MANDATORY CONCILIATION/MEDIATION CONFERENCE; REQUIREMENTS.— Section 2, Rule V of the then New Rules of Procedure of the NLRC provides: *Section 2.* Mandatory Conciliation/Mediation Conference. – …. Should the parties arrive at any agreement as to the whole or any part of the dispute, the same shall be reduced to writing and signed by the parties and their respective counsels, if any[,] before the Labor Arbiter. In order to be valid, any agreement arrived at in the course of the mandatory conciliation and mediation conference should be in writing and signed by the parties, or their counsel, before the Labor Arbiter. In this case, no such written and duly signed evidence of any amicable settlement of the dispute, whether in whole or in part, was ever adduced. Thus, petitioner has no basis for claiming that the issue of illegal dismissal has been amicably settled.

2. ID.; TERMINATION OF EMPLOYMENT BY EMPLOYER; DISMISSAL OF EMPLOYEES MUST BE MADE IN ACCORDANCE WITH LAW; VIOLATION IN CASE AT BAR.— Concededly, employers have the right to terminate the services of an employee for a just or authorized cause. However, the dismissal of employees must be made in accordance with law. The burden of proof is always on the employer to prove that the dismissal was for a just or authorized cause. In this case, petitioner failed to prove (1) that the dismissal of private respondents was for a valid cause and (2) that he complied with the two- notice requirement of procedural due process. Hence, we are constrained to agree that this case is a matter of illegal dismissal.

3. ID.; ID.; ILLEGAL DISMISSAL; REMEDIES.— As for the *third* issue, Article 279 of the Labor Code, as amended by Section 34 of Republic Act No. 6715, states that: **ART. 279. Security of Tenure.** – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. **An employee who is unjustly dismissed from work shall be entitled to**

reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Thus, having been illegally dismissed, private respondents should be reinstated to their former positions without loss of seniority rights and other privileges. They should also be paid their full backwages, inclusive of allowances, and the monetary equivalent of other benefits, computed from the time their compensation was withheld from them up to the time of their actual reinstatement.

APPEARANCES OF COUNSEL

Cabio Law Offices & Associates for petitioner.

Carlos Voltaire M. Verzosa and *Glennaries M. Yamsuan* for respondents.

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* are the January 27, 2003 Decision[1] and the February 4, 2004 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 69878, which had affirmed the Decision[3] dated November 29, 2001, of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 025192-2000. The NLRC decision upheld the Labor Arbiter's finding of illegal dismissal against herein petitioner.

The facts are uncomplicated.

Petitioner Silvestre P. Ilagan is the president and proprietor of Infantry Surveillance Investigation Security Agency. The agency

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[1] *Rollo*, pp. 29-34. Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Conrado M. Vasquez, Jr. and Sergio L. Pestaño concurring.

[2] *Id*. at 36.

[3] CA *rollo*, pp. 17-22.

hired as security guards private respondents Peter B. Orias and Romelito Pueblo, Sr. on November 6, 1992 and October 4, 1995, respectively; and as head guard, private respondent Dolores Peregrino in December 1996. On separate occasions in 1998, they were orally informed by petitioner not to report for work anymore.

Private respondents filed with the Labor Arbiter separate complaints against petitioner for illegal dismissal. They claimed that they reported for work at their assigned workplaces for twelve-hour shifts; however, their salaries were below the minimum wage, they were not given 13th month pay, overtime pay, holiday pay, night shift differential, and the monthly ₱50 cash bond petitioner promised at the start of their employment.

In the course of the mandatory conciliation and mediation conference, the parties agreed that the only issue left was the payment of money claims. However, the parties later moved for the submission of their respective position papers, thereby terminating the conciliation and mediation conference.

Acting on the complaint for illegal dismissal and money claims, on April 28, 2000, the Labor Arbiter ruled against petitioner, thus:

> WHEREFORE, … judgment is hereby rendered in favor of complainants Peter B. Orias, Dolores Peregrino and Romelito Pueblo, Sr., and against respondent Infantry Surveillance Investigation Security Agency and/or Silvestre P. Ilagan, thus:
>
> a. Ordering respondent to immediately reinstate complainants to their former position without loss of seniority rights and other privileges, or at the option of respondent, payroll reinstatement;
>
> b. Ordering respondent to pay complainants their respective full backwages, inclusive of allowances and … other benefits or their monetary equivalent computed from the time complainants were separated from service up to the date of this decision;
>
> c. Ordering respondent to pay complainants their respective 13th month pays subject to the three (3) years prescriptive period.

x x x x x x x x x

SO ORDERED.[4]

The NLRC affirmed the ruling of the Labor Arbiter, to wit:

WHEREFORE, the appeal filed by respondents is hereby DENIED for lack of merit. The [D]ecision dated 28 April 2000 is AFFIRMED.

SO ORDERED.[5]

Petitioner's motion for reconsideration was denied for lack of merit. Undaunted, petitioner filed in the Court of Appeals a petition for *certiorari*, which was likewise dismissed, thus:

WHEREFORE, in view of all the foregoing, the instant petition is ***DENIED***. The November 29, 2001 Decision of the NLRC, Third Division, as well as its January 31, 2002 Resolution denying the Motion for Reconsideration of the petitioner are hereby ***AFFIRMED***.

SO ORDERED.[6]

Petitioner's motion for reconsideration was denied. Hence, the instant petition raising the following issues:

I.

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AND THEREFORE A REVERSIBLE ERROR IN AFFIRMING THE INCLUSION OF THE ISSUE OF ILLEGAL DISMISSAL IN THIS CASE;

II.

WHETHER OR NOT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION, AND THEREFORE A REVERSIBLE ERROR IN AFFIRMING THAT PRIVATE RESPONDENTS WERE ILLEGALLY DISMISSED; [AND]

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[4] *Id*. at 30.

[5] *Id*. at 22.

[6] *Rollo*, pp. 33-34.

III.

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING SERVICE INCENTIVE LEAVE PAY AND 13TH MONTH PAY TO PRIVATE RESPONDENTS.[7]

Petitioner contends the issue of illegal dismissal was already mooted by the parties' agreement, limiting the issue to money claims, allegedly arrived at during the conciliation and mediation conference. Petitioner insists absent proof of a positive act of dismissal, a complaint for illegal dismissal could not prosper. Petitioner claims private respondents simply resigned from their jobs, but he no longer presented the resignation letters to the Labor Arbiter simply because he thought the issue of illegal dismissal was already moot. Petitioner further avers that the awards of service incentive leave pay and 13th month pay are without basis.

Private respondents, for their part, counter that the issue of illegal dismissal was not amicably resolved. They stress that no compromise agreement or any actual settlement of the case ever materialized before the Labor Arbiter. They aver that they have substantially proven the fact of their illegal dismissal. Private respondents point out that it is now too late for petitioner to allege their supposed resignation.

The petition lacks merit.

Section 2, Rule V of the then New Rules of Procedure of the NLRC provides:

Section 2. Mandatory Conciliation/Mediation Conference. – ….

Should the parties arrive at any agreement as to the whole or any part of the dispute, the same shall be reduced to writing and signed by the parties and their respective counsels, if any[,] before the Labor Arbiter.

In order to be valid, any agreement arrived at in the course of the mandatory conciliation and mediation conference should

[7] *Id*. at 103-104.

be in writing and signed by the parties, or their counsel, before the Labor Arbiter.

In this case, no such written and duly signed evidence of any amicable settlement of the dispute, whether in whole or in part, was ever adduced. Thus, petitioner has no basis for claiming that the issue of illegal dismissal has been amicably settled.

It may be true that in the course of the mandatory conciliation and mediation conference, the parties agreed that the only issue left was the payment of money claims. However, the parties later moved for the submission of their respective position papers on the issues of both illegal dismissal and money claims, thereby terminating the conciliation and mediation conference. Clearly then, no amicable settlement at all was reached by the parties.

Anent the *second* issue, petitioner's belated submission that private respondents voluntarily resigned deserves no consideration. It should have been raised in the hearing before the Labor Arbiter. We are not prepared to indulge petitioner's defense that he thought illegal dismissal was no longer an issue. He could not have been unaware that during the conciliation and mediation conference, no agreement on either of the two issues was ever forged.

Concededly, employers have the right to terminate the services of an employee for a just or authorized cause. However, the dismissal of employees must be made in accordance with law. The burden of proof is always on the employer to prove that the dismissal was for a just or authorized cause.[8]

In this case, petitioner failed to prove (1) that the dismissal of private respondents was for a valid cause and (2) that he complied with the two- notice requirement of procedural due process. Hence, we are constrained to agree that this case is a matter of illegal dismissal.

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[8] *Mayon Hotel and Restaurant v. Adana*, G.R. No. 157634, May 16, 2005, 458 SCRA 609, 639.

As for the *third* issue, Article 279 of the Labor Code, as amended by Section 34 of Republic Act No. 6715,[9] states that:

> **ART. 279. Security of Tenure**. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. **An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement**. (Emphasis supplied.)

Thus, having been illegally dismissed, private respondents should be reinstated to their former positions without loss of seniority rights and other privileges. They should also be paid their full backwages, inclusive of allowances, and the monetary equivalent of other benefits, computed from the time their compensation was withheld from them up to the time of their actual reinstatement.

WHEREFORE, the petition is *DENIED*. The assailed January 27, 2003 Decision and the February 4, 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 69878, are *AFFIRMED*. The Decision dated April 28, 2000 of the Labor Arbiter is *REINSTATED with MODIFICATION*. Petitioner SILVESTRE P. ILAGAN, doing business under the name and style "Infantry Surveillance Investigation Security Agency" is *ORDERED* to:

1. **REINSTATE** private respondents PETER B. ORIAS, ROMELITO PUEBLO, SR., and DOLORES PEREGRINO to

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[9] AN ACT TO EXTEND PROTECTION TO LABOR, STRENGTHEN THE CONSTITUTIONAL RIGHTS OF WORKERS TO SELF-ORGANIZATION, COLLECTIVE BARGAINING AND PEACEFUL CONCERTED ACTIVITIES, FOSTER INDUSTRIAL PEACE AND HARMONY, PROMOTE THE PREFERENTIAL USE OF VOLUNTARY MODES OF SETTLING LABOR DISPUTES, AND REORGANIZE THE NATIONAL LABOR RELATIONS COMMISSION, AMENDING FOR THESE PURPOSES CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES, approved on March 6, 1989.

their former positions without loss of seniority rights and other privileges; and

2. **PAY** private respondents their respective full backwages, inclusive of allowances, and the monetary equivalent of other benefits, computed from the time compensation was withheld up to the time of their actual reinstatement.

No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 163876. July 9, 2008]

ROSALINA CLADO-REYES, ALICIA REYES-POTENCIANO, ANTONIO C. REYES, BERNARDO C. REYES, JOVITO C. REYES, MARIA REYES-DIZON, BERNARDA REYES-LLANZA, deceased represented by BONG R. LLANZA and REYNALDO C. REYES (deceased), represented by NINO R. REYES, *petitioners, vs.* **SPOUSES JULIUS and LILY LIMPE,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; OWNERSHIP; ACTION FOR QUIETING OF TITLE; CONSTRUED.— An action for quieting of title originated in equity jurisprudence to secure an adjudication that a claim of title to or an interest in property, adverse to that of the complainant, is invalid, so that the complainant and those claiming under him may be forever free from any danger of hostile claim. Thus, our courts are tasked to determine the respective rights of the contending parties,

not only to put things in their proper places, but also to benefit both parties, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use and even to abuse the property as he may deem best.

2. ID.; ID.; ID.; ID.; REQUISITES.— Under Articles 476 and 477 of the New Civil Code, there are two indispensable requisites in order that an action to quiet title could prosper: (1) that the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) that the deed, claim, encumbrance or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.

3. REMEDIAL LAW; CIVIL PROCEDURE; HE WHO ALLEGES HAS THE BURDEN OF PROVING THE ALLEGATION WITH THE REQUISITE QUANTUM OF EVIDENCE. — Time and again we have held that a mere allegation is not evidence, and he who alleges has the burden of proving the allegation with the requisite quantum of evidence. x x x In civil cases, the plaintiff must establish his cause of action by preponderance of evidence; otherwise, his suit will not prosper. After carefully considering the arguments of the parties, as well as their respective evidence, we unanimously agree that the petitioners were not able to prove that they have any legal or equitable title over the disputed lot. Thus, we find no reversible error in the assailed decisions of the courts below.

APPEARANCES OF COUNSEL

Ernesto M. Tomaneng for petitioners.
Mario P. Ontal for respondents.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review seeks to set aside the Decision[1] dated February 20, 2004 and the Resolution[2] dated June 9, 2004, of the Court of Appeals in CA-G.R. CV No. 70170, which had affirmed the Decision[3] dated January 9, 2001 of the Regional Trial Court (RTC), Branch 81, of Malolos, Bulacan in Civil Case No. 61-M-95 for quieting of title, reconveyance and damages.

Subject of the present controversy is a 2,445-square meter portion of a certain lot in Guiguinto, Bulacan covered by Transfer Certificate of Title (TCT) No. RT-32498 (T-199627),[4] having a total lot area of 20,431 square meters, more or less.

On February 1, 1995,[5] petitioners filed an action to quiet title, reconveyance and damages against respondents and alleged that they have been occupying the disputed lot since 1945 through their predecessor-in-interest, Mamerto B. Reyes. They claimed that during his lifetime, Mamerto had accepted a verbal promise of the former lot owner, Felipe Garcia, to give the disputed lot to him in exchange for the surrender of his tenancy rights as a tiller thereof. To prove that Mamerto was a former tenant of Felipe; that during his lifetime he had worked on the lot; and that he owned and possessed the same,[6] petitioners presented

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[1] *Rollo,* pp. 17-23. Penned by Associate Justice Eloy R. Bello, Jr., with Associate Justices Amelita G. Tolentino and Arturo D. Brion (now a member of this Court) concurring.

[2] *Id*. at 29.

[3] Records, Vol. 1, pp. 621-624. Penned by Acting Presiding Judge Oscar P. Barrientos.

[4] *Id*. at 7.

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

[6] *Id*. at 326-327.

two documents, namely: (1) Certification[7] dated October 12, 1979 and (2) "*Pagpapatunay*"[8] dated November 17, 1982 allegedly executed by Simeon I. Garcia, the eldest son of Felipe, attesting to such facts. Petitioners also alleged that whenever respondents visited the lot, respondent Julius Limpe would promise to deliver the certificate of title to them. However, sometime in October 1994,

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[7] *Id*. at 338.

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that the deceased MAMERTO REYES had been and used to be a tenant and agricultural worker of our late father, MR. FELIPE GARCIA, in our small agricultural lot in Barrio Cabay, Guiguinto, Bulacan from the period since post liberation year of 1945 up to sometime in the year 1959 prior to the . . . disposition of said lot to a certain MR. JOSE GARIN.

x x x x x x x x x

(signed)
SIMEON I. GARCIA
Judge
City Court of Manila, Br. I
(Eldest Son of the late Felipe Garcia)

[8] *Id*. at 337.

P A G P A P A T U N A Y

Ako na si SIMEON I. GARCIA . . . ay nagpapatunay:

Na ang namatay na si MAMERTO REYES... ay aming ginawang tagapagsaka ng aking namatay na ama na si FELIPE GARCIA, sa aming maliit na taniman na lote sa Barrio Cabay, Guiguinto, Bula[c]an, simula noong taong, 1945, hanggang taong 1959;

Na ayon sa nakita ko ang sukat ng lupang kanilang dapat na magawi sa nasabing Mamerto Reyes... ay may sukat na 2,445 metros kuadrados humigit kumulang na karatig ng Sapang Guiguinto, na may lapad na 16 na metros hanggang sa sulot ng Corner 6 simula sa gawing SUR na makikita sa Sketch ng plano.

Na ayon dito sa pagkaka alam ko ang nasabing lupa ay nagkaruon na ng Cadastral Lot No. 1159, ngunit ang nasabing dapat na makuha ng Mamerto Reyes, ay nasakop ng nasabing Lote ng ito ay cadastruhin.

x x x x x x x x x

(signed)
SIMEON I. GARCIA
Nagpapatunay

petitioners received a letter[9] from respondents asserting ownership over the disputed lot.

In their answer, respondents contended that they are the legal owners of the lot by virtue of a Deed of Exchange of Real Estate[10] and Deed of Absolute Sale[11] executed on July 5, 1974 and February 28, 1974, respectively, between them and Farm-Tech Industries, Incorporated. To further assert ownership over the lot, they presented TCT No. T-199627, Tax Declaration Nos. 15172[12] and 9529[13] and realty tax receipts[14] of the lot, which were all registered and declared in their names.

In its Decision dated January 9, 2001, the trial court ruled in favor of respondents and held that the certificate of title, tax declarations and realty tax receipts presented in court indisputably established respondents' ownership over the lot. The certificate of title was registered in respondents' names and the realty tax receipts showed that respondents consistently paid the corresponding real property taxes. These pieces of evidence, said the trial court, prevail over petitioners' allegation of an "undocumented promise" by the former lot owner, which in itself, is ineffective or unenforceable under the law. Accordingly, the trial court ordered petitioners to reconvey the disputed lot to respondents.

On February 20, 2004, the Court of Appeals affirmed the trial court's ruling and held that petitioners have no title whatsoever upon which respondents' title could cast a cloud, as they were the ones casting doubt on respondents' title.[15] It held that the documents allegedly executed by Simeon I. Garcia showed no *indicia* that the alleged owner, Felipe Garcia, donated the disputed

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[9] *Id*. at 335-336.

[10] *Id*. at 479-481.

[11] *Id*. at 477-478.

[12] *Id*. at 474.

[13] *Id*. at 475.

[14] *Id*. at 485-492 and 494.

[15] *Rollo*, p. 11.

lot to them. It further held that Simeon I. Garcia was not the real owner of the lot; thus, he could not make an effective conveyance thereof. Consequently, it upheld respondents' title over the disputed lot. The decretal portion of the decision reads,

> WHEREFORE, the appeal is hereby DISMISSED. The decision of the Regional Trial Court of Malolos, Bulacan, Branch 81, dated January 9, 2001 is AFFIRMED.
>
> SO ORDERED.[16]

Petitioners now before this Court raise the sole issue of:

> WHETHER THE [PETITIONERS] HAVE A CAUSE OF ACTION TO QUIET TITLE, RECONVEYANCE AND DAMAGES AGAINST RESPONDENTS.[17]

Petitioners cite Section 4[18] of Article XIII of the 1987 Constitution and Section 2[19] of the Comprehensive Agrarian

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[16] *Id*. at 23.

[17] *Id*. at 84-85.

[18] SEC. 4. **The State shall, by law, undertake an agrarian reform program 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 farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the rights of small landowners. The State shall further provide incentives for voluntary land-sharing. (Emphasis supplied.)

[19] SEC. 2. *Declaration of Principles and Policies*.–It is the policy of the State to pursue a Comprehensive Agrarian Reform Program (CARP). …

To this end, **a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation**..., **shall be undertaken to provide farmers and farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.**

The agrarian reform program is founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till…

x x x (Emphasis supplied.)

Reform Law and state that their title was founded upon those provisions, which were enacted for the benefit of farmers, majority of whom are educationally deficient, if not uneducated. Next, they contend that respondents are not purchasers in good faith because they were fully aware of petitioners' actual possession of the lot when they purchased the same. Conformably, according to petitioners, respondents are liable for damages under Article 19[20] of the Civil Code of the Philippines.

Respondents counter that they are the true and lawful owners of the disputed lot as evidenced by TCT No. RT-32498 (T-199627), Tax Declaration Nos. 15172 and 9529 and realty tax receipts, all registered and declared in their names. They claim that they are buyers in good faith when they purchased the lot from Farm-Tech Industries, Incorporated, free from all liens and encumbrances. They aver that they are not obliged to go beyond the face of a TCT in the absence of any cloud therein.

Respondents also argue that petitioners' cause of action must fail because they failed to prove (1) that their predecessor-in-interest, Mamerto B. Reyes, was a farmer; (2) that the lot was agricultural and not a commercial lot; and (3) that they are qualified beneficiaries under the agrarian reform law. They point out that Simeon I. Garcia, who allegedly executed the Certification and "*Pagpapatunay*," was not presented in court to prove the veracity of the contents of those two documents. They also aver that the property mentioned in the document "*Pagpapatunay*" was not specifically described as the property litigated herein. Thus, according to respondents, those documents have no binding effect on third persons, are hearsay, and have no probative value.

After considering the submissions of the parties and the issue before us, we are in agreement that the petition lacks merit.

To begin with, an action for quieting of title originated in equity jurisprudence to secure an adjudication that a claim of

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[20] ART. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

title to or an interest in property, adverse to that of the complainant, is invalid, so that the complainant and those claiming under him may be forever free from any danger of hostile claim. Thus, our courts are tasked to determine the respective rights of the contending parties, not only to put things in their proper places, but also to benefit both parties, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use and even to abuse the property as he may deem best.[21]

Under Articles 476[22] and 477[23] of the New Civil Code, there are two indispensable requisites in order that an action to quiet title could prosper: (1) that the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) that the deed, claim, encumbrance or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.[24]

To prove their case, petitioners merely cited Section 4 of Article XIII of the 1987 Constitution and Section 2 of the Comprehensive Agrarian Reform Law and stated that their title was founded upon those provisions. They hardly argued on the

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[21] *Heirs of Susana De Guzman Tuazon v. Court of Appeals*, G.R. No. 125758, January 20, 2004, 420 SCRA 219, 226, citing *Baricuatro, Jr. v. Court of Appeals,* G.R. No. 105902, February 9, 2000, 325 SCRA 137, 146-147.

[22] ART. 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

[23] ART. 477. The plaintiff must have legal or equitable title to, or interest in the real property which is the subject matter of the action. He need not be in possession of said property.

[24] *Heirs of Enrique Diaz v. Virata,* G.R. No. 162037, August 7, 2006, 498 SCRA 141, 162.

matter. Neither was there positive evidence (1) that their predecessor had legal title, *i.e.,* a certificate of land transfer;[25] (2) that the lot was an agricultural lot and not a commercial one as contended by respondents; and (3) that they are qualified beneficiaries under the Agrarian Reform Law. Time and again we have held that a mere allegation is not evidence, and he who alleges has the burden of proving the allegation with the requisite quantum of evidence.[26]

Next, the documentary evidence petitioners presented, namely, the "Certification" and "*Pagpapatunay*," did not confirm their title over the disputed lot. First, original copies of those documents were not presented in court.[27] Second, as the appellate court pointed out, Simeon I. Garcia, the declarant in those documents,

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[25] *Del Castillo v. Orciga,* G.R. No. 153850, August 31, 2006, 500 SCRA 498, 505-506 (A Certificate of Land Transfer (CLT) is a document issued to a tenant-farmer, which proves **inchoate ownership** of an agricultural land… It is issued in order for the tenant-farmer to acquire the land. This certificate prescribes the terms and conditions of ownership over said land and likewise describes the landholding—its area and its location. A CLT is the provisional title of ownership over the landholding while the lot owner is awaiting full payment of the land's value or for as long as the beneficiary is an "amortizing owner.")

[26] *Heirs of Basanes v. Cortes*, OCA IPI No. 01-1065-P, March 31, 2003, pp. 1, 5 (Unsigned Resolution).

[27] RULES OF COURT, Rule 130,

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;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office. (Emphasis supplied.)

was not presented in court to prove the veracity of their contents.[28] Third, even a cursory examination of those documents would not show any transfer or intent to transfer title or ownership of the disputed lot from the alleged owner, Felipe Garcia, to petitioners or their predecessor-in-interest, Mamerto B. Reyes. Fourth, petitioners did not bother to adduce evidence that Simeon I. Garcia, as the eldest son of the late Felipe Garcia, inherited the entire lot as to effectively convey title or ownership over the disputed lot, *i.e.* thru extrajudicial settlement of the estate of the late Felipe Garcia. Accordingly, we agree that the documents allegedly executed by Simeon I. Garcia are purely hearsay and have no probative value.

In contrast, respondents presented evidence which clearly preponderates in their favor. First, the transfer certificate of title, tax declarations and realty tax receipts were all in their names. Second, pursuant to the Torrens System, TCT No. RT-32498 (T-199627) enjoys the conclusive presumption of validity and is the best proof of ownership of the lot.[29] Third, although tax declarations or realty tax receipts are not conclusive evidence of ownership, nevertheless, they are good *indicia* of possession in the concept of an 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. As we previously held, such realty tax payments constitute proof that the holder has a claim of title over the property.[30]

Worth stressing, in civil cases, the plaintiff must establish his cause of action by preponderance of evidence; otherwise, his suit will not prosper.[31] After carefully considering the arguments of the parties, as well as their respective evidence, we unanimously agree that the petitioners were not able to prove that they have

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[28] *Rollo*, p. 19.

[29] Records, Vol. I, p. 7.

[30] *Cuenco v. Cuenco Vda. de Manguerra,* G.R. No. 149844, October 13, 2004, 440 SCRA 252, 264-265.

[31] *San Pedro v. Lee*, G.R. No. 156522, May 28, 2004, 430 SCRA 338, 347-348.

any legal or equitable title over the disputed lot. Thus, we find no reversible error in the assailed decisions of the courts below.

WHEREFORE, the instant petition is *DENIED* for utter lack of merit. The Decision dated February 20, 2004 and the Resolution dated June 9, 2004, of the Court of Appeals in CA-G.R. CV No. 70170 are *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Carpio,[*] *Carpio Morales, Tinga,* and *Velasco, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 165147. July 9, 2008]

PHILIPPINE FIRST INSURANCE CO., INC. and PARAMOUNT GENERAL INSURANCE CORPORATION, *petitioners, vs.* **PYRAMID LOGISTICS AND TRUCKING CORPORATION (formerly PANACOR INTEGRATED WAREHOUSING AND TRUCKING CORPORATION),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; THE PARTY CLAIMING DAMAGES HAS THE DUTY TO SPECIFY THE AMOUNT SOUGHT; RATIONALE. — Consider this Court's pronouncement bearing on the matter in *Ayala Corporation v. Madayag*: x x x Apparently, the trial court misinterpreted paragraph 3 of the [*Sun Insurance*] ruling of this Court wherein it stated that "where the judgment awards a claim not specified in the pleading, or if specified, the same

[*] Additional member in place of Associate Justice Arturo D. Brion who took no part due to prior action in the Court of Appeals.

has been left for the determination of the court, the additional filing fee therefor shall constitute a lien on the judgment" by considering it to mean that where in the body and prayer of the complaint there is a prayer xxx the amount of which is left to the discretion of the Court, there is no need to specify the amount being sought, and that any award thereafter shall constitute a lien on the judgment. x x x While it is true that the determination of certain damages x x x is left to the sound discretion of the court, it is the **duty of the parties** claiming such damages **to specify** the amount sought on the basis of which the court may make a proper determination, and for the proper assessment of the appropriate docket fees. The **exception** contemplated as to claims not specified or to claims although specified are left for determination of the court is limited only to any damages that may arise **after the filing of the complaint or similar pleading** for then it will not be possible for the claimant to specify nor speculate as to the amount thereof.

2. LEGAL ETHICS; ATTORNEYS; DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE, SUSTAINED.— The Court at this juncture thus reminds Pyramid's counsel to observe Canon 12 of the Code of Professional Ethics which enjoins a lawyer to "exert every effort and consider it his duty to assist in the speedy and efficient administration of justice," and Rule 12.04 of the same Canon which enjoins a lawyer "not [to] unduly delay a case, impede the execution of a judgment or misuse court processes." And the Court reminds too the trial judge to bear in mind that the nature of an action is determined by the allegations of the pleadings and to keep abreast of all laws and prevailing jurisprudence, consistent with the standard that magistrates must be the embodiments of competence, integrity and independence.

APPEARANCES OF COUNSEL

Astorga and Repol Law Offices for petitioners.
Manuel S. Fonacier, Jr. for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

The issue, in the main, in the present case is whether respondent, Pyramid Logistics and Trucking Corporation (Pyramid), which filed on November 7, 2001 a complaint,[1] denominated as one for *specific performance and damages*, against petitioners Philippine First Insurance Company, Inc. (Philippine First) and Paramount General Insurance Corporation (Paramount) before the Regional Trial Court (RTC) of Makati, docketed as Civil Case No. 01-1609, paid the correct docket fee; if in the negative, whether the complaint should be dismissed or Pyramid can still be ordered to pay the fee.

Pyramid sought to recover the proceeds of two insurance policies issued to it, Policy No. IN-002904 issued by petitioner Paramount, and Policy No. MN-MCL-HO-00-0000007-00 issued by petitioner Philippine First. Despite demands, petitioners allegedly failed to settle them, hence, it filed the complaint subject of the present petition.

In its complaint, Pyramid alleged that on November 8, 2000, its delivery van bearing license plate number PHL-545 which was loaded with goods belonging to California Manufacturing Corporation (CMC) valued at PESOS NINE HUNDRED SEVEN THOUSAND ONE HUNDRED FORTY-NINE AND SEVEN/100 (₱907,149.07) left the CMC Bicutan Warehouse but the van, together with the goods, failed to reach its destination and its driver and helper were nowhere to be found, to its damage and prejudice; that it filed a criminal complaint against the driver and the helper for qualified theft, and a claim with herein petitioners as co-insurers of the lost goods but, in violation of petitioners' undertaking under the insurance policies, they refused without just and valid reasons to compensate it for the loss; and that as a direct consequence of petitioners' failure, despite repeated demands, to comply with their respective undertakings under the Insurance Policies by compensating for the value of the

[1] Records, pp. 1-5.

lost goods, it suffered damages and was constrained to engage the services of counsel to enforce and protect its right to recover compensation under said policies, for which services it obligated itself to pay the sum equivalent to twenty-five (25%) of any amount recovered as and for attorney's fees and legal expenses.[2]

Pyramid thus **prayed**

> . . . that after due proceedings, judgment be rendered, ordering [herein petitioners] to comply with their obligation under their respective Insurance Policies by paying to [it] jointly and severally, the claims arising from the subject losses.
>
> THAT, [herein petitioners] be adjudged jointly and severally to pay to [it], in addition to the foregoing, the following:
>
> 1. The sum of PHP 50,000.00 plus PHP 1,500.00 for each Court session attended by counsel until the instant [case] is finally terminated, as and for attorney's fees;
>
> 2. The costs of suit[;][3] (Underscoring supplied)

and for other reliefs just and equitable in the premises.[4]

Pyramid was assessed ₱610 docket fee, apparently on the basis of the amount of ₱50,000 **specified** in the prayer representing attorney's fees, which it duly paid.[5]

Pyramid later filed a 1st Amended Complaint[6] containing minor changes in its body[7] but bearing the same prayer.[8] Branch 148 of the Makati RTC to which the complaint was raffled admitted the Amended Complaint.[9]

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[2] *Id*. at 2-3.

[3] *Id*. at 4.

[4] *Ibid*.

[5] *Id*. at 17.

[6] *Id*. at 21-25.

[7] *Vide id*. at 22-24.

[8] *Id*. at 24.

[9] *Id*. at 26.

Petitioners filed a Motion to Dismiss on the ground of, *inter alia*, lack of jurisdiction, Pyramid not having paid the docket fees in full, arguing thus:

x x x x x x x x x

In the *body* of the Amended Complaint, plaintiff alleged that the goods belonging to California Manufacturing Co., Inc. (CMC) is [*sic*] "valued at Php907,149.07" and consequently, "plaintiff incurred expenses, suffered damages and was constrained to engage the services of counsel to enforce and protect its right to recover compensation under the said policies and for which services, it obligated itself to pay the sum equivalent to twenty-five (25%) of any recovery in the instant action, as and for attorney's fees and legal expenses."

On the other hand, in the *prayer* in the Complaint, plaintiff deliberately omitted to specify what these damages are. x x x

x x x x x x x x x

Verily, this deliberate omission by the plaintiff is clearly intended for no other purposes than to evade the payment of the correct filing fee if not to mislead the docket clerk, in the assessment of the filing fee. In fact, the docket clerk in the instant case charged the plaintiff a total of **Php610.00** only as a filing fee, which she must have based on the amount of **Php50,000.00** [attorney's fees] only.[10] (Emphasis in the original; italics and underscoring supplied)

Petitioners cited[11] *Manchester Development Corporation v. Court of Appeals*[12] which held:

x x x [A]ll complaints, petitions, answers and other similar pleadings should **specify the amount of damages** being prayed for not only in the **body** of the pleading but also in the **prayer**, and said damages shall be considered in the assessment of the filing fees in any case. Any pleading that fails to comply with this requirement shall not be accepted or admitted, or shall otherwise be expunged from the record.[13] (Emphasis and underscoring supplied)

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[10] *Id*. at 34-35.

[11] *Id*. at 35.

[12] G.R. No. 75919, May 7, 1987, 149 SCRA 562.

[13] *Id*. at 569.

They cited too *Sun Insurance Office, Ltd. v. Asuncion*[14] which held that "[i]t is not simply the filing of the complaint or appropriate pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject-matter or nature of the action."[15]

Petitioners thus concluded:

> With the above cases as a backdrop, the Supreme Court, in revising the rules of pleading and practice in the 1997 Rules of Civil Procedure, added a tenth ground to a Motion to Dismiss – to wit, "[t]hat a condition precedent for filing claim [*sic*] has not been complied with.["]
>
> On the contrary, if plaintiff would insist that its claim against the defendants is only Php50,000.00 plus Php 1,500.00 as appearance fee per court hearing, then it follows that it is the Metropolitan Trial Court which has jurisdiction over this case, not this Honorable Court. Such amount is way below the minimum jurisdictional amount prescribed by the rules in order to confer jurisdiction to the Regional Trial Court.[16] (Underscoring supplied)

To the Motion to Dismiss Pyramid filed its Opposition,[17] alleging that if there was a mistake in the assessment of the docket fees, the trial court was not precluded from acquiring jurisdiction over the complaint as "it has the authority to direct the mistaken party to complete the docket fees in the course of the proceedings . . ."[18] The Opposition merited a Reply[19] from petitioners.

By Order of June 3, 2002, the trial court[20] denied the Motion to Dismiss in this wise:

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[14] G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274.

[15] *Id*. at 285.

[16] Records, pp. 35-36.

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

[18] *Id*. at 49. Citations omitted.

[19] *Id*. at 57-62.

[20] Presided by Judge Oscar B. Pimentel.

x x x x x x x x x

Indeed, a perusal of the Complaint reveals that while plaintiff made mention of the value of the goods, which were lost, the prayer of plaintiff did not indicate its exact claim from the defendants. The Complaint merely prayed defendants "*to comply with their obligation under their respective insurance policies by paying to plaintiff jointly and severally, the claims arising from the subject losses"* and did not mention the amount of PHP907,149.07, which is the value of the goods and which is also the subject of insurance. This resulted to the assessment and payment of docket fees in the amount of ₱610 only. The Court, even without the Motion to Dismiss filed by defendant, actually noted such omission which is actually becoming a practice for some lawyers. For whatever purpose it may be, the Court will not dwell into it. In this instant case, **this being for specific performance**, it is not dismissible on that ground but unless proper docket fees are paid, the Court can only grant what was prayed for in the Complaint.

x x x[21] (Emphasis and underscoring supplied)

Petitioners' Motion for Reconsideration[22] of the denial of their Motion to Dismiss having been denied[23] by Order of August 1, 2002, they filed their Answer with Compulsory Counterclaim *ad Cautelam*,[24] alleging that they intended to file a Petition for *Certiorari* with the Court of Appeals.[25]

Petitioners did indeed eventually file before the Court of Appeals a Petition for *Certiorari* (With Preliminary Injunction and Urgent Prayer for Restraining Order)[26] posing the following two of three queries, *viz*:

First. Does [Pyramid's] deliberate omission to pay the required correct docket and filing fee vest the trial court [with] jurisdiction to entertain the subject matter of the instant case?

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[21] Records, p. 65.

[22] *Id*. at 66-72.

[23] *Id*. at 76-80.

[24] *Id*. at 81-86.

[25] *Id*. at 81.

[26] CA *rollo*, pp. 2-22.

Second. [Is] the instant case an action for specific performance or simply one for damages or recovery of a sum of money?

x x x x x x x x x[27]

By Decision of June 3, 2004,[28] the Court of Appeals partially granted petitioners' petition for *certiorari* by setting aside the trial judge's assailed orders and ordering Pyramid to file the correct docket fees within a reasonable time, it holding that while the complaint was denominated as one for specific performance, it sought to recover from petitioners Pyramid's "claims arising from the subject losses." The appellate court ratiocinated:

x x x x x x x x x x x x

Indeed, it has been held that "it is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee that vests a trial court with jurisdiction over the subject matter or nature of the action." To determine the docket fees, it is necessary to **determine the true nature of the action by examining the allegations of the complaint**. x x x

x x x x x x x x x x x x

While the captions of the complaint and 1st amended complaint denominated the case as one for "Specific Performance and Damages", the allegations and prayer therein show that the specific performance sought by private respondent was for petitioners to "comply with their obligation under their respective Insurance Policies by **paying to plaintiff jointly and severally, the claims arising from the subject losses"** as well as the attorney's fees and costs of suit. Obviously, what constitutes specific performance is the payment itself by petitioners of private respondent's claims arising from the losses it allegedly incurred. x x x[29]

x x x x x x x x x x x x

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[27] *Id*. at 7.

[28] Penned by Court of Appeals Associate Justice Fernanda Lampas Peralta, with the concurrence of Associate Justices Portia Aliño Hormachuelos and Josefina Guevarra-Salonga, *id*. at 82-94.

[29] *Id*. at 85-86.

Public respondent should have ordered private respondent to pay the correct docket fees on the basis of the allegations of the complaint. x x x

x x x x x x x x x

While it has been held in *Manchester Development Corporation vs. Court of Appeals* x x x that "any pleading that fails to comply with this requirement of specifying the amount of damages not only in the body of the pleading but also in the prayer shall not be accepted nor admitted, or shall otherwise be expunged from the record," this rule was relaxed in subsequent cases, wherein **payment of the correct docket fees was allowed within a reasonable time**. . .

x x x[30] (Emphasis and underscoring supplied)

Thus the appellate court disposed:

WHEREFORE, the petition is partially granted. The Orders dated June 3, 2002 and August 1, 2002 of public respondent are partially set aside insofar as they dispensed with the payment of the correct docket fees. Consequently, [Pyramid] is hereby directed to **pay the correct docket fees on the basis of the losses alleged in the body of the complaint, plus the attorney's fees mentioned in the prayer, within a reasonable time** which should not go beyond the applicable prescriptive or reglementary period. In all other respects, the said Orders are affirmed.[31] (Underscoring supplied)

Petitioners filed a Motion for Reconsideration[32] of the appellate court's decision. Pyramid filed its Comment and Opposition to the Motion for Reconsideration,[33] arguing thus:

x x x x x x x x x

In the present case, [Pyramid] thru its Complaint simply sought from petitioners compliance with their contractual undertaking as insurers of the goods insured which were lost in [its] custody. Private respondent did not specify the extent of petitioners' obligation as

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[30] *Id*. at 89-90. Citations omitted.

[31] *Id*. at 94. Citations omitted.

[32] *Id*. at 96-103.

[33] *Id*. at 119-121.

it left the matter entirely in the judgment of the trial court to consider. Thus, the Complaint was labeled "*Specific Performance"* which [Pyramid] submitted to the Clerk of Court for assessment of the docket fee, after which, it paid the same based on the said assessment. There was no indication whatsoever that [Pyramid] had refused to pay; rather, it merely argued against petitioners' submissions as it maintained the correctness of the assessment made.[34] (Underscoring supplied)

By Resolution of August 23, 2004, the Court of Appeals denied petitioners' Motion for Reconsideration;[35] hence, the present Petition for Review on *Certiorari*,[36] raising the issues of whether the appellate court erred:

. . . WHEN IT APPLIED IN THE INSTANT CASE THE LIBERAL RULE ENUNCIATED IN *SUN INSURANCE OFFICE, LTD. (SIOL) VS. ASUNCION*, 170 SCRA 274 AND *NATIONAL STEEL CORPORATION VS. COURT OF APPEALS,* 302 SCRA 523 (1999) IN RESPECT TO THE PAYMENT OF THE PRESCRIBED FILING AND DOCKET FEES DESPITE CLEAR SHOWING OF RESPONDENT'S INTENTION TO EVADE THE PAYMENT OF THE CORRECT DOCKET FEE WHICH WARRANTS THE APPLICATION OF THE DOCTRINE LAID DOWN IN *MANCHESTER DEVELOPMENT CORPORATION VS. COURT OF APPEALS*, 149 SCRA 562.

. . . WHEN IT DID NOT APPLY THE RULING OF THIS HONORABLE TRIBUNAL IN *MARCOPPER MINING CORPORATION VS. GARCIA*, 143 SCRA 178, *TAN VS. DIRECTOR OF FORESTRY*, 125 SCRA 302, AND *CHINA ROAD AND BRIDGE CORPORATION VS. COURT OF APPEALS*, 348 SCRA 401.[37] (Underscoring supplied)

Petitioners invoke the doctrine in *Manchester Development Corporation v. Court of Appeals*[38] that a pleading which does

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[34] *Id*. at 120.

[35] *Id*. at 123-124.

[36] *Rollo*, pp. 3-23.

[37] *Rollo*, p. 7.

[38] *Supra* note 12.

not specify in the prayer the amount sought shall not be admitted or shall otherwise be expunged, and that the court acquires jurisdiction only upon the payment of the prescribed docket fee.[39]

Pyramid, on the other hand, insists, in its Comment on the Petition,[40] on the application of *Sun Insurance Office, Ltd. (SIOL) v. Asuncion*[41] and subsequent rulings relaxing the *Manchester* ruling by allowing payment of the docket fee within a reasonable time, in no case beyond the applicable prescriptive or reglementary period, where the filing of the initiatory pleading is not accompanied by the payment of the prescribed docket fee.[42]

In *Tacay v. Regional Trial Court of Tagum, Davao del Norte*,[43] the Court clarified the effect of the *Sun Insurance* ruling on the *Manchester* ruling as follows:

> As will be noted, the requirement in Circular No. 7 [of this Court which was issued based on the *Manchester* ruling[44]] that complaints, petitions, answers, and similar pleadings should specify the amount of damages being prayed for not only in the body of the pleading but also in the prayer, has not been altered. What has been revised is the rule that subsequent "amendment of the complaint or similar pleading will not thereby vest jurisdiction in the Court, much less the payment of the docket fee based on the amount sought in the amended pleading," the trial court now being authorized to **allow payment of the fee within a reasonable time** but in no case beyond the applicable prescriptive period or reglementary period. Moreover, a new rule has been added, governing the awards of claims not specified in the pleading – *i.e.*, damages arising **after** the filing of the complaint or similar pleading – as to which the additional filing fee therefore shall constitute a lien on the judgment.

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[39] *Vide id*. at 569; *rollo*, pp. 8-9.

[40] *Rollo,* pp. 61-64.

[41] G.R. Nos. 79937-39, February 13, 1989, 170 SCRA 274.

[42] *Vide id*. at 285; *rollo*, p. 82.

[43] G.R. Nos. 88075-77, December 20, 1989, 180 SCRA 433.

[44] *Vide id*. at 442; Supreme Court Circular No. 7-88, March 24, 1988.

Now, under the Rules of Court, docket or filing fees are assessed on the basis of the "sum claimed," on the one hand, or the "value of the property in litigation or the value of the estate," on the other. . .

Where the action is purely for the recovery of money or damages, the docket fees are assessed on the basis of the aggregate amount claimed, exclusive only of interests and costs. In this case, the complaint or similar pleading should, according to Circular No. 7 of this Court, "specify the amount of damages being prayed for not only in the body of the pleading but also in the prayer, and said damages shall be considered in the assessment of filing fees in any case."

Two situations may arise. One is where the complaint or similar pleading sets out a claim purely for money and damages and there is no statement of the amounts being claimed. In this event the rule is that the pleading will "not be accepted nor admitted, or shall otherwise be expunged from the record." In other words, the complaint or pleading may be dismissed, or the claims as to which amounts are unspecified may be expunged, although as aforestated the Court may, on motion, permit amendment of the complaint and payment of the fees provided the claim has not in the meantime become time-barred. The other is where the pleading does specify the amount of every claim, but the fees paid are insufficient; and here again, the rule now is that the court may allow a reasonable time for the payment of the prescribed fees, or the balance thereof, and upon such payment, the defect is cured and the court may properly take cognizance of the action, unless in the meantime prescription has set in and consequently barred the right of action.[45] (Emphasis and underscoring supplied)

Indeed, Pyramid captioned its complaint as one for "specific performance and damages" even if it was, as the allegations in its body showed, seeking in the main the collection of its claims-sums of money representing losses the amount of which it, by its own admission, "knew."[46] And, indeed, it failed to specify in its prayer in the complaint the amount of its claims/damages.

When Pyramid amended its complaint, it still did not specify, in its prayer, the amount of claims/damages it was seeking. In

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[45] *Tacay v. Regional Trial Court of Tagum, Davao del Norte*, G.R. Nos. 88075-77, December 20, 1989, 180 SCRA 433, 442-443. Citations omitted.

[46] *Vide* Pyramid's Memorandum dated May 18, 2005, p. 9, *rollo*, pp. 73-84.

fact it has the audacity to inform this Court, in its Comment on the present Petition, that

> x x x In the natural order of things, when a litigant is given the opportunity to spend less for a docket fee after submitting his pleading for assessment by the Office of the Clerk of Court, he would not decline it inasmuch as to request for a higher assessment under the circumstances [for such] is against his interest and would be senseless. Placed under the same situation, petitioner[s] would certainly do likewise. To say otherwise would certainly be dishonest,[47]

which comment drew petitioners to conclude as follows:

> [This] only shows respondent's dishonesty and lack of regard of the rules. Following this line of reasoning, respondent would do everything if only for it to spend less for the filing fee, even to the extent of circumventing and defying the rule on the payment of the filing fee.
>
> In spite of the fact that the respondent was already caught in the quagmire of its own cobweb of deception, it further justified its unethical act by ratiocinating that "*placed under the same situation, petitioner would certainly do likewise, to say otherwise would certainly be dishonest.*" ***This attitude of the respondent is very alarming!*** Having been caught red-handed, the honorable thing that respondent should have done is admit its own violation rather than justify an act which it knows is a clear contravention of the rules and jurisprudence.[48] (Italics and emphasis in the original)

Pyramid's following justification for omitting to specify in the prayer of its complaint the amount of its claims/damages, *viz*:

> x x x x x x x x x
>
> x x x While respondent knew its losses and alleged them in the body of the Complaint, it was **not aware** of the **extent of petitioners' respective liability** under the two insurance policies. The allegation of respondent's losses, albeit, without repeating them in its prayer for relief was not motivated by an intention to mislead, cheat or defraud the Court. It just left the matter of liability arising from two separate and distinct Insurance Policies covering the same

[47] *Rollo*, p. 63.

[48] *Id*. at 94.

insurable risk for the trial court's determination, hence, respondent came up with an action for "specific performance[,]"[49] (Emphasis and underscoring supplied)

fails to impress.

As the salient allegations of Pyramid's complaint show and as priorly stated, they constitute, in the main, an action for collection of its claims it admittedly "knew."

Assuming *arguendo* that Pyramid has other claims the amounts of which are yet to be determined by the trial court, the rule established in *Manchester* which was embodied in this Court's Circular No. 7-88 issued on March 24, 1988, as modified by the *Sun Insurance* ruling, still applies. Consider this Court's pronouncement bearing on the matter in *Ayala Corporation v. Madayag*:[50]

x x x x x x x x x

Apparently, the trial court misinterpreted paragraph 3 of the [*Sun Insurance*] ruling of this Court wherein it stated that "where the judgment awards a claim not specified in the pleading, or if specified, the same has been left for the determination of the court, the additional filing fee therefor shall constitute a lien on the judgment" by considering it to mean that where in the body and prayer of the complaint there is a prayer xxx the amount of which is left to the discretion of the Court, there is no need to specify the amount being sought, and that any award thereafter shall constitute a lien on the judgment.

x x x While it is true that the determination of certain damages x x x is left to the sound discretion of the court, it is the **duty of the parties** claiming such damages **to specify** the amount sought on the basis of which the court may make a proper determination, and for the proper assessment of the appropriate docket fees. The **exception** contemplated as to claims not specified or to claims although specified are left for determination of the court is limited only to any damages that may arise **after** the filing of the complaint or similar pleading for then it will not be possible for the claimant to specify nor speculate as to the amount thereof. (Emphasis and underscoring supplied)

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[49] *Id.* at 81.

[50] G.R. No. 88421, January 30, 1990, 181 SCRA 687, 690-691. Citations omitted.

If respondent Pyramid's counsel had only been forthright in drafting the complaint and taking the cudgels for his client and the trial judge assiduous in applying Circular No. 7 *vis-a-vis* prevailing jurisprudence, the precious time of this Court, as well as of that of the appellate court, would not have been unnecessarily sapped.

The Court at this juncture thus reminds Pyramid's counsel to observe Canon 12 of the Code of Professional Ethics which enjoins a lawyer to "exert every effort and consider it his duty to assist in the speedy and efficient administration of justice," and Rule 12.04 of the same Canon which enjoins a lawyer "not [to] unduly delay a case, impede the execution of a judgment or misuse court processes." And the Court reminds too the trial judge to bear in mind that the nature of an action is determined by the allegations of the pleadings[51] and to keep abreast of all laws and prevailing jurisprudence, consistent with the standard that magistrates must be the embodiments of competence, integrity and independence.[52]

WHEREFORE, in light of the foregoing discussions, the petition is *DENIED*.

SO ORDERED.

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

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[51] *Vide Reyes Alsons Development and Investment Corporation,* G.R. No. 153936, March 2, 2007, 517 SCRA 244, 252-253.

[52] *Vide Cabañero v. Judge Cañon,* 417 Phil. 754, 785 (2001).

FIRST DIVISION

[G.R. No. 167058. July 9, 2008]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **SPOUSES TOMAS CABATINGAN and AGAPITA EDULLANTES Represented by RAMIRO DIAZ as Their Attorney-in-Fact,** *respondents.*

SYLLABUS

CIVIL LAW; SALES; EXTRAJUDICIAL FORECLOSURE SALE; ACT 3135 PRESCRIBES THE PROCEDURE WHICH EFFECTIVELY SAFEGUARDS THE RIGHT OF BOTH DEBTOR AND CREDITOR; JUSTIFIED. — Statutes should be sensibly construed to give effect to the legislative intention. Act 3135 regulates the extrajudicial sale of mortgaged real properties by prescribing a procedure which effectively safeguards the rights of both debtor and creditor. Thus, its construction (or interpretation) must be equally and mutually beneficial to both parties. Section 4 of Act 3135 provides that the sale must take place **between the hours of nine in the morning and four in the afternoon.** Pursuant to this provision, Section 5 of Circular No. 7-2002 states: Section 5. Conduct of extrajudicial foreclosure sale— a. **The bidding shall be made through sealed bids which must be submitted to the Sheriff who shall conduct the sale between the hours of 9 a.m. and 4 p.m. of the date of the auction** (Act 3135, Sec. 4). The property mortgaged shall be awarded to the party submitting the highest bid and, in case of a tie, an open bidding shall be conducted between the highest bidders. Payment of the winning bid shall be made in either cash or in manager's check, in Philippine Currency, within five (5) days from notice. x x x A creditor may foreclose on a real estate mortgage only if the debtor fails to pay the principal obligation when it falls due. Nonetheless, the foreclosure of a mortgage does not *ipso facto* extinguish a debtor's obligation to his creditor. The proceeds of a sale at public auction may not be sufficient to extinguish the liability of the former to the latter. For this reason, we favor a construction of Section 4 of Act 3135 that affords the creditor greater opportunity to satisfy his claim without unduly

rewarding the debtor for not paying his just debt. The word "between" ordinarily means "in the time interval that separates." Thus, "between the hours of nine in the morning and four in the afternoon" merely provides a time frame within which an auction sale may be conducted. Therefore, a sale at public auction held within the intervening period provided by law (*i.e.,* at any time from 9:00 a.m. until 4:00 p.m.) is valid, without regard to the duration or length of time it took the auctioneer to conduct the proceedings. In this case, the November 5, 1991 sale at public auction took place from 9:00 a.m. to 9:20 a.m. Since it was conducted within the time frame provided by law, the sale was valid.

APPEARANCES OF COUNSEL

Benly Frederick C. Bergonio for petitioner.
Escalon Law Office for respondents.

R E S O L U T I O N

CORONA, *J.*:

Respondent spouses Tomas Cabatingan and Agapita Edullantes obtained two loans, secured by a real estate mortgage,[1] in the

[1] Respondent spouses mortgaged the following properties:

1. Lot No. 10650 in the Municipality of Kananga, Leyte covered by TCT No. 168;
2. Lot No. 10654 in the Municipality of Kananga, Leyte covered by OCT No. P-590;
3. Lot No. 10653 in the Municipality of Kananga, Leyte covered by TCT No. 2173;
4. Lot No. 10645 in the Municipality of Kananga, Leyte covered by TCT No. 220;
5. Lot No. 7912 in Brgy. Valencia, Ormoc City covered by TCT No. 11664 and
6. Lot No. 6550 in Brgy. Valencia, Ormoc City covered by TCT No. 6559.

total amount of ₱421,200[2] from petitioner Philippine National Bank. However, they were unable to fully pay their obligation despite having been granted more than enough time to do so.[3] Thus, on September 25, 1991, petitioner extrajudicially foreclosed on the mortgage pursuant to Act 3135.[4]

Thereafter, a notice of extrajudicial sale[5] was issued stating that the foreclosed properties would be sold at public auction on November 5, 1991 between 9:00 a.m. and 4:00 p.m. at the main entrance of the office of the Clerk of Court on San Pedro St., Ormoc City.

Pursuant to the notice, the properties were sold at public auction on November 5, 1991. The auction began at 9:00 a.m. and was concluded after 20 minutes with petitioner as the highest bidder.[6]

On March 16, 1993, respondent spouses filed in the Regional Trial Court (RTC) of Ormoc City, Branch 12 a complaint for annulment of extrajudicial foreclosure of real estate mortgage

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[2] Respondents obtained the following loans:

Year	Amount
1973	₱ 46,200
1977	375,000
TOTAL	₱ 421,200

[3] While petitioner failed to explain how respondent spouses' obligation ballooned to ₱1,990,421.21 at the time of foreclosure (excluding interest at 28% p.a., penalties and other bank charges, attorney's fees and expenses for foreclosure), respondent spouses failed to contest petitioner's claim. Thus, they are deemed to have admitted such as the amount of their liability to petitioner.

[4] An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed to Real Estate Mortgages. See also Administrative Order No. 3 dated October 19, 1984. (This issuance was superseded by A.M. No. 99-10-05-0, as amended.)

[5] Dated October 3, 1991.

[6] On March 22, 1992, a certificate of sale was issued to petitioner. This certificate was registered in the Registry of Deeds of the Province of Leyte on May 22, 1992. However, it appears (based on the records of this case) that no writ of possession was issued to petitioner.

and the November 5, 1991 auction sale.[7] They invoked Section 4 of Act 3135 which provides:

> Section 4. The sale shall be made at public auction, **between the hours of nine in the morning and four in the afternoon**, and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of peace of the municipality in which such sale has to be made, or of a notary public of said municipality, who shall be entitled to collect a fee of Five pesos for each day of actual work performed, in addition to his expenses. (emphasis supplied)

Petitioners claimed that the provision quoted above must be observed strictly. Thus, because the public auction of the foreclosed properties was held for only 20 minutes (instead of seven hours as required by law), the consequent sale was void.

On November 4, 2004, the RTC issued an order[8] annulling the November 5, 1991 sale at public auction. It held:

> [T]he rationale behind the holding of auction sale between the hours of 9:00 in the morning and 4:00 in the afternoon of a particular day as mandated in Section 4 of Act 3135 is to give opportunity to more would-be bidders to participate in the auction sale thus giving the judgment-debtor more opportunity to recover the value of his or her property subject of the auction sale.

Petitioner moved for reconsideration but it was denied in an order dated February 7, 2005.[9] Hence, this petition.

The issue here is whether a sale at public auction, to be valid, must be conducted *the whole day* from 9:00 a.m. until 4:00 p.m. of the scheduled auction day.

Petitioner contends that the RTC erred in interpreting Section 4 of Act 3135. The law only prohibits the conduct of a sale at any time before nine in the morning and after four in the afternoon. Thus, a sale held within the intervening period (*i.e.,* at

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[7] Docketed as Civil Case No. 3111-0.

[8] Penned by Judge Francisco C. Gedorio, Jr. Annex "A" of the petition. *Rollo,* pp. 29-31.

[9] Annex "B" of the petition, *id*., p. 32.

any time between 9:00 a.m. and 4:00 p.m.), regardless of duration, is valid.

We grant the petition.

We note that neither the previous rule (Administrative Order No. 3)[10] nor the current rules (A.M. No. 99-10-05-O, as amended, and the guidelines for its enforcement, Circular No. 7-2002)[11] governing the conduct of foreclosure proceedings provide a clear answer to the question at hand.

Statutes should be sensibly construed to give effect to the legislative intention.[12] Act 3135 regulates the extrajudicial sale of mortgaged real properties[13] by prescribing a procedure which effectively safeguards the rights of both debtor and creditor. Thus, its construction (or interpretation) must be equally and mutually beneficial to both parties.

Section 4 of Act 3135 provides that the sale must take place **between the hours of nine in the morning and four in the afternoon.** Pursuant to this provision, Section 5 of Circular No. 7-2002 states:

Section 5. Conduct of extrajudicial foreclosure sale—

a. **The bidding shall be made through sealed bids which must be submitted to the Sheriff who shall conduct the sale between the hours of 9 a.m. and 4 p.m. of the date of the auction** (Act 3135, Sec. 4).[14] The property mortgaged shall be awarded to the party submitting the highest bid and, in case of a tie, an open

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[10] *Supra* note 4.

[11] Dated April 22, 2002.

[12] See *Cosico, Jr. v. National Labor Relations Commission,* 338 Phil. 1080, 1089 (1997).

[13] *Luna v. Encarnacion,* 92 Phil. 531, 534 (1952).

[14] *Contra* Circular No. 7-2002, Sec. 4(a) which provides:

Sec. 4. The Sheriff to whom the application for extra-judicial foreclosure of mortgage was raffled shall do the following:

a. Prepare a Notice of Extrajudicial Sale using the following form:

"NOTICE OF EXTRA-JUDICIAL SALE"

bidding shall be conducted between the highest bidders. Payment of the winning bid shall be made in either cash or in manager's check, in Philippine Currency, within five (5) days from notice. (emphasis supplied)

x x x x x x x x x

A creditor may foreclose on a real estate mortgage only if the debtor fails to pay the principal obligation when it falls due.[15] Nonetheless, the foreclosure of a mortgage does not *ipso facto* extinguish a debtor's obligation to his creditor. The proceeds of a sale at public auction may not be sufficient to extinguish the liability of the former to the latter.[16] For this reason, we favor a construction of Section 4 of Act 3135 that affords the creditor greater opportunity to satisfy his claim without unduly rewarding the debtor for not paying his just debt.

The word "between" ordinarily means "in the time interval that separates."[17] Thus, "between the hours of nine in the morning

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"Upon extra-judicial petition for sale under Act 3135/1508 filed _____ against (name and address of Mortgagor/s) to satisfy the mortgage indebtedness which as of _____ amounts to ₱ _____, excluding penalties, charges, attorney's fees and expenses of foreclosure, the undersigned or his duly authorized deputy will sell at public auction on (date of sale) _____ **at 10:00 A.M. or soon thereafter** at the main entrance of the _____ (place of sale) to the highest bidder, for cash or manager's check and in Philippine Currency, the following property with all its improvements, to wit:"

"(Description of Property)"

"All sealed bids must be submitted to the undersigned on the above stated time and date."

"In the event the public auction should not take place on the said date, it shall be held on _____, _____ without further notice."

_____ (date)

"SHERIFF"

x x x x x x x x x (emphasis supplied)

[15] *de* Leon, COMMENT AND CASES ON CREDIT TRANSACTIONS, 2002 ed., 424-425 (citations omitted).

[16] *Id*., pp. 437-439 (citations omitted).

[17] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, 1993 ed., 209.

and four in the afternoon" merely provides a time frame within which an auction sale may be conducted. Therefore, a sale at public auction held within the intervening period provided by law (*i.e.,* at any time from 9:00 a.m. until 4:00 p.m.) is valid, without regard to the duration or length of time it took the auctioneer to conduct the proceedings.

In this case, the November 5, 1991 sale at public auction took place from 9:00 a.m. to 9:20 a.m. Since it was conducted within the time frame provided by law, the sale was valid.

WHEREFORE, the petition is hereby *GRANTED*. The November 4, 2004 and February 7, 2005 orders of the Regional Trial Court of Ormoc City, Branch 12 in Civil Case No. 3111-0 are *REVERSED* and *SET ASIDE*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 168723. July 9, 2008]

DOLE PHILIPPINES, INC. (TROPIFRESH DIVISION), *petitioner, vs.* **HON. REINATO G. QUILALA in his capacity as pairing judge of Branch 150, RTC-Makati City, and ALL SEASON FARM, CORP.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; SERVICE UPON DOMESTIC CORPORATION, RESTRICTED, LIMITED AND EXCLUSIVE; APPLICATION IN CASE AT BAR.— Well-settled is the rule

that service of summons on a domestic corporation is restricted, limited and exclusive to the persons enumerated in Section 11, Rule 14 of the 1997 Rules of Civil Procedure, following the rule in statutory construction that *expressio unios est exclusio alterius*. Service must therefore be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel. x x x Considering that the service of summons was made on a legal assistant, not employed by herein petitioner and who is not one of the designated persons under Section 11, Rule 14, the trial court did not validly acquire jurisdiction over petitioner.

2. ID.; ID.; ID.; ID.; DEFENDANT'S VOLUNTARY APPEARANCE IN THE ACTION IS EQUIVALENT TO SERVICE OF SUMMONS; PRESENT IN CASE AT BAR.— Under Section 20 of Rule 14, 1997 Rules of Civil Procedure, a defendant's voluntary appearance in the action is equivalent to service of summons. As held previously by this Court, the filing of motions seeking affirmative relief, such as, to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, are considered voluntary submission to the jurisdiction of the court. x x x It was not a conditional appearance entered to question the regularity of the service of summons, but an appearance submitting to the jurisdiction of the court by acknowledging the receipt of the *alias* summons and praying for additional time to file responsive pleading. Consequently, petitioner having acknowledged the receipt of the summons and also having invoked the jurisdiction of the RTC to secure affirmative relief in its motion for additional time, petitioner effectively submitted voluntarily to the jurisdiction of the RTC. It is estopped now from asserting otherwise, even before this Court. The RTC therefore properly took cognizance of the case against Dole Philippines, Inc., and we agree that the trial and the appellate courts committed no error of law when Dole's contentions were overruled.

APPEARANCES OF COUNSEL

Platon Martinez Flores San Pedro & Leaño for petitioner.
King Capuchino Tan and Associates for respondents.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review assails the Decision[1] dated May 20, 2005 of the Court of Appeals in CA-G.R. SP No. 87723 and its Resolution[2] dated June 28, 2005, denying the motion for reconsideration. The appellate court had affirmed the Order[3] dated February 6, 2004 of the Regional Trial Court (RTC) of Makati City, Branch 150, in Civil Case No. 03-093 and its Order[4] dated September 16, 2004 denying the motion for partial reconsideration.

The factual antecedents of this case are as follows.

In a complaint filed with the RTC of Makati City, presided over by Pairing Judge Reinato Quilala, private respondent All Season Farm Corporation ("All Season") sought the recovery of a sum of money, accounting and damages from petitioner Dole Philippines, Inc. (Tropifresh Division) ("Dole") and several of its officers. According to Dole, an *alias* summons was served upon it through a certain Marifa Dela Cruz, a legal assistant employed by Dole Pacific General Services, Ltd., which is an entity separate from Dole.

On May 20, 2003, Dole filed a motion to dismiss the complaint on the following grounds: (a) the RTC lacked jurisdiction over the person of Dole due to improper service of summons; (b) the complaint failed to state a cause of action; (c) All Season was not the real party in interest; and (d) the officers of Dole cannot be sued in their personal capacities for alleged acts performed in their official capacities as corporate officers of Dole.[5] In its Order dated February 6, 2004, the RTC denied

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[1] *Rollo*, pp. 64-71. Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Noel G. Tijam and Mariflor P. Punzalan Castillo concurring.

[2] *Id*. at 60-61.

[3] *Id*. at 42-46. Penned by Acting Presiding Judge Reinato G. Quilala.

[4] *Id*. at 56-58.

[5] *Id*. at 31.

said motion. Dole moved for partial reconsideration raising the same issues but its motion was denied.

Thereafter, Dole filed a petition for *certiorari* with the Court of Appeals contending that the *alias* summons was not properly served. The appellate court, however, ruled otherwise. It reasoned that Dole's president had known of the service of the *alias* summons although he did not personally receive and sign it. It also held that in today's corporate setup, documents addressed to corporate officers are received in their behalf by their staff.[6] Dole sought reconsideration, but its motion was likewise denied.

Hence, this petition where petitioner raises the lone issue:

WHETHER OR NOT THE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT ALLOWED SUBSTITUTED SERVICE ON A PRIVATE CORPORATION WHEN IT HELD THAT DOLE WAS VALIDLY SERVED WITH SUMMONS IN SPITE OF THE FACT THAT SUMMONS WAS NOT SERVED ON ITS PRESIDENT, MANAGING PARTNER, GENERAL MANAGER, CORPORATE SECRETARY, TREASURER OR IN-HOUSE COUNSEL THEREBY IGNORING THE RULE ON SERVICE OF SUMMONS ON PRIVATE DOMESTIC CORPORATIONS.[7]

Simply stated, the issue in this case is whether there was a valid service of summons on petitioner for the trial court to acquire jurisdiction over the person of the corporate defendant below, now the petitioner herein.

Petitioner contends that for the court to validly acquire jurisdiction over a domestic corporation, summons must be served only on the corporate officers enumerated in Section 11,[8] Rule 14 of the 1997 Rules of Civil Procedure. Petitioner maintains

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

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

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

that the *alias* summons was not validly served on it since the *alias* summons was served on Marifa Dela Cruz, an employee of Dole Pacific General Services, Ltd., which is an entity separate and distinct from petitioner. It further avers that even if she were an employee of the petitioner, she is not one of the officers enumerated under Section 11, Rule 14. Thus, the RTC, without proper service of summons, lacks jurisdiction over petitioner as defendant below.

Private respondent All Season, for its part, contends that the trial court had acquired jurisdiction over petitioner, since petitioner received the *alias* summons through its president on April 23, 2003. According to private respondent, there was full compliance with Section 11, Rule 14, when Marifa Dela Cruz received the summons upon instruction of petitioner's president as indicated in the Officer's Return.[9] More so, petitioner had admitted that it received the *alias* summons in its Entry of Appearance with Motion for Time[10] filed on May 5, 2003.

Well-settled is the rule that service of summons on a domestic corporation is restricted, limited and exclusive to the persons enumerated in Section 11, Rule 14 of the 1997 Rules of Civil Procedure, following the rule in statutory construction that *expressio unios est exclusio alterius*.[11] Service must therefore be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.

In this case, it appears that on April 23, 2003, Marifa Dela Cruz, a legal assistant, received the *alias* summons.[12] Contrary to private respondent's claim that it was received upon instruction of the president of the corporation as indicated in the Officer's Return, such fact does not appear in the receiving copy of the *alias* summons which Marifa Dela Cruz signed. There was no evidence that she was authorized to receive court processes in

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[9] Records, p. 46.

[10] *Id*. at 40-42.

[11] *Mason v. Court of Appeals*, G.R. No. 144662, October 13, 2003, 413 SCRA 303, 311.

[12] Records, p. 47.

behalf of the president. Considering that the service of summons was made on a legal assistant, not employed by herein petitioner and who is not one of the designated persons under Section 11, Rule 14, the trial court did not validly acquire jurisdiction over petitioner.

However, under Section 20 of the same Rule, a defendant's voluntary appearance in the action is equivalent to service of summons.[13] As held previously by this Court, the filing of motions seeking affirmative relief, such as, to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, are considered voluntary submission to the jurisdiction of the court.[14]

Note that on May 5, 2003, petitioner filed an Entry of Appearance with Motion for Time. It was not a conditional appearance entered to question the regularity of the service of summons, but an appearance submitting to the jurisdiction of the court by acknowledging the receipt of the *alias* summons and praying for additional time to file responsive pleading.[15] Consequently, petitioner having acknowledged the receipt of the summons and also having invoked the jurisdiction of the RTC to secure affirmative relief in its motion for additional time, petitioner effectively submitted voluntarily to the jurisdiction of the RTC. It is estopped now from asserting otherwise, even before this Court.[16] The RTC therefore properly took cognizance of the case against Dole Philippines, Inc., and we agree that the trial and the appellate courts committed no error of law when Dole's contentions were overruled.

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[13] Rule 14, 1997 RULES OF CIVIL PROCEDURE:

SEC. 20. *Voluntary appearance.*—The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

[14] *Hongkong and Shanghai Banking Corporation Limited v. Catalan,* G.R. Nos. 159590-91, October 18, 2004, 440 SCRA 498, 515.

[15] Records, pp. 40-41.

[16] *Hongkong and Shanghai Banking Corporation Limited v. Catalan, supra* at 516.

WHEREFORE, the petition is *DENIED* for lack of merit. The Decision dated May 20, 2005 of the Court of Appeals in CA-G.R. SP No. 87723 and its Resolution dated June 28, 2005 are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 168753. July 9, 2008]

PHILIMARE, INC./MARLOW NAVIGATION CO., LTD., BONIFACIO GOMEZ and ALBERTO GOMEZ, *petitioners, vs.* **BENEDICTO F. SUGANOB,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* AVERMENTS IN THE PLEADINGS ARE CONTROLLING IN DETERMINING THE NATURE OF THE PROCEEDING; APPLICATION IN CASE AT BAR.— The policy of our judicial system is to encourage full adjudication of the merits of an appeal. Procedural niceties should be avoided in labor cases as the provisions of the Rules of Court are applied only in a suppletory manner. Indeed, rules of procedure may be relaxed to relieve a party of an injustice not commensurate with the degree of noncompliance with the process required. Moreover, averments in the pleadings, not the title, are controlling in determining the nature of the proceeding. Suganob categorized his petition before the Court of Appeals as a petition for review on *certiorari* (under Rule 43 of the Revised Rules of Civil Procedure). However, the contents of his petition clearly reveal that the petition filed complied with the requirements of a petition for *certiorari*, albeit wrongly captioned as one for a petition for review under Rule 43. Courts

look beyond the form and consider substance as circumstances warrant. Thus, we rule that the Court of Appeals correctly treated Suganob's petition under Rule 43 as one being filed under Rule 65.

2. ID.; ID.; ID.; WHEN REMAND OF LABOR CASE TO LABOR ARBITER IS NOT NECESSARY.— We rule against remanding the case to the labor arbiter since it will only cause further delay and may frustrate speedy justice and, in any event, would be a futile exercise, as in all probability the case would eventually end up with this Court. Also, this Court has repeatedly ruled that delay in the settlement of labor cases cannot be countenanced. Not only does it involve the survival of an employee and his loved ones who are dependent on him for food, shelter, clothing, medicine and education, it also wears down the meager resources of the workers.

3. LABOR AND SOCIAL LEGISLATION; HEALTH, SAFETY, AND SOCIAL WELFARE BENEFITS; DISABILITY, WHEN COMPENSABLE; PRESENT IN CASE AT BAR.— Disability is intimately related to one's earning capacity. It should be understood less on its medical significance but more on the loss of earning capacity. To be entitled to Grade 1 disability benefits, the employee's disability must not only be total but also permanent. Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body. x x x Total disability, on the other hand, does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather the incapacity to work resulting in the impairment of one's earning capacity. Total disability does not require that the employee be absolutely disabled, or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his usual work and earn therefrom. Both the company-designated physician and Suganob's physician found that Suganob is unfit to continue his duties as a Chief Cook since his illness prevented him from continuing his duties as such. Due to his illness, he can no longer perform work which is part of his daily routine as Chief Cook like lifting heavy loads of frozen meat, fish, water, *etc.* when preparing meals for the crew members. Hence, Suganob's disability is also total. x x x Here, Suganob was unable to work for a period of more than 120 days. It is therefore correct that he be awarded

his 120-day sickness wages as required by the POEA Standard Employment Contract. No doubt Suganob became sick in the course of his employment with petitioners because he was declared to be healthy prior to his departure. This is corroborated by the fact that he was subjected to thorough examination before boarding M/V Mekong Star. Had he not been found fit to work prior to his departure, he would not have been allowed to board said ship. Without a doubt, Suganob acquired his illness in the course of his employment with petitioners.

APPEARANCES OF COUNSEL

Brillantes Navarro Jumamil Arcilla Escolin Martinez & Vivero Law Offices for petitioners.

R.C. Cabrera Law Office for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review assails the Decision[1] dated April 29, 2005 and the Resolution[2] dated June 29, 2005 of the Court of Appeals in CA-G.R. SP No. 86350. Also assailed is the appellate court's Resolution[3] dated September 23, 2004, which had treated respondent's petition for review under Rule 43 as a petition for *certiorari* under Rule 65.

The antecedent facts are as follows:

Respondent Benedicto F. Suganob was employed as Chief Cook for petitioners for almost ten years on board various vessels of petitioners. His last employment contract with petitioners was on board M/V Mekong Star where he was hired for a period of ten

[1] *Rollo*, pp. 59-74. Penned by Associate Justice Mariano C. del Castillo, with Associate Justices Regalado E. Maambong and Jose C. Mendoza concurring.

[2] *Id*. at 75. Penned by Associate Justice Mariano C. del Castillo, with Associate Justices Rosmari D. Carandang and Jose C. Mendoza concurring.

[3] *Id*. at 76. Penned by Associate Justice Mariano C. del Castillo, with Associate Justices Romeo A. Brawner and Magdangal M. de Leon concurring.

months starting September 2, 2001. Six days after he had boarded said ship, he experienced pains on his right shoulder. After undergoing consultation in Vietnam, he was medically repatriated.

Upon his arrival in the Philippines, Suganob was immediately referred by the petitioners to the People's Diagnostic Center, Inc. where a series of examinations and diagnosis were performed on him. The medical report showed that he had right shoulder sprain, gouty arthritis, urinary tract infection and hypertension and that he was unfit to work until October 11, 2001. On October 29, 2001, Suganob was declared fit to work by the People's Diagnostic Center, Inc. provided he maintains his medications. However, on April 5, 2002, Suganob's physician declared that he cannot be cleared and is not fit to work because of his age and the recurrence of symptoms of illness.

As Suganob was totally incapacitated, he sought his permanent disability compensation and other benefits from petitioners who refused his request. Hence, on April 25, 2002, Suganob filed a Complaint[4] to recover sickness and permanent disability benefits.

On October 30, 2002, the Labor Arbiter rendered a Decision[5] in favor of Suganob, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondents [herein petitioners] to pay complainant [Suganob] jointly and severally the following:
>
> 1. 120 [days] sickness benefits as provided for under the POEA Standard Employment Contract which is equivalent to US$3,036.00;
> 2. Permanent disability benefits equivalent to US$60,000.00 as provided for under the POEA Standard Employment Contract;
> 3. 10% of the total award recovered as attorney's fees.
>
> All other claims are dismissed for lack of merit.
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> So Ordered.[6]

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[4] Records, p. 2.

[5] *Rollo*, pp. 85-99.

[6] *Id*. at 98-99.

Not satisfied with the foregoing decision, petitioners interposed an appeal before the National Labor Relations Commission (NLRC). The NLRC issued a Notice of Conference setting the case for conference in order to give the parties an opportunity to settle the case amicably. However, the parties failed to settle amicably. Thus, on April 22, 2004, the NLRC rendered its Decision[7] remanding the case to the Labor Arbiter. The dispositive portion of said decision states:

> WHEREFORE, premises considered, this case is remanded to the Arbitration branch of origin for further proceedings to determine the degree of impediment of complainant [Suganob] with the aid of either a private or public physician to be chosen or agreed upon by the parties.
>
> SO ORDERED.[8]

From the said decision, Suganob filed with the Court of Appeals a petition for review[9] which the appellate court treated as a petition for *certiorari*. Despite the objection of petitioners that the remedy availed of by Suganob was incorrect, the Court of Appeals also later rendered judgment in favor of Suganob on April 29, 2005. The dispositive portion of said decision reads:

> WHEREFORE, the instant Petition is hereby **PARTIALLY GRANTED**. The assailed decision and resolution of public respondent [NLRC] are hereby **NULLIFIED** and **SET ASIDE** and the decision of the Labor Arbiter **REINSTATED** and **AFFIRMED** with modification that the award of attorney's fees is hereby **DELETED**.
>
> SO ORDERED.[10]

Petitioners now come before us raising the following issues:

I.

THE COURT OF APPEALS COMMITTED SERIOUS ERRORS WHEN IT ENTERTAINED PRIVATE RESPONDENT'S ERRONEOUS

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[7] *Id*. at 101-113.

[8] *Id*. at 112.

[9] *Id*. at 118-136.

[10] *Id*. at 73-74.

PETITION UNDER RULE 43 AND TREATED THE SAME AS BEING FILED UNDER RULE 65.

II.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR WHEN IT NULLIFIED AND ANNULLED THE DECISION OF THE NLRC DESPITE THE ABSENCE OF ANY FINDING OF GRAVE ABUSE OF DISCRETION ON THE LATTER'S PART.

III.

THE COURT OF APPEALS COMMITTED SERIOUS ERRORS WHEN IT REINSTATED AND AFFIRMED THE RULING OF THE LABOR ARBITER AWARDING DISABILITY BENEFITS TO THE RESPONDENT NOTWITHSTANDING THE ESTABLISHED FACTS THAT RESPONDENT'S ILLNESS IS NOT WORK-RELATED AND THAT RESPONDENT HAS ALREADY BEEN DECLARED FIT TO WORK.

IV.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN AFFIRMING THE LABOR ARBITER'S AWARD OF SICKNESS ALLOWANCE/WAGES WITHOUT ANY LEGAL AND/OR FACTUAL BASIS.[11]

Simply put, the issues are: (1) Did the Court of Appeals err in treating Suganob's petition as one filed under Rule 65?; (2) Is Suganob entitled to disability benefits?; and (3) Is Suganob entitled to sickness allowance/wages?

On the first issue, petitioners contend that Suganob's petition before the Court of Appeals should have been dismissed outright since he availed of the wrong remedy. They stress that in the case of *St. Martin Funeral Home v. NLRC*,[12] the Court held that decisions of the NLRC should be brought to the Court of Appeals by way of a petition for *certiorari* under Rule 65.[13]

For his part, Suganob avers that technical rules of procedure should not be strictly applied in labor cases. He argues that the

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[11] *Id*. at 17.

[12] G.R. No. 130866, September 16, 1998, 295 SCRA 494.

[13] *Id*. at 509.

Court of Appeals acted accordingly when it decided the case based on the issues raised and not through a mere technicality. Further, Suganob asserts that the kind of pleadings filed before the Court is not determined by its title but rather by its content.

Petitioners' contention lacks merit. The policy of our judicial system is to encourage full adjudication of the merits of an appeal. Procedural niceties should be avoided in labor cases as the provisions of the Rules of Court are applied only in a suppletory manner. Indeed, rules of procedure may be relaxed to relieve a party of an injustice not commensurate with the degree of noncompliance with the process required.[14] Moreover, averments in the pleadings, not the title, are controlling[15] in determining the nature of the proceeding.

Suganob categorized his petition before the Court of Appeals as a petition for review on *certiorari* (under Rule 43 of the Revised Rules of Civil Procedure). However, the contents of his petition clearly reveal that the petition filed complied with the requirements of a petition for *certiorari*, albeit wrongly captioned as one for a petition for review under Rule 43. Courts look beyond the form and consider substance as circumstances warrant. Thus, we rule that the Court of Appeals correctly treated Suganob's petition under Rule 43 as one being filed under Rule 65.

As to the second issue, petitioners contend Suganob is not entitled to disability benefits because his illness is not work-related. They stress that the company-designated physician declared him fit to work provided he maintains his medications. Also, even if Suganob's arthritis is work-related, the same is not a total and permanent disability as to entitle him to an award of US$60,000. Corollary to this, petitioners aver that the NLRC is correct in remanding the case to the labor arbiter for further proceedings to determine the degree of impediment of Suganob.

Suganob, for his part, alleges that he is entitled to disability benefits for total and permanent disability since he can no longer engage himself as a seafarer. If indeed petitioners found him fit for

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[14] *Novelty Philippines, Inc. v. Court of Appeals*, G.R. No. 146125, September 17, 2003, 411 SCRA 211, 217.

[15] *Cruz v. Cristobal*, G.R. No. 140422, August 7, 2006, 498 SCRA 37, 49.

work, he would have been re-employed after he was medically repatriated; however, he was not. Suganob adds that the decision to remand the case to the labor arbiter would merely delay the proceedings of the case.

We rule against remanding the case to the labor arbiter since it will only cause further delay and may frustrate speedy justice and, in any event, would be a futile exercise, as in all probability the case would eventually end up with this Court.[16] Also, this Court has repeatedly ruled that delay in the settlement of labor cases cannot be countenanced. Not only does it involve the survival of an employee and his loved ones who are dependent on him for food, shelter, clothing, medicine and education, it also wears down the meager resources of the workers.[17]

Apropos the appropriate disability benefits that respondent is entitled to, we find that Suganob is entitled to Grade 1[18] disability

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[16] *Reyes v. Court of Appeals*, G.R. No. 154448, August 15, 2003, 409 SCRA 267, 278, citing *Fernandez v. National Labor Relations Commission*, G.R. No. 105892, January 28, 1998, 285 SCRA 149, 170.

[17] *Santos v. Velarde*, G.R. No. 140753, April 30, 2003, 402 SCRA 321, 329.

[18] Department Order No. 4, Series of 2000, AMENDED STANDARD TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING VESSELS, adopted on May 31, 2000.

SECTION 32. Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted

HEAD

x x x	x x x	x x x
3.	Severe paralysis of both upper or lower extremities or one upper and one lower extremity.....Gr. 1	
x x x	x x x	x x x
6.	Severe mental disorder or Severe Complex Cerebral function disturbance or post-traumatic psychoneurosis which require regular aid and attendance as to render worker permanently unable to perform any work…….……Gr. 1	
x x x	x x x	x x x
9.	Incurable imbecility…..……Gr. 1	

FACE

x x x	x x x	x x x

benefits which corresponds to total and permanent disability. As correctly pointed out by the Court of Appeals, the medical certificate issued by petitioners' company physician do not conflict with that issued by the physician chosen by Suganob. The medical certificate issued on October 29, 2001 by petitioners' company physician which stated that Suganob was fit to return to work was conditional because Suganob still has to maintain his medications. On the other

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4. Complete loss of the power of mastication and speech function……..Gr.1

x x x x x x x x x

EYES

1. Blindness or total and permanent loss of vision of both eyes……...Gr.1

x x x x x x x x x

CHEST-TRUNK-SPINE

x x x x x x x x x

8. Injury to the spinal cord as to make walking impossible even with the aid of a pair of crutches.…….Gr.1

9. Injury to the spinal cord resulting to incontinence of urine and feces……..…..Gr.1

ABDOMEN

x x x x x x x x x

3. Severe residuals of impairment of intra-abdominal organs which requires regular aid and attendance that will unable worker to seek any gainful employment…….…...……Gr.1

x x x x x x x x x

PELVIS

1. Fracture of the pelvic rings as to totally incapacitate worker to work……..Gr.1

x x x x x x x x x

HANDS

1. Total loss of use of both hands or amputation of both hands at wrist joints or above……..Gr.1

x x x x x x x x x

SHOULDER AND ARM

x x x x x x x x x

14. Total paralysis of both upper extremities……Gr. 1

x x x x x x x x x

LOWER EXTREMITIES

x x x x x x x x x

10. Loss of both feet at ankle joint or above……..Gr. 1

x x x x x x x x x

hand, the medical certificate of the physician chosen by Suganob which was issued on April 5, 2002 indicated that Suganob's illness recurred and continued which rendered him unfit to continue his work. In both medical certificates, it is clear that Suganob was not considered as totally cured and fit to return to work.[19] Hence, there is no dispute that Suganob is entitled to disability benefits.

Disability is intimately related to one's earning capacity. It should be understood less on its medical significance but more on the loss of earning capacity.[20] To be entitled to Grade 1 disability benefits, the employee's disability must not only be total but also permanent.

Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.[21] Clearly, Suganob's disability is permanent since he was unable to work from the time he was medically repatriated on September 17, 2001 up to the time the complaint was filed on April 25, 2002, or more than 7 months. Moreover, if in fact Suganob is clear and fit to work on October 29, 2001, he would have been taken back by petitioners to continue his work as a Chief Cook, but he was not. His disability is undoubtedly permanent.

Total disability, on the other hand, does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather the incapacity to work resulting in the impairment of one's earning capacity.[22] Total disability does not

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33. Failure of fracture of both hips to unite……...Gr. 1
x x x x x x x x x
35. Paralysis of both lower extremities……...……..Gr. 1
x x x x x x x x x

[19] *Rollo*, p. 69.

[20] *Austria v. Court of Appeals*, G.R. No. 146636, August 12, 2002, 387 SCRA 216, 221.

[21] *Government Service Insurance System v. Cadiz*, G.R. No. 154093, July 8, 2003, 405 SCRA 450, 454.

[22] *Philippine Transmarine Carriers, Inc. v. NLRC*, G.R. No. 123891, February 28, 2001, 353 SCRA 47, 53.

require that the employee be absolutely disabled, or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his usual work and earn therefrom. Both the company-designated physician and Suganob's physician found that Suganob is unfit to continue his duties as a Chief Cook since his illness prevented him from continuing his duties as such. Due to his illness, he can no longer perform work which is part of his daily routine as Chief Cook like lifting heavy loads of frozen meat, fish, water, *etc*. when preparing meals for the crew members. Hence, Suganob's disability is also total.

Lastly, petitioners allege that the Court of Appeals erred in affirming the labor arbiter's decision awarding 120-day sickness allowance to Suganob. They point out that Suganob has in fact received said illness allowance during the period that he was under treatment by petitioners' physicians.

Suganob, however, counters that he is entitled to said sickness allowance because under the Philippine Overseas Employment Administration (POEA) Standard Employment Contract, a seafarer who is medically sick is entitled to sickness allowance for no less than 120 days.

We rule for Suganob. Section 20, par. B, sub-par. 3 of the POEA Standard Employment Contract states,

> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.[23]

Here, Suganob was unable to work for a period of more than 120 days. It is therefore correct that he be awarded his 120-day sickness wages as required by the POEA Standard Employment Contract.

No doubt Suganob became sick in the course of his employment with petitioners because he was declared to be healthy prior to

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[23] *Rollo*, p. 256.

his departure. This is corroborated by the fact that he was subjected to thorough examination before boarding M/V Mekong Star. Had he not been found fit to work prior to his departure, he would not have been allowed to board said ship. Without a doubt, Suganob acquired his illness in the course of his employment with petitioners.

WHEREFORE, the petition is *DENIED*. The Decision dated April 29, 2005 and Resolution dated June 29, 2005 of the Court of Appeals in CA-G.R. SP No. 86350 are *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 169298. July 9, 2008]

LAW FIRM OF TUNGOL & TIBAYAN, *petitioner, vs.* **COURT OF APPEALS and SPOUSES RENATO M. INGCO & MA. LUISA S. INGCO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; LEGAL FEES; COURTS CAN FIX REASONABLE COMPENSATION WHICH LAWYERS SHOULD RECEIVE FOR THEIR PROFESSIONAL SERVICES.— As we have ruled previously, courts can fix reasonable compensation which lawyers should receive for their professional services. Nothing precludes the appellate courts from reducing the award when it is deemed unconscionable or excessive. Further, here we note that when the auction sale of the three lots was made, the attorney-client relationship between

petitioner and respondents no longer existed. Thus, we cannot include in the attorney's fees the 25% of the excess of the market value of the lots over the ₱7,193,505.56 paid by the Ingcos in acquiring them. Incidentally, while the spouses Ingco might have not raised the issue of the interpretation of contract in the trial court, it cannot be said also that the Court of Appeals deprived petitioner its right to be heard when it passed upon the issue. When it interpreted the agreement, the Court of Appeals merely sought to ascertain the meaning attached to the words used in the written contract, undoubtedly to resolve the opposing contentions of the parties themselves.

2. LEGAL ETHICS; DISCIPLINE OF JUDGES; MERE SUSPICION OF PARTIALITY IS NOT A VALID REASON FOR VOLUNTARY INHIBITION; RATIONALE.— While bias and partiality are recognized as valid reasons for the voluntary inhibition of a judge under Rule 137, Section 1, par. 2, of the Rules of Court, mere suspicion that a judge is partial is not enough. As long as the judge's opinions were formed in the course of judicial proceedings based on the evidence presented, and on the conduct of the parties as observed by the magistrate in court, such opinions – even if later found to be erroneous – will not prove personal bias or prejudice on the part of the judge. In this case, the law firm has failed to present concrete proof that any or all members of the Court of Appeals' Second Division had a personal interest in the case, or that their opinions on the case have stemmed from an extrajudicial source. We find no sufficient basis or reason to doubt their fairness and ability to decide this case with the "cold neutrality of an impartial judge." As the appellate court pointed out, the present case has already been decided. A motion for inhibition can no longer be granted if a decision has already been rendered and the justice or judge sought to be disqualified had duly participated and cast his or her vote without any objection from any source. Clearly, a litigant cannot be permitted to speculate upon the action of the court and to raise objections only after an unfavorable decision has already been rendered.

APPEARANCES OF COUNSEL

Brilla Racal-Zulueta for private respondents.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review assails the Decision[1] dated March 17, 2005 of the Court of Appeals in CA-G.R. SP No. 85540, denying, among others, the prayer of petitioner Law Firm of Tungol & Tibayan for a greater sum of contingent attorney's fees. Said Decision had reversed and set aside the April 30, 2004 Resolution[2] of the Office of the President, granting the law firm additional attorney's fees.

The facts are as follows:

Private respondents Renato M. Ingco and Ma. Luisa S. Ingco hired the services of petitioner law firm to enforce delivery of a land title covering a 300-square meter lot in Tivoli Royale Subdivision, Quezon City. Atty. Abelardo M. Tibayan, a partner in said law firm, specified in a letter to respondent Renato Ingco that the graduated attorney's fees the firm would charge would depend on the circumstances of the case. This agreement was embodied in Atty. Tibayan's "Case Referral and Acceptance Confirmation,"[3] (hereinafter referred to as contract) dated November 9, 1998.

In behalf of the Ingcos, the law firm filed a Complaint[4] against Villa Crista Monte Realty and Development Corporation, Inc. (Villa Crista) before the Housing and Land Use Regulatory Board (HLURB). The complaint alleged that the Ingcos had paid the contract price of ₱5.1 million for the lot, but Villa Crista did not deliver the title to the Ingcos and refused to execute the final deed of sale in their favor.

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[1] *Rollo*, pp. 70-82. Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Godardo A. Jacinto and Bienvenido L. Reyes concurring.

[2] *Id*. at 271-277.

[3] *Id*. at 122-123.

[4] *Id*. at 279-293. Dated March 29, 1999.

After a series of negotiations, Villa Crista entered into a compromise agreement[5] with the Ingcos to refund ₱4,845,000 with interest, and in case of breach, ₱200,000 liquidated damages. The HLURB approved the compromise and rendered a judgment upon compromise on December 21, 1999. Despite the compromise agreement, however, Villa Crista did not pay the Ingcos. This prompted the HLURB to issue a writ of execution,[6] ordering the *ex-officio* sheriff of the Regional Trial Court (RTC) to execute the judgment. The writ required Villa Crista to refund to the spouses Ingco ₱5,081,856; to pay them ₱200,000 liquidated damages; and to seize, garnish or levy any property of Villa Crista to satisfy the judgment.

The *ex-officio* sheriff levied and auctioned ten lots belonging to Villa Crista.[7] The spouses bought three of the ten lots at a bid price of ₱7,193,505.56, which includes the ₱5.1 million contract price for the 300- square meter lot, ₱1,350,000 attorney's fees and other expenses. The sheriff issued final deeds of sale[8] to the Ingcos after Villa Crista failed to redeem the three lots within the redemption period.

Thereafter, in a Letter[9] dated August 2, 2001, the Ingcos terminated the law firm's services. They alleged that they had already paid the law firm ₱1.5 million in attorney's fees. In a Letter[10] dated August 8, 2001, petitioner's Atty. Danilo N. Tungol wrote the Ingcos and expressed his surprise at the termination of their firm's services since, to their knowledge, the spouses were satisfied with its services. Atty. Tungol contended that the spouses terminated the law firm's services because they merely wanted to escape paying the firm. Atty. Tibayan also wrote the Ingcos a similar letter.[11]

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[5] *Id*. at 322-323, 326-327.

[6] *Id*. at 328-330.

[7] *Id*. at 331-334.

[8] *Id*. at 339-344.

[9] *Id*. at 130.

[10] *Id*. at 131-132.

[11] *Id*. at 133-134.

The law firm eventually also filed with the HLURB a Motion and Statement of Claim for Attorney's Lien[12] on August 20, 2001, and a Motion to Enforce the Attorney's Lien[13] on November 12, 2001. Both motions sought to recover 25% of the excess of the existing prevailing selling price or fair market value of the three levied lots over the total bid price and expenses of ₱7,193,505.56.[14] It also filed a damage suit[15] against its former clients before the RTC.

According to the law firm, the spouses Ingco still owed attorney's fees of ₱4,506,500 on top of the advance payment of ₱1.5 million. It asserted that as agreed upon in their contract, the law firm shall be entitled to additional attorney's fees equivalent to 25% of the excess of the price value of the three lots over the total bid price and expenses in case Villa Crista fails to redeem the three lots the spouses bought in the auction sale. Since the lots were not redeemed, the property was consolidated in the name of the spouses. The additional attorney's fees, according to the law firm, were due because of the additional benefit derived by the spouses since the three lots which Villa Crista failed to redeem were worth more than the bid price and expenses the spouses paid. Allegedly, the three lots measuring 1,378 square meters, were worth ₱17,000 per square meter or ₱23,426,000. Petitioner also claimed that after the consolidation of the titles, it allegedly prepared a motion for titling of the property in the name of the Ingcos, but the latter allegedly took all original copies of the final deeds and subsequently terminated its services.

The Ingcos opposed[16] the aforementioned motions, contending that it terminated the services of the firm because it demanded ₱70,000 for notarial fees. They explained that the three lots

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[12] *Id*. at 345-352.

[13] *Id*. at 374-382.

[14] Covered by Transfer Certificates of Title Nos. N-162238, N-162319 and N-162350 of the Registry of Deeds of Quezon City.

[15] *Rollo*, pp. 565-576.

[16] *Id*. at 353-357.

would cost only ₱7,500 and not ₱17,000 per square meter, as claimed by the firm.

In an Order[17] dated December 10, 2001, HLURB Arbiter Rowena C. Balasolla, granted the Motion and Statement of Claim for Attorney's Lien and ordered the annotation of the said attorney's lien on Transfer Certificates of Title (TCT) Nos. 162238, 162319 and 162350.

The spouses Ingco sought reconsideration of the order but its motion for reconsideration was denied. In an Order[18] dated May 6, 2003, HLURB Arbiter Balasolla also granted the firm's Motion to Enforce Attorney's Lien, and ordered the spouses jointly and severally, to pay the firm ₱4,506,500.

The HLURB Board,[19] on appeal, reversed the arbiter's order. In a Decision[20] dated October 8, 2003, the HLURB Board declared that a realized gain of ₱23,426,000 was premature; that the payment of ₱1.5 million was more than sufficient and reasonable compensation; and that the firm was not entitled to an additional compensation of ₱4,506,500.

The firm appealed to the Office of the President. In a Resolution dated April 30, 2004, the Office of the President set aside the HLURB's decision and affirmed the arbiter's order. It also denied the spouses' motion for reconsideration.[21]

On March 17, 2005, the HLURB Regional Director Jesse A. Obligacion issued a writ of execution,[22] ordering the Ingcos to pay the firm ₱4,506,500.

On appeal, the Court of Appeals reversed and set aside the Resolution of the Office of the President. The appellate court ruled,

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[17] *Id*. at 136-141.

[18] *Id*. at 387-393.

[19] Through Commissioner Teresita A. Desierto and *Ex-Officio* Commissioners Jose C. Calida of DOJ and Fortunato R. Abrenilla of NEDA.

[20] *Rollo*, pp. 394-400.

[21] *Id*. at 278.

[22] *Id*. at 429-431.

WHEREFORE, premises considered, the petition for review with prayer for injunction is ***GRANTED***. The Resolution and Order dated April 30, 2004 and July 9, 2004, respectively, of the Office of the President in O.P. Case No. 03-J-620 are hereby ***REVERSED*** and ***SET ASIDE*** and the decision dated October 8, 2003 of the HLURB Board of Commissioners is ***REINSTATED***. The HLURB arbiter concerned is hereby permanently ***ENJOINED*** from executing or implementing the orders dated December 10, 2001 and May 6, 2003.

SO ORDERED.[23]

Petitioner's motion for reconsideration with motion for inhibition[24] was denied. Hence, this petition via Rule 45 of the Rules of Court.

Petitioner law firm contends that the appellate court committed the following errors:

I.

THE ACT OF RESPONDENT COURT IN INTERPRETING AND MAKING ITS OWN CONSTRUCTION OF THE CLEAR AND UNAMBIGUOUS TERMS OF THE CONTRACT BETWEEN PETITIONER AND PRIVATE RESPONDENT IS NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT.

II.

[THE] ASSAILED DECISION [,] SOLELY BASED ON RESPONDENT COURT'S INTERPRETA[T]ION AND OWN CONSTRUCTION OF THE CONTRACT, WHICH WAS NEVER RAISED AS AN ISSUE, AMOUNTS TO DEPRIVATION OF PETITIONER'S FUNDAMENTAL RIGHT TO DUE PROCESS.

III.

THE REFUSAL OF THE HONORABLE JUSTICES OF RESPONDENT COURT TO VOLUNTAR[IL]Y INHIBIT THEMSELVES DESPITE [THE] JUSTIFICATIONS PETITIONER RAISED, IS NOT IN ACCORD WITH SECTION 1, RULE 137 OF THE REVISED RULES OF COURT AND DEPARTS FROM THE

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[23] *Id*. at 81-82.

[24] *Id*. at 409-425.

ACCEPTED AND NORMAL COURSE OF JUDICIAL DISPOSITIONS.[25]

Simply, the issues for our resolution are: (1) Did the Court of Appeals commit reversible error when it interpreted the allegedly unambiguous terms of the contract? (2) Did the Court of Appeals justices err in refusing to inhibit themselves from the case?

Invoking Article 1370[26] of the Civil Code and citing jurisprudence, petitioner argues that the Court of Appeals erred in interpreting a clear and unambiguous contract. It insists that a clearly worded contract leaves no doubt on the intention of the parties, and requires no interpretation but only literal application. It points out that the appellate court and respondents did not even say that the terms of the contract are unclear and ambiguous.[27]

According to the law firm, the Court of Appeals erred when it concluded that since the subject of the contract was only the lot worth ₱5.1 million, and it was only the delivery of title or refund of its value which petitioner committed to enforce, these should be the only basis for attorney's fees. Petitioner counters that the contract contained no wording to that effect and the parties had no such intention for otherwise, the contract would have been so worded. Petitioner insists that it is not the province of the courts to amend a contract by construction, nor to make a new contract for the parties, interject material stipulations, nor even to read into the contract words which it did not contain.[28]

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

[26] 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.

[27] *Petrophil Corporation v. Court of Appeals*, G.R. No. 122796, December 10, 2001, 371 SCRA 702, 708; *Sea-Land Service, Inc. v. Court of Appeals*, G.R. No. 126212, March 2, 2000, 327 SCRA 135, 143; *Heirs of Juan San Andres v. Rodriguez*, G.R. No. 135634, May 31, 2000, 332 SCRA 769, 783.

[28] *Rollo*, p. 28.

The law firm likewise stressed that the compromise, judgment, execution, levy, sale and finally, consolidation of ownership in favor of private respondents constitute a series of events which petitioner persistently aimed at and worked on. The identification of the three lots was the result of its continuous and tedious search and verifications of the numerous properties of the erring developer, which were traced by petitioner. According to the law firm, after the levy, the developer even attempted to defeat the sale of the three lots by submitting affidavits of adverse claims, but the law firm thwarted the attempt. Petitioner avers there was no truth to the claims of the Ingcos that it was not through the law firm's efforts that the three lots were recovered because those were acquired through the execution sale. To entertain such premise, says petitioner, would allegedly render nugatory every contract for legal services, and then every counsel, despite his efforts, would not deserve his fees every time execution sale became necessary to enforce judgment.[29]

In their comment,[30] the Ingcos explain that they were in disbelief when petitioner charged them ₱70,000 as notarization fee for the final deeds. They had the same deeds notarized by another lawyer for only ₱900. Further, the law firm would not let them borrow the case files such that their relationship turned sour, prompting them to terminate the services of the firm. They deny gaining any extra material benefit from the auction of the three lots and stress that they even doubt whether any benefit would accrue to them, considering the numerous claims annotated on the titles. The spouses add that the Court of Appeals did not interpret the contract, but applied its literal meaning to the facts of the case in accord with law and jurisprudence.

At this juncture, as to the interpretation of contracts, we invite attention to Article 1370, paragraph 1 of the Civil Code which states that: "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

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[29] *Id*. at 32-33.

[30] *Id*. at 435-466.

be contrary to the evident intention of the parties, the latter shall prevail over the former."

Moreover, as we recently held:

> A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the contract as a matter of law. If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence.[31]

The Court of Appeals, in this case before us, faced a situation where there were opposing interpretations of the parties as to the meaning and application of the disputed contract.

To the extent here relevant, we find that the contract reads as follows:

> Dear Mr. Ingco:
>
> We hereby accept the legal referral you made and confirm our decision and commitment to make legal and/or extrajudicial representations for and in your behalf. In its professional capacity, the firm shall enforce delivery of title covering a lot you purchased at ₱5,100,000.00 or refund of said amount plus interest, in your favor, by Villa Crista Monte Realty and Development Corporation, Inc. and/or Crisencio Tio.
>
> x x x x x x x x x
>
> 2. In case the firm succeeds to recover upon mere sending of a demand letter, it shall be entitled to five (5%) per cent of the value of property protected/recovered, amount of claim collected or the total interests (including gains) which actually inure to your benefit, as a result of filing of the case, ***whichever is higher***, as its attorney's fee;
>
> x x x x x x x x x

[31] *Abad v. Goldloop Properties, Inc.*, G.R. No. 168108, April 13, 2007, 521 SCRA 131, 144.

5. In case recovery/collection is made by virtue of a final judgment, the firm shall be entitled to an attorney's fee equivalent to TWENTY FIVE (25%) per cent based on that mentioned above (No. 2) [;]

x x x x x x x x x

Should you find the foregoing in order, kindly signify your conformity and sign the space herein provided.

Thank you very much for your trust.

Very truly yours,

(SIGNED)
ABELARDO M. TIBAYAN
For the Firm[32]

In our own perusal of the contract, we find that the contract did not provide for any other basis for the computation of attorney's fees other than the value of the property protected/recovered, amount of claim collected, or the total interests including gains which actually inured to the client's benefit. Proceeds from levy or garnishment was not mentioned. The contract itself, did not include a situation where the buyer-client recovers from levy of real properties. The contract is silent in this regard. If the intention of the parties was to provide for an automatic application of the contract on levy proceeds, both parties could have easily agreed on it.

From the phraseology of its contract with the spouses Ingco, petitioner had only two alternative objectives as their legal tasks, (1) delivery of title or (2) refund of the purchase price.

Items 2 and 5 of the contract envisioned two scenarios: (1) when the law firm recovers by mere demand letter; and (2) when the collection is through final judgment. In case of collection effected through a final judgment, the firm shall be entitled to an attorney's fee equivalent to 25% of what actually inures to the benefit of the Ingcos, whichever is higher among (a) the value of property protected or recovered; (b) the amount of claim collected; or (c) the total interests inuring to the Ingco's benefit including gains. The 25% attorney's fees must be based

[32] *Rollo*, pp. 122-123.

on what was actually realized and received by the Ingcos. Of the three serially enumerated, only the value of the property sold, bought and recovered actually inured to the benefit of the Ingcos. At this point, however, no money had yet been collected, nor had any interests and gains been verified and realized.

We are in agreement with the appellate court that what the law firm delivered to its clients was the refund of the amount claimed plus interest, stated in the compromise agreement with Villa Crista, not the title to the lot and more so, not the three lots purchased by the spouses at the execution sale.

In our view, the law firm had been adequately paid its lawyer's fees and is no longer entitled to additional fees on top of the ₱1.5 million it had received. In fact, the 25% attorney's fees based on the value of the lot, which is ₱5.1 million, multiplied by 25%, will only amount to ₱1,275,000. Thus, the firm had a bonus of ₱225,000, since they received ₱1,500,000 from the clients.

We note that the Ingcos acquired the three lots as the highest bidder at the execution sale, since no one else bid higher. On this point, it can be said that the lots had been acquired not through the recovery efforts of the law firm. Had other persons bidded a higher price, the matter of the three lots would be entirely impertinent here. It is stretching the firm's contractual rights to say that the three lots acquired in the auction by the Ingcos' was thru the law firm's contractual services.

The law firm appears to have extended the following services to the Ingcos: (1) sent three demand letters[33] to the developer; (2) filed a complaint[34] against the latter on March 29, 1999; (3) appeared for the Ingcos during the July 29, 1999 pre-trial before the HLURB arbiter;[35] (4) filed the joint motion to approve compromise agreement[36] between the parties dated October 21, 1999; and (5)

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[33] *Id*. at 467-469.

[34] *Id*. at 470-484.

[35] *Id*. at 488.

[36] *Id*. at 491-492.

attended four preliminary conferences, three of which were reset, and only one called. It took three months from pre-trial to the signing of the compromise agreement on October 1, 1999. There were no long-drawn trials. It was respondent Renato Ingco who actually negotiated in person with the developer. There is no positive evidence shown that the law firm battled for its clients against Villa Crista during the negotiation stage.

As we have ruled previously, courts can fix reasonable compensation which lawyers should receive for their professional services.[37] Nothing precludes the appellate courts from reducing the award when it is deemed unconscionable or excessive.[38] Further, here we note that when the auction sale of the three lots was made, the attorney-client relationship between petitioner and respondents no longer existed.[39] Thus, we cannot include in the attorney's fees the 25% of the excess of the market value of the lots over the ₱7,193,505.56 paid by the Ingcos in acquiring them.

Incidentally, while the spouses Ingco might have not raised the issue of the interpretation of contract in the trial court, it cannot be said also that the Court of Appeals deprived petitioner its right to be heard when it passed upon the issue. When it interpreted the agreement, the Court of Appeals merely sought to ascertain the meaning attached to the words used in the written contract,[40] undoubtedly to resolve the opposing contentions of the parties themselves.

On the last issue regarding the inhibition of the justices of the appellate court, aside from being moot and academic, we

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[37] *Traders Royal Bank Employees Union-Independent v. NLRC*, G.R. No. 120592, March 14, 1997, 269 SCRA 733, 750.

[38] *Brahm Industries, Inc. v. NLRC*, G.R. No. 118853, October 16, 1997, 280 SCRA 828, 839.

[39] See *Rilloraza, Africa, De Ocampo and Africa v. Eastern Telecommunications Phils., Inc*., G.R. No. 104600, July 2, 1999, 309 SCRA 566, 575.

[40] See *Huibonhoa v. Court of Appeals*, G.R. Nos. 95897 and 102604, December 14, 1999, 320 SCRA 625, 646; *National Irrigation Administration v. Gamit*, G.R. No. 85869, November 6, 1992, 215 SCRA 436, 450.

find that the issue had been adequately addressed by the appellate court. While bias and partiality are recognized as valid reasons for the voluntary inhibition of a judge under Rule 137, Section 1, par. 2,[41] of the Rules of Court, mere suspicion that a judge is partial is not enough. As long as the judge's opinions were formed in the course of judicial proceedings based on the evidence presented, and on the conduct of the parties as observed by the magistrate in court, such opinions – even if later found to be erroneous – will not prove personal bias or prejudice on the part of the judge. In this case, the law firm has failed to present concrete proof that any or all members of the Court of Appeals' Second Division had a personal interest in the case, or that their opinions on the case have stemmed from an extrajudicial source. We find no sufficient basis or reason to doubt their fairness and ability to decide this case with the "cold neutrality of an impartial judge."

As the appellate court pointed out, the present case has already been decided. A motion for inhibition can no longer be granted if a decision has already been rendered and the justice or judge sought to be disqualified had duly participated and cast his or her vote without any objection from any source. Clearly, a litigant cannot be permitted to speculate upon the action of the court and to raise objections only after an unfavorable decision has already been rendered.[42]

WHEREFORE, the instant petition is *DENIED*. The Decision dated March 17, 2005 of the Court of Appeals in CA-G.R. SP No. 85540, entitled "*Spouses Renato M. Ingco and Ma. Luisa S. Ingco v. Law Firm of Tungol and Tibayan*," is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

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[41] SECTION 1. *Disqualification of judges*. – . . .

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

[42] *Rollo*, p. 88.

SECOND DIVISION

[G.R. No. 170539. July 9, 2008]

HEIRS OF LETICIA LOPEZ-CUEVAS, represented by EMILIO AYTONA, JR., *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PREPONDERANCE OF EVIDENCE; DEFINED.— Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

2. CIVIL LAW; LAND REGISTRATION; REPLACEMENT OF LOST DUPLICATE CERTIFICATES OF TITLE; PREPONDERANCE OF EVIDENCE SUFFICIENT TO PROVE THE LOSS OF THE OWNER'S DUPLICATE COPY OF TRANSFER CERTIFICATE OF TITLE; PRESENT IN CASE AT BAR.— As such, Section 109, Chapter X of Presidential Decree No. 1529, which governs actions for the replacement of lost duplicate certificates of title, applies. The provision states: Sec. 109. *Notice and replacement of lost duplicate certificate.*—In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered. Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such

for all purposes of this decree. The record reveals that in compliance with the jurisdictional requirement that notice of the loss be sent to the Register of Deeds of the province where the land lies, petitioners submitted Aytona's Affidavit of Notice of Loss dated 28 November 2001, duly stamped "Received" by the Registry of Deeds of Daet, Camarines Norte. They then attached to their petition for the issuance of a new TCT Aytona's affidavit of loss which states that the title was entrusted to him but he later discovered that it was among the personal belongings which he could no longer locate. x x x To bolster the allegation that the certificate of title had been lost, Aytona gave the following testimony: x x x We deem the foregoing evidence sufficient to prove the loss of the owner's duplicate copy of TCT No. 11356 and the consequent entitlement of petitioners to the issuance of a new owner's duplicate copy. After all, in civil cases such as the one at bar, mere preponderance of evidence suffices. x x x Verily, the issuance of a new owner's duplicate of TCT No. 11356 is the only means by which petitioners can attain their ultimate objective of receiving just compensation for the parcels of land covered by the title which had been compulsorily taken by the government for agrarian reform purposes. To deny them the remedy under Section 109 of P.D. No. 1529 would leave them no recourse because the submission of the owner's duplicate of the title to the LBP is a condition to the payment of just compensation. In this regard, we deem this an opportune time to steer the course which petitioners should take to finally put order to their property. P.D. No. 1529, specifically Section 49 thereof, provides the procedure by which the distinct parcels of land embraced by petitioners' title can be issued separate titles. Section 58 of the same law also lays down the procedure in cases such as the one at bar where the conveyances involve only certain portions of land described in a certificate of title.

APPEARANCES OF COUNSEL

Legacion & Escueta-Legacion for petitioners.
The Solicitor General for respondent.

D E C I S I O N

TINGA, *J.*:

This Petition[1] before the Court, dated 9 December 2005 assails the Decision[2] of the Court of Appeals dated 28 February 2005, which declared null and void the new owner's duplicate certificate of title issued in favor of petitioners, and its Resolution[3] dated 27 October 2005 which denied reconsideration.

The facts are as follows:

On 5 December 2001, petitioners, Heirs of Leticia Lopez-Cuevas, represented by Emilio Aytona, Jr. (Aytona), filed with the Regional Trial Court (RTC) of Labo, Camarines Norte, Branch 64 a Petition[4] for the issuance of a new owner's duplicate copy of Transfer Certificate of Title (TCT) No. 11356 in replacement of the duplicate copy in Aytona's possession which was allegedly lost.

The petition alleges:

x x x x x x x x x

3. That Leticia Lopez[-] Cuevas is one of the registered owners of land located at Cabusay, Labo, Camarines Norte covered under Transfer Certificate of Title No. 11356 registered at the [O]ffice of the Registry of Deeds of Camarines Norte on December 19, 1974, certified photocopy of the aforesaid title is hereto attached and marked Annex "B" and made an integral part of this petition;

4. That said title consists of Lot 1 with FIFTY THOUSAND FIVE HUNDRED AND EIGHTY-FOUR (50,584) square meters, [L]ot 2 with SIX HUNDRED AND FOUR (604)

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[1] *Rollo*, pp. 9-22.

[2] *Id*. at 23-33; penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Noel F. Tijam and Arturo D. Brion (now Supreme Court Associate Justice).

[3] *Id*. at 34-35.

[4] Records, pp. 1-3.

SQUARE METERS, Lot 3 with SIX HUNDRED AND SEVENTY-SIX (676) SQUARE METERS, Lot 4 with ONE HUNDRED SIXTY-NINE THOUSAND TWO HUNDRED THIRTY-SIX (169,236) SQUARE METERS, Lot 5 with FIVE HUNDRED EIGHTY-FOUR THOUSAND [*sic*] FOUR HUNDRED AND SIXTY-FIVE (584,465) SQUARE METERS, Lot 6 with SEVENTY-SIX THOUSAND [sic] (76,572) SQUARE METERS, Lot 7 with EIGHTY-THREE THOUSAND FOUR HUNDRED AND FORTY-EIGHT (83,448) SQUARE METERS, Lot 8 with TWENTY-NINE THOUSAND ONE HUNDRED EIGHTY-TWO (29,182) SQUARE METERS, and Lot 9 with NINE HUNDRED TWENTY-SIX (926) SQUARE METERS, more or less;

5. That since the said title was entrusted to herein petitioner for safekeeping, he had been in possession of the owner's duplicate copy of said title and he kept the same in his files;

6. That, however, lately when petitioner looked for the said title in his files he discovered that the same was among those personal belongings which he could no longer be found up to this date thereby creating a conclusion that the same has been lost and already beyond recovery;

7. That the required Notice of Loss of said Title was sent to the Office of the Registry of Deeds as evidenced by its receiving stamp appearing on the said Affidavit and Notice of Loss, a copy of which is hereto attached and marked as Annex "C";

8. That the original copy of the said title is intact and on file with the Office of the Registry of Deeds of Camarines Norte as per Certification dated November 27, 2001 which the said office had issued is hereto attached and marked as Annex "D";

9. That said Owner's Duplicate Copy of the Transfer Certificate of Title [N]o. 11356 has not been delivered to any person or entity to secure payment or performance of any obligation whatsoever, nor any transaction any transaction or document relating to the same was presented for or pending registration in the office of the Registry of Deeds of Camarines Norte.

The RTC, in an Order[5] dated 23 September 2002, granted the petition, declared the owner's duplicate copy of TCT No. 11356 as null and void and directed the Registry of Deeds of Camarines Norte to issue a new owner's duplicate TCT.

In its assailed Decision, the Court of Appeals reversed the RTC's order and declared void the new owner's duplicate certificate of title issued by authority of this order.

Petitioners insist that their copy of TCT No. 11356 was lost and was not delivered to any third person or entity. They claim that the issuance of a new copy is a necessary condition to the payment to them by the Land Bank of the Philippines (LBP) of just compensation for the compulsory coverage of their property under the Comprehensive Agrarian Reform Program (CARP).

The Office of the Solicitor General (OSG) filed its Comment[6] dated 16 August 2006, on behalf of the Republic of the Philippines, arguing that apart from the affidavit of loss executed by Aytona and the latter's testimony in court, petitioners had failed to sufficiently explain the circumstances leading to the alleged loss of their copy of TCT No. 11356. More importantly, the OSG points out that the memorandum of encumbrances on the certificate of title shows that several transactions involving the lots embraced therein have been entered into, proving that TCT No. 11356 had already been cancelled. These transactions allegedly belie petitioners' claim that the owner's duplicate copy of the "Transfer Certificate of Title No. 11356 has not been delivered to any person or entity to secure the payment or performance of any obligation whatsoever, nor any transaction or document relating to the same was presented for or pending registration in the office of the Registry of Deeds of Camarines Norte."[7]

In their Reply[8] dated 15 January 2007, petitioners insist that the cancellation of TCT No. 11356 was merely partial because

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[5] *Id*. at 40-41.

[6] CA *rollo,* pp. 101-111.

[7] Records, p. 2.

[8] *Rollo,* pp. 127-134.

the transactions inscribed in the title pertain only to 75.5642 hectares out of the 99.5693 hectares comprising the entire landholding. They claim that except for the partial cancellation of the title in view of the Deed of Absolute Sale involving Lot 5 executed in favor of Eusebio Madera, *et al*., all the other transactions in favor of the national government in connection with its implementation of the CARP and that the inscriptions pertaining to these transactions do not state that the owner's duplicate copy of the certificate of title was delivered to a third person. Thus, petitioners advance that they cannot be said to have misrepresented the fact that their copy of TCT No. 11356 had not been delivered to any third person or entity.

The case at bar is merely for the replacement of a lost owner's duplicate certificate of title. As such, Section 109, Chapter X of Presidential Decree No. 1529, which governs actions for the replacement of lost duplicate certificates of title, applies. The provision states:

> Sec. 109. *Notice and replacement of lost duplicate certificate.*— In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.
>
> Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree.

The record reveals that in compliance with the jurisdictional requirement that notice of the loss be sent to the Register of Deeds of the province where the land lies, petitioners submitted

Aytona's Affidavit of Notice of Loss[9] dated 28 November 2001, duly stamped "Received" by the Registry of Deeds of Daet, Camarines Norte. They then attached to their petition for the issuance of a new TCT Aytona's affidavit of loss which states that the title was entrusted to him but he later discovered that it was among the personal belongings which he could no longer locate. The relevant portions of the said affidavit state:

> 4. That since the same has been entrusted to me, I had been in possession of the Owner's duplicate copy of said title and I kept the same in my files;
>
> 5. That however, lately when I look for the same in my files I discovered that it was among those personal belongings which I could no longer locate and despite diligent efforts in search of the said title, the same could no longer be found up to this date [there by] creating in my mind a conclusion that the same has been lost and already beyond recovery;
>
> 6. That said Owner's duplicate copy of TCT#11356 has not been delivered to any person of entity to secure payment of performance of any obligation [whatsoever], nor any transaction in the office of the [R]egistry of Deeds of Camarines Norte;[10]

To bolster the allegation that the certificate of title had been lost, Aytona gave the following testimony:

> Q: Do you have the title in your possession right now?
>
> A: I don't have.
>
> Q: Why?
>
> A: The title was somewhat lost because when I was looking for the title I cannot find the title in my possession.
>
> Q: What did you do after learning that said title has already been lost?
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> A: Well, I check with my wife and other relative if they borrowed it from me and I found out that the said title is

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[9] Records, p. 14.

[10] *Id*.

not in their possession so they advised me to search on it and what I did was I still kept on searching for it and after that I really cannot find it anymore.

Q: For how long did you search?

A: More than a year.

Q: After exerting diligent effort to locate the same and search seem to be futile[,] what did you do next, if any?

A: I decided to execute an Affidavit of Loss of the title.[11]

We deem the foregoing evidence sufficient to prove the loss of the owner's duplicate copy of TCT No. 11356 and the consequent entitlement of petitioners to the issuance of a new owner's duplicate copy. After all, in civil cases such as the one at bar, mere preponderance of evidence suffices. Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[12]

In the case of *Strait Times, Inc. v. Court of Appeals*[13] cited by the OSG, the Court annulled the trial court's decision granting a petition for the issuance of an owner's duplicate certificate of title because there was clear proof that the same had not been lost but was in fact in the possession of another person. Similarly in *Rexlon Realty Group, Inc. v. Court of Appeals*,[14] also relied upon by the OSG, there was no proof adduced to support the actual loss of the owner's duplicate copies of the TCTs in question. Hence, the Court said that the trial court did not acquire jurisdiction and the new titles issued in replacement thereof were void.

Verily, the issuance of a new owner's duplicate of TCT No. 11356 is the only means by which petitioners can attain

[11] TSN, 17 May 2002, pp. 9-10.

[12] *Republic v. Orfinada, Sr.,* G. R. No. 141145, 12 November 2004, 442 SCRA 342, 351-352.

[13] 356 Phil. 217 (1998).

[14] 429 Phil. 31 (2002).

their ultimate objective of receiving just compensation for the parcels of land covered by the title which had been compulsorily taken by the government for agrarian reform purposes. To deny them the remedy under Section 109 of P.D. No. 1529 would leave them no recourse because the submission of the owner's duplicate of the title to the LBP is a condition to the payment of just compensation.

In this regard, we deem this an opportune time to steer the course which petitioners should take to finally put order to their property. P.D. No. 1529, specifically Section 49 thereof, provides the procedure by which the distinct parcels of land embraced by petitioners' title can be issued separate titles.[15] Section 58 of the same law also lays down the procedure in cases such as the one at bar where the conveyances involve only certain portions of land described in a certificate of title.[16]

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[15] Sec. 49. *Splitting or consolidation of titles.*—A registered owner of several distinct parcels of land embraced in and covered by a certificate of title desiring in lieu thereof separate certificates, each containing one or more parcels, may file a written request for that purpose with the Register of Deeds concerned, and the latter, upon the surrender of the owner's duplicate, shall cancel it together with its original and issue in lieu thereof separate certificates as desired. x x x

[16] Sec. 58. *Procedure where conveyance involves portion of land.*— If a deed or conveyance is for a part only of the land described in a certificate of title, the Register of Deeds shall not enter any transfer certificate to the grantee until a plan of such land showing all the portions or lots into which it has been subdivided and the corresponding technical descriptions shall have been verified and approved pursuant to Section 50 of this Decree. Meanwhile, such deed may only be annotated by way of memorandum upon the grantor's certificate of title, original and duplicate, said memorandum to serve as a notice to third persons of the fact that certain unsegregated portion of the land described therein has been conveyed, and every certificate with such memorandum shall be effectual for the purpose of showing the grantee's title to the portion conveyed to him, pending the actual issuance of the corresponding certificate in his name.

Upon the approval of the plan and technical descriptions, the original of the plan, together with a certified copy of the technical descriptions shall be filed with the Register of Deeds for annotation in the corresponding certificate of title and thereupon said officer shall issue a new certificate of title to the grantee for the portion conveyed, and at the same time cancel the grantor's

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. CV No. 77287, dated 28 February 2005, and its Resolution dated 27 October 2005 are *REVERSED* and *SET ASIDE*. The Order of the Regional Trial Court of Labo, Camarines Norte, Branch 64 dated 23 September 2002, is *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Quisumbing (Chairperson), Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

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certificate partially with respect only to said portion conveyed, or, if the grantor so desires, his certificate may be cancelled totally and a new one issued to him describing therein the remaining portion: *Provided, however,* That pending approval of said plan, no further registration or annotation of any subsequent deed or other voluntary instrument involving the unsegregated portion conveyed shall be effected by the Register of Deeds, except where such unsegregated portion was purchased from the Government or any of its instrumentalities. If the land has been subdivided into several lots, designated by numbers or letters, the Register of Deeds may, if desired by the grantor, instead of canceling the latter's certificate and issuing a new one to the same for the remaining unconveyed lots, enter on said certificate and on its owner's duplicate a memorandum of such deed of conveyance and of the issuance of the transfer certificate to the grantee for the lot or lots thus conveyed, and that the grantor's certificate is cancelled as to such lot or lots.

SECOND DIVISION

[G.R. No. 171310. July 9, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SANNY CABACABA *y* GAYOSO,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; VIOLATION OF THE DANGEROUS DRUGS LAW; BUY-BUST OPERATION AS VALID FORM OF ENTRAPMENT.— This Court has already ruled repeatedly that a buy-bust operation is a form of entrapment which has repeatedly been accepted to be a valid means of arresting violators of the Dangerous Drugs Law. An arrest made after 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.

2. ID.; ID.; ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS.— Important in a prosecution for the illegal sale of prohibited drugs is proof that the transaction or sale actually took place and the presentation in court of the *corpus delicti*, which has two elements: (1) proof of the occurrence of a certain event and (2) a person's criminal responsibility for the act. Here, the prosecution has adequately shown that an illegal sale of drugs took place between the police and the appellant in a valid entrapment scheme. The prosecution actually presented during the trial of the case, the illegal substance and the payment seized from the appellant's possession.

3. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS BY THE TRIAL COURT; WHEN ACCORDED RESPECT AND EVEN FINALITY; PRESENT IN CASE AT BAR.— Generally this Court relies upon the assessment by the trial court, which had the distinct advantage of observing the conduct or demeanor of the witnesses while they were testifying. The factual findings by the trial court are accorded respect, even finality, absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied. We find no justifiable reason

to deviate from this rule in the case before us. x x x Factual findings of the trial court, when adopted and confirmed by the Court of Appeals, are binding and conclusive and, generally, will not be reviewed on appeal. Thus we see no valid reason to overturn the findings of the courts below that have undergone meticulous scrutiny, and we sustain the judgment both of the trial court and the appellate court that appellant is guilty as charged beyond reasonable doubt, hence his sentence to suffer life imprisonment and to pay a fine of ₱500,000 must be sustained.

APPEARANCES OF COUNSEL

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

D E C I S I O N

QUISUMBING, *J.*:

This is an appeal from the Decision[1] dated December 15, 2005 of the Court of Appeals in CA-G.R. CR-H.C. No. 00302. The appellate court affirmed the Decision[2] dated October 12, 2004 of the Regional Trial Court (RTC) of Quezon City, Branch 103 in Criminal Case No. Q-02-112846 finding appellant Sanny Cabacaba guilty for violation of Section 5,[3] Article II, Republic Act No. 9165, the Comprehensive Dangerous Drugs Act of 2002.

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[1] *Rollo*, pp. 2-12. Penned by Associate Justice Renato C. Dacudao, with Associate Justices Lucas P. Bersamin and Celia C. Librea-Leagogo concurring.

[2] CA *rollo,* pp. 13-16. Penned by Judge Jaime N. Salazar, Jr.

[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 (₱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.

The antecedent facts in this case are as follows.

On October 18, 2002, according to PO2 Jaime Ocampo's testimony, his superior formed a team to conduct a buy-bust operation at No. 138 Ermin Garcia Street, Barangay Rodriguez, Cubao, Quezon City after an informant had reported that appellant Sanny Cabacaba had been selling drugs at said address. PO2 Ocampo was designated as poseur buyer, with PO2 Jerry Sanchez and PO1 Glyn Fallorin as back-up. As poseur buyer, he was given one ₱200 bill with Serial Number D977936 and a ₱100 bill with Serial Number DF747795.[4] Both bills were recorded in their pre-operation logbook. He marked said bills with his initials "JO."[5]

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) 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 controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[4] Records, p. 7.

[5] TSN, March 13, 2003, pp. 2-4, 9.

The police team and the informant left the police station and arrived at Ermin Garcia Street at 7:00 p.m. According to PO2 Ocampo, he and the informant proceeded to a house at 138 Ermin Garcia Street. They asked the appellant to sell to them *shabu* worth ₱300. Appellant then handed over two sachets of *shabu* to PO2 Ocampo who then gave appellant the marked money. PO2 Ocampo examined the contents of the two sachets. After determining that they contained *shabu*, he tapped the shoulder of appellant. This was a signal to his two companions on the look-out that the sale of *shabu* had just been consummated.[6]

As his men rushed to the place of the transaction, PO2 Ocampo got hold of appellant. The latter was able to break free from him and run into the house in front of which the sale took place.

The police ran after appellant who was then collared by PO2 Ocampo inside the house. Two persons sitting on a sofa were searched like appellant. The search on one of them, who was identified as Elena Blancha, yielded a sachet of *shabu*. The other male person yielded no contraband. In the body search conducted on appellant, the police recovered both the ₱200 and ₱100 bills earlier received by him from PO2 Ocampo. PO2 Ocampo testified that the accused and Elena were live-in partners.

In his defense, appellant testified that on October 18, 2002 at 7:00 p.m. he was attending the birthday party of the daughter of his neighbor, Elena Blancha. At around 9:30 p.m., five armed men entered Elena's house and searched four persons including appellant and Elena. Nothing was found in their possession. After a while, however, a police officer waived a plastic sachet he said he found on top of a TV set. The armed persons then brought all four of them to the Araneta Center Police Block 5 in handcuffs.[7]

According to appellant, the police asked each of them to give ₱10,000 in exchange for their release. Afterwards, only

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[6] *Id*. at 4-6.

[7] TSN, June 28, 2004, pp. 2-10.

appellant was detained. Appellant testified that he believed that his companions had given the police some cash.

Another witness for the defense, Conrado de Guzman,[8] testified that on October 18, 2002 at around 6:00 p.m., he was walking along an alley of Ermin Garcia Street, when he met four policemen armed with armalites walking toward him. He stepped aside to give way to them. After two had passed him, however, the two others returned and grabbed him. Those persons brought him to the house of his neighbor, Elena Blancha. He saw the police officers searching the house. He also saw four persons inside that house, including Elena Blancha and the appellant, both of whom were residents of the house. He did not know the identity of the other two. Later on, a police officer cried, "*Ito na ang hinahanap natin*!" All five of them were brought afterwards to the police station where each one of them was interrogated inside an investigation room. After an hour, according to de Guzman, he was released.[9]

On cross-examination, de Guzman stated that the arresting officers told him that arresting bystanders was part of their operations. De Guzman further testified that he was a neighbor and acquaintance of the appellant.[10]

On October 12, 2004, the trial court convicted the appellant. Its decision reads as follows:

> After a review of the evidence, the court inclines towards the moral guilt of the accused. Police Officer Ocampo testified positively and unwaveringly that he purchased ₱300.00 worth of *shabu* from the accused. The accused, whose shoulder was tapped by Police Officer Ocampo as a pre-arranged signal to his companions, suddenly ran away towards a house when someone shouted, as Police Officer Ocampo and his companions were rushing in, that "*Mga parak yan*!"
>
> Against this strong testimonial evidence, the defense evidence is lacking in coherence, naturalness and consistency.

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[8] TSN, August 17, 2004, p. 3. Also known as Arnel de Guzman in some parts of the record.

[9] *Id*. at 4-11.

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

For example, Sanny said a children's birthday party was going on at the time of his arrest inside Elena's house. If this is true, the court finds it impossible that defense witness Arnel did not see any child or children attending the party; did not see any birthday balloon that Sanny said festooned the occasion; and did not see any neighbor of theirs accompanying their kids and partaking of food and holding a program. Arnel only saw inside Elena's house two men, whom he does not know, together with Sanny and Elena. He could not have failed to mention the balloons, the children and the food and drinks, if indeed there was a party there.

Sanny testified that Elena's husband was out buying liquor at that time. He said that Elena is his neighbor. As it turned out, when Arnel testified, Sanny is living-in with Elena in the same house. Indeed, if Sanny's defense theory is true, the "husband" of Elena would have testified here. Any husband would naturally feel great indignation that during a peaceful, festive gathering of children on the occasion of his 4-year old daughter's birthday, the police would suddenly barge in, rifle through everything in the house, arrest his wife, and charge her "falsely" of possession of *shabu* which carries a 12 to 20 years' penalty.

It is in fact surprising that according to Sanny, not a neighbor of Elena went to the party. This is most unusual because even among squatters, when there is a party, particularly a children's party, there will be a lot of women in attendance, accompanying their little kids, acting as helpers in the preparations, *etc*.

ACCORDINGLY, judgment is hereby rendered finding the accused **Sanny Cabacaba *y* Gayoso GUILTY** beyond reasonable doubt of Violation of Section 5 of R.A. 9165 for selling methylamphetamine hydrochloride weighing 0.04 gram and he is hereby sentenced to suffer a jail term of **LIFE IMPRISONMENT** and to pay a fine of ₱500,000.00.

The drugs involved in this case are ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) thru the Dangerous Drugs Board (DDB) for proper legal disposition.

SO ORDERED.

October 12, 2004.

(SGD.)
JAIME N. SALAZAR, JR.
Judge[11]

[11] CA *rollo*, pp. 15-16.

On appeal, the issues presented for determination were:

I.

THE COURT *A QUO* GRAVELY ERRED IN NOT FINDING THAT THE ACCUSED-APPELLANT WAS ILLEGALLY ARRESTED.

II.

THE LOWER COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT.[12]

The Court of Appeals held:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the decision appealed from must be, as it is hereby **AFFIRMED**, *in toto*. With the costs of this instance to be taxed against the accused-appellant.

SO ORDERED.[13]

On February 20, 2006, in view of the penalty of life imprisonment imposed on appellant, the records of the case were elevated to this Court for review.[14]

Both parties manifested that they waived their rights to file supplemental briefs, as their arguments had been already discussed in their previous briefs.[15]

Briefly stated, the issues for our resolution now are: (1) Was there a valid arrest on the accused? and (2) Was the accused's guilt proven beyond reasonable doubt?

Appellant argues that at the time of his arrest, he had not committed, was not committing, and was not about to commit any crime. Hence, he contends that none of the circumstances

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[12] *Rollo*, p. 7.

[13] *Id.* at 12.

[14] *Id*. at 1.

[15] *Id*. at 25-28.

justifying an arrest without a warrant under Section 5[16] of Rule 113 of the Rules of Court was present.[17]

Appellee for its part, points out that time and again, a buy-bust operation has been held as a legitimate mode of apprehending drug pushers. Although appellant was previously under surveillance, no search warrant was needed in this case since the buy-bust operation conducted was an entrapment and not a search.[18]

We agree with the appellee. This Court has already ruled repeatedly that a buy-bust operation is a form of entrapment which has repeatedly been accepted to be a valid means of arresting violators of the Dangerous Drugs Law.[19] An arrest made after 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.[20]

On the second issue, appellant argues that the evidence relied upon by the prosecution falls short of the quantum of proof

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[16] 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;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

[17] CA *rollo*, p. 40.

[18] *Id*. at 64.

[19] *People v. Juatan*, G.R. No. 104378, August 20, 1996, 260 SCRA 532, 538.

[20] *Teodosio v. Court of Appeals,* G.R. No. 124346, June 8, 2004, 431 SCRA 194, 207.

required for a conviction. Although the testimony of a police officer should ordinarily be accorded full faith and credence, still it cannot prevail over the constitutional presumption of innocence that an accused enjoys.[21] Appellee for its part, maintains that the elements of violation of Section 5, Article II of Rep. Act No. 9165 has been proven.[22]

Again we cannot agree with the appellant. Important in a prosecution for the illegal sale of prohibited drugs is proof that the transaction or sale actually took place and the presentation in court of the *corpus delicti*,[23] which has two elements: (1) proof of the occurrence of a certain event and (2) a person's criminal responsibility for the act.[24] Here, the prosecution has adequately shown that an illegal sale of drugs took place between the police and the appellant in a valid entrapment scheme. The prosecution actually presented during the trial of the case, the illegal substance and the payment seized from the appellant's possession.

In a prosecution for violation of the Comprehensive Dangerous Drugs Act of 2002, usually a case becomes a contest of credibility between the accused and the police, the witnesses and their testimonies. Generally this Court relies upon the assessment by the trial court, which had the distinct advantage of observing the conduct or demeanor of the witnesses while they were testifying.[25] The factual findings by the trial court are accorded respect, even finality, absent any showing that certain facts of weight and substance bearing on the elements of the crime have

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[21] CA *rollo*, p. 44.

[22] *Id*. at 66.

[23] *People v. Uy,* G.R. No. 128046, March 7, 2000, 327 SCRA 335, 358.

[24] *People v. Boco,* G.R. No. 129676, June 23, 1999, 309 SCRA 42, 56. Also, *People v. Montano,* G.R. No. 130836, August 11, 2000, 337 SCRA 608, 618, said that the requisites for the prosecution of illegal sale of drugs are as follows: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.

[25] *People v. Sy*, G.R. No. 147348, September 24, 2002, 389 SCRA 594, 605.

been overlooked, misapprehended or misapplied.[26] We find no justifiable reason to deviate from this rule in the case before us.[27]

The reasoning of the decision by the Court of Appeals, penned by Justice Dacudao, deserves full consideration, as we quote it as follows:

Case law teaches that the defense of frame-up is frowned upon as it can easily be concocted, even as it is commonly employed by the accused as a standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by some improper motive, or were not properly performing their duty, their testimonies with respect to the buy-bust operation deserve full faith and credit. Without proof of motive to falsely impute such a serious crime against appellant, as in this case, the presumption of regularity in the performance of official duty and the findings of the trial court on the credibility of witnesses shall prevail over his claim of having been framed. This teaching equally applies to the accused-appellant's allegation on extortion.

Moreover, in the prosecution of the offense for illegal sale of prohibited drugs, what is essential is **proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence**. It suffices to show that the accused is **in possession** of an item or an object identified to be a prohibited or a regulated drug; that such possession is not authorized by law; and that the accused has freely and consciously possessed the prohibited drug. Possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of a satisfactory explanation of such possession. Hence, the burden of evidence is shifted to the accused to explain away the absence of knowledge or *animus possidendi*. This, the accused herein, under the circumstances heretofore related, miserably failed to do.

Nor is it necessary to establish how the accused-appellant and the informant met, or how the police officer was introduced to the

[26] *People v. Chen Tiz Chang*, G.R. Nos. 131872-73, February 17, 2000, 325 SCRA 776, 778.

[27] *People v. Yatco*, G.R. No. 138388, March 19, 2002, 379 SCRA 432, 442.

accused-appellant. Drug dealers are known to sell their goods even to strangers. They ply their wares [wherever] prospective customers are found. They have indeed become increasingly daring and openly defiant of the law.

Indeed, in this case the police officers were able to prove the factuality of the transaction between PO2 Ocampo and the accused-appellant, and they were moreover able to present in court the substance seized from the latter which, after chemical examination, was found to contain methamphetamine hydrochloride or *shabu*. PO2 Ocampo's testimony was coherent, straightforward and candid even under intense cross-examination by the defense counsel. It bears the badges of truth, such that it is extremely difficult for a rational mind not to find it credible.

The constitutional presumption of innocence can be accorded to the accused only in the absence of evidence to prove his guilt beyond reasonable doubt. In the case at bench, that constitutional presumption cannot be upheld, in the face of the overwhelming and incontrovertible evidence for the prosecution irresistibly pointing to the conclusive culpability of the accused-appellant.[28]

We are in agreement that the facts of this case, as gleaned from the records, fully support the decision of the court *a quo*. Factual findings of the trial court, when adopted and confirmed by the Court of Appeals, are binding and conclusive and, generally, will not be reviewed on appeal.[29] Thus we see no valid reason to overturn the findings of the courts below that have undergone meticulous scrutiny, and we sustain the judgment both of the trial court and the appellate court that appellant is guilty as charged beyond reasonable doubt, hence his sentence to suffer life imprisonment and to pay a fine of ₱500,000 must be sustained.

WHEREFORE, the Decision dated December 15, 2005 of the Court of Appeals in CA-G.R. CR-H.C. No. 00302 is *AFFIRMED*.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

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[28] *Rollo,* pp. 10-11.

[29] *W-Red Construction and Development Corp. v. Court of Appeals*, G.R. No. 122648, August 17, 2000, 338 SCRA 341, 345.

SECOND DIVISION

[G.R. No. 172167. July 9, 2008]

SOLEDAD E. DIZON, CORAZON R. ESPINOSA, CYNTHIA R. ESPINOSA, JENNIFER R. ESPINOSA, JULIE R. ESPINOSA, GELACIO R. ESPINOSA, JR., and JOSELITO R. ESPINOSA, *petitioners, vs.* **RODRIGO G. TUAZON and ESTRELLA M. TUAZON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF TO OVERCOME PRESUMPTION OF DUE EXECUTION OF A NOTARIZED DOCUMENT LIES ON THE ONE CONTESTING THE SAME.— As notarized documents, the Deed of Absolute Sale, the Affidavit of Non-tenancy, and the Agreement of Subdivision carry evidentiary weight conferred upon them with respect to their due execution and enjoy the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity. Absent such evidence, the presumption must be upheld. The burden of proof to overcome the presumption of due execution of a notarized document lies on the one contesting the same.

2. ID.; ID.; EXPERT OPINION; PROBATIVE VALUE THEREOF, EXPLAINED; APPLICATION IN CASE AT BAR.— Expert opinion evidence is to be considered or weighed by the court like any other testimony, in the light of its own general knowledge and experience upon the subject of inquiry. The probative force of the testimony of an expert does not lie in a mere statement of his theory or opinion, but rather in the aid that he can render to the courts in showing the facts which serve as a basis for his criterion and the reasons upon which the logic of his conclusion is founded. The handwriting expert gave only a definitive conclusion as to Segundo's signature in the Agreement of Subdivision, and not in the Affidavit of Non-tenancy or more importantly in the Deed of Absolute Sale. An accurate examination to determine forgery should dwell on both the differences and similarities between the questioned signatures. Obviously, the abbreviated signature is different

from the full signature presented by petitioners. However, we find that there are only slight dissimilarities between the surname "Espinosa" in the questioned documents and in the samples. These slight dissimilarities do not indicate forgery for these are natural, expected and inevitable variations in genuine signatures made by one and the same person. Even Segundo's sample signatures submitted by petitioners show clear variations in structure, flourish and size. The passage of time and a person's increase in age may have decisive influences in his writing characteristics and so, in order to bring about an accurate comparison and analysis, the standards of comparison must be as close as possible in point and time to the suspected signature. This was in fact the reason why the handwriting expert stated in her report that no definite opinion of falsification/ forgery could be rendered on the questioned signatures appearing in the Deed of Absolute Sale since the sample signatures submitted could not serve as sufficient basis for a scientific comparative examination. We also note that petitioners were unable to rebut the genuineness of the full signature appearing on the second page of the Deed of Absolute Sale, which signature we observe to be similar to Segundo's sample/specimen signatures.

APPEARANCES OF COUNSEL

Joselito L. Lim for petitioners.
Tabaquero Villafañe Albano & Associates for respondents.

D E C I S I O N

TINGA, *J.*:

This is a Petition for Review[1] of the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. CV No. 79523 dated 26

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[1] *Rollo,* pp. 12-31.

[2] *Id*. at 32-51; penned by Associate Justice Rosmarie D. Carandang, with Associate Justices Andres B. Reyes, Jr. and Monina Arevalo-Zenarosa concurring.

[3] *Id*. at 50-51.

January 2006 and 31 March 2006, respectively, which reversed and set aside the Decision[4] of the Regional Trial Court of Tarlac City, Branch 63 dated 19 May 2003.

The facts of the case, as culled from the decisions of the lower courts, follow.

Petitioners are the heirs of Segundo Espinosa (Segundo), owner of one-half undivided share[5] in two parcels of land individually covered by OCT No. 0-279[6] and TCT No. 38284[7] and both situated in Brgy. Tibag, Tarlac, Tarlac. When Segundo was widowed, he cohabited with one Laureana Bondoc and sired Estrella Tuazon (Estrella), one of the respondents in this case.

In 1988, petitioner Soledad Dizon (Soledad), daughter of Segundo, discussed with her brother the transfer of the properties in their name. They informed Segundo of their plan and the latter agreed. However, Segundo told them that the titles of the properties were in the name of the spouses Estrella and respondent Rodrigo Tuazon (Rodrigo). Soledad inquired from respondents and was told that they had already bought the subject property.

Soledad went to the Register of Deeds and was able to secure copies of the Deed of Absolute Sale and Affidavit of Non-tenancy allegedly executed by Segundo in favor of respondents. In 1990, respondents also allegedly prepared an Agreement of Subdivision and made it appear therein that Segundo had signed and executed the same. When Segundo was shown the documents, he claimed that he was fooled by respondents to enter into the transaction and that his signature had been forged. He met with a certain Atty. Conrado Genilo, the lawyer who notarized the documents, and was informed that he had merely notarized the said documents prepared by his secretary. Atty. Genito also told Segundo that he was willing to testify in his favor.

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[4] *Id*. at 52-65.

[5] The other half was owned by his deceased wife, Aurelia Mallari.

[6] Folder of Exhibits, p. 8.

[7] *Id*. at 10.

The parties brought the matter to the *barangay* for conciliation but no settlement was reached. Hence, Segundo prepared and signed a complaint for annulment of the Deed of Absolute Sale, the Affidavit of Non-tenancy and the Agreement of Subdivision. However, the complaint was not filed in court because Segundo fell ill and Soledad was then working abroad. Segundo died on 16 October 1995.

Petitioners filed a complaint for declaration of nullity of sale and damages against respondents on 16 November 1995. They claimed that respondents fraudulently prepared the three documents, namely, the Deed of Absolute Sale dated 30 August 1985,[8] the Affidavit of Non-tenancy dated 30 August 1985[9] and the Agreement of Subdivision dated 21 February 1990,[10] in all of which respondents made it appear that Segundo had signed, executed and acknowledged the said documents before a notary public.

Respondents claimed that when Segundo's mortgage obligation to Philippine National Bank (PNB)[11] fell due, he sought financial assistance from respondents in order to avert the foreclosure of the mortgage. They obliged and made several payments on the mortgage debt. In return, Segundo promised to transfer to respondent Estrella his share in the mortgaged properties, which he fulfilled when he freely delivered to her and her husband the Deed of Absolute Sale and Affidavit of Non-tenancy in 1985. Respondents also alleged that in 1990, Segundo executed the Agreement of Subdivision to effect the actual conveyance of title to the properties subject of the sale.[12]

The trial court rendered its judgment on 19 May 2003, holding that the signatures appearing in the documents were not Segundo's and granting the reliefs prayed for in the complaint. It declared

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[8] *Id*. at 12.

[9] *Id*. at 19.

[10] *Id*. at 20.

[11] Records, pp. 28-31. In January 1972, Segundo and his wife (who was then still living) executed a real estate mortgage on the properties subject of this case to secure a loan with the Philippine National Bank (PNB).

[12] *Id*. at 20-25.

as null and void the Deed of Absolute Sale, the Affidavit of Non-tenancy, and the Agreement of Subdivision, and accordingly ordered the cancellation of the titles to the properties in respondents' names and the restoration of the former titles. It also ordered petitioners to pay the litigation expenses and attorney's fees.[13]

Respondents appealed the decision to the Court of Appeals, which in turn reversed the decision of the trial court.[14] According to the Court of Appeals, petitioners were unable to establish the charge of forgery by a preponderance of evidence.

Before us, petitioners contend that the Court of Appeals erred when it reversed the judgment of the trial court. They claim that it disregarded the evaluation made by the trial court and instead gave credence to the testimonies of the witnesses who testified that they saw Segundo sign the questioned deed.[15] Moreover, the appellate court allegedly failed to consider petitioners' evidence proving the charge of falsification, to wit: (1) the NBI report which stated that the signatures "S. Espinosa" and "Segundo Espinosa" were written by two different persons; (2) the combined testimony of petitioner Soledad and Theodore Espinosa (Theodore), Segundo's grandson, that the signature of Segundo was falsified; (3) the memorandum of the proceedings before the Office of the Barangay Lupon of Tibag, Tarlac which established the fact that Segundo had already questioned the genuiness of his signature as early as 27 September 1989; and (4) the fact that despite the alleged sale, the tenants on the land continued paying rentals to them.[16] Petitioners also claim that the Court of Appeals misconstrued respondents' possession of the PNB receipts as proof of their having purchased the property for valuable consideration, because they gained access to the said receipts only after Segundo and the mother of Estrella had started to live together.[17] For the same reason, according to

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[13] *Rollo*, p. 65.

[14] *Id*. at 32-48; Decision of the Court of Appeals dated 26 January 2006.

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

[16] *Id*. at 17-26.

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

petitioners, respondents gained access to the owner's copies of TCT No. 38284 and OCT No. 0-279 and thus, it could not be said that Segundo had voluntarily given the documents to them.[18]

For their part, respondents claim that petitioners gave a constricted statement of the matters involved since they relied completely and only on the findings of the trial court.[19] They defend the decision of the Court of Appeals, noting that the latter has made a thorough evaluation and analysis of the documentary evidence and the testimonies of the witnesses.[20]

The determination of whether Segundo's signature was forged is a question of fact which calls for a review of the evidence presented by the parties. While such determination is usually not within the Court's domain, we will delve into factual issues in this case due to the conflicting findings of the Court of Appeals and of the trial court.[21]

In ruling that Segundo's signature in the subject documents is a forgery, the trial court based its conclusion on the NBI Report[22] which stated that the abbreviated signature in the Agreement of Subdivision and the standard sample signatures of Segundo were not affixed by one and the same person; hence, the document is falsified.[23] Anent the Deed of Sale and the Affidavit of Non-tenancy, the trial court concluded that the signatures therein could not have been Segundo's because Segundo always affixed his signature by writing his full name and surname.[24] It also gave credence to the testimonies of Soledad, Theodore and the other witnesses who identified the genuine signatures of Segundo.[25] It noted that the only iota of

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[18] *Id*. at 27.

[19] *Id*. at 72.

[20] *Id*. at 74.

[21] *Baricuatro, Jr. v. Court of Appeals,* 382 Phil. 15, 24 (2000).

[22] Records, pp. 110-112.

[23] *Rollo*, p. 62.

[24] *Id*. at 63.

[25] *Id*.

evidence presented by petitioners was a piece of mimeographed paper with a handwritten name "S. Espinosa," which the trial court found to be not Segundo's signature but rather of the clerk who made the entry.[26] In addition, the trial court noted that as early as 27 September 1989, Segundo had already questioned the supposed sale of the property to respondents and hence, he could not have agreed to sign and execute the Agreement of Subdivision dated 21 February 1990.[27]

On the contrary, the Court of Appeals ruled that petitioners were unable to establish their claim by preponderance of evidence, save for their assertion that the signature of Segundo was falsified because it was not the latter's usual signature. Even the NBI report stated that no definite opinion of falsification/forgery could be rendered on the questioned signatures appearing in the Deed of Absolute Sale since the sample signatures could not serve as sufficient basis for a scientific comparative examination. The appellate court noted that while petitioners claim that the abbreviated signature of Segundo was forged, they nevertheless could not explain the appearance of the full signature of Segundo in the second page of the document. Thus, the Court of Appeals concluded that if Segundo had signed the second page, it follows that he likewise signed the first page except that he signed it in abbreviated form.[28]

The Court of Appeals also gave credence to the testimonies of Marino Tabaquero (Tabaquero), the secretary of the notary public who personally witnessed Segundo affix his signature, and respondent Rodrigo, the buyer of the subject property who was likewise present when Segundo signed the documents.[29] It took into consideration respondents' possession of the original PNB receipts, proof that they were the ones who secured the release of the mortgage and which, in turn, is evidence of the valuable consideration for which the Deed of Sale was executed.[30]

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[26] *Id*.

[27] *Id*. at 4.

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

[29] *Id*. at 40-43.

[30] *Id*. at 44.

The appellate court also noted that in July 1986, the sale was inscribed at the back of the title of the subject property which proves that the owner's copy of the certificates of title was surrendered and presented to the Register of Deeds; thus, as of 1986, Segundo already had constructive notice of the alleged falsification/forgery but did not take the necessary legal steps to annul the deed.[31] Finally, the appellate court held that petitioners failed to overcome the legal presumption of authenticity and due execution of the Deed of Absolute Sale, it being a notarized document.[32]

The petition must be denied.

As notarized documents, the Deed of Absolute Sale, the Affidavit of Non-tenancy, and the Agreement of Subdivision carry evidentiary weight conferred upon them with respect to their due execution and enjoy the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity. Absent such evidence, the presumption must be upheld. The burden of proof to overcome the presumption of due execution of a notarized document lies on the one contesting the same.[33]

To recapitulate, petitioners rely on the following evidence in support of their case: (i) the NBI Report which concluded that the "S. Espinosa" in the Agreement of Subdivision and the "Segundo Espinosa" in the sample signatures were not written by one and the same person; (ii) the combined testimony of Soledad and Theodore, who both claimed familiarity with Segundo's signature, that the signatures appearing in the questioned documents were affixed by Segundo; (iii) the memorandum of the *barangay lupon* proceedings captioned "*Isang Paglilipat Pansin* (Endorsement)" dated 27 September 1989 relative to the questioned Deed of Absolute Sale;[34] and (iv) the fact that the

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[31] *Id*. at 46.

[32] *Id*. at 47.

[33] *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals*, G.R. No. 125283, 10 February 2006, 482 SCRA, 164, 174.

[34] Folder of Exhibits, p. 104.

rent payments on the land purportedly sold to respondents were being paid to petitioners despite the alleged sale.

However, these pieces of evidence, these are not enough to overcome the presumption of regularity in the execution and validity of the questioned deeds. Hence, we are inclined to agree with the findings of the Court of Appeals.

In the first place, the court is not bound by the findings of a handwriting expert. Expert opinion evidence is to be considered or weighed by the court like any other testimony, in the light of its own general knowledge and experience upon the subject of inquiry.[35] The probative force of the testimony of an expert does not lie in a mere statement of his theory or opinion, but rather in the aid that he can render to the courts in showing the facts which serve as a basis for his criterion and the reasons upon which the logic of his conclusion is founded.[36] The handwriting expert gave only a definitive conclusion as to Segundo's signature in the Agreement of Subdivision, and not in the Affidavit of Non-tenancy or more importantly in the Deed of Absolute Sale.[37] An accurate examination to determine forgery should dwell on both the differences and similarities

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[35] *People v. Malejana*, 24 January 2006, G.R. No. 145002, 479 SCRA 610, 623, citing FRANCISO, R.J., EVIDENCE, Vol. VII, Part I (1997 Ed.), p. 663.

[36] *People v. Malejana*, *supra*, citing *People v. Florendo*, 68 Phil. 619 (1939).

[37] Records, pp. 111-112. Referring to the signatures in the Deed of Absolute Sale and on the Affidavit of Non- Tenancy, the Report stated:

FINDINGS:

x x x x x x x x x

2. No definite opinion can be rendered on the questioned signatures marked as "Q-1" thru "Q-3" as the standards/sample signatures submitted are not sufficient to be used as basis for a scientific comparative examination. It is therefore, respectfully suggested that additional standards/sample signatures SEGUNDO ESPINOSA preferably appearing on documents executed in 1985 and 1986, be procured from files and submitted to this Office.

CONCLUSION:

x x x x x x x x x

2. No definite opinion can be rendered on the questioned signatures marked as "Q-1" thru "Q-3, as per Findings No.2, above.

between the questioned signatures.[38] Obviously, the abbreviated signature is different from the full signature presented by petitioners. However, we find that there are only slight dissimilarities between the surname "Espinosa" in the questioned documents and in the samples. These slight dissimilarities do not indicate forgery for these are natural, expected and inevitable variations in genuine signatures made by one and the same person.[39] Even Segundo's sample signatures submitted by petitioners show clear variations in structure, flourish and size. The passage of time and a person's increase in age may have decisive influences in his writing characteristics and so, in order to bring about an accurate comparison and analysis, the standards of comparison must be as close as possible in point and time to the suspected signature.[40] This was in fact the reason why the handwriting expert stated in her report that no definite opinion of falsification/forgery could be rendered on the questioned signatures appearing in the Deed of Absolute Sale since the sample signatures submitted could not serve as sufficient basis for a scientific comparative examination.[41] We also note that petitioners were unable to rebut the genuineness of the full signature appearing on the second page of the Deed of Absolute Sale, which signature we observe to be similar to Segundo's sample/specimen signatures.

Neither are we swayed by the testimonies of Soledad and Theodore, who both professed that Segundo always signed his name in full and not by mere initials. These testimonies alone do not lead to the conclusion that the signatures appearing in the questioned documents were forged. Besides, Soledad's testimony that Segundo one told her that he had never signed

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[38] *Causapin v. Court of Appeals*, G.R. No. 107432, 4 July 1994, 233 SCRA 615, 623.

[39] *Jimenez v. Commission on Ecumenical Mission United Presbyterian Church, USA* , 432 Phil. 895, 911 (2001).

[40] *Jimenez v. Commission on Ecumenical Mission, United Presbyterian Church, USA*, *supra* note 42 at 910, citing C*ausapin v. Court of Appeals*, 233 SCRA 615.

[41] Folder of Exhibits, p. 49.

the questioned documents[42] is hearsay, as this was not of her own personal knowledge but was rather narrated merely to her. We are more inclined to believe the testimony of Tabaquero and Rodrigo, who both personally witnessed Segundo affix his signature. Tabaquero testified that when he called Segundo's attention to the difference in the signatures on page one and page two of the Deed of Absolute Sale, Segundo answered, "*Yanaman yan, ana*" (That is just the same. That is my signature.)"[43] Rodrigo, for his part, stated that he heard Tabaquero's comment on the dissimilarity of the signatures as well as Segundo's reply, "This is the same."[44]

Furthermore, even if the endorsement from the Barangay Lupon is indeed proof that as early as 1989 there has already been a dispute between Segundo and respondents concerning the sale, nowhere in the said document is it mentioned that Segundo claimed the forgery of his signature. Instead, we read that the issue in the *barangay* proceedings is the amount actually paid by respondents and petitioners' desire to repurchase the property. Thus:

Bagamat sa pandinig ng mga bagay na ito dito sa barangay, waring ninanais malaman ng mga nanghahabulan kung magkano naman ang ipinaabot o ibinayad ng mga bumili sa nagbili at hangad nilang matubos kung saka-sakali man ang nabanggit na mahalagang ari-arian.[45]

The claim that rental payments of one of the tenants of the subject properties were given to Segundo and, after his death, to Soledad likewise does not point to the conclusion that Segundo's signature was forged.

A final note. Petitioners claim that Atty. Genilo, the lawyer who notarized the questioned documents, was willing to testify in their favor. However, despite their opportunity to present and even compel him to testify as their witness, petitioners

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[42] TSN, 3 September 1998, pp. 11-16.

[43] TSN, 20 June 2000, pp. 43-50.

[44] TSN, 14 September 2001, pp. 70-71.

[45] Folder of Exhibits, p. 104, *Isang Paglilipat Pansin* (Endorsement).

nevertheless failed to do so despite the fact that his testimony is crucial to the determination of whether Segundo appeared before him and actually signed the questioned documents.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated 26 January 2006 is *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 172263. July 9, 2008]

SPOUSES AUTHER G. KELLEY, JR. and DORIS A. KELLEY, *complainants, vs.* **PLANTERS PRODUCTS, INC. and JORGE A. RAGUTANA,**[1] *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; THE FAMILY HOME; REQUISITES FOR THE CONSTITUTION THEREOF.— There must be proof that the alleged family home was constituted jointly by the husband and wife or by an unmarried head of a family. It must be the house where they and their family actually reside and the lot on which it is situated. The family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent, or on the property of the unmarried head of the family. The actual value of

[1] In other parts of the *rollo*, respondent Jorge A. Ragutana's first name was spelled as "George" and his last name was spelled as "Regutana."

the family home shall not exceed, at the time of its constitution, the amount of ₱300,000 in urban areas and ₱200,000 in rural areas. Under the Family Code, there is no need to constitute the family home judicially or extrajudicially. All family homes constructed after the effectivity of the Family Code (August 3, 1988) are constituted as such by operation of law. All existing family residences as of August 3, 1988 are considered family homes and are prospectively entitled to the benefits accorded to a family home under the Family Code. The exemption is effective from the time of the constitution of the family home as such and lasts as long as any of its beneficiaries actually resides therein. Moreover, the debts for which the family home is made answerable must have been incurred after August 3, 1988. Otherwise (that is, if it was incurred prior to August 3, 1988), the alleged family home must be shown to have been constituted either judicially or extrajudicially pursuant to the Civil Code.

2. ID.; ID.; ID.; EXEMPT FROM EXECUTION, FORCED SALE OR ATTACHMENT; EXCEPTION.— The rule, however, is not absolute. The Family Code, in fact, expressly provides for the following exceptions: Article 155. The family home shall be exempt from execution, forced sale or attachment except: (1) For non-payment of taxes; (2) For debts incurred prior to the constitution of the family home; (3) For debts secured by a mortgage on the premises before or after such constitution; and (4) For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building. x x x Article 160. When a creditor whose claim is not among those mentioned in Article 155 obtains a judgment in his favor, and he has reasonable grounds to believe that the family home is actually worth more than the maximum amount fixed in Article 157, he may apply to the court which rendered the judgment for an order directing the sale of the property under execution. The court shall so order if it finds that the actual value of the family home exceeds the maximum amount allowed by law as of the time of its constitution. If the increased actual value exceeds the maximum amount allowed by law in Article 157 and results from subsequent voluntary improvements introduced by the person or persons constituting the family home, by the owner or owners of the property, or by any of the beneficiaries, the same rule and procedure shall apply.

APPEARANCES OF COUNSEL

Edwin A. Hidalgo for petitioners.
Dominador Santiago for respondents.

R E S O L U T I O N

CORONA, *J.*:

Petitioner Auther G. Kelley, Jr. (Auther) acquired agricultural chemical products on consignment from respondent Planters Products, Inc. (PPI) in 1989. Due to Auther's failure to pay despite demand, PPI filed an action for sum of money against him in the Regional Trial Court of Makati City, Branch 57 (RTC Makati City). This was docketed as Civil Case No. 91-904.

After trial on the merits, the RTC Makati City decided in favor of PPI and issued a writ of execution. Pursuant thereto, respondent sheriff Jorge A. Ragutana sold on execution real property covered by TCT No. 15079 located in Naga City. A certificate of sale was issued in favor of PPI as the highest bidder.

After being belatedly informed of the said sale, petitioners Auther and his wife Doris A. Kelley (Doris) filed a motion to dissolve or set aside the notice of levy in the RTC Makati City on the ground that the subject property was their family home which was exempt from execution. Petitioners' motion was denied for failure to comply with the three-day notice requirement.

Subsequently, petitioners filed a complaint for declaration of nullity of levy and sale of the alleged family home with damages against Ragutana and PPI in the Regional Trial Court of Naga City, Branch 19 (RTC Naga City). This was docketed as Civil Case No. 2000-0188. The case was, however, dismissed for lack of jurisdiction and lack of cause of action. The dismissal was upheld by the CA.

Petitioners now come to us in this petition for review on *certiorari* contending that the CA erred in upholding the dismissal of Civil Case No. 2000-0188 by the RTC Naga City. They

claim that Doris was a stranger[2] to Civil Case No. 91-904 (in the RTC Makati City) who could not be forced to litigate therein.

Petitioners anchor their action in Civil Case No. 2000-0188 on their contention that TCT No. 15079 is the Kelley family home. No doubt, a family home is generally exempt from execution[3] provided it was duly constituted as such. There must be proof that the alleged family home was constituted jointly by the husband and wife or by an unmarried head of a family.[4] It must be the house where they and their family actually reside and the lot on which it is situated.[5] The family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent, or on the property of the unmarried head of the family.[6] The actual value of the family home shall not exceed, at the time of its constitution, the amount of ₱300,000 in urban areas and ₱200,000 in rural areas.[7]

Under the Family Code, there is no need to constitute the family home judicially or extrajudicially. All family homes constructed after the effectivity of the Family Code (August 3, 1988) are constituted as such by operation of law. All existing family residences as of August 3, 1988 are considered family homes and are prospectively entitled to the benefits accorded to a family home under the Family Code.[8]

The exemption is effective from the time of the constitution of the family home as such and lasts as long as any of its

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[2] *Rollo*, p. 15.

[3] RULES OF COURT, Rule 39, Sec. 13 (a).

[4] FAMILY CODE, Art. 152.

[5] *Id*.

[6] *Id*., Art. 156.

[7] *Id*., Art. 157.

[8] *Manacop v. CA*, 342 Phil. 735, 742 (1997). This was in reference to Article 162 of the Family Code which provides: "Art. 162. The provisions of this Chapter shall also govern existing family residences insofar as said provisions are applicable."

beneficiaries actually resides therein.[9] Moreover, the debts for which the family home is made answerable must have been incurred after August 3, 1988. Otherwise (that is, if it was incurred prior to August 3, 1988), the alleged family home must be shown to have been constituted either judicially or extrajudicially pursuant to the Civil Code.

The rule, however, is not absolute. The Family Code, in fact, expressly provides for the following exceptions:

Article 155. The family home shall be exempt from execution, forced sale or attachment except:

(1) For non-payment of taxes;

(2) For debts incurred prior to the constitution of the family home;

(3) For debts secured by a mortgage on the premises before or after such constitution; and

(4) For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building.

xxx xxx xxx

Article 160. When a creditor whose claim is not among those mentioned in Article 155 obtains a judgment in his favor, and he has reasonable grounds to believe that the family home is actually worth more than the maximum amount fixed in Article 157, he may apply to the court which rendered the judgment for an order directing the sale of the property under execution. The court shall so order if it finds that the actual value of the family home exceeds the maximum amount allowed by law as of the time of its constitution. If the increased actual value exceeds the maximum amount allowed by law in Article 157 and results from subsequent voluntary improvements introduced by the person or persons constituting the family home, by the owner or owners of the property, or by any of the beneficiaries, the same rule and procedure shall apply.

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[9] *Modequillo v. Breva*, G.R. No. 86355, 31 May 1990, 185 SCRA 766, 771.

We grant the petition only to the extent of allowing petitioners to adduce evidence in the trial court that TCT No. 15079 is in fact their family home as constituted in accordance with the requirements of law. This is in consonance with our ruling in *Gomez v. Sta. Ines*[10] where we held:

> [The husband and children] were not parties to the Pasig RTC case and are third-party claimants who became such only after trial in the previous case had been terminated and the judgment therein had become final and executory. Neither were they indispensable nor necessary parties in the Pasig RTC case, and they could not therefore intervene in said case. As strangers to the original case, respondents cannot be compelled to present their claim with the Pasig RTC which issued the writ of execution.xxx

In said case, the alleged family home was sold on execution by the sheriff of the Pasig RTC. The husband and children of the judgment debtor filed a complaint for annulment of sale of the levied property in Bayombong, Nueva Vizcaya where the alleged family home was situated. As they were considered strangers to the action filed in the Pasig RTC, we ruled that the Nueva Vizcaya RTC had jurisdiction over the complaint and that they could vindicate their alleged claim to the levied property there.[11]

WHEREFORE, Civil Case No. 2000-0188 captioned *Spouses Auther G. Kelley, Jr. and Doris A. Kelley v. Planters Products, Inc. and Jorge A. Ragutana* is hereby *REINSTATED* and this case is hereby *REMANDED* to the Regional Trial Court of Naga City, Branch 19 for determination whether or not the property covered by TCT No. 15079 is a duly constituted family home and therefore exempt from execution.

SO ORDERED.

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

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[10] G.R. No. 132537, 14 October 2005, 473 SCRA 25, 38.

[11] Despite this pronouncement, however, the complaint was dismissed because evidence was adduced that the alleged family home was not constituted as such before the debt was incurred.

SECOND DIVISION

[G.R. No. 172592. July 9, 2008]

SPOUSES WILFREDO N. ONG and EDNA SHEILA PAGUIO-ONG, *petitioners, vs.* **ROBAN LENDING CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; MORTGAGE; *PACTUM COMMISSORIUM*; PROHIBITED BY LAW; ELEMENTS.— This Court finds that the Memorandum of Agreement and Dacion in Payment constitute *pactum commissorium*, which is prohibited under Article 2088 of the Civil Code which provides: The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void." The elements of *pactum commissorium*, which enables the mortgagee to acquire ownership of the mortgaged property without the need of any foreclosure proceedings, are: (1) there should be a property mortgaged by way of security for the payment of the principal obligation, and (2) there should be a stipulation for automatic appropriation by the creditor of the thing mortgaged in case of non-payment of the principal obligation within the stipulated period.

2. ID.; OBLIGATIONS; EXTINGUISHMENT OF OBLIGATION; *DATION EN PAGO*; NOT PRESENT IN CASE AT BAR; RATIONALE.— In a true *dacion en pago*, the assignment of the property extinguishes the monetary debt. In the case at bar, the alienation of the properties was by way of security, and not by way of satisfying the debt. The Dacion in Payment did not extinguish petitioners' obligation to respondent. On the contrary, under the Memorandum of Agreement executed on the same day as the Dacion in Payment, petitioners had to execute a promissory note for ₱5,916,117.50 which they were to pay within one year. Respondent cites *Solid Homes, Inc. v. Court of Appeals* where this Court upheld a Memorandum of Agreement/*Dacion en Pago*. That case did not involve the issue of *pactum commissorium*. That the questioned contracts were freely and voluntarily executed by petitioners and respondent

is of no moment, *pactum commissorium* being void for being prohibited by law.

3. ID.; DAMAGES; REDUCTION OF INTEREST RATE, PENALTY AND ATTORNEY'S FEES; SUSTAINED.— This Court, based on existing jurisprudence, finds the monthly interest rate of 3.5%, or 42% per annum unconscionable and thus reduces it to 12% per annum. This Court finds too the penalty fee at the monthly rate of 5% (60% per annum) of the total amount due and demandable – principal plus interest, with interest not paid when due added to and becoming part of the principal and likewise bearing interest at the same rate, compounded monthly – unconscionable and reduces it to a yearly rate of 12% of the amount due, to be computed from the time of demand. This Court finds the attorney's fees of 25% of the principal, interests and interests thereon, and the penalty fees unconscionable, and thus reduces the attorney's fees to 25% of the principal amount only.

4. REMEDIAL LAW; CIVIL PROCEDURE; SUMMARY JUDGMENTS; WHEN PROPER.— A summary judgment is permitted only if there is no genuine issue as to any material fact and a moving party is entitled to a judgment as a matter of law. A summary judgment is proper if, while the pleadings on their face appear to raise issues, the affidavits, depositions, and admissions presented by the moving party show that such issues are not genuine. A genuine issue, as opposed to a fictitious or contrived one, is an issue of fact that requires the presentation of evidence. As mentioned above, petitioners' prayer for accounting requires the presentation of evidence on the issue of partial payment.

5. ID.; ID.; JUDGMENT ON THE PLEADINGS; NOT PRESENT IN CASE AT BAR.— A judgment on the pleadings may be rendered only when an answer fails to tender an issue or otherwise admits the material allegations of the adverse party's pleadings. In the case at bar, respondent's Answer with Counterclaim disputed petitioners' claims that the Memorandum of Agreement and Dation in Payment are illegal and that the extra charges on the loans are unconscionable. Respondent disputed too petitioners' allegation of bad faith.

APPEARANCES OF COUNSEL

Concepcion Law Office for petitioners.
Mendoza Mendoza & Bautista for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

On different dates from July 14, 1999 to March 20, 2000, petitioner-spouses Wilfredo N. Ong and Edna Sheila Paguio-Ong obtained several loans from Roban Lending Corporation (respondent) in the total amount of ₱4,000,000.00. These loans were secured by a real estate mortgage on petitioners' parcels of land located in Binauganan, Tarlac City and covered by TCT No. 297840.[1]

On February 12, 2001, petitioners and respondent executed an Amendment to Amended Real Estate Mortgage[2] consolidating their loans inclusive of charges thereon which totaled ₱5,916,117.50. On even date, the parties executed a Dacion in Payment Agreement[3] wherein petitioners assigned the properties covered by TCT No. 297840 to respondent in settlement of their total obligation, and a Memorandum of Agreement[4] reading:

> That the FIRST PARTY [Roban Lending Corporation] and the SECOND PARTY [the petitioners] agreed to consolidate and restructure all aforementioned loans, which have been all past due and delinquent since April 19, 2000, and outstanding obligations totaling ₱5,916,117.50. The SECOND PARTY hereby sign [*sic*] another promissory note in the amount of ₱5,916,117.50 (a copy of which is hereto attached and forms xxx an integral part of this document), with a promise to pay the FIRST PARTY in full within one year from the date of the consolidation and restructuring, otherwise the SECOND PARTY agree to have their "DACION IN

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[1] Records, pp. 11-16.

[2] *Id*. at 37.

[3] *Id*. at 40.

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

PAYMENT" agreement, which they have executed and signed today in favor of the FIRST PARTY be enforced[.][5]

In April 2002 (the day is illegible), petitioners filed a Complaint,[6] docketed as Civil Case No. 9322, before the Regional Trial Court (RTC) of Tarlac City, for declaration of mortgage contract as abandoned, annulment of deeds, illegal exaction, unjust enrichment, accounting, and damages, alleging that the Memorandum of Agreement and the Dacion in Payment executed are void for being *pactum commissorium*.[7]

Petitioners alleged that the loans extended to them from July 14, 1999 to March 20, 2000 were founded on several uniform promissory notes, which provided for 3.5% monthly interest rates, 5% penalty per month on the total amount due and demandable, and a further sum of 25% attorney's fees thereon,[8] and in addition, respondent exacted certain sums denominated as "EVAT/AR."[9] Petitioners decried these additional charges as "illegal, iniquitous, unconscionable, and revolting to the conscience as they hardly allow any borrower any chance of survival in case of default."[10]

Petitioners further alleged that they had previously made payments on their loan accounts, but because of the illegal exactions thereon, the total balance appears not to have moved at all, hence, accounting was in order.[11]

Petitioners thus prayed for judgment:

a) Declaring the Real Estate Mortgage Contract and its amendments x x x as null and void and without legal force and effect for having been renounced, abandoned, and given up;

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

[6] *Id*. at 1-5.

[7] *Id*. at 2.

[8] *Id*. at 2-3. Vide *id*. at 20.

[9] *Id*. at 21.

[10] *Id*. at 3.

[11] *Id*. at 3.

b) Declaring the "Memorandum of Agreement" xxx and "Dacion in Payment" x x x as null and void for being *pactum commissorium*;

c) Declaring the interests, penalties, Evat [*sic*] and attorney's fees assessed and loaded into the loan accounts of the plaintiffs with defendant as unjust, iniquitous, unconscionable and illegal and therefore, stricken out or set aside;

d) Ordering an accounting on plaintiffs' loan accounts to determine the true and correct balances on their obligation against legal charges only; and

e) Ordering defendant to [pay] to the plaintiffs: —

e.1 Moral damages in an amount not less than ₱100,000.00 and exemplary damages of ₱50,000.00;

e.2 Attorney's fees in the amount of ₱50,000.00 plus ₱1,000.00 appearance fee per hearing; and

e.3 The cost of suit.[12]

as well as other just and equitable reliefs.

In its Answer with Counterclaim,[13] respondent maintained the legality of its transactions with petitioners, alleging that:

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If the voluntary execution of the Memorandum of Agreement and Dacion in Payment Agreement novated the Real Estate Mortgage then the allegation of *Pactum Commissorium* has no more legal leg to stand on;

The Dacion in Payment Agreement is lawful and valid as it is recognized x x x under Art. 1245 of the Civil Code as a special form of payment whereby the debtor-Plaintiffs alienates their property to the creditor-Defendant in satisfaction of their monetary obligation;

The accumulated interest and other charges which were computed for more than two (2) years would stand reasonable and valid taking into consideration [that] the principal loan is ₱4,000,000 and if indeed

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[12] *Id*. at 4.

[13] *Id*. at 51-54.

it became beyond the Plaintiffs' capacity to pay then the fault is attributed to them and not the Defendant[.][14]

After pre-trial, the initial hearing of the case, originally set on December 11, 2002, was reset several times due to, among other things, the parties' efforts to settle the case amicably.[15]

During the scheduled initial hearing of May 7, 2003, the RTC issued the following order:

> Considering that the plaintiff Wilfredo Ong is not around on the ground that he is in Manila and he is attending to a very sick relative, without objection on the part of the defendant's counsel, the initial hearing of this case is reset to June 18, 2003 at 10:00 o'clock in the morning.
>
> Just in case [plaintiff's counsel] Atty. Concepcion cannot present his witness in the person of Mr. Wilfredo Ong in the next scheduled hearing, the counsel manifested that he will submit the case for summary judgment.[16] (Underscoring supplied)

It appears that the June 18, 2003 setting was eventually rescheduled to February 11, 2004 at which both counsels were present[17] and the RTC issued the following order:

> The counsel[s] agreed to reset this case on April 14, 2004, at 10:00 o'clock in the morning. However, the counsels are directed to be ready with their memorand[a] together with all the exhibits or evidence needed to support their respective positions which should be the basis for the judgment on the pleadings if the parties fail to settle the case in the next scheduled setting.
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> x x x[18] (Underscoring supplied)

At the scheduled April 14, 2004 hearing, both counsels appeared but only the counsel of respondent filed a memorandum.[19]

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[14] *Id*. at 52-53.

[15] *Id*. at 127-128, 138-143, 147-153.

[16] *Id*. at 141.

[17] *Id*. at 154.

[18] *Id*. at 155.

[19] *Id*. at 156-164, 204.

By Decision of April 21, 2004, Branch 64 of the Tarlac City RTC, finding on the basis of the pleadings that there was no *pactum commissorium*, dismissed the complaint.[20]

On appeal,[21] the Court of Appeals[22] noted that

> x x x [W]hile the trial court in its decision stated that it was rendering judgment on the pleadings, x x x what it actually rendered was a summary judgment. A judgment on the pleadings is proper when the answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading. However, a judgment on the pleadings would not have been proper in this case as the answer tendered an issue, *i.e.* the validity of the MOA and DPA. On the other hand, a summary judgment may be rendered by the court if the pleadings, supporting affidavits, and other documents show that, except as to the amount of damages, there is no genuine issue as to any material fact.[23]

Nevertheless, finding the error in nomenclature "to be mere semantics with no bearing on the merits of the case",[24] the Court of Appeals upheld the RTC decision that there was no *pactum commissorium*.[25]

Their Motion for Reconsideration[26] having been denied,[27] petitioners filed the instant Petition for Review on *Certiorari*,[28] faulting the Court of Appeals for having committed a clear and reversible error

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[20] *Id.* at 205-206.

[21] *Id.* at 207.

[22] Decision of November 30, 2005, penned by Court of Appeals Associate Justice Portia Aliño-Hormachuelos, with the concurrences of Associate Justices Mariano C. Del Castillo and Magdangal M. de Leon. CA *rollo*, pp. 35-45.

[23] CA *rollo*, pp. 40-41.

[24] *Id.* at 41.

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

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

[27] *Id.* at 65-66.

[28] *Id.* at 8-25.

I. . . . WHEN IT FAILED AND REFUSED TO APPLY PROCEDURAL REQUISITES WHICH WOULD WARRANT THE SETTING ASIDE OF THE SUMMARY JUDGMENT IN VIOLATION OF APPELLANTS' RIGHT TO DUE PROCESS;

II. . . . WHEN IT FAILED TO CONSIDER THAT TRIAL IN THIS CASE IS NECESSARY BECAUSE THE FACTS ARE VERY MUCH IN DISPUTE;

III. . . . WHEN IT FAILED AND REFUSED TO HOLD THAT THE MEMORANDUM OF AGREEMENT (MOA) AND THE *DACION EN PAGO* AGREEMENT (DPA) WERE DESIGNED TO CIRCUMVENT THE LAW AGAINST *PACTUM COMMISSORIUM*; and

IV. . . . WHEN IT FAILED TO CONSIDER THAT THE MEMORANDUM OF AGREEMENT (MOA) AND THE *DACION EN PAGO* (DPA) ARE NULL AND VOID FOR BEING CONTRARY TO LAW AND PUBLIC POLICY.[29]

The petition is meritorious.

Both parties admit the execution and contents of the Memorandum of Agreement and Dacion in Payment. They differ, however, on whether both contracts constitute *pactum commissorium* or *dacion en pago*.

This Court finds that the Memorandum of Agreement and Dacion in Payment constitute *pactum commissorium*, which is prohibited under Article 2088 of the Civil Code which provides:

"The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void."

The elements of *pactum commissorium*, which enables the mortgagee to acquire ownership of the mortgaged property without the need of any foreclosure proceedings,[30] are: (1) there should be a property mortgaged by way of security for the payment of the principal obligation, and (2) there should be a stipulation

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[29] *Rollo*, p. 15.

[30] *Vide Lumayag v. Heirs of Jacinto Nemeño*, G.R. No. 162112, July 3, 2007, 526 SCRA 315, 328.

for automatic appropriation by the creditor of the thing mortgaged in case of non-payment of the principal obligation within the stipulated period.[31]

In the case at bar, the Memorandum of Agreement and the Dacion in Payment contain no provisions for foreclosure proceedings nor redemption. Under the Memorandum of Agreement, the failure by the petitioners to pay their debt within the one-year period gives respondent the right to enforce the Dacion in Payment transferring to it ownership of the properties covered by TCT No. 297840. Respondent, in effect, automatically acquires ownership of the properties upon petitioners' failure to pay their debt within the stipulated period.

Respondent argues that the law recognizes *dacion en pago* as a special form of payment whereby the debtor alienates property to the creditor in satisfaction of a monetary obligation.[32] This does not persuade. In a true *dacion en pago*, the assignment of the property extinguishes the monetary debt.[33] In the case at bar, the alienation of the properties was by way of security, and not by way of satisfying the debt.[34] The Dacion in Payment did not extinguish petitioners' obligation to respondent. On the contrary, under the Memorandum of Agreement executed on the same day as the Dacion in Payment, petitioners had to execute a promissory note for ₱5,916,117.50 which they were to pay within one year.[35]

Respondent cites *Solid Homes, Inc. v. Court of Appeals*[36] where this Court upheld a Memorandum of Agreement/*Dacion*

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[31] *Development Bank of the Philippines v. Court of Appeals*, 348 Phil. 15, 31 (1998).

[32] Records, p. 53. *Vide* CIVIL CODE, Article 1245.

[33] *Vide* CIVIL CODE, Article 1245; *Development Bank of the Philippines v. Court of Appeals*, 348 Phil. 15, 30 (1998).

[34] *Vide Development Bank of the Philippines v. Court of Appeals*, *ibid*.

[35] Records, p. 38.

[36] 341 Phil. 261 (1997).

en Pago.[37] That case did not involve the issue of *pactum commissorium*.[38]

That the questioned contracts were freely and voluntarily executed by petitioners and respondent is of no moment, *pactum commissorium* being void for being prohibited by law.[39]

Respecting the charges on the loans, courts may reduce interest rates, penalty charges, and attorney's fees if they are iniquitous or unconscionable.[40]

This Court, based on existing jurisprudence,[41] finds the monthly interest rate of 3.5%, or 42% per annum unconscionable and thus reduces it to 12% per annum. This Court finds too the penalty fee at the monthly rate of 5% (60% per annum) of the total amount due and demandable – principal plus interest, with interest not paid when due added to and becoming part of the principal and likewise bearing interest at the same rate, compounded monthly[42] – unconscionable and reduces it to a yearly rate of 12% of the amount due, to be computed from the time of demand.[43] This Court finds the attorney's fees of 25% of the principal, interests and interests thereon, and the penalty fees unconscionable, and thus reduces the attorney's fees to 25% of the principal amount only.[44]

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[37] Records, p. 160.

[38] *Solid Homes, Inc. v. Court of Appeals*, *supra* note 37 at 274-280.

[39] *Vide* CIVIL CODE, Articles 1409 and 2088.

[40] *Vide* CIVIL CODE, Articles 1229 and 2227; *United Coconut Planters Bank v. Beluso*, G.R. No. 159912, August 17, 2007, 530 SCRA 567, 590; *Poltan v. BPI Family Savings Bank, Inc.*, G.R. No. 164307, March 5, 2007, 517 SCRA 430, 444-446; *Radiowealth Finance Co., Inc. v. International Corporate Bank*, G.R. Nos. 77042-43, February 28, 1990, 182 SCRA 862, 868-869.

[41] *Vide Poltan v. BPI Family Savings Bank, Inc.*, G.R. No. 164307, March 5, 2007, 517 SCRA 430, 444-446.

[42] Records, p. 41.

[43] *Vide United Coconut Planters Bank v. Beluso*, G.R. No. 159912, August 17, 2007, 530 SCRA 567, 590, 604-605.

[44] *Vide Titan Construction Corporation v. Uni-Field Enterprises, Inc.,* G.R. No. 153874, March 1, 2007, 517 SCRA 180, 190.

The prayer for accounting in petitioners' complaint requires presentation of evidence, they claiming to have made partial payments on their loans, *vis a vis* respondent's denial thereof.[45] A remand of the case is thus in order.

Prescinding from the above disquisition, the trial court and the Court of Appeals erred in holding that a summary judgment is proper. A summary judgment is permitted only if there is no genuine issue as to any material fact and a moving party is entitled to a judgment as a matter of law.[46] A summary judgment is proper if, while the pleadings on their face appear to raise issues, the affidavits, depositions, and admissions presented by the moving party show that such issues are not genuine.[47] A genuine issue, as opposed to a fictitious or contrived one, is an issue of fact that requires the presentation of evidence.[48] As mentioned above, petitioners' prayer for accounting requires the presentation of evidence on the issue of partial payment.

But neither is a judgment on the pleadings proper. A judgment on the pleadings may be rendered only when an answer fails to tender an issue or otherwise admits the material allegations of the adverse party's pleadings.[49] In the case at bar, respondent's Answer with Counterclaim disputed petitioners' claims that the Memorandum of Agreement and Dation in Payment are illegal and that the extra charges on the loans are unconscionable.[50] Respondent disputed too petitioners' allegation of bad faith.[51]

WHEREFORE, the challenged Court of Appeals Decision is *REVERSED* and *SET ASIDE*. The Memorandum of Agreement

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[45] *Vide* records, pp. 3, 51-52.

[46] RULES OF COURT, Rule 35, Section 3; *Pineda v. Heirs of Eliseo Guevarra,* G.R. No. 143188, February 14, 2007, 515 SCRA 627, 638.

[47] *Vide Marcelo v. Sandiganbayan*, G.R. No. 156605, August 28, 2007, 531 SCRA 385, 398.

[48] *Ibid*.

[49] RULES OF COURT, Rule 34, Section 1.

[50] Records, p. 53.

[51] *Id*. at 51.

and the Dacion in Payment executed by petitioner- spouses Wilfredo N. Ong and Edna Sheila Paguio-Ong and respondent Roban Lending Corporation on February 12, 2001 are declared NULL AND VOID for being *pactum commissorium*.

In line with the foregoing findings, the following terms of the loan contracts between the parties are *MODIFIED* as follows:

1. The monthly interest rate of 3.5%, or 42% *per annum*, is reduced to 12% *per annum;*
2. The monthly penalty fee of 5% of the total amount due and demandable is reduced to 12% *per annum*, to be computed from the time of demand; and
3. The attorney's fees are reduced to 25% of the principal amount only.

Civil Case No. 9322 is *REMANDED* to the court of origin only for the purpose of receiving evidence on petitioners' prayer for accounting.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 174042. July 9, 2008]

CITY OF NAGA, as represented by Mayor Jesse M. Robredo, *petitioner, vs.* **HON. ELVI JOHN S. ASUNCION, as *ponente* and chairman, HON. JUSTICES JOSE C. MENDOZA and ARTURO G. TAYAG, as members, 12th DIVISION, COURT OF APPEALS, HON. JUDGE FILEMON MONTENEGRO, Presiding Judge, Regional Trial Court, Branch 26, Naga City; ATTY. JESUS MAMPO, Clerk of Court, RTC, Branch 26, Naga City, SHERIFF JORGE B. LOPEZ, RTC, Branch 26, Naga City, THE HEIRS OF JOSE MARIANO and HELEN S. MARIANO represented by DANILO DAVID S. MARIANO, MARY THERESE IRENE S. MARIANO, MA. CATALINA SOPHIA S. MARIANO, JOSE MARIO S. MARIANO, MA. LEONOR S. MARIANO, MACARIO S. MARIANO and ERLINDA MARIANO-VILLANUEVA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* PROPER REMEDY IN CASE AT BAR.— As a rule, petitions for the issuance of such extraordinary writs against an RTC should be filed with the Court of Appeals. A direct invocation of this Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. Under the present circumstance however, we agree to take cognizance of this case as an exception to the principle of hierarchy of courts. For while it has been held by this Court that a motion for reconsideration is a condition *sine qua non* for the grant of a writ of *certiorari*, nevertheless such requirement may be dispensed with where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government. Such is the situation in the case at bar. Thus, we find no merit in respondents' contention that petitioner erred in its choice of remedy before this Court. Under Section 1(c) and (f), Rule 41 of the Rules of Court, no

appeal may be taken from an interlocutory order and an order of execution, respectively. An interlocutory order is one which does not dispose of the case completely but leaves something to be decided upon. Such is the nature of an order granting or denying an application for preliminary injunction; hence, not appealable. The proper remedy, as petitioner did in this case, is to file a petition for *certiorari* and/or prohibition under Rule 65.

2. ID.; ID.; ID.; THERE IS NO FORUM SHOPPING WHEN THE ACTION FOR *CERTIORARI* IS HELD INDEPENDENT FROM THE PETITION FOR REVIEW BEFORE THE COURT OF APPEALS. — Under the *Same Objective Standard* enunciated in the case of *First Philippine International Bank v. Court of Appeals*, the filing by a party of two apparently different actions, *but with the same objective*, constitutes forum-shopping. Here, the special civil action of *certiorari* before us is an independent action. The ultimate purpose of such action is to keep the inferior tribunal within the bounds of its jurisdiction or relieve parties from arbitrary acts of the court. In contrast, the petition for review before the Court of Appeals under Rule 42 involves an evaluation of the case on the merits. Clearly, petitioner did not commit forum-shopping.

3. ID.; ID.; FORCIBLE ENTRY AND UNLAWFUL DETAINER; IMMEDIATELY EXECUTORY; EXCEPTION.— Section 21, Rule 70 of the Rules of Court is pertinent: **SEC. 21.** *Immediate execution on appeal to Court of Appeals or Supreme Court.* – The judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom. Thus, the judgment of the RTC against the defendant in an ejectment case is immediately executory. Unlike Section 19, Rule 70 of the Rules, Section 21 does not provide a means to prevent execution; hence, the court's duty to order such execution is practically ministerial. Section 21 of Rule 70 presupposes that the defendant in a forcible entry or unlawful detainer case is unsatisfied with the judgment of the RTC and decides to appeal to a superior court. It authorizes the RTC to immediately issue a writ of execution without prejudice to the appeal taking its due course. Nevertheless, it should be stressed that the appellate court may stay the said writ should circumstances so require. Petitioner herein invokes seasonably the exceptions to

immediate execution of judgments in ejectment cases cited in *Hualam Construction and Dev't. Corp. v. Court of Appeals* and *Laurel v. Abalos,* thus: Where supervening events (occurring subsequent to the judgment) bring about a material change in the situation of the parties which makes the execution inequitable, or where there is no compelling urgency for the execution because it is not justified by the prevailing circumstances, the court may stay immediate execution of the judgment. Noteworthy, the foregoing exceptions were made in reference to Section 8, Rule 70 of the old Rules of Court which has been substantially reproduced as Section 19, Rule 70 of the 1997 Rules of Civil Procedure. Therefore, even if the appealing defendant was not able to file a supersedeas bond, and make periodic deposits to the appellate court, immediate execution of the MTC decision is not proper where the circumstances of the case fall under any of the above-mentioned exceptions. Yet, Section 21, Rule 70 of the Rules does not provide for a procedure to avert immediate execution of an RTC decision.

4. ID.; ID.; ID.; PRELIMINARY INJUNCTION; ISSUANCE THEREOF, WHEN GRANTED.— This is not to say that the losing defendant in an ejectment case is without recourse to avoid immediate execution of the RTC decision. The defendant may, as in this case, appeal said judgment to the Court of Appeals and therein apply for a writ of preliminary injunction. Thus, as held in *Benedicto v. Court of Appeals*, even if RTC judgments in unlawful detainer cases are immediately executory, preliminary injunction may still be granted. x x x A writ of preliminary injunction is available to prevent threatened or continuous irremediable injury to parties before their claims can be thoroughly studied and adjudicated. Its sole objective is to preserve the *status quo* until the merits of the case can be heard fully. *Status quo* is the last actual, peaceable and uncontested situation which precedes a controversy. As a rule, the issuance of a preliminary injunction rests entirely within the discretion of the court taking cognizance of the case and will not be interfered with, except in cases of manifest abuse. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack or excess of jurisdiction. The exercise of power must have been done in an arbitrary or a despotic manner by reason of passion or personal

hostility. It must have been so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. Considering the circumstances in this case, we find that the Court of Appeals abused its discretion when it denied petitioner's application for a writ of preliminary injunction because of the pendency of respondents' Motion to Issue Writ of Execution with the RTC, but ruled on the merits of the application at the same time. At most, the appellate court should have deferred resolution on the application until the RTC has decided on the motion for execution pending appeal. Moreover, nothing in the rules allow a qualified execution pending appeal that would have justified the exclusion of the NBI, City Hall and Hall of Justice from the effects of the writ.

5. ID.; ID.; ID.; ID.; GROUND FOR THE ISSUANCE OF WRIT; EXPLAINED. — Be it noted that for a writ of preliminary injunction to be issued, the Rules of Court do not require that the act complained of be in clear violation of the rights of the applicant. Indeed, what the Rules require is that the act complained of be *probably* in violation of the rights of the applicant. Under the Rules, probability is enough basis for injunction to issue as a provisional remedy. This situation is different from injunction as a main action where one needs to establish absolute certainty as basis for a final and permanent injunction. Thus, we have stressed the foregoing distinction to justify the issuance of a writ of preliminary injunction in actions for unlawful detainer: ...Where the action, therefore, is one of illegal detainer, as distinguished from one of forcible entry, and the right of the plaintiff to recover the premises is seriously placed in issue in a proper judicial proceeding, it is more equitable and just and less productive of confusion and disturbance of physical possession, with all its concomitant inconvenience and expenses. For the Court in which the issue of legal possession, whether involving ownership or not, is brought to restrain, should a petition for preliminary injunction be filed with it, the effects of any order or decision in the unlawful detainer case in order to await the final judgment in the more substantive case involving legal possession or ownership. It is only where there has been forcible entry that as a matter of public policy the right to physical possession should be immediately set at rest in favor of the prior possession

regardless of the fact that the other party might ultimately be found to have superior claim to the premises involved, thereby to discourage any attempt to recover possession thru force, strategy or stealth and without resorting to the courts.

6. POLITICAL LAW; LOCAL GOVERNMENT; GOVERNMENT FUNDS MAY NOT BE SUBJECT TO GARNISHMENT OR LEVY; PRESENT IN CASE AT BAR.— Needless to reiterate, grave and irreparable injury will be inflicted on the City of Naga by the immediate execution of the June 20, 2005 RTC Decision. Foremost, as pointed out by petitioner, the people of Naga would be deprived of access to basic social services. It should not be forgotten that the land subject of the ejectment case houses government offices which perform important functions vital to the orderly operation of the local government. As regards the garnishment of Naga City's account with the Land Bank, the rule is and has always been that all government funds deposited in official depositary of the Philippine Government by any of its agencies or instrumentalities, whether by general or special deposit, remain government funds. Hence, they may not be subject to garnishment or levy, in the absence of corresponding appropriation as required by law. For this reason, we hold that the Notice of Garnishment dated August 23, 2006 is void.

7. LEGAL ETHICS; DISCIPLINE OF JUDGES; MERE IMPUTATION OF BIAS AND PARTIALITY IS NOT ENOUGH GROUND FOR JUDGES TO INHIBIT; APPLICATION IN CASE AT BAR.— The mere imputation of bias and partiality is not enough ground for judges to inhibit, especially when the charge is without sufficient basis. This Court has to be shown acts or conduct clearly indicative of arbitrariness or prejudice before it can brand concerned judges with the stigma of bias and partiality. Bare allegations of partiality will not suffice "in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence without fear and favor. The Resolution of the Court *En Banc* dated June 27, 2006 which dismissed the complaint filed by Mayor Jesse Robredo against Judge Montenegro served to negate petitioner's allegations. Nevertheless, when the ground sought for the judge's inhibition

is not among those enumerated in Section 1, Rule 137 of the Rules of Court, a judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons.

8. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; DUTY TO EXECUTE THE ORDER OF THE COURT, MINISTERIAL.— When Judge Montenegro issued the order directing the issuance of a writ of execution, Atty. Jesus Mampo was left with no choice but to issue the writ. Such was his ministerial duty in accordance with Section 4, Rule 136 of the Rules of Court. In the same vein, when the writ was placed in the hands of Sheriff Lopez, it was his duty, in the absence of instructions to the contrary, to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. It is elementary that a sheriff's duty in the execution of the writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. The rule may appear harsh, but such is the rule we have to observe.

APPEARANCES OF COUNSEL

Cadiz Tabayoyong Law Offices and *Nelson S. Legacion* for petitioner.

Marlito I. Villanueva Law Office for private respondents.

D E C I S I O N

QUISUMBING, *J.*:

This petition for certiorari and prohibition under Rule 65 of the Rules of Court seeks the reversal of the Resolution[1] dated August 16, 2006 of the Court of Appeals in CA-G.R. SP

[1] *Rollo*, pp. 75-76. Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Jose C. Mendoza and Arturo G. Tayag concurring.

No. 90547 which denied the Application for a Writ of Preliminary Prohibitory Injunction[2] filed by petitioner.

Challenged as well is the Order[3] dated August 17, 2006 of the Regional Trial Court (RTC) of Naga City, Branch 26 in Civil Case No. RTC 2005-0030 for unlawful detainer which granted respondents' Motion to Issue Writ of Execution[4] filed on August 16, 2005 and denied petitioner's Motion for Inhibition[5] filed on June 27, 2005. Concomitantly, the processes issued to enforce said Order are equally assailed, namely: the Writ of Execution Pending Appeal[6] dated August 22, 2006; the Notice to Vacate[7] dated August 23, 2006; and the Notice of Garnishment[8] dated August 23, 2006.

The facts as culled from the *rollo* of this petition and from the averments of the parties to this petition are as follows:

Macario A. Mariano and Jose A. Gimenez were the registered owners of a 229,301-square meter land covered by Transfer Certificate of Title (TCT) No. 671[9] located in Naga City. The land was subdivided into several lots and sold as part of City Heights Subdivision (CHS).

In a Letter[10] dated July 3, 1954, the officers of CHS offered to construct the Naga City Hall on a two (2)-hectare lot within the premises of the subdivision. Said lot was to be designated as an open space for public purpose and donated to petitioner in accordance with the rules and regulations of the National Urban Planning Commission. By Resolution No. 75[11] dated July 12, 1954, the

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[2] *Id*. at 138-223.

[3] *Id*. at 78-84.

[4] Records (Vol. II), pp. 910-915.

[5] *Id*. at 712-713.

[6] *Rollo*, pp. 85-86.

[7] *Id*. at 87.

[8] *Id*. at 88.

[9] *Id*. at 379-404.

[10] *Id*. at 326-327.

[11] *Id*. at 328-330.

Municipal Board of Naga City (Municipal Board) asked CHS to increase the area of the land to four (4) hectares. Accordingly, CHS amended its offer to five (5) hectares.

On August 11, 1954, the Municipal Board adopted Resolution No. 89[12] accepting CHS' amended offer. Mariano and Gimenez thereafter delivered possession of the lots described as Blocks 25 and 26 to the City Government of Naga (city government). Eventually, the contract for the construction of the city hall was awarded by the Bureau of Public Works through public bidding to Francisco O. Sabaria, a local contractor. This prompted Mariano and Gimenez to demand the return of the parcels of land from petitioner. On assurance, however, of then Naga City Mayor Monico Imperial that petitioner will buy the lots instead, Mariano and Gimenez allowed the city government to continue in possession of the land.

On September 17, 1959, Mariano wrote a letter[13] to Mayor Imperial inquiring on the status of the latter's proposal for the city government to buy the lots instead. Then, through a note[14] dated May 14, 1968, Mariano directed Atty. Eusebio Lopez, Jr., CHS' General Manager, to disregard the proposed donation of lots and insist on Mayor Imperial's offer for the city government to purchase them.

On December 2, 1971, Macario A. Mariano died. Meanwhile, the city government continued in possession of the lots, and constructed the Naga City Hall on Block 25 and the public market on Block 26. It also conveyed to other government offices[15] portions of the land which at present, house the National Bureau of Investigation (NBI), Land Transportation Office, and Hall of Justice, among others.

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[12] *Id*. at 335.

[13] Records (Vol. I), p. 428.

[14] *Id*. at 429.

[15] *Rollo*, p. 87. Land Transportation Office, Department of Labor and [E]mployment, Philippine Postal Corporation, Integrated Bar of the Philippines, Senior Citizen, PICPA, Radyo ng Bayan, Naga City Health Office, Camarines Sur Dental Association, Philippine Nurses Association, Naga Centrum, City Engineer's Office, Lingkod Barangay, Naga City Youth Center, Naga City Library, Naga City Canteen.

In a Letter[16] dated September 3, 2003, Danilo D. Mariano, as administrator and representative of the heirs of Macario A. Mariano, demanded from petitioner the return of Blocks 25 and 26 to CHS. Alas, to no avail.

Thus, on February 12, 2004, respondent filed a Complaint[17] for unlawful detainer against petitioner before the Municipal Trial Court (MTC) of Naga City, Branch 1. In a Decision[18] dated February 14, 2005 of the MTC in Civil Case No. 12334, the MTC dismissed the case for lack of jurisdiction. It ruled that the city's claim of ownership over the lots posed an issue not cognizable in an unlawful detainer case.

On appeal, the RTC reversed the court *a quo* by Decision[19] dated June 20, 2005 in Civil Case No. RTC 2005-0030. It directed petitioner to surrender physical possession of the lots to respondents with forfeiture of all the improvements, and to pay ₱2,500,000.00 monthly as reasonable compensation for the use and occupation of the land; ₱587,159.60 as attorney's fees; and the costs of suit.

On June 27, 2005, petitioner filed a Motion for Inhibition against Presiding RTC Judge Filemon B. Montenegro for alleged bias and partiality. Then, petitioner moved for reconsideration/ new trial of the June 20, 2005 Decision. On July 15, 2005, the RTC denied both motions.

On July 22, 2005, petitioner filed a Petition for Review with Very Urgent Motion/Application for Temporary Restraining Order and Writ of Preliminary Prohibitory Injunction[20] with the Court of Appeals. Respondents thereafter filed a Motion to Issue Writ of Execution.

On October 13, 2005, respondents manifested that they will not seek execution against the NBI, City Hall and Hall of Justice

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[16] Records (Vol. I), p. 378.

[17] *Id*. at 1-9.

[18] *Rollo*, pp. 259-263. Penned by Presiding Judge Jose P. Nacional.

[19] *Id*. at 224-250.

[20] *Id*. at 138-223.

in case the writ of preliminary injunction is denied. On August 16, 2006, the appellate court issued the challenged Resolution, the decretal portion of which reads:

> WHEREFORE, based on the foregoing premises, and in the absence of any immediate threat of grave and irreparable injury, petitioner's prayer for issuance of a writ of preliminary injunction is hereby DENIED. Petitioner had already filed its Memorandum. Hence, the private respondents are given fifteen (15) days from notice within which to submit their Memorandum.
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> SO ORDERED.[21]

On August 17, 2006, the RTC issued the assailed Order, thus:

> WHEREFORE, let the corresponding Writ of Execution Pending Appeal be issued in this case immediately pursuant to Sec. 21, Rule 70. However, in view of the MANIFESTATION of plaintiffs dated October 13, 2005 that they will not take possession of the land and building where the City Hall, Hall of Justice and National Bureau of Investigation are located while this case is still pending before the Court of Appeals, this writ of execution shall be subject to the above-cited exception.
>
> The Sangguniang [Panlungsod] of Naga City is hereby directed to immediately appropriate the necessary amount of [₱]2,500,000.00 per month representing the unpaid rentals reckoned from November 30, 2003 up to the present from its UNAPPROPRIATED FUNDS to satisfy the claim of the plaintiffs, subject to the existing accounting and auditing rules and regulations.
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> SO ORDERED.[22]

Consequently, Clerk of Court Atty. Jesus Mampo issued a writ of execution pending appeal. Sheriff Jorge B. Lopez on the other hand, served a notice to vacate on respondents, and a notice of garnishment on Land Bank, Naga City Branch.

Hence, this petition for *certiorari* and prohibition.

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[21] *Rollo*, p. 76.

[22] *Id*. at 83-84.

On August 28, 2006, we issued a Temporary Restraining Order[23] to maintain the *status quo* pending resolution of the petition.

Petitioner raises the following issues for our consideration:

I.

WHETHER OR NOT PETITIONER CAN VALIDLY AVAIL OF THE EXTRAORDINARY WRITS OF *CERTIORARI* AND PROHIBITION IN ASSAILING THE CHALLENGED RESOLUTION, ORDERS AND NOTICES.

II.

WHETHER OR NOT PETITIONER IS GUILTY OF FORUM-SHOPPING.

III.

WHETHER OR NOT PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION IN ALLOWING THE IMMEDIATE EXECUTION OF ITS JUDGMENT NOTWITHSTANDING THE CATASTROPHIC CONSEQUENCES IT WILL BEAR ON THE DELIVERY OF BASIC GOVERNMENTAL SERVICES TO THE GOOD CITIZENS OF NAGA CITY; THE INCONCLUSIVENESS OF PRIVATE RESPONDENTS' TITLE AND CLAIM OF POSSESSION OVER THE SUBJECT PROPERTY; AND THE IMPUTATION OF BIAS AND PARTIALITY AGAINST PUBLIC RESPONDENT JUDGE.

IV.

WHETHER OR NOT PUBLIC RESPONDENTS JUDGE FILEMON B. MONTENEGRO, ATTY. JESUS MAMPO AND SHERIFF JORGE B. LOPEZ EXCEEDED THEIR AUTHORITY AND/OR COMMITTED GRAVE ABUSE OF DISCRETION IN TRYING TO EVICT PETITIONER AND VARIOUS DEPARTMENTS AND OFFICES THEREOF FROM THE SUBJECT PROPERTY.

V.

WHETHER OR NOT PUBLIC RESPONDENT JUDGE FILEMON B. MONTENEGRO EXCEEDED HIS JURISDICTION AND/OR COMMITTED GRAVE ABUSE OF DISCRETION IN DIRECTING PETITIONER TO PAY PRIVATE RESPONDENTS MONTHLY RENTALS OF ABOUT [₱]81,500,000.00.

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[23] *Id*. at 764-765.

VI.

WHETHER OR NOT THE ORDER DIRECTING PETITIONER TO PAY PRIVATE RESPONDENT MONTHLY RENTALS [DISREGARDED] THE HONORABLE COURT'S ADMINISTRATIVE CIRCULAR NO. 10-2000 AND THE LAW AND THE JURISPRUDENCE CITED THEREIN.

VII.

WHETHER OR NOT PUBLIC RESPONDENTS JUDGE FILEMON B. MONTENEGRO, ATTY. JESUS MAMPO AND SHERIFF JORGE B. LOPEZ EXCEEDED THEIR AUTHORITY AND/OR COMMITTED GRAVE ABUSE OF DISCRETION IN CAUSING THE GARNISHMENT OF PETITIONER'S ACCOUNT WITH LAND BANK OF THE PHILIPPINES.

VIII.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING THE PETITIONER'S APPLICATION FOR WRIT OF PRELIMINARY PROHIBITORY INJUNCTION.[24]

The pertinent issues, in our view, are as follows: (1) whether petitioner availed of the proper remedy to contest the disputed order, resolution, and notices; (2) whether petitioner was guilty of forum-shopping in filing the instant petition pending the petition for review before the Court of Appeals; (3) whether RTC Judge Montenegro committed grave abuse of discretion in granting execution pending appeal; and (4) whether the Court of Appeals committed grave abuse of discretion in denying petitioner's application for a writ of preliminary injunction.

Petitioner City of Naga ascribes grave abuse of discretion on Judge Montenegro for allowing execution pending appeal and for refusing to inhibit himself from the proceedings. It contends that its claim of ownership over the lots behooved the RTC of jurisdiction to try the illegal detainer case. Granting *arguendo* that the RTC had jurisdiction and its judgment was immediately executory, petitioner insists that the circumstances in the case

[24] *Id*. at 1095-1097.

at bar warranted against it. For one, the people of Naga would be deprived of access to basic social services even before respondents' right to possess the land has been conclusively established. The City of Naga assails the validity of the order of execution issued by the court inasmuch as it excluded the NBI, City Hall and Hall of Justice from its coverage; ordered garnishment of government funds; and directed the *Sangguniang Panlungsod* to appropriate money in violation of the Supreme Court Administrative Circular No. 10-2000.[25] Petitioner likewise claims that Atty. Jesus Mampo and Sheriff Jorge B. Lopez acted with manifest abuse when they issued the writ of execution pending appeal, and served notice to vacate and notice of garnishment, respectively.

Finally, petitioner imputes grave abuse of discretion on the Court of Appeals for denying its application for a writ of preliminary injunction. The appellate tribunal struck down petitioner's application pending resolution by the RTC of respondent's motion to execute its June 20, 2005 Decision. Also, it found no merit in petitioner's claim that grave and irreparable injury will result to the City of Naga by the implementation of said decision. Nevertheless, it excused the NBI, Naga City Hall and Hall of Justice from execution.

For their part, respondents (Marianos) call for the dismissal of the instant petition on the ground of forum-shopping. They aver that the petition for review in the Court of Appeals and the present petition are but similar attempts to stop the immediate enforcement of the June 20, 2005 RTC Decision. They add that the court *a quo* merely acted in obedience to the provisions of Section 21[26] of Rule 70 of the Rules of Court when it ordered

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[25] RE: EXERCISE OF UTMOST CAUTION, PRUDENCE AND JUDICIOUSNESS IN THE ISSUANCE OF WRITS OF EXECUTION TO SATISFY MONEY JUDGMENTS AGAINST GOVERNMENT AGENCIES AND LOCAL GOVERNMENT UNITS, issued on October 25, 2000.

[26] SEC. 21. *Immediate execution on appeal to Court of Appeals or Supreme Court*. – The judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom.

execution. Thus, the writ of execution, notice to vacate and notice of garnishment are also valid as incidents of the August 17, 2006 RTC Order. Respondents agree with the appellate court that there is no immediate threat of grave and irreparable injury to petitioner. In any case, the Marianos suggest that petitioner just seek reparation for damages should the appellate court reverse the RTC. Lastly, respondents allege that the court *a quo* correctly ruled on the merits despite its finding that the MTC erroneously dismissed the unlawful detainer case for lack of jurisdiction. The MTC based its decision on the affidavits and position papers submitted by the parties.

The petition is partly meritorious.

In the interest of justice, we decided to give due course to the petition for *certiorari* and prohibition concerning the August 17, 2006 Order of the RTC. As a rule, petitions for the issuance of such extraordinary writs against an RTC should be filed with the Court of Appeals. A direct invocation of this Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition.[27] Under the present circumstance however, we agree to take cognizance of this case as an exception to the principle of hierarchy of courts.[28] For while it has been held by this Court that a motion for reconsideration is a condition *sine qua non* for the grant of a writ of *certiorari*, nevertheless such requirement may be dispensed with where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government.[29] Such is the situation in the case at bar.

Thus, we find no merit in respondents' contention that petitioner erred in its choice of remedy before this Court. Under Section

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[27] *Cabarles v. Maceda*, G.R. No. 161330, February 20, 2007, 516 SCRA 303, 320.

[28] *Id.* at 321.

[29] *Nisce v. Equitable PCI Bank, Inc.*, G.R. No. 167434, February 19, 2007, 516 SCRA 231, 251.

1(c) and (f),[30] Rule 41 of the Rules of Court, no appeal may be taken from an interlocutory order and an order of execution, respectively. An interlocutory order is one which does not dispose of the case completely but leaves something to be decided upon.[31] Such is the nature of an order granting or denying an application for preliminary injunction; hence, not appealable.[32] The proper remedy, as petitioner did in this case, is to file a petition for *certiorari* and/or prohibition under Rule 65.

Nor can we agree that petitioner was guilty of forum-shopping. Under the *Same Objective Standard* enunciated in the case of *First Philippine International Bank v. Court of Appeals*,[33] the filing by a party of two apparently different actions, *but with the same objective*, constitutes forum- shopping.[34] Here, the special civil action of *certiorari* before us is an independent action. The ultimate purpose of such action is to keep the inferior tribunal within the bounds of its jurisdiction or relieve parties from arbitrary acts of the court.[35] In contrast, the petition for review before the

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

No appeal may be taken from:

x x x x x x x x x

(c) An interlocutory order;

x x x x x x x x x

(f) An order of execution;

x x x x x x x x x

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

[31] *Valenzuela v. Court of Appeals*, G.R. No. 149449, February 20, 2006, 482 SCRA 637, 642.

[32] *Allgemeine-Bau-Chemie Phils., Inc. v. Metropolitan Bank & Trust Co.*, G.R. No. 159296, February 10, 2006, 482 SCRA 247, 255.

[33] G.R. No. 115849, January 24, 1996, 252 SCRA 259.

[34] *Id.* at 285; *Clark Development Corporation v. Mondragon Leisure and Resorts Corporation*, G.R. No. 150986, March 2, 2007, 517 SCRA 203, 214.

[35] *Espinoza v. Provincial Adjudicator of the Provincial Agrarian Reform Adjudication Office of Pampanga*, G.R. No. 147525, February 26, 2007, 516 SCRA 635, 639-640.

Court of Appeals under Rule 42 involves an evaluation of the case on the merits. Clearly, petitioner did not commit forum-shopping.

Now, we shall proceed to resolve the contentious issues in this case.

Section 21, Rule 70 of the Rules of Court is pertinent:

SEC. 21. *Immediate execution on appeal to Court of Appeals or Supreme Court.* – The judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom.

Thus, the judgment of the RTC against the defendant in an ejectment case is immediately executory. Unlike Section 19,[36] Rule 70 of the Rules, Section 21 does not provide a means to prevent execution; hence, the court's duty to order such execution is practically ministerial.[37] Section 21 of Rule 70 presupposes that the defendant in a forcible entry or unlawful detainer case is unsatisfied with the judgment of the RTC and decides to appeal to a superior court. It authorizes the RTC to immediately issue a writ of execution without prejudice to the appeal taking

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[36] **SEC. 19.** *Immediate execution of judgment; how to stay same.* – If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. In the absence of a contract, he shall deposit with the Regional Trial Court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment of the lower court on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the Municipal Trial Court, with the other papers, to the clerk of the Regional Trial Court to which the action is appealed.

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[37] *Puncia v. Gerona,* G.R. No. 107640, January 29, 1996, 252 SCRA 425, 430.

its due course. Nevertheless, it should be stressed that the appellate court may stay the said writ should circumstances so require.[38]

Petitioner herein invokes seasonably the exceptions to immediate execution of judgments in ejectment cases cited in *Hualam Construction and Dev't. Corp. v. Court of Appeals*[39] and *Laurel v. Abalos,*[40] thus:

> Where supervening events (occurring subsequent to the judgment) bring about a material change in the situation of the parties which makes the execution inequitable, or where there is no compelling urgency for the execution because it is not justified by the prevailing circumstances, the court may stay immediate execution of the judgment.[41]

Noteworthy, the foregoing exceptions were made in reference to Section 8,[42] Rule 70 of the old Rules of Court which has been substantially reproduced as Section 19, Rule 70 of the 1997 Rules of Civil Procedure. Therefore, even if the appealing defendant was not able to file a supersedeas bond, and make periodic deposits to the appellate court, immediate execution of the MTC decision is not proper where the circumstances of the case fall under any of the above-mentioned exceptions. Yet, Section 21, Rule 70 of the Rules does not provide for a procedure to avert immediate execution of an RTC decision.

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[38] *Benedicto v. Court of Appeals*, G.R. No. 157604, October 19, 2005, 473 SCRA 363, 370.

[39] G.R. No. 85466, October 16, 1992, 214 SCRA 612.

[40] No. L-26098, October 31, 1969, 30 SCRA 281.

[41] *Hualam Construction and Dev't. Corp. v. Court of Appeals*, *supra* at 627; *Laurel v. Abalos*, *supra* at 291.

[42] SEC. 8. *Immediate execution of judgment. How to stay same.*- If judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond approved by the justice of the peace or municipal court and executed to the plaintiff to enter the action in the Court of First Instance and to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as found by the judgment of the justice of the peace or municipal court to exist…

x x x x x x x x x

This is not to say that the losing defendant in an ejectment case is without recourse to avoid immediate execution of the RTC decision. The defendant may, as in this case, appeal said judgment to the Court of Appeals and therein apply for a writ of preliminary injunction. Thus, as held in *Benedicto v. Court of Appeals*,[43] even if RTC judgments in unlawful detainer cases are immediately executory, preliminary injunction may still be granted.[44]

In the present case, the Court of Appeals denied petitioner's application for a writ of preliminary injunction because the RTC has yet to rule on respondents' Motion to Issue Writ of Execution. Significantly, however, it also made a finding that said application was without merit. On this score, we are unable to agree with the appellate court.

A writ of preliminary injunction is available to prevent threatened or continuous irremediable injury to parties before their claims can be thoroughly studied and adjudicated. Its sole objective is to preserve the *status quo* until the merits of the case can be heard fully.[45] *Status quo* is the last actual, peaceable and uncontested situation which precedes a controversy.[46]

As a rule, the issuance of a preliminary injunction rests entirely within the discretion of the court taking cognizance of the case and will not be interfered with, except in cases of manifest abuse.[47] Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack or excess of jurisdiction. The exercise of power must have been done in an arbitrary or a despotic manner by reason of passion or personal hostility. It must have been so patent and gross as to amount to

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[43] *Supra* note 38.

[44] *Id*. at 371.

[45] *Food Terminal, Inc. v. Shoppers Paradise FTI Corporation,* G.R. No. 153925, August 10, 2006, 498 SCRA 429, 436.

[46] *Preysler, Jr. v. Court of Appeals*, G.R. No. 158141, July 11, 2006, 494 SCRA 547, 553.

[47] *University of the East v. Wong*, G.R. No. 150280, April 26, 2006, 488 SCRA 361, 363.

an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[48]

Considering the circumstances in this case, we find that the Court of Appeals abused its discretion when it denied petitioner's application for a writ of preliminary injunction because of the pendency of respondents' Motion to Issue Writ of Execution with the RTC, but ruled on the merits of the application at the same time. At most, the appellate court should have deferred resolution on the application until the RTC has decided on the motion for execution pending appeal. Moreover, nothing in the rules allow a qualified execution pending appeal that would have justified the exclusion of the NBI, City Hall and Hall of Justice from the effects of the writ.

In any case, we have ploughed through the records of this case and we are convinced of the pressing need for a writ of preliminary injunction. Be it noted that for a writ of preliminary injunction to be issued, the Rules of Court do not require that the act complained of be in clear violation of the rights of the applicant. Indeed, what the Rules require is that the act complained of be *probably* in violation of the rights of the applicant. Under the Rules, probability is enough basis for injunction to issue as a provisional remedy. This situation is different from injunction as a main action where one needs to establish absolute certainty as basis for a final and permanent injunction.[49]

Thus, we have stressed the foregoing distinction to justify the issuance of a writ of preliminary injunction in actions for unlawful detainer:

> ...Where the action, therefore, is one of illegal detainer, as distinguished from one of forcible entry, and the right of the plaintiff to recover the premises is seriously placed in issue in a proper judicial proceeding, it is more equitable and just and less productive of confusion

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[48] *Reyes-Rara v. Chan*, G.R. No. 142961, August 4, 2006, 497 SCRA 616, 621-622.

[49] *Hernandez v. National Power Corporation*, G.R. No. 145328, March 23, 2006, 485 SCRA 166, 180-181 (Underscoring supplied).

and disturbance of physical possession, with all its concomitant inconvenience and expenses. For the Court in which the issue of legal possession, whether involving ownership or not, is brought to restrain, should a petition for preliminary injunction be filed with it, the effects of any order or decision in the unlawful detainer case in order to await the final judgment in the more substantive case involving legal possession or ownership. It is only where there has been forcible entry that as a matter of public policy the right to physical possession should be immediately set at rest in favor of the prior possession regardless of the fact that the other party might ultimately be found to have superior claim to the premises involved, thereby to discourage any attempt to recover possession thru force, strategy or stealth and without resorting to the courts.[50]

Needless to reiterate, grave and irreparable injury will be inflicted on the City of Naga by the immediate execution of the June 20, 2005 RTC Decision. Foremost, as pointed out by petitioner, the people of Naga would be deprived of access to basic social services. It should not be forgotten that the land subject of the ejectment case houses government offices which perform important functions vital to the orderly operation of the local government. As regards the garnishment of Naga City's account with the Land Bank, the rule is and has always been that all government funds deposited in official depositary of the Philippine Government by any of its agencies or instrumentalities, whether by general or special deposit, remain government funds. Hence, they may not be subject to garnishment or levy, in the absence of corresponding appropriation as required by law.[51] For this reason, we hold that the Notice of Garnishment dated August 23, 2006 is void.

Anent Judge Montenegro's refusal to recuse himself from the proceedings, we find no grave abuse of discretion. We have held time and again that inhibition must be for just and valid causes. The mere imputation of bias and partiality is not enough ground for judges to inhibit, especially when the charge is without

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[50] *Amagan v. Marayag*, G.R. No. 138377, February 28, 2000, 326 SCRA 581, 591.

[51] *City of Caloocan v. Allarde*, G.R. No. 107271, September 10, 2003, 410 SCRA 432, 439.

sufficient basis. This Court has to be shown acts or conduct clearly indicative of arbitrariness or prejudice before it can brand concerned judges with the stigma of bias and partiality. Bare allegations of partiality will not suffice "in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence without fear and favor.[52] The Resolution[53] of the Court *En Banc* dated June 27, 2006 which dismissed the complaint filed by Mayor Jesse Robredo against Judge Montenegro served to negate petitioner's allegations. Nevertheless, when the ground sought for the judge's inhibition is not among those enumerated in Section 1,[54] Rule 137 of the Rules of Court, a judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons.

Similarly, in our view, the charge of grave abuse of discretion against Clerk of Court Atty. Jesus Mampo and Sheriff Jorge B. Lopez cannot prosper. When Judge Montenegro issued the order directing the issuance of a writ of execution, Atty. Jesus Mampo was left with no choice but to issue the writ. Such was his ministerial duty in accordance with Section 4,[55] Rule 136 of

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[52] *Sarmiento v. Zaratan*, G.R. No. 167471, February 5, 2007, 514 SCRA 246, 263.

[53] *Rollo,* p. 137.

[54] SECTION. 1**.** *Disqualification of judges*. – No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

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[55] SEC. 4. *Issuance by clerk of process*. – The clerk of a superior court shall issue under the seal of the court all ordinary writs and process incident to pending cases, the issuance of which does not involve the exercise of functions appertaining to the court or judge only; and may, under the direction of the court or judge, make out and sign letters of administration, appointments of guardians, trustees and receivers, and all writs and process issuing from the court.

the Rules of Court.[56] In the same vein, when the writ was placed in the hands of Sheriff Lopez, it was his duty, in the absence of instructions to the contrary, to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. It is elementary that a sheriff's duty in the execution of the writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. The rule may appear harsh, but such is the rule we have to observe.[57]

WHEREFORE, the instant petition is *PARTLY GRANTED*, and it is hereby *ORDERED* that:

(A) The Resolution dated August 16, 2006 of the Court of Appeals in CA-G.R. SP No. 90547 is *REVERSED* and *SET ASIDE*. The Court of Appeals is *ORDERED* to issue a writ of preliminary injunction to restrain the execution of the Decision dated June 20, 2005 of the Regional Trial Court, Branch 26, Naga City pending resolution of the petition for review before it;

(B) The Writ of Execution Pending Appeal dated August 22, 2006, Notice to Vacate dated August 23, 2006, and the Notice of Garnishment dated August 23, 2006 are *SET ASIDE*.

Lastly, the Court of Appeals is hereby *ENJOINED* to resolve the pending petition for review before it, CA-G.R. SP No. 90547, without further delay, in a manner not inconsistent with this Decision.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

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[56] *Mariano v. Garfin*, A.M. No. RTJ-06-2024, October 17, 2006, 504 SCRA 605, 615.

[57] *Salcedo v. Caguioa*, A.M. No. MTJ-00-1328, February 11, 2004, 422 SCRA 426, 433.

SECOND DIVISION

[G.R. No. 180499. July 9, 2008]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CONRADO CACAYAN,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; POSITIVE TESTIMONY PREVAILS OVER NEGATIVE TESTIMONY.— The age-old rule is that the task of assigning values to the testimonies of witnesses in the stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it. It is also axiomatic that positive testimony prevails over negative testimony. The denial and alibi of appellant fail in light of AAA's positive identification that he raped her on the alleged dates which is corroborated by physical evidence showing forced coitus.

2. ID.; ID.; ID.; ALIBI; ALIBI CAN BE A BASIS OF ACQUITTAL IF IT CAN BE SHOWN BY CLEAR AND CONVINCING EVIDENCE THAT IT WAS INDEED PHYSICALLY IMPOSSIBLE FOR THE ACCUSED TO BE AT THE CRIME SCENE AT THE TIME; NOT PRESENT IN CASE AT BAR.— It is true that alibi is not always false and without merit. It may serve as basis for an acquittal if it can really be shown by clear and convincing evidence that it was indeed physically impossible for the accused to be at the crime scene at the time. In this regard, appellant failed to prove convincingly that he was not at the crime scene at the time the four rapes occurred because he merely denied that AAA was with him on the alleged dates. Moreover, the distance of appellant's house, where AAA was alleged to be during the four rapes, from the crime scene does not evince belief that it was impossible for him to be there when the rapes were committed. Further, jurisprudence has shown that alibi becomes less plausible as a defense when it is invoked and sought to be crafted mainly by the accused himself and his immediate relative or relatives.

Appellant's alibi is patently self-serving even though his brothers tried to corroborate it.

3. ID.; ID.; ID.; THE COMPLAINANT'S CANDOR IS THE SINGLE MOST IMPORTANT ISSUE IN PROSECUTION OF RAPE; APPLICATION IN CASE AT BAR.— In a prosecution for rape, the complainant's candor is the single most important issue. If a complainant's testimony meets the test of credibility, the accused may be convicted solely on that basis. We have thoroughly examined AAA's testimony and find nothing that would cast doubt as to her credibility. All said, there is no evidence to show any improper motive on the part of AAA to falsely charge appellant with rape and to testify against him; hence, the logical conclusion is that her testimony is worthy of full faith and credence. The prosecution has established beyond reasonable doubt that appellant had carnal knowledge of AAA against her will, through force and intimidation, and with the use of a bolo.

4. ID.; ID.; ID.; CREDIBILITY IS NOT AFFECTED BY MINOR INCONSISTENCIES. — The alleged minor inconsistencies in AAA's testimony pertain only to collateral or minor incidents of the case and they do not affect the real issue, which is whether or not appellant indeed raped his daughter, AAA. As long as the witness has been found credible by the trial court, especially after undergoing a rigid cross-examination, any apparent inconsistency may be overlooked. This is especially true if the lapses concern trivial matters.

5. CRIMINAL LAW; RAPE; WHEN DEATH PENALTY IS PROPER.— The RTC is correct when it imposed the penalty of death for the four rapes. Under Article 335 of the Revised Penal Code, the use by appellant of a bolo to consummate the crime is a special aggravating circumstance which warrants the imposition of the penalty of *reclusion perpetua* to death. A similar provision can also be found in Article 266-B, when the law on rape was amended by Republic Act No. 8353 which also reclassified rape to a crime against persons. With the existence of the aggravating circumstance of relationship, the imposable penalty is death conformably with Article 63 of the Revised Penal Code. There is no question that appellant is the father of AAA. Such relationship of father-daughter in rape

cases is considered an aggravating circumstance under Article 15 of the RPC. However, pursuant to Republic Act No. 9346, the Court can only impose the penalty of *reclusion perpetua* without eligibility for parole, in lieu of the death penalty. Article 335 also provides for the death penalty if the rape victim is under eighteen (18) years of age and the offender is a parent of the victim. The Court notes that the Court of Appeals erred when it applied this qualifying circumstance and reduced appellant's sentence to *reclusion perpetua*. It also erred when it held that the age of AAA has not been adequately established during the trial. It must be emphasized that the RTC imposed the death penalty on appellant, but not on the basis of the qualifying circumstances of minority and relationship, the concurrence of which would have warranted a mandatory death sentence under the law. Instead, the RTC based its judgment on the finding that appellant committed the rape with the use of a deadly weapon which prescribes the penalty of *reclusion perpetua* to death. Moreover, the alternative circumstance of relationship was appreciated by the RTC as an aggravating circumstance that justified the imposition of death. Thus, even if the qualifying circufmstance of minority had not been sufficiently established by the prosecution, still it would not matter because the death sentence was imposed without reference to and independently of the minority of AAA.

6. ID.; CIVIL LIABILITY; AWARD OF DAMAGES TO RAPE VICTIM, SUSTAINED.— As to damages, the trial court correctly awarded ₱50,000.00 as moral damages, an award that rests on the jural foundation that the crime of rape necessarily brings with it shame, mental anguish, besmirched reputation, moral shock and social humiliation. The award of exemplary damages in the amount of ₱25,000.00 was correctly granted pursuant to the ruling in *People v. Catubig* that the award of exemplarydamages is justified pursuant to Article 2230 of the Civil Code. Since the special aggravating circumstance of the use of a deadly weapon attended the commission of the rape, the offended party is entitled to exemplary damages. However, the Court finds that the civil indemnity should be increased to ₱75,000.00 for each of the four (4) counts of rape. In accordance with prevailing jurisprudence, the civil indemnity awarded to the victims of qualified rape shall not be less than

Seventy-Five Thousand Pesos (₱75,000.00), and ₱50,000.00 for simple rape.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TINGA, *J.*:

Four (4) informations[1] for rape accusing appellant Conrado Cacayan of raping his eighteen (18)-year old daughter,

[1] CA *rollo*, pp. 13-20. Criminal Case No. **2282** reads:

That at about 7:00 o'clock in the evening on May 13, 1997 at Sitio Dipasalin, Diniog, Dilasag, Aurora and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there, wi[ll]fully, unlawfully and feloniously have carnal knowledge of her [*sic*] 18 year old daughter [AAA] by pressing a small pointed bolo (*kampit*) at her neck and threatening to kill her.

CONTRARY TO LAW.

Criminal Case No. **2283** reads:

That at about May 14, 1997 at Sitio Dipasalin, Diniog, Dilasag, Aurora and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there, wi[ll]fully, unlawfully and feloniously have carnal knowledge of her [*sic*] 18 year old daughter [AAA] by pressing a small pointed bolo (*kampit*) at her neck and threatening to kill her.

CONTRARY TO LAW.

Criminal Case No. **2284** reads:

That on or about June 7, 1997 at Dicasiw, Diniog, Dilasag, Aurora and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there, wi[ll]fully, unlawfully and feloniously have carnal knowledge of her [*sic*] 18 year old daughter [AAA] by pressing a small pointed bolo (*kampit*) at her neck and threatening to kill her.

CONTRARY TO LAW.

Criminal Case No. **2285** reads:

That on or about June 21, 1997 at Diniog, Dilasag, Aurora and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there, wi[ll]fully, unlawfully and feloniously have

AAA,[2] were filed before the Regional Trial Court (RTC) of Baler, Aurora, Branch 96. The informations were similarly worded except for the dates of the commission of the crime. Appellant pleaded not guilty to all the charges against him during the arraignment.[3]

The facts as culled from the records are as follows:

AAA[4] was born on 19 August 1979.[5] Due to familial problems, AAA was reared by a sister of appellant in Saguday, Quirino, Isabela. On 10 January 1997, AAA started living with appellant in Barangay Diniog, Dilasag, Aurora. Her father was living in with another woman and the latter's 13-year old niece, BBB.[6] AAA helped out in appellant's *sari-sari* store.[7]

In the afternoon of 13 May 1997, AAA and BBB went out with appellant to gather rattan in the mountain. Earlier that day, appellant had a drinking session with a friend who was elected as *barangay* councilor. At around 7:00 p.m., the three passed by the seashore on the way to the mountain. As they were about to set up camp for the night, appellant asked BBB to fetch a cauldron (*casserole*) from Dipasaleng, Diniog, which, from where they were, would take around 15 minutes to reach. After BBB left, appellant approached AAA, who was then spreading a blanket on the seashore, and blamed her for his defeat in the 12 May 1997 *barangay* election. Appellant told her to undress and lie down. When she did not comply, appellant unsheathed his bolo, pointed it to her neck, and threatened to

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carnal knowledge of her [*sic*] 18 year old daughter [AAA] by pressing a small pointed bolo (*kampit*) at her neck and threatening to kill her.

CONTRARY TO LAW.

[2] The real name of the victim is withheld to protect her privacy. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 425-426.

[3] Records, p. 19.

[4] *Supra* note 2.

[5] TSN, 8 May 1998, p. 2.

[6] *Supra* note 2.

[7] TSN, 11 February 2002, pp. 4-11.

kill her if she refused to lie down. Despite AAA's vehement refusal, appellant started pulling down her pants and panties. After undressing AAA, appellant removed his pants. AAA's pleas for mercy fell on deaf ears. Appellant laid her on the blanket, held her left hand, and rested the bolo on the right side of her neck. Appellant then inserted his penis into her vagina. After appellant succeeded in having sexual intercourse with her, he told her to get dressed. Appellant called back BBB. They all spent the night by the seashore. AAA was not permitted by appellant to leave the place.[8]

The following morning, 14 May 1997, the three of them went to the mountain to gather rattan. At around 10:00 a.m., appellant told BBB to go down the mountain ahead of them. When BBB left, appellant asked AAA if he could repeat what he did to her the night before. AAA pleaded and reminded him that she is his daughter. When AAA did not comply with his wishes, appellant again threatened her with a bolo, then held her hand and laid her down. Appellant rested his bolo on her neck and held her hand as he inserted his penis into her vagina. AAA cried and shouted for help to no avail. After the sexual intercourse, they went down the mountain.[9]

On 7 June 1997, the three of them went to appellant's banana plantation in Dicasiw, Dilasag, Aurora to gather bananas. After the task, AAA went home ahead of them. Appellant followed her and told her to stop. She refused and told him that she still had to wash some clothes. Appellant scolded her with expletives for not following his order. She retorted, "What kind of father are you? You are doing bad things to your daughter!" Appellant pulled AAA, causing her to stumble. He laid AAA down and undressed her. Appellant held her hand and rested his bolo on AAA's neck. He inserted his penis into her vagina. The penetration caused her extreme pain because she was then suffering from vaginal infection caused by appellant's previous sexual assaults. AAA described it as, "*Masakit po dahil hindi pa po magaling*

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[8] TSN, 4 February 1998, pp. 11-15.

[9] *Id*. at 15-17. See also TSN, 17 June 1998, pp. 3-4.

iyong mga butlig-butlig dahil doon po sa ginawa niya sa akin."[10] AAA did not report the rape for fear that appellant would make good his threat that he would kill her and her mother.[11]

Sometime in June 1997, AAA started living in the house of CCC,[12] who used to be her teacher in school. Because AAA had financial difficulties when she was still CCC's student, the latter invited her to stay in her house. Appellant gave his permission to this arrangement; however, he told CCC not to allow AAA to go out.[13]

On 21 June 1997, appellant went to CCC's house and confronted AAA about the rumors that she had gone out with many male companions during the town fiesta. She went with appellant to his house to verify the gossips and there, she denied the rumors. Then, she proceeded to leave for CCC's house but appellant persisted in accompanying her. Together, they boarded a tricycle which, on the way to their destination, ran out of fuel. The driver advised them to just walk the rest of the way. However, before they could reach CCC's house, appellant dragged AAA into a coconut plantation and told her to undress. Appellant persisted in undressing AAA despite her pleas for mercy. AAA resisted appellant's actions but the latter drew a knife and pointed it at her neck. Appellant undressed himself and inserted his penis into AAA's vagina while she was lying down. Appellant made push-and-pull movements which AAA described as, "*kinayopan po nya ako. Labas[-] pasok po ang ari nya sa ari ko*." After satisfying his bestial desires, appellant told AAA to stand up and get dressed.[14]

As soon as AAA reached the house of CCC, she confided to the latter that appellant had raped her. CCC advised her to report the matter to the Department of Social Welfare and

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

[11] *Id*. at 19.

[12] *Supra* note 2.

[13] TSN, 29 January 1999, pp. 2-4.

[14] TSN, 6 May 1998, pp. 1-4.

Development (DSWD). AAA did not follow CCC's advice for she was afraid that appellant could easily kill her.[15] Instead, AAA escaped to Barangay Calabuanan, Baler, Aurora to seek her friend. She was told by the residents, however, that her friend was working in Bulacan. A certain Baby Lucie Bitong (Baby), a resident of the locality, invited AAA to her house. There, AAA related her ordeal to Baby. Baby accompanied AAA to a *barangay* councilor who, in turn, referred them to the *barangay* captain. The *barangay* captain was then in a meeting so a *tanod* took her statement. AAA and Baby proceeded to the DSWD office in the municipal building. As advised by the DSWD, they proceeded to the police station where AAA's statement was taken.[16]

On 14 July 1997, Dr. Nenita Hernandez, the municipal health officer of Baler, Aurora, examined AAA and issued a medico-legal examination report.[17] She testified that the healed hymenal lacerations were consistent with the fact that the last rape occurred on 21 June 1997, and that these also indicate several forcible copulations.[18]

Appellant denied the charges against him. He testified that AAA merely concocted the charges against him for he scolded and mauled her on 20 June 1997 when he learned from his brother that she was having an affair with a certain "*Alias* Pogi" near the seashore the day before. Appellant disavowed that

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

[16] TSN, 6 May 1998, pp. 5-7.

[17] Records, pp. 8-9. The pertinent portion of the report reads:

GENITAL EXAMINATION:

On optical inspection, there were multiple hymenal lacerations which were already healed at the following positions: 11 o'clock position, 3 o'clock position, 4 o'clock position, 6 o'clock position, 7 o'clock position, 8 o'clock position.

The vulva opening was nulliparous but admits the speculum with ease. There was a mild erosion noted at the posterior forchet. A whitish discharge was also noted.

Gramstaining result indicates the presence of non-gonococcal infection in the cervical and vaginal canal.

[18] TSN, 4 February 1998, pp. 4-8.

AAA was with him gathering rattan on 13 and 14 May 1997 and that she was with him gathering bananas on 7 June 1997 as in fact on those dates, she was managing their *sari-sari* store.[19] He testified that AAA was not in his house on 21 June 1997, the date of the fourth rape.[20]

Appellant's brothers—Arman Cacayan (Arman), Mariano Cacayan (Mariano) and Guillermo Cacayan (Guillermo)—tried to corroborate appellant's defense. Arman and Mariano both testified that appellant could not have raped AAA on 13 and 14 May and on 7 June 1997 since on said dates, they saw AAA tending the *sari-sari* store, and that appellant was at home in the evening of 13 May. Mariano testified that he even saw AAA having a picnic with her friends by the beach in Dilasag on 14 May. Mariano further testified that he saw AAA kissing a man near the seashore in the evening of 19 June 1997, and told appellant about it. He revealed that AAA was beaten up by appellant because of said incident.[21] Arman testified that AAA was alone when she boarded the tricycle bound to CCC's house in the evening of 21 June 1997, and that appellant was then in his house. He further testified that AAA was a flirt.[22] Guillermo also tried to show through his testimony that AAA was a flirt. He testified that AAA was no longer a virgin and that the latter had previously suffered a miscarriage as he once saw her bleeding when they were still living in the same house.[23]

In its Decision[24] dated 23 July 2002, the RTC found appellant guilty of four (4) counts of rape with the use of a deadly weapon

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[19] TSN, 11 February 2002, pp. 2-4, 13.

[20] *Id*. at 9-12.

[21] TSN, 23 April 2002, pp. 3-8.

[22] TSN, 7 October 1999, pp. 4-6, 14.

[23] TSN, 6 October 1999, pp. 2-6.

[24] CA *rollo*, pp. 31-36. The decision was penned by Judge Armando A. Yanga. The dispositive portion reads:

WHEREFORE, in view of all the foregoing, this Court finds accused Conrado Cacayan **GUILTY** beyond reasonable doubt of the crime of Multiple Rape committed with the use of a deadly weapon against her daughter [AAA] and hereby sentences him to suffer the extreme penalty of **DEATH** on four

and attended by the aggravating circumstance of relationship and sentenced him to death. Since the rapes were committed prior to the effectivity of Republic Act No. 8353 on 22 October 1997, the RTC applied Article 335 of the Revised Penal Code.[25] The records of the case were thereafter forwarded to this Court on automatic review. On 7 February 2006, the Court issued a Resolution[26] transferring the case to the Court of Appeals for intermediate review.

The Court of Appeals[27] affirmed with modification the decision of the RTC. The appellate court found appellant guilty of all four (4) counts of simple and not qualified rape. It held that although appellant admitted that AAA is his daughter, her minority at the time she was raped was not alleged in the informations nor was it proven in court. Appellant filed a Notice of Appeal dated 19 July 2007 before the Court of Appeals.[28]

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(4) counts; to indemnify the victim in the amount of ₱50,000.00 civil indemnity, ₱50,000.00 moral damages, and ₱25,000.00 exemplary damages for each of the four counts of rape or altogether, a grand sum of ₱500,000.00; and to pay the costs.

SO ORDERED.

[25] Art. 335. When and how rape *is* committed.— Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

1. By using force or intimidation.

x x x x x x x x x

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death. x x x (As amended by Sec. 11, R.A. No. 7659.)

[26] CA *rollo*, pp. 123-124. Pursuant to the case of *People v. Efren Mateo*, G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640, 656.

[27] *Rollo*, pp. 7-21; Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Enriquez, Jr. and Vicente S.E. Veloso. The dispositive portion reads:

WHEREFORE, the decision dated July 23, 2002 of the Regional Trial Court, Branch 96, Baler, Aurora, finding accused-appellant Conrado Cacayan guilty beyond reasonable doubt of rape on four counts, is hereby **AFFIRMED** with **MODIFICATION** in that the *penalty of* ***death*** *is reduced to* ***reclusion perpetua***. Cost *de oficio*.

SO ORDERED.

[28] CA *rollo*, pp. 148-149.

The case is again before us for our final disposition. Appellant assigns two (2) errors which have already been passed upon by the Court of Appeals, to wit: whether the RTC erred in finding him guilty of all four (4) counts of rape despite the alleged failure of the prosecution to prove his guilt beyond reasonable doubt; and assuming *arguendo* that he is guilty, whether the RTC erred in imposing the death penalty.[29]

The appeal is bereft of merit.

The issues raised by the appellant involve weighing of evidence already passed upon by the RTC and the Court of Appeals. The age-old rule is that the task of assigning values to the testimonies of witnesses in the stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it. It is also axiomatic that positive testimony prevails over negative testimony.[30] The denial and alibi of appellant fail in light of AAA's positive identification that he raped her on the alleged dates which is corroborated by physical evidence showing forced coitus.

It is true that alibi is not always false and without merit. It may serve as basis for an acquittal if it can really be shown by clear and convincing evidence that it was indeed physically impossible for the accused to be at the crime scene at the time.[31] In this regard, appellant failed to prove convincingly that he was not at the crime scene at the time the four rapes occurred because he merely denied that AAA was with him on the alleged dates. Moreover, the distance of appellant's house, where AAA was alleged to be during the four rapes, from the crime scene does not evince belief that it was impossible for him to be there when the rapes were committed. Further, jurisprudence has shown that alibi becomes less plausible as a defense when it is

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[29] *Id*. at 58-72.

[30] *People v. Sarabia*, 334 Phil. 432, 446 (1997).

[31] *People v. Villapando*, G.R. No. 73656, 5 October 1989, 178 SCRA 341, 347; *People v. Manzanares*, G.R. No. 82696, 8 September 1989, 177 SCRA 427, 433-434. See also *People v. Castañeda,* 322 Phil. 267, 279 (1996); *People v. Abaya,* G.R. No. 77980, 27 February 1989, 170 SCRA 691, 698.

invoked and sought to be crafted mainly by the accused himself and his immediate relative or relatives.[32] Appellant's alibi is patently self-serving even though his brothers tried to corroborate it.

The use of a bolo at the time of the rapes and the threat of death posed by appellant constituted sufficient force and intimidation to cow AAA into obedience.[33] Moreover, appellant, who is AAA's father, undoubtedly exerted a strong moral influence over her. His moral ascendancy and influence over AAA may even substitute for actual physical violence and intimidation.[34]

In a prosecution for rape, the complainant's candor is the single most important issue. If a complainant's testimony meets the test of credibility, the accused may be convicted solely on that basis.[35] We have thoroughly examined AAA's testimony and find nothing that would cast doubt as to her credibility. All said, there is no evidence to show any improper motive on the part of AAA to falsely charge appellant with rape and to testify against him; hence, the logical conclusion is that her testimony is worthy of full faith and credence. The prosecution has established beyond reasonable doubt that appellant had carnal knowledge of AAA against her will, through force and intimidation, and with the use of a bolo.

The alleged minor inconsistencies in AAA's testimony pertain only to collateral or minor incidents of the case and they do not affect the real issue, which is whether or not appellant indeed raped his daughter, AAA. As long as the witness has been found credible by the trial court, especially after undergoing a rigid cross-examination, any apparent inconsistency may be overlooked. This is especially true if the lapses concern trivial matters.[36]

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[32] *People v. Danao*, 313 Phil. 178, 188 (1996), citing *People v. Retuta, et al.*, G.R. No. 95758, 2 August 1994, 234 SCRA 645, 656.

[33] TSN, 4 February 1998, pp. 13-14, 16, 18-19; 6 May 1998, p. 3.

[34] See *People v. Casil*, 311 Phil. 300, 309 (1995); and *People v. Burce*, 336 Phil. 283, 302 (1997).

[35] *People v. De Guzman y Pascual*, 388 Phil. 943, 953 (2000), citing *People v. Abad*, 268 SCRA 246 (1997).

[36] *People v. Dela Cuesta*, 396 Phil. 330, 340 (2000).

AAA's failure to report the previous incidents of rape to her mother does not dent her credibility, there being no standard form of behavior expected of rape victims who react differently to emotional stress.[37] Appellant's threats had intimidated AAA and kept her from immediately reporting the rapes. As this Court held, it is not uncommon for young girls to conceal for some time the violation of their honor because of the threats on their lives.[38]

Appellant's contention that AAA filed the rape charges because he had scolded and mauled her for seeing a man could not be believed. As held by the Court in *People v. Rosario,*[39] "[i]t would take the most senseless kind of depravity for a young daughter to fabricate a story which would send her father to death only because he disciplined her. Verily, no child in her right mind would concoct a story of defloration against her own father and expose her whole family to the stigma and disgrace associated with incestuous rape, if only to free herself from an overweening and strict parent who only happens to enforce parental guidance and discipline."

Significantly, AAA's claim of sexual violations was corroborated by Dr. Hernandez's medical findings which were presented to the RTC at the trial. AAA's hymen showed multiple healed lacerations at 11, 3, 4, 6, 7 and 8 o'clock positions.[40] As Dr. Hernandez testified, these lacerations could only have resulted from the forcible insertion into the vagina of an erect penis.[41]

Lastly, just as in other rape cases, appellant raises the argument that the rapes could not have happened because BBB was with

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[37] See *People v. Quezada*, 425 Phil. 877, 895 (2002); *People v. Dy*, 425 Phil. 609, 644 (2002); *People v. Silvano*, 368 Phil. 676, 707 (1999).

[38] *People v. Manzana*, 320 Phil. 200, 211 (1995). See also *People v. Calamlam*, 451 Phil. 283, 295 (2003), citing *People v. Melivo*, 253 SCRA 347, 356-358 (1996).

[39] 455 Phil. 876, 888 (2003). See also *People v. Cabanela*, 359 Phil. 481, 491 (1998); *People v. Managaytay,* 364 Phil. 800, 808 (1999).

[40] *Supra* note 17.

[41] TSN, 4 February 1998, pp. 4-8.

them when the alleged crime was committed. However, as is common judicial experience, rapists are not deterred from committing their odious act by the presence of people nearby. As revealed in our review of rape cases, rape can be committed in a house where there are other occupants.[42]

All told, the Court finds no reason to reverse the ruling of the RTC and the Court of Appeals insofar as the crime was committed. What remains to be determined is the propriety of the penalty imposed on appellant in relation to the second issue raised.

The RTC is correct when it imposed the penalty of death for the four rapes. Under Article 335 of the Revised Penal Code, the use by appellant of a bolo to consummate the crime is a special aggravating circumstance which warrants the imposition of the penalty of *reclusion perpetua* to death. A similar provision can also be found in Article 266-B,[43] when the law on rape was amended by Republic Act No. 8353 which also reclassified rape to a crime against persons. With the existence of the aggravating circumstance of relationship, the imposable penalty is death conformably with Article 63[44] of the Revised Penal Code. There is no question that appellant is the father of AAA.[45] Such relationship of father-daughter in rape cases is considered an

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[42] *People v. Quinevista, Jr.*, 314 Phil. 540, 548 (1995). See also *People v. Devilleres*, 336 Phil. 688, 700 (1997); *People v. Manuel*, G.R. Nos. 107732-33, 19 September 1994, 236 SCRA 545, 554; *People v. Tan, Jr.*, 332 Phil. 465, 476-477 (1996).

[43] Art. 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death. x x x

[44] Art. 63. Rules for the application of indivisible penalties.- x x x In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof: x x x

2. Where there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied. x x x

[45] TSN, 11 February 2002, pp. 3, 6.

aggravating circumstance under Article 15[46] of the RPC.[47] However, pursuant to Republic Act No. 9346,[48] the Court can only impose the penalty of *reclusion perpetua* without eligibility for parole, in lieu of the death penalty.

Article 335 also provides for the death penalty if the rape victim is under eighteen (18) years of age and the offender is a parent of the victim. The Court notes that the Court of Appeals erred when it applied this qualifying circumstance and reduced appellant's sentence to *reclusion perpetua*. It also erred when it held that the age of AAA has not been adequately established during the trial. It must be emphasized that the RTC imposed the death penalty on appellant, but not on the basis of the qualifying circumstances of minority and relationship, the concurrence of which would have warranted a mandatory death sentence under the law. Instead, the RTC based its judgment on the finding that appellant committed the rape with the use of a deadly weapon which prescribes the penalty of *reclusion perpetua* to death.

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[46] Chapter Five, Alternative Circumstances. Art. 15. Their concept.- Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication and the degree of instruction and education of the offender.

The alternative circumstance of relationship shall be taken into consideration when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender. x x x x

[47] See *People v. Padao*, 437 Phil. 405, 423 (2002); *People v. Silvano*, 368 Phil. 677, 711 (1999). Citing *People v. Busohan*, 227 SCRA 87; *People v. Lucas*, 181 SCRA 316; *People v. Porras*, 58 Phil. 578.

[48] SEC. 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Pursuant to the same law, appellant shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law.

Moreover, the alternative circumstance of relationship was appreciated by the RTC as an aggravating circumstance that justified the imposition of death. Thus, even if the qualifying circumstance of minority had not been sufficiently established by the prosecution, still it would not matter because the death sentence was imposed without reference to and independently of the minority of AAA.

As to damages, the trial court correctly awarded ₱50,000.00 as moral damages, an award that rests on the jural foundation that the crime of rape necessarily brings with it shame, mental anguish, besmirched reputation, moral shock and social humiliation.[49] The award of exemplary damages in the amount of ₱25,000.00 was correctly granted pursuant to the ruling in *People v. Catubig*[50] that the award of exemplary damages is justified pursuant to Article 2230 of the Civil Code.[51] Since the special aggravating circumstance of the use of a deadly weapon attended the commission of the rape, the offended party is entitled to exemplary damages.

However, the Court finds that the civil indemnity should be increased to ₱75,000.00 for each of the four (4) counts of rape. In accordance with prevailing jurisprudence, the civil indemnity awarded to the victims of qualified rape shall not be less than Seventy-Five Thousand Pesos (₱75,000.00),[52] and ₱50,000.00 for simple rape.[53]

WHEREFORE, the decision of the RTC in Criminal Case Nos. 2282-85 ordering appellant to pay AAA ₱50,000.00 as

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[49] *People v. Manallo*, 448 Phil. 149, 168-169 (2003).

[50] 416 Phil. 102, 120 (2001).

[51] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended part.

[52] *People v. Perez*, 357 Phil. 17, 35 (1998); *People v. Bernaldez*, 355 Phil. 740, 758 (1998); *People v. Victor*, 354 Phil. 195, 210 (1998).

[53] See *People v. Mendoza*, 432 Phil. 666, 684 (2002).

moral damages and ₱25,000.00 as exemplary damages, for each of the four (4) counts of rape, and the decision of the Court of Appeals in CA-G.R. CR-HC No. 02039 reducing the sentence of appellant from death to *reclusion perpetua* without eligibility for parole, likewise for each of the four (4) counts of rape, is *AFFIRMED with the MODIFICATION* that the civil indemnity be increased to ₱75,000.00 for each of the four (4) counts of rape. Costs against appellant.

SO ORDERED.

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

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and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatsoever, or that the great body of voters have been prevented by violence, intimidation and threats from exercising their franchise. (Presbitero, Jr. *vs.* COMELEC, G.R. No. 178884, June 30, 2008) p. 278

— When declared; cited. *(Id.)*

EMPLOYEES, KINDS OF

Project employees — Assigned to carry out a specific project or undertaking the duration and scope of which are specified at the time the employee is engaged in the project. (Goma *vs*. Pamplona Plantation Inc., G.R. No. 160905, July 04, 2008) p. 402

— Distinguished from regular employees. *(Id.)*

Regular employees — Distinguished from project employees. (Goma vs. Pamplona Plantation Inc., G.R. No. 160905, July 04, 2008) p. 402

— Enjoy security of tenure and can only be dismissed for just cause and with due process. *(Id.)*

— Kinds. *(Id.)*

EMPLOYEES' COMPENSATION

Disability — When compensable. (Philimare, Inc./Marlow Navigation Co., Ltd. *vs*. Suganob, G.R. No. 168753, July 09, 2008) p. 706

EMPLOYMENT

Regular employment — Nature. (Goma *vs*. Pamplona Plantation Inc., G.R. No. 160905, July 04, 2008) p. 402

EMPLOYMENT, TERMINATION OF

Dismissal of employees — Must be made in accordance with law. (Ilagan *vs*. CA, G.R. No. 162089, July 09, 2008) p. 661

Illegal dismissal — An illegally dismissed employee is entitled to, either reinstatement, if viable, or separation pay if

reinstatement is no longer viable, and backwages. (Goma *vs*. Pamplona Plantation Inc., G.R. No. 160905, July 04, 2008) p. 402

— Remedies of an illegally dismissed employee. (Ilagan *vs*. CA, G.R. No. 162089, July 09, 2008) p. 661

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Buy-bust operation — A form of entrapment which has repeatedly been accepted to be a valid means of arresting violators of the Dangerous Drugs Law. (People *vs*. Cabacaba, G.R. No. 171310, July 09, 2008) p. 741

EQUITABLE MORTGAGE

Instances when a contract is presumed to be an equitable mortgage — Cited. (Bautista *vs*. Unangst, G.R. No. 173002, July 04, 2008) p. 528

— Whenever it is clearly shown that a deed of sale with pacto de retro is given as a security for a loan, it must be regarded as an equitable mortgage. *(Id.)*

— Where in a contract of sale with pacto de retro, the vendor remains in possession, as lessee or otherwise, the contract shall be presumed to be an equitable mortgage. *(Id.)*

Prescription of action for annulment of — An equitable mortgage is a voidable contract which may be annulled within four years from the time the cause of action accrues. (Ayson, Jr. *vs*. Sps. Paragas, G.R. No. 146730, July 04, 2008) p. 329

ESTOPPEL

Doctrine of — A person, who by deed or conduct has induced another to act in a particular manner, is barred from adopting an inconsistent position, attitude, or course of conduct that thereby causes loss or injury to another. (BF Corp. *vs*. Manila Int'l. Airport Authority, G.R. No. 164517, June 30, 2008) p. 162

— An admission or representation is conclusive on the person making it and cannot be denied or disproved as against the person relying on it. *(Id.)*

— Cannot be sustained by mere argument or doubtful inference. (Phil. Savings Bank *vs*. Chowking Food Corp., G.R. No. 177526, July 04, 2008) p. 589

— Elements. *(Id.)*

— The government is not bound by the errors committed by its agents. (Intra-Strata Assurance Corp. *vs*. Rep. of the Phils., G.R. No. 156571, July 09, 2008) p. 631

Estoppel in pais — Elements. (Phil. Savings Bank *vs*. Chowking Food Corp., G.R. No. 177526, July 04, 2008) p. 589

EVIDENCE

Burden of proof — He who alleges that he is a purchaser in good faith and for value of a registered land bears the onus of proving such statement. (Eagle Realty Corp. *vs*. Rep. of the Phils., G.R. No. 151424, July 04, 2008) p. 355

— The plaintiff must rely on the strength of its own evidence and not upon the weakness of that of the defendants. (Ek Lee Steel Works Corp. *vs*. Manila Castor Oil Corp., G.R. No. 119033, July 09, 2008) p. 608

Guilt of the accused — The prosecution bears the burden of establishing the guilt of the accused beyond reasonable doubt. (Guillermo *vs*. People, G.R. No. 153287, June 30, 2008) p. 127

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Real Estate Mortgage Law (Act No. 3135) — Regulates the extrajudicial sale of mortgaged real properties by prescribing a procedure which effectively safeguards the rights of

both debtor and creditor. (PNB *vs*. Sps. Tomas Cabatingan and Agapita Edullantes, G.R. No. 167058, July 09, 2008) p. 694

Writ of possession — The issuance thereof becomes a ministerial duty of the court upon proper application and proof of title; exception. (China Banking Corp. *vs*. Sps. Lozada, G.R. No. 164919, July 04, 2008) p. 454

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— Judgment of the Regional Trial Court in a forcible entry case shall be immediately executory; exceptions. (City of Naga *vs*. Hon. Asuncion, G.R. No. 174042, July 09, 2008) p. 781

FORECLOSURE OF REAL ESTATE MORTGAGE

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Special authority to foreclose — When not present. (First Marbella Condominium Assn., Inc. *vs*. Gatmaytan, G.R. No. 163196, July 04, 2008) p. 432

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Certification against forum-shopping — Must be signed by all the petitioners; exception. (Tan *vs.* Ballena, G.R. No. 168111, July 04, 2008) p. 503

— Purpose. *(Id.)*

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— Elements. (Martelino *vs*. National Home Mortgage Finance Corp., G.R. No. 160208, June 30, 2008) p. 145

Existence of — There is no forum shopping when the action for certiorari is held independent from the petition for review before the Court of Appeals. (City of Naga *vs*. Hon. Asuncion, G.R. No. 174042, July 09, 2008) p. 781

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Preliminary injunction — Shall not be granted without hearing and prior notice to the party sought to be enjoined. (Martelino *vs*. National Home Mortgage Finance Corp., G.R. No. 160208, June 30, 2008) p. 145

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Definition — The word "interlocutory" refers to something intervening between the commencement and the end of the suit which decides some point or matter but is not a final decision of the whole controversy. (Sps. Gutierrez *vs*. Sps. Valiente, G.R. No. 166802, July 04, 2008) p. 486

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— Shall be dismissed considering the absence of any evidence substantiating the allegation. (Vecino *vs*. Atty. Ortiz, Jr., A.C. No. 6909, June 30, 2008) p. 14

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— Imposable penalty. *(Id.)*

Disqualification of judges — Partiality and prejudgment as disqualifying circumstances, explained. (Heirs of Generoso A. Juaban and Francis M. Zosa, *vs*. Bancale, G.R. No. 156011, July 03, 2008) p. 285

Inhibition of judges — Mere suspicion or imputation of bias or partiality is not a valid reason for voluntary inhibition; rationale. (City of Naga *vs*. Hon. Asuncion, G.R. No. 174042, July 09, 2008) p. 781

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Immutability of final judgment — Litigation must sometime be terminated even at the risk of occasional errors. (PLDT Co., Inc. *vs*. Reus, G.R. No. 160474, July 09, 2008) p. 649

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Execution of judgments for money — Where the judgment obligor cannot pay the monetary judgment in cash, the court, through the sheriff, may levy or attach properties belonging to the judgment obligor to secure the judgment. (Solar Resources, Inc., *vs*. Inland Trailways, Inc., G.R. No. 173566, July 04, 2008) p. 548

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— When proper. *(Id.)*

Redemption by judgment debtor — Allowed even after the lapse of the redemption period provided a valid tender of payment is made by the original owners within the redemption period. (Lucasan *vs*. PDIC, G.R. No. 176929, July 04, 2008) p. 576

— Distinguished from repurchase. *(Id.)*

— The judgment debtor or redemptioner loses his right over the property if he fails to redeem it from the purchaser within twelve months from registration of the certificate of sale. *(Id.)*

— The offer to redeem the property made after the expiry of the redemption period is one for repurchase, not for redemption. *(Id.)*

Satisfaction by levy — The judgment obligor should communicate to the sheriff its choices before the sheriff implements the levy. (Solar Resources, Inc., *vs*. Inland Trailways, Inc., G.R. No. 173566, July 04, 2008) p. 548

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Overlapping of land titles — In case thereof, the trial court may rely on the findings and conclusions of experts in the field of geodetic engineering. (Cambridge Realty and Resources Corp. *vs*. Eridanus Dev't., Inc., G.R. No. 152445, July 04, 2008) p. 372

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Petition for — The burden of proof to show the nullity of marriage lies on the plaintiff. (Rep. of the Phils. *vs*. Cabantug-Baguio, G.R. No. 171042, June 30, 2008) p. 187

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— 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.)*

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Pactum commissorium — Elements. (Sps. Wilfredo N. Ong and Edna Sheila Paguio-Ong *vs*. Roban Lending Corp., G.R. No. 172592, July 09, 2008) p. 769

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Requirement of notice and hearing and service — A motion, without notice and hearing, is pro forma and a motion that does not contain proof of service and notice to the adverse party is not entitled to judicial cognizance; rationale. (Solar Resources, Inc., *vs*. Inland Trailways, Inc., G.R. No. 173566, July 04, 2008) p. 548

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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. (Ek Lee Steel Works Corp. *vs*. Manila Castor Oil Corp., G.R. No. 119033, July 09, 2008) p. 608

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PREPONDERANCE OF EVIDENCE

Application in civil cases — The plaintiff must establish his cause of action by preponderance of evidence. (Clado-Reyes *vs*. Sps. Limpe, G.R. No. 163876, July 09, 2008) p. 669

Concept — The evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. (Heirs of Leticia Lopez Cuevas *vs*. Rep. of the Phils., G.R. No. 170539, July 09, 2008) p. 731

PROBABLE CAUSE

Concept — Defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. (Tan *vs*. Ballena, G.R. No. 168111, July 04, 2008) p. 503

Determination of — A function that belongs to the public prosecutor. (Tan *vs*. Ballena, G.R. No. 168111, July 04, 2008) p. 503

— Subject to the power of review by the Department of Justice; elucidated. *(Id.)*)

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Petition for — Defined. (Martelino *vs*. National Home Mortgage Finance Corp., G.R. No. 160208, June 30, 2008) p. 145

— Not a substitute for a lost appeal. (Sps. Gutierrez *vs*. Sps. Valiente, G.R. No. 166802, July 04, 2008) p. 486

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Liability for damages — Public service companies are liable for damages where it failed to exercise the diligence required of them. (MERALCO *vs*. Wilcon Builders Supply, Inc., G.R. No. 171534, June 30, 2008) p. 214

Ridjo doctrine — States that the public utility has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction; its failure to discover the defect, if any, considering the length of time, amounts to inexcusable negligence; its failure to make the necessary repairs and replace the defective electric meter installed within the consumer's premises limits the latter's liability. (MERALCO *vs*. Wilcon Builders Supply, Inc., G.R. No. 171534, June 30, 2008) p. 214

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Negligence in the operation of a motor vehicle — A sale or lease that is not registered with the Land Transportation Office shall not bind third persons who are aggrieved in tortious incidents. (PCI Leasing and Finance, Inc. *vs*. UCPB General Ins. Co., Inc., G.R. No. 162267, July 04, 2008) p. 418

— Liability of the registered owner of a vehicle for damage or injury arising out of negligence in the operation thereof, explained *(Id.)*

— The registered owner of a vehicle is liable for quasi-delicts resulting from its use; rationale. *(Id.)*

Proximate cause — Defined. (Phil. Savings Bank *vs*. Chowking Food Corp., G.R. No. 177526, July 04, 2008) p. 589

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— Requisites. *(Id.)*

(Lucasan *vs*. PDIC, G.R. No. 176929, July 04, 2008) p. 576

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Commission of — Civil indemnities of the accused. (People *vs*. Bunagan, G.R. No. 177161, June 30, 2008) p. 271

— Imposable penalty. (People *vs*. Cacayan, G.R. No. 180499, July 09, 2008) p. 803

— Lust is not a respecter of time and place. (People *vs*. Domingo, G.R. No. 177136, June 30, 2008) p. 254

— The date or time of the commission of rape is not a material ingredient of the said crime because the *gravamen* of rape is carnal knowledge of a woman through force and intimidation. (People *vs*. Bunagan, G.R. No. 177161, June 30, 2008) p. 271

Minority of rape victim — Guidelines as to the appreciation of age, either as an element of the crime or as a qualifying circumstance. (People *vs*. Domingo, G.R. No. 177136, June 30, 2008) p. 254

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— The strict and rigid application of the Rules, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. (Tan *vs*. Ballena, G.R. No. 168111, July 04, 2008) p. 503

— When allowed. (Haurie *vs*. Meridien Resources, Inc., G.R. No. 141820, July 09, 2008) p. 621

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Contract of sale — When considered only as a contract of loan secured by a mortgage. (Ayson, Jr. *vs*. Sps. Paragas, G.R. No. 146730, July 04, 2008) p. 329

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— When a writ is placed in the hands of a sheriff, it becomes his ministerial duty to proceed with reasonable promptness to implement the same. (Juario *vs*. Labis, A.M. No. P-07-2388, June 30, 2008) p. 33

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— The service of summons on a domestic corporation is restricted, limited and exclusive. *(Id.)*

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Contract of suretyship — A surety is released from its obligation when there is a material alteration of the contract in connection with which the bond is given. (Intra-Strata Assurance Corp. *vs*. Rep. of the Phils., G.R. No. 156571, July 09, 2008) p. 631

— An accessory contract that introduces a third party element in the fulfillment of the principal obligation that an obligor owes an obligee. *(Id.)*

— Defined. *(Id.)*

— Laws applicable to surety bonds, cited. *(Id.)*

— The surety does not, by reason of the surety agreement, earn the right to intervene in the principal creditor-debtor relationship. *(Id.)*

Surety bond — Once accepted by the obligee, it becomes valid and enforceable, irrespective of whether or not the premium has been paid by the obligor. (AFP General Insurance Corp. *vs*. Molina, G.R. No. 151133, June 30, 2008) p. 114

— The liability of the surety and the obligor is solidary. *(Id.)*

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