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SUPREME COURT

OF THE

PHILIPPINES

FROM

JULY 21, 2008 TO JULY 23, 2008

SUPREME COURT
MANILA
2013

Prepared
by

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Supreme Court
Manila
2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 4829. July 21, 2008]

ELAINE V. ARMA, *complainant, vs.* **ATTY. ANITA C. MONTEVILLA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT; NATURE OF DISBARMENT PROCEEDINGS.— Disbarment is the most severe form of disciplinary sanction and, as such, the power to disbar must always be exercised with great caution, only for the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar. As a rule, an attorney enjoys the legal presumption that he is innocent of the charges proffered against him until the contrary is proved, and that as an officer of the court, he has performed his duties in accordance with his oath. In disbarment proceedings, the burden of proof is upon the complainant and the Court will exercise its disciplinary power only if the former establishes its case by clear, convincing, and satisfactory evidence. Considering the serious consequence of disbarment, this Court has consistently held that only a clear preponderant evidence would warrant the imposition of such a harsh penalty. It means that the record must disclose as free from doubt a case that compels the exercise by the court of its disciplinary powers. The dubious character of the act done, as well as the motivation thereof, must be clearly demonstrated.

2. ID.; ID.; ID.; AIMS OF DISBARMENT PROCEEDING.— Disbarment of lawyers is a proceeding that aims to purge the law profession of unworthy members of the bar. It is intended to preserve the nobility and honor of the legal profession. While the Supreme Court has the plenary power to discipline erring lawyers through this kind of proceedings, it does so in the most vigilant manner so as not to frustrate its preservative principle. The Court, in the exercise of its sound judicial discretion, is inclined to impose a less severe punishment if through it the end desired of reforming the errant lawyer is possible.

D E C I S I O N

NACHURA, *J.*:

The instant controversy arose from a Complaint for Disbarment filed by Elaine V. Arma (complainant) against Atty. Anita Montevilla (respondent) for alleged negligence and irresponsibility in the handling of Labor Case NLRC-NCR Case No. 00-01-00216, which caused irreparable prejudice to her clients including the complainant herein.

The factual antecedents are as follows:

On October 6, 1997, complainant Elaine V. Arma wrote a letter-complaint addressed to then Chief Presidential Legal Counsel, Atty. Renato L. Cayetano. In her handwritten complaint, she sought the help of Atty. Cayetano's office to assist their group in their plight against their former employer, Tashi Garments, Inc., and their counsel, respondent Atty. Anita C. Montevilla.

In response to that request, the Office of the Chief Presidential Legal Counsel indorsed complainant's letter-complaint[1] to the Office of the Court Administrator (OCA), who in turn, ordered the referral of the same to the Office of the Bar Confidant (OBC).[2]

[1] Indorsement dated October 8, 1997 issued by the Office of the Chief Presidential Legal Counsel; *rollo,* p. 38.

[2] 2nd Indorsement dated October 23, 1997, issued by the SC Office of the Court Administrator; *rollo,* p. 37.

On November 6, 1997, the OBC wrote complainant a letter[3] requiring her to file a verified complaint together with the documents that would strengthen her allegations against the respondent.

Accordingly, Elaine V. Arma filed a verified Complaint for Disbarment,[4] received by the OBC on November 26, 1997. In her complaint, she alleged that she was one of the thirty-two (32) dismissed workers of Tashi Garments, Inc. who filed a complaint[5] for illegal dismissal, non-payment of wages, underpayment of wages and money claims before the Department of Labor and Employment. The complainant averred that they availed themselves of the legal services of the respondent, Atty. Montevilla, in this labor case; and that respondent accepted the case on a contingency basis, with a success fee equivalent to thirty percent (30%) of whatever amount they would recover, and Six Hundred Pesos (₱600.00) per appearance for her gasoline expense and the daily salary of the counsel's driver. The laborers obtained a favorable decision from the Labor Arbiter (LA), which ordered the reinstatement of the thirty-two (32) workers with full backwages and awarded the money claims in the aggregate amount of Three Million Three Hundred Ninety Six Thousand Six Hundred Ninety-Four Pesos and Eighty-Four centavos (₱3,396,694.84).[6] The said decision, however, was appealed to the National Labor Relations Commission (NLRC), with Tashi Garments, Inc. posting a ₱500,000.00 cash bond. However, the NLRC reversed the decision of the LA and dismissed the complaint for lack of merit.[7]

The complainant averred that Atty. Montevilla promised to attend personally to the filing of a motion for reconsideration and an application for the issuance of the restraining order to

[3] *Rollo,* p.35.

[4] Dated November 19, 2007, *id*. at 1-7.

[5] Docketed as NLRC-NCR Case No. 00-01-00216-95 assigned to Labor Arbiter Salimathar Nambi.

[6] Annex "A" of the Complaint, *rollo,* pp. 8-17.

[7] Annex "B" of the Complaint, *rollo,* pp. 18-24.

prevent the NLRC from allowing the withdrawal of the cash bond posted by Tashi Garments, Inc.; that she paid the counsel the amount of ₱600.00 on July 20, 1997 and ₱1,000.00 on July 23, 1997 to facilitate the filing of the Motion for Reconsideration (MR); but that upon her verification with the NLRC, the counsel had not filed a motion for reconsideration.[8] Complainant added that when she returned to the residence of Atty. Montevilla to seek explanation for her failure to file the said MR, the latter refused to accommodate her and, instead, directed her sister, Emma Montevilla, to hand her back the records of the case including three (3) copies of a signed and postdated Notice of Withdrawal of Counsel.[9] Complainant then concluded that she is filing this instant Complaint for Disbarment for the misconduct of Atty. Montevilla which prejudiced their interest as clients.

The Supreme Court Third Division then issued a Resolution[10] requiring respondent to comment on the complaint. Later, the Supreme Court Third Division issued a Resolution[11] transferring the case to the First Division.

In compliance with the Honorable Court's order, respondent filed her Comment[12] vehemently denying the accusations of the complainant. She contends that the complaint is baseless, unfounded, malicious, and purposely filed to destroy her good name and to blemish her reputation. She, likewise, denied having a verbal agreement for the payment of a 30% contingency fee because if such were the case she would have prepared a Contract of Service. She denied that she received attorney's fees per appearance. She contends that the complainant merely assured her that they would give her a share should they win the case. The respondent also claimed that she even had to spend her

[8] Certification dated October 8, 1997 issued by the National Labor Relations Commission.

[9] Annex "E" of the Complaint, *rollo*, p. 29.

[10] Dated January 26, 2008, *rollo*, p. 43.

[11] Dated March 4, 2008.

[12] Dated March 6, 2008, *rollo*, pp. 44-57.

own money for the preparation and filing of their complaint against Tashi Garments, Inc.

Atty. Montevilla alleged that what prompted her to withdraw as counsel was the incident that transpired after the complainant learned that through her painstaking efforts they won the case and were able to obtain an award of ₱3,396,694.84. Respondent narrated that, at that point, the complainant then insisted that they should make an appointment with Jesusa dela Cruz, owner of Tashi Garments, Inc. so that she could collect her share and that of her sister Lilibeth Eñevo ahead of their co-workers; that, as counsel, she, however, admonished the complainant for her selfishness and disloyalty to her co-workers; and that because of the persistent demand of the complainant, respondent told her to find a new lawyer and advised her to pick up the Motion to Withdraw as Counsel on the following day.

In a Resolution,[13] the Supreme Court Third Division referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

Hearings were conducted, after which, the IBP-Commission on Bar Discipline (CBD), through Investigating Commissioner Elpidio G. Soriano III, rendered a Report and Recommendation[14] which discussed the pertinent issues of whether or not respondent: (1) was negligent in handling the labor case of the complainant; and (2) made a proper withdrawal as counsel on March 19, 1997 or on October 6, 1997.

The Investigating Commissioner found respondent negligent in the filing and service of pleadings, especially the two (2) Motions to Withdraw as Counsel.

Respondent, in her defense, stated that she ordered the complainant to file the March 19, 1997 Motion to Withdraw but that it was not filed because of the fault of the complainant. Per findings of Commissioner Soriano, the motion was never made part of the records of the labor case. The records revealed that, on a later date, Atty. Montevilla even filed a subsequent

[13] Dated April 20, 2008.

[14] Dated August 14, 2006.

pleading[15] which belies her claim that she withdrew as counsel on March 19, 1997. On one hand, the complainant claimed that the NLRC considered a Notice of Withdrawal as Counsel dated October 6, 1997, but the respondent denied any participation in the preparation and filing of the same.

Since there was irreconcilable conflict in the two contentions, the Investigating Commissioner then sought the professional assistance of the National Bureau of Investigation Questioned Documents Division (NBI-QDD) to determine the genuineness of the signatures in the two Motions to Withdraw. As affirmed by NBI-QDD Report No. 526-1005 and 526-1005 A,[16] the questioned signatures matched the specimen signatures of both E. Arma and Atty. Montevilla, giving rise to the conclusion that both parties were at fault for the non-filing or belated filing of the Motion to Withdraw as Counsel. However, the IBP Commissioner concludes that this finding that Atty. Montevilla has been remiss in this instance will not justify the imposition of the supreme administrative sanction of disbarment.

The Investigating Commissioner then recommended that the disbarment complaint against Atty. Montevilla should be dismissed for lack of basis, but the respondent should be admonished for her failure to observe due diligence in the filing and service of pleadings, especially relating to the filing of her Motion to Withdraw as Counsel which she simply delegated to the complainant.

On July 18 2007, the IBP Board of Governors passed a Resolution adopting and approving the recommendation of Commissioner Soriano, as follows:

> **"RESOLUTION NO. XVII-2006-035**
> **Adm. Case No. 4829**
> **Elaine V. Arma vs. Atty. Anita C. Montevilla**
>
> *RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein*

[15] Opposition to Respondent's Appeal Memorandum and Urgent Motion for Execution with Verification, dated April 18, 1997; *rollo*, pp. 325-332.

[16] *Rollo*, pp. 359-364.

made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, considering that the complaint lacks merit, the same is hereby ***DISMISSED.*** *However, Atty. Anita C. Montevilla is* ***ADMONISHED*** *for her failure to observe the required diligence.*

A perusal of the records shows that the evidence adduced by the complainant is insufficient to warrant disbarment.

Disbarment is the most severe form of disciplinary sanction and, as such, the power to disbar must always be exercised with great caution, only for the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar.[17]

As a rule, an attorney enjoys the legal presumption that he is innocent of the charges proffered against him until the contrary is proved, and that as an officer of the court, he has performed his duties in accordance with his oath.[18] In disbarment proceedings, the burden of proof is upon the complainant and the Court will exercise its disciplinary power only if the former establishes its case by clear, convincing, and satisfactory evidence.[19] Considering the serious consequence of disbarment, this Court has consistently held that only a clear preponderant evidence would warrant the imposition of such a harsh penalty. It means that the record must disclose as free from doubt a case that compels the exercise by the court of its disciplinary powers. The dubious character of the act done, as well as the motivation thereof, must be clearly demonstrated.[20]

In this case, the complainant failed to discharge this burden. In addition, the complainant failed to refute the fact alleged by the respondent that the complaint is a vindictive charge of a

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

[18] Agpalo, *Legal and Judicial Ethics*, 2002, 7th Edition, p. 532.

[19] *Saquing v. Mora*, A.C. No. 6678, October 9, 2006, 504 SCRA 1.

[20] *Soto v. Lacre*, A.C. No. 1019, June 30, 1977, 77 SCRA 453.

stubborn client against her counsel who refuses to extrajudicially execute a monetary judgment in order not to jeopardize honesty and loyalty to the other clients. It must be noted, likewise, that this Court affords protection not only to the aggrieved clients but also to members of the bar who are at times maliciously charged.

However, it is worthy to note that respondent indeed fell short of her duty of meticulously ensuring that all pleadings are properly filed and served on the concerned parties. Atty. Montevilla was remiss when she passed on the filing of her Motion to Withdraw as Counsel to her client. Because of this negligence, the Motion to Withdraw was belatedly filed, and the eventual Motion for Reconsideration of the NLRC decision was resultantly filed out of time, thus causing the dismissal of complainant's case before the NLRC. Were it not for the fact that the Petition for *Certiorari* filed in the Supreme Court was given due course and the case was remanded to the Court of Appeals, the clients of Atty. Montevilla would have lost the fruits of their adamant suit against their employer. The respondent should have been more diligent in her duties as lawyer, as dictated by the Code of Professional Responsibility and as required by his oath as a lawyer.

Disbarment of lawyers is a proceeding that aims to purge the law profession of unworthy members of the bar. It is intended to preserve the nobility and honor of the legal profession. While the Supreme Court has the plenary power to discipline erring lawyers through this kind of proceedings, it does so in the most vigilant manner so as not to frustrate its preservative principle. The Court, in the exercise of its sound judicial discretion, is inclined to impose a less severe punishment if through it the end desired of reforming the errant lawyer is possible.

In this case, the negligence of the respondent is not so gross as to justify removal from the legal profession. That there is no material damage to the complainant may be considered as a mitigating circumstance[21] and this being Atty. Montevilla's first

[21] *Maligaya v. Doronilla, Jr.*, A.C. No. 6198, September 15, 2006, 502 SCRA 1.

offense, she should be entitled to some measure of forbearance. A penalty other than disbarment may satisfactorily forewarn the respondent and other members of the bar to be more cautious and diligent in the practice of their profession.

WHEREFORE, premises considered, the prayer for Disbarment is *DENIED* for lack of merit. Nevertheless, respondent Atty. Anita C. Montevilla is hereby *REPRIMANDED* and *WARNED* that a repetition of the same or similar acts shall be dealt with more severely. Let a copy of this Decision be attached to his personal records and another copy be furnished the Integrated Bar of the Philippines.

SO ORDERED.

Quisumbing,[*] *Ynares-Santiago (Chairperson), Austria-Martinez,* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 151121. July 21, 2008]

RUBEN S. GALERO, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, DEPUTY OMBUDSMAN (VISAYAS), and PHILIPPINE PORTS AUTHORITY,** *respondents.*

SYLLABUS

1. POLITICAL LAW; OMBUDSMAN ACT OF 1989 (R.A. 6770); POWER OF THE OMBUDSMAN TO "RECOMMEND" REMOVAL, SUSPENSION, ETC., DISCUSSED.— The

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[*] In lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 508, dated June 25, 2008.

restrictive interpretation of the word "recommend" had long been rejected by this Court for being inconsistent with the wisdom and spirit behind the creation of the Office of the Ombudsman. Instead, to be faithful to the constitutional objective, the word has been construed to mean that the implementation of the Ombudsman's order of dismissal, suspension, *etc.*, is mandatory but shall be coursed through the proper officer. We have already ruled that although the Constitution lays down the specific powers of the Ombudsman, it likewise allows the legislature to enact a law that would grant added powers to the Ombudsman. To be sure, the provisions of R.A. 6770, taken together, reveal the manifest intent of the lawmakers to bestow the Office of the Ombudsman full administrative disciplinary authority. Specifically, it is given the authority to receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and necessarily, impose the said penalty. Clearly, the Office of the Ombudsman was given teeth to render this constitutional body not merely functional but also effective.

2. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE CASE; VERIFICATION OF A SUBORDINATE'S FALSE DAILY TIME RECORD CONSTITUTES SIMPLE NEGLECT OF DUTY; RELEVANT RULINGS, CITED.— Simple neglect of duty is defined as the failure to give proper attention to a task expected from an employee resulting from either carelessness or indifference. Had petitioner performed the task required of him, that is, to monitor the employees' attendance, he would have discovered that indeed Mr. Geocadin was dividing his time between PPA and Napocor. Though not required to know every detail of his subordinates' whereabouts, petitioner should have implemented measures to make sure that the government was not defrauded. As he was required to sign Mr. Geocadin's DTR, petitioner should have verified the truthfulness of the entries therein. Indeed, petitioner neglected his duty which caused prejudice to the government in that Mr. Geocadin was paid twice for his services. These facts, taken together, are sufficient to make petitioner liable for simple

neglect of duty, but insufficient to make him answer for charges of dishonesty and falsification of document. This is not the first time that we hold an immediate superior administratively liable for neglect of duty for obvious lack of care in verifying his subordinate's DTR. In *Re: Anonymous Complaint Against Ms. Rowena Marinduque, Assigned at PHILJA Dev't Center, Tagaytay City* and *Amane v. Atty. Mendoza-Arce*, the Court found the Branch Clerk of Court, the Presiding Judge and the OIC Philja Director liable because of their acts of tolerating their subordinates' absences. In the said cases, which involved court employees, the Court concluded that there was a relaxation and too much leniency in the implementation of the rules on attendance which thus resulted in the unauthorized absences of employees not being reflected in their DTRs. The Court said: We find the inclination of the respondent judge to leniency in the administrative supervision of his employees an undesirable trait. Oftentimes, such leniency provides the court employees the opportunity to commit minor transgressions of the laws and slight breaches of official duty ultimately leading to vicious delinquencies. The respondent judge should constantly keep a watchful eye on the conduct of his employees. He should realize that big start small. His constant scrutiny of the behavior of his employees would deter any abuse on the part of the latter in the exercise of their duties. Then, his subordinates would know that any misdemeanor will not remain unchecked. Applying the aforesaid pronouncement by analogy, petitioner in the instant case was indeed lenient in the implementation of the rules on attendance. Mr. Geocadin took advantage of this leniency by taking unauthorized undertime with PPA in order to attend to his duties with Napocor. Since such act remained unchecked for almost seven (7) months, Mr. Geocadin was not deterred from continuing his unlawful act, to the prejudice of the government and the taxpayers.

APPEARANCES OF COUNSEL

Silva & Associates for petitioner.

The Solicitor General for respondents.

D E C I S I O N

NACHURA, *J.*:

For review is the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 57397 dated April 26, 2001 affirming the Resolution[2] of the Office of the Ombudsman (Visayas) in OMB-VIS-ADM-97-0565 finding petitioner Ruben S. Galero guilty of *Dishonesty, Falsifying Official Documents and Causing Undue Injury to the Government* and imposing the penalty of dismissal from service, forfeiture of all benefits and perpetual disqualification to hold public office. Likewise assailed is the CA's Resolution[3] dated December 21, 2001 denying his motion for reconsideration.

The factual and procedural antecedents follow:

On January 17, 1997, Rogelio Caigoy (Mr. Caigoy), then the resident Ombudsman of the Philippine Ports Authority – Port Management Office (PPA-PMO), Pulupandan, Negros Occidental, received an anonymous letter from concerned citizens, reporting that Robert Geocadin (Mr. Geocadin), a security guard of United Field Sea Watchmen and Checkers Agency (UFSWCA), officially assigned at the National Power Corporation (Napocor) in Bacolod City, at the same time submitted a Daily Time Record (DTR) at PPA-PMO but did not report to the said office. [4] He received a second anonymous letter on December 16, 1997 stating that Mr. Geocadin was receiving double salary from Napocor and PPA-PMO, and implicating the petitioner, who was then the Acting Station Commander, Port Police Division, and Winfred Elizalde (Mr. Elizalde), the Port Manager, both of the PPA-PMO. The said letter specifically claimed that petitioner and Mr. Elizalde were each receiving shares in the security

[1] Penned by Associate Justice Marina L. Buzon, with Associate Justices Eubulo G. Verzola and Bienvenido L. Reyes, concurring; *rollo*, pp. 39-52.

[2] CA *rollo*, pp. 20-28.

[3] *Rollo*, p. 64.

[4] CA *rollo*, p. 32.

guards' salary.[5] In short, the letters charged that Mr. Geocadin was a ghost employee.

On the strength of the two anonymous letters, Mr. Caigoy recommended the filing of criminal and administrative charges against petitioner and Mr. Elizalde in their capacities as Acting Port Police Division Commander and Port Manager, respectively.[6] The administrative case was docketed as OMB-VIS-ADM-97-0565 and was assigned to Graft Investigation Officer I Helen Catacutan-Acas.

From the affidavits and counter-affidavits of the parties and witnesses, as well as their testimonies and the documentary evidence presented, it appears that Mr. Geocadin was officially assigned at the Napocor with the following areas of supervision:

1. Bacolod Sub-Station in Mansilingan;
2. Engineering Office in Bacolod City;
3. Tumonton Cable Station which is more or less twenty-two (22) km. away from Bacolod Station;
4. Bulata Sipalay small stockyard which is more or less 20 km. away from Bacolod City.[7]

At Napocor, petitioner was required to report for duty from 8:00 in the morning until 4:00 in the afternoon, from April 16, 1996 until April 16, 1997. Covering almost the same period from April 16, 1996 until November 30, 1996, Mr. Geocadin, who was also appointed as the Station Commander of the security guards of PPA-PMO, filled up Civil Service Form No. 48 (DTR) allegedly for services rendered for PPA-PMO from 8:00 in the morning until 5:00 in the afternoon. The DTRs he submitted for seven (7) months were certified correct by petitioner being Mr. Geocadin's immediate superior.[8]

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[5] *Id*. at 31.

[6] *Id*. at 35.

[7] *Id*. at 26.

[8] *Id*.

For his part, petitioner denied that Mr. Geocadin was a ghost security guard. He alleged that Mr. Geocadin was designated by UFSWCA as Detachment Commander who was tasked to supervise the security guards posted at PPA-PMO Bacolod City and Pulupandan and to inspect their security equipment. Apart from these, Mr. Geocadin was assigned to issue mission orders; prepare duty schedules; and act as paymaster and liaison officer. He, likewise, did clerical work and prepared memoranda on disciplinary actions taken against erring security guards.[9] To justify his lack of knowledge of Mr. Geocadin's fraudulent acts, petitioner explained that because PMO-Pulupandan was then in the process of reorganization, Mr. Geocadin was initially tasked to conduct security inspection of the posts in Bacolod City and random inspections in other stations.[10] In other words, petitioner was not expected to see Mr. Geocadin the whole day as he could be in another station. Mr. Elizalde, on the other hand, claimed that whenever he needed Mr. Geocadin, the latter was always available.

During the hearing of the case, Mr. Geocadin admitted that he was assigned both to Napocor and PPA-PMO with 16-hour duty everyday.[11]

On May 31, 1999, the Office of the Ombudsman (Visayas) issued a Resolution[12] against petitioner, the pertinent portion of which reads:

> WHEREFORE, in the light of all the foregoing, this Office finds Ruben Galero guilty of Dishonesty, for Falsifying Official Documents, and for causing undue injury to the government, thus metes upon him, the penalty of DISMISSAL FROM SERVICE, FORFEITURE OF ALL BENEFITS, and PERPETUAL DISQUALIFICATION TO PUBLIC OFFICE in accordance with Memorandum Circular No. 30, Series of 1989 of the Civil Service Commission.[13]

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[9] *Id*. at 23.

[10] *Id*.

[11] *Id*. at 25.

[12] *Id*. at 20-28.

[13] *Id*. at 28.

SO RESOLVED.

The Office of the Ombudsman declared that Mr. Geocadin was officially assigned at Napocor and was not tied to only one post as he was then tasked to supervise four stations. Making use of this set-up to his advantage, Mr. Geocadin took undeclared undertime with Napocor which enabled him to accept his appointment with PPA-PMO. Though it may have been possible for Mr. Geocadin to accept dual positions, it is impossible for him to be at different work stations at the same time, as reflected in his DTRs both with Napocor and PPA-PMO. Considering that Mr. Geocadin repeatedly committed the fraudulent act for a continuous period of seven (7) months, the Office of the Ombudsman concluded that the petitioner, being his immediate superior who verified his DTRs, was aware of such irregularity.[14] Hence, the extreme penalty of dismissal as to the petitioner. Mr. Elizalde, on the other hand, was exonerated for lack of evidence to show conspiracy. Petitioner's motion for reconsideration was also denied on December 10, 1999.[15]

Petitioner likewise failed to obtain a favorable judgment from the CA when his petition for review was denied.[16] The appellate court declared that petitioner's verification of Mr. Geocadin's DTRs was sufficient to hold him guilty as charged. His verification, according to the court, enabled Mr. Geocadin to receive from the government such amounts not due him. The court did not give credence to the affidavits of some security guards that Mr. Geocadin was indeed their station commander. Neither did the appellate court consider the affidavit of retraction executed by one of the witnesses.[17] In conclusion, the court said that there was substantial evidence to establish petitioner's guilt.

Aggrieved, petitioner comes before this Court in this petition for review raising the following errors:

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

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

[16] *Rollo*, pp. 39-52.

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

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE FINDINGS OF THE OMBUDSMAN WHICH FINDING IS GROUNDED ENTIRELY ON SPECULATION, SURMISES OR CONJECTURES.

II.

THE HONORABLE COURT OF APPEALS FAILS (SIC) TO NOTICE CERTAIN RELEVANT FACTS WHICH, IF PROPERLY CONSIDERED, WILL JUSTIFY A DIFFERENT CONCLUSION.

III.

THE FINDINGS OF THE HONORABLE COURT OF APPEALS AS TO THE VALIDITY OF PETITIONERS' DISMISSAL FROM SERVICE ARE CONTRADICTED BY THE EVIDENCE ON RECORD.[18]

Before we rule on these assigned errors, we note that petitioner belatedly questioned in his Reply[19] the scope of the Ombudsman's power and authority to dismiss government employees. If only to erase doubts as to the Ombudsman's power to impose the penalty of dismissal, we would like to stress the well-settled principle laid down in the two *Office of the Ombudsman v. Court of Appeals*[20] cases and in *Estarija v. Ranada.*[21]

The powers, functions and duties of the Ombudsman are set forth in Section 15(3) of Republic Act No. 6770 (R.A. 6770) otherwise known as the "Ombudsman Act of 1989" which substantially restates Section 13(3),[22] Article XI of the 1987 Constitution, thus:

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[18] *Id*. at 12.

[19] *Id*. at 337-349.

[20] G.R. No. 167844, November 22, 2006, 507 SCRA 593; G.R. No. 160675, June 16, 2006, 491 SCRA 92.

[21] G.R. No. 159314, June 26, 2006, 492 SCRA 652.

[22] Section 13. The Office of the Ombudsman shall have the following powers, functions and duties:

xxx xxx xxx

SEC. 15. *Powers, Functions and Duties*. – The Office of the Ombudsman shall have the following powers, functions and duties:

xxx xxx xxx

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and *recommend* his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act; *Provided*, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer.[23]

The restrictive interpretation of the word "recommend" had long been rejected by this Court for being inconsistent with the wisdom and spirit behind the creation of the Office of the Ombudsman.[24] Instead, to be faithful to the constitutional objective, the word has been construed to mean that the implementation of the Ombudsman's order of dismissal, suspension, *etc*., is mandatory but shall be coursed through the proper officer.[25]

We have already ruled that although the Constitution lays down the specific powers of the Ombudsman, it likewise allows the legislature to enact a law that would grant added powers to the Ombudsman. To be sure, the provisions of R.A. 6770, taken together, reveal the manifest intent of the lawmakers to bestow the Office of the Ombudsman full administrative disciplinary authority. Specifically, it is given the authority to receive complaints, conduct investigations, hold hearings in accordance

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

[23] Emphasis supplied.

[24] *Office of the Ombudsman v. Court of Appeals, supra* note 20, at 604, citing *Ledesma v. Court of Appeals*, 465 SCRA 437 (2005).

[25] *Id*.

with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and necessarily, impose the said penalty.[26] Clearly, the Office of the Ombudsman was given teeth to render this constitutional body not merely functional but also effective.[27]

We now proceed to the meat of this petition on the validity of petitioner's dismissal from service.

The CA affirmed the Office of the Ombudsman's conclusion that petitioner was guilty of dishonesty for falsifying official documents and causing undue injury to the government. Both the CA and the Ombudsman anchored such finding on the alleged collusion between petitioner and Mr. Geocadin which enabled the latter to receive compensation from the government for services not actually rendered.

We would like to reiterate at this point the undisputed facts material to the determination of petitioner's guilt. *First*, per UFSWCA records, Mr. Geocadin was officially assigned at the Napocor, supervising the security guards of four stations. *Second*, though earlier branded as a ghost employee, Mr. Geocadin was established to be the Station Commander of all the security guards assigned at the PPA-PMO. *Third*, as Acting Station Commander, Port Police Division, petitioner was the immediate superior of Mr. Geocadin whose duty was to supervise the security guards and to certify to the truth of the entries they made in their DTRs. *Fourth*, Mr. Geocadin was an employee of UFSWCA which had a contract with the government for security services. *Fifth*, the payment of the security guards' salaries was based on the DTRs they prepared as certified by petitioner. *Lastly*, Mr. Geocadin's DTRs submitted to Napocor and PPA show that he was reporting for duty at the two offices at the same time, which is physically impossible.

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[26] *Office of the Ombudsman v. Court of Appeals, supra* note 20, at 116.

[27] *Estarija v. Ranada, supra* note 21, at 674.

Mr. Geocadin's assignment and actual service at the PPA-PMO Pulupandan was sufficiently established. This is shown by the communications he signed in his capacity as station commander. He was not, therefore, a ghost employee as initially claimed by the concerned citizens. This is bolstered by the Office of the Ombudsman's finding that the coverage of Mr. Geocadin's assignment with Napocor, where he was not tied to his post, enabled him to hold such two positions.[28] Clearly, the Office of the Ombudsman itself recognized that Mr. Geocadin rendered service at the PPA. Whether he rendered the 8-hour service as reflected in his DTR is another matter which will be discussed below.

It is well to note that Mr. Geocadin was not a government employee, having been employed only by UFSWCA, a private company supplying security services for both Napocor and PPA. He was, however, required to submit his DTR which the government used to verify the correctness of UFSWCA's billing with PPA-PMO. Like any other DTR, Mr. Geocadin's DTR was certified by him as reflecting his true attendance at the office, and verified by petitioner, the latter being his immediate supervisor. The submission of another DTR stating that Mr. Geocadin was rendering service at the Napocor at exactly the same time on the same dates makes his DTR with PPA false. As pointed out by the Office of the Ombudsman, the fact remains that it would be physically impossible for him to be simultaneously rendering services with Napocor and PPA-PMO as reflected in his DTRs.[29]

In finding petitioner guilty of dishonesty, falsification of document and causing injury to the government, the Office of the Ombudsman, as affirmed by the CA, ratiocinated, thus:

> It is the finding of this office that respondent Geocadin cannot possibly do it alone without [the] knowledge and consent of his most immediate superior – Ruben Galero. It is unthinkable for this fact to be kept known by respondent Geocadin alone, because it has been repeatedly

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

[29] *Id*.

done by him for a period of about seven (7) months. Thus, respondent Ruben Galero cannot feign of having no knowledge on what Geocadin was doing during said period because the latter is under his direct and immediate supervision. Accordingly, a government official or officer is presumed to have knowledge of the commission of any irregularity or offense, when the irregularities or illegal acts have been repeatedly or regularly committed within his official area of jurisdiction.[30]

While not totally exonerating petitioner from the charges filed against him, a modification of the nature of petitioner's administrative liability as well as the penalty that was correspondingly imposed, is in order. The only basis of petitioner's liability for dishonesty, *etc*., was the presumed collusion between him and Mr. Geocadin. This stemmed from the unproven fact that Mr. Geocadin was a ghost employee and that petitioner was receiving part of his (Mr. Geocadin) salary. There was nothing in the record which establishes petitioner's collusion or conspiracy with Mr. Geocadin to defraud the government. For the purpose of sustaining the Ombudsman's findings, it would have been necessary that the alleged conspiracy or collusion be established by independent, competent and substantial evidence. Since the records are bereft of this evidence, what remains is only petitioner's verification of Mr. Geocadin's false DTR. With this as sole basis, petitioner can be held administratively liable only for simple neglect of duty — not for dishonesty, for falsification of official document, or for causing undue injury to the government.

Simple neglect of duty is defined as the failure to give proper attention to a task expected from an employee resulting from either carelessness or indifference.[31] Had petitioner performed the task required of him, that is, to monitor the employees' attendance, he would have discovered that indeed Mr. Geocadin was dividing his time between PPA and Napocor. Though not required to know every detail of his subordinates' whereabouts,

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

[31] *Re: Anonymous Complaint Against Ms. Rowena Marinduque, Assigned at PHILJA Dev't Center, Tagaytay City*, A.M. No. 2004-35-SC, January 23, 2006, 479 SCRA 343, 349.

petitioner should have implemented measures to make sure that the government was not defrauded. As he was required to sign Mr. Geocadin's DTR, petitioner should have verified the truthfulness of the entries therein. Indeed, petitioner neglected his duty which caused prejudice to the government in that Mr. Geocadin was paid twice for his services. These facts, taken together, are sufficient to make petitioner liable for simple neglect of duty, but insufficient to make him answer for charges of dishonesty and falsification of document.

This is not the first time that we hold an immediate superior administratively liable for neglect of duty for obvious lack of care in verifying his subordinate's DTR. In *Re: Anonymous Complaint Against Ms. Rowena Marinduque, Assigned at PHILJA Dev't Center, Tagaytay City*[32] and *Amane v. Atty. Mendoza-Arce*,[33] the Court found the Branch Clerk of Court, the Presiding Judge and the OIC Philja Director liable because of their acts of tolerating their subordinates' absences. In the said cases, which involved court employees, the Court concluded that there was a relaxation and too much leniency in the implementation of the rules on attendance which thus resulted in the unauthorized absences of employees not being reflected in their DTRs. The Court said:

> We find the inclination of the respondent judge to leniency in the administrative supervision of his employees an undesirable trait. Oftentimes, such leniency provides the court employees the opportunity to commit minor transgressions of the laws and slight breaches of official duty ultimately leading to vicious delinquencies. The respondent judge should constantly keep a watchful eye on the conduct of his employees. He should realize that big start small. His constant scrutiny of the behavior of his employees would deter any abuse on the part of the latter in the exercise of their duties. Then, his subordinates would know that any misdemeanor will not remain unchecked.[34]

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[32] *Id*.

[33] 376 Phil. 575 (1999).

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

Applying the aforesaid pronouncement by analogy, petitioner in the instant case was indeed lenient in the implementation of the rules on attendance. Mr. Geocadin took advantage of this leniency by taking unauthorized undertime with PPA in order to attend to his duties with Napocor. Since such act remained unchecked for almost seven (7) months, Mr. Geocadin was not deterred from continuing his unlawful act, to the prejudice of the government and the taxpayers.

It must be remembered that public service requires integrity and discipline. For this reason, public servants must exhibit at all times the highest sense of honesty and dedication to duty. By the very nature of their duties and responsibilities, government employees must faithfully adhere to, hold sacred and render inviolate the constitutional principle that a public office is a public trust; that all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency.[35]

As to the proper penalty imposable, simple neglect of duty is classified as a less grave offense punishable by suspension without pay for one (1) month and one (1) day to six (6) months.[36] The circumstances surrounding the instant case, considering that it appears to be petitioner's first offense, warrant the imposition of suspension without pay for one (1) month and one (1) day.

WHEREFORE, the Decision of the Court of Appeals dated April 26, 2001 and its Resolution dated December 21, 2001 in CA-G.R. SP No. 57397 are hereby *MODIFIED*. We find petitioner *GUILTY* of Simple Neglect of Duty instead of Dishonesty, Falsification of Official Documents, Causing Undue Injury to the Government, and is meted the penalty of suspension without pay for one (1) month and one (1) day, instead of dismissal from service, forfeiture of all benefits and perpetual disqualification from public office.

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[35] *Concerned Litigants v. Araya, Jr., supra,* at 20.

[36] *Re: Anonymous Complaint Against Ms. Rowena Marinduque, Assigned at PHILJA Dev't Center, Tagaytay City, supra* note 31, at 349; *Philippine Retirement Authority v. Rupa,* 415 Phil. 713, 722 (2001); *De la Victoria v. Mongaya,* 404 Phil. 609, 618 (2001).

SO ORDERED.

Quisumbing,[*] *Ynares-Santiago (Chairperson), Austria-Martinez,* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 152991. July 21, 2008]

ALBERTO P. OXALES, *petitioner, vs.* **UNITED LABORATORIES, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; RETIREMENT OF EMPLOYEE; A RETIREMENT PLAN IN A COMPANY PARTAKES THE NATURE OF A CONTRACT.— A retirement plan in a company partakes the nature of a contract, with the employer and the employee as the contracting parties. It creates a contractual obligation in which the promise to pay retirement benefits is made in consideration of the continued faithful service of the employee for the requisite period. The employer and the employee may establish such stipulations, clauses, terms, and conditions as they may deem convenient. The obligations arising from the agreement between the employer and the employee have the force of law between them and should be complied with in good faith. However, though the employer and the employee are given the widest latitude possible in the crafting of their contract, such right is not absolute. There is no such thing as absolute freedom of contract. A limitation is provided for by the law itself. Their stipulations, clauses, terms, and conditions should not be contrary to law, morals, good customs, public

[*] In lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 508, dated June 25, 2008.

order, or public policy. Indeed, the law respects the freedom to contract but, at the same time, is very zealous in protecting the contracting parties and the public in general. So much so that the contracting parties need not incorporate the existing laws in their contract, as the law is deemed written in every contract. *Quando abest, proviso parties, adest proviso legis.* When the provision of the party is lacking, the provision of the law supplies it. ***Kung may kulang na kondisyon sa isang kasunduan, ang batas ang magdaragdag dito.***

2. ID.; ID.; ID.; ID.; APPLICATION OF THE RULE; CASE AT BAR.— We rule that Oxales is not entitled to the additional retirement benefits he is asking. The United Retirement Plan (URP) is very clear: "basic monthly salary" for purposes of computing the retirement pay is "the basic monthly salary, or if daily[,] means the basic rate of pay converted to basic monthly salary of the employee **excluding** any commissions, overtime, bonuses, or extra compensations." *Inclusio unius est exclusio alterius.* The inclusion of one is the exclusion of others. ***Ang pagsama ng isa, pagpwera naman sa iba.*** **The URP is not contrary to law, morals, good customs, public order, or public policy to merit its nullification**. We, thus, sustain it. At first blush, the URP seems to be disadvantageous to the retiring employee because of the exclusion of commissions, overtime, bonuses, or extra compensations in the computation of the basic monthly salary. However, a close reading of its provisions would reveal otherwise. We quote with approval the explanation of the NLRC in this regard, *viz.*: x x x the United Retirement Plan of the respondent [Unilab] has a one and one-half months salary for every year of service as the basis of entitlement. Under the new law, only one-half month of the retiree's salary inclusive however, of not more than five (5) days of service incentive leave and one-twelfth (1/12) of the 13th month pay are used as the bases in the retirement benefits computation. Mathematically speaking therefore, complainant's [Oxales] benefits received amounting to P1,599,179.00 under Trust Fund A together with the cash equivalent of his unused leaves which has an amount of P176,313.06 and his contribution in the Trust Fund B amounting to P397,738.33 are way above the entitlement he could have received under Republic Act 7641, otherwise known as the New Retirement Law.

3. ID.; ID.; ID.; SITUATIONS WHERE THE RETIREMENT PAY LAW (R.A. 7641) SHOULD APPLY.— R.A. No. 7641, otherwise known as "The Retirement Pay Law," only applies in a situation where (1) there is no collective bargaining agreement or other applicable employment contract providing for retirement benefits for an employee; or (2) there is a collective bargaining agreement or other applicable employment contract providing for retirement benefits for an employee, but it is **below** the requirements set for by law. The reason for the first situation is to prevent the absurd situation where an employee, who is otherwise deserving, is denied retirement benefits by the nefarious scheme of employers in not providing for retirement benefits for their employees. The reason for the second situation is expressed in the latin maxim *pacta privata juri publico derogare non possunt*. Private contracts cannot derogate from the public law. ***Ang kasunduang pribado ay hindi makasisira sa batas publiko***.

4. ID.; ID.; ID.; ID.; R.A. 7641 DOES NOT APPLY IN CASE AT BAR.— R.A. No. 7641 does not apply because the URP grants to the retiring employee more than what the law gives. Under the URP, the employee receives a lump sum of 1½ pay per year of service, compared to the minimum ½ month salary for every year of service set forth by R.A. No. 7641. Oxales is trying to have the best of both worlds. He wants to have his cake and eat it too: the 1½ months formula under the URP, and the inclusion of the value of food benefits and other allowances he was entitled to as employee of UNILAB with his monthly salary as the multiplicand of his number of years in the service. This he should not be permitted to do, lest a grave injustice is caused to UNILAB, and its past and future retirees. We agree with the NLRC observation on this score: As an illustration, Complainant claims that his monthly salary as the multiplicand of his number of years in the service should include the value of the food benefits and other allowances he was entitled while in the employ of respondent. However, he did not even, by implication, intend to reduce the 1½ month salary as multiplier under the URP to ½ under the law he invoked. This is a sign of covetousness, unfair both to the employer and those employees who have earlier retired under said plan.

5. ID.; ID.; ID.; A RETIRED EMPLOYEE CAN NOT DEMAND THE CONTINUANCE OF HIS MEDICAL BENEFITS

UNILATERALLY GIVEN BY EMPLOYER IF HE JOINED A RIVAL COMPANY AFTER HIS RETIREMENT.— The records bear out that after Oxales retired from UNILAB, he chose to join a rival company, Lloyds Laboratories, Inc. As UNILAB correctly puts it, "[i]f any employer can legally and validly do the supreme act of dismissing a disloyal employee for having joined or sympathized with a rival company, with more reason may it do the lesser act of merely discontinuing a benefit unilaterally given to an already-retired employee." As a retired employee, Oxales may not claim a vested right on these medical benefits. A careful examination of the URP would show that **medical benefits are *not* included in the URP**. Indeed, while there is nothing wrong in the act of Oxales in joining a rival company after his retirement, justice and fair play would dictate that by doing so, he cannot now legally demand the continuance of his medical benefits from UNILAB. To rule otherwise would result in an absurd situation where Oxales would continue to receive medical benefits from UNILAB while working in a rival company. We note that these medical benefits are merely unilaterally given by UNILAB to its retired employees.

APPEARANCES OF COUNSEL

Alfredo Wilberto O. Oxales, Jr. for petitioner.

Sycip Salazar Hernandez Gatmaitan for respondent.

D E C I S I O N

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

HOW should a private company retirement plan for employees be implemented *vis-à-vis* The Retirement Pay Law (Republic Act No. 7641)?

Papaano ipapatupad ang isang plano ng pribadong kompanya para sa pagreretiro ng mga empleyado sa harap ng Batas ng Pagbabayad sa Pagreretiro (Batas Republika Blg. 7641)?

We address the concern in this appeal by *certiorari* of the Decision[1] of the Court of Appeals (CA) affirming the Resolution[2] and Decision[3] of the Labor Arbiter and the National Labor Relations Commission (NLRC), respectively, dismissing petitioner Alberto P. Oxales' complaint for additional retirement benefits, recovery of the cash equivalent of his unused sick leaves, damages, and attorney's fees, against respondent United Laboratories, Inc. (UNILAB).

The Facts

Sometime in 1959, UNILAB established the United Retirement Plan (URP).[4] The plan is a comprehensive retirement program aimed at providing for retirement, resignation, disability, and death benefits of its members. An employee of UNILAB becomes a member of the URP upon his regularization in the company. The URP mandates the compulsory retirement of any member-employee who reaches the age of 60.

Both UNILAB and the employee contribute to the URP. On one hand, UNILAB provides for the account of the employee an actuarially-determined amount to Trust Fund A. On the other hand, the employee chips in 2½% of his monthly salary to Trust Fund B. Upon retirement, the employee gets both amounts standing in his name in Trust Fund A and Trust Fund B.

As retirement benefits, the employee receives (1) from Trust Fund A a lump sum of 1½ month's pay per year of service "based on the member's last or terminal basic monthly salary,"[5] and (2) whatever the employee has contributed to Trust Fund B,

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[1] *Rollo*, pp. 122-128; Annex "A". CA-G.R. SP No. 55528. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Delilah Vidallon-Magtolis and Eliezer R. De Los Santos, concurring.

[2] *Id*. at 170-182; Annex "O". NLRC-CA 016627-98. Penned by Commissioner Alberto R. Quimpo, with Commissioners Rogelio I. Rayala and Vicente S.E. Veloso, concurring.

[3] *Id*. at 163-169; Annex "N". NLRC-NCR Case No. 00-08-06073-97. Penned by Labor Arbiter Romulus S. Protasio.

[4] Annex "C".

[5] United Retirement Plan, Art. V, Sec. 1(a).

together with the income minus any losses incurred. The URP excludes commissions, overtime, bonuses, or extra compensations in the computation of the basic salary for purposes of retirement.

Oxales joined UNILAB on September 1, 1968. He was compulsorily retired by UNILAB when he reached his 60th birthday on September 7, 1994, after having rendered service of twenty-five (25) years, eleven (11) months, and six (6) days. He was then Director of Manufacturing Services Group.

In computing the retirement benefits of Oxales based on the 1½ months for every year of service under the URP, UNILAB took into account only his basic monthly salary. It did not include as part of the salary base the permanent and regular bonuses, reasonable value of food allowances, 1/12 of the 13th month pay, and the cash equivalent of service incentive leave.

Thus, Oxales received from Trust Fund A ₱1,599,179.00, instead of ₱4,260,255.70. He also received ₱176,313.06, instead of ₱456,039.20 as cash equivalent of his unused sick leaves. Lastly, he received ₱397,738.33 from his contributions to Trust Fund B. In sum, Oxales received the total amount of ₱2,173,230.39 as his retirement benefits.

On August 21, 1997, Oxales wrote UNILAB, claiming that he should have been paid ₱1,775,907.23 more in retirement pay and unused leave credits. He insisted that his bonuses, allowances and 13th month pay should have been factored in the computation of his retirement benefits.[6]

On September 9, 1997, UNILAB wrote[7] back and reminded Oxales about the provision of the URP excluding any commissions, overtime, bonuses or extra compensations in the computation of the basic salary of the retiring employee.

Disgruntled, Oxales filed a complaint with the Labor Arbiter for (1) the correct computation of his retirement benefits, (2) recovery of the cash equivalent of his unused sick leaves, (3)

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[6] Annex "L".

[7] Annex "L-1".

damages, and (4) attorney's fees. He argued that in the computation of his retirement benefits, UNILAB should have included in his basic pay the following, to wit: (a) cash equivalent of not more than five (5) days service incentive leave; (b) 1/12th of 13th month pay; and (c) all other benefits he has been receiving.

Efforts were exerted for a possible amicable settlement. As this proved futile, the parties were required to submit their respective pleadings and position papers.

Labor Arbiter, NLRC and CA Dispositions

On June 30, 1998, Labor Arbiter Romulus A. Protasio rendered a decision dismissing the complaint, thus:

WHEREFORE, premises considered, judgment is hereby rendered dismissing the instant complaint for lack of merit.

SO ORDERED.[8]

The Labor Arbiter held that the URP clearly excludes commission, overtime, bonuses, or other extra compensation. Hence, the benefits asked by Oxales to be included in the computation of his retirement benefits should be excluded.[9]

The Arbiter also held that the inclusion of the fringe benefits claimed by Oxales would put UNILAB in violation of the terms and conditions set forth by the Bureau of Internal Revenue (BIR) when it approved the URP as a tax-qualified plan. More, any overpayment of benefits would adversely affect the actuarial soundness of the plan. It would also expose the trustees of the URP to liabilities and prejudice the other employees. Worse, the BIR might even withdraw the tax exemption granted to the URP.[10] Lastly, the Labor Arbiter opined that the URP precludes the application of the provisions of R.A. No. 7641.[11]

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[8] *Rollo*, p. 169.

[9] *Id*. at 168.

[10] *Id*. at 168-169.

[11] *Id*. at 169.

Oxales appealed to the NLRC. On February 8, 1999, the NLRC affirmed the decision of the Labor Arbiter, disposing as follows:

> WHEREFORE, in view thereof, the instant appeal is hereby dismissed for lack of merit and the appealed decision is ordered affirmed.
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> SO ORDERED.[12]

The NLRC ruled that the interpretation by Oxales of R.A. No. 7641 is selective. He only culled the provisions that are beneficial to him, putting in grave doubt the sincerity of his motives. For instance, he claims that the value of the food benefits and other allowances should be included in his monthly salary as multiplicand to the number of his years of service with UNILAB. At the same time, however, he does not intend to reduce the 1½ month salary as multiplier under the URP to ½ under R.A. No. 7641.[13]

The NLRC agreed with the Labor Arbiter that the provisions of R.A. No. 7641 do not apply in view of the URP. The NLRC also took into account the fact that the benefits granted to Oxales by virtue of the URP was even higher than what R.A. No. 7641 requires.[14]

His motion for reconsideration having been denied, Oxales filed with the CA a petition for *certiorari* under Rule 65.

In a decision promulgated on April 12, 2002, the CA dismissed the petition. The CA ruled that the petition of Oxales calls for a review of the factual findings of the Labor Arbiter as affirmed by the NLRC. It is not the normal function of the CA in a special civil action for *certiorari* to inquire into the correctness of the evaluation of the evidence by the Labor Arbiter. Its authority is confined only to issues of jurisdiction or grave abuse of discretion.[15]

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[12] *Id.* at 181.

[13] *Id.* at 179-180.

[14] *Id.* at 178-179.

[15] *Id.* at 126.

Just like the Labor Arbiter and the NLRC, the CA also held that R.A. No. 7641 is applicable only in the absence of a retirement plan or agreement providing for the retirement benefits of employees in an establishment.[16]

Finally, the CA denied the claim of Oxales to moral and exemplary damages. According to the appellate court, he failed to prove the presence of bad faith or fraud on the part of UNILAB. His mere allegations of having suffered sleepless nights, serious anxiety, and mental anguish are not enough. No premium should be placed on the right to litigate.[17]

Left with no other option, Oxales filed the present recourse under Rule 45 of the 1997 Rules of Civil Procedure.[18]

Issues

In his Memorandum,[19] Oxales raises the following issues for Our disposition, to wit:

1. WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN NOT FINDING THAT ACCORDING TO PREVAILING JURISPRUDENCE, SUCH ERRORS IN THE COMPUTATION OF RETIREMENT BENEFITS OF PETITIONER SHOULD BE CORRECTED IN A SPECIAL ACTION FOR *CERTIORARI*;

2. WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN NOT FINDING THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN INCORRECTLY INTERPRETING THE URP TO EXCLUDE SEVERAL REMUNERATIONS FROM THE SAID SALARY BASE;

3. WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN TOTALLY IGNORING THE ISSUE AND IN NOT FINDING THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN INCORRECTLY INTERPRETING THE URP TO EXCLUDE PERMANENT AND REGULAR ALLOWANCES

[16] *Id*. at 127.

[17] *Id*. at 126-127.

[18] *Id*. at 11-120.

[19] *Id*. at 438-568.

FROM THE SALARY BASE FOR COMPUTING RETIREMENT BENEFITS OF PETITIONER;

4. WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN NOT FINDING THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN INCORRECTLY INTERPRETING THE URP TO EXCLUDE PERMANENT AND REGULAR REMUNERATIONS MISLABELED AS BONUSES FROM THE SALARY BASE FOR COMPUTING THE RETIREMENT BENEFITS OF THE PETITIONER;

5. WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN INCORRECTLY INTERPRETING THE URP TO EXCLUDE ONE TWELFTH (1/12th) OF THE STATUTORY THIRTEENTH MONTH PAY FROM THE SALARY BASE FOR COMPUTING RETIREMENT BENEFITS;

6. WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN THE INTERPRETATION OF R.A. NO. 7641 WHEN IT CONCLUDED THAT THE SAID LAW IS APPLICABLE ONLY IN THE ABSENCE OF RETIREMENT PLAN OR AGREEMENT PROVIDING FOR THE RETIREMENT BENEFITS OF EMPLOYEES IN AN ESTABLISHMENT;

7. WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN NOT FINDING THAT THE DEFINITION OF "SALARY" UNDER THE IMPLEMENTING RULES OF R.A. NO. 7641 SHOULD BE INTERPRETED TO INCLUDE THE PERMANENT AND REGULAR REMUNERATIONS OF PETITIONER IN THE SALARY BASE FOR COMPUTING RETIREMENT BENEFITS;

8. WHETHER OR NOT THE LABOR ARBITER, THE NLRC, AND COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN IGNORING AND NOT RESOLVING THE ISSUES REGARDING PETITIONER'S UNPAID CASH EQUIVALENT OF THE UNUSED SICK LEAVE CREDITS;

9. WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN NOT RULING THAT THE NLRC GRAVELY ABUSED ITS DISCRETION IN ITS FAILURE TO PROPERLY INTERPRET THE URP IN DETERMINING THE EMPLOYMENT PERIOD OF PETITIONER FOR THE PURPOSE OF COMPUTING RETIREMENT BENEFITS;

10. WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN NOT RULING THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN NOT REINSTATING THE MEDICAL RETIREMENT BENEFITS OF PETITIONER;

11. WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN TOTALLY AND ARBITRARILY IGNORING THE ISSUE AND IN NOT FINDING THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN RENDERING A DECISION IN VIOLATION OF THE CONSTITUTIONAL REQUIREMENTS WHICH IN EFFECT DENIED PETITIONER'S RIGHT TO DUE PROCESS;

12. WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN LIKEWISE RENDERING A DECISION IN VIOLATION OF THE CONSTITUTIONAL REQUIREMENT THAT DECISIONS SHOULD EXPRESS CLEARLY AND DISTINCTLY THE FACTS OF THE CASE AND THE LAW ON WHICH IT IS BASED;

13. WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN NOT GRANTING MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES TO PETITIONER;

14. WHETHER OR NOT THE SUPREME COURT SHOULD GRANT PETITIONER UNPAID RETIREMENT PAY, UNPAID CASH EQUIVALENT OF UNUSED LEAVE CREDITS, REINSTATEMENT OF MEDICAL BENEFITS, MORAL AND EXEMPLARY DAMAGES, AND ATTORNEY'S FEES.[20]
(Underscoring supplied)

The issues posed by Oxales may be compressed as follows: **first**, whether in the computation of his retirement and sick leave benefits, UNILAB should have factored such benefits like bonuses, cash and meal allowances, rice rations, service incentive leaves, and 1/12 of the 13th month pay; **second**, whether R.A. No. 7641 is applicable for purposes of computing his retirement benefits; and **third**, whether UNILAB is liable for moral damages, exemplary damages, and attorney's fees.

[20] *Id.* at 456-458.

Our Ruling

The clear language of the URP should be respected.

A retirement plan in a company partakes the nature of a contract, with the employer and the employee as the contracting parties. It creates a contractual obligation in which the promise to pay retirement benefits is made in consideration of the continued faithful service of the employee for the requisite period.[21]

The employer and the employee may establish such stipulations, clauses, terms, and conditions as they may deem convenient.[22] In *Allgeyer v. Louisiana*,[23] *New York Life Ins. Co. v. Dodge*,[24] *Coppage v. Kansas*,[25] *Adair v. United States*,[26] *Lochner v. New York*,[27] and *Muller v. Oregon*,[28] the United States Supreme Court held that the right to contract about one's affair is part and parcel of the liberty of the individual which is protected by the "due process of law" clause of the Constitution.

The obligations arising from the agreement between the employer and the employee have the force of law between them and should be complied with in good faith.[29] However, though the employer and the employee are given the widest latitude possible in the crafting of their contract, such right is not absolute.

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[21] *Brion v. South Philippine Union Mission of the Seventh Day Adventist Church,* G.R. No. 135136, May 19, 1999, 307 SCRA 497, 504.

[22] See Civil Code, Art. 1306.

[23] 165 US 578, 591.

[24] 246 US 357, 373, 374.

[25] 236 US 1, 10, 14.

[26] 208 US 161.

[27] 198 US 45, 49.

[28] 208 US 412, 421.

[29] See Civil Code, Art. 1159; *Pichel v. Alonzo,* G.R. No. L-36902, January 30, 1982, 111 SCRA 341; *De Cortes v. Venturanza,* G.R. No. L-26058, October 28, 1977, 79 SCRA 709; *Villonco Realty Company v. Bormaheco, Inc.*, G.R. No. L-26872, July 25, 1975, 65 SCRA 352; *Government v. Vaca,* 64 Phil. 6 (1937); *Government v. Lim,* 61 Phil. 737 (1935); *Government v. Conde,* 61 Phil. 714 (1935); *Hanlon v. Haussermann,* 41 Phil. 276 (1920); *Ollendorff v. Abrahamson,* 38 Phil. 585 (1918); *Compañia de Tabacos v.*

There is no such thing as absolute freedom of contract. A limitation is provided for by the law itself. Their stipulations, clauses, terms, and conditions should not be contrary to law, morals, good customs, public order, or public policy.[30] Indeed, the law respects the freedom to contract but, at the same time, is very zealous in protecting the contracting parties and the public in general. So much so that the contracting parties need not incorporate the existing laws in their contract, as the law is deemed written in every contract. *Quando abest, proviso parties, adest proviso legis*. When the provision of the party is lacking, the provision of the law supplies it. ***Kung may kulang na kondisyon sa isang kasunduan, ang batas ang magdaragdag dito.***

Viewed from the foregoing, We rule that Oxales is not entitled to the additional retirement benefits he is asking. The URP is very clear: "basic monthly salary" for purposes of computing the retirement pay is "the basic monthly salary, or if daily[,] means the basic rate of pay converted to basic monthly salary of the employee **excluding** any commissions, overtime, bonuses, or extra compensations."[31] *Inclusio unius est exclusio alterius.* The inclusion of one is the exclusion of others. ***Ang pagsama ng isa, pagpwera naman sa iba.***

The URP is not contrary to law, morals, good customs, public order, or public policy to merit its nullification. We, thus, sustain it. At first blush, the URP seems to be disadvantageous to the retiring employee because of the exclusion of commissions, overtime, bonuses, or extra compensations in the computation of the basic monthly salary. However, a close reading of its provisions would reveal otherwise. We quote with approval the explanation of the NLRC in this regard, *viz.*:

Obed, 13 Phil. 391 (1909); *De la Rama v. Inventor,* 12 Phil. 44 (1908); *Alcantara v. Alinea,* 8 Phil. 111 (1907); *Borromeo v. Franco,* 5 Phil. 49 (1905); *Salonga v. Concepcion,* 3 Phil. 563 (1904); *Co-Tiangco v. To-Jamco,* 3 Phil. 210 (1908).

[30] *Id.,* Art. 1306.

[31] *Rollo,* p. 131; United Retirement Plan, Art. II, Sec. 1(j). (Emphasis supplied.)

x x x the United Retirement Plan of the respondent [Unilab] has a one and one-half months salary for every year of service as the basis of entitlement. Under the new law, only one-half month of the retiree's salary inclusive however, of not more than five (5) days of service incentive leave and one-twelfth (1/12) of the 13th month pay are used as the bases in the retirement benefits computation.

Mathematically speaking therefore, complainant's [Oxales] benefits received amounting to ₱1,599,179.00 under Trust Fund A together with the cash equivalent of his unused leaves which has an amount of ₱176,313.06 and his contribution in the Trust Fund B amounting to ₱397,738.33 are way above the entitlement he could have received under Republic Act 7641, otherwise known as the New Retirement Law.[32] (Underscoring supplied)

Both law[33] and jurisprudence[34] mandate 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. Thus, if the terms of a writing are plain and unambiguous, there is no room for construction, since the only purpose of judicial construction is to remove doubt and uncertainty.[35] Only where the language of a contract is ambiguous

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[32] *Id.* at 179.

[33] Civil Code, Art. 1370. See also RULES OF COURT, Rule 130, Secs. 10-19 on Interpretation of Documents.

[34] *Chinchilla v. Rafel,* 39 Phil. 888 (1919); *Escario v. Regis,* 31 Phil. 618 (1915); *De Lizardi v. Yaptico,* 30 Phil. 211 (1915); *Nolan v. Majinay,* 12 Phil. 559 (1909); *Palacios v. Municipality of Cavite,* 12 Phil. 140 (1908); *Azarraga v. Rodriguez,* 9 Phil. 637 (1908); *Alburo v. Villanueva,* 7 Phil. 277 (1907).

[35] 17A Am. Jur. 2d § 337, citing *Binghamton Bridge,* 70 US 51, 18 L. Ed. 137; *South Hampton Co. v. Stinnes Corp.,* (CA5 Tex) 733 F. 2d 1108, 38 UCCRS 1137; *Murray v. Kaiser Aluminum & Chemical Corp.,* (SD W Va) 591 F. Supp. 1550, affd without op. (CA4 W Va) 767 F. 2d 912; *Schulist v. Blue Cross of Iowa,* (ND Ill) 553 F. Supp. 248, 4 EBC 1193, aff'd (CA7 Ill) 717 F. 2d 1127, 4 EBC 2237; *P & S Business, Inc. v. South Cent. Bell Tel. Co.,* (Ala) 466 So. 2d 928; *Estate of Wamack,* (2nd Dist) 137 Cal. App. 2d 112, 289 P. 2d 871; *BMW of North America, Inc. v. Krathen,* (Fla App D4) 471 So. 2d 585, 10 FLW 1452, review den (Fla) 484 So. 2d 7, later proceeding (Fla App D4) 510 So. 2d 366, 12 FLW 1857; *Petroziello v. United*

and uncertain that a court may, under well-established rules of construction, interfere to reach a proper construction and make certain that which in itself is uncertain.[36] Where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids.[37]

R.A. No. 7641 does not apply in view of the URP which gives to the retiring employee more than what the law requires; the supporting cases cited by Oxales are off-tangent.

R.A. No. 7641, otherwise known as "The Retirement Pay Law," only applies in a situation where (1) there is no collective

States Leasing Corp., EOS Leasing Div., 176 Ga. App. 858, 338 SE 2d 63; *Hanagami v. China Airlines, Ltd.,* 67 Hawaii 357, 688 P. 2d 1139; *P. A. Bergner & Co. v. Lloyds Jewelers, Inc.,* 112 Ill. 2d 196, 97 Ill. Dec. 415, 492 NE 2d 1288; *Jenkins v. King,* 224 Ind. 164, 65 NE 2d 121, 163 ALR 397; *Scott v. Anderson Newspapers, Inc.,* (Ind App) 477 NE 2d 553; *Allen v. Highway Equipment Co.,* (Iowa) 239 NW 2d 135; *General Motors Acceptance Corp. v. Daniels,* 303 Md. 254, 492 A. 2d 1306; *Craig v. Bossenbery,* 134 Mich. App. 543, 351 NW 2d 596; *Kuhlman v. Educational Publishers,* 245 Minn. 171, 71 NW 2d 889; *State by Crow Wing Environment Protection Asso. v. Breezy Point,* (Minn App) 363 NW 2d 778, later app (Minn App) 394 NW 2d 592; *Adams v. Kerr,* (Mo App) 655 SW 2d 49; *T.V. Transmission, Inc. v. Lincoln,* 220 Neb. 887, 374 NW 2d 49; *Parks v. Venters Oil Co.,* 255 NC 498, 121 SE 2d 850; *Re Robinson's Will,* 101 Vt. 464, 144 A. 457, 75 ALR 59; *Ross v. Harding,* 64 Wash. 2d 231, 391 P. 2d 526; *Cotiga Dev. Co. v. United Fuel Gas Co.,* 147 W. Va. 484, 128 SE 2d 626, 17 OGR 583.

[36] *Id.,* citing *Gulf Cities Gas Corp. v. Tangelo Park Service Co.,* (Fla App D4) 253 So. 2d 744; *Sears, roebuck & Co. v. Poling,* 248 Iowa 582, 81 NW 2d 462; *Gans v. Aetna Life Ins. Co.,* 214 NY 326, 108 NE 443; *General American Indem. Co. v. Pepper,* 161 Tex. 263, 339 SW 2d 660; *Griffin v. Fairmont Coal Co.,* 59 W. Va. 480, 53 SE 24.

[37] *Id.,* citing *Massey-Ferguson v. Bent Equipment Co.,* (CA5 Fla) 283 F. 2d 12, 3 FR Serv. 2d 135; *Atlas Sewing Center, Inc. v. Belk's Dept. Store, Inc.,* (Fla App D2) 162 So. 2d 274; *Coopersmith v. Isherwood,* 219 Md. 455, 150 A. 2d 243; *Shapleigh Hardware Co. v. Spiro,* 141 Miss. 38, 106 So. 209, 44 ALR 393, later app 153 Miss. 81, 118 So. 429, motion overr 153 Miss. 195, 119 So. 206; *Wood v. Security Mut. Life Ins. Co.,* 112 Neb. 66, 198 NW 537, 34 ALR 712; *Republic Nat. Life Ins. Co. v. Spillars,* (Tex) 368 SW 2d 92, 5 ALR 3d 957.

bargaining agreement or other applicable employment contract providing for retirement benefits for an employee; or (2) there is a collective bargaining agreement or other applicable employment contract providing for retirement benefits for an employee, but it is **below** the requirements set for by law. The reason for the first situation is to prevent the absurd situation where an employee, who is otherwise deserving, is denied retirement benefits by the nefarious scheme of employers in not providing for retirement benefits for their employees. The reason for the second situation is expressed in the latin maxim *pacta privata juri publico derogare non possunt*. Private contracts cannot derogate from the public law. ***Ang kasunduang pribado ay hindi makasisira sa batas publiko***. Five (5) reasons support this conclusion.

First, a plain reading of the Retirement Pay Law. R.A. No. 7641 originated from the House of Representatives as House Bill 317 which was later consolidated with Senate Bill 132. It was approved on December 9, 1992 and took effect on January 7, 1993.[38] Amending Article 287 of the Labor Code, it provides as follows:

> Art. 287. *Retirement*. – Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.
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> In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, that an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.
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> In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory

[38] *CJC Trading, Inc. v. National Labor Relations Commission,* G.R. No. 115884, July 20, 1995, 246 SCRA 724; *Oro Enterprises v. National Labor Relations Commission,* G.R. No. 110861, November 14, 1994, 238 SCRA 105.

retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (½) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term 'one-half (½) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves. (Underscoring supplied)

Second, the legislative history of the Retirement Pay Law. It may be recalled that R.A. No. 7641 traces back its history in the case of *Llora Motors, Inc. v. Drilon*.[39] In this case, the Court held that the then Article 287 of the Labor Code[40] and its Implementing Rules[41] may not be the source of an employee's

[39] G.R. No. 82895, November 7, 1989, 179 SCRA 175.

[40] Article 287. *Retirement*. – Any employee may be retired upon reaching the age established in the Collective Bargaining Agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining or other agreement.

[41] Section 13. *Retirement*. – In the absence of any collective bargaining agreement or other applicable agreement concerning terms and conditions of employment which provides for retirement at an older age, an employee may be retired upon reaching the age of sixty (60) years.

Section 14. *Retirement Benefits*. – (a) An employee who is retired pursuant to a bona-fide retirement plan or in accordance with the applicable individual or collective agreement or established employer policy shall be entitled to all the retirement benefits provided therein or to termination pay equivalent at least to one-half month salary for every year of service, whichever is higher, a fraction of at least six (6) months being considered as one whole year.

(b) Where both the employer and the employee contribute to the retirement plan, agreement or policy, the employer's total contribution thereto shall not be less than the total termination pay to which the employee would have been entitled had there been no retirement fund. In case the employer's contribution is less than the termination pay the employee is entitled to receive, the employer shall pay the deficiency upon the retirement of the employee.

(c) This Section shall apply where the employee retires at the age of sixty (60) years or older. (Rules to Implement the Labor Code, Book VI, Rule I, Sec. 14.)

entitlement to retirement pay absent the presence of a collective bargaining agreement or voluntary company policy that provides for retirement benefits for the employee.[42]

Third, the legislative intent of the Retirement Pay Law. A reading of the explanatory note of Representative Alberto S. Veloso would show why Congress sought to pass the Retirement Pay Law: many employers refuse or neglect to adopt a retirement plan for their employees because of the absence of any legal compulsion for them to do so, thus:

> When the Labor Code came into effect in 1974, retirement pay had, as a matter of course, been granted to employees in the private sector when they reach the age of sixty (60) years. This had practically been the rule observed by employers in the country pursuant to the rules and regulations issued by the then Minister of Labor and Employment to implement the provisions of the Labor Code, more particularly, where there is no provision for the same in the collective bargaining agreement or retirement plan of the establishment.
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> At present, however, such benefit of retirement pay is no longer available where there is no collective agreement thereon or any retirement plan at all. This is so because, in a decision of the Supreme Court (*Llora Motors vs. Drilon and NLRC, et al.*, G.R. No. 82895, November 7, 1989), it was held that the grant of such benefit under the rules implementing the Labor Code is not supported by any express provision of the Labor Code itself. In short, there is no specific statutory basis for the grant of retirement benefits for employees in the private sector reaching the age of 60 years.
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> Since the time of such nullification by the Supreme Court of said implementing rules on retirement pay for private sector employees, many employers simply refuse or neglect to adopt any retirement plan for their workers, obviously emboldened by the thought that, after said ruling, there is no longer any legal compulsion to grant such retirement benefits. In our continuous quest to promote social justice, unfair situations like this, productive of grievance or irritants in the labor-management relations, must immediately be corrected or remedied by legislation. (Underscoring supplied)

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[42] *Llora Motors, Inc. v. Drilon, supra* note 39, at 181-187.

Fourth, the title of the Retirement Pay Law. The complete title of R.A. No. 7641 is "An Act Amending Article 287 of Presidential Decree No. 442, As Amended, Otherwise Known as the Labor Code of the Philippines, By Providing for Retirement Pay to Qualified Private Sector in the Absence of Any Retirement Plan in the Establishment." *Res ipsa loquitur*. The thing speaks for itself. ***Isang bagay na nangungusap na sa kanyang sarili***.

Fifth, jurisprudence. In *Oro Enterprises, Inc. v. National Labor Relations Commission*,[43] the Court held that R.A. No. 7641 "is undoubtedly a social legislation. The law has been enacted as a labor protection measure and as a curative statute that – absent a retirement plan devised by, an agreement with, or a voluntary grant from, an employer – can respond, in part at least, to the financial well-being of workers during their twilight years soon following their life of labor."[44]

In *Pantranco North Express, Inc. v. National Labor Relations Commission*,[45] the Court held that Article 287 of the Labor Code "makes clear the intention and spirit of the law to give employers and employees a free hand to determine and agree upon the terms and conditions of retirement,"[46] and that the law "presumes that employees know what they want and what is good for them absent any showing that fraud or intimidation was employed to secure their consent thereto."[47]

Lastly, in *Brion v. South Philippine Union Mission of the Seventh Day Adventist Church*,[48] the Court ruled that a reading of Article 287 of the Labor Code would reveal that the "employer

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[43] G.R. No. 110861, November 14, 1994, 238 SCRA 105.

[44] *Oro Enterprises, Inc. v. National Labor Relations Commission, id.* at 112.

[45] G.R. No. 95940, July 24, 1996, 259 SCRA 161.

[46] *Pantranco North Express, Inc. v. National Labor Relations Commission, id.* at 173.

[47] *Id.*

[48] G.R. No. 135136, May 19, 1999, 307 SCRA 497.

and employee are free to stipulate on retirement benefits, as long as these do not fall below floor limits provided by law."[49]

We are aware of the several cases cited by Oxales to support his claim that the computation of his retirement benefits should not have been limited to the basic monthly salary as defined by the URP. However, these cases negate, rather than support, his claim.

In *Villena v. National Labor Relations Commission*,[50] the "compulsory retirement" of Villena was, in fact, an illegal dismissal in disguise. Thus, the Court ordered the Batangas, Laguna, Tayabas Bus Co. to pay Villena "his full backwages, allowances, and other benefits for a period of three (3) years after his illegal dismissal on April 24, 1987, until he reached the compulsory retirement age plus his retirement benefits equivalent to his gross monthly pay, allowances and other benefits for every year of service up to age sixty (60), which is the normal retirement age for him."[51]

The distinction between *Villena* with the instant case is readily apparent. The Court used the regular compensation of Villena in computing his retirement benefits because the provision of the CBA for rank-and-file employees is **inapplicable** to him, being a managerial employee. The *Villena* case was also decided before the passage of R.A. No. 7641.

In *Planters Products, Inc. v. National Labor Relations Commission*,[52] the petitioning employees were given termination benefits based on their basic salary. However, Planters Products, Inc. had integrated the allowances of its remaining employees into their basic salary. Thus, it was the basic salary that increased. Also, it was the basic salary as increased (not the basic salary and allowances) which still formed the basis for the computation of the termination benefits of the remaining employees of the

[49] *Brion v. South Philippine Union Mission of the Seventh Day Adventist Church, id*. at 504.

[50] G.R. No. 90664, February 7, 1991, 193 SCRA 686.

[51] *Villena v. National Labor Relations Commission, id*. at 693.

[52] G.R. Nos. 78524 & 78739, January 20, 1989, 169 SCRA 328.

company. The Court held that fairness demanded that the terminated employees receive the same treatment.[53] Clearly, such situation is absent here.

In *Manuel L. Quezon University v. National Labor Relations Commission*,[54] the issue raised was whether respondents are entitled to the retirement benefits provided for under R.A. No. 7641, even if petitioner has an existing valid retirement plan. The Court held that the coverage of the law "applies to establishments with existing collective bargaining or other agreements or voluntary retirement plans whose benefits are less than those prescribed under the *proviso* in question."[55]

Admittedly, this Court held in the case of *Songco v. National Labor Relations Commission*[56] that not only the basic salary but also the "allowances" (like transportation and emergency living allowances) and "earned sales commissions" should be taken into consideration in computing the backwages and separation pay of the employee. However, a closer examination of the case would show that the CBA[57] between Zuellig and F.E. Zuellig Employees Association, in which Songco was a member, did not contain an explicit definition of what salary is. Neither was there any inclusions or exclusions in the determination of the salary of the employee. Here, the URP has an explicit provision

[53] *Planters Products, Inc. v. National Labor Relations Commission, id.* at 339.

[54] G.R. No. 141673, October 17, 2001, 367 SCRA 488.

[55] *Manuel L. Quezon University v. National Labor Relations Commission, id.* at 494.

[56] G.R. Nos. 50999-51000, March 23, 1990, 183 SCRA 610.

[57] Article XIV. *Retirement Gratuity*.

Section 1(a). Any employee, who is separated from employment, due to old age, sickness, death or permanent lay-off not due to the fault of said employee shall receive from the company a retirement gratuity in an amount equivalent to one (1) month's salary per year of service. One month of salary shall be deemed equivalent to the salary at date of retirement; years of service shall be deemed equivalent to total service credits, a fraction of at least six months being considered as one year, including probationary employment. (*Songco v. National Labor Relations Commission, id.* at 613, citing *rollo,* p. 71.)

excluding any commissions, overtime, bonuses, or extra compensations for purposes of computing the basic salary of a retiring employee. Too, the *Songco* case was decided before the passage of R.A. No. 7641.

Clearly then, R.A. No. 7641 does not apply because the URP grants to the retiring employee more than what the law gives. Under the URP, the employee receives a lump sum of 1½ pay per year of service, compared to the minimum ½ month salary for every year of service set forth by R.A. No. 7641.

Oxales is trying to have the best of both worlds. He wants to have his cake and eat it too: the 1½ months formula under the URP, and the inclusion of the value of food benefits and other allowances he was entitled to as employee of UNILAB with his monthly salary as the multiplicand of his number of years in the service. This he should not be permitted to do, lest a grave injustice is caused to UNILAB, and its past and future retirees.

We agree with the NLRC observation on this score:

> As an illustration, Complainant claims that his monthly salary as the multiplicand of his number of years in the service should include the value of the food benefits and other allowances he was entitled while in the employ of respondent. However, he did not even, by implication, intend to reduce the 1½ month salary as multiplier under the URP to ½ under the law he invoked. This is a sign of covetousness, unfair both to the employer and those employees who have earlier retired under said plan.[58]

Oxales is not entitled to the reinstatement of his medical benefits, which are not part of the URP. Corollarily, he is not also entitled to moral damages, exemplary damages, and attorney's fees.

Oxales claims that UNILAB unilaterally revoked his medical benefits, causing him humiliation and anxiety. This, he argues,

[58] *Rollo,* p. 180.

entitles him to moral damages, exemplary damages, plus attorney's fees.

We cannot agree. The records bear out that after Oxales retired from UNILAB, he chose to join a rival company, Lloyds Laboratories, Inc. As UNILAB correctly puts it, "[i]f any employer can legally and validly do the supreme act of dismissing a disloyal employee for having joined or sympathized with a rival company, with more reason may it do the lesser act of merely discontinuing a benefit unilaterally given to an already-retired employee."[59] As a retired employee, Oxales may not claim a vested right on these medical benefits. A careful examination of the URP would show that **medical benefits are *not* included in the URP**.

Indeed, while there is nothing wrong in the act of Oxales in joining a rival company after his retirement, justice and fair play would dictate that by doing so, he cannot now legally demand the continuance of his medical benefits from UNILAB. To rule otherwise would result in an absurd situation where Oxales would continue to receive medical benefits from UNILAB while working in a rival company. We note that these medical benefits are merely unilaterally given by UNILAB to its retired employees.

We are not unaware of this Court's pronouncement in *Brion v. South Philippine Union Mission of the Seventh Day Adventist Church*.[60] However, Oxales' plight **differs** from *Brion* because the URP does not expressly cover medical benefits to retirees. In contrast, the retired employee in *Brion* had acquired a vested right to the withheld benefits.

The claim of Oxales to moral damages, exemplary damages, and attorney's fees must also be denied for want of basis in law or jurisprudence. On this score, We echo the pronouncement of the Court in *Audion v. Electric Co., Inc. v. National Labor Relations Commission*,[61] to wit:

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[59] *Id.* at 432.

[60] *Supra* note 48.

[61] G.R. No. 106648, June 17, 1999, 308 SCRA 340.

Moral and exemplary damages are recoverable only where the dismissal of an employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, serious anxiety as the result of the actuations of the other party. Invariably, such action must be shown to have been willfully done in bad faith or with ill motive, and bad faith or ill motive under the law cannot be presumed but must be established with clear and convincing evidence. Private respondent predicated his claim for such damages on his own allegations of sleepless nights and mental anguish, without establishing bad faith, fraud or ill motive as legal basis therefor.

Private respondent not being entitled to award of moral damages, an award of exemplary damages is likewise baseless. Where the award of moral and exemplary damages is eliminated, so must the award for attorney's fees be deleted. Private respondent has not shown that he is entitled thereto pursuant to Art. 2208 of the Civil Code.[62] (Citations omitted)

Here, there was no dismissal, as Oxales was retired by UNILAB by virtue of the URP. He was also paid his complete retirement benefits.

Epilogue

It is not disputed that Oxales has worked tirelessly for UNILAB. For one thing, he has spent a considerable amount of years with the company. For another, he has contributed much to its growth and expansion. However, even as We empathize with him in his time of great need, it behooves Us to interpret the law according to what it mandates.

We reiterate the time-honored principle that the law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer. While the Constitution is committed to the policy of social justice and the protection of the working class, management also has its own rights, which

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[62] *Audion v. Electric Co., Inc. v. National Labor Relations Commission, id.* at 355.

are entitled to respect and enforcement in the interest of fair play. Out of its concern for those with less privilege in life, this Court has inclined more often than not toward the employee and upheld his cause with his conflicts with the employer. Such favorable treatment, however, has not blinded the Court to rule that justice is in every case for the deserving. Justice should be dispensed in the light of the established facts and applicable law and doctrine.[63]

WHEREFORE, the appealed Decision is *AFFIRMED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Quisumbing,[*] *Austria-Martinez,* and *Azcuna,*[**] *JJ.,* concur.

[63] *Revidad v. National Labor Relations Commission,* G.R. No. 111105, June 27, 1995, 245 SCRA 356, 372-373, citing *Mercury Drug Corporation v. National Labor Relations Commission,* G.R. No. 75662, September 15, 1989, 177 SCRA 580.

[*] Vice Associate Justice Minita V. Chico-Nazario. Justice Nazario is on official leave per Special Order No. 508 dated June 25, 2008.

[**] Designated as additional member vice Associate Justice Antonio Eduardo B. Nachura per raffle dated June 25, 2008. Justice Nachura participated as Solicitor General in the present case.

SECOND DIVISION

[G.R. No. 154402. July 21, 2008]

HEIRS OF ANTONIO F. BERNABE (namely: EVELYN C. VDA. DE BERNABE and JOSE III, SHIRLEY ANN, GREGORY, ALEXANDER, and MICHAEL, all surnamed BERNABE), *petitioners, vs.* **COURT OF APPEALS and TITAN CONSTRUCTION CORPORATION,** *respondents.*

SYLLABUS

1. CIVIL LAW; SALES; CONTRACT OF SALE AND CONTRACT TO SELL, DISTINGUISHED.— The difference between contracts of sale and contracts to sell is relevant. In a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold; in a contract to sell, ownership is, by agreement, reserved in the vendor and is not to pass to the vendee until full payment of the purchase price. Otherwise stated, in a contract of sale, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas in a contract to sell, title is retained by the vendor until full payment of the price. In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.

2. ID.; ID.; STIPULATIONS IN THE DEED OF CONDITIONAL SALE CONSIDERED AS A CONTRACT TO SELL; CASE AT BAR.— A careful reading of the stipulations in the *Deed of Conditional Sale* conveys the intent of the parties to enter into a contract to sell. The fourth paragraph of the contract explicitly states that only when full payment of the purchase price is made shall Antonio execute the deed of absolute sale transferring and conveying his shares in the subject properties. Clearly, the intent is to reserve ownership in the seller, Antonio, until the buyer, Titan, pays in full the purchase price. The full payment of the purchase price does not automatically vest ownership in Titan. A deed of absolute sale still has to be executed by Antonio.

3. ID.; ID.; RESCISSION OF THE CONTRACT CAN NOT BE ASKED WHEN THERE WAS NO VIOLATION OF THE CONDITIONS THEREOF.— Petitioners cannot ask for rescission of the *Deed of Conditional Sale* since it has been proven that far from violating the conditions of the deed, Titan was ready and willing to perform its contractual obligations. That the balance had not yet become due and demandable is a result of the appeal from the RTC and CA decisions, and is not due to Titan's alleged refusal to comply with the contract. Accordingly, the *Deed of Conditional Sale* remains valid, but petitioners cannot be compelled by specific performance to execute the deed of absolute sale in favor of Titan until and unless Titan settles the balance of the purchase price as agreed upon.

APPEARANCES OF COUNSEL

Beltran Beltran & Beltran for petitioners.

Salva Salva Salva & Associates for private respondent.

D E C I S I O N

TINGA, *J.*:

Petitioners in this case seek the review of the Court of Appeals Decision[1] dated 22 January 2002 and Resolution[2] dated 16 June 2002 in CA-G.R. CV No. 63168 which affirmed the Decision[3] of the Regional Trial Court (RTC) of Makati City, Branch 146 dated 1 December 1998 in Civil Case No. 90-2534.

This case stemmed from a Complaint[4] for specific performance filed by respondent Titan Construction Corporation (Titan) on 11 September 1990 before the RTC against petitioners' predecessor-in-interest, Antonio F. Bernabe, and his siblings

[1] *Rollo*, pp. 13-22. Penned by Justice Conrado M. Vasquez, Jr., concurred in by Justices Andres B. Reyes, Jr. and Amelita G. Tolentino.

[2] *Id.* at 24-25.

[3] *Id.* at 53-56. Penned by Judge Salvador S. Tensuan.

[4] *Id.* at 28-32.

Patricio F. Bernabe, Jose F. Bernabe and Cecilia Bernabe Perez (the defendants), who are co-owners of an undivided one-half (½) share in two (2) parcels of land located in La Huerta, Parañaque, Metro Manila. In an undated *Deed of Sale of Real Estate* [5] entered into by Titan and the defendants, the latter sold their one-half (½) share in the properties to Titan for ₱17,700,00.00 to be paid in the following manner:

> ONE MILLION (₱1,000,000.00) PESOS upon the signing by the VENDORS for this DEED OF SALE[,] provided[,] however, that payment may be made each VENDORS [*sic*] as the latter signs this DEED OF SALE;
>
> The balance shall be paid within, but not later than sixty (60) days after the acquisition by the VENDEE at the latter's expenses [*sic*] of a RIGHT OF WAY from the Municipal Government of Parañaque, Metro Manila, and upon the presentation by the VENDORS of an agreement with the ERIBERTA DEVELOPMENT CORPORATION that the latter has agreed that VENDOR'S [*sic*] share is the northern half and had waived the right of First Refusal as provided for in the DEED OF PARTITION OF REAL ESTATE; and upon the surrender by the VENDORS of the titles of the property subject of this DEED OF SALE. A violation by the VENDORS of the provision of this paragraph shall be a ground for cancellation of this Deed title.[6]

Titan prayed for judgment ordering defendants to comply with their obligations under the contract and to pay damages, alleging that it had already paid a substantial portion of the down payment and was still waiting for the defendants' compliance with their undertaking which they had failed to perform despite repeated reminders. Sometime in August 1990, Titan received a letter[7] from the defendants' counsel, Atty. Samuel A. Arcamo, (Atty. Arcamo) canceling and revoking the deed of sale allegedly in view of Titan's failure to comply with the terms of the deed. Insisting that it was the defendants who had incurred in default, Titan also sought the award of damages.

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[5] *Id.* at 33-35. Entered into sometime in May 1990.

[6] *Id.* at 33-34.

[7] Records, p. 9.

Defendants Antonio and Jose filed their Answer,[8] alleging therein that they alone signed[9] the deed of sale because the other defendants, Patricio and Cecilia, did not agree to the terms of the deed. They conceded that they received the down payment corresponding to their share in the property subject of the sale, and claimed that they had written to the municipal council of Parañaque for the grant of a right of way but the same had remained unacted upon since Titan failed to comply with its undertaking to shoulder the expenses of the grant. They denied having authorized Atty. Arcamo to cancel the deed of sale or even to send a letter of cancellation and revocation to respondent. Patricio filed a separate Amended Answer,[10] alleging that he had never met any of Titan's representatives much less entered into an agreement with anyone for the sale of the property or authorized anyone to act in his behalf pertaining to any sale. Cecilia, however, was declared in default for failure to file an answer.

On 26 December 1991, while the case was pending, Jose died without leaving any heir except his co-defendants.

A compromise agreement was subsequently entered into by Titan and the remaining defendants, whereby the latter agreed to the sale of their one-half (½) share in the properties to Titan and waived whatever cause of action for damages they might have against each other. By virtue of the compromise agreement, similar *Deeds of Conditional Sale* dated 3 March 1994 were separately entered into by respondent Titan as vendee, and defendants Patricio, Cecilia, and Antonio, who is represented by his attorneys-in-fact, as vendors of their undivided shares in the two properties. The three deeds were similarly worded and contained the same terms and conditions and differed only as to the amount of the purchase price.[11]

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[8] *Id*. at 15-16. Dated 28 November 1990.

[9] They signed the deed on 20 May 1990.

[10] Records, pp. 37-41.

[11] See Records, pp. 356-359, 385-388, and 390-393.

The parties filed a Joint Motion for Judgment Based on Compromise Agreement.[12] Antonio opposed the motion, contending that he had not entered into any compromise agreement.[13] It turned out, however, that the joint motion though not signed by Antonio was executed in his behalf by his two children, Jose III and Shirley Ann, by virtue of a *Special Power of Attorney*[14] (SPA) that Antonio himself had executed. Thus, the motion was denied.[15]

Later, on 16 August 1994, defendant Antonio died and left herein petitioners — his surviving spouse Evelyn Cruz and her children, Jose III, Shirley Ann, Gregory and Michael — as his heirs.

Titan subsequently filed a supplemental complaint[16] alleging that Antonio had already received a substantial portion of the down payment for the sale of his share in the properties; that prior to his death, Antonio executed a SPA in favor of his two children, Jose III and Shirley Ann, empowering them to execute in his favor the 3 March 1994 *Deed of Conditional Sale*[17] involving his share in the properties; that on the basis of the deed, it made additional substantial advances on the purchase price and even expended certain amounts to satisfy the judgment debt of Antonio in Civil Case No. 92-2328; that the heirs of Antonio refused to execute the formal deed of sale; and that through its exclusive efforts, the one-half share of the original defendants in both properties was segregated and TCT No. 86793[18] covering the same was subsequently issued.

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[12] *Id*. at 124-125.

[13] *Id*. at 133-134.

[14] *Id*. at 126-128. Dated 28 February 1994.

[15] *Id*. at 135. Order dated 23 May 1994.

[16] *Rollo*, pp. 36-43. Dated 22 May 1995.

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

[18] The subject properties were originally covered by TCT Nos. (301818) (35977-A) 34945 and (301819) (19616-A) 34944. Subsequent to the execution of the *Deed of Conditional Sale* by the parties, the two properties were consolidated into one and partitioned into two lots of equal size, Lots 1 and 2

Petitioners, as defendants, filed their Answer[19] to the supplemental complaint essentially controverting the validity of the contracts entered into by the parties. They denied that a consummated sale was made between Titan and the original defendants since only an unconcluded negotiation is reflected in the *Deed of Sale of Real Estate* and that the fact that the negotiations did not push through is shown by the absence of the signatures of defendants Patricio and Cecilia. Petitioners also questioned the genuineness of the *Deed of Conditional Sale*, pointing out that it had been signed only later by Titan's representative. They argued that, hence, the *Deed of Conditional Sale* is null and void and if found otherwise, should be cancelled and rescinded for failure of Titan to comply with its undertaking.

The compromise agreements entered into by Titan and defendants Patricio and Cecilia were approved by the RTC in separate partial judgments.[20] No settlement of the case was reached between Titan and petitioners.

After trial, the RTC decided in favor of Titan in its Decision dated 1 December 1998. The trial court upheld the validity of both the *Deed of Sale of Real Estate* and the *Deed of Conditional Sale*. It held that there was no basis to rescind the contracts since petitioners had not proven that Titan had failed to comply with its undertaking under them. The dispositive portion of the RTC decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to:
>
> 1. Execute the registrable Deed of Sale in favor of plaintiff upon payment by the latter of the remaini[n]g purchase price;
>
> 2. And to pay plaintiff cost[s] of suit.

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of approved plan (LRC) Pcs-28052 and covered by separate titles. Lot 1, covered by TCT No. 86793 and representing the shares of the original defendants, was partitioned to Antonio, Patricio and Cecilia.

[19] Records, pp. 197-199. Dated 21 June 1995.

[20] *Id*. at 313-314 and 315-316. Partial Judgments dated 3 June 1998.

SO ORDERED.[21]

The RTC modified the decision in its Order[22] dated 15 February 1999 by specifying that in view of the compromise agreements entered into by Titan and defendants Patricio and Cecilia, the 1 December 1998 Decision should be rendered against the heirs of Antonio. Accordingly, said heirs were ordered to execute a registrable Deed of Absolute Sale over the one-third (1/3) share of Antonio in the property covered by TCT No. 86793 of the Register of Deeds of Parañaque, pursuant to the *Deed of Conditional Sale*, upon Titan's payment to them of the amount of ₱3,431,058.42 representing the balance of the purchase price.

Petitioners appealed the RTC decision to the Court of Appeals. The appeal was dismissed in the Decision dated 22 January 2002, and the RTC decision was affirmed *in toto*. Petitioners' motion for reconsideration was denied in the Resolution[23] dated 16 July 2002.

In the present petition for review, petitioners submit the following issues for resolution by the Court:

(1) Under a deed of conditional sale of a parcel of land, may the vendee compel the vendors to execute a registerable deed of sale based on the allegation that it had paid a substantial portion of the ₱1 million down payment of the total consideration of ₱17,700,000.00, where it was expressly stipulated that the vendors would execute the necessary deed of absolute sale in favor of the vendee only upon full payment?

(2) May the vendors in a deed of conditional sale ask for rescission of contract for failure of the vendee to pay in full the agreed consideration?[24]

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[21] *Rollo*, pp. 55-56.

[22] *Id*. at 57.

[23] *Id*. at 24-25.

[24] *Id*. at 132.

Petitioners, contending that the *Deed of Sale of Real Estate* and *Deed of Conditional Sale* are contracts to sell and not contracts of sale, allege that Titan has no cause of action to file the complaint for specific performance since it failed to pay the purchase price in full as agreed upon in the contracts. Petitioners argue that the import of the stipulations in the *Deed of Sale of Real Estate*—which was not signed by Titan's representative or by two of the four alleged vendors, and which was neither notarized nor registered and hence defective—is that full payment of the purchase price must be made before ownership of the properties passes to Titan. The *Deed of Conditional Sale*, which necessarily superseded and nullified the *Deed of Sale of Real Estate*, expressed this intent more clearly when it stated that "upon full payment of the purchase price, Vendor shall execute the necessary Deed of Absolute Sale in favor of Vendee transferring and conveying all his undivided shares in the x x x properties."[25]

While Titan admitted that it had already made payments of substantial amounts, petitioners on the one hand argue that this is not the full payment agreed upon in the *Deed of Conditional Sale* that would entitle Titan to demand the execution of a deed of absolute sale in its favor. Petitioners believe that Titan should have at least tendered payment to them or deposited the money in court by way of consignation if acceptance of payment was refused; otherwise, Titan has no right to demand specific performance from petitioners. Thus, for failure of Titan to comply with its obligations, petitioners pray for the rescission of the *Deed of Conditional Sale* and the dismissal of Titan's complaint for specific performance.

On the other hand, Titan dismisses petitioners' claim that the *Deed of Sale of Real Estate* was superseded and nullified by the subsequent *Deed of Conditional Sale*, arguing that neither of these documents exclusively controls and determines the agreement between the parties. Instead, it relies on the declaration of the Court of Appeals that there was a perfected contract of sale of real estate evidenced by the *Deed of Sale of Real Estate*.

[25] Records, p. 358.

However, Titan expounds, said contract was not in the form required for registration under the law and so the courts below, in affirming it and requiring petitioners to execute a registerable deed, simply followed the provisions of the Civil Code governing the form of contracts, particularly Articles 1356, 1357 and 1358. Titan adds that it is only upon the execution of a registerable deed of sale that full payment of the consideration should be made, and that since the contract still has to be put in a registerable form as required by law, there is nothing yet to rescind. Moreover, it claims that it has not been shown to have breached the contract as in fact its obligation to pay the remainder of the purchase price would arise only upon petitioners' fulfillment of several conditions stipulated in the contract. It thus argues that petitioners have no cause of action for rescission.[26]

The petition should be denied.

The document that spells out the nature of the transaction of the parties is the *Deed of Conditional Sale*. Stemming from the compromise agreement entered into by Titan and petitioners, the *Deed of Conditional Sale* has superseded the *Deed of Sale of Real Estate* which is the original contract. The whole essence of a compromise is that by making reciprocal concessions, the parties avoid litigation or put an end to one already commenced.[27] A compromise agreement can be entered into without novating or supplanting existing contracts,[28] but in this case, the irreconcilable incompatibility between the *Deed of Sale of Real Estate* and the *Deed of Conditional Sale* inevitably resulted in extinctive novation.[29]

The first contract or the *Deed of Sale of Real Estate* embodies a perfected contract of sale. There is no stipulation in the said deed that title to the properties would remain with defendants

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[26] *Id*. at 120-126; Memorandum of Respondents dated 7 June 2004.

[27] *Riser Airconditioning Services Corporation v. Confield Construction Development Corporation*, G.R. No. 143273, 20 September 2004, 438 SCRA 471, 483.

[28] *Id*. at 482-483.

[29] CIVIL CODE, Art. 1292.

until full payment of the consideration, or that the right to unilaterally resolve the contract upon Titan's failure to pay within a fixed period is given to defendants. Patently, the contract executed by the parties is a contract of sale and not a contract to sell.

When the parties entered into a compromise, they executed new contracts involving the shares of Patricio, Cecilia and Antonio in the properties. These new contracts are the three deeds of conditional sale entered into by Titan with Patricio, Cecilia and Antonio, the last represented by his attorneys-in-fact. These contracts, all entitled *Deed of Conditional Sale*, are contracts to sell.

The difference between contracts of sale and contracts to sell is relevant. In a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold; in a contract to sell, ownership is, by agreement, reserved in the vendor and is not to pass to the vendee until full payment of the purchase price. Otherwise stated, in a contract of sale, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas in a contract to sell, title is retained by the vendor until full payment of the price. In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective.[30]

A careful reading of the stipulations in the *Deed of Conditional Sale* conveys the intent of the parties to enter into a contract to sell. The fourth paragraph of the contract explicitly states that only when full payment of the purchase price is made shall Antonio execute the deed of absolute sale transferring and conveying his shares in the subject properties. Clearly, the intent is to reserve ownership in the seller, Antonio, until the buyer, Titan, pays in full the purchase price. The full payment of the purchase price does not automatically vest ownership in Titan. A deed of absolute sale still has to be executed by Antonio.

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[30] *Salazar v. Court of Appeals*, 327 Phil. 944, 955 (1996).

As earlier noted, the *Deed of Sale of Real Estate* is substituted by the subsequent deeds of conditional sale. The *Deed of Sale of Real Estate* and the deeds of conditional sale involve different parties and different amounts, and impose different obligations. The original deed, on one hand, and the latter three, on the other, are incompatible and cannot subsist all at the same time.

Titan filed the complaint for specific performance based on petitioners' refusal to honor the *Deed of Sale of Real Estate.* Titan's prayer in the complaint was for petitioners to comply with their obligations under the deed or in other words, to honor the contract. The same relief is reiterated in the supplemental complaint since petitioners also refused to honor the *Deed of Conditional Sale*. Petitioners' refusal to honor the contract permeates the records of the case. Petitioners argued before the trial court that no consummated sale had been entered into by their father Antonio, his co-owners and Titan; that the *Deed of Sale of Real Estate* embodied only an unconsummated negotiation; and that the *Deed of Conditional Sale*, which petitioners Shirley Anne and Jose III signed in behalf of their father, was spurious. They attacked the validity of the contracts but alternatively argued for rescission based on Titan's failure to comply with its prestations thereunder.[31] With the trial court's finding that there was a valid agreement between the parties for the sale of the properties, petitioners in their brief before the Court of Appeals harped on Titan's supposed failure to fulfill its obligations under the contract to sell and on that basis sought the rescission of the contract.[32] The same arguments are laid down before this court.

Thus, Titan has a cause of action since it has already partially performed the contract by making down and other payments on the purchase price, as well as effecting and spending for the segregation and titling of the shares of petitioners and their co-owners in the properties. Titan seeks only to enforce the contract.

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[31] See Answer, records, p. 197-198; Memorandum for Defendants Heirs of Antonio Bernabe, records, pp. 457, 459.

[32] See Brief for Defendants-Appellants, CA *rollo*, pp. 37-40.

Petitioners argue that Titan's failure to pay the remainder of the purchase price constitutes a failure to perform its obligation under the deed and thus a ground for rescission. The demand for rescission is based on Article 1191[33] of the New Civil Code. This article refers to rescission applicable to reciprocal obligations. Reciprocal obligations are those which arise from the same cause, and in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other. They are to be performed simultaneously such that the performance of one is conditioned upon the simultaneous fulfillment of the other. While Article 1191 uses the term "rescission," the original term which was used in Article 1124 of the old Civil Code, from which the article was based, was "resolution." Resolution is a principal action which is based on breach of a party[34] or breach of faith by the other party who violates the reciprocity between them. The breach contemplated in the provision is the obligor's failure to comply with an existing obligation.[35] Thus, the power to rescind is given only to the injured party. The injured party is the party who has faithfully fulfilled his obligation or is ready and willing to perform his obligation.[36]

Under the *Deed of Conditional Sale*, the balance of the purchase price should be paid within sixty (60) days from the fulfillment

[33] Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thin, in accordance with Articles 1385 and 1388 and the Mortgage Law.

[34] *Ong v. Court of Appeals*, 369 Phil. 243, 252 (1999).

[35] *Sps. Velarde v. Court of Appeals*, 413 Phil. 360, 373 (2001).

[36] *Almira v. Court of Appeals*, 447 Phil. 467, 482 (2003).

of several conditions. At the time of the filing of the supplemental complaint, only three of the four conditions had been carried out. Thus, at that point, the balance of the purchase price had not yet become due and so, too, petitioners' obligation to execute a registerable deed of absolute sale had not yet arisen.

The first condition, *i.e.*, that Eriberta Development Corporation must agree to make the vendors' share pertain to the northern half of the properties, was deemed fulfilled with the segregation and titling of the interests of Antonio, Patricio and Cecilia under TCT No. 86793.[37] The separation of the property was registered on 12 October 1994, just a few months after the parties executed the *Deed of Conditional Sale*. With the segregation of the property and the issuance of TCT No. 86793, the fourth condition, *i.e.*, that the titles to the properties be surrendered to Titan, was also satisfied since the segregation would not have transpired had the old titles not been surrendered.[38] The second condition involving the co-owners' waiver of their right of first refusal was also complied with, as evidenced by similar declarations in the deeds of conditional sale executed by Patricio and Cecilia.[39] It is only the third condition—the acquisition of a right of way over the northern part of the property—that had not yet been fulfilled at the time of the filing of the supplemental complaint.

It was only during the trial that the fulfillment and/or waiver of the third condition was established. Titan presented proof that on 15 May 1995, its board of directors adopted a resolution declaring Titan's waiver of the acquisition of a right of way over the northern half portion of the properties as a condition to the sale, and its consequent willingness to pay the purchase price even before the right of way is secured.[40] It was on the basis of the fulfillment of all the conditions that the RTC ordered the execution of the registerable deed of sale but only upon Titan's payment of the balance. Although it was not explicitly

[37] TSN, 2 April 1998, pp. 5-6.

[38] *Id*. at 8.

[39] *Id*. at 6-8. See also records, pp. 3887 and 392.

[40] *Id*. at 3-5. See also records, p. 389, Secretary's Certificate, Exhibit "M".

stated, the trial court was essentially expressing that payment of the balance had already become due. But since the trial court's decision was appealed all the way to this Court, it could not attain finality and execution could not be ordered. In short, the pendency of the appeal put resolution of the controversy on hold.

Thus, petitioners cannot ask for rescission of the *Deed of Conditional Sale* since it has been proven that far from violating the conditions of the deed, Titan was ready and willing to perform its contractual obligations. That the balance had not yet become due and demandable is a result of the appeal from the RTC and CA decisions, and is not due to Titan's alleged refusal to comply with the contract. Accordingly, the *Deed of Conditional Sale* remains valid, but petitioners cannot be compelled by specific performance to execute the deed of absolute sale in favor of Titan until and unless Titan settles the balance of the purchase price as agreed upon.

Under the *Deed of Conditional Sale*, defendant Antonio promised to sell to Titan his "registered 1/12 interest and his 1/3 of 1/12 share in the 1/12 registered share of his late mother" in the properties covered by TCT No. 86793 for the consideration of ₱5,889,333.00. The trial court had ordered petitioners to execute the registerable deed of absolute sale of said shares upon payment to them by Titan of the amount of ₱3,431,058.42 representing the balance of the purchase price thereof. The amount due was affirmed by the Court of Appeals which found that based on the admitted exhibits, vouchers, checks, compromise agreement/partial judgments, the total payments already made by Titan is ₱2,458,274.58 which, if subtracted from the agreed purchase price of ₱5,889,333.00, would yield ₱3,431,058.42.[41] It is this amount that Titan should pay to petitioners sixty (60) days from the fulfillment of the conditions in order to compel petitioners to execute the deed of absolute sale in its favor.

WHEREFORE, in view of the foregoing, the petition is *DENIED*. Respondent Titan Construction Corporation is *ORDERED* to *PAY* petitioners Heirs of Antonio F. Bernabe

[41] See CA Decision, *rollo*, p. 22.

the amount of ₱3,431,058.42 within sixty (60) days from the finality of this decision. Petitioners are *ORDERED* to *ACCEPT* the payment and thereupon *EXECUTE* the proper deed of absolute sale. Both parties are *ORDERED* to *COMPLY* with the other stipulations in the *Deed of Conditional Sale*. No pronouncement as to costs.

SO ORDERED.

Quisumbing, (Chairperson) Ynares-Santiago, CarpioMorales, and *Velasco, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 158262. July 21, 2008]

SPS. PEDRO AND FLORENCIA VIOLAGO, *petitioners, vs.* **BA FINANCE CORPORATION and AVELINO VIOLAGO,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS; REQUISITES FOR NEGOTIABILITY, PRESENT.— The promissory note clearly satisfies the requirements of a negotiable instrument under the NIL. It is in writing; signed by the Violago spouses; has an unconditional promise to pay a certain amount, *i.e.,* PhP 209,601, on specific dates in the future which could be determined from the terms of the note; made payable to the order of VMSC; and names the drawees with certainty. The indorsement by VMSC to BA Finance appears likewise to be valid and regular.

2. ID.; ID.; HOLDER IN DUE COURSE; REQUISITES TO BE A HOLDER IN DUE COURSE, PRESENT.— The law presumes that a holder of a negotiable instrument is a holder

thereof in due course. In this case, the CA is correct in finding that BA Finance meets all the foregoing requisites: In the present recourse, on its face, (a) the "**Promissory Note**", **Exhibit "A**", is complete and regular; (b) the "**Promissory Note**" was endorsed by the VMSC in favor of the Appellee; (c) the Appellee, when it accepted the Note, acted in good faith and for value; (d) the Appellee was never informed, before and at the time the "**Promissory Note**" was endorsed to the Appellee, that the vehicle sold to the Defendants-Appellants was not delivered to the latter and that VMSC had already previously sold the vehicle to Esmeraldo Violago. Although Jose Olvido mortgaged the vehicle to Generoso Lopez, who assigned his rights to the BA Finance Corporation (Cebu Branch), the same occurred only on May 8, 1987, much later than August 4, 1983, when VMSC assigned its rights over the "**Chattel Mortgage**" by the Defendants-Appellants to the Appellee. Hence, Appellee was a holder in due course.

3. ID.; ID.; ID.; A HOLDER IN DUE COURSE HOLDS THE INSTRUMENT FREE FROM DEFENSES AVAILABLE TO PRIOR PARTIES; CASE AT BAR.— In the hands of one other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. A holder in due course, however, holds the instrument free from any defect of title of prior parties and from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof. Since BA Finance is a holder in due course, petitioners cannot raise the defense of non-delivery of the object and nullity of the sale against the corporation. The NIL considers every negotiable instrument *prima facie* to have been issued for a valuable consideration. In *Salas*, we held that a party holding an instrument may enforce payment of the instrument for the full amount thereof. As such, the maker cannot set up the defense of nullity of the contract of sale. Thus, petitioners are liable to respondent corporation for the payment of the amount stated in the instrument.

4. ID.; CORPORATIONS; PIERCING THE VEIL OF CORPORATE FICTION; TEST IN DETERMINING THE APPLICABILITY THEREOF, REITERATED; APPLICATION.— The test in determining the applicability of the doctrine of piercing the veil of corporate fiction is as follows: 1. Control, not mere

majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; 2. Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust acts in contravention of plaintiff's legal rights; and 3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of. This case meets the foregoing test. VMSC is a family-owned corporation of which Avelino was president. Avelino committed fraud in selling the vehicle to petitioners, a vehicle that was previously sold to Avelino's other cousin, Esmeraldo. Nowhere in the pleadings did Avelino refute the fact that the vehicle in this case was already previously sold to Esmeraldo; he merely insisted that he cannot be held liable because he was not a party to the transaction. The fact that Avelino and Pedro are cousins, and that Avelino claimed to have a need to increase the sales quota, was likely among the factors which motivated the spouses to buy the car. Avelino, knowing fully well that the vehicle was already sold, and with abuse of his relationship with the spouses, still proceeded with the sale and collected the down payment from petitioners. The trial court found that the vehicle was not delivered to the spouses. Avelino clearly defrauded petitioners. His actions were the proximate cause of petitioners' loss. He cannot now hide behind the separate corporate personality of VMSC to escape from liability for the amount adjudged by the trial court in favor of petitioners.

5. ID.; ID.; ID.; NON-INCLUSION AS A PARTY DOES NOT BAR THE APPLICATION OF THE PIERCING-OF-THE-CORPORATE-VEIL DOCTRINE.— The fact that VMSC was not included as defendant in petitioners' third party complaint does not preclude recovery by petitioners from Avelino; neither would such non-inclusion constitute a bar to the application of the piercing-of-the-corporate-veil doctrine. We suggested as much in *Arcilla v. Court of Appeals*, an appellate proceeding involving petitioner Arcilla's bid to avoid the adverse CA decision on the argument that he is not personally liable for the amount adjudged since the same constitutes a corporate liability which nevertheless cannot even be enforced against the corporation which has not been impleaded as a party below.

In that case, the Court found as well-taken the CA's act of disregarding the separate juridical personality of the corporation and holding its president, Arcilla, liable for the obligations incurred in the name of the corporation although it was not a party to the collection suit before the trial court.

APPEARANCES OF COUNSEL

Cabrera Makalintal & Baliad Law Offices for petitioners.

Reyes Cruz & Associates for A. Violago.

Brillantes Navarro Jumamil Arcilla Escolin Martinez & Vivero Law Offices for BA Finance Corp.

D E C I S I O N

VELASCO, JR., *J.*:

This is a Petition for Review on *Certiorari* of the August 20, 2002 Decision[1] and May 15, 2003 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 48489 entitled *BA Finance Corporation, Plaintiff-Appellee v. Sps. Pedro and Florencia Violago, Defendants and Third Party Plaintiffs-Appellants v. Avelino Violago, Third Party Defendant-Appellant*. Petitioners-spouses Pedro and Florencia Violago pray for the reversal of the appellate court's ruling which held them liable to respondent BA Finance Corporation (BA Finance) under a promissory note and a chattel mortgage. Petitioners likewise pray that respondent Avelino Violago be adjudged directly liable to BA Finance.

The Facts

Sometime in 1983, Avelino Violago, President of Violago Motor Sales Corporation (VMSC), offered to sell a car to his cousin, Pedro F. Violago, and the latter's wife, Florencia. Avelino

[1] *Rollo*, pp. 14-28. Penned by Associate Justice Romeo J. Callejo, Sr. (former member of this Court) and concurred in by Associate Justices Remedios Salazar-Fernando and Danilo B. Pine (now retired).

[2] *Id*. at 30-31.

explained that he needed to sell a vehicle to increase the sales quota of VMSC, and that the spouses would just have to pay a down payment of PhP 60,500 while the balance would be financed by respondent BA Finance. The spouses would pay the monthly installments to BA Finance while Avelino would take care of the documentation and approval of financing of the car. Under these terms, the spouses then agreed to purchase a Toyota Cressida Model 1983 from VMSC.[3]

On August 4, 1983, the spouses and Avelino signed a promissory note under which they bound themselves to pay jointly and severally to the order of VMSC the amount of PhP 209,601 in 36 monthly installments of PhP 5,822.25 a month, the first installment to be due and payable on September 16, 1983. Avelino prepared a Disclosure Statement of Loan/Credit Transportation which showed the net purchase price of the vehicle, down payment, balance, and finance charges. VMSC then issued a sales invoice in favor of the spouses with a detailed description of the Toyota Cressida car. In turn, the spouses executed a chattel mortgage over the car in favor of VMSC as security for the amount of PhP 209,601. VMSC, through Avelino, endorsed the promissory note to BA Finance **without recourse**. After receiving the amount of PhP 209,601, VMSC executed a Deed of Assignment of its rights and interests under the promissory note and chattel mortgage in favor of BA Finance. Meanwhile, the spouses remitted the amount of PhP 60,500 to VMSC through Avelino.[4]

The sales invoice was filed with the Land Transportation Office (LTO)-Baliwag Branch, which issued Certificate of Registration No. 0137032 in the name of Pedro on August 8, 1983. The spouses were unaware that the same car had already been sold in 1982 to Esmeraldo Violago, another cousin of Avelino, and registered in Esmeraldo's name by the LTO-San Rafael Branch. Despite the spouses' demand for the car and Avelino's repeated assurances, there was no delivery of the vehicle. Since

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[3] *Id.* at 15.

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

VMSC failed to deliver the car, Pedro did not pay any monthly amortization to BA Finance.[5]

On March 1, 1984, BA Finance filed with the Regional Trial Court (RTC), Branch 116 in Pasay City a complaint for Replevin with Damages against the spouses. The complaint, docketed as Civil Case No. 1628-P, prayed for the delivery of the vehicle in favor of BA Finance or, if delivery cannot be effected, for the payment of PhP 199,049.41 plus penalty at the rate of 3% per month from February 15, 1984 until fully paid. BA Finance also asked for the payment of attorney's fees, liquidated damages, replevin bond premium, expenses in the seizure of the vehicle, and costs of suit. The RTC issued an Order of Replevin on March 28, 1984. The Violago spouses, as defendants *a quo*, were declared in default for failing to file an answer. Eventually, the RTC rendered on December 3, 1984 a decision in favor of BA Finance. A writ of execution was thereafter issued on January 11, 1985, followed by an *alias* writ of execution.[6]

In the meantime, Esmeraldo conveyed the vehicle to Jose V. Olvido who was then issued Certificate of Registration No. 0014830-4 by the LTO-Cebu City Branch on April 29, 1985. On May 8, 1987, Jose executed a Chattel Mortgage over the vehicle in favor of Generoso Lopez as security for a loan covered by a promissory note in the amount of PhP 260,664. This promissory note was later endorsed to BA Finance, Cebu City branch.[7]

On August 21, 1989, the spouses Violago filed a Motion for Reconsideration and Motion to Quash Writ of Execution on the basis of lack of a valid service of summons on them, among other reasons. The RTC denied the motions; hence, the spouses filed a petition for *certiorari* under Rule 65 before the CA, docketed as CA G.R. No. 2002-SP. On May 31, 1991, the CA nullified the RTC's order. This CA decision became final and executory.

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[5] *Id.*

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

[7] *Id.* at 18.

On January 28, 1992, the spouses filed their Answer before the RTC, alleging the following: they never received the vehicle from VMSC; the vehicle was previously sold to Esmeraldo; BA Finance was not a holder in due course under Section 59 of the *Negotiable Instruments Law* (NIL); and the recourse of BA Finance should be against VMSC. On February 25, 1995, the Violago spouses, with prior leave of court, filed a Third Party Complaint against Avelino praying that he be held liable to them in the event that they be held liable to BA Finance, as well as for damages. VMSC was not impleaded as third party defendant. In his Motion to Dismiss and Answer, Avelino contended that he was not a party to the transaction personally, but VMSC. Avelino's motion was denied and the third party complaint against him was entertained by the trial court. Subsequently, the spouses belabored to prove that they affixed their signatures on the promissory note and chattel mortgage in favor of VMSC in blank.[8]

The RTC rendered a Decision on March 5, 1994, finding for BA Finance but against the Violago spouses. The RTC, however, declared that they are entitled to be indemnified by Avelino. The dispositive portion of the RTC's decision reads:

> WHEREFORE, defendant-[third]-party plaintiffs spouses Pedro F. Violago and Florencia R. Violago are ordered to deliver to plaintiff BA Finance Corporation, at its principal office the BAFC Building, Gamboa St., Legaspi Village, Makati, Metro Manila the Toyota Cressida car, model 1983, bearing Engine No. 21R-02854117, and with Serial No. RX60-804614, covered by the deed of chattel mortgage dated August 4, 1983; or if such delivery cannot be made, to pay, jointly and severally, to the plaintiff the sum of P198,003.06 together with the penalty [thereon] at three percent (3%) a month, from March 1, 1984, until the amount is fully paid.
>
> In either case, the defendant-third-party plaintiffs are required to pay, jointly and severally, to the plaintiff a sum equivalent to twenty-five percent (25%) of ₱198,003.06 as attorney's fees, and another amount also equivalent to twenty five percent (25%) of the said unpaid balance, as liquidated damages. The defendant-third party-plaintiffs are also required to shoulder the litigation expenses and costs.

[8] *Id.* at 18-19.

As indemnification, third-party defendant Avelino Violago is ordered to deliver to defendants-third-party plaintiffs spouses Pedro F. Violago and Florencia R. Violago the aforedescribed motor vehicle; or if such delivery is not possible, to pay to the said spouses the sum of ₱198,003.06, together with the penalty thereon at three (3%) a month from March 1, 1984, until the amount is entirely paid.

In either case, the third-party defendant should pay to the defendant-third-party plaintiffs spouses a sum equivalent to twenty-five percent (25%) of ₱198,003.06 as attorney's fees, and another sum equivalent also to twenty-five percent (25%) of the said unpaid balance, as liquidated damages.

Third-party defendant Avelino Violago is further ordered to return to the third-party plaintiffs the sum of ₱60,500.00 they paid to him as down payment for the car; and to pay them ₱15,000.00 as moral damages; ₱10,000.00 as exemplary damages; and reimburse them for all the expenses and costs of the suit.

The counterclaims of the defendants and third-party defendant, for lack of merit, are dismissed.[9]

The Ruling of the CA

Petitioners-spouses and Avelino appealed to the CA. The spouses argued that the promissory note is a negotiable instrument; hence, the trial court should have applied the NIL and not the Civil Code. The spouses also asserted that since VMSC was not the owner of the vehicle at the time of sale, the sale was null and void for the failure in the "cause or consideration" of the promissory note, which in this case was the sale and delivery of the vehicle. The spouses also alleged that BA Finance was not a holder in due course of the note since it knew, through its Cebu City branch, that the car was never delivered to the spouses.[10] On the other hand, Avelino prayed for the dismissal of the complaint against him because he was not a party to the transaction, and for an order to the spouses to pay him moral damages and costs of suit.

[9] *Id*.

[10] *Id*. at 20-26.

The appellate court ruled that the promissory note was a negotiable instrument and that BA Finance was a holder in due course, applying Secs. 8, 24, and 52 of the NIL. The CA faulted petitioners for failing to implead VMSC, the seller of the vehicle and creditor in the promissory note, as a party in their Third Party Complaint. Citing *Salas v. Court of Appeals*,[11] the appellate court reasoned that since VMSC is an indispensable party, any judgment will not bind it or be enforced against it. The absence of VMSC rendered the proceedings in the RTC and the judgment in the Third Party Complaint "null and void, not only as to the absent party but also to the present parties, namely the Defendants-Appellants (petitioners herein) and the Third-Party-Defendant-Appellant (Avelino Violago)." The CA set aside the trial court's order holding Avelino liable for damages to the spouses without prejudice to the action of the spouses against VMSC and Avelino in a separate action.[12]

The dispositive portion of the August 20, 2002 CA Decision reads:

> IN THE LIGHT OF ALL THE FOREGOING, the appeal of the Plaintiffs-Appellants is **DISMISSED**. The appeal of the Third-Party-Defendant-Appellant is **GRANTED**. The Decision of the Court a quo is **AFFIRMED**, with the modification that the Third-Party Complaint against the Third-Party-Defendant-appellant is **DISMISSED**, without prejudice. The counterclaims of the Third-Party Defendant Appellant against the Defendants-Appellants are **DISMISSED**, also without prejudice.[13]

The spouses Violago sought but were denied reconsideration by the CA per its Resolution of May 15, 2003.

The Issues

Petitioners raise the following issues:

WHETHER OR NOT THE HOLDER OF AN INVALID NEGOTIABLE PROMISSORY NOTE MAY BE CONSIDERED A HOLDER IN DUE COURSE

[11] G.R. No. 76788, January 22, 1990, 181 SCRA 296.

[12] *Rollo*, p. 19.

[13] *Supra* note 1, at 27.

WHETHER OR NOT A CHATTEL MORTGAGE SHOULD BE CONSIDERED VALID DESPITE VITIATION OF CONSENT OF, AND THE FRAUD COMMITTED ON, THE MORTGAGORS BY AVELINO, AND THE CLEAR ABSENCE OF OBJECT CERTAIN

WHETHER OR NOT THE VEIL OF CORPORATE ENTITY MAY BE INVOKED AND SUSTAINED DESPITE THE FRAUD AND DECEPTION OF AVELINO

The Court's Ruling

The ruling of the appellate court is set aside insofar as it dismissed, without prejudice, the third party complaint of petitioners against Avelino thereby effectively absolving Avelino from any liability under the third party complaint.

In addressing the threshold issue of whether BA Finance is a holder in due course of the promissory note, we must determine whether the note is a negotiable instrument and, hence, covered by the NIL. In their appeal to the CA, petitioners argued that the promissory note is a negotiable instrument and that the provisions of the NIL, not the Civil Code, should be applied. In the present petition, however, petitioners claim that Article 1318 of the Civil Code[14] should be applied since their consent was vitiated by fraud, and, thus, the promissory note does not carry any legal effect despite its negotiation. Either way, the petitioners' arguments deserve no merit.

The promissory note is clearly negotiable. The appellate court was correct in finding all the requisites of a negotiable instrument present. The NIL provides:

Section 1. Form of Negotiable Instruments. – An instrument to be negotiable must conform to the following requirements:

(a) It must be in writing and signed by the maker or drawer;

(b) Must contain an unconditional promise or order to pay a sum certain in money;

[14] Art. 1318. There is no contract unless the following requisites concur:

(1) Consent of the contracting parties;

(2) Object certain which is the subject matter of the contract;

(3) Cause of the obligation which is established.

(c) Must be payable on demand, or at a fixed or determinable future time;

(d) Must be payable to order or to bearer; and

(e) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

The promissory note signed by petitioners reads:

209,601.00 Makati, Metro Manila, Philippines, August 4, 1983

For value received, I/we, jointly and severally, promise to pay to the order of VIOLAGO MOTOR SALES CORPORATION, its office, the principal sum of TWO HUNDRED NINE THOUSAND SIX HUNDRED ONE ONLY Pesos (₱209,601.00), Philippines Currency, with interest at the rate stipulated herein below, in installments as follows:

Thirty Six (36) successive monthly installments of ₱5,822.25, the first installment to be paid on 9-16-83, and the succeeding monthly installments on the 16th day of each and every succeeding month thereafter until the account is fully paid, provided that the penalty charge of three (3%) per cent per month or a fraction thereof shall be added on each unpaid installment from maturity thereof until fully paid.

xxx xxx xxx

Notice of demand, presentment, dishonor and protest are hereby waived.

(Sgd.) PEDRO F. VIOLAGO	(Sgd.) FLORENCIA R. VIOLAGO
763 Constancia St., Sampaloc, Manila (Address)	same (Address)
(Sgd.) Marivic Avaria (WITNESS)	(Sgd.) Jesus Tuazon (WITNESS)

PAY TO THE ORDER OF BA FINANCE CORPORATION
WITHOUT RECOURSE

VIOLAGO MOTOR SALES CORPORATION
By: (Sgd.)
AVELINO A. VIOLAGO, Pres.[15]

The promissory note clearly satisfies the requirements of a negotiable instrument under the NIL. It is in writing; signed by the Violago spouses; has an unconditional promise to pay a certain amount, *i.e.*, PhP 209,601, on specific dates in the future which could be determined from the terms of the note; made payable to the order of VMSC; and names the drawees with certainty. The indorsement by VMSC to BA Finance appears likewise to be valid and regular.

The more important issue now is whether or not BA Finance is a holder in due course. The resolution of this issue will determine whether petitioners' defense of fraud and nullity of the sale could validly be raised against respondent corporation. Sec. 52 of the NIL provides:

Section 52. *What constitutes a holder in due course*.—A holder in due course is a holder who has taken the instrument under the following conditions:

(a) That it is complete and regular upon its face;

(b) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

(c) That he took it in good faith and for value;

(d) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

The law presumes that a holder of a negotiable instrument is a holder thereof in due course.[16] In this case, the CA is correct in finding that BA Finance meets all the foregoing requisites:

In the present recourse, on its face, (a) the "**Promissory Note**", **Exhibit "A**", is complete and regular; (b) the "**Promissory Note**"

[15] *Rollo*, p. 21.

[16] NIL, Sec. 59.

was endorsed by the VMSC in favor of the Appellee; (c) the Appellee, when it accepted the Note, acted in good faith and for value; (d) the Appellee was never informed, before and at the time the "**Promissory Note**" was endorsed to the Appellee, that the vehicle sold to the Defendants-Appellants was not delivered to the latter and that VMSC had already previously sold the vehicle to Esmeraldo Violago. Although Jose Olvido mortgaged the vehicle to Generoso Lopez, who assigned his rights to the BA Finance Corporation (Cebu Branch), the same occurred only on May 8, 1987, much later than August 4, 1983, when VMSC assigned its rights over the "**Chattel Mortgage**" by the Defendants-Appellants to the Appellee. Hence, Appellee was a holder in due course.[17]

In the hands of one other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable.[18] A holder in due course, however, holds the instrument free from any defect of title of prior parties and from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof.[19] Since BA Finance is a holder in due course, petitioners cannot raise the defense of non-delivery of the object and nullity of the sale against the corporation. The NIL considers every negotiable instrument *prima facie* to have been issued for a valuable consideration.[20] In *Salas*, we held that a party holding an instrument may enforce payment of the instrument for the full amount thereof. As such, the maker cannot set up the defense of nullity of the contract of sale.[21] Thus, petitioners are liable to respondent corporation for the payment of the amount stated in the instrument.

From the third party complaint to the present petition, however, petitioners pray that the veil of corporate fiction be set aside and Avelino be adjudged directly liable to BA Finance. Petitioners likewise pray for damages for the fraud committed upon them.

[17] *Rollo*, p. 25.

[18] NIL, Sec. 58.

[19] *Id.*, Sec. 57.

[20] *Id.*, Sec. 24.

[21] *Supra* note 11, at 302-303.

In *Concept Builders, Inc. v. NLRC*, we held:

> It is a fundamental principle of corporation law that a corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected. But, this separate and distinct personality of a corporation is merely a fiction created by law for convenience and to promote justice. So, when the notion of separate juridical personality is used to defeat public convenience, justify wrong, protect fraud or defend crime, or is used as a device to defeat the labor laws, this separate personality of the corporation may be disregarded or the veil of corporate fiction pierced. This is true likewise when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation.
>
> xxx xxx xxx
>
> The test in determining the applicability of the doctrine of piercing the veil of corporate fiction is as follows:
>
> 1. Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
>
> 2. Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust acts in contravention of plaintiffs legal rights; and
>
> 3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.[22]

This case meets the foregoing test. VMSC is a family-owned corporation of which Avelino was president. Avelino committed fraud in selling the vehicle to petitioners, a vehicle that was previously sold to Avelino's other cousin, Esmeraldo. Nowhere in the pleadings did Avelino refute the fact that the vehicle in this case was already previously sold to Esmeraldo; he merely insisted that he cannot be held liable because he was not a party to the transaction. The fact that Avelino and Pedro are

[22] G.R. No. 108734, May 29, 1996, 257 SCRA 149, 157-159.

cousins, and that Avelino claimed to have a need to increase the sales quota, was likely among the factors which motivated the spouses to buy the car. Avelino, knowing fully well that the vehicle was already sold, and with abuse of his relationship with the spouses, still proceeded with the sale and collected the down payment from petitioners. The trial court found that the vehicle was not delivered to the spouses. Avelino clearly defrauded petitioners. His actions were the proximate cause of petitioners' loss. He cannot now hide behind the separate corporate personality of VMSC to escape from liability for the amount adjudged by the trial court in favor of petitioners.

The fact that VMSC was not included as defendant in petitioners' third party complaint does not preclude recovery by petitioners from Avelino; neither would such non-inclusion constitute a bar to the application of the piercing-of-the-corporate-veil doctrine. We suggested as much in *Arcilla v. Court of Appeals*, an appellate proceeding involving petitioner Arcilla's bid to avoid the adverse CA decision on the argument that he is not personally liable for the amount adjudged since the same constitutes a corporate liability which nevertheless cannot even be enforced against the corporation which has not been impleaded as a party below. In that case, the Court found as well-taken the CA's act of disregarding the separate juridical personality of the corporation and holding its president, Arcilla, liable for the obligations incurred in the name of the corporation although it was not a party to the collection suit before the trial court. An excerpt from *Arcilla*:

> x x x In short, even if We are to assume *arguendo* that the obligation was incurred in the name of the corporation, the petitioner [Arcilla] would still be personally liable therefor because for all legal intents and purposes, he and the corporation are one and the same. Csar Marine Resources, Inc. is nothing more than his business conduit and alter ego. The fiction of separate juridical personality conferred upon such corporation by law should be disregarded. Significantly, petitioner does not seriously challenge the [CA's] application of the doctrine which permits the piercing of the corporate veil and the disregarding of the fiction of a separate juridical

personality; this is because he knows only too well that from the beginning, he merely used the corporation for his personal purposes.[23]

WHEREFORE, the CA's August 20, 2002 Decision and May 15, 2003 Resolution in CA-G.R. CV No. 48489 are *SET ASIDE* insofar as they dismissed without prejudice the third party complaint of petitioners-spouses Pedro and Florencia Violago against respondent Avelino Violago. The March 5, 1994 Decision of the RTC is *REINSTATED* and *AFFIRMED*. Costs against Avelino Violago.

SO ORDERED.

Quisumbing (Chairperson), Ynares-Santiago,[*] *Carpio Morales,* and *Tinga, JJ.,* concur.

THIRD DIVISION

[G.R. No. 158270. July 21, 2008]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HERMIN ARCEO, ROMEO L. SANTOS, MACARIO A. IGNACIO, AGNES D.C. MARQUEZ and RODEL V. DELA CRUZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PROPER MODE OF APPEAL FROM A DECISION OF SPECIAL AGRARIAN COURT IN A PETITION FOR DETERMINATION OF JUST COMPENSATION IS A PETITION FOR REVIEW UNDER RULE 43; *DE LEON*

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[23] G.R. No. 89804, October 23, 1992, 215 SCRA 120, 129.

[*] Additional member as per Special Order No. 509 dated July 1, 2008.

CASE MUST BE APPLIED PROSPECTIVELY FROM MARCH 20, 2003.— It can hardly be disputed that the instant case is covered by the Court's ruling in *De Leon*. In *De Leon*, this Court affirmed that the proper mode of appeal from a decision of the RTC, sitting as a special agrarian court, in a petition for determination of just compensation is a petition for review under Rule 43, not by a notice of appeal under Rule 41 of the 1997 Rules of Civil Procedure. This Court, however, later clarified that its decision in *De Leon* must be applied prospectively from **March 20, 2003**. This means that a notice of appeal filed before March 20, 2003 may still be given due course.

2. ID.; ID.; JUDGMENT; FINALITY OF JUDGMENT; DOCTRINE, APPLIED.— Notwithstanding the procedural lapse of the appellate court, We still affirm the RTC decision for having attained finality. The doctrine of finality of judgments provides that once judgment had become final and executory, it becomes immutable and can no longer be amended or modified. Records reveal that the RTC decision had attained finality. Per certification issued by the Postmaster of San Fernando, Pampanga, petitioner LBP received a copy of the RTC decision on **December 3, 2001**. It had fifteen (15) days, or until **December 18, 2001**, to file a motion for reconsideration or to appeal the RTC decision. Petitioner filed a motion for reconsideration only on **December 20, 2001**, or two (2) days beyond the reglementary period. At that time, the RTC decision was already final and executory. It is well-settled that court orders and decisions become final and executory by operation of law. It is the lapse of time which renders a court decision final and immutable.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.

H.E. Arceo & Associates Law Offices for respondent.

D E C I S I O N

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

This case illustrates an appeal deserving of dismissal not because of wrong mode of remedy but on the ground of tardiness. Once a judgment becomes final and executory, it becomes immutable. It can no longer be amended or modified.

Before Us is a petition for review on *certiorari* of the Resolutions[1] of the Court of Appeals (CA) dismissing the notice of appeal of petitioner Land Bank of the Philippines (LBP) from a Decision[2] of the Regional Trial Court (RTC) in a petition for determination of just compensation.

The Facts

In 1983, respondent Hermin E. Arceo acquired a 7.9842-hectare parcel of agricultural land situated in San Antonio, Nueva Ecija. The land was registered in his name under Transfer Certificate of Title No. NT-187449 of the Registry of Deeds of Nueva Ecija.

On April 29, 1998, respondent Arceo voluntarily offered to sell his agricultural land to the government under the provisions of Comprehensive Agrarian Reform Law (CARL).[3] The Department of Agrarian Reform (DAR) responded with a Notice of Acquisition, advising respondent Arceo that petitioner LBP shall make a determination of the value of his landholding pursuant to Executive Order No. 405.

After an ocular inspection of the agricultural land in the presence of some members of the *Barangay* Agrarian Reform Committee, petitioner LBP valued the entire landholding at ₱47,140.50 per hectare or a total of ₱376,379.18.[4]

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[1] *Rollo*, pp. 49-50. Resolution dated January 7, 2003 and Resolution dated May 8, 2003, both penned by Associate Justice Jose L. Sabio, with Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino, concurring.

[2] *Id.* at 216-225.

[3] Republic Act No. 6657. Effective on June 15, 1988.

[4] *Rollo*, p. 167.

Respondent Arceo rejected LBP's valuation. He elevated the matter to the Department of Agrarian Reform Adjudication Board (DARAB) in Nueva Ecija.

From the position papers submitted by the parties at the DARAB, it appeared that after respondent Arceo acquired what used to be an unproductive land from Nicolas Lumague of Malolos, Bulacan in 1983 at ₱391,700 per hectare, or a total of ₱3,127,411.14, he infused a considerable amount of capital for its improvement. He had the land bulldozed and cleared of "talahib" and "cogon" grass. He also treated the land with chemicals that would prevent further growth of weeds and other undesirable plants. He also provided it with water wells, dikes and irrigation canals. All these cost him a total of ₱574,862.40.[5]

Prior to its acquisition by DAR, respondent Arceo had the land planted with a variety of crops such as sorghum, *palay*, melon and other vegetables such as, but not limited to, corn, string beans, mongo. For planting *palay* from 1985 to 1990, he earned ₱748,518.75. For planting sorghum from 1991 to 1996, he earned ₱4,215,640.00. For planting other alternate crops between 1991 and 1996, he also derived additional income amounting to ₱3,592,890.00, which brought his produce to the total amount of ₱8,557,048.75.[6]

On September 23, 1999, DARAB rendered a decision fixing just compensation for the entire landholding at ₱8,577,048.75. Petitioner LBP moved for reconsideration but its motion was denied.

Undaunted, petitioner LBP sought judicial intervention with the RTC in Nueva Ecija pursuant to Section 18 of Republic Act (R.A.) No. 6657, which provides:

> Section 18. *Valuation and Mode of Compensation.* – The LBP shall compensate the landowner in such amount as may be agreed upon by the landowner and the DAR and the LBP, in accordance with the criteria provided for in Section 16 and 17 hereof, or **as**

[5] *Id.* at 127.

[6] *Id.*

may be finally determined by the court, as just compensation for the land. (Emphasis supplied)

RTC Disposition

On October 30, 2001, the RTC rendered a decision in favor of private respondent Arceo, with a *fallo* reading, thus:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1. Ordering the defendant Land Bank of the Philippines to pay to the Private Respondent Hermin E. Arceo the amount of ₱11,684,459.85 representing just compensation of the property with an area of 7.9842 hectares covered by TCT No. NT-187449 with legal interest from April 20, 1998 until fully paid in the mode of compensation as prescribed under Sec. 18 of RA 6657; and
> 2. Declaring the plaintiff entitled to the additional five (5%) percent cash payment under Sec. 19 thereof by way of incentive to plaintiff's voluntary offer to sell his property.
>
> No pronouncement as to costs.
>
> SO ORDERED.[7]

Petitioner LBP moved for reconsideration but its motion was denied.[8] It then filed a notice of appeal with the RTC under Rule 41 of the 1997 Rules of Civil Procedure.

CA Disposition

On January 7, 2003, the CA issued a resolution dismissing the notice of appeal of petitioner LBP for being an improper mode of remedy. The CA held that the proper mode of appeal from a decision of the RTC under the CARL is a petition for review under Rule 43, not a notice of appeal under Rule 41 of the 1997 Rules of Civil Procedure, thus:

> Sec. 60 of Republic Act 6657 otherwise known as the Comprehensive Agrarian Reform Code of the Philippines provides that "(A)n appeal may be taken from the decision of the Special

[7] *Id*. at 225.

[8] *Id*. at 500.

Agrarian Court by filing **a petition for review** with the Court of Appeals within fifteen (15) days from the receipt of the notice of the decision, otherwise the decision shall become final x x x."

In the instant case, the trial court acting as a Special Agrarian Court for the determination of just compensation, rendered the assailed decision; instead of filing a petition for review, petitioner filed a notice of appeal.

In view of the provisions of RA 6657, the instant appeal is hereby ordered DISMISSED for being a wrong remedy.

SO ORDERED.[9]

Petitioner LBP sought reconsideration but it was denied on May 8, 2003. Hence, the present petition for review on *certiorari*.

During the pendency of the appeal with the CA, this Court rendered a decision in the similar case of *Land Bank of the Philippines v. De Leon*,[10] reiterating that the proper mode of appeal from a decision of the RTC in a petition for determination of just compensation is a petition for review, thus:

A petition for review, not an ordinary appeal, is the proper procedure in effecting an appeal from decisions of the Regional Trial Courts acting as Special Agrarian Courts in cases involving the determination of just compensation to the landowners concerned. Section 60 of RA 6657 clearly and categorically states that the said mode of appeal should be adopted. There is no reason for a contrary interpretation. Where the law is clear and categorical, there is no room for construction, but only application.[11]

In a motion for reconsideration, this Court clarified the *Land Bank of the Philippines v. De Leon*[12] ruling to apply **prospectively** from March 20, 2003, thus:

On account of the absence of jurisprudence interpreting Section 60 and 61 of RA 6657 regarding the proper way to appeal decisions

[9] *Id.* at 49.

[10] G.R. No. 143275, September 10, 2002, 388 SCRA 537.

[11] *Land Bank of the Philippines v. De Leon, id.* at 543.

[12] G.R. No. 143275, March 20, 2003, 399 SCRA 376.

of Special Agrarian Courts, as well as the conflicting decisions of the Court of Appeals thereon, LBP cannot be blamed for availing of the wrong mode. Based on its own interpretation and reliance on the *Buenaventura* ruling, LBP acted on the mistaken belief that an ordinary appeal is the appropriate manner to question decisions of Special Agrarian Courts.

Hence, in the light of the aforementioned circumstances, we find it proper to emphasize the prospective application of our Decision dated September 10, 2002. A prospective application of our Decision is not only grounded on equity and fair play but also based on the constitutional tenet that rules of procedure shall not impair substantive rights.[13]

Issues

Petitioner LBP raises triple issues for Our consideration, thus:

A

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW WHEN IT RULED THAT NOTICE OF APPEAL IS A "WRONG REMEDY" IN APPEALING THE DECISION OF A SPECIAL AGRARIAN COURT TO THE SAME APPELLATE COURT, IN UTTER DISREGARD OF THIS HONORABLE COURT'S *EN BANC* RESOLUTION DATED 20 MARCH 2003 IN G.R. NO. 143275 TITLED "*LAND BANK OF THE PHILIPPINES VS. ARLENE DE LEON AND BERNARDO DE LEON*" WHICH CLARIFIED THAT ITS DECISION THEREIN DATED 10 SEPTEMBER 2002 SHOULD BE ACCORDED PROSPECTIVE APPLICATION. HENCE, PRIOR TO THE FINALITY OF THE DECISION DATED 10 SEPTEMBER 2002, NOTICE OF APPEAL AND PETITION FOR REVIEW, AS MODES OF APPEAL, ARE LEGALLY PERMISSIBLE.

B

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW WHEN IT MADE A STRICT OR RIGID INTERPRETATION OF A PROCEDURAL LAW AT THE EXPENSE OF SUBSTANTIAL JUSTICE AND THE RIGHT TO APPEAL OF PETITIONER.

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[13] *Land Bank of the Philippines v. De Leon, id.* at 382-383.

C

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW WHEN IT IGNORED SECTION 6, RULE I OF THE 1997 RULES OF CIVIL PROCEDURE IN REGARD TO THE LIBERAL CONSTRUCTION THEREOF TO PROMOTE THEIR OBJECT AND ASSIST THE PARTIES IN OBTAINING A JUST, SPEEDY AND INEXPENSIVE DETERMINATION OF EVERY ACTION OR PROCEEDING, AND APPLICABLE JURISPRUDENCE ON THE MATTER LAID DOWN BY THIS HONORABLE COURT.[14] (Underscoring supplied)

Essentially, petitioner LBP imputes to the CA the lone error of dismissing its notice of appeal in view of this Court's resolution that the *De Leon* decision will only apply prospectively from March 20, 2003.

Our Ruling

Ruling in De Leon case applies: notice of appeal still a proper remedy before March 20, 2003.

It can hardly be disputed that the instant case is covered by the Court's ruling in *De Leon*. In *De Leon*, this Court affirmed that the proper mode of appeal from a decision of the RTC, sitting as a special agrarian court, in a petition for determination of just compensation is a petition for review under Rule 43, not by a notice of appeal under Rule 41 of the 1997 Rules of Civil Procedure. This Court, however, later clarified that its decision in *De Leon* must be applied prospectively from **March 20, 2003**. This means that a notice of appeal filed before March 20, 2003 may still be given due course.

Records show that the notice of appeal was filed by petitioner LBP on February 13, 2002, or before the March 20, 2003 cut off. Thus, the CA resolution of outright dismissal of the appeal is flawed.

In fairness to the CA, however, there is no way in which the said court could have foreseen that this Court would revisit the

[14] *Rollo*, pp. 29-30.

decision in *De Leon* and opt to apply it prospectively. *De Leon* was originally promulgated on September 10, 2002. There, this Court was explicit that a notice of appeal is a wrong mode of appeal from the RTC decision in a petition for determination of just compensation. The CA merely followed the *De Leon* ruling when it dismissed the appeal of petitioner LBP on January 7, 2003.

As it turned out, this Court revisited *De Leon* in a motion for reconsideration and ruled, based on equity and fair play, that its decision must only be given prospective application. This meant that a notice of appeal filed before March 20, 2003 may still be given due course. By then, the CA stuck to its original resolution and denied the motion for reconsideration of petitioner LBP.

At any rate, the prospective application of the *De Leon* decision is now part of jurisprudence. The doctrine of *stare decisis* dictates that We must apply the ruling in *De Leon* to the present petition. On this score, the CA erred in dismissing the notice of appeal of petitioner LBP.

The RTC decision is already final and executory; doctrine of finality of judgments

Notwithstanding the procedural lapse of the appellate court, We still affirm the RTC decision for having attained finality. The doctrine of finality of judgments provides that once judgment had become final and executory, it becomes immutable and can no longer be amended or modified. In *Gallardo-Corro v. Gallardo*,[15] this Court held:

> Nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Just as the losing party has the right to file an appeal within the

[15] G.R. No. 136228, January 30, 2001, 350 SCRA 568.

prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case. The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice, and that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law; otherwise, there would be no end to litigations, thus setting to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by setting justiciable controversies with finality.[16]

In the recent case of *Social Security System v. Isip*,[17] this Court reiterated the long established doctrine, thus:

> When a final judgment is executory, it becomes immutable and unalterable. It may no longer be modified in any respect either by the court which rendered it or even by this Court. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.
>
> The doctrine of immutability and inalterability of a final judgment has a two-fold purpose: (1) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business and (2) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Controversies cannot drag on indefinitely. The rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[18]

Records reveal that the RTC decision had attained finality. Per certification issued by the Postmaster of San Fernando, Pampanga,[19] petitioner LBP received a copy of the RTC decision on **December 3, 2001**. It had fifteen (15) days, or until **December 18, 2001**, to file a motion for reconsideration or to appeal the RTC decision. Petitioner filed a motion for reconsideration only on **December 20, 2001**, or two (2) days beyond the

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[16] *Gallardo-Corro v. Gallardo, id.* at 578.

[17] G.R. No. 165417, April 4, 2007, 520 SCRA 310.

[18] *Social Security System v. Isip, id.* at 315.

[19] *Id.* at 496.

reglementary period.[20] At that time, the RTC decision was already final and executory. It is well-settled that court orders and decisions become final and executory by operation of law.[21] It is the lapse of time which renders a court decision final and immutable.

The Constitution mandates payment of just compensation before the State may acquire private property. A landowner deserves nothing less than prompt and due payment.

Itinatadhana ng Konstitusyon ang pagbabayad ng tamang halaga bago makuha ng Estado ang pag-aaring pribado. Marapat na ang may-ari ng lupa ay tumanggap agad ng kaukulang bayad.

Here, respondent Arceo waited for more than ten (10) years for fair payment of his landholdings. To date, the State still owes him just compensation. Given the finality of the RTC decision and the considerable lapse of time since the State acquired the subject property, it is only fair that respondent Arceo should be paid his just compensation in accordance with the final and executory RTC decision.

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

SO ORDERED.

Ynares-Santiago (Chairperson), Quisumbing,[*] *Austria-Martinez,* and *Nachura, JJ.,* concur.

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[20] The 15-day period expired on December 18, 2001, which is a Tuesday.

[21] *Testate Estate of Maria Manuel Vda. de Biascan v. Biascan,* G.R. No. 138731, December 11, 2000, 347 SCRA 621.

[*] Vice Associate Justice Minita V. Chio-Nazario. Justice Nazario is on official leaveper Special Order No. 508 dated June 25, 2008.

THIRD DIVISION

[G.R. No. 160219. July 21, 2008]

VECTOR SHIPPING CORPORATION and FRANCISCO SORIANO, *petitioners, vs.* **ADELFO B. MACASA, EMELIA B. MACASA, TIMOTEO B. MACASA, CORNELIO B. MACASA, JR., and ROSARIO C. MACASA, SULPICIO LINES, INC., GO GUIOC SO, ENRIQUE S. GO, EUSEBIO S. GO, RICARDO S. GO, VICTORIANO S. GO, EDWARD S. GO, ARTURO S. GO, EDGAR S. GO and EDMUNDO S. GO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; IN A PETITION FOR REVIEW ON *CERTIORARI*, ONLY QUESTIONS OF LAW MAY BE RAISED; DISTINCTION BETWEEN A QUESTION OF LAW AND QUESTION OF FACT, RE-STATED; APPLICATION.— It is a well-established doctrine that in petitions for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, only questions of law may be raised by the parties and passed upon by this Court. This Court defined a question of law, as distinguished from a question of fact, to wit: A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. **Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.** Petitioners' insistence that MV Doña Paz was at fault at the time of the collision will

entail this Court's review and determination of the weight, credence, and probative value of the evidence presented. This Court is being asked to evaluate the pieces of evidence which were adequately passed upon by both the RTC and the CA. Without doubt, this matter is essentially factual in character and, therefore, outside the ambit of a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure. Petitioners ought to remember that this Court is not a trier of facts. It is not for this Court to weigh these pieces of evidence all over again.

2. ID.; APPEALS; COURT OF APPEALS; FINDINGS OF FACT THEREOF ARE GENERALLY BINDING ON THE SUPREME COURT.— We reiterate, anew, the rule that findings of fact of the CA are generally binding and conclusive on this Court. While this Court has recognized several exceptions to this rule, none of these exceptions finds application in this case. It bears emphasis also that this Court accords respect to the factual findings of the trial court, especially if affirmed by the CA on appeal. Unless the trial court overlooked substantial matters that would alter the outcome of the case, this Court will not disturb such findings. In any event, we have meticulously reviewed the records of the case and found no reason to depart from the rule.

APPEARANCES OF COUNSEL

Cruz and Pascual Law Offices for petitioners.
Conrado Macasa, Sr. for respondents.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision[2] dated September 24,

[1] *Rollo,* pp. 9-30.

[2] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Conrado M. Vasquez, Jr. (now CA Presiding Justice) and Arsenio J. Magpale, concurring; *id*. at 34-48.

2003, which affirmed with modification the Decision[3] of the Regional Trial Court (RTC), Branch 17 of Davao City, dated May 5, 1995.

The Facts

On December 19, 1987, spouses Cornelio (Cornelio) and Anacleta Macasa (Anacleta), together with their eight-year-old grandson, Ritchie Macasa, (Ritchie) boarded the *MV Doña Paz*, owned and operated by respondent Sulpicio Lines, Inc. (Sulpicio Lines), at Tacloban, Leyte bound for Manila. On the fateful evening of December 20, 1987, *MV Doña Paz* collided with the *MT Vector*, an oil tanker owned and operated by petitioners Vector Shipping Corporation (Vector Shipping) and Francisco Soriano (Soriano), which at the time was loaded with 860,000 gallons of gasoline and other petroleum products, in the vicinity of Dumali Point, Tablas Strait, between Marinduque and Oriental Mindoro. Only twenty-six persons survived: 24 passengers of *MV Doña Paz* and 2 crew members of *MT Vector*. Both vessels were never retrieved. Worse, only a few of the victims' bodies, who either drowned or were burned alive, were recovered. Cornelio, Anacleta and Ritchie were among the victims whose bodies have yet to be recovered up to this day.

Respondents Adelfo, Emilia, Timoteo, and Cornelio, Jr., all surnamed Macasa, are the children of Cornelio and Anacleta. On the other hand, Timoteo and his wife, respondent Rosario Macasa, are the parents of Ritchie (the Macasas). Some of the Macasas went to the North Harbor in Manila to await the arrival of Cornelio, Anacleta and Ritchie. When they heard the news that *MV Doña Paz* was rammed at sea by another vessel, bewildered, the Macasas went to the office of Sulpicio Lines to check on the veracity of the news, but the latter denied that such an incident occurred. According to the Macasas, Sulpicio Lines was uncooperative and was reluctant to entertain their inquiries. Later, they were forced to rely on their own efforts to search for the bodies of their loved ones, but to no avail.

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[3] *Rollo*, pp. 233-254.

The Macasas manifested that before they filed a case in court, Sulpicio Lines, through counsel, intimated its intention to settle, and offered the amount of ₱250,000.00 for the death of Cornelio, Anacleta and Ritchie. The Macasas rejected the said offer. Thus, on October 2, 1991, the Macasas filed a Complaint for Damages arising out of breach of contract of carriage against Sulpicio Lines before the RTC. The complaint imputed negligence to Sulpicio Lines because it was remiss in its obligations as a common carrier. The Macasas prayed for civil indemnity in the amount of ₱800,000.00 for the death of Cornelio, Anacleta and Ritchie, as well as for Cornelio's and Anacleta's alleged unearned income since they were both working as vocational instructors before their demise. The Macasas also claimed ₱100,000.00 as actual and compensatory damages for the lost cash, checks, jewelries and other personal belongings of the latter, ₱600,000.00 in moral damages, ₱100,000.00 by way of exemplary damages, and ₱100,000.00 as costs and attorney's fees.

Sulpicio Lines traversed the complaint, alleging, among others that (1) *MV Doña Paz* was seaworthy in all aspects; (2) it exercised extraordinary diligence in transporting their passengers and goods; (3) it acted in good faith as it gave immediate assistance to the survivors and kin of the victims; (4) the sinking of *MV Doña Paz* was without contributory negligence on its part; and (5) the collision was *MT Vector*'s fault since it was allowed to sail with an expired coastwise license, expired certificate of inspection and it was manned by unqualified and incompetent crew members per findings of the Board of Marine Inquiry (BMI) in BMI Case No. 653-87 which had exonerated Sulpicio Lines from liability. Thus, Sulpicio Lines filed a Third-Party Complaint against *Vector Shipping*, Soriano and Caltex Philippines Inc. (Caltex), the charterer of *MT Vector*.

Trial on the merits ensued.

The RTC's Ruling

In its Decision[4] dated May 5, 1995, the RTC awarded ₱200,000.00 as civil indemnity for the death of Cornelio, Anacleta

[4] *Id.* at 253-254.

and Ritchie; ₱100,000.00 as actual damages; ₱500,000.00 as moral damages; ₱100,000.00 as exemplary damages; and ₱50,000.00 as attorney's fees. The case was disposed of in this wise:

> Accordingly, as a result of this decision, on plaintiffs' complaint against third-party (sic) defendant Sulpicio Lines Inc., third-party defendant Caltex Philippines, Inc. and third-party defendant MT Vector Shipping Corporation and/or Francisco Soriano, are liable against defendant third-party plaintiff, Sulpicio Lines, for reimbursement, subrogation and indemnity on all amounts, defendant Sulpicio Lines was ordered liable against plaintiffs, by way of actual, moral, exemplary damages and attorney's fee, MT Vector Shipping Lines and/or Francisco Soriano, third-party defendants, are ordered jointly and severally, liable to pay third-party plaintiff, Sulpicio Lines, by way of reimbursement, subrogation and indemnity, of all the above amounts, ordered against defendant Sulpicio Lines, Inc., to pay in favor of plaintiff, with interest and cost of suit.
>
> SO ORDERED.[5]

Aggrieved, Sulpicio Lines, Caltex, Vector Shipping and Soriano appealed to the CA.

The CA's Ruling

In the assailed Decision[6] dated September 24, 2003, the CA held:

> WHEREFORE, all premises considered, the assailed decision is hereby ***modified*** in that third-party defendant-appellant Caltex Phils., Inc. is hereby exonerated from liability. The ₱100,000 actual damages is ***deleted*** while the indemnity for (sic) is reduced to ₱150,000. All other aspects of the appealed judgment are perforce ***affirmed***.
>
> SO ORDERED.[7]

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[5] *Id.* at 253-254.

[6] *Id.* at 34-48.

[7] *Id.* at 48.

The Issues

Hence, this Petition raising the following issues:

1) May the decision of the Board Marine Inquiry (BMI) which, to date, is still pending with the Department of National Defense (DND) and, therefore, deemed vacated as it is not yet final and executory, be binding upon the court?

2) In the absence of clear, convincing, solid, and concrete proof of including, but not limited to, absence of eyewitnesses on that tragic maritime incident on 20 December 1987, will it be in consonance with law, logic, principles of physics, and/or allied science, to hold that MT VECTOR is the vessel solely at fault and responsible for the collision? How about MV DOÑA PAZ, a bigger ship of 2,324.08 gross tonnage (5-deck cargo passenger vessel, then cruising at 16.5 knots)? As compared to MT VECTOR of 629.82 gross tonner tanker, then cruising at 4.5 knots? May it be considered that, as between the two vessels, MV DOÑA PAZ could ha[ve] avoid[ed] such collision had there been an official on the bridge, and that MV DOÑA PAZ could had been earlier alarmed by its radar for an approaching vessel?

3) May VECTOR and SORIANO be held liable to indemnify/ reimburse SULPICIO the amounts it is ordered to pay the MACASA's because SULPICIO's liability arises from breach of contract of carriage, inasmuch as in "culpa contractual" it is sufficient to prove the existence of the contract, because carrier is presumed to be at fault or to have acted negligently it being its duty to exercise extraordinary diligence, and cannot make the [safety] of its passengers dependent upon the diligence of VECTOR and SORIANO?

4) Will it be in accord with existing law and/or jurisprudence that both vessels (MV DOÑA PAZ and MT VECTOR) be declared mutually at fault and, therefore, each must [bear] its own loss? In the absence of CLEAR and CONVINCING proof[,] who is solely at fault?[8]

Petitioners posit that the factual findings of the BMI are not binding on the Court as such is limited to administrative liabilities

[8] *Id.* at 274-290.

and does not absolve the common carrier from its failure to observe extraordinary diligence; that this Court's ruling in *Caltex (Philippines), Inc. v. Sulpicio Lines, Inc.*[9] is not *res adjudicata* to this case, since there were several other cases which did not reach this Court but, however, attained finality, previously holding that petitioners and Sulpicio Lines are jointly and severally liable to the victims;[10] that the collision was solely due to the fault of *MV Doña Paz* as it was guilty of navigational fault and negligence; that due to the absence of the ship captain and other competent officers who were not at the bridge at the time of collision, and running at a speed of 16.5 knots, it was the *MV Doña Paz* which rammed *MT Vector*; and that it was improbable for a slower vessel like *MT Vector* which, at the time, was running at a speed of merely 4.5 knots to ram a much faster vessel like the *MV Doña Paz*.[11]

On the other hand, Sulpicio Lines claims that this Court's ruling in *Caltex (Philippines), Inc. v. Sulpicio Lines, Inc.*[12] is *res adjudicata* to this case being of similar factual milieu and that the same is the law of the case on the matter; that the BMI proceedings are administrative in nature and can proceed independently of any civil action filed with the regular courts; that the BMI findings, as affirmed by the Philippine Coast Guard, holding that *MT Vector* was solely at fault at the time of collision, were based on substantial evidence and by reason of its special knowledge and technical expertise, the BMI's findings of facts are generally accorded respect by the courts; and that, as such, said BMI factual findings cannot be the subject of the instant petition for review asking this Court to look again into the pieces of evidence already presented. Thus, Sulpicio Lines prays that the instant Petition be denied for lack of merit.[13]

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[9] 374 Phil. 325 (1999).

[10] Consolidated Reply of Petitioners dated June 29, 2005; *rollo*, pp. 146-157.

[11] Petitioners' Memorandum dated November 12, 2005; *id*. at 274-290.

[12] *Supra* note 9.

[13] Sulpicio Lines' Memorandum dated November 4, 2005; *rollo*, pp. 180-202.

In their memorandum, the Macasas manifest that they are basically concerned with their claims against Sulpicio Lines for breach of contract of carriage. The Macasas opine that the arguments raised by Sulpicio Lines in its attempt to avoid liability to the Macasas are without basis in fact and in law because the RTC's Decision is supported by applicable provisions of law and settled jurisprudence on contract of carriage. However, they disagree with the CA on the deletion of the RTC's award of ₱100,000.00 actual damages. The CA's simple justification that if indeed the victims had such huge amount of money, they could have traveled by plane instead of taking the *MV Doña Paz*, according to the Macasas, is unjust, misplaced and adds insult to injury. They insist that the claim for actual damages was duly established in the hearings before the RTC by ample proof that Cornelio and Anacleta were both professionals; that they were in possession of personal effects and jewelries; and that since it was the Christmas season, the spouses intended a vacation in Manila and buy things to bring home as gifts. The Macasas also appeal that the reduction of the civil indemnity for the death of Cornelio, Anacleta and Ritchie from ₱200,000.00 to ₱150,000.00 be reconsidered. Thus, the Macasas pray that the RTC Decision be affirmed *in toto* and/or the CA Decision be modified with respect to the deleted award of actual damages and the reduced civil indemnity for the death of the victims.[14]

This Court's Ruling

The instant Petition lacks merit.

It is a well-established doctrine that in petitions for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, only questions of law may be raised by the parties and passed upon by this Court. This Court defined a question of law, as distinguished from a question of fact, to wit:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or

[14] Macasas' Memorandum dated November 4, 2005; *id*. at 204-232.

any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. **Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.**[15]

Petitioners' insistence that *MV Doña Paz* was at fault at the time of the collision will entail this Court's review and determination of the weight, credence, and probative value of the evidence presented. This Court is being asked to evaluate the pieces of evidence which were adequately passed upon by both the RTC and the CA. Without doubt, this matter is essentially factual in character and, therefore, outside the ambit of a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure. Petitioners ought to remember that this Court is not a trier of facts. It is not for this Court to weigh these pieces of evidence all over again.[16]

Likewise, we take judicial notice[17] of our decision in *Caltex (Philippines), Inc. v. Sulpicio Lines, Inc.*[18] In that case, while

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[15] *Binay v. Odeña*, G.R. No. 163683, June 8, 2007, 524 SCRA 248, 255-256, citing *Velayo-Fong v. Velayo*, 510 SCRA 320, 329-330 (2006) (Emphasis supplied).

[16] *Basmayor v. Atencio*, G.R. No. 160573, October 19, 2005, 473 SCRA 382, 389, citing *Omandam v. Court of Appeals*, 349 SCRA 483, 488 (2001).

[17] In *Asian Transmission Corporation v. Canlubang Sugar Estates*, 457 Phil. 260, 283 (2003), citing *Republic v. Court of Appeals*, 277 SCRA 633 (1997), we ruled that:

Mr. Justice Edgardo L. Paras opined:

"A court will take judicial notice of its own acts and records in the same case, of facts established in prior proceedings in the same case, of the authenticity of its own records of another case between the same parties, of the files of related cases in the same court, and of public records on file in the same court. In addition, judicial notice will be taken of the record, pleadings or judgment of a case in another court between the same parties or involving one of the same parties, as well as of the record of another case between different parties in the same court. Judicial notice will also be taken of court personnel."

[18] *Supra* note 9, at 725.

Caltex was exonerated from any third-party liability, this Court sustained the CA ruling that Vector Shipping and Soriano are liable to reimburse and indemnify Sulpicio Lines for whatever damages, attorney's fees and costs the latter is adjudged to pay the victims therein.

Petitioners' invocation of the pendency before this Court of *Francisco Soriano v. Sulpicio Lines, Inc.*[19] along with *Vector Shipping Corporation and Francisco Soriano v. American Home Assurance Co. and Sulpicio Lines, Inc.*[20] is unavailing. It may be noted that in a Resolution dated February 13, 2006, this Court denied the petition in *Francisco Soriano v. Sulpicio Lines, Inc.* for its failure to sufficiently show that the CA committed any reversible error in the challenged decision as to warrant the exercise of this Court's discretionary appellate jurisdiction. As a result, the CA decision[21] dated November 17, 2003 holding that Sulpicio Lines has a right to reimbursement and indemnification from the third-party defendants Soriano and Vector Shipping, who are the same petitioners in this case, was sustained by this Court. Considering that in the cases which have reached this Court, we have consistently upheld the third-party liability of petitioners, we see no cogent reason to deviate from this ruling.

Moreover, in *Caltex (Philippines), Inc. v. Sulpicio Lines, Inc.*,[22] we held that *MT Vector* fits the definition of a common carrier under Article 1732[23] of the New Civil Code. Our ruling in that case is instructive:

> Thus, the carriers are deemed to warrant impliedly the seaworthiness of the ship. For a vessel to be seaworthy, it must be adequately

[19] Particularly docketed as G.R. No. 160839.

[20] Particularly docketed as G.R. No. 159213.

[21] Particularly docketed as CA-G.R. CV No. 58014.

[22] *Supra* note 9, at 718-720.

[23] ARTICLE 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers for passengers or goods or both, by land, water, or air for compensation, offering their services to the public.

equipped for the voyage and manned with a sufficient number of competent officers and crew. The failure of a common carrier to maintain in seaworthy condition the vessel involved in its contract of carriage is a clear breach of its duty prescribed in Article 1755 of the Civil Code.

The provisions owed their conception to the nature of the business of common carriers. This business is impressed with a special public duty. The public must of necessity rely on the care and skill of common carriers in the vigilance over the goods and safety of the passengers, especially because with the modern development of science and invention, transportation has become more rapid, more complicated and somehow more hazardous. For these reasons, a passenger or a shipper of goods is under no obligation to conduct an inspection of the ship and its crew, the carrier being obliged by law to impliedly warrant its seaworthiness.

Thus, we are disposed to agree with the findings of the CA when it aptly held:

We are not swayed by the lengthy disquisition of MT Vector and Francisco Soriano urging this Court to absolve them from liability. All evidence points to the fact that it was MT Vector's negligent officers and crew which caused it to ram into MV Doña Paz. More so, MT Vector was found to be carrying expired coastwise license and permits and was not properly manned. As the records would also disclose, there is a defect in the ignition system of the vessel, and it was not convincingly shown whether the necessitated repairs were in fact undertaken before the said ship had set to sea. In short, MT Vector was unseaworthy at the time of the mishap. That the said vessel was allowed to set sail when it was, to everyone in the group's knowledge, not fit to do so translates into rashness and imprudence.[24]

We reiterate, anew, the rule that findings of fact of the CA are generally binding and conclusive on this Court.[25] While this Court has recognized several exceptions[26] to this rule, none

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[24] *Rollo,* p. 41.

[25] *Republic v. Bautista,* G.R. No. 169801, September 11, 2007, 532 SCRA 598, 606, citing *Baricuatro v. Court of Appeals*, 382 Phil. 15, 24 (2000).

[26] The exceptions are: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly

of these exceptions finds application in this case. It bears emphasis also that this Court accords respect to the factual findings of the trial court, especially if affirmed by the CA on appeal. Unless the trial court overlooked substantial matters that would alter the outcome of the case, this Court will not disturb such findings. In any event, we have meticulously reviewed the records of the case and found no reason to depart from the rule.[27]

Lastly, we cannot turn a blind eye to this gruesome maritime tragedy which is now a dark page in our nation's history. We commiserate with all the victims, particularly with the Macasas who were denied justice for almost two decades in this case. To accept petitioners' submission that this Court, along with the RTC and the CA, should await the review by the Department of National Defense of the BMI findings, would, in effect, limit the courts' jurisdiction to expeditiously try, hear and decide cases filed before them. It would not only prolong the Macasas' agony but would result in yet another tragedy at the expense of speedy justice. This, we cannot allow.

WHEREFORE, the instant Petition is *DENIED*. The assailed Court of Appeals Decision dated September 24, 2003 is hereby *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, will justify a different conclusion.

[27] *Solidbank Corporation/Metropolitan Bank and Trust Company v. Tan*, G.R. No. 167346, April 2, 2007, 520 SCRA 123, 128, citing *Bordalba v. Court of Appeals*, 425 Phil. 407 (2002).

Quisumbing,[*] *Ynares-Santiago (Chairperson), Carpio,*[**] and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 160940. July 21, 2008]

MEGAFORCE SECURITY and ALLIED SERVICES, INC., and RAUL MANALO, *petitioners, vs.* **HENRY LACTAO and NATIONAL LABOR RELATIONS COMMISSION,** *respondents.*[*]

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OFEMPLOYMENT; DISMISSAL OF EMPLOYEE; TEMPORARY "OFF-DETAIL" STATUS OF A SECURITY GUARD FOR MORE THAN SIX MONTHS CONSTITUTES CONSTRUCTIVE DISMISSAL.— In cases involving security guards, a relief and transfer order in itself does not sever employment relationship between a security guard and his agency. An employee has the right to security of tenure, but this does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where his service, as security guard, will be most beneficial to the client. Temporary "off-detail" or the period of time security guards are made to wait until they are transferred or assigned to a new post or client does

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[*] In lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 508, dated June 25, 2008.

[**] In lieu of Associate Justice Alicia Austria-Martinez per raffle dated June 23, 2008.

[*] The Court of Appeals is deleted from the title per Section 4, Rule 45 of the Rules of Court.

not constitute constructive dismissal as their assignments primarily depend on the contracts entered into by the security agencies with third parties. Indeed, the Court has repeatedly recognized that "off-detailing" is not equivalent to dismissal, so long as such status does not continue beyond a reasonable time; when such a "floating status" lasts for more than six months, the employee may be considered to have been constructively dismissed. However, in the present case, while the charge of illegal dismissal may have been premature because Lactao has not been given a new assignment or temporary "off-detail" for a period of seven days only when he amended his complaint, the continued failure of Megaforce to offer him a new assignment during the proceedings of the case before the LA and beyond the reasonable six-month period makes it liable for constructive dismissal. There is constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice by him except to forego his continued employment. It exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay. As Lactao averred in his Memorandum before the Court, "[w]hile [Megaforce] alleged that [Lactao] was not dismissed, they failed to offer him reinstatement or give him work assignment during the mandatory conciliation of this case before the LA. Even when the writ of execution for his reinstatement was served upon them on July 20, 2004, [Megaforce] refused to reinstate him." Clearly, the supposed temporary "off-detail" of Lactao was meant to be a permanent one.

2. ID.; ID.; ID.; ABANDONMENT, NOT A CASE OF.— The Court cannot accept the contention of Megaforce that Lactao did not report to work after his recall and had abandoned his job since it failed to present credible proof of any act on the part of Lactao to abandon his employment. Moreover, it is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with abandonment of employment. An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work. The filing of such complaint is proof enough of his desire to return to work, thus negating any suggestion of abandonment.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE ALLEGATIONS OF THE PETITION DETERMINE WHETHER THE RELIEF SOUGHT SHOULD BE GRANTED, NOT THE NON-FILING OF THE COMMENT OR MEMORANDUM.— It is clear that it is not the filing or non-filing of the comment and/or memorandum which determines whether the petition should be granted or dismissed, but whether the allegations of the petition are meritorious as to warrant the relief sought. Indeed, when a respondent fails to file his comment within the given period, the court may decide the case on the basis of the records before it, specifically the petition and its attachments. Thus, the CA ruled in favor of Lactao and against Megaforce after finding that, based on the allegations of the petition and parts of case records and documents attached thereto, the petition has no merit.

APPEARANCES OF COUNSEL

Jose T. Collado, Jr. for petitioners.

Nilo O. Ramoso & Associates for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.:*

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated May 29, 2003 of the Court of Appeals (CA) which dismissed petitioners' Petition for *Certiorari* in CA-G.R. SP No. 73156, and the CA Resolution[2] dated November 24, 2003 which denied petitioners' Motion for Reconsideration.

The factual background of the case is as follows:

On April 28, 1998, Megaforce Security and Allied Services, Inc. (Megaforce) hired Henry Lactao (Lactao) as a security

[1] Penned by Associate Justice Sergio L. Pestaño and concurred in by Associate Justices Bernardo P. Abesamis and Noel G. Tijam, CA *rollo*, p. 108.

[2] *Id.* at 128.

guard. He was detailed at Merville Park Subdivision in Parañaque City.

On April 4, 2000, Lactao filed with the Arbitration Branch of the National Labor Relations Commission (NLRC), National Capital Region a complaint against Megaforce for underpayment of wages, non-payment of overtime pay, service incentive leave pay and 13th month pay.[3]

On May 3, 2000, Lactao was reassigned to ABB Industry, Inc. in Sucat, Parañaque City.

On May 30, 2000, Megaforce, thru its Operations Manager, Lt. Col. Nicomedes P. Olaso, issued a Recall Order,[4] recalling Lactao from his assignment at ABB Industry, Inc. effective May 31, 2000 and directing him to report to the Headquarters for proper disposition and new assignment.

From May 31 to June 6, 2000, Lactao reported to the Headquarters but he was not given a new assignment. Believing he was terminated, Lactao amended his complaint on June 7, 2000 to one for illegal dismissal with prayer for reinstatement with the same prayer for underpayment of wages, non-payment of overtime pay, service incentive leave pay and 13th month pay, plus moral and exemplary damages and attorney's fees.

In his Position Paper[5] dated August 14, 2000, Lactao claims that in retaliation to his filing of a complaint for underpayment of wages; and non-payment of overtime pay, service incentive leave pay and 13th month pay, Megaforce constructively dismissed him by relieving him from his post and not giving him a new assignment.

In its Position Paper[6] dated August 30, 2000, Megaforce, thru its General Manager, co-petitioner Raul U. Manalo (Manalo), denied the illegal dismissal charge. It alleged that Lactao had committed various offenses such as abandoning his post and

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[3] *Id*. at 54.

[4] *Id*. at 56.

[5] *Id*. at 49.

[6] *Id*. at 35.

sleeping on duty during his detail at Merville Park Subdivision; when Lactao was reassigned to ABB Industry, Inc., the Management thereof requested that he be relieved of his post because of improper discipline and appearance, *i.e.*, for incomplete or worn-out paraphernalia and unshaved moustache; on May 30, 2000, it issued a Recall Order of Lactao's assignment at ABB Industry, Inc., effective May 31, 2000 with instruction that he should report to the Headquarters for proper disposition and new assignment; and Lactao never reported to the Headquarters after his relief.

On May 29, 2001, the Labor Arbiter (LA) rendered a Decision[7] dismissing the complaint for lack of merit.

Dissatisfied, Lactao filed an Appeal Memorandum with the NLRC. On April 15, 2002, the NLRC rendered a Decision[8] setting aside the Decision of the LA, ruling that the fact that Lactao was not given new assignment from May 31, 2000 up to the filing of the complaint leads to the conclusion that he was constructively dismissed without valid or authorized cause, thus making the same illegal. Hence, the NLRC ordered Megaforce to reinstate Lactao to his former or equivalent position and to pay his backwages from the time of his dismissal until he was actually reinstated. Lactao's other claims were denied for lack of merit.[9]

On May 20, 2002, Megaforce filed a Motion for Reconsideration[10] but it was denied by the NLRC in its Resolution[11] dated July 24, 2002.

On October 4, 2002, Megaforce filed a Petition for *Certiorari*[12] with the CA. Despite due notice, Lactao did not file his Comment and Memorandum.

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[7] *Id*. at 58.

[8] *Id*. at 24.

[9] *Id*. at 30.

[10] *Id*. at 68.

[11] *Id*. at 33.

[12] *Id*. at 2.

On May 29, 2003, the CA rendered a Decision[13] dismissing the petition, ruling that the NLRC did not commit grave abuse of discretion in finding that Lactao was constructively dismissed. It held that Lactao was constructively dismissed when Megaforce did not give him a new assignment in spite of the recall order which specifically directed him to report to Megaforce's office for disposition and new assignment; Megaforce failed to give Lactao notice that he was being put on "floating status"; the inaction of Megaforce gave the impression that he was being eased out from his work by not being given a new assignment.

On July 1, 2003, Megaforce filed a Motion for Reconsideration[14] but it was denied by the CA in its Resolution[15] dated November 24, 2003.

Hence, the present petition.

Megaforce contends that it is not guilty of illegal dismissal because Lactao was merely recalled from his post and the failure to give him a new assignment within seven days from his recall is not constructive dismissal because a security guard may be placed on "floating status" for a period not exceeding six months under prevailing jurisprudence; Lactao never reported back for reassignment and his refusal to report back to work should not be taken against it; and the CA erred in ruling in Lactao's favor when the latter failed to file his Comment and Memorandum.

Lactao insists that he was constructively dismissed when he was recalled from his post at ABB Industry, Inc. without being informed that he was being placed on "floating status" or given a new assignment.

The petition is bereft of merit.

In cases involving security guards, a relief and transfer order in itself does not sever employment relationship between a security

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[13] *Supra* note 1.

[14] CA *rollo*, p. 117.

[15] *Supra* note 2.

guard and his agency.[16] An employee has the right to security of tenure, but this does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where his service, as security guard, will be most beneficial to the client.[17] Temporary "off-detail" or the period of time security guards are made to wait until they are transferred or assigned to a new post or client does not constitute constructive dismissal as their assignments primarily depend on the contracts entered into by the security agencies with third parties.[18] Indeed, the Court has repeatedly recognized that "off-detailing" is not equivalent to dismissal, so long as such status does not continue beyond a reasonable time; when such a "floating status" lasts for more than six months, the employee may be considered to have been constructively dismissed.[19]

However, in the present case, while the charge of illegal dismissal may have been premature because Lactao has not been given a new assignment or temporary "off-detail" for a period of seven days only when he amended his complaint, the continued failure of Megaforce to offer him a new assignment during the proceedings of the case before the LA and beyond the reasonable six-month period makes it liable for constructive dismissal.

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[16] *OSS Security & Allied Services, Inc. v. National Labor Relations Commission*, 382 Phil. 35, 44 (2000); *Sentinel Security Agency, Inc. v. National Labor Relations Commission*, 356 Phil. 434, 444 (1998).

[17] *Tinio v. Court of Appeals*, G.R. No.171764, June 8, 2007, 524 SCRA 533, 540; *OSS Security & Allied Services, Inc. v. National Labor Relations Commission, supra* note 16, at 45.

[18] See *Mobile Protective & Detective Agency v. Ompad*, G.R. No. 159195, May 9, 2005, 458 SCRA 308, 322-323; *Philippine Industrial Security Agency Corporation v. Dapiton*, 377 Phil. 951, 961-962 (1999).

[19] See *Veterans Security Agency, Inc. v. Gonzalvo, Jr.*, G.R. No. 159293, December 16, 2005, 478 SCRA 298, 308; *Mobile Protective & Detective Agency v. Ompad*, *supra* note 18, at 323; *Soliman Security Services, Inc. v. Court of Appeals*, 433 Phil. 902, 910 (2002); *Valdez v. National Labor Relations Commission*, 349 Phil. 760, 766 (1998); *Superstar Security Agency, Inc. v. National Labor Relations Commission*, G.R. No. 81493, April 3, 1990, 184 SCRA 74, 77; *Agro Commercial Security Services Agency, Inc., v. National Labor Relations Commission*, G.R. Nos. 82823-24, July 31, 1989, 175 SCRA 790, 797.

There is constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice by him except to forego his continued employment.[20] It exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay.[21]

As Lactao averred in his Memorandum before the Court, "[w]hile [Megaforce] alleged that [Lactao] was not dismissed, they failed to offer him reinstatement or give him work assignment during the mandatory conciliation of this case before the LA. Even when the writ of execution for his reinstatement was served upon them on July 20, 2004, [Megaforce] refused to reinstate him."[22] Clearly, the supposed temporary "off-detail" of Lactao was meant to be a permanent one.

The Court cannot accept the contention of Megaforce that Lactao did not report to work after his recall and had abandoned his job since it failed to present credible proof of any act on the part of Lactao to abandon his employment. Moreover, it is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with abandonment of employment. An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work.[23] The filing of such complaint is proof enough of his desire to return to work, thus negating any suggestion of abandonment.[24]

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[20] *Fungo v. Lourdes School of Mandaluyong,* G.R. No. 152531, July 27, 2007, 528 SCRA 248, 256-257; *The Philippine American Life and General Insurance Co. v. Gramaje*, G.R. No. 156963, November 11, 2004, 442 SCRA 274, 290.

[21] *Duldulao v. Court of Appeals,* G.R. No. 164893, March 1, 2007, 517 SCRA 191, 199; *Phil. Employ Services and Resources, Inc. v. Paramio,* G.R. No. 144786, April 15, 2004, 427 SCRA 732, 753-754.

[22] *Rollo,* p. 268.

[23] *GSP Manufacturing Corporation v. Cabanban,* G.R. 150454, July 14, 2006, 495 SCRA 123, 126; *Samarca v. Arc-Men Industries, Inc*., 459 Phil. 506, 515 (2003).

[24] *Far East Agricultural Supply, Inc. v. Lebatique,* G.R. No. 162813, February 12, 2007, 515 SCRA 491, 498; *Anflo Management & Investment Corp. v. Bolanio*, 439 Phil. 309, 318 (2002).

Under Article 279 of the Labor Code, as amended, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges; to his full backwages, inclusive of allowances; and to 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, Lactao is entitled to reinstatement and backwages as a necessary consequence.

With respect to the question of whether the CA erred in ruling in Lactao's favor despite his failure to submit his comment and memorandum, suffice it to say that non-submission of Lactao's comment and memorandum does not mean that the appellate court shall *ipso facto* rule in favor of the petitioner and grant the petition. The applicable provision is Section 8, Rule 65 of the Rules of Court, which provides:

> SEC. 8. *Proceedings after comment is filed*. — After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court may hear the case or require the parties to submit memoranda. **If after such hearing or submission of memoranda or the expiration of the period for the filing thereof the court finds that the allegations of the petition are true, it shall render judgment for the relief prayed for or to which the petitioner is entitled**.
>
> The court, however, may dismiss the petition if it finds the same to be patently without merit, prosecuted for delay, or that the questions raised there are too unsubstantial to require consideration. (Emphasis supplied)

From the foregoing provision, it is clear that it is not the filing or non-filing of the comment and/or memorandum which determines whether the petition should be granted or dismissed, but whether the allegations of the petition are meritorious as to warrant the relief sought. Indeed, when a respondent fails to file his comment within the given period, the court may decide the case on the basis of the records before it, specifically the petition and its attachments.[25] Thus, the CA ruled in favor of

[25] RULES OF COURT, Rule 46, Sec. 7, provides:

Lactao and against Megaforce after finding that, based on the allegations of the petition and parts of case records and documents attached thereto, the petition has no merit.

WHEREFORE, the petition is *DENIED.* The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 73156 are *AFFIRMED*.

The present case is thus *REMANDED* to the Labor Arbiter for the computation, within thirty (30) days from receipt hereof, of the backwages, inclusive of allowances and other benefits due respondent Henry Lactao, computed from the time his compensation was withheld up to the time of his actual reinstatement.

Costs against petitioner.

SO ORDERED.

Quisumbing,[**] *Ynares-Santiago (Chairperson), Nachura,* and *Reyes, JJ.,* concur.

SEC. 7. *Effect of failure to file comment*. – When no comment is filed by any of the respondents, the case may be decided on the basis of the record, without prejudice to any disciplinary action which the court may take against the disobedient party. (See *DHL-URFA-FFW v. Buklod Ng Manggagawa ng DHL Phil. Corp*., 478 Phil. 842, 852 [2004]; see also *Ramoran v. Jardine CMG Life Insurance Co., Inc.*, 383 Phil. 83, 99 [2000]).

[**] In lieu of Justice Minita V. Chico-Nazario, per Special Order No. 508 dated June 25, 2008.

THIRD DIVISION

[G.R. No. 160965. July 21, 2008]

PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, *petitioner, vs.* **MARIA NYMPHA MANDAGAN,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL OF EMPLOYEE; THE RULE THAT THE BURDEN OF PROOF RESTS UPON THE EMPLOYER TO SHOW THAT THE DISMISSAL OF THE EMPLOYEE IS FOR JUST OR AUTHORIZED CAUSE, STRESSED.— We must stress, however, that in termination cases, the burden of proof rests upon the employer to show that the dismissal of the employee is for just or authorized cause. Failure to do so would mean that the dismissal is not justified. This is consonant with the guarantee of security of tenure in the Constitution and reiterated in the Labor Code. A dismissed employee is not required to prove his innocence of the charges leveled against him by his employer. Likewise, the determination of the existence and sufficiency of a just cause is to be exercised with fairness and in good faith and after observing due process.

2. ID.; ID.; ID.; ID.; APPLICATION OF THE RULE.— We agree with the CA that petitioner failed to show by clear and convincing evidence that respondent was indeed guilty of moonlighting as defined under the PNCC Code of Employee Discipline, *i.e.*, rendering services for another employer **without the knowledge OR approval of management.** In the manner in which the rule is phrased, since the words "knowledge" and "approval" are separated by the disjunctive **OR,** it is evident that even knowledge alone by the management of PNCC of the alleged moonlighting is tantamount to an implied approval and is sufficient to exonerate respondent from liability. Therefore, it cannot be said that her appearance in the ejectment case of PNCC Corporate Comptroller Ramirez was without the knowledge of management considering that the former PNCC top officers were the ones who asked her to do so.

Moreover, when she filed her application for leave of absence during one of her hearings, she specifically stated in the leave form that her absence was due to the filing of the ejectment complaint for Mr. Ramirez, and this application was approved by petitioner.

3. ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE AS A VALID GROUND FOR DISMISSAL, DISCUSSED.— Long recognized is the right of employers to dismiss employees by reason of loss of trust and confidence, particularly in cases of personnel occupying positions of responsibility. The burden of proof required in labor cases, however, must be amply discharged. Ordinarily, with respect to managerial employees, the mere existence of a basis for believing that such employee has breached the trust of his employer would be enough, such as when there is a reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of trust and confidence demanded by his position. We must stress herein that to be a valid ground for dismissal, the loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Loss of trust and confidence must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion, otherwise, the employee would forever remain at the mercy of the employer. The employer, thus, carries the burden of clearly and convincingly establishing the facts upon which loss of confidence in the employee is made to rest. Loss of trust and confidence as a ground for dismissal has never been intended to afford an occasion for abuse because of its subjective nature. It should not be used as a subterfuge for causes which are illegal, improper, and unjustified. It must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith. Let it not be forgotten that what is at stake is the means of livelihood, the name, and the reputation of the employee. To countenance an arbitrary exercise of that prerogative is to negate the employee's constitutional right to security of tenure.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Law Firm of Coluso Chica & Associates for respondent.

D E C I S I O N

NACHURA, *J.*:

For resolution is a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure seeking the review and the reversal of the Decision[2] dated May 29, 2002 and the Resolution[3] dated November 10, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 63166.

Petitioner Philippine National Construction Corporation (PNCC) hired respondent Maria Nympha Mandagan on December 16, 1995, as Legal Assistant, with the rank of Assistant Manager, on probationary status while she was waiting for the results of the Bar examinations. Respondent was assigned to the corporate legal division where she performed research work, drafted legal opinions, served as a member of a management collective bargaining agreement (CBA) negotiating panel, and handled litigation, mostly labor cases. On June 16, 1996, after successfully hurdling the Bar examinations, respondent was issued a regular appointment by petitioner.

On June 2, 1998, petitioner issued a memorandum[4] to respondent requiring her to show cause in writing why no disciplinary action should be taken against her for committing acts violative of the PNCC Code of Employee Discipline, to wit:

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[1] *Rollo*, pp. 39-70.

[2] Penned by Associate Justice Ruben T. Reyes (now Associate Justice of the Supreme Court), with Associate Justices Renato C. Dacudao and Amelita G. Tolentino, concurring. *id*. at 73-81.

[3] *Id.* at 83-84.

[4] Records, p. 34.

1. Engaging in private law practice which is in violation of Section 6(a), Section 6(b)(26) and Section 11 of the PNCC Code of Employee Discipline;

2. Using the company's official address as your address for your private case which is not only in violation of Section 8(A)(1) of the PNCC Code on Employee Discipline but is prejudicial to the best interests of the PNCC; and

3. Representing a client who has a pending case against PNCC which is not only prejudicial to the interests of the company but is in violation of the ethics of your profession.[5]

This memorandum was served on respondent on the eve of June 3, 1998 at her residence.

On June 4, 1998, in reply, respondent wrote a strongly worded memorandum[6] stating that she took offense at the manner of service of the office memorandum. According to her, the June 2, 1998 memorandum was merely a scheme intended to terminate her from employment. She said it was sparked by the incident on March 30, 1998 in which she was seen with then PNCC Corporate Comptroller Renato R. Ramirez, who was able to enter the PNCC compound despite being unauthorized to do so, he having filed a constructive dismissal case against petitioner.

On June 9, 1998, respondent submitted another memorandum[7] denying the charges against her, claiming that the case she handled was only an accommodation, accepted by her upon the request and authority of then PNCC President Melvin Nazareno and Mr. Ramirez, and that she was on leave at every scheduled hearing of the said case. She explained that she had the distinct impression that the lawyers of the PNCC Legal Division can take on accommodation cases. She cited as an example Atty. Glenna Jean Ogan who, appearing as counsel for PNCC employee Fabian Codera, was even provided with a service vehicle and considered on official time during hearings. She further explained that when a petition for the annulment of judgment was filed

[5] *Id*.

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

[7] *Id*. at 42.

with the regional trial court (RTC) assailing the final and executory decision in the ejectment case in favor of Mr. Ramirez, she desisted from representing the latter. She said that she signed, as counsel of record, the petition for *certiorari* filed before the CA only for the purpose of terminating it. She also claimed that there was no conflict of interest between Ramirez's labor and ejectment cases since the former was still pending resolution.

Petitioner, thereafter, conducted a clarificatory hearing.

Later, petitioner, thru then PNCC President and Chief Executive Officer Rogelio L. Luis, sent respondent a letter[8] dated June 15, 1998 notifying her that her explanation in both memoranda and her statements during the clarificatory conference were inconsistent, unacceptable, and, by themselves, admission of the truth of the charges against her. As a consequence, her employment would be terminated effective at the close of office hours on June 19, 1998 for violations of the PNCC Code of Employee Discipline and for loss of trust and confidence.

On October 28, 1998, respondent initiated a complaint[9] for illegal dismissal against petitioner and four (4) of its corporate officers.

In a Decision[10] dated July 15, 1999, Labor Arbiter (LA) Edgardo M. Madriaga dismissed the complaint for being unmeritorious, stating that petitioner was justified in dismissing respondent for loss of trust and confidence for handling the constructive dismissal case of Mr. Ramirez against PNCC, in a conflict of interest with her employer. Petitioner was, however, directed to pay respondent separation pay in accordance with law.

Aggrieved, respondent appealed the said Decision to the National Labor Relations Commission (NLRC). In the Resolution[11] promulgated July 31, 2000, the NLRC Second Division denied the appeal for lack of merit. While affirming

[8] *Id.* at 33.

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

[10] *Rollo*, pp. 97-105.

[11] *Id.* at 87-95.

in toto the Decision of LA Madriaga, the NLRC, however, declared that the allegation of conflict of interest was baseless as respondent was able to refute the same by documentary evidence that the labor case of Mr. Ramirez against petitioner was represented by another counsel. The dismissal of respondent was upheld on the ground that she failed to adduce documentary evidence to show that her appearance in the ejectment case of Mr. Ramirez was with the authority and approval of then PNCC President Nazareno and Mr. Ramirez. By reason thereof, the NLRC gave more credence to the theory of petitioner that she violated the PNCC Code of Employee Discipline on moonlighting and using company property for personal purposes. Respondent's motion for reconsideration was, likewise, denied in a Resolution[12] dated November 8, 2000.

Respondent thus went to the CA via a special civil action for *certiorari* under Rule 65 of the Rules of Court. This time, the tide turned in her favor. In its Decision[13] dated May 29, 2002, the CA annulled the Decision and Resolutions of the LA and the NLRC, respectively, for lack of sufficient proof that respondent did engage in the private practice of law since there was only a single case involved which had the corresponding authorization from her superiors. Finding the dismissal of respondent illegal, the CA ordered petitioner to pay respondent separation pay, in lieu of reinstatement, in view of their already strained relations, and full backwages from date of dismissal until the finality of its Decision.

Petitioner moved for the reconsideration of the CA Decision insisting *inter alia* that respondent's handling of even only a single non-PNCC case already constituted a violation of the PNCC Code of Employee Discipline, since moonlighting is strictly prohibited under existing company rules and regulations.

The CA, in its assailed Resolution dated November 10, 2003, denied petitioner's motion for lack of merit, citing *Office of the Court Administrator v. Atty. Misael M. Ladaga*[14] which held

[12] *Id.* at 27.

[13] *Id.* at 73-81.

[14] 403 Phil. 228 (2001).

that an isolated appearance did not constitute private practice of law, especially when done with the permission of superiors.

Hence, this petition assigning the following errors:

I

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT HEREIN RESPONDENT DID NOT VIOLATE ANY COMPANY POLICY OR REGULATION WHEN SHE HANDLED A PRIVATE CASE AND USED COMPANY TIME AND FACILITIES FOR SUCH UNAUTHORIZED OUTSIDE ENGAGEMENT.

II

THE COURT OF APPEALS GRAVELY ERRED WHEN IT FOUND NO VALID CAUSE TO TERMINATE THE EMPLOYMENT OF HEREIN RESPONDENT, A MANAGERIAL EMPLOYEE, FOR VIOLATION OF COMPANY RULES, BREACH OF TRUST, AND/OR LOSS OF CONFIDENCE.

III

THE COURT OF APPEALS GRAVELY ERRED WHEN IT ANNULLED THE RESOLUTIONS OF THE NLRC AND GRANTED HEREIN RESPONDENT'S PETITION FINDING THE NLRC TO HAVE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.[15]

In a nutshell, petitioner contends that the CA erred in holding that respondent's dismissal was illegal when it ruled that respondent did not violate the PNCC Code of Employee Discipline on moonlighting and personal use of company time and property despite undisputed and overwhelming evidence to the contrary. It posits that respondent readily admitted rendering services outside PNCC in her pleadings and her taking advantage of office time and property was shown by using the address of PNCC for her personal cases and utilizing her leave credits to attend hearings. It further claims that the CA gravely erred in reversing the findings of both the LA and the NLRC despite existing jurisprudence to the effect that their findings are entitled to great weight and respect, nay conclusiveness, when buttressed

[15] *Rollo,* pp. 49-50.

by substantial evidence. This is in addition to the fact that the case cited by the CA is not on all fours with the present case. It also asserts that respondent's fault-finding cannot exculpate her from her misdeeds. In view of these, petitioner insists that, as employer who is given a wide latitude in determining who among its managerial employees are entitled to its trust and confidence, and also taking into consideration its findings of her alleged frequent tardiness and absences, her not being able to "get along well with her co-employees," and her misrepresentations in the resume she submitted to Malacañang to get a favorable endorsement for promotion, it is only justified in dismissing respondent from employment.

The petition is without merit.

In petitions for review before this Court, as a general rule, only questions of law are allowed. An exception to this is when the findings of the administrative agencies below and the appellate court differ, as in the case at bar.[16] Thus, an independent evaluation of the facts of this case is called for, especially considering that, while the LA and the NLRC both found respondent's dismissal valid and legal, the bases for their findings are also different.[17] Hence, the claim of petitioner that these findings are conclusive upon us is incorrect.

Petitioner dismissed respondent from employment because she was found guilty of the charges against her. It found respondent to have engaged in private law practice in violation of Sections 6(a)(b)(26) and 11 of the PNCC Code of Employee Discipline.[18] It also found her to have used the company's official address for her private case in violation of Section 8(A)(1) of the same Code, which is also prejudicial to its best interests. Finally, it found her to have represented a client who had a pending case against PNCC. The pertinent sections of the Code are quoted

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[16] *Eastern Telecommunications Phils., Inc. v. Diamse*, G.R. No. 169299, June 16, 2006, 491 SCRA 239, 243-244.

[17] *Skippers United Pacific, Inc. v. Maguad*, G.R. No. 166363, August 15, 2006, 498 SCRA 639, 657.

[18] Per the June 2, 1998 Memorandum, *supra* note 4.

hereunder:

SECTION 6. Conduct and Behavior

a. An employee's conduct in the performance of his duties should be beyond reproach and free from the appearance of impropriety.

xxx xxx xxx

b. x x x

26) Moonlighting or rendering services for another employer without the knowledge or approval of Management.

SECTION 8. Company Property. –

A. The following acts shall constitute violation of this section:

1) Using Company property, equipment or materials for personal use or purpose.

SECTION 11. Conflict of Interest. –

a. The following act shall constitute violation of this section:

1) Engaging, participating or involving oneself, directly or indirectly, in any transaction, undertaking, or business enterprise, where such engagement, participation, or involvement is in conflict with, or is improper or undesirable in the interest of the Company.[19]

The imposable penalties for the said offenses within a 12-month period are as follows: a) for moonlighting – a 5-day suspension for the first offense, a 15-day suspension for the second offense, and dismissal on the third offense; b) for the use of company property for personal purposes – suspension to dismissal, depending on the gravity of the offense; and c) for committing acts constituting conflict of interest – reprimand to dismissal depending on the gravity of the offense.

According to petitioner, respondent failed to substantiate her claim that her appearance in the ejectment case of Mr. Ramirez was upon his and former PNCC President Nazareno's authority and directive, since she did not present any documentary evidence

[19] Records, pp. 46-48.

to prove the same. To support its position that respondent was without the proper authority, it presented a handwritten note from Atty. Hoover Abling, former Head of the Legal Division of PNCC, stating that her appearance was without his prior authority and clearance.

We must stress, however, that in termination cases, the burden of proof rests upon the employer to show that the dismissal of the employee is for just or authorized cause. Failure to do so would mean that the dismissal is not justified. This is consonant with the guarantee of security of tenure in the Constitution[20] and reiterated in the Labor Code.[21] A dismissed employee is not required to prove his innocence of the charges leveled against him by his employer. Likewise, the determination of the existence and sufficiency of a just cause is to be exercised with fairness and in good faith and after observing due process.

Thus, we agree with the CA that petitioner failed to show by clear and convincing evidence that respondent was indeed guilty of moonlighting as defined under the PNCC Code of Employee Discipline, *i.e.*, rendering services for another employer **without the knowledge OR approval of management**. In the manner in which the rule is phrased, since the words "knowledge" and "approval" are separated by the disjunctive **OR**, it is evident that even knowledge alone by the management of PNCC of the alleged moonlighting is tantamount to an implied approval and is sufficient to exonerate respondent from liability.

Therefore, it cannot be said that her appearance in the ejectment case of PNCC Corporate Comptroller Ramirez was without the knowledge of management considering that the former PNCC top officers were the ones who asked her to do so. Moreover, when she filed her application for leave of absence during one of her hearings, she specifically stated in the leave form that her absence was due to the filing of the ejectment complaint for Mr. Ramirez, and this application was approved by petitioner.

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[20] Philippine Constitution, Art. 13, Sec. 3.

[21] Labor Code (as amended), Art. 227(b).

We also find the handwritten note of the former head of the Legal Division, Atty. Hoover Abling, presented by petitioner to refute respondent's allegation of approval from the top management of PNCC, to be of questionable probative value in light of respondent's revelation that Atty. Abling himself appeared as counsel before the Metropolitan Trial Court of Manila, Branch 3, in the criminal case for violation of Batas Pambansa Blg. 22[22] filed against the wife of Jose Z. Gregorio, employee of PNCC. From the proceedings before the LA to its pleadings before this Court, the petitioner has consistently kept silent about the matter.

It may also be mentioned that respondent proffered documentary evidence in the form of an exchange of correspondence showing that another member of the Legal Division, Atty. Glenna Jean Ogan, was hired by the very same Mr. Ramirez to handle his annulment case for a fee.[23] Again, this Court notes that petitioner tried to dodge this allegation by simply claiming that respondent's "name-dragging" will not exculpate her from her misdeeds.

The CA, thus, did not err in citing *Office of the Court Administrator v. Atty. Misael M. Ladaga*[24] because the June 2, 1998 Memorandum enumerated among the violations committed by respondent the "private practice of law." In the cited case, we held that "private practice of law" does not refer to an isolated court appearance but contemplates a succession of acts of the same nature habitually or customarily holding one's self to the public as a lawyer.

As to the charge that respondent made personal use of company property, the only evidence submitted by petitioner were copies of the complaint filed before the MTC, Parañaque City and copies of the pleadings and resolutions in the CA case, showing that her mailing address corresponded to the company's address. As respondent pointed out, there was no proof from petitioner

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[22] Bouncing Checks Law.

[23] *Rollo*, pp. 160 and 161.

[24] *Supra* note 14.

as to her use of any other properties belonging to the company. It is safe to assume that respondent received personal mail using the address of petitioner because, since it pertained to the same ejectment suit which the former top PNCC officers authorized her to litigate, the handling of the said case would be more convenient. As there is no express prohibition under the PNCC Code of Employee Discipline as to the use of the company's address to receive personal mail, and, more importantly, there is no clear and convincing proof presented by petitioner as to the prejudice it suffered from such respondent's act, the charge of violation of the PNCC Code of Employee Discipline, Sec. 8(A)(1) should fall.

With respect to petitioner's claim that respondent's appearance in the same ejectment case was in conflict with the interests of the company, the NLRC correctly found that she was able to refute the allegation by submitting evidence that the constructive dismissal case of Mr. Ramirez was handled by Saguisag & Associates.[25] The petitioner's assertion is, thus, belied by the record.

We likewise disagree with petitioner's position that, in addition to the ascribed violations of the PNCC Code of Employee Discipline, it was justified in terminating respondent from employment because of her alleged frequent tardiness and absences, her inability to get along with some of her co-workers, and her misrepresentations in the resume she submitted to Malacañang. The respondent properly concluded that the claim of frequent absences and tardiness due to attendance to her private cases, and her inability to get along well with some co-workers were not amply substantiated, as they were, in fact, rebutted by her performance rating for the period July 1996 to April 1997 indicating that she was "[p]roficient in the duties of her position."[26] Anent her alleged misrepresentations in her resume submitted to Malacañang to gain a favorable endorsement for promotion, we note that this was raised by petitioner for

[25] Annexes "B" and "C" to respondent's Appeal Memorandum before the NLRC; Records, pp. 177-197 and 198-200, respectively.

[26] *Rollo*, pp. 162-163.

the first time in the proceedings before the LA, the same not being included in the charges enumerated in the June 2, 1998 Memorandum. In other words, these causes were merely an afterthought, resorted to by petitioner in a futile attempt to justify its decision to terminate respondent's employment on the ground of loss of trust and confidence.

Long recognized is the right of employers to dismiss employees by reason of loss of trust and confidence, particularly in cases of personnel occupying positions of responsibility. The burden of proof required in labor cases, however, must be amply discharged. Ordinarily, with respect to managerial employees, the mere existence of a basis for believing that such employee has breached the trust of his employer would be enough, such as when there is a reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of trust and confidence demanded by his position.[27]

Be that as it may, we must stress herein that to be a valid ground for dismissal, the loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Loss of trust and confidence must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion, otherwise, the employee would forever remain at the mercy of the employer. The employer, thus, carries the burden of clearly and convincingly establishing the facts upon which loss of confidence in the employee is made to rest.[28]

Loss of trust and confidence as a ground of dismissal has never been intended to afford an occasion for abuse because of

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[27] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, G.R. No. 148410, January 17, 2005, 448 SCRA 516, 529-530.

[28] *AMA Computer College, Inc. v. Garay*, G.R. No. 162468, January 23, 2007, 512 SCRA 312, 316-317.

its subjective nature. It should not be used as a subterfuge for causes which are illegal, improper, and unjustified. It must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith. Let it not be forgotten that what is at stake is the means of livelihood, the name, and the reputation of the employee. To countenance an arbitrary exercise of that prerogative is to negate the employee's constitutional right to security of tenure.[29]

However, it should be remembered that petitioner is a government-owned and controlled corporation. The handling by the lawyers in its employ of cases of its employees, whether for a fee or not, and despite the "knowledge and approval" of management, while not absolutely prohibited is, nonetheless, discouraged, as it could only breed corruption and cause distraction from the very duties that the lawyers were precisely hired for. The fact that a number of lawyers in petitioner's employ have handled private cases, obviously with the tolerance of petitioner, does not validate the practice or make it an acceptable rule of conduct. A wrong done by many does not make a right.

In light of the foregoing, we find that respondent, although not entirely faultless, was indeed illegally dismissed from employment by petitioner. Consequently, she is entitled to reinstatement without loss of seniority rights and other privileges, and to full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time of the withholding of the employee's compensation up to the time of actual reinstatement. If reinstatement is not possible due to the strained relations between the employer and the employee, separation pay should instead be paid the employee equivalent to one month salary for every year of service, computed from the time of engagement up to the finality of this decision.

WHEREFORE, the Decision dated May 29, 2002 and the Resolution dated November 10, 2003 of the Court of Appeals in CA-G.R. SP No. 63166 are *AFFIRMED*.

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[29] *Philippine National Construction Corporation v. Matias*, G.R. No. 156283, May 6, 2005, 458 SCRA 148, 163.

SO ORDERED.

Quisumbing,[*] *Ynares-Santiago (Chairperson), Austria-Martinez,* and *Tinga,*[**] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 165471. July 21, 2008]

EMETERIO O. PASIONA, JR., *petitioner, vs.* **COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, and SAN MIGUEL CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; FINALITY OF JUDGMENT; IMPORTANCE THEREOF, REITERATED; RELEVANT RULINGS, CITED.— The Court re-emphasizes the doctrine of finality of judgment. In *Alcantara v. Ponce*, the Court, citing its much earlier ruling in *Arnedo v. Llorente*, stressed the importance of said doctrine, to wit: It is true that it is the purpose and intention of the law that courts should decide all questions submitted to them "as truth and justice require," and that it is greatly to be desired that all judgments should be so decided; but controlling and irresistible reasons of public policy and of sound practice in the courts demand that **at the risk of occasional error,** judgments of courts determining controversies submitted to them should become final at some definite time fixed by law, or by a rule of practice recognized by law, so as to be **thereafter beyond the control even of the court which rendered them** for the

[*] In lieu of Associate Justice Minita V. Chico-Nazario, per Special Order No. 508, dated June 25, 2008.

[**] In lieu of Associate Justice Ruben T. Reyes, per Raffle dated June 25, 2008.

purpose of correcting errors of fact or of law, into which, in the opinion of the court it may have fallen. The very purpose for which the courts are organized is to put an end to controversy, to decide the questions submitted to the litigants, and to determine the respective rights of the parties. With the full knowledge that courts are not infallible, **the litigants submit their respective claims for judgment, and they have a right at some time or other to have final judgment on which they can rely as a final disposition of the issue submitted, and to know that there is an end to the litigation.** Then, in *Juani v. Alarcon*, it was held thus: This doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice. In fact, nothing is more settled in law than that **once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Again, in Dinglasan v. Court of Appeals,** the Court declared that: After the judgment or final resolution is entered in the entries of judgment, the case shall be laid to rest. x x x **The finality of decision is a jurisdictional event which cannot be made to depend on the convenience of the party.** To rule otherwise would completely negate the purpose of the rule on completeness of service, which is to place the date of receipt of pleadings, judgment and processes beyond the power of the party being served to determine at his pleasure. **It should also be borne in mind that the right of the winning party to enjoy the finality of the resolution of the case is also an essential part of public policy and the orderly administration of justice. Hence, such right is just as weighty or equally important as the right of the losing party to appeal or seek reconsideration within the prescribed period.**

2. ID.; ID.; ID.; ID.; TO JUSTIFY DEVIATION FROM THE PRINCIPLE OF FINALITY OF JUDGMENT, IT IS NECESSARY TO SHOW NOT ONLY THE COUNSEL'S GROSS NEGLIGENCE BUT THE DENIAL OF DUE PROCESS TO THE CLIENT BY REASON OF SUCH NEGLIGENCE.— In a long line of cases, the Court has upheld the principle that a client is bound by the action or mistakes

of his counsel, the only exception being, when such counsel's negligence is so gross and palpable resulting in the denial of due process to his client. It is undisputed that there was negligence on the part of petitioner's former counsel. However, **it is not only the gross negligence of counsel that would justify deviation from the principle of finality of judgment. It should be coupled with the denial of due process to the client by reason of said negligence.** Thus, the CA Decision can only be nullified if petitioner can successfully show that he was deprived of due process.

3. ID.; ID.; ID.; ID.; ID.; WHEN A PARTY WAS ABLE TO PRESENT ALL HIS EVIDENCE AND FULLY VENTILATED HIS ARGUMENTS, IT CAN NOT BE SAID THAT HE WAS DENIED DUE PROCESS.— In this case, petitioner's situation is far better than those of the aggrieved parties in the above-cited cases because **he had been able to present all his evidence and fully ventilate his arguments before the LA, then on appeal before the NLRC, and even in his petition for *certiorari* before the CA.** Akin to the aforementioned cases, herein petitioner's assertion, that he had been denied due process of law due to the negligence of counsel, is hollow. He had more than ample opportunity to be heard and fully thresh out his case. The reason he proffers as a ground for this Court to nullify the CA Decision - that his counsel's failure to notify him of the CA Decision and move for the reconsideration thereof deprived him of due process – had not been clearly established so as to justify divergence from the long-settled rule on finality of judgments and the principle that clients are bound by the actions of their counsels. Hence, the Court is bound by the CA's Decision which has become final and executory due to the simple negligence of petitioner's former counsel in not filing a motion for reconsideration within the reglementary period.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*, NOT PROPER REMEDY.— Even if this Court accedes to petitioner's request that he be considered to have received a copy of the CA Decision only on August 18, 2004, he is still not entitled to the remedy of a writ of *certiorari*. The Court categorically declared in *Iloilo La Filipina Uygongco Corporation v. Court of Appeals*, that if what is being assailed is a CA Decision, then "Rule 45 of the Rules of Civil Procedure specifically provides that an

appeal by *certiorari* from the judgments or final orders or resolutions of the CA is by *verified petition for review on certiorari*." Thus, even if petitioner is deemed to have received a copy of the petition on August 18, 2004, he only had 15 days therefrom within which to file a petition for review on *certiorari* under Rule 45. Thus, when he filed the instant petition for *certiorari* on October 18, 2004, the period to appeal had already expired, rendering the CA Decision final and executory. To repeat, *certiorari* is not a substitute for lost appeal.

APPEARANCES OF COUNSEL

Tan & Venturanza Law Offices for petitioner.

De la Rosa & Nograles for private respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.:*

This resolves the Petition for *Certiorari* under Rule 65 of the Rules of Court, seeking the nullification of the Decision[1] of the Court of Appeals (CA) dated April 30, 2004 dismissing the petition for *certiorari* filed by Emeterio O. Pasiona, Jr. (petitioner).

The antecedent facts, as accurately summarized by the CA, are as follows.

Records show that petitioner Emeterio Pasiona, Jr. was employed by San Miguel Corporation (SMC) as Account Specialist on February 1, 1986. He was assigned at the Naga Sales Office of the SMC for three (3) years handling the Partido Area, particularly, Lagonoy, Tigaon, Goa and other adjacent municipalities, all of Camarines Sur and was receiving a monthly salary of ₱19,440.00 and an average monthly commission of ₱10,000.00.

On August 18, 1997, SMC, through Mr. Gil Guerrero, issued a Memorandum requiring petitioner to explain within 48 hours from

[1] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Godardo A. Jacinto and Rosmari D. Carandang, concurring; *rollo*, pp. 48-54.

receipt thereof why the following violations of company policies occurred in his area of responsibility, to wit:

1. Unauthorized check acceptance from Customer Gloria Cariaga for ₱5,218.00.

2. Unauthorized check acceptance from Troy Monasterio for ₱242,978.76 on SMB Check payable to SMB Warehousing Services operated by Troy Monasterio.

3. Indication of irregularities on transactions related to price rollback:

    a. Pulled-out 40 cs. RPT – the partially unliquidated obligation of Mayor Melgarejo on the "Poronete" event was delivered to petitioner's brother Ike Pasiona the rebate of which after the price rollback was given to the latter by converting the amount of ₱1,800.00 to its equivalent of 8 cs. RH500;

    b. Rebates amounting to ₱2,655.00 were converted to 9 cases PP320 in the name of Marcel Pan were likewise delivered to and signed by certain "Pasiona"; the SMC delivery team claimed that they were delivered and received by Mrs. Pasiona;

    c. Questionable inventory counted by petitioner, *i.e.*, 40 RPT, 10 RH330 and 70 RH500, since purchases showed a record of 150 cases last October 31, 1996, 1 rpt on March 21, 1997; and 70 RH500 on May 15, 197; this refers to the inventory of Marcel Pan as counted by the petitioner;

    d. Rebates amounting to ₱6,075.00 were converted to 27 RH500 in the name of Vice Mayor Elias Pan of Goa, Camarines Sur but were likewise delivered to and signed by Ike Pasiona; and

    e. Rebates amounting to ₱7,050.00 were converted to 30 cases PP1000 in the name of Ernesto Torres (not a regular customer), but were also delivered to and received by Mrs. Pasiona.

4. Non-compliance in affixing the customer's signature and AS signature on the space provided for in the rover-generated receipts.

5. Vale issuances without approved vale request.

In accordance with the said Memorandum, petitioner wrote an explanation and submitted the same to the respondent SMC.

After due investigation, the management of SMC found petitioner guilty of gross negligence, withholding of funds due the company, and insubordination. Petitioner after notice, was subsequently terminated effective January 19, 1998.

Thus, on January 19, 1998, petitioner filed a complaint for illegal dismissal, praying for reinstatement without loss of seniority rights and other privileges, full back wages, inclusive of allowances, and other benefits or the monetary equivalent thereof. He further prayed that he be awarded ₱500,000.00 for moral damages and another ₱500,000.00 for exemplary damages, plus ₱50,000.00 as and by way of attorney's fees. The case was thereafter docketed as RAB 05-01-00009-98.

On November 24, 1999, after the parties had submitted their respective Position Papers and evidence, Labor Arbiter Rolando Bobis rendered a decision, the dispositive portion of which states:

> "WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the dismissal of complainant by respondent to be illegal thereby ordering the latter as follows:
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> 1. To reinstate complainant to his former position without loss of seniority rights within ten (10) days from receipt of this Decision. Should reinstatement be no longer feasible, to pay complainant separation pay equivalent to one-month salary for every year of his service commencing from the date of dismissal to the supposed date of reinstatement. A fraction of six-months or more is equivalent to one-year.
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> 2. To pay complainant backwages at the rate of ₱19,440.00 per month from the date of dismissal on January 19, 1998 up to the date of actual reinstatement, including monthly allowance of ₱10,000.00 per month as well as other benefits or its monetary equivalent, which as of this date of decision amounted to ₱677,120.00.
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> All other claims are hereby dismissed for lack of merit.

SO ORDERED.

Both parties appealed to the NLRC. On December 18, 2001, the NLRC rendered its assailed Decision, the dispositive portion of which states:

> "WHEREFORE, consistent with our finding that complainant's dismissal is valid, the assailed Decision of the Arbiter dated November 29, 1999 is hereby, REVERSED by declaring complainant's termination from employment valid and legal. Respondent, however, is ordered to pay complainant an average monthly variable monthly commissions of ₱10,000.00 from the period December 1999 up to the promulgation of this Decision. The Order of the Labor Arbiter dated August 6, 2000 awarding complainant the sum of ₱19,440.00 representing the one-time gift given by Eduardo M. Cojuanco, Jr., is hereby AFFIRMED.
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> SO ORDERED.[2]

From such adverse judgment, petitioner elevated his case to the CA *via* a petition for *certiorari*. On April 30, 2004, the CA promulgated the assailed Decision affirming the National Labor Relations Commission (NLRC) ruling, stating thus:

> In the case at bar, there is no dispute that **the petitioner is a regular employee of SMC and is occupying a position which calls for a high degree of trust and confidence**. As such employee, petitioner is expected to recognize the rules and regulations of the company which have not been declared to be illegal or improper by competent authorities for the purpose of maintaining the viability of its business. Despite knowledge thereof, **petitioner did some acts in direct violation of the company's policies**, thus, justifying the company's act of losing its confidence towards the petitioner. **Whatever may be the purpose behind the violation is immaterial**. **What matters is that petitioner knowingly violated the company's rules and regulations which constitutes a betrayal of the company's trust and confidence towards him.** Definitely, this constitutes just cause for termination of employment.[3] (Emphasis supplied)

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[2] *Id.* at 48-51.

[3] *Id.* at 53.

The dispositive portion of the CA Decision reads as follows:

> WHEREFORE, finding no merit to the instant petition, the same is hereby ordered **DISMISSED**. Consequently, the December 18, 2001 Decision and the March 26, 2002 Order of the National Labor Relations Commission, in CA No. 022470-00, are **AFFIRMED**.
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> SO ORDERED.[4]

No motion for reconsideration was filed by either party, hence, the Decision became final and executory and Entry of Judgment[5] was made by the CA on May 29, 2004.

Almost five months later, or on October 18, 2004, petitioner, a resident of Naga City, Camarines Sur, filed the present petition for *certiorari*, alleging that despite his inquiries with his former counsel, Atty. Apolinario N. Lomabao, regarding the status of his case with the CA, said counsel never informed him of the CA Decision and the non-filing of a motion for reconsideration thereof. It was only on August 18, 2004, upon coming to Manila to get his Bar Examination Permit from the Supreme Court, when he discovered that a CA Decision had already been promulgated on April 30, 2004. When he asked Atty. Lomabao why no motion for reconsideration was filed, said counsel allegedly answered that "the case will be dismissed by the Supreme Court anyway."[6] Petitioner then obtained the services of his present counsel of record and filed the instant petition.

Petitioner asserts that he should be allowed to avail of the remedy of *certiorari* because he was denied due process due to the recklessness and gross negligence of his former counsel and there is no other plain, speedy, and adequate remedy available to him in the ordinary course of law. **He prays for the Court to consider him to have received a copy of the CA Decision only on August 18, 2004**, when he personally obtained a copy thereof, instead of May 13, 2004, when his former counsel received a copy of the same.

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[4] *Id.* at 53-54.

[5] CA *rollo*, p. 409.

[6] Petition, *rollo*, p. 9.

Petitioner then alleges that the CA and the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding that there was just cause for the dismissal of petitioner and in affirming the said dismissal when a lesser penalty would have served the purpose.

Private respondent, on the other hand, insists that the proper remedy of an aggrieved party from a decision of the CA is a petition for review on *certiorari* under Rule 45 of the Rules of Court, not a petition for *certiorari* under Rule 65 of the same Rules. Private respondent further lays emphasis on the fact that the CA Decision had actually become final and executory as shown by the CA's Entry of Judgment.

The petition fails for lack of merit.

The Court re-emphasizes the doctrine of finality of judgment. In *Alcantara v. Ponce*,[7] the Court, citing its much earlier ruling in *Arnedo v. Llorente*,[8] stressed the importance of said doctrine, to wit:

> It is true that it is the purpose and intention of the law that courts should decide all questions submitted to them "as truth and justice require," and that it is greatly to be desired that all judgments should be so decided; but controlling and irresistible reasons of public policy and of sound practice in the courts demand that **at the risk of occasional error,** judgments of courts determining controversies submitted to them should become final at some definite time fixed by law, or by a rule of practice recognized by law, so as to be **thereafter beyond the control even of the court which rendered them** for the purpose of correcting errors of fact or of law, into which, in the opinion of the court it may have fallen. The very purpose for which the courts are organized is to put an end to controversy, to decide the questions submitted to the litigants, and to determine the respective rights of the parties. With the full knowledge that courts are not infallible, **the litigants submit their respective claims for judgment, and they have a right at some time or other to have final judgment on which they can rely as a final disposition of the issue submitted,**

[7] G.R. No. 131547, December 15, 2005, 478 SCRA 27.

[8] 18 Phil. 257 (1911).

and to know that there is an end to the litigation.[9] (Emphasis supplied)

Then, in *Juani v. Alarcon*,[10] it was held thus:

This doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice. In fact, nothing is more settled in law than that **once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land**.[11] (Emphasis supplied)

Again, in *Dinglasan v. Court of Appeals*,[12] the Court declared that:

After the judgment or final resolution is entered in the entries of judgment, the case shall be laid to rest. x x x

xxx xxx xxx

The finality of decision is a jurisdictional event which cannot be made to depend on the convenience of the party. To rule otherwise would completely negate the purpose of the rule on completeness of service, which is to place the date of receipt of pleadings, judgment and processes beyond the power of the party being served to determine at his pleasure.[13] (Emphasis and underscoring supplied)

It should also be borne in mind that the right of the winning party to enjoy the finality of the resolution of the case is also an essential part of public policy and the orderly administration of justice. Hence, such right is just as weighty

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[9] *Alcantara v. Ponce*, *supra* note 7 at 49-50, *Arnedo v. Llorente*, *supra* note 8, at 262-263.

[10] G.R. No. 166849, September 5, 2006, 501 SCRA 135.

[11] *Id.* at 155.

[12] G.R. No. 145420, September 19, 2006, 502 SCRA 253.

[13] *Id.* at 266.

or equally important as the right of the losing party to appeal or seek reconsideration within the prescribed period.[14]

In the present case, private respondent has the right to fully rely on the immutability of the CA Decision in its favor once entry of judgment was made by the CA on May 29, 2004.

Despite such finality, petitioner beseeches the Court to disregard this long-standing principle of finality of judgment and declare the CA Decision null and void, arguing that he was denied due process of law because of his former counsel's failure to file a timely motion for reconsideration of the CA Decision.

In a long line of cases, the Court has upheld the principle that a client is bound by the action or mistakes of his counsel, the only exception being, when such counsel's negligence is so gross and palpable resulting in the denial of due process to his client.[15]

It is undisputed that there was negligence on the part of petitioner's former counsel. However, **it is not only the gross negligence of counsel that would justify deviation from the principle of finality of judgment. It should be coupled with the denial of due process to the client by reason of said negligence**. Thus, the CA Decision can only be nullified if petitioner can successfully show that he was deprived of due process.

Hence, the pivotal question is, was petitioner deprived of due process of law by reason of counsel's failure to file a motion for reconsideration of the CA Decision? The answer is in the negative.

In a number of cases wherein the factual milieu confronted by the aggrieved party was much graver than the one being

[14] *Peña v. Government Service Insurance System*, G.R. No. 159520, September 19, 2006, 502 SCRA 383, 404.

[15] *Grande v. University of the Philippines*, G.R. No. 148456, September 15, 2006, 502 SCRA 67, 74; *Juani v. Alarcon*, *supra* note 10, at 154; *GCP-Manny Transport Services, Inc. v. Principe*, G.R. No. 141484, November 11, 2005, 474 SCRA 555, 562; *Victory Liner, Inc. v. Gammad*, G.R. No. 159636, November 25, 2004, 444 SCRA 355, 361.

faced by herein petitioner, the Court struck down the argument that the aggrieved parties were denied due process of law because they had the opportunity to be heard at some point of the proceedings even if they had not been able to fully exhaust all the remedies available by reason of their counsel's negligence or mistake. Thus, in *Dela Cruz v. Andres*,[16] the Court held that "where a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the essence of due process."[17] In the earlier case of *Producers Bank of the Philippines v. Court of Appeals*,[18] the decision of the trial court attained finality by reason of counsel's failure to timely file a notice of appeal but the Court still ruled that such negligence did not deprive petitioner of due process of law. As elucidated by the Court in said case, to wit:

> "**The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense.** x x x *Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process*."

Verily, **so long as a party is given the opportunity to advocate her cause or defend her interest in due course, it cannot be said that there was denial of due process**. x x x[19] (Emphasis supplied)

Also, in *Victory Liner, Inc. v. Gammad*,[20] the Court held that:

The question is not whether petitioner succeeded in defending its rights and interests, but simply, whether it had the opportunity to present its side of the controversy. Verily, as petitioner retained the services of counsel of its choice, it should,

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[16] 522 SCRA 585.

[17] *Id*. at 90.

[18] G.R. No. 126620, April 17, 2002, 430 Phil. 812 (2002).

[19] *Id*. at 825-826.

[20] *Supra* note 15.

as far as this suit is concerned, bear the consequences of its choice of a faulty option. x x x[21] (Emphasis supplied)

The Court succinctly ruled that there was no denial of due process despite the failure of the lawyer to file a motion for reconsideration of the trial court's order declaring his client to have waived the right to present evidence. It was held that the party had the opportunity to be heard when he assailed the trial court's decision through an appeal to the CA. The party was not considered to have been deprived of due process of law even if he had not been able to present evidence in his behalf and the trial court's decision was based only on the evidence presented by the opposing party.

In *Juani v. Alarcon*,[22] the Court was likewise unconvinced by therein petitioner's invocation of the argument of denial of due process by reason of the former lawyer's negligence. It was held that the counsel's mistake of not objecting to the dismissal of his client's counterclaim does not amount to denial of due process.

In *GCP-Manny Transport Services v. Principe*,[23] the Court held that there was no denial of due process in a case where petitioner failed to file a timely notice of appeal because of the failure of its former counsel (who did not submit a notice of withdrawal as counsel, thereby remaining as counsel of record) to inform petitioner of the date of receipt of the trial court's decision. The Court stated:

x x x [W]hile x x x counsel of petitioner was far from being vigilant in protecting the interest of his client, his infractions cannot be said to have deprived petitioner of due process that would justify deviation from the general rule that clients are bound by the actions of their counsel.

As may be gleaned from the records, **petitioner was able to actively participate in the proceedings *a quo*.** It was duly

[21] *Id*. at 363, citing *Gold Line Transit, Inc. v. Ramos*, 415 Phil. 492, 505 (2001).

[22] *Supra* note 10.

[23] *Supra* note 15.

represented by counsel during the trial. **While it may have lost its right to appeal, it was not denied its day in court. x x x As long as a party is given the opportunity to defend its interests in due course, it would have no reason to complain, for it is the opportunity to be heard that makes up the essence of due process.**[24] (Emphasis supplied)

In this case, petitioner's situation is far better than those of the aggrieved parties in the above-cited cases because **he had been able to present all his evidence and fully ventilate his arguments before the LA, then on appeal before the NLRC, and even in his petition for *certiorari* before the CA**.

Akin to the aforementioned cases, herein petitioner's assertion, that he had been denied due process of law due to the negligence of counsel, is hollow. He had more than ample opportunity to be heard and fully thresh out his case. The reason he proffers as a ground for this Court to nullify the CA Decision - that his counsel's failure to notify him of the CA Decision and move for the reconsideration thereof deprived him of due process – had not been clearly established so as to justify divergence from the long-settled rule on finality of judgments and the principle that clients are bound by the actions of their counsels. Hence, the Court is bound by the CA's Decision which has become final and executory due to the simple negligence of petitioner's former counsel in not filing a motion for reconsideration within the reglementary period.

Even if this Court accedes to petitioner's request that he be considered to have received a copy of the CA Decision only on August 18, 2004, he is still not entitled to the remedy of a writ of *certiorari*. The Court categorically declared in *Iloilo La Filipina Uygongco Corporation v. Court of Appeals*,[25] that if what is being assailed is a CA Decision, then "Rule 45 of the Rules of Civil Procedure specifically provides that an appeal by *certiorari* from the judgments or final orders or resolutions

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[24] *Id.* at 563.

[25] G.R. No. 170244, November 28, 2007, 539 SCRA 178.

of the CA is by *verified petition for review on certiorari*."[26] The Court further held in said case that:

> The aggrieved party is proscribed from assailing a decision or final order of the CA *via* Rule 65 because such recourse is proper only if the party has no plain, speedy and adequate remedy in the course of law. In this case, **petitioner had an adequate remedy, namely, a petition for review on *certiorari* under Rule 45 of the Rules of Court**. **A petition for review on *certiorari*, not a special civil action for *certiorari* was, therefore, the correct remedy**.
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> xxx xxx xxx
>
> **Settled is the rule that where appeal is available to the aggrieved party, the special civil action for *certiorari* will not be entertained – remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for a lost appeal,** especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal was available, as in this case, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion. Petitioner's resort to this Court by Petition for *Certiorari* was a fatal procedural error, and the instant petition must, therefore, fail.[27] (Emphasis and underscoring supplied)

Thus, even if petitioner is deemed to have received a copy of the petition on August 18, 2004, he only had 15 days therefrom within which to file a petition for review on *certiorari* under Rule 45. Thus, when he filed the instant petition for *certiorari* on October 18, 2004, the period to appeal had already expired, rendering the CA Decision final and executory. To repeat, *certiorari* is not a substitute for lost appeal.

Petitioner's reason for the delay in filing an appeal, *i.e.*, that he had to attend to taking the Bar Examinations before he could look for a new lawyer to represent him, is not enough justification to suspend the application of the rules of procedure in this

[26] *Id.* at 187.

[27] *Id.* at 187-189.

case. He made his choice not to give this case his preferential attention and now he has to accept the consequences of such choice. As aptly stated in *Ang v. Grageda*,[28] the remedy of *certiorari* "is not a procedural devise 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."[29]

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

SO ORDERED.

Quisumbing,[*] *Ynares-Santiago (Chairperson), Nachura,* and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 166757. July 21, 2008]

ROMMEL C. OREGAS, DARWIN R. HILARIO and SHERWIN A. ARBOLEDA, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION, DUSIT HOTEL NIKKO, PHILIPPINE HOTELIER'S INCORPORATED and FVA MANPOWER TRAINING CENTER & SERVICES,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; INDEPENDENT CONTRACTOR; CIRCUMSTANCES THAT ESTABLISHED THE STATUS OF A JOB

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[28] G.R. No. 166239, June 8, 2006, 490 SCRA 424.

[29] *Id.* at 439.

[*] In lieu of Justice Minita V. Chico-Nazario, per Special Order No. 508 dated June 25, 2008.

CONTRACTOR; CASE AT BAR.— In this case the Labor Arbiter, the NLRC, and the Court of Appeals were unanimous in finding that FVA was a legitimate job contractor. Among the circumstances that established the status of FVA as a legitimate job contractor are: (1) FVA is registered with the DOLE and the DTI; (2) FVA has a Contract for Services with Dusit for the supply of valet parking and door attendant services; (3) FVA has an independent business and provides valet parking and door attendant services to other clients like Mandarin Oriental, Manila Hotel, Peninsula Manila Hotel, Westin Philippine Plaza, Golden B Hotel, Pan Pacific Manila Hotel, and Strikezone Bowling Lane; and (4) FVA's total assets from 1997 to 1999 amount to ₱1,502,597.70 to ₱9,021,335.13. In addition, it provides the uniforms and lockers of its employees.

2. ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST IN DETERMINING THE EXISTENCE THEREOF, APPLIED.— By applying the four-fold test used in determining an employer-employee relationship, the status of FVA as the employer of petitioners is indubitably established. *First*, petitioners applied and signed employment contracts with FVA. They were merely assigned to Dusit conformably with the Contract for Services between FVA and Dusit. *Second*, FVA assigned a supervisor in Dusit to monitor petitioners' attendance, leaves of absence, performance and conduct. Petitioners also maintained their daily time records with FVA. *Third*, petitioners were duly notified by FVA that they would be assigned to Dusit for five months only. Thereafter, they may either be recalled for transfer to other clients or be reassigned to Dusit depending on the result of FVA's evaluation of their performance. In this case, FVA opted to recall petitioners from Dusit. *Fourth*, while FVA billed Dusit for the services rendered, it was actually FVA which paid petitioners' salaries. Worthy of note, FVA registered petitioners with the Bureau of Internal Revenue and the Social Security System as its employees.

APPEARANCES OF COUNSEL

Amelia Lourdes U. Mendoza for petitioners.

Angara Abello Concepcion Regala & Cruz for Dusit Hotel.

Orioste Lim & Calderon Law Offices for F.V.A. Manpower Training Center & Services.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review assails the Decision[1] dated October 28, 2004, as well as the Resolution[2] dated January 14, 2005 of the Court of Appeals in CA-G.R. SP No. 82237, which had affirmed the Resolution[3] dated August 25, 2003 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 028616-01. The NLRC modified the Decision[4] dated March 6, 2001 of the Labor Arbiter in NLRC NCR (S) 30-09-03734-00 and ordered respondent FVA Manpower Training Center & Services (FVA) to pay petitioners separation pay of one-half month pay for every year of service.

The facts are as follows:

On various dates from 1987 to 1999, petitioners Rommel C. Oregas, Darwin R. Hilario and Sherwin A. Arboleda, worked as valet parking attendants and door attendants in respondent Dusit Hotel Nikko (Dusit). As evidence of their employment, they have employment contracts with respondent FVA.

Sometime in 2000, FVA recalled petitioners from Dusit. Petitioners then instituted a complaint for illegal dismissal, regularization, premium pay for holiday and rest day, holiday pay, service incentive leave pay, 13th month pay and attorney's fees against respondents Dusit, Philippine Hotelier's, Inc., (in its capacity as managing company of Dusit) and FVA.

Petitioners alleged that despite the length of their service, Dusit never granted them the status and benefits of a regular employee. Thus, when the rank and file employees' union of Dusit learned that petitioners were entitled to regularization,

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[1] *Rollo*, pp. 61-76. Penned by Associate Justice Renato C. Dacudao, with Associate Justices Lucas P. Bersamin and Vicente S.E. Veloso concurring.

[2] *Id.* at 78-79.

[3] Records, pp. 631-641.

[4] *Id.* at 348-357.

Dusit immediately terminated their services due to "end of contract."

Dusit and FVA both argued that FVA is a legitimate job contractor registered with the Department of Labor and Employment (DOLE) and the Department of Trade and Industry (DTI). Pursuant to their Contract for Services[5] for the supply of valet parking and door attendant services, FVA assigned petitioners to Dusit. Accordingly, petitioners' real and actual employer is FVA.

On March 6, 2001, Labor Arbiter Potenciano S. Cañizares, Jr. rendered a decision dismissing the complaint for lack of merit. He declared that petitioners failed to prove that they were employees of Dusit. Petitioners themselves admitted that they transferred to FVA after their previous placement agencies terminated their contracts of services with Dusit. Labor Arbiter Cañizares also noted that petitioners signed application and employment contracts with FVA and were under its payrolls and accounts. Thus, FVA was petitioners' employer. Finally, he ruled that petitioners were merely recalled and not dismissed from the service by FVA.

On appeal, the NLRC issued a Resolution dated August 25, 2003, modifying the decision of Labor Arbiter Cañizares. The NLRC observed that the four-fold test in determining the existence of an employer-employee relationship is present in petitioners' relationship with FVA. On the matter of selection and engagement, records showed that petitioners applied with and were employed by FVA. Although they were required to test drive by Dusit, it was done only to verify if they had the necessary skills and competence required by the job. On the matter of control, it was established that petitioners maintained their daily time records with FVA. On the matter of dismissal, FVA exercised its power to dismiss when it recalled petitioners from Dusit. Finally, on the matter of payment of wages, it is undisputed that petitioners were under the payrolls and accounts of FVA. Nevertheless, the NLRC noted that after petitioners' recall, they were no

[5] *Id.* at 98-101.

longer given new assignments. Since more than six months have already lapsed, petitioners were deemed to have been constructively dismissed and therefore entitled to separation pay of one-half month pay for every year of service.

The decretal portion of the resolution reads:

> WHEREFORE, premises considered, the appeal is partly **GRANTED** and the Decision dated 06 March 2001 is hereby **MODIFIED** ordering respondent-appellee FVA to pay separation pay of one-half month pay for every year of service to complainants-appellants, to wit:
>
> | | | |
> |---|---|---|
> | 1) Arboleda | - | ₱ 8,716.50 |
> | 2) Hilario | - | ₱ 11,622.00 |
> | 3) Oregas | - | ₱ 11,622.00 |
>
> The appeal of the other complainants-appellants namely Jonathan Palacol, Allan Garcia, Rio Rose Tresnado, Maricel Cadayona, Herman Mosaso, Anthony Paggao, Mark Clint Morado, Ramina Espinosa, Jorge Coronado, Ruben de Jesus and Luis Lim was earlier **DISMISSED** due to the amicable settlement reached by the parties.
>
> SO ORDERED.[6]

Petitioners elevated the case to the Court of Appeals which affirmed the NLRC resolution. Reconsideration having been denied, petitioners now come before us alleging that the appellate court erred:

> I.
>
> ... IN FINDING THAT RESPONDENT FVA IS AN INDEPENDENT CONTRACTOR.
>
> II.
>
> … IN CONCLUDING THAT NO EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS BETWEEN PETITIONERS AND RESPONDENT HOTEL BY APPLYING THE FOUR-FOLD TEST.[7]

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[6] *Id*. at 641.

[7] *Rollo*, p. 39.

After careful consideration of the averments and arguments of the parties, we find that the instant petition lacks merit.

In a petition for review on *certiorari* as a mode of appeal under Rule 45 of the Rules of Court, the petitioner can raise only questions of law because the Supreme Court is not the proper venue to consider a factual issue as it is not a trier of facts.[8] Findings of fact of administrative bodies charged with their specific field of expertise are afforded great weight by the courts, and in the absence of substantial showing that such findings are made from an erroneous evaluation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.[9]

In this case the Labor Arbiter, the NLRC, and the Court of Appeals were unanimous in finding that FVA was a legitimate job contractor. Among the circumstances that established the status of FVA as a legitimate job contractor are: (1) FVA is registered with the DOLE and the DTI; [10] (2) FVA has a Contract for Services with Dusit for the supply of valet parking and door attendant services;[11] (3) FVA has an independent business and provides valet parking and door attendant services to other clients like Mandarin Oriental, Manila Hotel, Peninsula Manila Hotel, Westin Philippine Plaza, Golden B Hotel, Pan Pacific Manila Hotel, and Strikezone Bowling Lane;[12] and (4) FVA's total assets from 1997 to 1999 amount to ₱1,502,597.70 to ₱9,021,335.13.[13] In addition, it provides the uniforms and lockers of its employees.[14]

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[8] *Laguna Autoparts Manufacturing Corporation v. Office of the Secretary, Department of Labor and Employment (DOLE)*, G.R. No. 157146, April 29, 2005, 457 SCRA 730, 739.

[9] *United Special Watchman Agency v. Court of Appeals*, G.R. No. 152476, July 8, 2003, 405 SCRA 432, 438.

[10] Records, pp. 102-103.

[11] *Id.* at 98-101.

[12] *Id.* at 317.

[13] *Id.* at 189-202.

[14] *Id.* at 177.

Moreover, by applying the four-fold test used in determining an employer-employee relationship, the status of FVA as the employer of petitioners is indubitably established. *First*, petitioners applied and signed employment contracts with FVA. They were merely assigned to Dusit conformably with the Contract for Services between FVA and Dusit. *Second*, FVA assigned a supervisor in Dusit to monitor petitioners' attendance, leaves of absence, performance and conduct. Petitioners also maintained their daily time records with FVA. *Third*, petitioners were duly notified by FVA that they would be assigned to Dusit for five months only. Thereafter, they may either be recalled for transfer to other clients or be reassigned to Dusit depending on the result of FVA's evaluation of their performance. In this case, FVA opted to recall petitioners from Dusit. *Fourth*, while FVA billed Dusit for the services rendered, it was actually FVA which paid petitioners' salaries. Worthy of note, FVA registered petitioners with the Bureau of Internal Revenue and the Social Security System as its employees.

In summary, this Court accepts as established the fact that FVA is a legitimate job contractor and, in contemplation of law, the employer of petitioners.

WHEREFORE, the instant petition is *DENIED* for lack of merit. The Decision dated October 28, 2004, as well as the Resolution dated January 14, 2005 of the Court of Appeals in CA-G.R. SP No. 82237 is *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago,[*] *Carpio Morales, Tinga,* and *Velasco, Jr., JJ.,* concur.

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[*] Additional member in place of Associate Justice Arturo D. Brion who is on leave.

SECOND DIVISION

[G.R. Nos. 167274-75. July 21, 2008]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **FORTUNE TOBACCO CORPORATION,** *respondent.*

SYLLABUS

1. TAXATION; EXCISE TAXES; SECTION 145 OF THE TAX CODE *VIZ-A-VIZ* REVENUE REGULATION NO. 17-99, CONSTRUED; APPLICATION; REVENUE REGULATION NO. 17-99 DECLARED INDEFENSIBLY FLAWED.— xxx Section 145 of the Tax Code mandates a 12% increase effective on 1 January 2000 based on the taxes indicated under paragraph C, sub-paragraph (1)-(4). However, Revenue Regulation No. 17-99 went further and added that "[T]he new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquor *shall not be lower than the excise tax that is actually being paid prior to January 1, 2000*." Parenthetically, Section 145 states that during the transition period, *i.e.*, within the next three (3) years from the effectivity of the Tax Code, the excise tax from any brand of cigarettes shall not be lower than the tax due from each brand on 1 October 1996. This qualification, however, is conspicuously absent as regards the 12% increase which is to be applied on cigars and cigarettes packed by machine, among others, effective on 1 January 2000. Clearly and unmistakably, Section 145 mandates a new rate of excise tax for cigarettes packed by machine due to the 12% increase effective on 1 January 2000 without regard to whether the revenue collection starting from this period may turn out to be lower than that collected prior to this date. By adding the qualification that the tax due after the 12% increase becomes effective shall not be lower than the tax actually paid prior to 1 January 2000, Revenue Regulation No. 17-99 effectively imposes a tax which is the higher amount between the *ad valorem* tax being paid at the end of the three (3)-year transition period and the specific tax under paragraph C, sub-paragraph (1)-(4), as increased by 12%—a situation not supported by the plain wording of Section 145 of the Tax Code. In the case at bar, the OSG's argument

that by 1 January 2000, the excise tax on cigarettes should be the higher tax imposed under the specific tax system and the tax imposed under the *ad valorem* tax system plus the 12% increase imposed by paragraph 5, Section 145 of the Tax Code, is an unsuccessful attempt to justify what is clearly an impermissible incursion into the limits of administrative legislation. Such an interpretation is not supported by the clear language of the law and is obviously only meant to validate the OSG's thesis that Section 145 of the Tax Code is ambiguous and admits of several interpretations. The contention that the increase of 12% starting on 1 January 2000 does not apply to the brands of cigarettes listed under Annex "D" is likewise unmeritorious, absurd even. Paragraph 8, Section 145 of the Tax Code simply states that, "[T]he classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex 'D', shall remain in force until revised by Congress." This declaration certainly does not lend itself to the interpretation given to it by the OSG. As plainly worded, the average net retail prices of the listed brands under Annex "D," which classify cigarettes according to their net retail price into low, medium or high, obviously remain the bases for the application of the increase in excise tax rates effective on 1 January 2000. The foregoing leads us to conclude that Revenue Regulation No. 17-99 is indeed indefensibly flawed. The Commissioner cannot seek refuge in his claim that the purpose behind the passage of the Tax Code is to generate additional revenues for the government. Revenue generation has undoubtedly been a major consideration in the passage of the Tax Code. However, as borne by the legislative record, the shift from the *ad valorem* system to the specific tax system is likewise meant to promote fair competition among the players in the industries concerned, to ensure an equitable distribution of the tax burden and to simplify tax administration by classifying cigarettes, among others, into high, medium and low-priced based on their net retail price and accordingly graduating tax rates. At any rate, this advertence to the legislative record is merely gratuitous because, as we have held, the meaning of the law is clear on its face and free from the ambiguities that the Commissioner imputes. We simply cannot disregard the letter of the law on the pretext of pursuing its spirit.

2. ID.; PRINCIPLES; THE DOCTRINE THAT A TAX REFUND PARTAKES THE NATURE OF A TAX EXEMPTION DOES

NOT APPLY; TAX REFUND AND TAX EXEMPTION, DISTINGUISHED.— The Commissioner's contention that a tax refund partakes the nature of a tax exemption does not apply to the tax refund to which Fortune Tobacco is entitled. There is parity between tax refund and tax exemption only when the former is based either on a tax exemption statute or a tax refund statute. Obviously, that is not the situation here. Quite the contrary, Fortune Tobaccos claim for refund is premised on its erroneous payment of the tax, or better still the government's exaction in the absence of a law. Tax exemption is a result of legislative grace. And he who claims an exemption from the burden of taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken. The rule is that tax exemptions must be strictly construed such that the exemption will not be held to be conferred unless the terms under which it is granted clearly and distinctly show that such was the intention. A claim for tax refund may be based on statutes granting tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language. The taxpayer must show that the legislature intended to exempt him from the tax by words too plain to be mistaken. Tax refunds (or tax credits), on the other hand, are not founded principally on legislative grace but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another. The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, *solutio indebiti*, which covers not only mistake in fact but also mistake in law.

3. ID.; ID.; THE GOVERNMENT IS NOT EXEMPT FROM THE APPLICATION OF *SOLUTIO INDEBITI*.— The Government is not exempt from the application of *solutio indebiti*. Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to refund without any unreasonable delay what it has erroneously collected. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers. And so, given its essence, a claim for tax refund necessitates only preponderance

of evidence for its approbation like in any other ordinary civil case.

4. ID.; ID.; DOCTRINE OF STRICT INTERPRETATION IN THE IMPOSITION OF TAXES, APPLIED.— What is controlling in this case is the well-settled doctrine of strict interpretation in the imposition of taxes, not the similar doctrine as applied to tax exemptions. The rule in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. A tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. In answering the question of who is subject to tax statutes, it is basic that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import. As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Angelo Raymundo Q. Valencia for respondent.

D E C I S I O N

TINGA, *J.*:

Simple and uncomplicated is the central issue involved, yet whopping is the amount at stake in this case.

After much wrangling in the Court of Tax Appeals (CTA) and the Court of Appeals, Fortune Tobacco Corporation (Fortune Tobacco) was granted a tax refund or tax credit representing specific taxes erroneously collected from its tobacco products. The tax refund is being re-claimed by the Commissioner of Internal Revenue (Commissioner) in this petition.

The following undisputed facts, summarized by the Court of Appeals, are quoted in the assailed Decision[1] dated 28 September 2004:

CAG.R. SP No. 80675

xxx xxx xxx

Petitioner[2] is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at Fortune Avenue, Parang, Marikina City.

Petitioner is the manufacturer/producer of, among others, the following cigarette brands, with tax rate classification based on net retail price prescribed by Annex "D" to R.A. No. 4280, to wit:

Brand	Tax Rate
Champion M 100	₱1.00
Salem M 100	₱1.00
Salem M King	₱1.00
Camel F King	₱1.00
Camel Lights Box 20's	₱1.00
Camel Filters Box 20's	₱1.00
Winston F Kings	₱5.00
Winston Lights	₱5.00

Immediately prior to January 1, 1997, the above-mentioned cigarette brands were subject to ad *valorem tax* pursuant to then Section 142 of the Tax Code of 1977, as amended. However, on January 1, 1997, R.A. No. 8240 took effect whereby a shift from the ad *valorem* tax (AVT) system to the specific tax system was made and subjecting the aforesaid cigarette brands to specific tax under [S]ection 142 thereof, now renumbered as Sec. 145 of the Tax Code of 1997, pertinent provisions of which are quoted thus:

Section 145. Cigars and Cigarettes-

(A) **Cigars**. – There shall be levied, assessed and collected on cigars a tax of One peso (₱1.00) per cigar.

[1] *Rollo*, pp. 59-93; penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Eubulo G. Verzola and Monina Arevalo-Zenarosa.

[2] Herein respondent, Fortune Tobacco Corporation.

"(B) **Cigarettes packed by hand**. – There shall be levied, assessesed and collected on cigarettes packed by hand a tax of Forty centavos (₱0.40) per pack.

(C) **Cigarettes packed by machine**. – There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:

(1) If the net retail price (excluding the excise tax and the value-added tax) is above Ten pesos (₱10.00) per pack, the tax shall be Twelve (₱12.00) per pack;

(2) If the net retail price (excluding the excise tax and the value added tax) exceeds Six pesos and Fifty centavos (₱6.50) but does not exceed Ten pesos (₱10.00) per pack, the tax shall be Eight Pesos (₱8.00) per pack.

(3) If the net retail price (excluding the excise tax and the value-added tax) is Five pesos (₱5.00) but does not exceed Six Pesos and fifty centavos (₱6.50) per pack, the tax shall be Five pesos (₱5.00) per pack;

(4) If the net retail price (excluding the excise tax and the value-added tax) is below Five pesos (₱5.00) per pack, the tax shall be One peso (₱1.00) per pack;

"Variants of existing brands of cigarettes which are introduced in the domestic market after the effectivity of R.A. No. 8240 shall be taxed under the highest classification of any variant of that brand.

The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996. Provided, however, that in cases were (sic) the excise tax rate imposed in paragraphs (1), (2), (3) and (4) hereinabove will result in an increase in excise tax of more than seventy percent (70%), for a brand of cigarette, the increase shall take effect in two tranches: fifty percent (50%) of the increase shall be effective in 1997 and one hundred percent (100%) of the increase shall be effective in 1998.

Duly registered or existing brands of cigarettes or new brands thereof packed by machine shall only be packed in twenties.

The rates of excise tax on cigars and cigarettes under paragraphs (1), (2) (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000.

New brands shall be classified according to their current net retail price.

For the above purpose, 'net retail price' shall mean the price at which the cigarette is sold on retail in twenty (20) major supermarkets in Metro Manila (for brands of cigarettes marketed nationally), excluding the amount intended to cover the applicable excise tax and value-added tax. For brands which are marketed only outside Metro Manila, the 'net retail price' shall mean the price at which the cigarette is sold in five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.

The classification of each brand of cigarettes based on its average retail price as of October 1, 1996, as set forth in Annex "D", shall remain in force until revised by Congress.

Variant of a brand shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or a different brand which carries the same logo or design of the existing brand.

To implement the provisions for a twelve percent (12%) increase of excise tax on, among others, cigars and cigarettes packed by machines by January 1, 2000, the Secretary of Finance, upon recommendation of the respondent Commissioner of Internal Revenue, issued Revenue Regulations No. 17-99, dated December 16, 1999, which provides the increase on the applicable tax rates on cigar and cigarettes as follows:

SECTION	DESCRIPTION OF ARTICLES	PRESENT SPECIFIC TAX RATE PRIOR TO JAN. 1, 2000	NEW SPECIFIC TAX RATE EFFECTIVE JAN. 1, 2000
145	(A) (B)Cigarettes packed by machine	₱1.00/cigar	₱1.12/cigar

	(1) Net retail price (excluding VAT and excise) exceeds ₱10.00 per pack	₱12.00/pack	₱13.44/pack
	(2) Exceeds ₱10.00 per pack	₱8.00/pack	₱8.96/pack
	(3) Net retail price (excluding VAT and excise) is ₱5.00 to ₱6.50 per pack	₱5.00/pack	₱5.60/pack
	(4) Net Retail Price (excluding VAT and excise) is below ₱5.00 per pack	₱1.00/pack	₱1.12/pack

Revenue Regulations No. 17-99 likewise provides in the last paragraph of Section 1 thereof, "**(t)hat the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquor shall not be lower than the excise tax that is actually being paid prior to January 1, 2000."**

For the period covering January 1-31, 2000, petitioner allegedly paid specific taxes on all brands manufactured and removed in the total amounts of ₱585,705,250.00.

On February 7, 2000, petitioner filed with respondent's Appellate Division a claim for refund or tax credit of its purportedly overpaid excise tax for the month of January 2000 in the amount of ₱35,651,410.00

On June 21, 2001, petitioner filed with respondent's Legal Service a letter dated June 20, 2001 reiterating all the claims for refund/tax credit of its overpaid excise taxes filed on various dates, including the present claim for the month of January 2000 in the amount of ₱35,651,410.00.

As there was no action on the part of the respondent, petitioner filed the instant petition for review with this Court on December 11, 2001, in order to comply with the two-year period for filing a claim for refund.

In his answer filed on January 16, 2002, respondent raised the following Special and Affirmative Defenses;

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. The amount of ₱35,651,410 being claimed by petitioner as alleged overpaid excise tax for the month of January 2000 was not properly documented.

6. In an action for tax refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to its claim for refund/credit.

7. Petitioner must show that it has complied with the provisions of Section 204(C) in relation [to] Section 229 of the Tax Code on the prescriptive period for claiming tax refund/ credit;

8. Claims for refund are construed strictly against the claimant for the same partake of tax exemption from taxation; and

9. The last paragraph of Section 1 of Revenue Regulation[s] [No.]17-99 is a valid implementing regulation which has the force and effect of law."

CA G.R. SP No. 83165

The petition contains essentially similar facts, except that the said case questions the CTA's December 4, 2003 decision in CTA Case No. 6612 granting respondent's[3] claim for refund of the amount of ₱355,385,920.00 representing erroneously or illegally collected specific taxes covering the period January 1, 2002 to December 31, 2002, as well as its March 17, 2004 Resolution denying a reconsideration thereof.

xxx xxx xxx

In both CTA Case Nos. 6365 & 6383 and CTA No. 6612, the Court of Tax Appeals reduced the issues to be resolved into two as stipulated by the parties, to wit: (1) Whether or not the last paragraph of Section 1 of Revenue Regulation[s] [No.] 17-99 is in accordance with the pertinent provisions of Republic Act [No.] 8240, now incorporated in Section 145 of the Tax Code of 1997; and (2) Whether or not petitioner is entitled to a refund of ₱35,651,410.00 as alleged overpaid excise tax for the month of January 2000.

[3] Herein respondent, Fortune Tobacco Corporation.

xxx xxx xxx

Hence, the respondent CTA in its assailed October 21, 2002 [twin] Decisions[s] disposed in CTA Case Nos. 6365 & 6383:

WHEREFORE, in view of the foregoing, the court finds the instant petition meritorious and in accordance with law. Accordingly, respondent is hereby ORDERED to REFUND to petitioner the amount of ₱35,651.410.00 representing erroneously paid excise taxes for the period January 1 to January 31, 2000.

SO ORDERED.

Herein petitioner sought reconsideration of the above-quoted decision. In [twin] resolution[s] [both] dated July 15, 2003, the Tax Court, in an apparent change of heart, granted the petitioner's consolidated motions for reconsideration, thereby denying the respondent's claim for refund.

However, on consolidated motions for reconsideration filed by the respondent in CTA Case Nos. 6363 and 6383, the July 15, 2002 resolution was set aside, and the Tax Court ruled, this time with a semblance of finality, that the respondent is entitled to the refund claimed. Hence, in a resolution dated November 4, 2003, the tax court reinstated its December 21, 2002 Decision and disposed as follows:

> WHEREFORE, our Decisions in CTA Case Nos. 6365 and 6383 are hereby REINSTATED. Accordingly, respondent is hereby ORDERED to REFUND petitioner the total amount of ₱680,387,025.00 representing erroneously paid excise taxes for the period January 1, 2000 to January 31, 2000 and February 1, 2000 to December 31, 2001.
>
> SO ORDERED.

Meanwhile, on December 4, 2003, the Court of Tax Appeals rendered decision in CTA Case No. 6612 granting the prayer for the refund of the amount of ₱355,385,920.00 representing overpaid excise tax for the period covering January 1, 2002 to December 31, 2002. The tax court disposed of the case as follows:

> IN VIEW OF THE FOREGOING, the Petition for Review is GRANTED. Accordingly, respondent is hereby ORDERED to REFUND to petitioner the amount of ₱355,385,920.00

representing overpaid excise tax for the period covering January 1, 2002 to December 31, 2002.

SO ORDERED.

Petitioner sought reconsideration of the decision, but the same was denied in a Resolution dated March 17, 2004.[4] (Emphasis supplied) (Citations omitted)

The Commissioner appealed the aforesaid decisions of the CTA. The petition questioning the grant of refund in the amount of ₱680,387,025.00 was docketed as CA-G.R. SP No. 80675, whereas that assailing the grant of refund in the amount of ₱355,385,920.00 was docketed as CA-G.R. SP No. 83165. The petitions were consolidated and eventually denied by the Court of Appeals. The appellate court also denied reconsideration in its Resolution[5] dated 1 March 2005.

In its Memorandum[6] 22 dated November 2006, filed on behalf of the Commissioner, the Office of the Solicitor General (OSG) seeks to convince the Court that the literal interpretation given by the CTA and the Court of Appeals of Section 145 of the Tax Code of 1997 (Tax Code) would lead to a lower tax imposable on 1 January 2000 than that imposable during the transition period. Instead of an increase of 12% in the tax rate effective on 1 January 2000 as allegedly mandated by the Tax Code, the appellate court's ruling would result in a significant decrease in the tax rate by as much as 66%.

The OSG argues that Section 145 of the Tax Code admits of several interpretations, such as:

1. That by January 1, 2000, the excise tax on cigarettes should be the higher tax imposed under the specific tax system and the tax imposed under the *ad valorem* tax system plus the 12% increase imposed by par. 5, Sec. 145 of the Tax Code;

2. The increase of 12% starting on January 1, 2000 does not apply to the brands of cigarettes listed under Annex "D"

[4] *Rollo*, pp. 60-73.

[5] *Id.* at 95-101.

[6] *Id.* at 456-495.

referred to in par. 8, Sec. 145 of the Tax Code;

3. The 12% increment shall be computed based on the net retail price as indicated in par. C, sub-par. (1)-(4), Sec. 145 of the Tax Code even if the resulting figure will be lower than the amount already being paid at the end of the transition period. This is the interpretation followed by both the CTA and the Court of Appeals.[7]

This being so, the interpretation which will give life to the legislative intent to raise revenue should govern, the OSG stresses.

Finally, the OSG asserts that a tax refund is in the nature of a tax exemption and must, therefore, be construed strictly against the taxpayer, such as Fortune Tobacco.

In its Memorandum[8] dated 10 November 2006, Fortune Tobacco argues that the CTA and the Court of Appeals merely followed the letter of the law when they ruled that the basis for the 12% increase in the tax rate should be the net retail price of the cigarettes in the market as outlined in paragraph C, sub paragraphs (1)-(4), Section 145 of the Tax Code. The Commissioner allegedly has gone beyond his delegated rule-making power when he promulgated, enforced and implemented Revenue Regulation No. 17-99, which effectively created a separate classification for cigarettes based on the excise tax "actually being paid prior to January 1, 2000."[9]

It should be mentioned at the outset that there is no dispute between the fact of payment of the taxes sought to be refunded and the receipt thereof by the Bureau of Internal Revenue (BIR). There is also no question about the mathematical accuracy of Fortune Tobacco's claim since the documentary evidence in support of the refund has not been controverted by the revenue agency. Likewise, the claims have been made and the actions have been filed within the two (2)-year prescriptive period provided under Section 229 of the Tax Code.

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[7] *Rollo,* pp. 484, 486 and 487.

[8] *Id.* at 407-455.

[9] *Id.* at 409.

The power to tax is inherent in the State, such power being inherently legislative, based on the principle that taxes are a grant of the people who are taxed, and the grant must be made by the immediate representatives of the people; and where the people have laid the power, there it must remain and be exercised.[10]

This entire controversy revolves around the interplay between Section 145 of the Tax Code and Revenue Regulation 17-99. The main issue is an inquiry into whether the revenue regulation has exceeded the allowable limits of legislative delegation.

For ease of reference, Section 145 of the Tax Code is again reproduced in full as follows:

Section 145. Cigars and Cigarettes-

(A) **Cigars**.—There shall be levied, assessed and collected on cigars a tax of One peso (₱1.00) per cigar.

(B). **Cigarettes packed by hand**.—There shall be levied, assessed and collected on cigarettes packed by hand a tax of Forty centavos (₱0.40) per pack.

(C) **Cigarettes packed by machine**.—There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:

(1) If the net retail price (excluding the excise tax and the value-added tax) is above Ten pesos (₱10.00) per pack, the tax shall be Twelve pesos (₱12.00) per pack;

(2) If the net retail price (excluding the excise tax and the value added tax) exceeds Six pesos and Fifty centavos (₱6.50) but does not exceed Ten pesos (₱10.00) per pack, the tax shall be Eight Pesos (₱8.00) per pack.

(3) If the net retail price (excluding the excise tax and the value-added tax) is Five pesos (₱5.00) but does not exceed Six Pesos and fifty centavos (₱6.50) per pack, the tax shall be Five pesos (₱5.00) per pack;

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[10] 1 COOLEY TAXATION, 3rd Ed., p. 43 cited in DIMAAMPAO, TAX PRINCIPLE AND REMEDIES, p. 13.

(4) If the net retail price (excluding the excise tax and the value-added tax) is below Five pesos (₱5.00) per pack, the tax shall be One peso (₱1.00) per pack;

Variants of existing brands of cigarettes which are introduced in the domestic market after the effectivity of R.A. No. 8240 shall be taxed under the highest classification of any variant of that brand.

The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996. *Provided, however*, That in cases where the excise tax rates imposed in paragraphs (1), (2), (3) and (4) hereinabove will result in an increase in excise tax of more than seventy percent (70%), for a brand of cigarette, the increase shall take effect in two tranches: fifty percent (50%) of the increase shall be effective in 1997 and one hundred percent (100%) of the increase shall be effective in 1998.

Duly registered or existing brands of cigarettes or new brands thereof packed by machine shall only be packed in twenties.

The rates of excise tax on cigars and cigarettes under paragraphs (1), (2) (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000.

New brands shall be classified according to their current net retail price.

For the above purpose, *'net retail price'* shall mean the price at which the cigarette is sold on retail in twenty (20) major supermarkets in Metro Manila (for brands of cigarettes marketed nationally), excluding the amount intended to cover the applicable excise tax and value-added tax. For brands which are marketed only outside Metro [M]anila, the *'net retail price'* shall mean the price at which the cigarette is sold in five (5) major intended to cover the applicable excise tax and the value-added tax.

The classification of each brand of cigarettes based on its average retail price as of October 1, 1996, as set forth in Annex "D", shall remain in force until revised by Congress.

Variant of a brand' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or a

different brand which carries the same logo or design of the existing brand.[11] (Emphassis supplied)

Revenue Regulation 17-99, which was issued pursuant to the unquestioned authority of the Secretary of Finance to promulgate rules and regulations for the effective implementation of the Tax Code,[12] interprets the above-quoted provision and reflects the 12% increase in excise taxes in the following manner:

SECTION	DESCRIPTION OF ARTICLES	PRESENT SPECIFIC TAX RATES PRIOR TO JAN. 1, 2000	NEW SPECIFIC TAX RATE Effective Jan.. 1, 2000
145	(A) Cigars	₱1.00/cigar	₱1.12/cigar
	(B) Cigarettes packed by Machine		
	(1) Net Retail Price (excluding VAT and Excise) exceeds ₱10.00 per pack	₱12.00/pack	₱13.44/pack
	(2) Net Retail Price (excluding VAT and Excise) is ₱6.51 up to ₱10.00 per pack	₱8.00/pack	₱8.96/pack
	(3) Net Retail Price (excluding VAT and excise) is ₱5.00 to ₱6.50 per pack	₱5.00/pack	₱5.60/pack
	(4) Net Retail Price (excluding VAT and excise) is below ₱5.00 per pack)	₱1.00/pack	₱1.12/pack

This table reflects Section 145 of the Tax Code insofar as it mandates a 12% increase effective on 1 January 2000 based

[11] TAX CODE, Sec. 145.

[12] TAX CODE, Sec. 244, provides:

on the taxes indicated under paragraph C, sub-paragraph (1)-(4). However, Revenue Regulation No. 17-99 went further and added that "[T]he new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquor *shall not be lower than the excise tax that is actually being paid prior to January 1, 2000*."[13]

Parenthetically, Section 145 states that during the transition period, *i.e.,* within the next three (3) years from the effectivity of the Tax Code, the excise tax from any brand of cigarettes shall not be lower than the tax due from each brand on 1 October 1996. This qualification, however, is conspicuously absent as regards the 12% increase which is to be applied on cigars and cigarettes packed by machine, among others, effective on 1 January 2000. Clearly and unmistakably, Section 145 mandates a new rate of excise tax for cigarettes packed by machine due to the 12% increase effective on 1 January 2000 without regard to whether the revenue collection starting from this period may turn out to be lower than that collected prior to this date.

By adding the qualification that the tax due after the 12% increase becomes effective shall not be lower than the tax actually paid prior to 1 January 2000, Revenue Regulation No. 17-99 effectively imposes a tax which is the higher amount between the *ad valorem* tax being paid at the end of the three (3)-year transition period and the specific tax under paragraph C, sub-paragraph (1)-(4), as increased by 12%—a situation not supported by the plain wording of Section 145 of the Tax Code.

This is not the first time that national revenue officials had ventured in the area of unauthorized administrative legislation.

Sec. 244. *Authority of Secretary of Finance to Promulgate Rules and Regulations*.—The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.

See *ABAKADA Guro Party List Officers v. Ermita*, G.R. No. 168056, 1 September 2005, 469 SCRA 1.

[13] *Rollo,* p. 104.

In *Commissioner of Internal Revenue v. Reyes*,[14] respondent was not informed in writing of the law and the facts on which the assessment of estate taxes was made pursuant to Section 228 of the 1997 Tax Code, as amended by Republic Act (R.A.) No. 8424. She was merely notified of the findings by the Commissioner, who had simply relied upon the old provisions of the law and Revenue Regulation No. 12-85 which was based on the old provision of the law. The Court held that in case of discrepancy between the law as amended and the implementing regulation based on the old law, the former necessarily prevails. The law must still be followed, even though the existing tax regulation at that time provided for a different procedure.[15]

In *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*,[16] the tax authorities gave the term "tax credit" in Sections 2(i) and 4 of Revenue Regulation 2-94 a meaning utterly disparate from what R.A. No. 7432 provides. Their interpretation muddled up the intent of Congress to grant a mere discount privilege and not a sales discount. The Court, striking down the revenue regulation, held that an administrative agency issuing regulations may not enlarge, alter or restrict the provisions of the law it administers, and it cannot engraft additional requirements not contemplated by the legislature. The Court emphasized that tax administrators are not allowed to expand or contract the legislative mandate and that the "plain meaning rule" or *verba legis* in statutory construction should be applied such that where the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.

As we have previously declared, rule-making power must be confined to details for regulating the mode or proceedings in order to carry into effect the law as it has been enacted, and it cannot be extended to amend or expand the statutory requirements

[14] G.R. No. 159694, 27 January 2006, 480 SCRA 382.

[15] *Id*. at 396. Citing *Philippine Petroleum Corp. v. Municipality of Pililla, Rizal*, 198 SCRA 82, 88, 3 June 1991, citing *Shell Philippines, Inc. v. Central Bank of the Philippines*, 162 SCRA 628, 634, 27 June 1988.

[16] G.R. No. 159647, 15 April 2005, 456 SCRA 414.

or to embrace matters not covered by the statute. Administrative regulations must always be in harmony with the provisions of the law because any resulting discrepancy between the two will always be resolved in favor of the basic law.[17]

In *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*,[18] Commissioner Jose Ong issued Revenue Memorandum Order (RMO) No. 15-91, as well as the clarificatory Revenue Memorandum Circular (RMC) 43-91, imposing a 5% lending investor's tax under the 1977 Tax Code, as amended by Executive Order (E.O.) No. 273, on pawnshops. The Commissioner anchored the imposition on the definition of lending investors provided in the 1977 Tax Code which, according to him, was broad enough to include pawnshop operators. However, the Court noted that pawnshops and lending investors were subjected to different tax treatments under the Tax Code prior to its amendment by the executive order; that Congress never intended to treat pawnshops in the same way as lending investors; and that the particularly involved section of the Tax Code explicitly subjected lending investors and dealers in securities only to percentage tax. And so the Court affirmed the invalidity of the challenged circulars, stressing that "administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out."[19]

In *Philippine Bank of Communications v. Commissioner of Internal Revenue*,[20] the then acting Commissioner issued RMC 7-85, changing the prescriptive period of two years to ten years for claims of excess quarterly income tax payments, thereby creating a clear inconsistency with the provision of Section 230

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[17] *Landbank of the Philippines v. Court of Appeals*, 327 Phil. 1047, 1052 (1996).

[18] 453 Phil. 1043 (2003).

[19] *Id*. at 1052. Citing *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 108358, 20 January 1995, 240 SCRA 368, 372; *Romulo, Mabanta, Buenaventura, Sayoc & De los Angeles v. Home Development Mutual Fund*, G.R. No. 131082, 19 June 2000; 333 SCRA 777, 786.

[20] 361 Phil. 916 (1999).

of the 1977 Tax Code. The Court nullified the circular, ruling that the BIR did not simply interpret the law; rather it legislated guidelines contrary to the statute passed by Congress. The Court held:

> It bears repeating that Revenue memorandum-circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.[21]

In *Commissioner of Internal Revenue v. CA, et al.*,[22] the central issue was the validity of RMO 4-87 which had construed the amnesty coverage under E.O. No. 41 (1986) to include only assessments issued by the BIR after the promulgation of the executive order on 22 August 1986 and not assessments made to that date. Resolving the issue in the negative, the Court held:

> x x x all such issuances must not override, but must remain consistent and in harmony with, the law they seek to apply and implement. Administrative rules and regulations are intended to carry out, neither to supplant nor to modify, the law.[23]
>
> xxx xxx xxx
>
> If, as the Commissioner argues, Executive Order No. 41 had not been intended to include 1981-1985 tax liabilities already assessed (administratively) prior to 22 August 1986, the law could have simply so provided in its exclusionary clauses. It did not. The conclusion is unavoidable, and it is that the executive order has been designed

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[21] *Id.* at 928-929.

[22] 310 Phil. 392 (1995).

[23] *Id.* at 399. This ruling was reiterated in *Republic v. Court of Appeals*, 381 Phil. 248 (2000).

to be in the nature of a general grant of tax amnesty subject only to the cases specifically excepted by it.[24]

In the case at bar, the OSG's argument that by 1 January 2000, the excise tax on cigarettes should be the higher tax imposed under the specific tax system and the tax imposed under the *ad valorem* tax system plus the 12% increase imposed by paragraph 5, Section 145 of the Tax Code, is an unsuccessful attempt to justify what is clearly an impermissible incursion into the limits of administrative legislation. Such an interpretation is not supported by the clear language of the law and is obviously only meant to validate the OSG's thesis that Section 145 of the Tax Code is ambiguous and admits of several interpretations.

The contention that the increase of 12% starting on 1 January 2000 does not apply to the brands of cigarettes listed under Annex "D" is likewise unmeritorious, absurd even. Paragraph 8, Section 145 of the Tax Code simply states that, "[T]he classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex 'D', shall remain in force until revised by Congress." This declaration certainly does not lend itself to the interpretation given to it by the OSG. As plainly worded, the average net retail prices of the listed brands under Annex "D", which classify cigarettes according to their net retail price into low, medium or high, obviously remain the bases for the application of the increase in excise tax rates effective on 1 January 2000.

The foregoing leads us to conclude that Revenue Regulation No. 17-99 is indeed indefensibly flawed. The Commissioner cannot seek refuge in his claim that the purpose behind the passage of the Tax Code is to generate additional revenues for the government. Revenue generation has undoubtedly been a major consideration in the passage of the Tax Code. However, as borne by the legislative record,[25] the shift from the *ad valorem* system to the specific tax system is likewise meant to promote fair competition among the players in the industries concerned,

[24] *Id.* at 397.

[25] Record of the Senate, pp. 224-225.

to ensure an equitable distribution of the tax burden and to simplify tax administration by classifying cigarettes, among others, into high, medium and low-priced based on their net retail price and accordingly graduating tax rates.

At any rate, this advertence to the legislative record is merely gratuitous because, as we have held, the meaning of the law is clear on its face and free from the ambiguities that the Commissioner imputes. We simply cannot disregard the letter of the law on the pretext of pursuing its spirit.[26]

Finally, the Commissioner's contention that a tax refund partakes the nature of a tax exemption does not apply to the tax refund to which Fortune Tobacco is entitled. There is parity between tax refund and tax exemption only when the former is based either on a tax exemption statute or a tax refund statute. Obviously, that is not the situation here. Quite the contrary, Fortune Tobaccos claim for refund is premised on its erroneous payment of the tax, or better still the government's exaction in the absence of a law.

Tax exemption is a result of legislative grace. And he who claims an exemption from the burden of taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken.[27] The rule is that tax exemptions must be strictly construed such that the exemption will not be held to be conferred unless the terms under which it is granted clearly and distinctly show that such was the intention.[28]

A claim for tax refund may be based on statutes granting tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for

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[26] *Tañada and Macapagal v. Cuenco, et al.*, 103 Phil. 1051, 1086 (1957), citing 82 C.J.S., 613.

[27] *Surigao Consolidated Mining Co. Inc. v. Commissioner of Internal Revenue and Court of Tax Appeals*, 119 Phil. 33, 37 (1963).

[28] *Phil. Acetylene Co. v. Commissioner of Internal Revenue, et al.*, 127 Phil. 461, 472 (1967); *Manila Electric Company v. Vera*, G.R. No. L-29987, 22 October 1975, 67 SCRA 351, 357-358; *Surigao Consolidated Mining Co. Inc. v. Commissioner of Internal Revenue, supra.*

refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language. The taxpayer must show that the legislature intended to exempt him from the tax by words too plain to be mistaken.[29]

Tax refunds (or tax credits), on the other hand, are not founded principally on legislative grace but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another.[30] The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, *solutio indebiti*, which covers not only mistake in fact but also mistake in law.[31]

The Government is not exempt from the application of *solutio indebiti*.[32] Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to refund without any unreasonable delay what it has erroneously collected.[33] If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers.[34] And so, given its essence, a claim for tax refund necessitates only preponderance of evidence for its approbation like in any other ordinary civil case.

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[29] See *Surigao Consolidated Mining Co. Inc. v. CIR, supra* at 732-733; *Philex Mining Corp. v. Commissioner of Internal Revenue*, 365 Phil. 572, 579 (1999); *Davao Gulf Lumber Corp. v. Commissioner of Internal Revenue*, 354 Phil. 891-892 (1998); *Commissioner of Internal Revenue v. Tokyo Shipping Co., Ltd.*, 314 Phil. 220, 228 (1995).

[30] *Ramie Textiles, Inc. v. Hon. Mathay*, Sr., 178 Phil. 482 (1979); *Puyat & Sons v. City of Manila, et al.*, 117 Phil. 985 (1963).

[31] CIVIL CODE, Arts. 2142, 2154 and 2155.

[32] *Commissioner of Internal Revenue v. Fireman's Fund Insurance Co.*, G.R. No. L-30644, 9 March 1987, 148 SCRA 315, 324-325; *Ramie Textiles, Inc. v. Mathay, supra*; *Gonzales Puyat & Sons v. City of Manila, supra.*

[33] *Commissioner of Internal Revenue v. Tokyo Shipping Co., supra* at 338.

[34] *AB Leasing and Finance Corporation v. Commissioner of Internal Revenue*, 453 Phil. 297. Citing *BPI-Family Savings Bank, Inc. v. Court of Appeals*, 330 SCRA 507, 510, 518 (200).

Under the Tax Code itself, apparently in recognition of the pervasive quasi-contract principle, a claim for tax refund may be based on the following: (a) erroneously or illegally assessed or collected internal revenue taxes; (b) penalties imposed without authority; and (c) any sum alleged to have been excessive or in any manner wrongfully collected.[35]

What is controlling in this case is the well-settled doctrine of strict interpretation in the imposition of taxes, not the similar doctrine as applied to tax exemptions. The rule in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. A tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. In answering the question of who is subject to tax statutes, it is basic that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import.[36] As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws. [37]

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA G.R. SP No. 80675, dated 28 September 2004, and its Resolution, dated 1 March 2005, are *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

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

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[35] TAX CODE (1997), Secs. 204(c) and 229.

[36] *CIR v. Court of Appeals*, 338 Phil. 322, 330-331 (1997).

[37] *CIR v. Philippine American Accident Insurance Company, Inc.,* G.R. No. 141658, March 18, 2005, 453 SCRA 668, 680.

SECOND DIVISION

[G.R. No. 168263. July 21, 2008]

SPS. EDGARDO AND NATIVIDAD FIDEL, *petitioners, vs.* **HONORABLE COURT OF APPEALS, HEIRS OF THE LATE PRIMITIVO ESPINELI, namely, JOSEFINA, PATRICIO and LEONARDO, all surnamed ESPINELI,** *respondents.*

SYLLABUS

1. CIVIL LAW; PATERNITY AND FILIATION; A PERSON'S FILIATION MAY BE PASSED UPON IN AN ACTION FOR ANNULMENT OF SALE IF IT IS NECESSARY FOR THE RESOLUTION OF THE PRINCIPAL ACTION; CASE AT BAR.— While respondents' principal action was for the annulment of the sale and not an action to impugn one's legitimacy and that one's legitimacy can be questioned only in a direct action seasonably filed by the proper party, it is necessary to pass upon the relationship of respondents to the deceased Vicente for the purpose of determining what legal rights respondents have in the property. In fact, the issue of whether or not respondents are heirs of Vicente was squarely raised by petitioners in their Pre-Trial Brief filed on April 26, 1995, before the trial court, hence they are now estopped from assailing the trial court's ruling on respondents' status. Petitioners nonetheless contend that Primitivo's baptismal certificate is neither a public document nor a conclusive proof of the legitimate filiation by Vicente of Primitivo, the respondents' father. We find petitioners' contention lacking in merit, hence we reject it. Records show that Primitivo was born in 1895. At that time, the only records of birth are those which appear in parochial records. This Court has held that as to the nature and character of the entries contained in the parochial books and the certificates thereof issued by a parish priest, the same have not lost their character of being public documents for the purpose of proving acts referred to therein, inasmuch as from the time of the change of sovereignty in the Philippines to the present day, no law has been enacted abolishing the official and public character of parochial books

and entries made therein. Parish priests continue to be the legal custodians of the parochial books kept during the former sovereignty, and as such they may issue certified copies of the entries contained therein in the same manner as do keepers of archives. The baptismal certificate of Primitivo is, therefore, a valid and competent evidence to prove his filiation by Vicente.

2. ID.; SALES; BUYER IN GOOD FAITH, NOT A CASE OF.— Anent the third issue, can petitioners be considered buyers in good faith? Our ruling on this point is: no, they cannot be considered buyers in good faith. For we find that petitioners were only able to register the sale of the property and Tax Declaration No. 16304 in their name; they did not have a Torrens title. Unlike a title registered under the Torrens System, a tax declaration does not constitute constructive notice to the whole world. The issue of good faith or bad faith of a buyer is relevant only where the subject of the sale is a registered land but not where the property is an unregistered land.

3. ID.; DAMAGES; ACTUAL AND MORAL DAMAGES AND ATTORNEY'S FEES; CLAIM THEREFOR MUST BE SUBSTANTIATED.— On the issue of actual and moral damages and attorney's fees awarded by the trial court to respondents, we find the award bereft of factual basis. A party is entitled to an adequate compensation for such pecuniary loss or losses actually suffered by him which he has duly proven. Such damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. Attorney's fees should therefore be deleted for lack of factual basis and legal justification. Moral damages should likewise not be awarded since respondents did not show proof of moral suffering, mental anguish, serious anxiety, besmirched reputation, nor wounded feelings and social humiliation.

APPEARANCES OF COUNSEL

Ambrocio E. Pagtalunan for petitioners.

Manuelito C. Diosomito for respondents.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review seeks to reverse the Decision[1] dated November 22, 2004 and the Resolution[2] dated May 27, 2005 of the Court of Appeals in CA-G.R. CV No. 71996. The appellate court had affirmed with modification the Decision[3] dated February 20, 2001 of the Regional Trial Court (RTC), Branch 15, Naic, Cavite in Civil Case No. NC-652-95, annulling the sale in favor of the petitioners Edgardo and Natividad Fidel of a 150-square meter parcel of unregistered land located at San Miguel Street, Indang, Cavite and owned by the late Vicente Espineli.

The facts, culled from the records, are as follows:

On February 21, 1995, respondents filed a Complaint[4] for Annulment of Sale, Tax Declaration, Reconveyance with Damages against the petitioners Edgardo and Natividad Fidel and Guadalupe Espineli-Cruz before the RTC, Branch 15, Naic, Cavite. In their complaint, respondents alleged that they are compulsory heirs of Primitivo Espineli, the only child of Vicente and his first wife, Juliana Asas. Respondents further alleged that they discovered that the abovementioned parcel of land owned by the late Vicente was sold on October 7, 1994 to the petitioners despite the fact that Vicente died intestate on June 4, 1941. They argue that the sale is void and simulated because Vicente's signature appearing on the deed of sale is a forgery.

In her Answer,[5] Guadalupe, the only surviving child of Vicente and his second wife, Pacencia Romea, denied any knowledge of the deed of sale allegedly signed by Vicente. She, however,

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[1] *Rollo*, pp. 9-19. Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justices Juan Q. Enriquez, Jr. and Vicente Q. Roxas concurring.

[2] *Id.* at 20-22.

[3] *Id.* at 58-72. Penned by Judge Napoleon V. Dilag.

[4] Records, pp. 1-6.

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

admitted selling the property but by virtue of another deed of sale signed by her as heir of Vicente and in representation of her nephews and nieces who are children of her deceased siblings, all children of Vicente and Pacencia. She further denied knowledge of Vicente's alleged first marriage with Juliana Asas. She argues that the heirs of Primitivo must first establish their filiation from Vicente, prior to instituting the complaint for annulment of sale. Guadalupe further stresses that the petitioners Fidel have been able to register the sale of the property and to obtain Tax Declaration No. 16304[6] in their name.

On February 20, 2001, the RTC ruled in respondents' favor. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants as follows:

1. Ordering the annulment of the sale in favor of the defendants spouses Edgardo and Natividad Fidel of the property in litigation;

2. Ordering the Regis[ter] of Deeds and/or the Provincial Assessor of Cavite to cancel the registration and/or Tax Declaration No. 16304, Series of 1995;

3. Ordering the defendants spouses Edgardo and Natividad Fidel to cause the reconveyance of the property to Vicente Espineli and/or his heirs for disposition subject to the laws of intestacy;

4. Ordering the defendants jointly and severally, to pay the plaintiffs the amount of ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages;

5. Ordering the defendants jointly and severally, to reimburse the plaintiffs their expenses for litigation in the amount of ₱50,000.00 as attorney's fees;

6. And to pay costs of suit.

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[6] *Id*. at 15.

[7] *Rollo*, p. 72.

SO ORDERED.[7]

On November 22, 2004, the Court of Appeals affirmed with modification the RTC Decision as follows:

> Accordingly, the subject property should be reconveyed to the Estate of the late Vicente Espineli but the proper proceedings should be instituted to determine the latter's heirs, and if appropriate, to partition the subject property.
>
> WHEREFORE, premises considered, the assailed DECISION is hereby AFFIRMED subject to the foregoing MODIFICATION. No costs.
>
> SO ORDERED.[8]

Thus, the instant petition by the spouses Edgardo and Natividad Fidel, alleging that the appellate court:

> I.
>
> … ERRED IN UPHOLDING THE DECISION OF THE TRIAL COURT, CONSIDERING THAT PRIVATE RESPONDENTS HAVE NO LEGAL PERSONALITY TO INSTITUTE THE ACTION. PRIVATE RESPONDENTS MUST FIRST ESTABLISH THE SAME IN PROPER ACTION TO PROVE THEIR FILIATION. LACK OF SUCH DETERMINATION ON THE ISSUE OF FILIATION ON SEPARATE AND INDEPENDENT ACTION, PRIVATE RESPONDENTS HAVE NO LEGAL PERSONALITY TO INSTITUTE THE ACTION FOR ANNULMENT OF SALE, CONVEYANCE AND DAMAGES.
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> II.
>
> … LIKEWISE COMMITTED ERROR IN RECOGNIZING AND/OR ADMITTING THE BAPTISMAL CERTIFICATE OF PRIMITIVO ESPINELI AS PROOF OF FILIATION THAT [VICENTE ESPINELI IS HIS FATHER].
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> III.
>
> … ERRED IN AWARDING DAMAGES AND ATTORNEY'S FEES, CONSIDERING THAT PRIVATE RESPONDENTS MUST FIRST INSTITUTE A SEPARATE ACTION TO PROVE THEIR FILIATION.[9]

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[8] *Id.* at 18-19.

[9] *Id.* at 172.

Respondents for their part raise the following issues:

I.

WHETHER OR NOT PRIVATE RESPONDENTS ARE SUFFICIENTLY CLOTHED WITH LEGAL PERSONALITY TO FILE THE PRESENT ACTION FOR ANNULMENT OF SALE, RECONVEYANCE WITH DAMAGES WITHOUT PREJUDICE TO INSTITUTING A SEPARATE ACTION TO ESTABLISH FILIATION AND HEIRSHIP IN A SEPARATE [PROCEEDING].

II.

ASSUMING PETITIONERS HAVE PERSONALITY TO RAISE THE ISSUE OF FILIATION, WHETHER OR NOT THE BAPTISMAL CERTIFICATE OF PRIMITIVO ESPINELI IS VALID AND COMPETENT EVIDENCE OF HIS FILIATION AS CHILD OF VICENTE ESPINELI.

III.

WHETHER OR NOT THE SALE OF SUBJECT PROPERTY BY GUADALUPE TO PETITIONERS FIDEL IS VALID UNDER THE PRINCIPLE OF BUYER IN GOOD FAITH.

IV.

WHETHER OR NOT THE AWARD OF DAMAGES AND ATTORNEY'S FEES TO PRIVATE RESPONDENTS HAS NO BASIS SINCE A [SEPARATE] ACTION TO PROVE THEIR FILIATION SHOULD FIRST BE FILED.[10]

Briefly stated, the issues for our resolution are: (1) Do respondents have the legal personality to file the complaint for annulment of title? (2) Is the baptismal certificate of Primitivo valid and competent evidence to prove his filiation by Vicente? (3) Are petitioners buyers in good faith? and (4) Is the award of attorney's fees and damages to respondents proper?

At the outset, we entertain no doubt that the first deed of sale, allegedly signed by Vicente, is void because his signature therein is a patent forgery. Records show he died in 1941, but the deed of sale was allegedly signed on October 7, 1994. Article 1409 of the Civil Code of the Philippines states:

[10] *Id*. at 147-148.

Art. 1409. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order, or public policy;

(2) **Those which are absolutely simulated or fictitious**;

(3) Those whose cause or object did not exist at the time of the transaction;

(4) Those whose object is outside the commerce of men;

(5) Those which contemplate an impossible service;

(6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;

(7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived. (Emphasis supplied.)

As for the deed of sale signed by Guadalupe as heir of Vicente and in representation of her nephews and nieces, petitioners insist that the sale is valid because respondents have no legal personality to file the complaint, the latter not having established their filiation by Vicente. They argue that respondents first need to establish their filiation by Vicente prior to instituting a complaint in a separate action, and not in the present action. On the other hand, respondents contend that their filiation was established by the baptismal certificate of their father, Primitivo, showing that Primitivo is the son of Vicente.

On this point we rule in favor of respondents.

While respondents' principal action was for the annulment of the sale and not an action to impugn one's legitimacy and that one's legitimacy can be questioned only in a direct action seasonably filed by the proper party, it is necessary to pass upon the relationship of respondents to the deceased Vicente for the purpose of determining what legal rights respondents have in the property. In fact, the issue of whether or not respondents are heirs of Vicente was squarely raised by petitioners

in their Pre-Trial Brief[11] filed on April 26, 1995, before the trial court, hence they are now estopped from assailing the trial court's ruling on respondents' status. In the similar case of *Fernandez v. Fernandez*,[12] the Supreme Court held:

> It must be noted that the respondents' principal action was for the declaration of absolute nullity of two documents, namely: deed of extra-judicial partition and deed of absolute sale, and not an action to impugn one's legitimacy. The respondent court ruled on the filiation of petitioner Rodolfo Fernandez in order to determine Rodolfo's right to the deed of extra-judicial partition as the alleged legitimate heir of the spouses Fernandez. **While we are aware that one's legitimacy can be questioned only in a direct action seasonably filed by the proper party, this doctrine has no application in the instant case considering that respondents' claim was that petitioner Rodolfo was not born to the deceased spouses Jose and Generosa Fernandez**; we do not have a situation wherein they (respondents) deny that Rodolfo was a child of their uncle's wife. . . .
>
> xxx xxx xxx
>
> Thus, **it is necessary to pass upon the relationship of petitioner Rodolfo Fernandez to the deceased spouses Fernandez for the purpose of determining what legal right Rodolfo has in the property subject of the extra-judicial partition**. In fact, the issue of whether or not Rodolfo Fernandez was the son of the deceased spouses Jose Fernandez and Generosa de Venecia was squarely raised by petitioners in their pre-trial brief filed before the trial court, hence they are now estopped from assailing the trial court's ruling on Rodolfo's status.[13] (Emphasis supplied.)

Petitioners nonetheless contend that Primitivo's baptismal certificate is neither a public document nor a conclusive proof of the legitimate filiation by Vicente of Primitivo, the respondents' father. We find petitioners' contention lacking in merit, hence we reject it.

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[11] Records, pp. 45-47.

[12] G.R. No. 143256, August 28, 2001, 363 SCRA 811.

[13] *Id.* at 821-823.

Records show that Primitivo was born in 1895. At that time, the only records of birth are those which appear in parochial records. This Court has held that as to the nature and character of the entries contained in the parochial books and the certificates thereof issued by a parish priest, the same have not lost their character of being public documents for the purpose of proving acts referred to therein, inasmuch as from the time of the change of sovereignty in the Philippines to the present day, no law has been enacted abolishing the official and public character of parochial books and entries made therein. Parish priests continue to be the legal custodians of the parochial books kept during the former sovereignty, and as such they may issue certified copies of the entries contained therein in the same manner as do keepers of archives.[14]

The baptismal certificate of Primitivo is, therefore, a valid and competent evidence to prove his filiation by Vicente.

Accordingly, we uphold the Court of Appeals ruling that the subject property should be reconveyed to the Estate of the late Vicente Espineli and proper proceedings be instituted to determine the latter's heirs, and, if appropriate, to partition the subject property.

Anent the third issue, can petitioners be considered buyers in good faith? Our ruling on this point is: no, they cannot be considered buyers in good faith. For we find that petitioners were only able to register the sale of the property and Tax Declaration No. 16304 in their name; they did not have a Torrens title. Unlike a title registered under the Torrens System, a tax declaration does not constitute constructive notice to the whole world. The issue of good faith or bad faith of a buyer is relevant only where the subject of the sale is a registered land but not where the property is an unregistered land.[15]

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[14] *United States v. Evangelista*, 29 Phil. 215, 219 (1915), citing *United States v. Arceo*, 11 Phil. 530, 536 (1908).

[15] *Sales v. Court of Appeals*, G.R. No. 40145, July 29, 1992, 211 SCRA 858, 865-866, citing *David v. Bandin*, No. L-48322, April 8, 1987, 149 SCRA 140, 151.

However, on the issue of actual and moral damages and attorney's fees awarded by the trial court to respondents, we find the award bereft of factual basis. A party is entitled to an adequate compensation for such pecuniary loss or losses actually suffered by him which he has duly proven. Such damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. Attorney's fees should therefore be deleted for lack of factual basis and legal justification.[16] Moral damages should likewise not be awarded since respondents did not show proof of moral suffering, mental anguish, serious anxiety, besmirched reputation, nor wounded feelings and social humiliation.[17]

WHEREFORE, the petition is *DENIED.* The assailed Decision dated November 22, 2004 and the Resolution dated May 27, 2005 of the Court of Appeals in CA-G.R. CV No. 71996 are *AFFIRMED* with the *MODIFICATION* that the award of moral and exemplary damages as well as attorney's fees be *DELETED.* No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago,[*] *Carpio Morales, Tinga,* and *Velasco, Jr., JJ.,* concur.

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[16] *Fernandez v. Fernandez, supra* note 12, at 829-830.

[17] *Id.*

[*] Additional member in place of Associate Justice Arturo D. Brion who is on leave.

SECOND DIVISION

[G.R. No. 175118. July 21, 2008]

SOLIDSTATE MULTI-PRODUCTS CORPORATION, *petitioner, vs.* **SPS. ERLINDA CATIENZA-VILLAVERDE and VICTOR VILLAVERDE,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; A CONTRACT WITHOUT CONSIDERATION IS VOID; CASE AT BAR.— The Agreement with Mortgage, one of the key contracts in the present controversy, specifically mentions that the mortgage is without any consideration. Paragraph 8 thereof states: 8. The Mortgage herein agreed upon is without any consideration and the amount of NINETY SIX THOUSAND (₱96,000.00) PESOS, Philippine Currency, mentioned in the next preceding paragraph was not paid to and received by the First Party and the Third Party; That the parties specifically treated this contract, on the one hand, to be without consideration despite presumably knowing the legal consequence of such a characterization, *i.e.,* that a contract without consideration is void under Article 1352 of the Civil Code, is odd in light of petitioner's argument that the consideration for the mortgage was Peñaranda's undertakings (1) to institute at his own expense whatever legal action may be necessary to protect petitioner's title to the lot he had sold to the latter and (2) to answer for any damage which may be suffered by petitioner if ownership of the property is adjudged to another claimant. On the other hand, the Deed of Absolute Sale makes specific reference to the mortgage obligation and states that the consideration for the sale, like the mortgage, is also ₱96,000.00 "and the cancellation of the original mortgage obligation of NINETY SIX THOUSAND PESOS (₱96,000.00)." As previously stipulated by the parties, however, the amount of ₱96,000.00, which was supposedly the consideration for the mortgage, was never received by respondents. The foregoing circumstances justify the appellate court's conclusion, to which we agree, that the parties executed the Agreement with Mortgage and the Deed of Absolute Sale

solely to confront the possibility that the property sold by Peñaranda to petitioner would be adjudged to another claimant. The final disposition of the quieting of title case in favor of petitioner rendered the contracts without a cause, therefore void. The evidence clearly shows that while respondents acknowledged receipt of the amount of ₱96,000.00 in the Deed of Absolute Sale, such amount was not actually paid to them by petitioner. A contract of sale is void and produces no effect whatsoever where the price, which appears thereon as paid, has in fact never been paid by the purchaser to the vendor. As the appellate court found, respondents were given the amount of ₱55,000.00 in October 1988—a few months before the Deed of Absolute Sale was executed—after they were told that the amount was a "*paconsuelo*" for the use of their property. Later, when they obliged to sign the Deed of Absolute Sale, respondents were given ₱50,000.00. The amount of ₱50,000.00, which is less than the stated consideration for the sale of ₱96,000.00, was received by respondents only because they were then under the impression that petitioner had lost the quieting of title case. The amounts received by respondents are not the consideration for the sale but rather, as they understood it, amounts merely by petitioner out of the latter's munificence and good will. In their own words, respondents allege that they signed the Deed of Absolute Sale "due to the fraudulent misrepresentation and false notice or information coupled by plaintiffs' financial handicap at that time, in consideration of the meager amount of ₱50,000.00,"

2. ID.; MORTGAGE; *PACTUM COMMISSORIUM*, NOT A CASE OF.— We do not agree, however, with the appellate court's ruling that the sale should be considered a *pactum commissorium* prohibited under Article 2088 of the Civil Code. There is no stipulation in any of the contracts between the parties which states that ownership of the property in question shall automatically vest in petitioner upon respondents' failure to perform their obligations under the mortgage contract, which is the essence of *pactum commissorium.* There does not even appear to have been any demand or default yet. That the parties entered into a separate Deed of Absolute Sale is proof that there was no automatic transfer of ownership.

APPEARANCES OF COUNSEL

Corpuz Ejercito Macasaet & Rivera Law Offices for petitioner.
Eduardo A. Salinas for respondents.

D E C I S I O N

TINGA, *J.*:

Petitioner Solidstate Multi-Products Corporation seeks the reversal of the Decision[1] of the Court of Appeals dated 31 July 2006, in CA-G.R. CV No. 73733, which annulled the sale to petitioner of the parcel of land subject of this case, and of its Resolution[2] dated 18 October 2006 which denied reconsideration.

The facts are as follows:

In February 1976, Julian Peñaranda (Peñaranda), respondent Erlinda Villaverde's uncle, sold to petitioner a 48,182-square meter parcel of land located in Molino, Bacoor, Cavite, covered by Transfer Certificate of Title (TCT) No. T-80889 of the Registry of Deeds of the Province of Cavite. Because the property was then being adversely claimed by a third party, the Intestate Estate of Antenor S. Virata (Estate of Virata), Peñaranda undertook to institute at his own expense whatever legal action that might become necessary and to answer for damages to petitioner should the ownership of the property be "proven to be that of any other person or claimant thru fault of the First Party."[3]

The undertaking was reduced to writing in the form of an Agreement with Mortgage[4] dated 8 July 1976, executed by Peñaranda, petitioner and respondents. In the same document, respondents agreed to mortgage a 30,302-sq m property owned

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[1] *Rollo*, pp. 35-42; penned by Associate Justice Mario L. Guariña III and concurred in by Associate Justices Roberto A. Barrios and Arcangelita Romilla-Lontok.

[2] *Id.* at 43.

[3] *Id.* at 67; Agreement with Mortgage.

[4] *Id.* at 67-70.

by them and covered by TCT No. T-82596 in order to secure Peñaranda's faithful compliance with the undertaking. Respondents also signed an Agreement[5] to shoulder 50% of the expenses that would be incurred in the suit between petitioner and the Estate of Virata.

Petitioner instituted a civil action against the Estate of Virata to remove the cloud on its title. The complaint, docketed as Civil Case No. RTC-BCV 82-85 of the Regional Trial Court of Bacoor, Cavite, Branch 19, was dismissed on 15 June 1985 on the ground of failure to state a cause of action.[6] The dismissal was affirmed by the Court of Appeals on 13 July 1987, but was ultimately reversed by this Court on 6 May 1991 with the declaration that the parcel of land covered by TCT No. T-80889 was truly owned by petitioner.[7]

On 13 February 1989, while the case was pending with this Court, the parties executed a Deed of Absolute Sale [8] whereby respondents sold their property covered by TCT No. T-82596 to petitioner in consideration of the amount of ₱96,000.00—receipt of which respondents acknowledged to their full satisfaction—and of the cancellation of the original mortgage obligation under the Agreement with Mortgage. It appears that respondents also received the amount of ₱105,000.00 from petitioner on account of the sale.

Respondents, seven years thence, filed a Complaint[9] seeking the annulment of the Deed of Absolute Sale on the ground that their consent to the transaction was vitiated by mistake, undue influence and fraud. They alleged that petitioner had induced them to sell their land on the misinformation that the case filed against the Estate of Virata, which motivated them to sign the

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[5] *Id.* at 83.

[6] CA *rollo*, pp. 105-135.

[7] Records, pp. 158-174. Id. at 37-38; Decision of the Supreme Court in G.R. No. 83383.

[8] *Rollo*, pp. 64-66.

[9] Records, pp. 1-10.

Agreement with Mortgage and later the Deed of Absolute Sale, had already been dismissed.

The trial court rendered judgment in favor of respondents, ruling that the latter's property covered by TCT No. T-82596 was made the subject of the Agreement with Mortgage and of the Deed of Absolute Sale only to guarantee the success of the quieting of title case against the Estate of Virata. Since the case was eventually won by petitioner the trial court concluded that the sale was absolutely simulated or fictitious, without consideration and, therefore, void under Article 1409 of the Civil Code. It then directed the nullification of the Deed of Absolute Sale, the return of TCT No. T-82596 to respondents, and the cancellation of the annotation on the dorsal portion of the title pertaining to the Agreement with Mortgage. It also awarded ₱100,000.00 to respondents as nominal damages.[10]

The Court of Appeals affirmed the decision of the trial court with the modification that respondents return to petitioner the amount of ₱105,000.00 with interest at 6% from the finality of judgment until fully paid.

In this Petition for Review on *Certiorari*[11] dated 6 November 2006, petitioner argues that the Deed of Absolute Sale is separate and distinct from the Agreement with Mortgage. According to petitioner, there is no basis for the appellate court's ruling that the stated consideration of ₱96,000.00 for the Agreement with Mortgage, which respondents did not actually receive, is the same consideration for the Deed of Absolute Sale. The appellate court allegedly merely speculated that there was no consideration for the sale just because the Deed of Absolute Sale alluded to the mortgage. Petitioner maintains that there is nothing in the deed which indicates that respondents agreed to sell the property because they failed to comply with their obligation under the Agreement with Mortgage or that the sale was due to the dismissal of the case for quieting of title.

[10] The Decision dated 13 November 2001 was amended on 11 December 2001 to reflect the correct TCT Number of the property subject of the case. *Id.* at 261-262.

[11] *Rollo*, pp. 3-34.

Petitioner insists that respondents consent to the sale was not vitiated in any manner because the status of the quieting of title case could be easily verified with the exercise of reasonable diligence on their part. It also avers that the sale was supported by valuable consideration because respondents received ₱96,000.00 which they themselves acknowledged in the Deed of Absolute Sale, as well as an additional ₱105,000.00. Finally, petitioner argues that the complaint was filed more than four (4) years from the discovery of the alleged fraud or mistake and was thus filed out of time.

In their Comments[12] dated 23 May 2006, respondents argue that the Agreement with Mortgage and the Deed of Absolute Sale were devised to indemnify petitioner should it lose its case against the Estate of Virata; hence, when petitioner's title was upheld by the court, both agreements lost the purpose for their existence. Respondents thus aver that the appellate court's conclusion that the sale was without a valid consideration was correct. They likewise point out that since the case is one for the declaration of nullity of a contract, prescription should not apply.

Petitioner filed a Reply[13] dated 14 August 2007, reiterating its arguments and adding that respondents assumed two (2) undertakings in the Agreement with Mortgage: *first*, to assume the litigation costs in the suit against the Estate of Virata and *second*, to indemnify petitioner in case it loses the case. Only the second undertaking was allegedly resolved by the Court of Appeals.

Petitioner points out that respondents also signed a separate agreement to shoulder 50% of the expenses incurred in the quieting of title case. It avers that it incurred litigation expenses in the amount of ₱3,000,000.00 for which respondents should answer. The considerations for the Deed of Absolute Sale are allegedly the amount of ₱96,000.00 stated therein, the cancellation of the original mortgage obligation under the Agreement with Mortgage, the amount of ₱105,000.00 received by respondents, and the payment of respondents' obligations under the said agreement.

[12] *Id.* at 212-221.

[13] *Id.* at 226-234.

A contract, as defined by the Civil Code, has the following requisites: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established.[14] Cause or consideration is the contested requisite in this case.

The Agreement with Mortgage, one of the key contracts in the present controversy, specifically mentions that the mortgage is without any consideration. Paragraph 8 thereof states:

> 8. The Mortgage herein agreed upon is without any consideration and the amount of NINETY SIX THOUSAND (₱96,000.00) PESOS, Philippine Currency, mentioned in the next preceding paragraph was not paid to and received by the First Party and the Third Party;[15]

That the parties specifically treated this contract, on the one hand, to be without consideration despite presumably knowing the legal consequence of such a characterization, *i.e.,* that a contract without consideration is void under Article 1352 of the Civil Code, is odd in light of petitioner's argument that the consideration for the mortgage was Peñaranda's undertakings (1) to institute at his own expense whatever legal action may be necessary to protect petitioner's title to the lot he had sold to the latter and (2) to answer for any damage which may be suffered by petitioner if ownership of the property is adjudged to another claimant.

On the other hand, the Deed of Absolute Sale makes specific reference to the mortgage obligation and states that the consideration for the sale, like the mortgage, is also ₱96,000.00 "and the cancellation of the original mortgage obligation of NINETY SIX THOUSAND PESOS (₱96,000.00)."[16] As previously stipulated by the parties, however, the amount of ₱96,000.00, which was supposedly the consideration for the mortgage, was never received by respondents.

The foregoing circumstances justify the appellate court's conclusion, to which we agree, that the parties executed the

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[14] CIVIL CODE, Art. 1318.

[15] *Rollo*, p. 69.

[16] *Id*. at 65.

Agreement with Mortgage and the Deed of Absolute Sale solely to confront the possibility that the property sold by Peñaranda to petitioner would be adjudged to another claimant. The final disposition of the quieting of title case in favor of petitioner rendered the contracts without a cause, therefore void.[17]

The evidence clearly shows that while respondents acknowledged receipt of the amount of ₱96,000.00 in the Deed of Absolute Sale, such amount was not actually paid to them by petitioner. A contract of sale is void and produces no effect whatsoever where the price, which appears thereon as paid, has in fact never been paid by the purchaser to the vendor.[18]

As the appellate court found, respondents were given the amount of ₱55,000.00 in October 1988—a few months before the Deed of Absolute Sale was executed—after they were told that the amount was a "*paconsuelo*" for the use of their property.[19] Later, when they obliged to sign the Deed of Absolute Sale, respondents were given ₱50,000.00. The amount of ₱50,000.00, which is less than the stated consideration for the sale of ₱96,000.00, was received by respondents only because they were then under the impression that petitioner had lost the quieting of title case. The amounts received by respondents are not the consideration for the sale but rather, as they understood it, amounts merely by petitioner out of the latter's munificence and good will. In their own words, respondents allege that they signed the Deed of Absolute Sale "due to the fraudulent misrepresentation and false notice or information coupled by plaintiffs' financial handicap at that time, in consideration of the meager amount of ₱50,000.00,"[20]

We do not agree, however, with the appellate court's ruling that the sale should be considered a *pactum commissorium*

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[17] *Manila Banking Corporation v. Silverio*, G.R. No. 132887, 11 August 2005, 466 SCRA 438.

[18] *Montecillo v. Reynes*, G.R. No. 138018, 26 July 2002.

[19] TSN, 29 April 1997, p. 12; TSN, 24 June 1997, pp. 3-4.

[20] Records, p. 6.

prohibited under Article 2088 of the Civil Code.[21] There is no stipulation in any of the contracts between the parties which states that ownership of the property in question shall automatically vest in petitioner upon respondents' failure to perform their obligations under the mortgage contract, which is the essence of *pactum commissorium*.[22] There does not even appear to have been any demand or default yet. That the parties entered into a separate Deed of Absolute Sale is proof that there was no automatic transfer of ownership.

Based on the foregoing, we find that prescription had not, nay cannot, set in. Article 1410 of the Civil Code provides that the action or defense for the declaration of the inexistence of a contract does not prescribe.

As a final note, effect should be given to the agreement signed by respondents in which they committed "to shoulder 50% of the expense that will be incurred" in the case filed by petitioner against the Estate of Virata.[23] The appellate court correctly ruled, however, that this issue must be resolved in another case.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CV No. 73733 dated 31 July 2006 and its Resolution dated 18 October 2006 are *AFFIRMED* in accordance with the foregoing discussion. No pronouncement as to costs.

SO ORDERED.

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

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[21] Civil Code, Art. 2088. 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.

[22] *Briones-Vasquez v. Court of Appeals*, G.R. No. 144882, 4 February 2005, 450 SCRA 482.

[23] *Rollo,* p. 83.

THIRD DIVISION

[G.R. No. 176664. July 21, 2008]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **SPOUSES REYNALDO AND VICTORIA ROYECA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF IN CIVIL CASES.— In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence, or evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Thus, the party, whether plaintiff or defendant, who asserts the affirmative of an issue has the onus to prove his assertion in order to obtain a favorable judgment. For the plaintiff, the burden to prove its positive assertions never parts. For the defendant, an affirmative defense is one which is not a denial of an essential ingredient in the plaintiff's cause of action, but one which, if established, will be a good defense – *i.e.* an "avoidance" of the claim.

2. CIVIL LAW; OBLIGATIONS; PAYMENT; PAYMENT IN CHECK; NOTICE OF DISHONOR, WHEN REQUIRED; EFFECT OF FAILURE TO GIVE NOTICE.— A notice of dishonor is required only to preserve the right of the payee to recover on the check. It preserves the liability of the drawer and the indorsers on the check. Otherwise, if the payee fails to give notice to them, they are discharged from their liability thereon, and the payee is precluded from enforcing payment on the check.

3. ID.; ID.; ID.; CREDITOR'S POSSESSION OF PROMISSORY NOTE IS A PROOF THAT THE DEBT HAS NOT BEEN PAID.— The creditor's possession of the evidence of debt is proof that the debt has not been discharged by payment. A promissory note in the hands of the creditor is a proof of indebtedness rather than proof of payment. In an action for replevin by a mortgagee, it is *prima facie* evidence that the promissory note has not been paid. Likewise, an uncancelled

mortgage in the possession of the mortgagee gives rise to the presumption that the mortgage debt is unpaid.

4. ID.; ID.; ID.; A CHECK IS NOT A LEGAL TENDER AND CANNOT CONSTITUTE A VALID TENDER OF PAYMENT; APPLICATION.— Settled is the rule that payment must be made in legal tender. A check is not legal tender and, therefore, cannot constitute a valid tender of payment. Since a negotiable instrument is only a substitute for money and not money, the delivery of such an instrument does not, by itself, operate as payment. Mere delivery of checks does not discharge the obligation under a judgment. The obligation is not extinguished and remains suspended until the payment by commercial document is actually realized.

5. ID.; LACHES; DOCTRINE, NOT APPLICABLE.— Laches is a recourse in equity. Equity, however, is applied only in the absence, never in contravention, of statutory law. Thus, laches cannot, as a rule, abate a collection suit filed within the prescriptive period mandated by the New Civil Code. The petitioner's action was filed within the ten-year prescriptive period provided under Article 1144 of the New Civil Code. Hence, there is no room for the application of laches.

6. ID.; OBLIGATIONS; REDUCTION OF PENALTY CHARGES DEEMED JUST AND EQUITABLE.— The Court cannot ignore what the respondents have consistently raised — that they were not notified of the non-payment of the checks. Reasonable banking practice and prudence dictates that, when a check given to a creditor bank in payment of an obligation is dishonored, the bank should immediately return it to the debtor and demand its replacement or payment lest it causes any prejudice to the drawer. In light of this and the fact that the obligation has been partially paid, we deem it just and equitable to reduce the 3% per month penalty charge as stipulated in the Promissory Note to 12% per annum. Although a court is not at liberty to ignore the freedom of the parties to agree on such terms and conditions as they see fit, as long as they contravene no law, morals, good customs, public order or public policy, a stipulated penalty, nevertheless, may be equitably reduced by the courts if it is iniquitous or unconscionable, or if the principal obligation has been partly or irregularly complied with.

APPEARANCES OF COUNSEL

Benedictine Law Center for petitioner.

Morales Rojas & Risos Vidal for respondents.

D E C I S I O N

NACHURA, *J.:*

Bank of the Philippine Islands (BPI) seeks a review of the Court of Appeals (CA) Decision[1] dated July 12, 2006, and Resolution[2] dated February 13, 2007, which dismissed its complaint for replevin and damages and granted the respondents' counterclaim for damages.

The case stems from the following undisputed facts:

On August 23, 1993, spouses Reynaldo and Victoria Royeca (respondents) executed and delivered to Toyota Shaw, Inc. a Promissory Note[3] for ₱577,008.00 payable in 48 equal monthly installments of ₱12,021.00, with a maturity date of August 18, 1997. The Promissory Note provides for a penalty of 3% for every month or fraction of a month that an installment remains unpaid.

To secure the payment of said Promissory Note, respondents executed a Chattel Mortgage[4] in favor of Toyota over a certain motor vehicle, more particularly described as follows:

Make and Type	1993 Toyota Corolla 1.3 XL
Motor No.	2E-2649879
Serial No.	EE100-9512571
Color	D.B. Gray Met.

[1] Penned by Associate Justice Eliezer R. de los Santos, with Associate Justices Fernanda Lampas-Peralta and Myrna Dimaranan Vidal concurring; *rollo*, pp. 25-31.

[2] *Rollo*, p. 33.

[3] *Id.* at 37.

[4] *Id.* at 42-45.

Toyota, with notice to respondents, executed a Deed of Assignment[5] transferring all its rights, title, and interest in the Chattel Mortgage to Far East Bank and Trust Company (FEBTC).

Claiming that the respondents failed to pay four (4) monthly amortizations covering the period from May 18, 1997 to August 18, 1997, FEBTC sent a formal demand to respondents on March 14, 2000 asking for the payment thereof, plus penalty.[6] The respondents refused to pay on the ground that they had already paid their obligation to FEBTC.

On April 19, 2000, FEBTC filed a Complaint for Replevin and Damages against the respondents with the Metropolitan Trial Court (MeTC) of Manila praying for the delivery of the vehicle, with an alternative prayer for the payment of ₱48,084.00 plus interest and/or late payment charges at the rate of 36% per annum from May 18, 1997 until fully paid. The complaint likewise prayed for the payment of ₱24,462.73 as attorney's fees, liquidated damages, bonding fees and other expenses incurred in the seizure of the vehicle. The complaint was later amended to substitute BPI as plaintiff when it merged with and absorbed FEBTC.[7]

In their Answer, respondents alleged that on May 20, 1997, they delivered to the Auto Financing Department of FEBTC eight (8) postdated checks in different amounts totaling ₱97,281.78. The Acknowledgment Receipt,[8] which they attached to the Answer, showed that FEBTC received the following checks:

DATE	BANK	CHECK NO.	AMOUNT
26 May 97	Landbank	#610945	₱13,824.15
6 June 97	Head Office	#610946	12,381.63
30 May 97	FEBTC	#17A00-11550P	12,021.00
15 June 97	Shaw Blvd.	#17A00-11549P	12,021.00
30 June 97	"	#17A00-11551P	12,021.00
18 June 97	Landbank	#610947	11,671.00
18 July 97	Head Office	#610948	11,671.00
18 August 97		#610949	11,671.00

[5] *Id.* at 39.

[6] *Id.* at 58.

[7] *Id.* at 46-49.

[8] *Id.* at 56.

The respondents further averred that they did not receive any notice from the drawee banks or from FEBTC that these checks were dishonored. They explained that, considering this and the fact that the checks were issued three years ago, they believed in good faith that their obligation had already been fully paid. They alleged that the complaint is frivolous and plainly vexatious. They then prayed that they be awarded moral and exemplary damages, attorney's fees and costs of suit.[9]

During trial, Mr. Vicente Magpusao testified that he had been connected with FEBTC since 1994 and had assumed the position of Account Analyst since its merger with BPI. He admitted that they had, in fact, received the eight checks from the respondents. However, two of these checks (Landbank Check No. 0610947 and FEBTC Check No. 17A00-11551P) amounting to ₱23,692.00 were dishonored. He recalled that the remaining two checks were not deposited anymore due to the previous dishonor of the two checks. He said that after deducting these payments, the total outstanding balance of the obligation was ₱48,084.00, which represented the last four monthly installments.

On February 23, 2005, the MeTC dismissed the case and granted the respondents' counterclaim for damages, thus:

> WHEREFORE, judgment is hereby rendered dismissing the complaint for lack of cause of action, and on the counterclaim, plaintiff is ordered to indemnify the defendants as follows:
>
> a) The sum of PhP30,000.00 as and by way of moral damages;
>
> b) The sum of PhP30,000.00 as and by way of exemplary damages;
>
> c) The sum of PhP20,000.00 as and by way of attorney's fees; and
>
> d) To pay the costs of the suit.
>
> SO ORDERED.[10]

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[9] *Id.* at 53.

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

On appeal, the Regional Trial Court (RTC) set aside the MeTC Decision and ordered the respondents to pay the amount claimed by the petitioner. The dispositive portion of its Decision[11] dated August 11, 2005 reads:

> WHEREFORE, premises considered, the Decision of the Metropolitan Trial Court, Branch 9 dated February 23, 2005 is REVERSED and a new one entered directing the defendants-appellees to pay the plaintiff-appellant, jointly and severally,
>
> 1. The sum of ₱48,084.00 plus interest and/or late payment charges thereon at the rate of 36% per annum from May 18, 1997 until fully paid;
> 2. The sum of ₱10,000.00 as attorney's fees; and
> 3. The costs of suit.
>
> SO ORDERED.[12]

The RTC denied the respondents' motion for reconsideration.[13]

The respondents elevated the case to the Court of Appeals (CA) through a petition for review. They succeeded in obtaining a favorable judgment when the CA set aside the RTC's Decision and reinstated the MeTC's Decision on July 12, 2006.[14] On February 13, 2007, the CA denied the petitioner's motion for reconsideration.[15]

The issues submitted for resolution in this petition for review are as follows:

> I. WHETHER OR NOT RESPONDENTS WERE ABLE TO PROVE FULL PAYMENT OF THEIR OBLIGATION AS ONE OF THEIR AFFIRMATIVE DEFENSES.
>
> II. WHETHER OR NOT TENDER OF CHECKS CONSTITUTES PAYMENT.

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[11] *Id*. at 64-73.

[12] *Id*. at 73.

[13] *Id*. at 11.

[14] *Id*. at 31.

[15] *Id*. at 33.

III. WHETHER OR NOT RESPONDENTS ARE ENTITLED TO MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[16]

The petitioner insists that the respondents did not sufficiently prove the alleged payment. It avers that, under the law and existing jurisprudence, delivery of checks does not constitute payment. It points out that this principle stands despite the fact that there was no notice of dishonor of the two checks and the demand to pay was made three years after default.

On the other hand, the respondents postulate that they have established payment of the amount being claimed by the petitioner and, unless the petitioner proves that the checks have been dishonored, they should not be made liable to pay the obligation again.[17]

The petition is partly meritorious.

In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence, or evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[18] Thus, the party, whether plaintiff or defendant, who asserts the affirmative of an issue has the onus to prove his assertion in order to obtain a favorable judgment. For the plaintiff, the burden to prove its positive assertions never parts. For the defendant, an affirmative defense is one which is not a denial of an essential ingredient in the plaintiff's cause of action, but one which, if established, will be a good defense – *i.e.* an "avoidance" of the claim.[19]

In *Jimenez v. NLRC,*[20] cited by both the RTC and the CA, the Court elucidated on who, between the plaintiff and defendant, has the burden to prove the affirmative defense of payment:

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[16] *Id.* at 15.

[17] *Id.* at 124.

[18] *Encinas v. National Bookstore, Inc.*, G.R. No. 162704, November 19, 2004, 443 SCRA 293, 302.

[19] *DBP Pool of Accredited Insurance Companies v. Radio Mindanao Network, Inc.*, G.R. No. 147039, January 27, 2006, 480 SCRA 314, 322-323.

[20] 326 Phil. 89 (1996).

As a general rule, one who pleads payment has the burden of proving it. Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.

When the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such a defense to the claim of the creditor. Where the debtor introduces some evidence of payment, the burden of going forward with the evidence - as distinct from the general burden of proof - shifts to the creditor, who is then under a duty of producing some evidence to show non-payment.[21]

In applying these principles, the CA and the RTC, however, arrived at different conclusions. While both agreed that the respondents had the burden of proof to establish payment, the two courts did not agree on whether the respondents were able to present sufficient evidence of payment — enough to shift the burden of evidence to the petitioner. The RTC found that the respondents failed to discharge this burden because they did not introduce evidence of payment, considering that mere delivery of checks does not constitute payment.[22] On the other hand, the CA concluded that the respondents introduced sufficient evidence of payment, as opposed to the petitioner, which failed to produce evidence that the checks were in fact dishonored. It noted that the petitioner could have easily presented the dishonored checks or the advice of dishonor and required respondents to replace the dishonored checks but none was presented. Further, the CA remarked that it is absurd for a bank, such as petitioner, to demand payment of a failed amortization only after three years from the due date.

The divergence in this conflict of opinions can be narrowed down to the issue of whether the Acknowledgment Receipt was sufficient proof of payment. As correctly observed by the RTC,

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[21] *Id*. at 95.

[22] *Rollo,* p. 72.

this is only proof that respondents delivered eight checks in payment of the amount due. Apparently, this will not suffice to establish actual payment.

Settled is the rule that payment must be made in legal tender. A check is not legal tender and, therefore, cannot constitute a valid tender of payment.[23] Since a negotiable instrument is only a substitute for money and not money, the delivery of such an instrument does not, by itself, operate as payment. Mere delivery of checks does not discharge the obligation under a judgment. The obligation is not extinguished and remains suspended until the payment by commercial document is actually realized.[24]

To establish their defense, the respondents therefore had to present proof, not only that they delivered the checks to the petitioner, but also that the checks were encashed. The respondents failed to do so. Had the checks been actually encashed, the respondents could have easily produced the cancelled checks as evidence to prove the same. Instead, they merely averred that they believed in good faith that the checks were encashed because they were not notified of the dishonor of the checks and three years had already lapsed since they issued the checks.

Because of this failure of the respondents to present sufficient proof of payment, it was no longer necessary for the petitioner to prove non-payment, particularly proof that the checks were dishonored. The burden of evidence is shifted only if the party upon whom it is lodged was able to adduce preponderant evidence to prove its claim.[25]

To stress, the obligation to prove that the checks were not dishonored, but were in fact encashed, fell upon the respondents who would benefit from such fact. That payment was effected through the eight checks was the respondents' affirmative allegation

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[23] *Abalos v. Macatangay, Jr.*, G.R. No. 155043, September 30, 2004, 439 SCRA 649, 659.

[24] *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 49188, January 30, 1990, 181 SCRA 557, 568.

[25] *Asian Transmission Corporation v. Canlubang Sugar Estates*, 457 Phil. 260, 290 (2003).

that they had to establish with legal certainty. If the petitioner were seeking to enforce liability upon the check, the burden to prove that a notice of dishonor was properly given would have devolved upon it.[26] The fact is that the petitioner's cause of action was based on the original obligation as evidenced by the Promissory Note and the Chattel Mortgage, and not on the checks issued in payment thereof.

Further, it should be noted that the petitioner, as payee, did not have a legal obligation to inform the respondents of the dishonor of the checks. A notice of dishonor is required only to preserve the right of the payee to recover on the check. It preserves the liability of the drawer and the indorsers on the check. Otherwise, if the payee fails to give notice to them, they are discharged from their liability thereon, and the payee is precluded from enforcing payment on the check. The respondents, therefore, cannot fault the petitioner for not notifying them of the non-payment of the checks because whatever rights were transgressed by such omission belonged only to the petitioner.

In all, we find that the evidence at hand preponderates in favor of the petitioner. The petitioner's possession of the documents pertaining to the obligation strongly buttresses its claim that the obligation has not been extinguished. The creditor's possession of the evidence of debt is proof that the debt has not been discharged by payment.[27] A promissory note in the hands of the creditor is a proof of indebtedness rather than proof of payment.[28] In an action for replevin by a mortgagee, it is *prima facie* evidence that the promissory note has not been paid.[29] Likewise, an uncancelled mortgage in the possession of the mortgagee gives rise to the presumption that the mortgage debt is unpaid.[30]

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[26] See Negotiable Instruments Law, Sec. 89.

[27] *Redmond v. Hughes*, 135 N.Y.S. 843, 151 App. Div. 99 (1912).

[28] *Biala v. Court of Appeals*, G.R. No. L-43503, October 31, 1990, 191 SCRA 50, 59.

[29] *Heagney v. J.I. Case Threshing Mach. Co.*, 99 N.W. 260 (1904).

[30] *Guerin v. Cassidy*, 38 NJ Super 454, 119 A2d 780 (1956); *Beattie v. Meeker*, 149 N.Y.S. 453 (1914).

Finally, the respondents posit that the petitioner's claim is barred by laches since it has been three years since the checks were issued. We do not agree. Laches is a recourse in equity. Equity, however, is applied only in the absence, never in contravention, of statutory law. Thus, laches cannot, as a rule, abate a collection suit filed within the prescriptive period mandated by the New Civil Code.[31] The petitioner's action was filed within the ten-year prescriptive period provided under Article 1144 of the New Civil Code. Hence, there is no room for the application of laches.

Nonetheless, the Court cannot ignore what the respondents have consistently raised — that they were not notified of the non-payment of the checks. Reasonable banking practice and prudence dictates that, when a check given to a creditor bank in payment of an obligation is dishonored, the bank should immediately return it to the debtor and demand its replacement or payment lest it causes any prejudice to the drawer. In light of this and the fact that the obligation has been partially paid, we deem it just and equitable to reduce the 3% per month penalty charge as stipulated in the Promissory Note to 12% per annum.[32] Although a court is not at liberty to ignore the freedom of the parties to agree on such terms and conditions as they see fit, as long as they contravene no law, morals, good customs, public order or public policy, a stipulated penalty, nevertheless, may be equitably reduced by the courts if it is iniquitous or unconscionable, or if the principal obligation has been partly or irregularly complied with.[33]

WHEREFORE, premises considered, the petition is *PARTIALLY GRANTED*. The Court of Appeals Decision dated July 12, 2006, and Resolution dated February 13, 2007, are *REVERSED* and *SET ASIDE*. The Decision of the Regional Trial Court, dated August 11, 2005, is *REINSTATED* with the

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[31] *Agra v. Philippine National Bank,* 368 Phil. 829 (1999).

[32] Article 1229 of the Civil Code authorizes the judge to equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor.

[33] *Ligutan v. Court of Appeals,* 427 Phil. 42, 51 (2002).

MODIFICATION that respondents are ordered to deliver the possession of the subject vehicle, or in the alternative, pay the petitioner ₱48,084.00 plus late penalty charges/interest thereon at the rate of 12% per annum from May 18, 1997 until fully paid.

SO ORDERED.

Quisumbing,[*] *Ynares-Santiago (Chairperson), Austria-Martinez,* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 177576. July 21, 2008]

UNIVERSAL STAFFING SERVICES, INC., *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION and GRACE M. MORALES, *** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL OF EMPLOYEE; POOR PERFORMANCE CAN BE A JUST CAUSE FOR DISMISSAL IF IT AMOUNTS TO GROSS AND HABITUAL NEGLECT OF DUTY.— Morales was dismissed for her alleged poor performance. As a general concept, "poor performance" is equivalent to inefficiency and incompetence in the performance of official duties. Under Article 282 of the Labor

[*] In lieu of Associate Justice Minita V. Chico-Nazario, per Special Order No. 508 dated June 25, 2008.

[*] The present petition impleaded the Court of Appeals, as respondent. However, Section 4, Rule 45 of the Revised Rules of Court provides that the petition shall not implead the lower courts and judges thereof as petitioners or respondents. Hence, the deletion of the Court of Appeals from the title.

Code, an unsatisfactory rating can be a just cause for dismissal only if it amounts to gross and habitual neglect of duties. Thus, the fact that an employee's performance is found to be poor or unsatisfactory does not necessarily mean that the employee is grossly and habitually negligent of his duties. Gross negligence implies a want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.

2. ID.; ID.; ID.; ID.; POOR PERFORMANCE MUST BE SUBSTANTIATED.— We reviewed the records of the case and we agree with the NLRC and the CA that no substantial evidence was presented to substantiate the cause of Morales' dismissal. First, USSI failed to cite particular acts or instances that would validate its claim of Morales' poor performance. Second, no convincing proof was offered to substantiate Morales' alleged poor performance. As the NLRC had taken pains to demonstrate: [T]he notice of termination and the statement dated July 29, 2002 purportedly executed by Sharath B. Rai, Al Sandos Human Resource and Training Manager stating that Morales was dismissed due to her poor performance and for revealing secret information of potential clients do not constitute substantial evidence. x x x First, the notice of termination was, apparently never served upon [Morales], since it does not bear her signature. Second, the two pieces of evidence are inconsistent. Based on the notice of termination, which bears an earlier date, [Morales] was dismissed due to poor performance. Third, there is no showing that [Morales] was dismissed on the basis of established facts and not on the basis of a mere suspicion. There is no mention of what criteria were used in evaluating her performance. Fourth, and most important, the pieces of evidence in question are not sworn to, and the persons who supposedly executed them were not presented in the proceedings conducted by the Labor Arbiter. They, therefore, constitute mere hearsay evidence, which means that they have no evidentiary value. Besides, even assuming that Morales' performance was unsatisfactory, USSI failed to demonstrate that her alleged poor performance amounted to gross and habitual neglect of duty, which would justify her dismissal.

3. ID.; ID.; ID.; DENIAL OF DUE PROCESS IN THE DISMISSAL OF EMPLOYEE.— Furthermore, Morales was not accorded

due process. Under Article 277(b) of the Labor Code, the employer must send the employee who is about to be terminated, a written notice stating the cause/s for termination and must give the employee the opportunity to be heard and to defend himself. There was no showing that Al Sandos warned Morales of her alleged poor performance. Likewise, Morales was not served the first notice apprising her of the particular acts or omissions on which her dismissal was based together with the opportunity to explain her side. The only notice given to Morales was the letter dated December 14, 2002 informing her that she was already terminated.

4. ID.; ID.; ID.; EFFECT WHEN AN ILLEGALLY DISMISSED EMPLOYEE DID NOT APPEAL FROM THE DECISION OF THE NLRC.— As shown by the records, Morales did not appeal from the said NLRC decision; hence, the same attained finality as to Morales. The monetary awards, as well as the denial of the holiday and overtime pay, had already been laid to rest. This is in accord with the doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision. Certainly, the CA can no longer modify the awards by the NLRC. Thus, USSI can only be held liable for the payment of the monetary award granted by the NLRC, that is, the payment of Morales' three (3) months' salary.

5. ID.; ID.; ID.; PRINCIPLES ON QUITCLAIMS AND WAIVERS, REITERATED; APPLICATION.— USSI cannot take refuge in the *final settlement* signed by Morales on January 1, 2003 to escape liability. Generally, deeds of release, waivers, or quitclaims cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal, since quitclaims are looked upon with disfavor and are frowned upon as contrary to public policy. Where, however, the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking. The burden of proving that the quitclaim or waiver was voluntarily entered into rests on the employer. Unfortunately for USSI, it again failed to discharge this burden. Other than its barefaced assertion, no evidence was presented to establish that Morales voluntarily signed the *final settlement*. The mere fact that Morales was

not physically coerced or intimidated does not necessarily imply that she freely and voluntarily consented to the terms of the *final settlement*.

APPEARANCES OF COUNSEL

Pangcoga Basar and Associates for petitioner.

Avelino M. Morales for respondent.

D E C I S I O N

NACHURA, *J.*:

At bar is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Universal Staffing Services, Inc. challenging the February 12, 2007 Decision[1] and the May 3, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 93352.

The facts.

Respondent Grace M. Morales (Morales) applied for and was hired as receptionist by petitioner Universal Staffing Services, Inc. (USSI) in behalf of its principal Jin Xiang International Labour Supply of United Arab Emirates (U.A.E.). The contract duly approved by the Philippine Overseas Employment Administration (POEA), provided for an employment term of two (2) years with a monthly salary of Dhs1,100.00.[3]

On February 2, 2002, Morales left for Abu Dhabi, U.A.E. and upon arrival, worked as receptionist at Al Sandos Suites (Al Sandos). Ten (10) months later, or on December 13, 2002, Morales' employment was terminated allegedly due to her poor

[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Vicente Q. Roxas and Ramon R. Garcia, concurring; *rollo*, pp. 158-169.

[2] *Id.* at 185-187.

[3] *Rollo*, pp. 31-32.

work performance. Morales received Dhs1,300.00 as full and final settlement of all her claims on January 1, 2003, and was repatriated on January 7, 2003.

Claiming that she was illegally terminated, Morales filed a complaint[4] for illegal dismissal and non-payment of overtime and vacation pay against USSI and Al Sandos Hotel Management with the Labor Arbiter, docketed as OFW Case No. 03-04-0973-00.

Traversing the complaint, USSI asserted that Morales was dismissed for just cause and with due process. It averred that Morales' performance as receptionist was unsatisfactory, and that despite the chance given her, Morales' job performance did not improve; thus, Al Sandos was prompted to pre-terminate Morales' employment contract upon payment of all the benefits due her. USSI prayed for the dismissal of the complaint.

On April 2, 2004, the Labor Arbiter rendered a Decision,[5] *viz.*:

> [W]e are not convinced that [Morales] was illegally dismissed.
>
> Firstly, [Morales] was informed that she is being charged with poor performance and grave misconduct for leaking passport copies of guests to competitors thereby greatly prejudicing the profitability of the operation of the hotel which is here (sic) foreign employer. While the charge of leaking confidential information to competitors has not been established clearly, [Morales'] foreign employer should be afforded a leeway to determine what acts as (sic) detrimental to the sound operation of its business. To substantiate our judgment to the sound discretion of the employer would be a transgression that the government should allow a business to freely operate on its own in consonance with a domestic free enterprise. Besides, [Al Sandos] has no motive or malice to impute upon [Morales] the grievous act of revealing confidential information if it did not have sufficient basis to support its suspicion. If indeed [Morales] has served her foreign employer faithfully and with utmost fidelity, her employer would [not have] decided to terminate her services for grave misconduct and poor performance because by doing so, it would entail additional expenses in looking for a replacement of [Morales].

[4] *Id.* at 33.

[5] *Id.* at 57-62.

Secondly, [the] letter of termination (Annex C), certification letter of [Morales'] termination dated July 29, 2003 (Annex B), Final Settlement (Annex D), and exit clearance (Annex E) were all authenticated and noted by the Labour Attaché of the Philippine Embassy in Dubai, U.A.E. In other words, all the acts of [Al Sandos] were transparent and made known to the Labour Attaché who has he (sic) right to object to the dismissal if it were (sic) attended by malice or fraud.

Finally, the Final Settlement and Quitclaim and Release signed and executed by [Morales] should be given great weight and probative value in the absence of showing that the same was executed through threat and intimidation. While [Morales] claims that the execution thereof was attended by duress, [Morales] failed to specify the acts constitutive of duress.

With respect to the second issue, the same is laid to rest with [Morales] executing a Final Settlement (Annex D) and Bank Payment Voucher in the sum of 1,300 dinars to answer for the monetary claims of [Morales]. It is worthy to note that the aforementioned documents were authenticated and duly noted by the Labour Attache. If, indeed, there was deficiency, the same should have been received under protest or that deficiency was made known to the Labour Attache who can demand from the foreign employer that then deficiency should be paid.

Considering that the complaint for illegal dismissal did not prosper, the claim for moral and exemplary damages must perforce fail.[6]

On appeal by Morales, the National Labor Relations Commission (NLRC) reversed the Labor Arbiter. The NLRC found that no substantial evidence supports a valid dismissal. Accordingly, it ordered USSI to pay Morales Dhs3,300.00, or its peso equivalent, for the unexpired portion of her contract, pursuant to Section 10 of Republic Act (R.A.) No. 8042, or the *Migrant Workers and Overseas Filipinos Act of 1995*. The NLRC, however, affirmed the denial of Morales' claim for overtime pay and holiday pay for lack of basis.

Thus, the NLRC disposed:

WHEREFORE, the decision appealed from is hereby MODIFIED.

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[6] *Id.* at 60-62.

The finding that there was no illegal dismissal is hereby REVERSED. Consequently, [USSI] is hereby ordered to immediately pay [Morales] the Philippine peso equivalent at the time of actual payment of DHS3,300 representing her salaries for three (3) months.

The finding that overtime pay and holiday pay are not recoverable is hereby AFFIRMED.

SO ORDERED.[7]

Only USSI went up to the Court of Appeals via *certiorari*. On February 12, 2007, the CA rendered a Decision[8] modifying the resolutions of the NLRC. The CA sustained the NLRC's finding of unlawful termination, but modified, by increasing, the awards granted to Morales. The dispositive portion of the Decision reads:

WHEREFORE, the foregoing considered, the assailed Decision is **MODIFIED** in that [USSI] is ordered to pay [Morales] her salaries equivalent to six (6) months, overtime pay and holiday pay as well as ten [percent] (10%) of the total monetary award as attorney's fees. The rest of the Decision is **AFFIRMED**.

Let the records of this case be **REMANDED** to the Labor Arbiter for the computation of the said award.

SO ORDERED.[9]

USSI filed a motion for reconsideration, but the CA denied it on May 3, 2007.[10]

Hence, this appeal by USSI positing these:

1. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION BY RULING THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED AND BY AWARDING HER SALARIES EQUIVALENT TO SIX (6) MONTHS SALARY FOR THE UNEXPIRED PORTION OF HER CONTRACT, OVERTIME PAY,

[7] *Id.* at 95.

[8] *Id.* at 158-170.

[9] *Id.* at 169.

[10] *Id.* at 185-187.

AND HOLIDAY PAY AND ATTORNEY'S FEE DESPITE EVIDENCE AND RULING TO THE CONTRARY ADDUCED AND ADJUDICATED BEFORE THE LABOR ARBITER AND NATIONAL LABOR RELATIONS COMMISSION.

2. WITH DUE RESPECT, REVERSIBLE ERROR WAS COMMITTED BY THE HONORABLE COURT OF APPEALS WITH RESPECT TO THE AWARD OF SALARIES TO PRIVATE RESPONDENT CONTRARY TO THE PROVISIONS OF REPUBLIC ACT NO. 8042 OTHERWISE KNOWN AS MIGRANT WORKERS ACT. THUS, A QUESTION OF LAW IS INVOLVED.[11]

USSI insists that Morales' dismissal was based on a valid and legal ground. The Labor Arbiter lent credence to USSI's posture and dismissed Morales' complaint, but the NLRC and the CA reversed the Arbiter's findings. Before us, USSI contends that the CA committed grave abuse of discretion and serious reversible error when it adhered to the patently erroneous finding of illegal dismissal by the NLRC.

There is no denying that it is within the NLRC's competence, as an appellate administrative agency reviewing decisions of Labor Arbiters, to disagree with and set aside the latter's findings. But it stands to reason that the NLRC should state an acceptable cause therefor; otherwise it would be a whimsical, capricious, oppressive, illogical, and unreasonable exercise of quasi-judicial prerogative. Thus, the key issue for our resolution is whether the reversal by the NLRC of the Labor Arbiter's decision, as well as the affirmance by the CA of the NLRC finding, was in order.

Morales was dismissed for her alleged poor performance. As a general concept, "poor performance" is equivalent to inefficiency and incompetence in the performance of official duties. Under Article 282 of the Labor Code, an unsatisfactory rating can be a just cause for dismissal only if it amounts to gross and habitual neglect of duties. Thus, the fact that an employee's performance is found to be poor or unsatisfactory does not necessarily mean that the employee is grossly and habitually negligent of his duties. Gross negligence implies a

[11] *Id*. at 17.

want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[12]

We reviewed the records of the case and we agree with the NLRC and the CA that no substantial evidence was presented to substantiate the cause of Morales' dismissal. First, USSI failed to cite particular acts or instances that would validate its claim of Morales' poor performance. Second, no convincing proof was offered to substantiate Morales' alleged poor performance.

As the NLRC had taken pains to demonstrate:

> [T]he notice of termination and the statement dated July 29, 2002 purportedly executed by Sharath B. Rai, Al Sandos Human Resource and Training Manager stating that Morales was dismissed due to her poor performance and for revealing secret information of potential clients do not constitute substantial evidence.
>
> x x x First, the notice of termination was, apparently never served upon [Morales], since it does not bear her signature. Second, the two pieces of evidence are inconsistent. Based on the notice of termination, which bears an earlier date, [Morales] was dismissed due to poor performance. Third, there is no showing that [Morales] was dismissed on the basis of established facts and not on the basis of a mere suspicion. There is no mention of what criteria were used in evaluating her performance. Fourth, and most important, the pieces of evidence in question are not sworn to, and the persons who supposedly executed them were not presented in the proceedings conducted by the Labor Arbiter. They, therefore, constitute mere hearsay evidence, which means that they have no evidentiary value.[13]

Besides, even assuming that Morales' performance was unsatisfactory, USSI failed to demonstrate that her alleged poor performance amounted to gross and habitual neglect of duty, which would justify her dismissal.

The principle echoed and reechoed in jurisprudence is that the *onus* of proving that the employee was dismissed for a just

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[12] *Eastern Overseas Employment Center, Inc. v. Bea,* G.R. No. 143023, November 29, 2005, 476 SCRA 384, 393-394.

[13] *Rollo,* p. 94.

cause rests on the employer,[14] and the latter's failure to discharge that burden would result in a finding that the dismissal is unjustified.[15]

Furthermore, Morales was not accorded due process. Under Article 277(b)[16] of the Labor Code, the employer must send the employee who is about to be terminated, a written notice stating the cause/s for termination and must give the employee the opportunity to be heard and to defend himself. There was no showing that Al Sandos warned Morales of her alleged poor performance. Likewise, Morales was not served the first notice apprising her of the particular acts or omissions on which her dismissal was based together with the opportunity to explain her side. The only notice given to Morales was the letter[17] dated December 14, 2002 informing her that she was already terminated.

Certainly, there can be no other conclusion than that Morales was illegally dismissed and her employment contract was illegally terminated. The CA, therefore, committed no reversible error in sustaining the NLRC on this point.

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[14] See *De Jesus v. National Labor Relations Commission*, G.R. No. 151158, August 17, 2007, 530 SCRA 489, 498.

[15] *Eastern Overseas Employment Center v. Bea, supra* note 11, at 394.

[16] ART. 277. *MISCELLANEOUS PROVISIONS*:

xxx xxx xxx

Subject to the constitutional right of the workers to security of tenure and their right to be protected against dismissal except for a just and valid and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to the guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the workers to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.

[17] *Rollo*, p. 51.

With this finding, it is imperative that Morales be granted the monetary benefits due her. However, we rule that the CA erred in modifying the amounts awarded by the NLRC.

As shown by the records, Morales did not appeal from the said NLRC decision; hence, the same attained finality as to Morales. The monetary awards, as well as the denial of the holiday and overtime pay, had already been laid to rest. This is in accord with the doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision.[18]

As we explained in *SMI Fish Industries, Inc. v. National Labor Relations Commission*:[19]

> It is a well-settled procedural rule in this jurisdiction, and we see no reason why it should not apply in this case, that an appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than those granted in the decision of the court below. The appellee can only advance any argument that he may deem necessary to defeat the appellant's claim or to uphold the decision that is being disputed. He can assign errors on appeal if such is required to strengthen the views expressed by the court *a quo*. Such assigned errors, in turn, may be considered by the appellate court solely to maintain the appealed decision on other grounds, but not for the purpose of modifying the judgment in the appellee's favor and giving him other affirmative reliefs.

Certainly, the CA can no longer modify the awards by the NLRC. Thus, USSI can only be held liable for the payment of the monetary award granted by the NLRC, that is, the payment of Morales' three (3) months' salary.

USSI cannot take refuge in the *final settlement* signed by Morales on January 1, 2003 to escape liability. Generally, deeds of release, waivers, or quitclaims cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal, since quitclaims are

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[18] *Filflex Industrial & Manufacturing Corporation v. National Labor Relations Commission*, G.R. No. 115395, February 12, 1998, 286 SCRA 245, 256.

[19] G.R. No. 96952-56, September 2, 1992, 213 SCRA 444, 449.

looked upon with disfavor and are frowned upon as contrary to public policy. Where, however, the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking.[20] The burden of proving that the quitclaim or waiver was voluntarily entered into rests on the employer.[21]

Unfortunately for USSI, it again failed to discharge this burden. Other than its barefaced assertion, no evidence was presented to establish that Morales voluntarily signed the *final settlement*. The mere fact that Morales was not physically coerced or intimidated does not necessarily imply that she freely and voluntarily consented to the terms of the *final settlement*.

We also note that the payment of Dhs1,300.00 is not a consideration for the execution of the quitclaim, but is actually the payment for Morales' salary as of December 13, 2002.[22] Thus, this *final settlement* purporting to be a quitclaim or waiver, cannot absolve USSI from liability arising from the employment contract.

WHEREFORE, the petition is *PARTIALLY GRANTED*. Grace M. Morales is declared illegally dismissed. Petitioner Universal Staffing Services, Inc. is ordered to pay Morales' three (3) months' salary or Dhs3,300.00, or its peso equivalent. The awards of overtime and holiday pay, as well as attorney's fees, are *DELETED*. No pronouncement as to costs.

SO ORDERED.

Quisumbing,[**] *Ynares-Santiago (Chairperson), Austria-Martinez,* and *Reyes, JJ.*, concur.

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[20] *Heirs of the Late Panfilo V. Pajarillo v. Court of Appeals*, G.R. Nos. 155056-57, October 19, 2007, 137 SCRA 96, 408 Phil.

[21] *EMCO Plywood Corporation v. Abelgas*, G. R. No. 148532, April 14, 2001, 427 SCRA 496, 514.

[22] *Rollo*, p. 53.

[**] In lieu of Associate Justice Minita V. Chico-Nazario, per Special Order No. 508 dated June 25, 2008.

THIRD DIVISION

[G.R. No. 178266. July 21, 2008]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **SAMUEL and LORETA VANZUELA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; CRIMINAL JURISDICTION; REQUISITES.— The three important requisites in order that a court may acquire criminal jurisdiction are (1) the court must have jurisdiction over the subject matter; (2) the court must have jurisdiction over the territory where the offense was committed; and (3) the court must have jurisdiction over the person of the accused.

2. ID.; ID.; ID.; ID.; LACK OF JURISDICTION OVER AN ACTION OR THE SUBJECT MATTER OF AN ACTION CANNOT BE CURED BY THE SILENCE, ACQUIESCENCE, OR EVEN BY THE EXPRESS CONSENT OF THE PARTIES.— It is a well-entrenched doctrine that the jurisdiction of a tribunal over the subject matter of an action is conferred by law. It is determined by the material allegations of the complaint or information and the law at the time the action was commenced. Lack of jurisdiction of the court over an action or the subject matter of an action, cannot be cured by the silence, acquiescence, or even by express consent of the parties. Thus, the jurisdiction of the court over the nature of the action and the subject matter thereof cannot be made to depend upon the defenses set up in the court or upon a motion to dismiss; otherwise, the question of jurisdiction would depend almost entirely on the defendant. Once jurisdiction is vested, the same is retained up to the end of the litigation. In the instant case, the RTC has jurisdiction over the subject matter because the law confers on it the power to hear and decide cases involving estafa.

3. ID.; ID.; ID.; WHERE THE COURT HAS JURISDICTION OVER THE SUBJECT MATTER AND OVER THE PERSON OF THE ACCUSED, AND THE CRIME WAS COMMITTED WITHIN ITS TERRITORIAL JURISDICTION, THE COURT NECESSARILY EXERCISES JURISDICTION OVER ALL

ISSUES THAT THE LAW REQUIRES THE COURT TO RESOLVE.— The RTC likewise acquired jurisdiction over the persons of the respondents because they voluntarily submitted to the RTC's authority. Where the court has jurisdiction over the subject matter and over the person of the accused, and the crime was committed within its territorial jurisdiction, the court necessarily exercises jurisdiction over all issues that the law requires the court to resolve. Thus, based on the law and material allegations of the information filed, the RTC erroneously concluded that it lacks jurisdiction over the subject matter on the premise that the case before it is purely an agrarian dispute. The cases relied upon by the RTC, namely, *David v. Rivera* and *Philippine Veterans Bank v. Court of Appeals*, are of different factual settings. They hinged on the subject matter of Ejectment and Annulment of Certificate of Land Ownership Awards (CLOAs), respectively. It is true that in *Machete v. Court of* Appeals this Court held that RTCs have no jurisdiction over cases for collection of back rentals filed against agricultural tenants by their landowners. In that case, however, what the landowner filed before the RTC was a collection suit against his alleged tenants. These three cases show that trial courts were declared to have no jurisdiction over civil cases which were initially filed with them but were later on characterized as agrarian disputes and thus, within DARAB's jurisdiction. No such declaration has been made by this Court with respect to criminal cases.

4. ID.; ID.; ID.; THE AUTHORITY OF THE COURT TO PASS UPON THE CRIMINAL LIABILITY OF THE ACCUSED DOES NOT INCLUDE THE GRANT OF CIVIL AWARDS THAT RELATE TO THE AGRARIAN RELATIONSHIP OF THE PARTIES.— Instead, we have *Monsanto v. Zerna*, where we upheld the RTC's jurisdiction to try the private respondents, who claimed to be tenants, for the crime of qualified theft. However, we stressed therein that the trial court cannot adjudge civil matters that are beyond its competence. Accordingly, the RTC had to confine itself to the determination of whether private respondents were guilty of the crime. Thus, while a court may have authority to pass upon the criminal liability of the accused, it cannot make any civil awards that relate to the agrarian relationship of the parties because this matter is beyond its jurisdiction and, correlatively, within DARAB's exclusive domain. In the instant case, the RTC failed to consider that

what is lodged before it is a criminal case for estafa involving an alleged misappropriated amount of ₱80,000.00 — a subject matter over which the RTC clearly has jurisdiction. Notably, while the RTC has criminal jurisdiction conferred on it by law, the DARAB, on the other hand, has no authority to try criminal cases at all.

5. ID.; ID.; ID.; NO CONFERMENT OF ANY CRIMINAL JURISDICTION IN FAVOR OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); JURISDICTION OVER PROSECUTION OF CRIMINAL OFFENSES IN VIOLATION OF REPUBLIC ACT 6657 PER SE IS LODGED WITH THE SPECIAL AGRARIAN COURTS.— Clearly, the law and the DARAB Rules are deafeningly silent on the conferment of any criminal jurisdiction in favor of the DARAB. It is worth stressing that even the jurisdiction over the prosecution of criminal offenses in violation of RA 6657 per se is lodged with the SACs and not with the DARAB. While indeed, the parties admit that there is an agricultural tenancy relationship in this case, and that under the circumstances, Veneranda as landowner could have simply filed a case before the DARAB for collection of lease rentals and/or dispossession of respondents as tenants due to their failure to pay said lease rentals, there is no law which prohibits landowners from instituting a criminal case for estafa, as defined and penalized under Article 315 of the Revised Penal Code, against their tenants. Succinctly put, though the matter before us apparently presents an agrarian dispute, the RTC cannot shirk from its duty to adjudicate on the merits a criminal case initially filed before it, based on the law and evidence presented, in order to determine whether an accused is guilty beyond reasonable doubt of the crime charged.

6. ID.; ID.; ID.; RULING IN THE CASE OF CARULASDULASAN AND BECAREL (95 PHIL 8 (1954) INAPPLICABLE TO CASE AT BAR.— We viewed the cases invoked by the petitioner, namely, *People v. Carulasdulasan and Becarel* and *Embuscado v. People* where this Court affirmed the conviction for estafa of the accused therein who were also agricultural tenants. xxx. Unfortunately for the petitioner, these cited cases are inapplicable. People v. Carulasdulasan and Becare involved a relationship of agricultural share tenancy between the landowner and the accused. In such relationship, it was

incumbent upon the tenant to hold in trust and, eventually, account for the share in the harvest appertaining to the landowner, failing which the tenant could be held liable for misappropriation. As correctly pointed out by the respondents, share tenancy has been outlawed for being contrary to public policy as early as 1963, with the passage of R.A. 3844. What prevails today, under R.A. 6657, is agricultural leasehold tenancy relationship, and all instances of share tenancy have been automatically converted into leasehold tenancy. In such a relationship, the tenant's obligation is simply to pay rentals, not to deliver the landowner's share. Given this dispensation, the petitioner's allegation that the respondents misappropriated the landowner's share of the harvest – as contained in the information – is untenable. Accordingly, the respondents cannot be held liable under Article 315, paragraph 4, No. 1(b) of the Revised Penal Code.

APPEARANCES OF COUNSEL

Bayana Law Office for petitioner.

Bureau of Agrarian Legal Assistance for respondents.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure. The petitioner People of the Philippines (petitioner) seeks the reversal of the Order[2] dated May 18, 2007, issued by the Regional Trial Court (RTC), Branch 30 of Surigao City, which dismissed for lack of jurisdiction over the subject matter the criminal case for estafa filed by private complainant Veneranda S. Paler (Veneranda) against respondents Samuel Vanzuela (Samuel) and his wife, Loreta Vanzuela (Loreta) (respondents). The case ostensibly involves an agrarian dispute, hence, according to the RTC, within the exclusive original jurisdiction of the Department

[1] Dated June 5, 2007; *rollo*, pp. 3-11.

[2] Particularly docketed as Criminal Case No. 6087; *id.* at 13-16.

of Agrarian Reform Adjudication Board (DARAB).

The antecedents are as follows:

Veneranda is the wife of the late Dionisio Paler, Sr.[3] who is the registered owner of a parcel of irrigated riceland, containing an area of more than four (4) hectares, situated in *Barangay* Mabini (Roxas), Mainit, Surigao del Norte, and covered by Original Certificate of Title (OCT) No. 5747.[4] One (1) hectare of this riceland (subject property) was cultivated by the respondents as agricultural tenants for more than ten (10) years, with an agreed lease rental of twelve and one half (12½) cavans of palay, at 45 kilos per cavan, per harvest. The respondents allegedly failed to pay the rentals since 1997. Initially, Veneranda brought the matter before the Department of Agrarian Reform (DAR) Office in Mainit, Surigao del Norte, but no amicable settlement was reached by the parties. Thus, Veneranda filed a criminal complaint for estafa against the respondents.

Consequently, respondents were charged in an Information[5] dated February 28, 2002 which reads:

> That in about and during the period from 1997 to 2001 in Brgy. Roxas, Mainit, Surigao del Norte, Philippines and within the jurisdiction of this Honorable Court, said spouses Samuel and Loreta Vanzuela, conspiring, confederating and mutually helping one another, having leased and occupied the farmland of Veneranda S. Paler and other heirs of the late Dionesio Paler, Sr., and having harvested and accounted for a total of 400 sacks of palay for the past 10 harvest seasons of which 25% thereof were hold (sic) in trust by them or a total value of ₱80,000.00, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert said sum of ₱80,000.00 to their own use and benefit to the damage and prejudice of said Veneranda Paler and other heirs of the late Dionesio Paler, Sr. in the aforementioned sum of ₱80,000.00.
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> Contrary to law.

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[3] Also referred to as Dionesio Paler, Sr. in other documents and pleadings.

[4] *Rollo*, p. 37.

[5] *Id.* at 33-34.

Upon arraignment, respondents pleaded not guilty. During pre-trial, the parties agreed that the respondents had been the agricultural tenants of Veneranda for more than ten (10) years; and that the palay was harvested twice a year on the subject property. Thereafter, trial on the merits ensued. After the prosecution rested its case, the respondents filed a Demurrer to Evidence,[6] praying that the criminal case be dismissed for failure of the petitioner to establish the culpability of the respondents beyond reasonable doubt. Petitioner filed a Comment/Opposition[7] arguing that the respondents, as agricultural tenants, were required by law to hold the lease rentals in trust for the landowner and thereafter turn over the same to the latter.

In an Order[8] dated May 18, 2007, the RTC dismissed the criminal case ratiocinating, thus:

> From the averments of the information, the admissions of the parties and the evidence adduced by the prosecution, it is easily discernable (sic) that the instant case pertains to the non-payment of rentals by the accused to the private complainant, involving a lease of an agricultural land by the former from the latter. This being so, the controversy in the case at bench involves an agrarian dispute which falls under the primary and exclusive original jurisdiction of the Department of Agrarian Reform Adjudication Board (DARAB), pursuant to Section 1, Rule II of the DARAB New Rules of Procedure, x x x.

Citing our ruling in *David v. Rivera*[9] and *Philippine Veterans Bank v. Court of Appeals*,[10] the RTC opined that it had no jurisdiction over the subject matter of the case because the controversy had the character of an "agrarian dispute." The trial court did not find it necessary to rule on the respondents' Demurrer to Evidence and, in fact, no mention of it was made

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[6] Dated December 4, 2006; *id*. at 17-29.

[7] Dated January 20, 2007; *id*. at 30-32.

[8] *Supra* note 2, *id*. at 14.

[9] 464 Phil. 1006 (2004).

[10] G.R. No. 132561, June 30, 2005, 462 SCRA 336.

in the assailed Order of May 18, 2007. Hence, this petition raising the following issues:

1. WHETHER OR NOT THE HONORABLE REGIONAL TRIAL COURT BRANCH 30, SURIGAO CITY HAS JURISDICTION OVER THE CHARGE FOR ESTAFA EVEN IF IT INVOLVES AGRICULTURAL TENANTS OF THE PRIVATE COMPLAINANT; [AND]

2. WHETHER OR NOT THE SEEMING "EXEMPTION" FROM CRIMINAL PROSECUTION OF AGRICULTURAL TENANTS FOR ESTAFA WOULD CONTRAVENE THE PROVISIONS OF SECTION 1, ARTICLE III OF THE CONSTITUTION, SPECIFICALLY THE "EQUAL PROTECTION CLAUSE."[11]

Petitioner, on one hand, contends that, under Section 57 of Republic Act (RA) 6657, otherwise known as the "Comprehensive Agrarian Reform Law" (CARL), Special Agrarian Courts (SACs) were vested with limited criminal jurisdiction, *i.e.*, with respect only to the prosecution of all criminal offenses under the said Act; that the only penal provision in RA 6657 is Section 73 thereof in relation to Section 74, which does not cover estafa; that no agrarian reform law confers criminal jurisdiction upon the DARAB, as only civil and administrative aspects in the implementation of the agrarian reform law have been vested in the DAR; that necessarily, a criminal case for estafa instituted against an agricultural tenant is within the jurisdiction and competence of regular courts of justice as the same is provided for by law; that the cases relied upon by the RTC do not find application in this case since the same were concerned only with the civil and administrative aspects of agrarian reform implementation; that there is no law which provides that agricultural tenants cannot be prosecuted for estafa after they have misappropriated the lease rentals due the landowners; and that to insulate agricultural tenants from criminal prosecution for estafa would, in effect, make them a class by themselves, which cannot be validly done because there is no law allowing such classification. Petitioner submits that there is no substantial

[11] *Rollo* pp. 4-5.

distinction between an agricultural tenant who incurs criminal liability for estafa for misappropriating the lease rentals due his landowner, and a non-agricultural tenant who likewise incurs criminal liability for misappropriation.[12]

Finally, petitioner posits that, at this point, it is premature to discuss the merits of the case because the RTC has yet to receive in full the evidence of both parties before it can render a decision on the merits. Petitioner also claims that it is pointless to delve into the merits of the case at this stage, since the sole basis of the assailed RTC Order is simply lack of jurisdiction.[13]

Respondents, on the other hand, argue that share tenancy is now automatically converted into leasehold tenancy wherein one of the obligations of an agricultural tenant is merely to pay rentals, not to deliver the landowner's share; thus, petitioner's allegation that respondents misappropriated the landowner's share of the harvest is not tenable because share tenancy has already been abolished by law for being contrary to public policy. Accordingly, respondents contend that the agricultural tenant's failure to pay his lease rentals does not give rise to criminal liability for estafa. Respondents stand by the ruling of the RTC that pursuant to Section 1, Rule II of the DARAB New Rules of Procedure, the DARAB has jurisdiction over agrarian disputes; and that respondents did not commit estafa for their alleged failure to pay their lease rentals. Respondents submit that a simple case for ejectment and collection of unpaid lease rentals, instead of a criminal case, should have been filed with the DARAB. Respondents also submit that, assuming *arguendo* that they failed to pay their lease rentals, they cannot be held liable for Estafa, as defined under Article 315, paragraph 4, No. 1(b) of the Revised Penal Code, because the liability of an agricultural tenant is a mere monetary civil obligation; and that an agricultural tenant who fails to pay the landowner becomes merely a debtor, and, thus, cannot be held criminally liable for estafa.[14]

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

[13] Petitioner's Reply dated January 14, 2008; *id.* at 45-51.

[14] Respondents' Comment dated September 17, 2007; *id.* at 43-47.

Ostensibly, the main issue we must resolve is whether the RTC has jurisdiction over the crime of estafa, because the assailed order is premised on the RTC's lack of jurisdiction over the subject matter. However, should our resolution be in the affirmative, the more crucial issue is whether an agricultural tenant, who fails to pay the rentals on the land tilled, can be successfully prosecuted for estafa.

For the guidance of the bench and bar, we find it appropriate to reiterate the doctrines laid down by this Court relative to the respective jurisdictions of the RTC and the DARAB.

The three important requisites in order that a court may acquire criminal jurisdiction are (1) the court must have jurisdiction over the subject matter; (2) the court must have jurisdiction over the territory where the offense was committed; and (3) the court must have jurisdiction over the person of the accused.[15]

First. It is a well-entrenched doctrine that the jurisdiction of a tribunal over the subject matter of an action is conferred by law. It is determined by the material allegations of the complaint or information and the law at the time the action was commenced. Lack of jurisdiction of the court over an action or the subject matter of an action, cannot be cured by the silence, acquiescence, or even by express consent of the parties. Thus, the jurisdiction of the court over the nature of the action and the subject matter thereof cannot be made to depend upon the defenses set up in the court or upon a motion to dismiss; otherwise, the question of jurisdiction would depend almost entirely on the defendant. Once jurisdiction is vested, the same is retained up to the end of the litigation.[16]

In the instant case, the RTC has jurisdiction over the subject matter because the law confers on it the power to hear and decide cases involving estafa. In *Arnado v. Buban*,[17] we held that:

[15] *Cruz v. Court of Appeals, 436 Phil. 641, 654 (2002)*, citing Oscar M. Herrera, *Remedial* Law, Volume IV, 1992 Edition, p. 3.

[16] *Laresma v. Abellana*, G.R. No. 140973, November 11, 2004, 442 SCRA 156, 168.

[17] A.M. No. MTJ-04-1543, May 31, 2004, 430 SCRA 382, 387, citing Republic Act No. 7691, An Act Expanding the Jurisdiction of the Metropolitan Trial

Under Article 315 of the Revised Penal Code, "the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period shall be imposed if the amount of the fraud is over ₱12,000.00 but does not exceed ₱22,000.00; and if such amount exceeds the latter sum, the penalty provided x x x shall be imposed in its maximum period, adding one (1) year for its additional ₱10,000.00 x x x." *Prision mayor* in its minimum period, ranges from six (6) years and one (1) day to eight (8) years. Under the law, the jurisdiction of municipal trial courts is confined to offenses punishable by imprisonment not exceeding six (6) years, irrespective of the amount of the fine.

Hence, jurisdiction over the criminal cases against the [respondents] pertains to the regional trial court. x x x

The allegations in the Information are clear — Criminal Case No. 6087 involves alleged misappropriation of the amount of ₱80,000.00.

Second. The RTC also has jurisdiction over the offense charged since the crime was committed within its territorial jurisdiction.

Third. The RTC likewise acquired jurisdiction over the persons of the respondents because they voluntarily submitted to the RTC's authority. Where the court has jurisdiction over the subject matter and over the person of the accused, and the crime was committed within its territorial jurisdiction, the court necessarily exercises jurisdiction over all issues that the law requires the court to resolve.[18]

Thus, based on the law and material allegations of the information filed, the RTC erroneously concluded that it lacks jurisdiction over the subject matter on the premise that the case before it is purely an agrarian dispute. The cases relied upon by the RTC, namely, *David v. Rivera*[19] and *Philippine*

Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending for the Purpose Batas Pambansa Blg. 129, otherwise known as the "Judiciary Reorganization Act of 1980."

[18] *Cruz v. Court of Appeals*, *supra* note 15.

[19] *Supra* note 9.

Veterans Bank v. Court of Appeals,[20] are of different factual settings. *They* hinged on the subject matter of Ejectment and Annulment of Certificate of Land Ownership Awards (CLOAs), respectively. It is true that in *Machete v. Court of* Appeals [21] this Court held that RTCs have no jurisdiction over cases for collection of back rentals filed against agricultural tenants by their landowners. In that case, however, what the landowner filed before the RTC was a collection suit against his alleged tenants. These three cases show that trial courts were declared to have no jurisdiction over civil cases which were initially filed with them but were later on characterized as agrarian disputes and thus, within DARAB's jurisdiction. No such declaration has been made by this Court with respect to criminal cases.

Instead, we have *Monsanto v. Zerna*,[22] where we upheld the RTC's jurisdiction to try the private respondents, who claimed to be tenants, for the crime of qualified theft. However, we stressed therein that the trial court cannot adjudge civil matters that are beyond its competence. Accordingly, the RTC had to confine itself to the determination of whether private respondents were guilty of the crime. Thus, while a court may have authority to pass upon the criminal liability of the accused, it cannot make any civil awards that relate to the agrarian relationship of the parties because this matter is beyond its jurisdiction and, correlatively, within DARAB's exclusive domain.

In the instant case, the RTC failed to consider that what is lodged before it is a criminal case for estafa involving an alleged misappropriated amount of ₱80,000.00 — a subject matter over which the RTC clearly has jurisdiction. Notably, while the RTC has criminal jurisdiction conferred on it by law, the DARAB, on the other hand, has no authority to try criminal cases at all. In *Bautista v. Mag-isa Vda. de Villena*,[23] we outlined the jurisdiction of the DARAB, to wit:

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[20] *Supra* note 10.

[21] 320 Phil. 227, 235 (1995).

[22] 423 Phil. 150, 164 (2001).

[23] G.R. No. 152564, September 13, 2004, 438 SCRA 259, 262-263. (Citations omitted).

For agrarian reform cases, jurisdiction is vested in the Department of Agrarian Reform (DAR); more specifically, in the Department of Agrarian Reform Adjudication Board (DARAB).

Executive Order 229 vested the DAR with (1) quasi-judicial powers to determine and adjudicate agrarian reform matters; and (2) jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the Department of Agriculture and the Department of Environment and Natural Resources. This law divested the regional trial courts of their general jurisdiction to try agrarian reform matters.

Under Republic Act 6657, the DAR retains jurisdiction over all agrarian reform matters. The pertinent provision reads:

> Section 50. *Quasi-Judicial Powers of the DAR.* — The DAR is hereby vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture and the Department of Environment and Natural Resources.
>
> It shall not be bound by technical rules of procedure and evidence but shall proceed to hear and decide all cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity and the merits of the case. Toward this end, it shall adopt a uniform rule of procedure to achieve a just, expeditious and inexpensive determination of every action or proceeding before it.
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> xxx xxx xxx

Subsequently, in the process of reorganizing and strengthening the DAR, Executive Order No. 129-A[24] was issued; it created the DARAB to assume the adjudicatory powers and functions of the DAR. Pertinent provisions of Rule II of the DARAB 2003 Rules of Procedure read:

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[24] "Reorganizing and Strengthening the Department of Agrarian Reform and for Other Purposes." Approved on July 26, 1987.

SECTION 1. Primary and Exclusive Original Jurisdiction. — The Adjudicator shall have primary and exclusive original jurisdiction to determine and adjudicate the following cases:

1.1. The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation, and use of all agricultural lands covered by Republic Act (RA) No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL), and other related agrarian laws;

xxx xxx xxx

1.4. Those cases involving the ejectment and dispossession of tenants and/or leaseholders;

xxx xxx xxx.

Section 3(d) of RA 6657, or the CARL, defines an "agrarian dispute" over which the DARAB has exclusive original jurisdiction as:

(d) . . . refer[ing] to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements including

any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee.[25]

Clearly, the law and the DARAB Rules are deafeningly silent on the conferment of any criminal jurisdiction in favor of the DARAB. It is worth stressing that even the jurisdiction over the prosecution of criminal offenses in violation of RA 6657 per se is lodged with the SACs and not with the

[25] As cited in *Sindico v. Diaz,* G.R. No. 147444, October 1, 2004, 440 SCRA 50, 53-54.

DARAB.[26] While indeed, the parties admit that there is an agricultural tenancy relationship in this case, and that under the circumstances, Veneranda as landowner could have simply filed a case before the DARAB for collection of lease rentals and/or dispossession of respondents as tenants due to their failure to pay said lease rentals, there is no law which prohibits landowners from instituting a criminal case for estafa, as defined and penalized under Article 315 of the Revised Penal Code, against their tenants. Succinctly put, though the matter before us apparently presents an agrarian dispute, the RTC cannot shirk from its duty to adjudicate on the merits a criminal case initially filed before it, based on the law and evidence presented, in order to determine whether an accused is guilty beyond reasonable doubt of the crime charged.

However, we must reiterate our ruling in *Re: Conviction of Judge Adoracion G. Angeles*,[27] that while we do not begrudge a party's prerogative to initiate a case against those who, in his opinion, may have wronged him, we now remind landowners that such prerogative of instituting a criminal case against their tenants, on matters related to an agrarian dispute, must be exercised with prudence, when there are clearly lawful grounds, and only in the pursuit of truth and justice.

Thus, even as we uphold the jurisdiction of the RTC over the subject matter of the instant criminal case, we still deny the petition.

Herein respondents were charged with the crime of estafa as defined under Article 315, paragraph 4, No. 1(b) of the Revised Penal Code, which refers to fraud committed —

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[26] Regional Trial Courts have not been completely divested of jurisdiction over agrarian reform matters. §56 of RA 6657 confers jurisdiction on "Special Agrarian Courts," which are RTCs designated by this Court to act as such — at least one branch within each province. Under §57, these special agrarian courts have original and exclusive jurisdiction over (1) all petitions for the determination of just compensation to landowners and (2) the prosecution of all criminal offenses under the Act.

[27] A.M. No. 06-9-545-RTC, January 31, 2008.

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.

We viewed the cases invoked by the petitioner, namely, *People v. Carulasdulasan and Becarel* [28] and *Embuscado v. People*[29] where this Court affirmed the conviction for estafa of the accused therein who were also agricultural tenants. In *People v. Carulasdulasan and Becarel*,[30] this Court held that -

From the facts alleged, it is clear that the accused received from the sale of the abaca harvested by them a sum of money which did not all belong to them **because one-half of it corresponds to the landlord's share of the abaca under the tenancy agreement. This half the accused were under obligation to deliver to the landlord. They therefore held it in trust for him.** But instead of turning it over to him, they appropriated it to their own use and refused to give it to him notwithstanding repeated demands. In other words, the accused are charged with having committed fraud by misappropriating or converting to the prejudice of another money received by them in trust or under circumstances which made it their duty to deliver it to its owner. Obviously, this is a form of fraud specially covered by the penal provision above cited.

In *Embuscado v. People*,[31] the accused appealed to this Court his conviction for the crime of theft by the Court of First Instance even as the information charged him with Estafa and of which he was convicted by the City Court. This Court ruled that the accused was denied due process when the Court of First Instance convicted him of a crime not charged in the information, and

[28] 95 Phil. 8 (1954).

[29] G.R. No. 38984, November 24, 1989, 179 SCRA 589.

[30] *Supra* note 28 at 9-10 (Emphasis supplied).

[31] *Supra* note 29.

then reinstated with modification the ruling of the City Court convicting him of estafa.

Unfortunately for the petitioner, these cited cases are inapplicable. *People v. Carulasdulasan and Becare*[32] involved a relationship of agricultural share tenancy between the landowner and the accused. In such relationship, it was incumbent upon the tenant to hold in trust and, eventually, account for the share in the harvest appertaining to the landowner, failing which the tenant could be held liable for misappropriation. As correctly pointed out by the respondents, share tenancy has been outlawed for being contrary to public policy as early as 1963, with the passage of R.A. 3844.[33] What prevails today, under R.A. 6657, is agricultural leasehold tenancy relationship, and all instances of share tenancy have been automatically converted into leasehold tenancy. In such a relationship, the tenant's obligation is simply to pay rentals, not to deliver the landowner's share. Given this dispensation, the petitioner's allegation that the respondents misappropriated the landowner's share of the harvest – as contained in the information – is untenable. Accordingly, the respondents cannot be held liable under Article 315, paragraph 4, No. 1(b) of the Revised Penal Code.

It is also worth mentioning that in *Embuscado v. People*,[34] this Court merely dwelt on the issue of whether the accused charged with estafa could be convicted of the crime of theft. Issues of tenancy *vis-a-vis* issues of criminal liability of tenants were not addressed. Thus, the dissenting opinion of then Justice Teodoro R. Padilla in the said case is worth mentioning when he opined that:

It is also my opinion that the petitioner cannot be found guilty of estafa because the mangoes allegedly misappropriated by him were not given to him in trust or on commission, or for administration,

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[32] *Supra* note 28.

[33] Also known as "The Agricultural Land Reform Code," approved on August 8, 1963.

[34] *Supra* note 29.

or under any obligation involving the duty to make delivery of, or to return the same, as provided for in Art. 315, par. 4, No. 1(b) of the Revised Penal Code. What was entrusted to him for cultivation was a landholding planted with coconut and mango trees and the mangoes, allegedly misappropriated by him, were the fruits of the trees planted on the land. Consequently, the action, if any, should have been for accounting and delivery of the landlord's share in the mangoes sold by the petitioner.[35]

In fine, we hold that the trial court erred when it dismissed the criminal case for lack of jurisdiction over the subject matter. However, we find no necessity to remand the case to the trial court for further proceedings, as it would only further delay the resolution of this case. We have opted to rule on the merits of the parties' contentions, and hereby declare that respondents cannot be held liable for estafa for their failure to pay the rental on the agricultural land subject of the leasehold.

WHEREFORE, the petition is *DENIED*. No costs.

SO ORDERED.

Quisumbing,[*] *Ynares-Santiago (Chairperson), Austria-Martinez,* and *Reyes, JJ.,* concur.

[35] *Id.* at 592.

[*] In lieu of Associate Justice Minita V. Chico-Nazario, per Special Order No. 508 dated June 25, 2008.

THIRD DIVISION

[G.R. No. 178083. July 22, 2008]

FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF THE PHILIPPINES (FASAP), *petitioner, vs.* **PHILIPPINE AIRLINES, INC., PATRIA CHIONG and COURT OF APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; THE SUPREME COURT IS NOT A TRIER OF FACTS; EXCEPTION. – It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during trial. However, there are several exceptions to this rule such as when the factual finding of the Labor Arbiter differ from those of the NLRC, as in the instant case, which opens the door to a review by this Court.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RETRENCHMENT; REDUCTION OF WORK FORCE TO FORESTALL BUSINESS LOSSES IS A MANAGEMENT'S PREROGATIVE; FAITHFUL COMPLIANCE WITH SUBSTANTIVE AND PROCEDURAL REQUIREMENTS IS A REQUISITE. – The law recognizes the right of every business entity to reduce its work force if the same is made necessary by compelling economic factors which would endanger its existence or stability. Where appropriate and where conditions are in accord with law and jurisprudence, the Court has authorized valid reductions in the work force to forestall business losses, the hemorrhaging of capital, or even to recognize an obvious reduction in the volume of business which has rendered certain employees redundant. Nevertheless, while it is true that the exercise of this right is a prerogative of management, there must be faithful compliance with substantive and procedural requirements of the law and jurisprudence, for retrenchment strikes at the very heart of the worker's employment, the lifeblood upon which he and his family owe their survival.

Retrenchment is only a measure of last resort, when other less drastic means have been tried and found to be inadequate.

3. ID.; ID.; ID.; ID.; STANDARDS THAT MUST BE SATISFIED BY THE EMPLOYER BEFORE REDUCTION OF PERSONNEL BECOMES LEGAL, ENUMERATED. – The burden clearly falls upon the employer to prove economic or business losses with sufficient supporting evidence. Its failure to prove these reverses or losses necessarily means that the employee's dismissal was not justified. Any claim of actual or potential business losses must satisfy certain established standards, all of which must concur, before any reduction of personnel becomes legal. These are: (1) That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (3) That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher; (4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and, (5) That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.

4. ID.; ID.; ID.; ID.; EMPLOYER'S PREROGATIVE TO LAYOFF EMPLOYEES, LIMITATIONS. – The employer's prerogative to layoff employees is subject to certain limitations. In *Lopez Sugar Corporation v. Federation of Free Workers*, we held that: firstly, the losses expected should be substantial and not merely *de minimis* in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the bona fide nature of the retrenchment would appears to be seriously in question. Secondly, the substantial loss apprehended must be

reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it must, thirdly, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, *i.e.*, cut other costs than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes," can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means – *e.g.*, reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, *etc*. – have been tried and found wanting. Lastly, but certainly not the least important, alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence.

5. ID.; ID.; ID.; ID.; "SERIOUS BUSINESS LOSSESS," EXPLAINED. – The law speaks of serious business losses or financial reverses. Sliding incomes or decreasing gross revenues are not necessarily losses, much less serious business losses within the meaning of the law. The fact that an employer may have sustained a net loss, such loss, per se, absent any other evidence on its impact on the business, nor on expected losses that would have been incurred had operations been continued, may not amount to serious business losses mentioned in the law. The employer must show that its losses increased through a period of time and that the condition of the company will not likely improve in the near future, or that it expected no abatement of its losses in the coming years. Put simply, not every loss incurred or expected to be incurred by a company will justify retrenchment.

6. ID.; ID.; ID.; ID.; JUSTIFIED ONLY WHEN ALL OTHER LESS DRASTIC MEANS HAVE BEEN TRIED AND FOUND INSUFFICIENT. – The employer must also exhaust all other means to avoid further losses without retrenching its employees. Retrenchment is a means of last resort; it is justified only when all other less drastic means have been tried and found insufficient. Even assuming that the employer has actually incurred losses by reason of the Asian economic crisis, the retrenchment is not completely justified if there is no showing that the retrenchment was the last recourse resorted to. Where the only less drastic measure that the employer undertook was the rotation work scheme, or the three-day-work-per-employee-per-week schedule, and it did not endeavor at other measures, such as cost reduction, lesser investment on raw materials, adjustment of the work routine to avoid scheduled power failure, reduction of the bonuses and salaries of both management and rank-and-file, improvement of manufacturing efficiency, and trimming of marketing and advertising costs, the claim that retrenchment was done in good faith to avoid losses is belied.

7. ID.; ID.; ID.; ID.; ALLEGED LOSSES AND THE EXPECTED IMMINENT LOSSES MUST BE PROVED BY SUFFICIENT AND CONVINCING EVIDENCE. – Alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this is readily apparent; any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees; scheming employers might be merely feigning business losses or reverses in order to ease out employees.

8. ID.; ID.; ID.; ID.; ID.; ACTUAL OR POTENTIAL LOSSES OF THE COMPANY, HOW PROVED. – In establishing a unilateral claim of actual or potential losses, financial statements audited by independent external auditors constitute the normal method of proof of profit and loss performance of a company. The condition of business losses justifying retrenchment is normally shown by audited financial documents like yearly balance sheets and profit and loss statements as well as annual income tax returns. Financial statements must be prepared and signed by independent auditors; otherwise, they may be assailed as self-serving. A Statement of Profit and Loss submitted to prove alleged losses, without the accompanying signature of

a certified public accountant or audited by an independent auditor, is nothing but a self-serving document which ought to be treated as a mere scrap of paper devoid of any probative value. The audited financial statements should be presented before the Labor Arbiter who is in the position to evaluate evidence. They may not be submitted belatedly with the Court of Appeals, because the admission of evidence is outside the sphere of the appellate court's *certiorari* jurisdiction. Neither can this Court admit in evidence audited financial statements, or make a ruling on the question of whether the employer incurred substantial losses justifying retrenchment on the basis thereof, as this Court is not a trier of facts. Even so, this Court may not be compelled to accept the contents of said documents blindly and without thinking.

9. ID.; ID.; ID.; ID.; ID.; AFFIDAVIT OF THE ASSISTANT TO THE GENERAL MANAGER IS INADMISSIBLE TO PROVE LOSSES.– The requirement of evidentiary substantiation dictates that not even the affidavit of the Assistant to the General Manager is admissible to prove losses, as the same is self-serving. Thus, in *Central Azucarera de la Carlota v. National Labor Relations Commission*, the Court ruled that the mere citation by the employer of the economic setback suffered by the sugar industry as a whole cannot, in the absence of adequate, credible and persuasive evidence, justify its retrenchment program, xxx. In the instant case, PAL failed to substantiate its claim of actual and imminent substantial losses which would justify the retrenchment of more than 1,400 of its cabin crew personnel. Although the Philippine economy was gravely affected by the Asian financial crisis, however, it cannot be assumed that it has likewise brought PAL to the brink of bankruptcy. Likewise, the fact that PAL underwent corporate rehabilitation does not automatically justify the retrenchment of its cabin crew personnel.

10. ID.; ID.; ID.; ID.; ID.; DECISION OF THE LABOR ARBITER IS CONSIDERED ARBITRARY WHERE THE SAME DID NOT INDICATE THE SPECIFIC BASES FOR THE FINDING THAT THE EMPLOYER WAS SUFFERING BUSINESS REVERSES. – To prove that PAL was financially distressed, it could have submitted its audited financial statements but it failed to present the same with the Labor Arbiter. Instead, it narrated a litany of woes without offering

any evidence to show that they translated into specific and substantial losses that would necessitate retrenchment, xxx. This bare and unilateral claim does not suffice. The Labor Arbiter's finding that PAL "amply satisfied the rules imposed by law and jurisprudence that sustain retrenchment," is without basis, absent the presentation of documentary evidence to that effect. In *Saballa v. National Labor Relations Commission,* we ruled that where the decision of the Labor Arbiter did not indicate the **specific** bases for such crucial finding that the employer was suffering business reverses, the same was arbitrary. We ratiocinated therein that since the employer insisted that its critical financial condition was the central and pivotal reason for its retrenchment, there was no reason why it should have neglected or refused to submit its audited financial statements.

11. ID.; ID.; ID.; ID.; NON-PRESENTATION OF THE AUDITED FINANCIAL STATEMENTS TO PROVE THE ALLEGED LOSSES OR EXPECTED IMMINENT LOSSES IS FATAL.– PAL's assertion – that its finances were gravely compromised as a result of the 1997 Asian financial crisis and the pilots' strike – lacks basis due to the non-presentation of its audited financial statements to prove actual or imminent losses. Also, the fact that PAL was placed on receivership did not excuse it from submitting to the labor authorities copies of its audited financial statements to prove the urgency, necessity and extent, of its retrenchment program. PAL should have presented its audited financial statements for the years immediately preceding and during which the retrenchment was carried out. Law and jurisprudence require that alleged losses or expected imminent losses must be proved by sufficient and convincing evidence.

12. ID.; ID.; ID.; ID.; SHALL BE DECLARED ILLEGAL WHERE THE EMPLOYER FAILED TO PROVE ITS CLAIM THAT THE EMPLOYEES' STRIKE PARALIZED ITS OPERATIONS AND RESULTED IN THE WITHDRAWAL OF ITS CLIENTS' ORDERS. – Likewise, PAL has not shown to the Court's satisfaction that the pilots' strike had gravely affected its operations. It offered no proof to show the correlation between the pilots' strike and its alleged financial difficulties. In *Guerrero v. National Labor Relations Commission,* the Court held that where the employer failed to

prove its claim with competent evidence that the employees' strike paralyzed its operations and resulted in the withdrawal of its clients' orders, the retrenchment of its employees must be declared illegal.

13. ID.; ID.; ID.; ID.; THE EMPLOYER MUST PROVE THAT IT RESORTED TO OTHER COST-CUTTING MEASURES BUT THE SAME PROVED TO BE INSUFFICIENT OR INADEQUATE. – Moreover, as the Court ruled in the case of *EMCO Plywood Corporation,* it must be shown that the employer resorted to other means but these proved to be insufficient or inadequate, such as cost reduction, lesser investment on raw materials, adjustment of the work routine to avoid scheduled power failure, reduction of the bonuses and salaries of both management and rank-and-file, improvement of manufacturing efficiency, and trimming of marketing and advertising costs. In the instant case, there is no proof that PAL engaged in cost-cutting measures other than a mere reduction in its fleet of aircraft and the retrenchment of 5,000 of its personnel. The only manifestation of PAL's attempt at exhausting other possible measures besides retrenchment was when it conducted negotiations and consultations with FASAP which, however, ended nowhere. None of the plans and suggestions taken up during the meetings was implemented. On the other hand, PAL's September 4, 1998 offer of shares of stock to its employees was adopted belatedly, or only **after** its more than 1,400 cabin crew personnel were retrenched. Besides, this offer can hardly be considered to be borne of good faith, considering that it was premised on the condition that, if accepted, all existing CBAs between PAL and its employees would have to be suspended for 10 years. When the offer was rejected by the employees, PAL ceased its operations on September 23, 1998. It only resumed business when the CBA suspension clause was ratified by the employees in a referendum subsequently conducted. Moreover, this stock distribution scheme does not do away with PAL's expenditures or liabilities, since it has for its sole consideration the commitment to suspend CBAs with its employees for 10 years. It did not improve the financial standing of PAL, nor did it result in corporate savings, *vis-à-vis* the financial difficulties it was suffering at the time.

14. ID.; ID.; ID.; ID.; THE CHARACTERIZATION OF AN EMPLOYEE'S SERVICES AS NO LONGER NECESSARY OR SUSTAINABLE, AND THEREFORE, PROPERLY TERMINABLE, IS AN EXERCISE OF BUSINESS JUDGMENT ON THE PART OF THE EMPLOYER, AND THAT THE WISDOM THEREOF IS NOT SUBJECT TO DISCRETIONARY REVIEW ABSENT VIOLATION OF LAW OR ARBITRARY OR MALICIOUS ACTION. – That FASAP admitted and took for granted the existence of PAL's financial woes cannot excuse the latter from proving to the Court's satisfaction that indeed it was bleeding financially. It was the airline's obligation to prove that it was in such financial distress; that it was necessary to implement an appropriate retrenchment scheme; that it had to undergo a retrenchment program *in proportion to or commensurate with* the extent of its financial distress; and that, it was carrying out the scheme in good faith and without undermining the security of tenure of its employees. The Court is mindful that the characterization of an employee's services as no longer necessary or sustainable, and therefore, properly terminable, is an exercise of business judgment on the part of the employer, and that the wisdom or soundness of such characterization or decision is not subject to *discretionary* review, provided of course that violation of law or arbitrary or malicious action is not shown.

15. ID.; ID.; ID.; ID.; THE RIGHT OF AN EMPLOYER TO DISMISS AN EMPLOYEE DIFFERS FROM THE MANNER THE SAID RIGHT IS EXERCISED. – The foregoing principle holds true with respect to PAL's claim in its Comment that the only issue is the *manner* by which its retrenchment scheme was carried out because the *validity* of the scheme has been settled in its favor. Respondents might have confused the *right to retrench* with its *actual retrenchment program*, treating them as one and the same. The first, no doubt, is a valid prerogative of management; it is a right that exists for all employers. As to the second, it is always subject to scrutiny in regard to faithful compliance with substantive and procedural requirements which the law and jurisprudence have laid down. The *right* of an employer to dismiss an employee differs from and should not be confused with the *manner* in which such right is exercised.

16. ID.; ID.; ID.; ID; THE EMPLOYER'S PREROGATIVE TO DISMISS AN EMPLOYEE CANNOT BE EXERCISED ARBITRARILY AND ABUSIVELY.– Concededly, retrenchment to prevent losses is an authorized cause for terminating employment and the decision whether to resort to such move or not is a management prerogative. However, the right of an employer to dismiss an employee differs from and should not be confused with the manner in which such right is exercised. It must not be oppressive and abusive since it affects one's person and property. In *Indino v. National Labor Relations Commission*, the Court held that it is almost an inflexible rule that employers who contemplate terminating the services of their workers cannot be so arbitrary and ruthless as to find flimsy excuses for their decisions. This must be so considering that the dismissal of an employee from work involves not only the loss of his position but more important, his means of livelihood. Applying this caveat, it is therefore incumbent for the employer, before putting into effect any retrenchment process on its work force, to show by convincing evidence that it was being wrecked by serious financial problems. Simply declaring its state of insolvency or its impending doom will not be sufficient. To do so would render the security of tenure of workers and employees illusory. Any employer desirous of ridding itself of its employees could then easily do so without need to adduce proof in support of its action. We can not countenance this. Security of tenure is a right guaranteed to employees and workers by the Constitution and should not be denied on the basis of mere speculation.

17. ID.; ID.; ID.; ID.; THE HIRING OF NEW EMPLOYEES AND SUBSEQUENT REHIRING OF RETRENCHED EMPLOYEES CONSTITUTE BAD FAITH.– On the requirement that the prerogative to retrench must be exercised in good faith, we have ruled that the hiring of new employees and subsequent rehiring of "retrenched" employees constitute bad faith; that the failure of the employer to resort to other less drastic measures than retrenchment seriously belies its claim that retrenchment was done in good faith to avoid losses; and that the demonstrated arbitrariness in the selection of which of its employees to retrench is further proof of the illegality of the employer's retrenchment program, not to mention its bad faith.

18. ID.; ID.; ID.; ID.; CRITERIA IN THE SELECTION OF EMPLOYEES TO BE DISMISSED, ENUMERATED. – In selecting employees to be dismissed, fair and reasonable criteria must be used, such as but not limited to: (a) less preferred status (*e.g.*, temporary employee), (b) efficiency and (c) seniority. In *Villena v. National Labor Relations Commission,* the Court considered seniority an important aspect for the validity of a retrenchment program. In *Philippine Tuberculosis Society, Inc. v. National Labor Union,* the Court held that the implementation of a retrenchment scheme without taking seniority into account rendered the retrenchment invalid, even as against factors such as dependability, adaptability, trainability, job performance, discipline, and attitude towards work.

19. ID.; ID.; ID.; ID.; EMPLOYERS ARE ENJOINED TO ADOPT AND OBSERVE FAIR AND REASONABLE STANDARDS TO EFFECT RETRENCHMENT. – This Court has repeatedly enjoined employers to adopt and observe fair and reasonable standards to effect retrenchment. This is of paramount importance because an employer's retrenchment program could be easily justified considering the subjective nature of this requirement. The adoption and implementation of *un*fair and *un*reasonable criteria could not easily be detected especially in the retrenchment of large numbers of employees, and in this aspect, abuse is a very distinct and real possibility. This is where labor tribunals should exercise more diligence; this aspect is where they should concentrate when placed in a position of having to judge an employer's retrenchment program.

20. ID.; ID.; ID.; ID.; SUBSEQUENT RECALL AND REHIRE PROCESS CONSIDERED INVALID WHERE THE RETRENCHMENT WAS DECLARED ILLEGAL. – As to PAL's recall and rehire process (of retrenched cabin crew employees), the same is likewise defective. Considering the illegality of the retrenchment, it follows that the subsequent recall and rehire process is likewise invalid and without effect.

21. ID.; ID.; ID.; UNFAIR LABOR PRACTICE; VIOLATIONS OF THE COLLECTIVE BARGAINING AGREEMENT, EXCEPT THOSE WHICH ARE GROSS IN CHARACTER, SHALL NO LONGER BE TREATED AS UNFAIR LABOR PRACTICE. – Anent the claim of unfair labor practices committed against petitioner, we find the same to be without

basis. Article 261 of the Labor Code provides that violations of a CBA, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the parties' CBA. Moreover, "gross violations of CBA" under the same Article referred to flagrant and/or malicious refusal to comply with the *economic* provisions of such agreement, which is not the issue in the instant case.

22. ID.; ID.; ID.; UNION BUSTING; RETRENCHMENT OR DEMOTION OF MAJORITY OF THE UNION OFFICERS NOT SUFFICIENT PROOF OF RESTRAINT OR COERCION IN THEIR RIGHT TO ORGANIZE. – Also, we fail to see any specific instance of union busting, oppression or harassment and similar acts of FASAP's officers. The fact that majority of FASAP's officers were either retrenched or demoted does not prove restraint or coercion in their right to organize. Instead, we see a simple retrenchment scheme gone wrong for failure to abide by the stringent rules prescribed by law, and a failure to discharge the employer's burden of proof in such cases.

23. ID.; ID.; ID.; QUITCLAIMS; DEEDS OF RELEASE OR QUITCLAIM CANNOT BAR EMPLOYEES FROM DEMANDING BENEFITS TO WHICH THEY ARE LEGALLY ENTITLED TO OR FROM CONTESTING THE LEGALITY OF THEIR DISMISSAL. – Quitclaims executed as a result of PAL's illegal retrenchment program are likewise annulled and set aside because they were not voluntarily entered into by the retrenched employees; their consent was obtained by fraud or mistake, as volition was clouded by a retrenchment program that was, at its inception, made without basis. The law looks with disfavor upon quitclaims and releases by employees pressured into signing by unscrupulous employers minded to evade legal responsibilities. As a rule, deeds of release or quitclaim cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal. The acceptance of those benefits would not amount to estoppel. The amounts already received by the retrenched employees as consideration for signing the quitclaims should, however, be deducted from their respective monetary awards. In *Trendline Association-Southern Philippines Federation of Labor v. NLRC,* we held that where the employer led its employees to believe that the employer

was suffering losses and as a result thereof accept retrenchment by executing quitclaims and waivers, there was evident bad faith on the part of the employer justifying the setting aside of the quitclaims and waivers executed.

24. ID.; ID.; ID.; MONEY CLAIMS; A CORPORATE OFFICER IS NOT PERSONALLY LIABLE FOR THE MONEY CLAIMS OF DISCHARGED EMPLOYEES UNLESS HE ACTED WITH EVIDENT MALICE AND BAD FAITH IN TERMINATING THEIR EMPLOYMENT. – A corporate officer is not personally liable for the money claims of discharged corporate employees unless he acted with evident malice and bad faith in terminating their employment. We do not see how respondent Patria Chiong may be held personally liable together with PAL, it appearing that she was merely acting in accordance with what her duties required under the circumstances. Being an Assistant Vice President for Cabin Services of PAL, she takes direct orders from superiors, or those who are charged with the formulation of the policies to be implemented.

25. ID.; ID.; ID.; ID.; MORAL DAMAGES; A CORPORATION IS NOT ENTITLED TO AN AWARD THEREOF. – With respect to moral damages, we have time and again held that as a general rule, a corporation cannot suffer nor be entitled to moral damages. A corporation, being an artificial person and having existence only in legal contemplation, has no feelings, no emotions, no senses; therefore, it cannot experience physical suffering and mental anguish. Mental suffering can be experienced only by one having a nervous system and it flows from real ills, sorrows, and griefs of life – all of which cannot be suffered by an artificial, juridical person. The Labor Arbiter's award of moral damages was therefore improper.

APPEARANCES OF COUNSEL

Soo Gutierrez Leogardo and Lee for petitioner.

Sycip Salazar Hernandez and Gatmaitan for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari* assails the Decision[1] of the Court of Appeals (CA) dated August 23, 2006 in CA-G.R. SP No. 87956 which affirmed the National Labor Relations Commission's (NLRC) decision setting aside the Labor Arbiter's findings of illegal retrenchment and ordering the reinstatement of the retrenched Philippine Airlines, Inc. (PAL) employee-members of petitioner Flight Attendants and Stewards Association of the Philippines (FASAP), with payment of backwages, moral and exemplary damages, and attorney's fees. Also assailed is the May 29, 2007 Resolution[2] denying the motion for reconsideration.

Petitioner FASAP is the duly certified collective bargaining representative of PAL flight attendants and stewards, or collectively known as PAL cabin crew personnel. Respondent PAL is a domestic corporation organized and existing under the laws of the Republic of the Philippines, operating as a common carrier transporting passengers and cargo through aircraft.

On June 15, 1998, PAL retrenched 5,000 of its employees, including more than 1,400 of its cabin crew personnel, to take effect on July 15, 1998. PAL adopted the retrenchment scheme allegedly to cut costs and mitigate huge financial losses as a result of a downturn in the airline industry brought about by the Asian financial crisis. During said period, PAL claims to have incurred ₱90 billion in liabilities, while its assets stood at ₱85 billion.[3]

In implementing the retrenchment scheme, PAL adopted its so-called "Plan 14" whereby PAL's fleet of aircraft would be

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[1] *Rollo*, pp. 59-83; penned by Associate Justice Ruben T. Reyes (now Associate Justice of this Court) and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso.

[2] *Id.* at 85-86.

[3] *Id.* at 490; Decision of the Labor Arbiter.

reduced from 54 to 14, thus requiring the services of only 654 cabin crew personnel.[4] PAL admits that the retrenchment is wholly premised upon such reduction in fleet,[5] and to "the strike staged by PAL pilots since this action also translated into a reduction of flights."[6] PAL claims that the scheme resulted in "savings x x x amounting to approximately P24 million per month – savings that would greatly alleviate PAL's financial crisis."[7]

Prior to the full implementation of the assailed retrenchment program, FASAP and PAL conducted a series of consultations and meetings and explored all possibilities of cushioning the impact of the impending reduction in cabin crew personnel. However, the parties failed to agree on how the scheme would be implemented. Thus PAL unilaterally resolved to utilize the criteria set forth in Section 112 of the PAL-FASAP Collective Bargaining Agreement[8] (CBA) in retrenching cabin crew personnel:

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[4] *Id*. at 420; Respondents' Memorandum filed with the Labor Arbiter.

[5] *Id*. at 154; Respondents' Position Paper filed with the Labor Arbiter.

[6] *Id*.

[7] *Id*.

[8] Entered into on November 22, 1996 and valid up to July 13, 2000. Section 112 thereof provides:

In the event of redundancy, phase-out of equipment or reduction of operations, the following rules in the reduction of personnel shall apply:

A. Reduction in the number of Pursers:

1. In the event of a reduction of purser OCARs, pursers who have not attained an efficiency rating of 85% shall be downgraded to international Cabin Attendant in the reverse order of seniority.

2. If the reduction of purser OCARs would involve more than the number of pursers who have not attained an efficiency rating of 85%, then pursers who have attained an efficiency rating of 85% shall be downgraded to international Cabin Attendant in the inverse order of seniority.

B. In reducing the number of international Cabin Attendants due to reduction in international Cabin Attendant OCARs, the same process in paragraph A shall be observed. International Cabin Attendants shall be downgraded to domestic.

C. In the event of reduction of domestic OCARs thereby necessitating the retrenchment of personnel, the same process shall be observed.

that is, that retrenchment shall be based on the individual employee's **efficiency rating** and **seniority**.

PAL determined the cabin crew personnel efficiency ratings through an evaluation of the individual cabin crew member's overall performance for the year 1997 ***alone.***[9] Their respective performance during previous years, *i.e.*, the whole duration of service with PAL of each cabin crew personnel, was not considered. The factors taken into account on whether the cabin crew member would be retrenched, demoted or retained were: 1) the existence of excess sick leaves; 2) the crew member's being physically overweight; 3) seniority; and 4) previous suspensions or warnings imposed.[10]

While consultations between FASAP and PAL were ongoing, the latter began implementing its retrenchment program by initially terminating the services of 140 probationary cabin attendants

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D. In no case, however, shall a regular Cabin Attendant be separated from the service in the event of retrenchment until all probationary or contractual Cabin Attendant in the entire Cabin Attendants Corps, in that order, shall have been retrenched.

E. Regular Cabin Attendants whose services are terminated due to reduction in force shall receive the benefits of the Retirement Plan provided hereunder or such separation pay as may be required under the Labor Code, whichever is the greater amount.

F. VOLUNTARY DOWNGRADING – The Company shall grant the Cabin Attendants the option to revert back to a lower position provided they agree to be considered the most junior among the group. This consideration shall be for the sole purpose of re-upgrading. (Emphasis supplied)

[9] The evaluation is contained in the **1997 ICCD Masterank and Seniority Listings** prepared by PAL, which lists the **names** of all cabin crew personnel; their respective **seniority numbers (1-1,733)**; their respective **efficiency ratings or ranking for the year 1997 only** (85% is the passing grade or rate); whether they are **retained**, **downgraded** or **retrenched**; and the **reasons for their retrenchment**, if so. *Rollo*, pp. 1085-1140.

The said Masterank and Seniority Listings was belatedly submitted by PAL to the Labor Arbiter only in March 2000, when it filed its Supplemental Memorandum.

[10] *Rollo*, pp. 79-80; Decision of the Third Division of the NLRC.

only to rehire them in April 1998. Moreover, their employment was made permanent and regular.[11]

On July 15, 1998, however, PAL carried out the retrenchment of its more than 1,400 cabin crew personnel.

Meanwhile, in June 1998, PAL was placed under corporate rehabilitation and a rehabilitation plan was approved per Securities and Exchange Commission (SEC) Order dated June 23, 1998 in SEC Case No. 06-98-6004.[12]

On September 4, 1998, PAL, through its Chairman and Chief Executive Officer (CEO) Lucio Tan, made an offer to transfer shares of stock to its employees and three seats in its Board of Directors, on the condition that all the existing Collective Bargaining Agreements (CBAs) with its employees would be suspended for 10 years, but it was rejected by the employees. On September 17, 1998, PAL informed its employees that it was shutting down its operations effective September 23, 1998,[13] despite the previous approval on June 23, 1998 of its rehabilitation plan.

On September 23, 1998, PAL ceased its operations and sent notices of termination to its employees. Two days later, PAL employees, through the Philippine Airlines Employees Association (PALEA) board, sought the intervention of then President Joseph E. Estrada. PALEA offered a 10-year moratorium on strikes and similar actions and a waiver of some of the economic benefits in the existing CBA. Lucio Tan, however, rejected this counter-offer.[14]

On September 27, 1998, the PALEA board again wrote the President proposing the following terms and conditions, subject to ratification by the general membership:

1. Each PAL employee shall be granted 60,000 shares of stock with a par value of ₱5.00, from Mr. Lucio Tan's shareholdings, with three (3) seats in the PAL Board and an additional seat from

[11] *Id*. at 486-487; Decision of the Labor Arbiter.

[12] *Id*. at 492; Decision of the Labor Arbiter.

[13] See *Rivera v. Espiritu*, 425 Phil. 169 (2002).

[14] *Id*.

government shares as indicated by His Excellency;

2. Likewise, PALEA shall, as far as practicable, be granted adequate representation in committees or bodies which deal with matters affecting terms and conditions of employment;

3. To enhance and strengthen labor-management relations, the existing Labor-Management Coordinating Council shall be reorganized and revitalized, with adequate representation from both PAL management and PALEA;

4. To assure investors and creditors of industrial peace, PALEA agrees, subject to the ratification by the general membership, (to) the suspension of the PAL-PALEA CBA for a period of ten (10) years, provided the following safeguards are in place:

a. PAL shall continue recognizing PALEA as the duly certified bargaining agent of the regular rank-and-file ground employees of the Company;

b. The 'union shop/maintenance of membership' provision under the PAL-PALEA CBA shall be respected.

c. No salary deduction, with full medical benefits.

5. PAL shall grant the benefits under the 26 July 1998 Memorandum of Agreement forged by and between PAL and PALEA, to those employees who may opt to retire or be separated from the company.

6. PALEA members who have been retrenched but have not received separation benefits shall be granted priority in the hiring/ rehiring of employees.

7. In the absence of applicable Company rule or regulation, the provisions of the Labor Code shall apply.[15]

In a referendum conducted on October 2, 1998, PAL employees ratified the above proposal. On October 7, 1998, PAL resumed domestic operations and, soon after, international flights as well.[16]

Meanwhile, in November 1998, or five months after the June 15, 1998 mass dismissal of its cabin crew personnel, PAL began

[15] *Id*.

[16] *Id*.

recalling to service those it had previously retrenched. Thus, in November 1998[17] and up to March 1999,[18] several of those retrenched were called back to service. To date, PAL claims to have recalled 820 of the retrenched cabin crew personnel.[19] FASAP, however, claims that only 80 were recalled as of January 2001.[20]

In December 1998, PAL submitted a "stand-alone" rehabilitation plan to the SEC by which it undertook a recovery on its own while keeping its options open for the entry of a strategic partner in the future. Accordingly, it submitted an amended rehabilitation plan to the SEC with a proposed revised business and financial restructuring plan, which required the infusion of US$200 million in new equity into the airline.

On May 17, 1999, the SEC approved the proposed "Amended and Restated Rehabilitation Plan" of PAL and appointed a permanent rehabilitation receiver for the latter.[21]

On June 7, 1999, the SEC issued an Order confirming its approval of the "Amended and Restated Rehabilitation Plan" of PAL. In said order, the cash infusion of US$200 million made by Lucio Tan on June 4, 1999 was acknowledged.[22]

On October 4, 2007, PAL officially exited receivership; thus, our ruling in *Philippine Air Lines v. Kurangking*[23] no longer applies.

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[17] *Rollo*, pp. 913; Respondents' Comment to the FASAP Petition for *Certiorari* filed with the Court of Appeals.

[18] *Id*. at 422-425; Respondents' Memorandum filed with the Labor Arbiter.

[19] *Id*. at 584.

[20] *Id*. at 611.

[21] *Philippine Airlines, Incorporated v. Philippine Airlines Association (PALEA)*, G.R. No. 142399, June 19, 2007, 525 SCRA 29, 36.

[22] *Rollo*, pp. 1259-1261.

[23] 438 Phil. 375 (2002). Therein we upheld a stay of claims against PAL, which runs effective from the date of issuance of a stay order (under Sec. 6, Rule 4 of the Interim Rules of Procedure On Corporate Rehabilitation) until the dismissal of the petition for rehabilitation or termination of rehabilitation proceedings.

On June 22, 1998, FASAP filed a Complaint[24] against PAL and Patria T. Chiong[25] (Chiong) for unfair labor practice, illegal retrenchment with claims for reinstatement and payment of salaries, allowances and backwages of affected FASAP members, actual, moral and exemplary damages with a prayer to enjoin the retrenchment program then being implemented. Instead of a position paper, respondents filed a Motion to Dismiss and/or Consolidation with NCMB Case No. NS 12-514-97 pending with the Office of the Secretary of the Department of Labor and Employment and/or Suspension and Referral of Claims to the interim rehabilitation proceedings (motion to dismiss).[26]

On July 6, 1998, FASAP filed its Comment to respondents' motion to dismiss. On July 23, 1998, the Labor Arbiter issued an Order[27] denying respondents' motion to dismiss; granting a writ of preliminary injunction against PAL's implementation of its retrenchment program with respect to FASAP members; setting aside the respective notices of retrenchment addressed to the cabin crew; directing respondents to restore the said retrenched cabin crew to their positions and PAL's payroll until final determination of the case; and directing respondents to file their position paper.

Respondents appealed to the NLRC which reversed the decision of the Labor Arbiter. The NLRC directed the lifting of the writ of injunction and to vacate the directive setting aside the notices of retrenchment and reinstating the dismissed cabin crew to their respective positions and in the PAL payroll.[28]

FASAP filed its Position Paper[29] on September 28, 1999. On November 8, 1999, respondents filed their Position Paper[30]

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[24] Docketed as *FASAP v. Philippine Airlines & Chiong*, NLRC-NCR Case No. 06-05100-98; *rollo*, p. 87.

[25] Then the Assistant Vice President for Cabin Services of PAL.

[26] *Rollo*, p. 487.

[27] *Id*.

[28] *Id*. at 488, 1422-1443.

[29] *Id*. at 105.

[30] *Id*. at 153.

with counterclaims against FASAP, to which FASAP filed its Reply.[31] Thereafter, the parties were directed to file their respective Memoranda.[32]

Meanwhile, instead of being dismissed in accordance with the *Kurangking* case, the FASAP case (NLRC-NCR Case No. 06-05100-98) was consolidated with the following cases:

1. *Ramon and Marian Joy Camahort v. PAL, et al.* (NLRC-NCR Case No. 00-07-05854-98);

2. *Erlinda Arevalo and Chonas Santos v. PAL, et al.* (NLRC-NCR Case No. 00-07-09793-98); and

3. *Victor Lanza v. PAL, et al.* (NLRC-NCR Case No.00-04-04254-99).

On July 21, 2000, Labor Arbiter Jovencio Ll. Mayor rendered a Decision,[33] the dispositive portion of which reads, as follows:

WHEREFORE, premises considered, this Office renders judgment declaring that Philippine Airlines, Inc., illegally retrenched One Thousand Four Hundred (1,400) cabin attendants including flight pursers for effecting the retrenchment program in a despotic and whimsical manner. Philippine Airlines, Inc. is likewise hereby ordered to:

1. Reinstate the cabin attendants retrenched and/or demoted to their previous positions;

2. Pay the concerned cabin attendants their full backwages from the time they were illegally dismissed/retrenched up to their actual reinstatements;

3. Pay moral and exemplary damages in the amount of Five Hundred Thousand Pesos (₱500,000.00); and

4. Ten (10%) per cent of the total monetary award as and by way of attorney's fees.

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[31] *Id.* at 164.

[32] *Id.* at 175, 416 and 470.

[33] *Id.* at 483-517.

SO ORDERED.[34]

Respondents appealed to the NLRC. Meanwhile, FASAP moved for the implementation of the reinstatement aspect of the Labor Arbiter's decision. Despite respondents' opposition, the Labor Arbiter issued a writ of execution with respect to the reinstatement directive in his decision. Respondents moved to quash the writ, but the Labor Arbiter denied the same. Again, respondents took issue with the NLRC.

Meanwhile, on May 31, 2004, the NLRC issued its Decision[35] in the appeal with respect to the Labor Arbiter's July 21, 2000 decision. The dispositive portion thereof reads:

> WHEREFORE, premises considered, the Decision dated July 21, 2000 is hereby SET ASIDE and a new one entered DISMISSING the consolidated cases for lack of merit.
>
> With respect to complainant Ms. Begonia Blanco, her demotion is hereby declared illegal and respondent PAL is ordered to pay her salary differential covering the period from the time she was downgraded in July 1998 up to the time she resigned in October 1999.
>
> Respondent PAL is likewise ordered to pay the separation benefits to those complainants who have not received their separation pay and to pay the balance to those who have received partial separation pay.
>
> The Order of the Labor Arbiter dated April 6, 2000 is also SET ASIDE and the Writ of Execution dated November 13, 2000 is hereby quashed.
>
> Annexes "A" and "B" are considered part of this Decision.
>
> SO ORDERED.[36]

FASAP moved for reconsideration but it was denied; hence it filed an appeal to the Court of Appeals which was denied in the herein assailed Decision.

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[34] *Id*. at 516-517.

[35] *Id*. at 672-708; penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioner Tito F. Genilo.

[36] *Id*. at 707-708.

FASAP's motion for reconsideration was likewise denied; hence, the instant petition raising the following issues:

WHETHER OR NOT THE COURT OF APPEALS DECIDED THE CASE *A QUO* IN A WAY CONTRARY TO LAW AND/OR APPLICABLE JURISPRUDENCE WHEN IT DENIED FASAP'S PETITION FOR *CERTIORARI* UNDER RULE 65 AND EFFECTIVELY VALIDATED THE RETRENCHMENT EXERCISED BY RESPONDENT PAL WHICH WAS INITIALLY DECLARED AS ILLEGAL BY THE LABOR ARBITER *A QUO* SINCE:

FIRST, the record shows that PAL **failed or neglected to adopt less drastic cost-cutting measures before resorting to retrenchment**. No less than the Supreme Court held that resort to less drastic cost-cutting measures is an indispensable requirement for a valid retrenchment x x x.

SECOND, **PAL arbitrarily and capriciously singled out the year 1997 as a reference in its alleged assessment of employee efficiency**. With this, it totally disregarded the employee's performance during the years prior to 1997. This resulted in the unreasonable and unfair retrenchment or demotion of several flight pursers and attendants who showed impeccable service records during the years prior to 1997.

THIRD, **seniority was totally disregarded in the selection of employees to be retrenched**, which is a clear and willful violation of the CBA.

FOURTH, **PAL maliciously represented in the proceedings below that it could only operate on a fleet of fourteen (14) planes in order to justify the retrenchment scheme**. Yet, the evidence on record revealed that PAL operated a fleet of twenty two (22) planes. In fact, after having illegally retrenched the unfortunate flight attendants and pursers, PAL rehired those who were capriciously dismissed and even hired from the outside just to fulfill their manning requirements.

FIFTH, **PAL did not use any fair and reasonable criteria in effecting retrenchment**. If there really was any, the same was applied arbitrarily, if not discriminatorily.

FINALLY, and perhaps the worst transgression of FASAP's rights, **PAL used retrenchment to veil its union-busting motives** and struck at the heart of FASAP when it retrenched seven (7) of its

twelve (12) officers and demoted three (3) others.[37] (Emphasis supplied)

These issues boil down to the question of whether PAL's retrenchment scheme was justified.

It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during trial. However, there are several exceptions to this rule[38] such as when the factual findings of the Labor Arbiter differ from those of the NLRC, as in the instant case, which opens the door to a review by this Court.[39]

Under the Labor Code, retrenchment or reduction of employees is authorized as follows:

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 at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction

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

[38] *Mamsar Enterprises Agro-Industrial Corporation v. Varley Trading, Inc.*, G.R. No. 142729, November 29, 2005, 476 SCRA 378, 382; *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86.

[39] *Perez v. Medical City General Hospital*, G.R. No. 150198, March 6, 2006, 484 SCRA 138, 142.

of at least six (6) months shall be considered one (1) whole year.

The law recognizes the right of every business entity to reduce its work force if the same is made necessary by compelling economic factors which would endanger its existence or stability.[40] Where appropriate and where conditions are in accord with law and jurisprudence, the Court has authorized valid reductions in the work force to forestall business losses, the hemorrhaging of capital, or even to recognize an obvious reduction in the volume of business which has rendered certain employees redundant.[41]

Nevertheless, while it is true that the exercise of this right is a prerogative of management, there must be faithful compliance with substantive and procedural requirements of the law and jurisprudence, for retrenchment strikes at the very heart of the worker's employment, the lifeblood upon which he and his family owe their survival. Retrenchment is only a measure of last resort, when other less drastic means have been tried and found to be inadequate.[42]

The burden clearly falls upon the employer to prove economic or business losses with sufficient supporting evidence. Its failure to prove these reverses or losses necessarily means that the employee's dismissal was not justified.[43] Any claim of actual or potential business losses must satisfy certain established standards, all of which must concur, before any reduction of personnel becomes legal.[44] These are:

(1) That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely

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[40] *Uichico v. National Labor Relations Commission*, G.R. No. 121434, June 2, 1997, 273 SCRA 35, 41.

[41] *Id*.

[42] *Polymart Paper Industries, Inc. v. National Labor Relations Commission*, 355 Phil. 592, 602 (1998).

[43] *F.F. Marine Corporation v. National Labor Relations Commission*, G.R. No. 152039, April 8, 2005, 455 SCRA 154, 166-167.

[44] *Uichico v. National Labor Relations Commission, supra* note 40 at 43.

de minimis, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;

(2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment;

(3) That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher;

(4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and,

(5) That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.[45]

In view of the facts and the issues raised, the resolution of the instant petition hinges on a determination of the existence of the **first**, **fourth** and the **fifth** elements set forth above, as well as compliance therewith by PAL, taking to mind that the burden of proof in retrenchment cases lies with the employer in showing valid cause for dismissal;[46] that legitimate business reasons exist to justify retrenchment.[47]

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[45] *Casimiro v. Stern Real Estate Inc.*, G.R. No. 162233, March 10, 2006, 484 SCRA 463; *Philippine Carpet Employees Association v. Sto. Tomas*, G.R. No. 168719, February 22, 2006, 483 SCRA 128; *Ariola v. Philex Mining Corp.*, G.R. No. 147756, August 9, 2005, 466 SCRA 152; *Danzas Intercontinental, Inc. v. Daguman*, G.R. No. 154368, April 15, 2005, 456 SCRA 382.

[46] *Banana Growers Collective at Puyod Farms v. National Labor Relations Commission*, 342 Phil. 511, 523 (1997).

[47] *Polymart Paper Industries, Inc. v. National Labor Relations Commission, supra* note 42.

FIRST ELEMENT: That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer.

The employer's prerogative to layoff employees is subject to certain limitations. In *Lopez Sugar Corporation v. Federation of Free Workers*,[48] we held that:

> Firstly, the losses expected should be substantial and not merely *de minimis* in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the bona fide nature of the retrenchment would appear to be seriously in question. Secondly, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it must, thirdly, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, *i.e.*, cut other costs than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes," can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means - *e.g.*, reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, *etc*. - have been tried and found wanting.

[48] G.R. Nos. 75700-01, August 30, 1990, 189 SCRA 179, 186-187.

Lastly, but certainly not the least important, alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence.

The law speaks of serious business losses or financial reverses. Sliding incomes or decreasing gross revenues are not necessarily losses, much less serious business losses within the meaning of the law. The fact that an employer may have sustained a net loss, such loss, per se, absent any other evidence on its impact on the business, nor on expected losses that would have been incurred had operations been continued, may not amount to serious business losses mentioned in the law. The employer must show that its losses increased through a period of time and that the condition of the company will not likely improve in the near future,[49] or that it expected no abatement of its losses in the coming years.[50] Put simply, not every loss incurred or expected to be incurred by a company will justify retrenchment.[51]

The employer must also exhaust all other means to avoid further losses without retrenching its employees.[52] Retrenchment is a means of last resort; it is justified only when all other less drastic means have been tried and found insufficient.[53] Even assuming that the employer has actually incurred losses by reason of the Asian economic crisis, the retrenchment is not completely justified if there is no showing that the retrenchment was the last recourse resorted to.[54] Where the only less drastic measure that the employer undertook was the rotation work scheme, or the three-day-work-per-employee-per-week schedule, and it did

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[49] *Philippine Carpet Employees Association v. Sto. Tomas, supra* note 45 at 145.

[50] *Oriental Petroleum and Minerals Corp. v. Fuentes*, G.R. No. 151818, October 14, 2005, 473 SCRA 106, 116.

[51] *Polymart Paper Industries, Inc. v. National Labor Relations Commission, supra* note 42 at 600, 602.

[52] *Id.* at 602.

[53] *Id.*

[54] *F.F. Marine Corporation v. National Labor Relations Commission, supra* note 43 at 171.

not endeavor at other measures, such as cost reduction, lesser investment on raw materials, adjustment of the work routine to avoid scheduled power failure, reduction of the bonuses and salaries of both management and rank-and-file, improvement of manufacturing efficiency, and trimming of marketing and advertising costs, the claim that retrenchment was done in good faith to avoid losses is belied.[55]

Alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees; scheming employers might be merely feigning business losses or reverses in order to ease out employees.[56]

In establishing a unilateral claim of actual or potential losses, financial statements audited by independent external auditors constitute the normal method of proof of profit and loss performance of a company.[57] The condition of business losses justifying retrenchment is normally shown by audited financial documents like yearly balance sheets and profit and loss statements as well as annual income tax returns. Financial statements must be prepared and signed by independent auditors; otherwise, they may be assailed as self-serving.[58] A Statement of Profit and Loss submitted to prove alleged losses, without the accompanying signature of a certified public accountant or audited by an independent auditor, is nothing but a self-serving document which ought to be treated as a mere scrap of paper devoid of any probative value.[59]

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[55] *EMCO Plywood Corporation v. Abelgas*, G.R.No. 148532, April 14, 2004, 427 SCRA 496, 511.

[56] *Id.*; *Guerrero v. National Labor Relations Commission*, 329 Phil. 1069 (1996); *Lopez Sugar Corporation v. Federation of Free Workers*, *supra* note 48 at 186-187.

[57] *TPI Philippines Cement Corporation v. Cajucom VII*, G.R. No. 149138, February 28, 2006, 483 SCRA 494, 503.

[58] *Danzas Intercontinental, Inc. v. Daguman*, *supra* note 45 at 393.

[59] *Uichico v. National Labor Relations Commission*, *supra* note 40 at 45.

The audited financial statements should be presented before the Labor Arbiter who is in the position to evaluate evidence. They may not be submitted belatedly with the Court of Appeals, because the admission of evidence is outside the sphere of the appellate court's *certiorari* jurisdiction. Neither can this Court admit in evidence audited financial statements, or make a ruling on the question of whether the employer incurred substantial losses justifying retrenchment on the basis thereof, as this Court is not a trier of facts.[60] Even so, this Court may not be compelled to accept the contents of said documents blindly and without thinking.[61]

The requirement of evidentiary substantiation dictates that not even the affidavit of the Assistant to the General Manager is admissible to prove losses, as the same is self-serving.[62] Thus, in *Central Azucarera de la Carlota v. National Labor Relations Commission*,[63] the Court ruled that the mere citation by the employer of the economic setback suffered by the sugar industry as a whole cannot, in the absence of adequate, credible and persuasive evidence, justify its retrenchment program,[64] thus:

> A litany of woes, from a labor strike way back in 1982 to the various crises endured by the sugar industry, droughts, the 1983 assassination of former Senator Benigno Aquino, Jr., high crop loan interests, spiraling prices of fertilizers and spare parts, the depression of sugar prices in the world market, cutback in the U.S. sugar quota, abandonment of productive areas because of the insurgency problem and the absence of fair and consistent government policies may have contributed to the unprecedented decline in sugar production in the country, but there is no solid evidence that they translated into specific and substantial losses that would necessitate retrenchment. Just exactly

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[60] *Danzas Intercontinental, Inc. v. Daguman, supra* note 45 at 394-395.

[61] *Philippine Tobacco Flue-Curing & Redrying Corporation v. National Labor Relations Commission*, 360 Phil. 218, 238 (1998).

[62] *Polymart Paper Industries, Inc. v. National Labor Relations Commission, supra* note 42 at 602.

[63] G.R. No. 100092, December 29, 1995, 251 SCRA 589.

[64] *Id.* at 596.

what negative effects were borne by petitioner as a result, petitioner failed to underscore.[65]

In *Anino v. National Labor Relations Commission*,[66] the Court also held that the employer's claim – that retrenchment was undertaken as a measure of self-preservation to prevent losses brought about by the continuing decline of nickel prices and export volume in the mining industry, as well as its allegation that the reduction of excise taxes on mining from 5% to 1% on a graduated basis as provided under Republic Act No. 7729 was a clear recognition by the government of the industry's worsening economic difficulties – was a bare claim in the absence of evidence of actual losses in its business operations.[67]

In the instant case, PAL failed to substantiate its claim of actual and imminent substantial losses which would justify the retrenchment of more than 1,400 of its cabin crew personnel. Although the Philippine economy was gravely affected by the Asian financial crisis, however, it cannot be assumed that it has likewise brought PAL to the brink of bankruptcy. Likewise, the fact that PAL underwent corporate rehabilitation does not automatically justify the retrenchment of its cabin crew personnel.

Records show that PAL was not even aware of its actual financial position when it implemented its retrenchment program. It initially decided to cut its fleet size to only 14 ("Plan 14") and based on said plan, it retrenched more than 1,400 of its cabin crew personnel. Later on, however, it abandoned its "Plan 14" and decided to retain 22 units of aircraft ("Plan 22"). Unfortunately, it has retrenched more than what was necessary. PAL admits that:

> [U]pon reconsideration and with some optimistic prospects for operations, the Company (PAL) decided not to implement "Plan 14" and instead implemented "Plan 22," which would involve a fleet of 22 planes. Since "Plan 14" was abandoned, the Company deemed it appropriate to recall back into employment employees it had

[65] *Id*.

[66] 352 Phil. 1098 (1998).

[67] *Id.* at 1113.

previously retrenched. Thus, some of the employees who were initially laid off were recalled back to duty, the basis of which was passing the 1997 efficiency rating to meet the Company's operational requirements.[68]

PAL decided to adopt "Plan 14" on June 12, 1998. Three days after, or on June 15, 1998, it sent notices of retrenchment to its cabin crew personnel to take effect on July 15, 1998. However, after allegedly realizing that it was going to retain 22 of its aircraft instead of 14, and after more than 1,400 of its cabin crew have been fired – during the period from November 30, 1998 to December 15, 1998, it suddenly recalled to duty 202 of the retrenched cabin crew personnel.[69]

This only proves that PAL was not aware of the true state of its finances at the time it implemented the assailed massive retrenchment scheme. It embarked on the mass dismissal without first undertaking a well-considered study on the proposed retrenchment scheme. This view is underscored by the fact that previously, PAL terminated the services of 140 probationary cabin attendants, but rehired them almost immediately and even converted their employment into permanent and regular, even as a massive retrenchment was already looming in the horizon.

To prove that PAL was financially distressed, it could have submitted its audited financial statements but it failed to present the same with the Labor Arbiter. Instead, it narrated a litany of woes without offering any evidence to show that they translated into specific and substantial losses that would necessitate retrenchment, thus:

1. It is a matter of public knowledge that PAL had been suffering severe financial losses that reached its most critical condition in 1998 when its liabilities amounted to about ₱90,642,933,919.00, while its assets amounted to only about ₱85,109,075,351.00. The precarious situation prompted PAL to adopt cost-cutting measures to prevent it from becoming totally bankrupt, including the reduction

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[68] *Rollo*, p. 913; Respondents' Comment to the FASAP Petition for *Certiorari* filed with the Court of Appeals.

[69] *Id*. at 937-938, 1395; *id*.

of its flight fleet from 56 to 14 aircrafts and the retrenchment of unneeded employees.

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26. To save its business, PAL had every right to undergo a retrenchment program immediately. PAL did not need, by law, to justify or explain to FASAP the reasons for the retrenchment before it could implement it. Proof of actual financial losses incurred by the company is not a condition *sine qua non* for retrenchment.[70]

This bare and unilateral claim does not suffice. The Labor Arbiter's finding that PAL "amply satisfied the rules imposed by law and jurisprudence that sustain retrenchment," is without basis, absent the presentation of documentary evidence to that effect. In *Saballa v. National Labor Relations Commission*,[71] we ruled that where the decision of the Labor Arbiter did not indicate the **specific** bases for such crucial finding that the employer was suffering business reverses, the same was arbitrary. We ratiocinated therein that since the employer insisted that its critical financial condition was the central and pivotal reason for its retrenchment, there was no reason why it should have neglected or refused to submit its audited financial statements.

PAL's assertion – that its finances were gravely compromised as a result of the 1997 Asian financial crisis and the pilots' strike – lacks basis due to the non-presentation of its audited financial statements to prove actual or imminent losses. Also, the fact that PAL was placed under receivership did not excuse it from submitting to the labor authorities copies of its audited financial statements to prove the urgency, necessity and extent, of its retrenchment program. PAL should have presented its audited financial statements for the years immediately preceding and during which the retrenchment was carried out. Law and jurisprudence require that alleged losses or expected imminent losses must be proved by sufficient and convincing evidence.

Likewise, PAL has not shown to the Court's satisfaction that the pilots' strike had gravely affected its operations. It

[70] *Id.* at 153 and 160.

[71] 329 Phil. 511, 523-524 (1996).

offered no proof to show the correlation between the pilots' strike and its alleged financial difficulties. In *Guerrero v. National Labor Relations Commission,*[72] the Court held that where the employer failed to prove its claim with competent evidence that the employees' strike paralyzed its operations and resulted in the withdrawal of its clients' orders, the retrenchment of its employees must be declared illegal.[73]

Moreover, as the Court ruled in the case of *EMCO Plywood Corporation*,[74] it must be shown that the employer resorted to other means but these proved to be insufficient or inadequate, such as cost reduction, lesser investment on raw materials, adjustment of the work routine to avoid scheduled power failure, reduction of the bonuses and salaries of both management and rank-and-file, improvement of manufacturing efficiency, and trimming of marketing and advertising costs. In the instant case, there is no proof that PAL engaged in cost-cutting measures other than a mere reduction in its fleet of aircraft and the retrenchment of 5,000 of its personnel.

The only manifestation of PAL's attempt at exhausting other possible measures besides retrenchment was when it conducted negotiations and consultations with FASAP which, however, ended nowhere. None of the plans and suggestions taken up during the meetings was implemented. On the other hand, PAL's September 4, 1998 offer of shares of stock to its employees was adopted belatedly, or only **after** its more than 1,400 cabin crew personnel were retrenched. Besides, this offer can hardly be considered to be borne of good faith, considering that it was premised on the condition that, if accepted, all existing CBAs between PAL and its employees would have to be suspended for 10 years. When the offer was rejected by the employees, PAL ceased its operations on September 23, 1998. It only resumed business when the CBA suspension clause was ratified by the employees in a referendum subsequently conducted.[75]

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[72] *Supra* note 56.

[73] *Id.* at 1074-1075.

[74] *Supra* note 55.

[75] *Rivera v. Espiritu, supra* note 13.

Moreover, this stock distribution scheme does not do away with PAL's expenditures or liabilities, since it has for its sole consideration the commitment to suspend CBAs with its employees for 10 years. It did not improve the financial standing of PAL, nor did it result in corporate savings, *vis-à-vis* the financial difficulties it was suffering at the time.

Also, the claim that PAL saved ₱24 million monthly due to the implementation of the retrenchment program does not prove anything; it has not been shown to what extent or degree such savings benefited PAL, *vis-à-vis* its total expenditures or its overall financial position. Likewise, its claim that its liabilities reached ₱90 billion, while its assets amounted to ₱85 billion only – or a debt to asset ratio of more than 1:1 – may not readily be believed, considering that it did not submit its audited financial statements. All these allegations are self-serving evidence.

Interestingly, PAL submitted its audited financial statements only when the case was the subject of *certiorari* proceedings in the Court of Appeals by attaching in its Comment[76] a copy of its consolidated audited financial statements for the years 2002, 2003 and 2004.[77] However, these are not the financial statements that would have shown PAL's alleged precarious position at the time it implemented the massive retrenchment scheme in 1998. PAL should have submitted its financial statements for the years 1997 up to 1999; and not for the years 2002 up to 2004 because these financial statements cover a period markedly distant to the years in question, which make them irrelevant and unacceptable.

Neither could PAL claim to suffer from imminent or resultant losses had it not implemented the retrenchment scheme in 1998. It could not have proved that retrenchment was necessary to prevent further losses, because immediately thereafter – or in February 1999[78] – PAL was on the road to recovery; this is the

[76] *Rollo*, p. 912.

[77] *Id.* at 1264-1300.

[78] Only seven (7) months after the questioned retrenchment was implemented.

airline's bare admission in its Comment to the instant petition.[79] During that period, it was recalling to duty cabin crew it had previously retrenched. In March 2000, PAL declared a net income of ₱44.2 million. In March 2001, it reported a profit of ₱419 million. In March 2003, it again registered a net income of ₱295 million.[80] All these facts are anathema to a finding of financial difficulties.

Finally, what further belied PAL's allegation that it was suffering from substantial actual and imminent losses was the fact that in December 1998, PAL submitted a "stand-alone" rehabilitation plan to the SEC, and on June 4, 1999, or less than a year after the retrenchment, the amount of US$200 million was invested directly into PAL by way of additional capital infusion for its operations.[81] These facts betray PAL's claim that it was in dire financial straits. By submitting a "stand-alone" rehabilitation plan, PAL acknowledged that it could undertake recovery on its own and that it possessed enough resources to weather the financial storm, if any.

Thus said, it was grave error for the Labor Arbiter, the NLRC and the Court of Appeals, to have simply assumed that PAL was in grievous financial state, without requiring the latter to substantiate such claim. It bears stressing that in retrenchment cases, the presentation of proof of financial difficulties through the required documents, preferably audited financial statements prepared by independent auditors, may not summarily be done away with.

That FASAP admitted and took for granted the existence of PAL's financial woes cannot excuse the latter from proving to

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[79] *Rollo*, p. 1395. Therein, PAL admits that –

During this time, the Company was slowly but steadily recovering. Its finances were improving and additional planes were flying. Because of the Company's steady recovery, necessity dictated more employees to man and service the additional planes and flights. Thus, instead of taking in new hires, the Company first offered employment to employees who were previously retrenched. A recall/rehire plan was initiated.

[80] See footnote 21.

[81] SEC Order of June 7, 1999; *rollo*, pp. 1259-1261.

the Court's satisfaction that indeed it was bleeding financially. It was the airline's obligation to prove that it was in such financial distress; that it was necessary to implement an appropriate retrenchment scheme; that it had to undergo a retrenchment program *in proportion to* or *commensurate with* the extent of its financial distress; and that, it was carrying out the scheme in good faith and without undermining the security of tenure of its employees. The Court is mindful that the characterization of an employee's services as no longer necessary or sustainable, and therefore, properly terminable, is an exercise of business judgment on the part of the employer, and that the wisdom or soundness of such characterization or decision is not subject to *discretionary* review, provided of course that violation of law or arbitrary or malicious action is not shown.[82]

The foregoing principle holds true with respect to PAL's claim in its Comment that the only issue is the *manner* by which its retrenchment scheme was carried out because the *validity* of the scheme has been settled in its favor.[83] Respondents might have confused the *right to retrench* with its *actual retrenchment program*, treating them as one and the same. The first, no doubt, is a valid prerogative of management; it is a right that exists for all employers. As to the second, it is always subject to scrutiny in regard to faithful compliance with substantive and procedural requirements which the law and jurisprudence have laid down. The *right* of an employer to dismiss an employee differs from and should not be confused with the *manner* in which such right is exercised.[84]

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[82] *Becton Dickinson Phils., Inc. v. National Labor Relations Commission*, G.R. Nos. 159969 & 160116, November 15, 2005, 475 SCRA 123, 144.

[83] *Rollo*, pp. 1403-1404.

[84] *Remerco Garments Manufacturing v. Minister of Labor and Employment*, G.R. Nos. 56176-77, February 28, 1985, 135 SCRA 167, 176.

FOURTH ELEMENT: That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure.

Concededly, retrenchment to prevent losses is an authorized cause for terminating employment and the decision whether to resort to such move or not is a management prerogative. However, the right of an employer to dismiss an employee differs from and should not be confused with the manner in which such right is exercised. It must not be oppressive and abusive since it affects one's person and property.[85]

In *Indino v. National Labor Relations Commission*,[86] the Court held that it is almost an inflexible rule that employers who contemplate terminating the services of their workers cannot be so arbitrary and ruthless as to find flimsy excuses for their decisions. This must be so considering that the dismissal of an employee from work involves not only the loss of his position but more important, his means of livelihood. Applying this caveat, it is therefore incumbent for the employer, before putting into effect any retrenchment process on its work force, to show by convincing evidence that it was being wrecked by serious financial problems. Simply declaring its state of insolvency or its impending doom will not be sufficient. To do so would render the security of tenure of workers and employees illusory. Any employer desirous of ridding itself of its employees could then easily do so without need to adduce proof in support of its action. We cannot countenance this. Security of tenure is a right guaranteed to employees and workers by the Constitution and should not be denied on the basis of mere speculation.

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[85] *AHS/Philippines Employees Union (FFW) v. National Labor Relations Commission*, G.R. No. 73721, March 30, 1987, 149 SCRA 5, 14; *Remerco Garments Manufacturing v. Minister of Labor and Employment*, *supra* note 84.

[86] G.R. No. 80352, September 29, 1989, 178 SCRA 168, 175-176.

On the requirement that the prerogative to retrench must be exercised in good faith, we have ruled that the hiring of new employees and subsequent rehiring of "retrenched" employees constitute bad faith;[87] that the failure of the employer to resort to other less drastic measures than retrenchment seriously belies its claim that retrenchment was done in good faith to avoid losses;[88] and that the demonstrated arbitrariness in the selection of which of its employees to retrench is further proof of the illegality of the employer's retrenchment program, not to mention its bad faith.[89]

When PAL implemented Plan 22, instead of Plan 14, which was what it had originally made known to its employees, it could not be said that it acted in a manner compatible with good faith. It offered no satisfactory explanation why it abandoned Plan 14; instead, it justified its actions of subsequently recalling to duty retrenched employees by making it appear that it was a show of good faith; that it was due to its good corporate nature that the decision to consider recalling employees was made. The truth, however, is that it was unfair for PAL to have made such a move; it was capricious and arbitrary, considering that several thousand employees who had long been working for PAL had lost their jobs, only to be recalled but assigned to lower positions (*i.e.*, demoted), and, worse, some as new hires, without due regard for their long years of service with the airline.

The irregularity of PAL's implementation of Plan 14 becomes more apparent when it rehired 140 probationary cabin attendants whose services it had previously terminated, and yet proceeded to terminate the services of its permanent cabin crew personnel.

In sum, we find that PAL had implemented its retrenchment program in an arbitrary manner and with evident bad faith, which prejudiced the tenurial rights of the cabin crew personnel.

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[87] *Philippine Carpet Employees Association v. Sto. Tomas, supra* note 45.

[88] *EMCO Plywood Corporation v. Abelgas, supra* note 55.

[89] *Saballa v. National Labor Relations Commission, supra* note 71.

Moreover, the management's September 4, 1998 offer to transfer PAL shares of stock in the name of its employees in exchange for the latter's commitment to suspend all existing CBAs for 10 years; the closure of its operations when the offer was rejected; and the resumption of its business after the employees relented; all indicate that PAL had not acted in earnest in regard to relations with its employees at the time.

FIFTH ELEMENT: That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.

In selecting employees to be dismissed, fair and reasonable criteria must be used, such as but not limited to: (a) less preferred status (*e.g.*, temporary employee), (b) efficiency and (c) seniority.[90]

In *Villena v. National Labor Relations Commission*,[91] the Court considered seniority an important aspect for the validity of a retrenchment program. In *Philippine Tuberculosis Society, Inc. v. National Labor Union*,[92] the Court held that the implementation of a retrenchment scheme without taking seniority into account rendered the retrenchment invalid, even as against factors such as dependability, adaptability, trainability, job performance, discipline, and attitude towards work.

In the implementation of its retrenchment scheme, PAL evaluated the cabin crew personnel's performance during the year preceding the retrenchment (1997), based on the following

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[90] Fernandez, P.V., *The Law of Employee Dismissal*, pp. 130-131, 1976 Ed.; *Asiaworld Publishing House, Inc. v. Ople*, G.R. No. 56398, July 23, 1987, 152 SCRA 219, 225; *Asufrin, Jr. v. San Miguel Corporation*, G.R. No. 156658, March 10, 2004, 425 SCRA 270, 275.

[91] G.R. No. 90664, February 7, 1991, 193 SCRA 686.

[92] 356 Phil. 63, 73 (1998).

set of criteria or *rating variables* found in the Performance Evaluation Form of the cabin crew personnel's Grooming and Appearance Handbook:

A. INFLIGHT PROFICIENCY EVALUATION – 30%

B. JOB PERFORMANCE – 35%

- Special Award – +5
- Commendations – +2
- Appreciation – +1
- Disciplinary Actions – Reminder (-3), Warning/Admonition & Reprimands (-5), Suspension (-20), Passenger Complaints (-30), Appearance (-10)

C. ATTENDANCE – 35%

- Perfect Attendance – +2
- Missed Assignment – -30
- Sick Leaves in excess of allotment and other leaves in excess of allotment – -20
- Tardiness – -10[93]

The appellate court held that there was no need for PAL to consult with FASAP regarding standards or criteria that the airline would utilize in the implementation of the retrenchment program; and that the criteria actually used which was unilaterally formulated by PAL using its Performance Evaluation Form in its Grooming and Appearance Handbook was reasonable and fair. Indeed, PAL was not obligated to consult FASAP regarding the standards it would use in evaluating the performance of the each cabin crew. However, we do not agree with the findings of the appellate court that the criteria utilized by PAL in the actual retrenchment were reasonable and fair.

This Court has repeatedly enjoined employers to adopt and observe fair and reasonable standards to effect retrenchment. This is of paramount importance because an employer's

[93] *Rollo*, p. 924.

retrenchment program could be easily justified considering the subjective nature of this requirement. The adoption and implementation of *un*fair and *un*reasonable criteria could not easily be detected especially in the retrenchment of large numbers of employees, and in this aspect, abuse is a very distinct and real possibility. This is where labor tribunals should exercise more diligence; this aspect is where they should concentrate when placed in a position of having to judge an employer's retrenchment program.

Indeed, the NLRC made a detailed listing of the retrenchment scheme based on the ICCD Masterank and Seniority 1997 Ratings. It found the following:

1. Number of employees retrenched due to inverse seniority rule and **other reasons** — 454

2. Number of employees retrenched due to excess sick leaves — 299

3. Number of employees who were retrenched due to excess sick leave and **other reasons** — 61

4. Number of employees who were retrenched due to **other reasons** — 107

5. Number of employees who were demoted — 552

Total — 1,473.[94]

Prominent from the above data is the retrenchment of cabin crew personnel due to "**other reasons**" which, however, are not specifically stated and shown to be for a valid cause. This is not allowed because it has no basis in fact and in law.

Moreover, in assessing the overall performance of each cabin crew personnel, PAL only considered the year 1997. This makes the evaluation of each cabin attendant's efficiency rating capricious and prejudicial to PAL employees covered by it. By discarding the cabin crew personnel's previous years of service and taking into consideration only one year's worth of job performance for evaluation, PAL virtually did away with the concept of seniority,

[94] Decision of the NLRC; *rollo*, p. 686.

loyalty and past efficiency, and treated all cabin attendants as if they were on equal footing, *with no one more senior than the other*.

In sum, PAL's retrenchment program is illegal because it was based on wrongful premise (Plan 14, which in reality turned out to be Plan 22, resulting in retrenchment of more cabin attendants than was necessary) and in a set of criteria or rating variables that is unfair and unreasonable when implemented. It failed to take into account each cabin attendant's respective service record, thereby disregarding seniority and loyalty in the evaluation of overall employee performance.

Anent the claim of unfair labor practices committed against petitioner, we find the same to be without basis. Article 261 of the Labor Code provides that violations of a CBA, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the parties' CBA. Moreover, "gross violations of CBA" under the same Article referred to flagrant and/or malicious refusal to comply with the *economic* provisions of such agreement, which is not the issue in the instant case.

Also, we fail to see any specific instance of union busting, oppression or harassment and similar acts of FASAP's officers. The fact that majority of FASAP's officers were either retrenched or demoted does not prove restraint or coercion in their right to organize. Instead, we see a simple retrenchment scheme gone wrong for failure to abide by the stringent rules prescribed by law, and a failure to discharge the employer's burden of proof in such cases.

Quitclaims executed as a result of PAL's illegal retrenchment program are likewise annulled and set aside because they were not voluntarily entered into by the retrenched employees; their consent was obtained by fraud or mistake, as volition was clouded by a retrenchment program that was, at its inception, made without basis. The law looks with disfavor upon quitclaims and releases by employees pressured into signing by unscrupulous employers minded to evade legal responsibilities. As a rule, deeds of release or quitclaim cannot bar employees from

demanding benefits to which they are legally entitled or from contesting the legality of their dismissal. The acceptance of those benefits would not amount to estoppel. The amounts already received by the retrenched employees as consideration for signing the quitclaims should, however, be deducted from their respective monetary awards.[95]

In *Trendline Employees Association-Southern Philippines Federation of Labor v. NLRC,*[96] we held that where the employer led its employees to believe that the employer was suffering losses and as a result thereof accept retrenchment by executing quitclaims and waivers, there was evident bad faith on the part of the employer justifying the setting aside of the quitclaims and waivers executed.

As to PAL's recall and rehire process (of retrenched cabin crew employees), the same is likewise defective. Considering the illegality of the retrenchment, it follows that the subsequent recall and rehire process is likewise invalid and without effect.

A corporate officer is not personally liable for the money claims of discharged corporate employees unless he acted with evident malice and bad faith in terminating their employment.[97] We do not see how respondent Patria Chiong may be held personally liable together with PAL, it appearing that she was merely acting in accordance with what her duties required under the circumstances. Being an Assistant Vice President for Cabin Services of PAL, she takes direct orders from superiors, or those who are charged with the formulation of the policies to be implemented.

With respect to moral damages, we have time and again held that as a general rule, a corporation cannot suffer nor be entitled to moral damages. A corporation, being an artificial person and having existence only in legal contemplation, has no feelings,

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[95] *F.F. Marine Corporation v. National Labor Relations Commission, supra* note 43.

[96] 338 Phil. 681 (1997).

[97] *Midas Touch Food Corporation v. National Labor Relations Commission,* 328 Phil. 1033, 1045 (1996).

no emotions, no senses; therefore, it cannot experience physical suffering and mental anguish. Mental suffering can be experienced only by one having a nervous system and it flows from real ills, sorrows, and griefs of life – all of which cannot be suffered by an artificial, juridical person.[98] The Labor Arbiter's award of moral damages was therefore improper.

WHEREFORE, the instant petition is *GRANTED*. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 87956 dated August 23, 2006, which affirmed the Decision of the NLRC setting aside the Labor Arbiter's findings of illegal retrenchment and its Resolution of May 29, 2007 denying the motion for reconsideration, are *REVERSED and SET ASIDE* and a new one is rendered:

1. FINDING respondent Philippine Airlines, Inc. GUILTY of illegal dismissal;

2. ORDERING Philippine Air Lines, Inc. to reinstate the cabin crew personnel who were covered by the retrenchment and demotion scheme of June 15, 1998 made effective on July 15, 1998, without loss of seniority rights and other privileges, and to pay them full backwages, inclusive of allowances and other monetary benefits computed from the time of their separation up to the time of their actual reinstatement, provided that with respect to those who had received their respective separation pay, the amounts of payments shall be deducted from their backwages. Where reinstatement is no longer feasible because the positions previously held no longer exist, respondent Corporation shall pay backwages plus, in lieu of reinstatement, separation pay equal to one (1) month pay for every year of service;

3. ORDERING Philippine Airlines, Inc. to pay attorney's fees equivalent to ten percent (10%) of the total monetary award.

Costs against respondent PAL.

[98] *LBC Express, Inc. v. Court of Appeals*, G.R. No. 108670, September 21, 1994, 236 SCRA 602, 607.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Leonardo-de Castro,*[*] *JJ.,* concur.

EN BANC

[A.M. No. 07-6-10-SC. July 23, 2008]

RE: REQUEST OF CHIEF JUSTICE ANDRES R. NARVASA (RET.) FOR RE-COMPUTATION OF HIS CREDITABLE GOVERNMENT SERVICE

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 910, AS AMENDED; PERA AND ADCOM ARE INCLUDED IN THE COMPUTATION OF RETIREMENT BENEFITS AND TERMINAL LEAVE PAY OF JUSTICES AND JUDGES.— The inclusion by the OAS of both the PERA and the ADCOM in the computation of the monetary value of the 142 days leave credits that the retired CJ was required to reimburse to the Court may have indeed been prompted by the Court's Resolution of February 29, 2000 in A.M. No. 99-8-05-Sc declaring that the PERA and the ADCOM must be included in the computation of retirement benefits and terminal leave pay of justices and judges, viz: Republic Act 8250 (GAA for CY 1997) granted PERA to all government employees and officials as a replacement of the [Cost of Living Allowance] COLA. Effective January 1, 1999, ADCOM was granted pursuant to RA 8745. **Both PERA and ADCOM are financial benefits given to augment the take-home pay of government employees in view of the increasing cost of living. Both**

[*] Designated in lieu of Associate Justice Ruben T. Reyes.

financial benefits are part of compensation embraced in the term "living" allowance provided under Republic Act No. 910, as amended. In the Borromeo case, we included COLA in the computation of retirement benefits because COLA was part of the basic salary, thereby recognizing that COLA must be part of the retirement package. **Both PERA and ADCOM are part of the compensation of government employees, including members of the judiciary**. xxx.

2. ID.; ID.; ID.; THE RATA AND PERA SHALL BE INCLUDED IN THE COMPUTATION OF THE TERMINAL LEAVE PAY OF THE QUALIFIED MEMBERS OF THE JUDICIARY AND CONSTITUTIONAL COMMISSIONS.— Early on in *Borromeo v. Civil Service Commission*, this Court held that RATA and COLA (now the PERA) should be included in the highest monthly salary in computing the terminal leave pay of the therein petitioner, retired chairperson of the Civil Service Commission. The Court ruled: A different law, R.A. 910 as amended, governs the petitioner. In the case of members of the Judiciary and Constitutional Commissions, the basis in computing the retirement gratuity if the highest monthly aggregate of transportation, living and representation allowance (COLA and RATA). xxx. Since terminal leave pay may also be considered a gratuity, then applying the rule on liberal interpretation of retirement laws, the basis for its computation in the case of members of the Judiciary and Constitutional Commissions must be the same as that used in computing the 5-year lump sum gratuity under RA 910 as amended and Administrative Order No. 444. *Borromeo*, however, held that the inclusion of COLA and RATA in the computation of terminal leave pay applied only to "those qualified members of the Judiciary and Constitutional Commissions who retired or shall retire on or after the change of government in February, 1986." Clearly then, the retired CJ's terminal leave pay must be computed with the PERA and ADCOM components. As such, the ₱6,788.84 that the FMBO chief recommends to be refunded to former CJ Narvasa should not be considered an overpayment but, more appropriately, a deficiency payment or differential between the amount actually due him as terminal leave pay (₱393,752.45) and the amount actually received by him (₱386,963.618).

3. ID.; REPUBLIC ACT NO. 9227; STEP INCREMENTS FORM PART OF BASIC SALARY.— The Court, by Resolution of February 24, 2004 in A.M. No. 03-12-04-SC, has clarified that the BMS under Section 2 of R.A. No. 9227 is the "actual basic monthly salary of Justices and Judges, **including step increments and longevity pay**." Insofar as the inclusion of step increments is concerned, the Court held: **1. Section 2 of Republic Act No. 9227 provides that "basic monthly salary" shall be that which is in accordance with the basic monthly salary specified for the respective salary grades of Justices and Judges under Republic Act No. 6758. Section 7 of Republic Act No. 6758 provides for a Salary Schedule that allows eight (8) step increments per Salary Grade**. Said section further provides that "[a]ll salaries in the Salary Schedule expressed as monthly rates in pesos shall represent full compensation for full time employment regardless of where the work is performed." **Considering that step increment is made a component of the Salary Schedule, which in turn represents full compensation, it only follows that step increments form part of basic salary**.

4. ID.; ID.; ID.; SPECIAL ALLOWANCES ARE PART OF THE INCREASED SALARY OF JUSTICES AND JUDGES AND ALL OTHER POSITIONS IN THE JUDICIARY WITH EQUIVALENT RANK; SUBSEQUENT SALARY INCREASE, EFFECTS THEREOF.— Finally, the Court finds merit in Flores' position that the salary and SAJ component of the monthly pension of the former CJ must be adjusted to reflect the 10% basic salary increase authorized under E.O. No. 611 which, in turn, translates into a corresponding deduction of the SAJ component. In previous Resolutions, this Court has categorically held that the special allowances are actually part of the increased salary of justices and judges and all other positions in the judiciary with equivalent rank. *A fortiori*, "such salary becomes the basis of the retirement pension of the retiree at the time of his cessation from office." The Court in A.M. No. 07-8-3-SC further clarified that pursuant to Section 6 of R.A. No. 9227, *viz*: Sec. 6. *Effects of Subsequent Salary Increase.— Upon implementation of any subsequent increase in the salary rates provided under Republic Act No. 6758, as amended, all special allowances granted under this Act to justices and all other positions in the Judiciary with the*

equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court as authorized under existing laws and any additional allowance granted to other personnel of the Judiciary shall be considered as an implementation of the said salary increase as may be provided by law. The special allowance equivalent to the increase in the basic salary as may be provided by law shall be converted as part of the basic salary*:* Provided, that, any excess in the amount of the special allowance not converted as part of the basic salary shall continue to be granted as such. the SAJ is to be considered an implementation of the 10% salary increase authorized under E.O. No. 611 effective July 2007. As such, the "10% increase in basic salary shall be made to apply to justices, judges and other court personnel of ranks equivalent to CA justices and RTC judges but will be sourced from the SAJ funds and result in a corresponding 10% reduction in SAJ." Accordingly, the Court ordered the FMBO to deduct the 10% salary increase authorized under E.O. No. 611 from the monthly SAJ of incumbent justices, judges and judiciary officials with the equivalent rank of CA Justices and RTC judges and to source the 10% salary increase from the SAJ fund.

R E S O L U T I O N

CARPIO MORALES, *J.*:

By letter dated March 10, 2008, Chief Justice (CJ) Andres R. Narvasa (Ret.) thanked the Court for its Resolution of January 15, 2008 approving his entitlement to monthly pension and directing the Fiscal Management and Budget Office (FMBO) to immediately determine the value of the 142 days leave that he was required to reimburse to the Court to pave the way for the payment of his monthly pensions starting December 1, 2003. He informed the Court that he received payment of his accumulated monthly pensions, Special Allowance for the Judiciary (SAJ), and monthly annuities with SAJ components on February 16, 2008.

The retired CJ, assisted by Justice Bernardo P. Pardo (Ret.), however, comes before this Court anew, this time to request the re-computation of his retirement benefits based on a Basic

Monthly Salary (BMS) that includes the step increments he claims to have accrued in his favor as provided for in the Salary Standardization Law, Republic Act No. 6758.[1] His letter contains his own computations of his monthly pension and SAJ since December 1, 2003 as well as the money value of the 142 leave credits he was required to reimburse. In all, his computations show a total deficiency of ₱224,198.74, the amount allegedly still due him as of February 29, 2008.

The Court, by Resolution of March 25, 2008,[2] noted the letter of the retired CJ and referred his request for comment within 30 days from notice to the Deputy Clerk of Court and FMBO Chief Atty. Corazon Ferrer-Flores (Flores) or FMBO Chief.

By Comment dated May 28, 2008,[3] Flores stresses at the outset that the FMBO based the computation of the retired CJ's monthly pension on the January 30, 2008 memorandum of the Office of the Administrative Services (OAS) which keeps track of the creditable services of Supreme Court officials and employees and furnishes the necessary supporting documents for the preparation of the vouchers for the payment of retirement benefits.

Regarding the monetary value of the 142 leave credits that the retired CJ was required to reimburse, Flores clarifies that the correct amount is ₱386,963.61 as computed by the retired CJ, and not ₱393,752.45 which was deducted from his accumulated monthly pensions following the OAS' computation. The difference of ₱6,788.84 has thus to be reimbursed to him, she says.

Flores points out that in computing the total monetary value of the retired CJ's leave credits which he was asked to reimburse, the OAS factored the Personnel Emergency Relief Allowance (PERA) and the additional compensation (ADCOM), apparently

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[1] AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES.

[2] *Rollo*, p. 118.

[3] *Id*. at 122-130.

in accordance with the Court's Resolution of February 29, 2000 in A.M. No. 99-8-05-SC[4] holding that the same be included in the computation of retirement benefits and terminal leave pay of justices and judges. The monetary value of the leave credits actually received by the CJ did not, however, include the PERA and ADCOM in the computation thereof.

Regarding the retired CJ's entitlement to step increments,[5] Flores refers to the provisions of applicable laws and this Court's resolutions, *viz*:

1. Section 13 (c) of R.A. No. 6758 or the SSL, that "effective January 1, 1990, step increments shall be granted based on merit and/or length of service in accordance with rules and regulations that will be promulgated jointly by the DBM and the Civil Service Commission."

2. CSC and DBM Joint Circular No. 1, s. 1996, as amended by Joint CSC and DBM Circular No. 2 series of 1991 dated July 5, 1991.

Section 1 of the aforementioned circular, as amended, makes the rules and regulations applicable to all officials and employees in the national and local governments x x x who are appointed on a permanent status in the career and non-career service. Section 2 meanwhile provides the grant of step increments to all deserving officials and employees based, among other criteria, on the rendition of "continuous service in a particular position for at least three (3) years." Section 3 further provides that a one (1) step increment shall be granted for every 3 years of continuous satisfactory service in the position.

3. Resolution of January 25, 2000 in A.M. No. 99-12-01-SC, which granted justices and judges "increment through length of service, in addition to their longevity pay, subject to the condition that payments of increments shall include only those that have accrued effective January 1999 and subject further to availability of funds."

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[4] Re: Exclusion of PERA and ADCOM from the Computation of Retirement Gratuity and Terminal Leave Benefits of Justices and Judges.

[5] The amount computed by the OAS at Salary Grade (SG) 32, Step 1, was ₱46,200. Former CJ Narvasa submits that his BMS beginning December 1, 2003 should have been pegged at SG 32, Step 3 or ₱48,539.

4. Resolution dated May 28, 2002, in A.M. No. 02-5-06-SC, which approved the formula for computing the longevity pay (LP) and step increments (SI) of justices and judges of lower courts, as follows:

> "(1) x x x
>
> (2) The proper step increments that have accrued from 1 January 1990 until 1 January 1999 shall be paid starting from the latter date provided that there shall be no back pay for step increments that accrued from 1 January 1990 to 31 December 1998, as the difference between salary actually received and the earned step increments during the period shall be deemed waived and forfeited."

As the service record of the retired CJ shows that he served as Chief Justice from December 8, 1991 to November 29, 1998, Flores emphasizes that he had earned step increments equivalent to three (3) steps during the said period. The non-crediting of these step increments, she opines, may have been due to the interpretation by the OAS of the Court's Resolutions dated January 25, 2000 and May 28, 2002 that the step increments apply only to incumbent justices and judges as of January 1999.

Flores states, however, that January 1, 1999 was set in the aforementioned Court Resolutions only for the purpose of reckoning the payments for step increments without precluding incumbent justices and judges who had rendered service from January 1, 1990 to January 1, 1999 from earning step increments. This interpretation is more in accord with the liberality of retirement laws, she adds.

Flores thus submits that the monthly pension of the retired CJ should have been computed on the basis of the basic monthly salary of a Chief Justice at SG 32, Step 3, of ₱48,539. This amount, she points out, is the basis of the re-computation by the OAS[6] of the monthly pension of the retired CJ, which also

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[6] *Rollo*, pp. 136-139. Memorandum dated May 26, 2008 of Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer to Flores.

shows the adjustment of the Representation and Traveling Allowance (RATA)[7] and the ADCOM.[8]

Flores reports that a total of ₱243,409.90 is still due the retired CJ for his accumulated monthly pensions (including the SAJ component thereof) beginning December 1, 2003 up to February 29, 2008. Together with the ₱6,788.84 which he overpaid, the retired CJ is entitled to a total of ₱250,198.74, she says.

Flores further recommends that the corresponding adjustments be made on the monthly pension of the former CJ to reflect the 10% salary increase authorized by Executive Order (E.O.) No. 611 and the corresponding deduction from the monthly SAJ component in accordance with the resolution of the Court dated March 31, 2008 in A.M. No. 07-8-3-SC. This adjustment, she says, is also in consonance with Section 3-A of Republic Act (R.A.) No. 910, as amended:

> Sec. 3-A. In case the salary of Justices of the Supreme Court or the Court of Appeals is increased or decreased, such increased or decreased salary shall, for the purpose of this Act, be deemed to be the salary or the retirement pension which a Justice who as of June twelve, nineteen hundred fifty-four had ceased to be such to accept another position in the Government or who retired was receiving at the time of his cessation in the office: Provided, That any benefits that have already accrued prior to such increase or decrease shall not be affected thereby.

The Court finds the comments of the FMBO chief well taken.

The inclusion by the OAS of both the PERA and the ADCOM in the computation of the monetary value of the 142 days leave credits that the retired CJ was required to reimburse to the Court may have indeed been prompted by the Court's Resolution of February 29, 2000 in A.M. No. 99-8-05-SC declaring that

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[7] *Id*. at 136-137. The re-computation showed that the RATA was increased twice — from ₱16,700 to ₱17,000 effective April 1, 2005 and from ₱17,000 to P21,000 effective April 1, 2007.

[8] *Id*. at 137. The ADCOM was shown to have increased from ₱500 to ₱1,500 effective January 1, 2006.

the PERA and the ADCOM must be included in the computation of retirement benefits and terminal leave pay of justices and judges, *viz*:

> Republic Act 8250 (GAA for CY 1997) granted PERA to all government employees and officials as a replacement of the [Cost of Living Allowance} COLA. Effective January 1, 1999, ADCOM was granted pursuant to RA 8745. **Both PERA and ADCOM are financial benefits given to augment the take-home pay of government employees in view of the increasing cost of living. Both financial benefits are part of compensation embraced in the term "living" allowance provided under Republic Act No. 910, as amended.** In the Borromeo case,[9] we included COLA in the computation of retirement benefits because COLA was part of the basic salary, thereby recognizing that COLA must be part of the retirement package. **Both PERA and ADCOM are part of the compensation of government employees, including members of the judiciary.** x x x . (Emphasis and underscoring supplied)

As reflected earlier, however, the terminal leave pay received by the retired CJ did not include the PERA and ADCOM in the computation thereof. The computer printout of his Voucher[10] for Terminal Leave shows that the commutation of the money value of his terminal leave with pay as Chief Justice was based on the following: (a) monthly salary of ₱40,000; (b) LP of ₱4,000; and (c) RATA at ₱13,000 from November 30, 1998 to December 3, 2001.

Early on in *Borromeo v. Civil Service Commission*,[11] this Court held that RATA and COLA (now the PERA) should be included in the highest monthly salary in computing the terminal leave pay of the therein petitioner, retired chairperson of the Civil Service Commission. The Court ruled:

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[9] Referring to *Borromeo v. Civil Service Commission*, G.R. No. 96032, July 31, 1991, 199 SCRA 911.

[10] *Rollo*, p. 116, Annex "D" of former CJ Narvasa's letter of March 10, 2008.

[11] *Supra* note 9.

A different law, R.A. 910 as amended, governs the petitioner. In the case of members of the Judiciary and Constitutional Commissions, the basis in computing the retirement gratuity if the highest monthly aggregate of transportation, living and representation allowance (COLA and RATA). x x x.

xxx xxx xxx.

Since terminal leave pay may also be considered a gratuity, then applying the rule on liberal interpretation of retirement laws, the basis for its computation in the case of members of the Judiciary and Constitutional Commissions must be the same as that used in computing the 5-year lump sum gratuity under RA 910 as amended and Administrative Order No. 444.[12]

Borromeo, however, held that the inclusion of COLA and RATA in the computation of terminal leave pay applied only to "those qualified members of the Judiciary and Constitutional Commissions who retired or shall retire on or after the change of government in February, 1986."[13]

Clearly then, the retired CJ's terminal leave pay must be computed with the PERA and ADCOM components. As such, the ₱6,788.84 that the FMBO chief recommends to be refunded to former CJ Narvasa should not be considered an overpayment but, more appropriately, a deficiency payment or differential between the amount actually due him as terminal leave pay (₱393,752.45) and the amount actually received by him (₱386,963.618).

As to the inclusion of the step increments claimed by the retired CJ, the FMBO likewise correctly points out that his pension starting December 1, 2003 should be recomputed based on the total BMS of an incumbent CJ at SG 32, Step 3.

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[12] *Supra* at 923-224. Administrative Order No. 44 dated December 13, 1979 extended to the Chairperson and members of the Constitutional Commissions the same benefits enjoyed by retiring members of the Judiciary in the matter of rationalized rate of allowances and liberalized computation of retirement benefits and accumulated leave credits.

[13] *Supra* at 925-926.

It may be recalled that by Resolution of January 25, 2000 in A.M. No. 99-12-01-SB,[14] the Court "grant[ed] justices and judges increment through length of service, in addition to their longevity pay, subject to the condition that payments of increments should include only those that have accrued effective January 1999 and subject further to availability of funds."

Further to the computation of the LP and step increments of judges of the lower courts, the Court in A.M. No. 02-5-06-SC[15] resolved to approve the formula recommended by the Chief Attorney for computing the LP[16] and step increments of lower court judges, as follows:

(1) Longevity pay shall be computed as follows:

(a) For the first five-year period, by multiplying the basic monthly salary **including** step increments and salary increases, by five percent (5%) x x x;

(b) For the second five-year period, by multiplying the basic monthly salary **including** step increments, salary increases and the earned longevity pay, by five percent (5%) x x x.

xxx xxx xxx.

2) **The proper step increments that have accrued from 1 January 1990 until 1 January 1999** shall be paid starting from the latter date **provided that there shall be no back pay for step increments that accrued from 1 January 1990 to 31 December**

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[14] Re: Letter of Presiding Justice Francis E. Garchitorena *re*: Step Increments of Members of the Judiciary in Addition to Longevity Pay.

[15] Dated May 28, 2002.

[16] In a Resolution of October 10, 2007 in A.M. No. 07-8-27-SC (Re: Computation of Longevity Pay upon Compulsory Retirement), 535 SCRA 390, the Court held that Administrative Circular No. 58-2003 entitled "ALLOWING THE TACKING OF EARNED LEAVE CREDITS IN THE COMPUTATION OF LONGEVITY PAY UPON COMPULSORY RETIREMENT OF JUSTICES AND JUDGES", as well as all the other Resolutions issued by this Court in A.M. No. 03-9-20-SC (Re: Request of Senior Associate Justice Josue N. Bellosillo for Computation of His Longevity Pay upon Compulsory Retirement), explicitly mandated the tacking or inclusion of earned leave credits to the computation of longevity pay of Justices and Judges upon their compulsory retirement.

1998, as the difference between salary actually received and the earned step increments during that period shall be deemed waived and forfeited. (Emphasis and underscoring supplied)

The foregoing recognized that step increments accrued from January 1, 1990 to January 1, 1998 although the same could not be the subject of back pay. It cannot be gainsaid, however, that the step increments already earned should form part of the BMS of the government officials or employees concerned at the time of their compulsory retirement for the purpose of computing retirement gratuity and monthly pension.

The Court, by Resolution of February 24, 2004 in A.M. No. 03-12-04-SC, has clarified that the BMS under Section 2[17] of R.A. No. 9227 is the "actual basic monthly salary of Justices and Judges, **including step increments and longevity pay**." Insofar as the inclusion of step increments is concerned, the Court held:

1. **Section 2 of Republic Act No. 9227 provides that "basic monthly salary" shall be that which is in accordance with the basic monthly salary specified for the respective salary grades of Justices and Judges under Republic Act No. 6758. Section 7 of Republic Act No. 6758 provides for a Salary Schedule that allows eight (8) step increments per Salary Grade.** Said section further provides that "[a]ll salaries in the Salary Schedule expressed as monthly rates in pesos shall represent full compensation for full time employment regardless of where the work is performed." **Considering that step increment is made a component of the Salary Schedule, which in turn represents full compensation, it only follows that step increments form part of basic salary.** (Emphasis and underscoring supplied)

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[17] Sec. 2. Grant of Special Allowances. — All justices, judges and all other positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court as authorized under existing laws shall be granted special allowances equivalent to one hundred percent (100%) of the **basic monthly salary specified for their respective salary grades under Republic Act No. 6758, as amended, otherwise known as the Salary Standardization Law**, to be implemented for a period of four (4) years.

It also bears noting that in the May 26, 2008 Memorandum[18] of the OAS to the FMBO, the former reconsidered the bases for computing the retired CJ's monthly pension at SG 32, Step 3, rather than at SG 32, Step 1, that was reported in its previous Memorandum of January 30, 2008. The RATA[19] and ADCOM[20] components of the total monthly pension of the retired CJ were also adjusted to reflect the increased amounts thereof.

Finally, the Court finds merit in Flores' position that the salary and SAJ component of the monthly pension of the former CJ must be adjusted to reflect the 10% basic salary increase authorized under E.O. No. 611[21] which, in turn, translates into a corresponding deduction of the SAJ component.

In previous Resolutions,[22] this Court has categorically held that the special allowances are actually part of the increased salary of justices and judges and all other positions in the judiciary with equivalent rank. *A fortiori*, "such salary becomes the basis of the retirement pension of the retiree at the time of his cessation from office."[23]

The Court in A.M. No. 07-8-3-SC[24] further clarified that pursuant to Section 6 of R.A. No. 9227,[25] *viz*:

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[18] *Supra* note 6.

[19] The adjustments in the RATA reflected the increase thereof from ₱16,700 to ₱17,000 effective April 1, 2005 and from ₱17,000 to ₱21,000 effective April 1, 2007.

[20] The original computation of the OAS was amended to include the increase in the ADCOM from ₱500 to ₱1,500 effective January 1, 2006.

[21] AUTHORIZING COMPENSATION ADJUSTMENTS TO GOVERNMENT PERSONNEL.

[22] Resolutions dated December 1, 2004, January 25, 2006, February 7, 2006 and March 14, 2006 in A.M. No. 04-11-06-SC (Re: Request of Retired Justices of the Supreme Court for Upgrading of their Retirement Gratuities).

[23] *Supra*.

[24] Resolution dated March 28, 2008, Re: Query on the Effect of the 10% Salary Increaser under Executive Order No. 611 on the Special Allowance for the Judiciary (SAJ) of Justices, Judges and Court Officials with Equivalent Rank of Court of Appeals Justices or Regional Trial Court Judges.

[25] An Act Granting Additional Compensation in the Form of Special Allowances for Justices, Judges and All Other Positions in the Judiciary with

Sec. 6. *Effects of Subsequent Salary Increase*. - **Upon implementation of any subsequent increase in the salary rates provided under Republic Act No. 6758, as amended, all special allowances granted under this Act to justices and all other positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court as authorized under existing laws and any additional allowance granted to other personnel of the Judiciary shall be considered as an implementation of the said salary increases as may be provided by law. The special allowance equivalent to the increase in the basic salary as may be provided by law shall be converted as part of the basic salary**: Provided, that, any excess in the amount of the special allowance not converted as part of the basic salary shall continue to be granted as such. (Emphasis and underscoring supplied),

the SAJ is to be considered an implementation of the 10% salary increase authorized under E.O. No. 611 effective July 2007. As such, the "10% increase in basic salary shall be made to apply to justices, judges and other court personnel of ranks equivalent to CA justices and RTC judges but will be sourced from the SAJ funds and result in a corresponding 10% reduction in SAJ."[26]

Accordingly, the Court ordered the FMBO to deduct the 10% salary increase authorized under E.O. No. 611 from the monthly SAJ of incumbent justices, judges and judiciary officials with the equivalent rank of CA Justices and RTC judges and to source the 10% salary increase from the SAJ fund.

WHEREFORE, the Court *GRANTS* the request of Chief Justice Andres R. Narvasa (Ret.) for the re-computation of his retirement benefits. The FMBO is directed to:

(1) Effect the payment of the amount of ₱6,778.84 representing the deficiency in the monetary value of the retired CJ's terminal leave pay;

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the Equivalent Rank of Justices of the Court of Appeals and Judges of the Regional Trial Court, and for Other Purposes.

[26] *Supra* note 24 at 5.

(2) Effect the payment of the amount of ₱243,409.90, representing the deficiency in the retired CJ's accumulated monthly pensions from December 1, 2003 to February 29, 2008 as a consequence of the inclusion of the step increments he had earned from December 8, 1991 to November 29, 1998, and other adjustments not included in the original computation of his monthly pension; and

(3) Adjust the monthly pension of the retired CJ, including the SAJ component, to reflect the 10% salary increase authorized under E.O. No. 611 and the corresponding 10% deduction of the monthly SAJ component, in line with the March 31, 2008 Resolution of this Court in A.M. No. 07-8-3-SC.

SO ORDERED.

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

Chico-Nazario, J., on leave.

FIRST DIVISION

[A.M. No. MTJ-07-1670. July 23, 2008]
(Formerly OCA IPI No. 06-1822-MTJ)

ATTY. RODERICK M. SANTOS and ALEXANDER ANDRES, *complainants, vs.* **JUDGE LAURO BERNARDO, Municipal Trial Court, Bocaue, Bulacan,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE NEED FOR PRELIMINARY INVESTIGATION DEPENDS UPON THE IMPOSABLE PENALTY FOR THE CRIME CHARGED IN THE COMPLAINT FILED AND NOT UPON THE PENALTY FOR THE OFFENSE WHICH MAY BE FOUND TO HAVE BEEN COMMITTED BY THE ACCUSED AFTER PRELIMINARY INVESTIGATION. – There is no merit in respondent's supposition that Grave Coercion is an offense not subject to preliminary investigation because the minimum penalty imposable for the said offense, which is six months and one day, falls short of the minimum penalty of four years, two months and one day required by the Rules. The OCA correctly applied *San Agustin v. People.* Certainly, the need for a preliminary investigation under Sec. 1 in relation to Sec. 8 of Rule 112 of the Rules depends upon the *imposable penalty for the crime charged in the complaint or information filed* and not upon the imposable penalty for the offense which may be found to have been committed by the accused after a preliminary investigation. In the case of Grave Coercion, the Revised Penal Code provides a penalty of *prision correccional* or anywhere between six months and one day to six years; thus, a preliminary investigation must still be held since there is a possibility that the complainants would stand to suffer the maximum penalty imposable for the offense. The purpose of a preliminary investigation is to protect the innocent from hasty, malicious and oppressive prosecutions, from an unnecessary open and public accusation of a crime, and from the trouble, expense and anxiety of a trial. It also protects the State from a useless and expensive litigation. Above all, it is a part of the guarantees of freedom and fair play.

2. ID.; ID.; ID.; JUDGES OF THE FIRST LEVEL COURTS ARE NO LONGER AUTHORIZED TO CONDUCT PRELIMINARY INVESTIGATION; CASE AT BAR. – Notably, however, by the time the criminal complaint of Dr. Yanga against herein complainants was filed on January 3, 2006, respondent was already without authority to conduct preliminary investigation since effective October 3, 2005, judges of Municipal Trial Courts and Municipal Circuit Trial Courts are

no longer authorized to conduct the same, pursuant to A.M. No. 05-8-26-SC *(Re: Amendment of Rules 112 and 114 of the Revised Rules on Criminal Procedure by Removing the Conduct of Preliminary Investigation from Judges of the First Level Courts).* The appropriate action of respondent, therefore, should have been to immediately refer the complaint to the Office of the Provincial Prosecutor of Bulacan so that a preliminary investigation could proceed with reasonable dispatch. His issuance of a subpoena directing complainants to appear before the court on January 12, 2006 for a "preliminary hearing," although the hearing did not materialize after his voluntary inhibition from the case on January 10, 2006, was definitely out of order. At this point, it is clear that respondent committed gross ignorance of an existing procedure which is basic and elementary.

3. JUDICIAL ETHICS; JUDGES; NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY; JUDGES SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL THEIR ACTIVITIES. – In fine, as the *New Code of Judicial Conduct for the Philippine Judiciary* mandates, judges should avoid impropriety and the appearance of impropriety in all of their activities. They should not use or lend the prestige of the judicial office to advance their private interests, or those of a member of their family or of anyone else, nor shall they convey or permit others to convey the impression that anyone is in a special position improperly to influence them in the performance of judicial duties.

D E C I S I O N

AZCUNA, *J.*:

This is an administrative case against respondent MTC Judge Lauro Bernardo for his alleged impropriety, manifest bias and partiality, grave abuse of discretion, and gross ignorance of the law/procedure relative to Criminal Case No. 06-004 entitled *"People of the Philippines v. Atty. Roderick M. Santos and Boyet Andres."*

On February 9, 2006, Atty. Roderick M. Santos and Alexander Andres filed a verified Affidavit-Complaint charging respondent of:

Impropriety –

Respondent is using government resources in the discharge of his functions for his personal pleasure and convenience. Specifically, he allows his girlfriend, a certain *"Boots,"* to stay and use as her lounge the judge's chamber in violation of his duty under Rule 2.01 of the Code of Judicial Conduct to maintain proper decorum. On many occasions, even when there is a hearing, his girlfriend stays in the chamber, hindering the full performance of respondent's duties as he has to attend to her whims and caprices, plus the fact that his girlfriend is just cooling herself in the air-conditioned room while litigants have to bear the cramped hot space of the courtroom. This act also invites suspicion since her mere presence therein is an indication of who to talk to regarding a case. Following the case of *Presado v. Genova*,[1] the act of respondent constitutes serious misconduct.

Manifest Bias and Partiality –

Respondent committed manifest bias and partiality when he allowed the filing of Criminal Case No. 06-004 for Grave Coercion against the complainants because it was his chance to get back at Atty. Santos against whom he is harboring a grudge after the latter moved for his inhibition in Criminal Case Nos. 04-430 and 04-572.

Instead of conducting a preliminary investigation after the filing of the complaint to find probable cause to hold complainants herein for trial, respondent immediately signed the criminal complaint upon its filing and ordered that the case be set for "preliminary hearing" on January 12, 2006. His own branch clerk certified that the "complainant and her witnesses only subscribed their statement before the presiding judge." Worse, respondent allowed the criminal case to be filed even if it is based on hearsay evidence, as the complainant therein, one Dr. Elida D. Yanga, was not in the place at the time the alleged

[1] A.M. No. RTJ 91-657, June 21, 1993, 223 SCRA 489.

offense happened. From the documents gathered, the undue haste by which respondent acted is very evident because the complaint-affidavit, the criminal complaint, and the subpoena have the common date of January 4, 2006. More so, the subpoena was immediately served on complainants on January 5, 2006.

Grave Abuse of Discretion and Unfaithfulness to the Law –

Respondent committed grave abuse of discretion when he did not conduct a preliminary investigation in Crim. Case No. 06-004. Under paragraph 2, Section 1, Rule 112 of the Revised Rules on Criminal Procedure (Rules),[2] preliminary investigation is required to be conducted before the filing of a complaint or information for offenses where the penalty prescribed by law is at least four years, two months and one day. The maximum imposable penalty for Grave Coercion is six years imprisonment; hence, complainants should have been accorded the right to preliminary investigation whereby they could have demonstrated that the complaint is worthless. Respondent, however, chose to be ignorant of the basic provisions of the Rules in order to exact revenge and cause them to unduly stand trial. Despite the Motion to Quash Complaint with Prayer for Voluntary Inhibition filed by complainants to give him a chance to correct his error by at least referring the case to the Office of the Provincial Prosecutor of Bulacan for the conduct of the requisite preliminary investigation, he remained adamant by issuing an order referring the case instead to the Executive Judge of Bulacan for its raffle to another MTC judge. This act showed respondent's deliberate intent to make the complainants accused persons in a criminal case.

By allowing the immediate filing of a patently unmeritorious case, respondent tainted Atty. Santos' good reputation: he is a law practitioner with companies in Makati, Pasig and Manila as

[2] Paragraph 2 of Section 1, Rule 112 provides:

SECTION 1. *Preliminary investigation defined; when required.* – xxx.

Except as provided in Section 6 of this Rule, a preliminary investigation is required to be conducted before the filing of a compliant or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard to the fine.

clients; he is a businessman and was also a former chairman of the board and current board director of St. Martin of Tours Credit and Development Cooperative, the largest credit cooperative in Region III; and he is a frequent traveler, going abroad at least once a year. With the worthless criminal case filed against him, respondent puts a sore obstacle to Atty. Santos' way of life that is truly an undeserved inconvenience.

On April 11, 2006, respondent filed his Comment arguing in the main that the charges against him are hearsay, without factual and legal basis, and are a malicious imputation upon his person; and that the acts stated in the complaint were based solely on the bare allegations of the complainants as no corroborative statements of witnesses were presented to prove the same. In contradicting complainants' representation, he stated thus:

As to the charge of Impropriety:

"Boots" (whose maiden name was Ma. Rosario M. Layuga) is now respondent's lawful wife, as proven by a marriage certificate showing their civil union before a Caloocan City Regional Trial Court (RTC) judge on March 14, 2006. There was no occasion or intention on his part to make the judge's chamber a residential or dwelling place. Instead, his wife's presence is "actually dictated by a moral duty in the exercise of marital responsibility" since he has been allergic to some foods, particularly fish and some beans. In fact, last October 2005, after eating fish, respondent nearly lost his life due to a severe allergy had it not been for the timely medical intervention administered at a nearby hospital. Aside from this, he is suffering from irregular heartbeat which causes constant rise of his blood pressure and uric acid. Also, his wife is not merely present in the chamber since, while in there, she is also attending to some activities. Being self-employed and with extensive exposure to trading, she administers the family property consisting of leased premises and landholdings in Pandi, Bulacan.

Respondent's relation to his wife is "serious, open and known to the public" and that the atmosphere prevailing in the court's chamber even in the alleged presence of his wife is "an atmosphere of friendship, respect and decency." He related that he and his

wife are regular participants of Marriage Encounter prayer meetings as well as in the prayer assemblies conducted by the Couples for Christ. Respondent is an active member of the Rotary Club of Sta. Maria and Knights of Columbus, Marian Council of Sta. Maria, Bulacan while his wife is a member of the Inner Wheel Club of the Philippines. As members, they are active participants in the clubs' community projects and other civic activities. On top of these, respondent judge presented Resolution No. 06-03-025, dated 20 March 2006, of the Sangguniang Bayan of Bocaue, Bulacan signifying its "unilateral decree of support and commendation to [respondent] in recognition of his long years of commendable and meritorious service in the dispensation of justice" and the Certificate of Commendation, dated 30 March 2006, issued by the Mayor of the Municipality of Bocaue.

As to the charge of Manifest Bias and Partiality:

Complainants interpreted that when respondent signed the criminal complaint as well as subscribed the affidavits of the witnesses under oath he already made a finding of probable cause. This is not correct because his signature was only for the purpose of administering an oath, as evidenced by the certification issued by the clerk of court. The fact is that the criminal case did not reach the stage of preliminary investigation since complainants filed a Motion for Inhibition which was readily granted. Respondent conducted the court proceedings in accordance with the provisions of the Rules, particularly Sections 3 (a) and 8 (b) of Rule 112.[3]

[3] Sec. 3 (a) of Rule 112 states:

SEC. 3. *Procedure*.– The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

As to the charge of Grave Abuse of Discretion and Unfaithfulness to the Law:

Admittedly, preliminary investigation must be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four years, two months and one day without regard to fine. In the case of Grave Coercion, however, there is no need for a preliminary investigation since *prision correccional* (six months and one day to six years), which is the imposable penalty for said crime, does not fall within the required penalty of *prision correccional* maximum (four years, two months and one day). The criminal case against complainants should proceed in accordance with Section 8 (b) of Rule 112.

When respondent issued a subpoena setting the case for preliminary hearing it was taken as a measure of "damage control." Knowing that a member of the Bar is being charged before the court, it might have afforded the parties the chance to thresh out their differences and possibly settle amicably. Likewise, his order to forward the case to the Office of the Executive Judge

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while Sec. 8 (b) of Rule 112 provides:

Sec. 8. *Cases not requiring a preliminary investigation nor covered by the Rule on Summary Procedure*. –

xxx xxx xxx

(b) If filed with the Municipal Trial Court. – If the complaint or information is filed with the Municipal Trial Court or Municipal Circuit Trial Court for an offense covered by this section, the procedure in section 3 (a) of this Rule shall be observed. If within ten (10) days after the filing of the complaint or information, the judge finds no probable cause after personally evaluating the evidence, or after personally examining in writing and under oath the complainant and his witnesses in the form of searching questions and answers, he shall dismiss the same. He may, however, require the submission of additional evidence, within ten (10) days from notice, to determine further the existence of probable cause. If the judge still finds no probable cause despite the additional evidence, he shall, within ten (10) days from its submission or expiration of said period, dismiss the case. When he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused had already been arrested, and hold him for trial. However, if the judge is satisfied that there is no necessity for placing the accused under custody, he may issue summons instead of a warrant of arrest.

was but a result of his voluntary inhibition from the case, which he had chosen to definitely rule upon instead of further quashing the criminal complaint since the Motion filed by complainants prayed respondent to resolve two "judiciously irreconcilable" issues.

As a background, the enmity between respondent and Atty. Santos started in Criminal Case Nos. 04-430 and 04-572 wherein the latter appeared as private prosecutor in Criminal Case No. 04-430 for Reckless Imprudence Resulting to Damage to Property. The accused in said case later on filed a similar case (docketed as Criminal Case No. 04-572) against Atty. Santos' client. Respondent found probable cause in both cases. Atty. Santos questioned this ruling but, on appeal, the RTC sustained the findings. Atty. Santos did not elevate the matter to the appellate court until the decision became final.

In order for liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but most importantly it must be established that he was moved by bad faith, dishonesty or some other like motive. In this case, respondent has nothing to gain, material or otherwise, from the outcome of the criminal action; he met the parties only during the proceedings in court, not before its filing, and he inhibited himself promptly from the case. Atty. Santos instead is the one who has animosity to respondent; he must realize and understand that what he (respondent) had done is just all in a day's work and nothing personal about it.

In their Reply, the complainants argued that aside from converting the judge's chamber into a "nursing home" or "convalescent center" what is more troubling is respondent's own admission that his wife's activities therein are not limited to the "[care] for the sick" but also to her involvement in trading, which is highly irregular and improper since they are being conducted within the court's premises. As regards the commendations received by respondent, the complainants stated that it is most likely that everybody working in the Municipal Government of Bocaue got an award because it was given during

its 400th foundation day; that the "*pro-forma*" certificates do not show whether he deserves it or not; and in any event, these awards are totally irrelevant to the case. Incidentally, complainants also mentioned that court sessions in Bocaue usually start late almost at 2:00 p.m. or later, instead of 1:30 p.m.

Likewise, complainants commented on the "disturbing procedure" followed by respondent, which is, allowing the criminal complaint to be immediately entered in the criminal docket (thus, converting it to a criminal case by a mere stroke of the clerk of court's pen) and signing the criminal complaint aside from the affidavit-complaint without first finding probable cause. This, according to them, is contrary to the provision of Sec. 3 (a), Rule 112 of the Rules which states that only the affidavits must be subscribed and sworn to, a rule that respondent must follow when he is to conduct his investigatory functions under Sec. 3 or Sec. 9 (b), Rule 112.[4] Complainants also dismissed respondent's reasoning that his actuation was based on Sec. 3 (a) and Sec. 9 (b), Rule 112 because, as proven by the absence of any transcript of stenographic notes (TSN), the latter did not conduct searching questions and answers to Dr. Yanga and her witnesses. He has to explain, therefore, why he admitted a complaint based on hearsay evidence since the person who was not the object of the alleged coercive acts is the one who is the offended party in the criminal case.

Complainants insisted that since the maximum penalty imposable for the offense of Grave Coercion is six years, a preliminary investigation should have been held. Moreover, they maintained that Rule 112 is a complete procedure in itself; hence, as stated in Sec. 9 (b), it is the duty of respondent to dismiss the complaint or find probable cause within ten (10) days from its filing and not to call for a "preliminary hearing," which is a non-existent procedure in the Rules.

Lastly, Atty. Santos denied that he was the one who has hard feelings against respondent. Instead, he claimed that it is a matter of record, in the Order resolving the Motion for Voluntary

[4] Now Sec. 8 (b) of the Rules, as amended by A.M. No. 05-8-26-SC *(Supra)*.

Inhibition in Crim. Case Nos. 04-430 and 04-572, that the latter branded him as somebody he could not "co-exist with … in the quest for a just and equitable administration of justice." Atty. Santos alleged that respondent even furnished the Executive Judge of Bulacan with a copy of the Order to broadcast that he is a difficult lawyer to deal with. He emphasized that this administrative complaint is not about his client in Crim. Case No. 04-572 but is concerned with the injustice committed by respondent when he willingly and deliberately violated established rules and legal doctrines just so complainants would suffer undue injury by being tried for a fabricated case of Grave Coercion.

Parrying the supplementary allegations, on the other hand, respondent countered in his Rejoinder that it is unfair for complainants to conclude, much more insinuate, that his wife has something to do with any impropriety by her mere presence in the chamber. He reiterated that her company is necessitated by his health condition and that, anyway, she also has her own business to attend to – that of managing the family inheritance of leased premises in the nearby town of Pandi, Bulacan, and actively engaging herself in an independent business concern, held not in MTC-Bocaue, which is the large-scale trading of electric transformers, metal scraps and heavy equipment entrusted to her by her uncles and close relatives.

As to the charge of frequent delay of court sessions, respondent stated that he has been always present and ready to begin the proceedings but it is the desire of most lawyers to start at 2:00 p.m., more or less, because most of them, including the public prosecutor and the PAO lawyer, come from RTC hearings and even all the way from Malolos City. To compensate for the lost time, however, he averred that court sessions adjourn even up to 6:30 p.m. so that all cases may be accommodated.

Respondent clarified that when he signed the affidavits of Dr. Yanga and her witnesses it was only for the purpose of administering the oath of the person filing the criminal complaint. He posited that the proper rule that must be applied is not Sec. 3 (a), Rule 112, which refers to the procedure in preliminary

investigation, but Sec. 3, Rule 110 [5] on the institution of criminal actions providing that the complaint must be subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated. Further, while respondent conceded that there was really no TSN available because no hearing was held he asserted that under Sec. 9 (b) of Rule 112 a judge is authorized to just personally evaluate the evidence before him to find probable cause instead of personally examining in writing and under oath the complainant and his witnesses in the form of searching questions and answers. Finally, respondent firmly held on to his position that Grave Coercion is not one of the crimes requiring preliminary investigation since the minimum penalty imposable for said offense is six months and one day.

On February 20, 2007, the Office of the Court Administrator (OCA) found respondent administratively liable for gross ignorance of the law, and recommended the imposition of a fine in the amount of ₱20,000 considering this is his first time to be sanctioned for a serious charge. In its Report, the OCA stated:

> Whether of not there is a need for preliminary investigation under Section 1 in relation to Section 9 of Rule 112 of the Revised Rules on Criminal Procedure depends upon the *maximum* imposable penalty for the crime charged in the complaint filed with the City Prosecutor's Office and not upon the imposable penalty for the crime found to have been committed by respondent.

In *San Agustin v. People*, the Court held:

> "However, we do not agree with the ruling of the Court of Appeals that there was no need for the City Prosecutor to conduct a preliminary investigation since the crime charged under the Information filed with the MeTC was arbitrary detention under Article 124, paragraph 1 of the Revised Penal Code punishable by *arresto mayor* in its maximum period to *prision correccional*

[5] Sec. 3 Rule 110 states:

Sec. 3. *Complaint defined*. – A complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated.

> in its minimum period, which has a range of four months and one day to two years and four months. **Whether or not there is a need for a preliminary investigation under Section 1 in relation to Section 9 [now Section 8] of Rule 112 of the Revised Rules of Criminal Procedure depends upon the imposable penalty for the crime charged in the complaint filed with the City or Provincial Prosecutor's Office and not upon the imposable penalty for the crime found to have been committed by the respondent after a preliminary investigation.** In this case, the crime charged in the complaint of the NBI filed in the Department of Justice was kidnapping/ serious illegal detention, the imposable penalty for which is *reclusion perpetua* to death."

The maximum imposable penalty for grave coercion is six years imprisonment and such entitled the accused to their right to a preliminary investigation to save them from the rigors of trials in case no probable cause exists to warrant the filing of the criminal complaint or information against them.

Respondent Judge should have remanded the case to the public prosecutor for the purposes of preliminary investigation. [The Supreme] Court in a catena of cases held:

> "The absence of preliminary investigation does not affect the court's jurisdiction over the case. Nor do they impair the validity of the information or otherwise render it defective, but if there were no preliminary investigation and the defendants, before entering their plea, invite the attention of the court to their absence, the court instead of dismissing the information, should conduct such investigation, order the fiscal to conduct it or remand the case to the inferior court so that preliminary investigation may be conducted."

The issue raised by complainant does not pertain to an error of judgment or to one pertaining to the exercise of sound discretion by respondent. Rather, the issue is whether respondent complied with the procedural rules so elementary that to digress from them amounts to ignorance of the law. Since the rules on preliminary investigation are basic and clearly expressed in the Revised Rules of Criminal Procedure, respondent's actuation in denying the same is deemed to have been attended by gross ignorance of the law and procedure.

[The Supreme] Court has consistently held that lack of conversance with legal principles sufficiently basic and elementary constitutes gross ignorance of the law. As an advocate of justice and a visible representation of the law, a judge is expected to be proficient in the interpretation of our laws.

Respondent clearly strayed from the well-trodden path when he grossly misapplied the Revised Rules of Criminal Procedure. (Citations omitted)

As regards the other charges, the OCA dismissed them for complainants' failure to adduce sufficient evidence to substantiate the allegations.

The Report and Recommendation of the OCA are sustained.

There is no merit in respondent's supposition that Grave Coercion is an offense not subject to preliminary investigation because the minimum penalty imposable for the said offense, which is six months and one day, falls short of the minimum penalty of four years, two months and one day required by the Rules. The OCA correctly applied *San Agustin v. People*.[6] Certainly, the need for a preliminary investigation under Sec. 1 in relation to Sec. 8 of Rule 112 of the Rules depends upon the ***imposable penalty for the crime charged in the complaint or information filed*** and not upon the imposable penalty for the offense which may be found to have been committed by the accused after a preliminary investigation. In the case of Grave Coercion, the Revised Penal Code provides a penalty of *prision correccional* or anywhere between six months and one day to six years; thus, a preliminary investigation must still be held since there is a possibility that the complainants would stand to suffer the maximum penalty imposable for the offense. The purpose of a preliminary investigation is to protect the innocent from hasty, malicious and oppressive prosecutions, from an unnecessary open and public accusation of a crime, and from the trouble, expense and anxiety of a trial. It also protects the

[6] G.R. No. 158211, August 31, 2004, 437 SCRA 392, 401.

State from a useless and expensive litigation. Above all, it is a part of the guarantees of freedom and fair play.[7]

Notably, however, by the time the criminal complaint of Dr. Yanga against herein complainants was filed on January 3, 2006, respondent was already without authority to conduct preliminary investigation since effective October 3, 2005, judges of Municipal Trial Courts and Municipal Circuit Trial Courts are no longer authorized to conduct the same, pursuant to A.M. No. 05-8-26-SC *(Re: Amendment of Rules 112 and 114 of the Revised Rules on Criminal Procedure by Removing the Conduct of Preliminary Investigation from Judges of the First Level Courts)*.[8] The appropriate action of respondent, therefore, should have been to immediately refer the complaint to the Office of the Provincial Prosecutor of Bulacan so that a preliminary investigation could proceed with reasonable dispatch. His issuance of a subpoena directing complainants to appear before the court on January 12, 2006 for a "preliminary hearing," although the hearing did not materialize after his voluntary inhibition from the case on January 10, 2006, was definitely out of order. At this point, it is clear that respondent committed gross ignorance of an existing procedure which is basic and elementary.

Meanwhile, as to the impropriety purportedly committed by respondent in his own chamber, the OCA rightly found that complainants failed to provide specific details that would validate any misuse or abuse of government funds and/or facilities. Nonetheless, it is opportune to remind respondent as well as other trial court judges, who are the "front-liners" in the promotion

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[7] *R.R. Paredes v. Calilung*, G.R. No. 156055, March 5, 2007, 517 SCRA 369, 395.

[8] See *Martinez v. Court of Appeals*, G.R. No. 168827, April 13, 2007, 521 SCRA 176, 191; *Verzosa v. Contreras*, A.M. No. MTJ-06-1636, March 12, 2007, 518 SCRA 94, 106; *Lumbos v. Baliguat*, A.M. No. MTJ-06-1641, July 27, 2006, 496 SCRA 556, 571-572; *Landayan v. Quilantang*, A.M. No. MTJ-06-1632, May 4, 2006, 489 SCRA 360, 366; *Bitoon v. Toledo-Mupas*, A.M. No. MTJ-05-1598, January 23, 2006, 479 SCRA 351, 354; *Ora v. Almajar*, A.M. No. MTJ-05-1599, October 14, 2005, 473 SCRA 17, 21; and *Gozun v. Gozum*, A.M. No. MTJ-00-1324, October 5, 2005, 472 SCRA 49, 62-63.

of the people's faith in the judiciary, of the directives embodied in the following administrative circulars:

1. **Administrative Circular (A.C.) No. 3-92** *(Prohibition against Use of Halls of Justice for Residential or Commercial Purposes)* [9] – All judges and court personnel are reminded that the Halls of Justice may be used only for purposes directly related to the functioning and operation of the courts of justice, and may not be devoted to any other use, least of all as residential quarters of the judges or court personnel, or for carrying on therein any trade or profession. Attention is drawn to this Court's ruling in A.M. No. RTJ-89-327 *(Nellie Kelly Austria v. Judge Singuat Guerra)* whereby we declared that the use of the court's premises inevitably degrades the honor and dignity of the court in addition to exposing judicial records to danger of loss or damage.

2. **A.C. No. 01-99** *(Enhancing the Dignity of Courts as Temples of Justice and Promoting Respect for their Official and Employees)*[10] – Considering the courts as temples of justice, their dignity and sanctity must, at all times, be preserved and enhanced. In inspiring public respect for the justice system, court officials and employees are directed, among others, never to use their offices as a residence or for any other purpose than for court or judicial functions.

3. **A.C. No. 09-99** *(Banning Smoking and Selling of Goods within Court Houses and Offices)*[11] – Conformably with A.C. No. 01-99, this circular disallowed, among others, within court houses and, more specifically, session halls and offices of court officials and personnel, the selling of goods of any kind, especially by persons who are not court employees.

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[9] Issued on August 31, 1992.

[10] Effective on February 1, 1999.

[11] Effective on July 27, 1999.

In fine, as the *New Code of Judicial Conduct for the Philippine Judiciary*[12] mandates, judges should avoid impropriety and the appearance of impropriety in all of their activities. They should not use or lend the prestige of the judicial office to advance their private interests, or those of a member of their family or of anyone else, nor shall they convey or permit others to convey the impression that anyone is in a special position improperly to influence them in the performance of judicial duties.[13]

WHEREFORE, respondent *Judge LAURO BERNARDO*, MTC, Bocaue, Bulacan, is found **GUILTY** of gross ignorance of the law and basic rules of procedure and is hereby *FINED* in the amount of ₱20,000, with a *STERN WARNING* that a repetition of the same or similar act in the future shall be dealt with more severely.

Let a copy of this Decision be attached to the personnel record of respondent in the Office of the Administrative Services, Office of the Court Administrator.

SO ORDERED.

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

EN BANC

[A.M. No. MTJ-08-1700. July 23, 2008]
(Formerly OCA-I.P.I. No. 07-1916-MTJ)

ROLANDO V. BLANCO, *petitioner, vs.* **JUDGE TERESITO A. ANDOY, Municipal Trial Court, Cainta, Rizal,** *respondent.*

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[12] A.M. No. 03-05-01-SC, effective June 1, 2004.

[13] Canon 4, Sections 1 and 8.

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; REQUIRED TO DISPOSE OF COURT BUSINESS PROMPTLY; DELAY IN RESOLVING PENDING MOTIONS AND INCIDENTS WITHIN THE PRESCRIBED PERIOD CONSTITUTES A VIOLATION THEREOF.— Unquestionably, delay in the disposition and resolution of cases constitutes a serious violation of the parties' right to a speedy disposition of their grievances in court. No less than the Constitution, in Section 15(1), Article VIII, mandates that lower courts must dispose of their cases promptly and decide them within three (3) months from the date they are submitted for decision or resolution or from the filing of the last pleading, brief or memorandum required by the Rules of Court or by the court concerned. A judge's delay in resolving pending motions and incidents within the prescribed period constitutes a violation of Rule 3.05 of the Code of Judicial Conduct requiring judges to dispose of court business promptly.

2. ID.; ID.; ID.; UNDUE DELAY IN RENDERING A DECISION CONSIDERED A LESS SERIOUS OFFENSE; IMPOSABLE PENALTY.— Under Section 9, Rule 140 of the Rules of Court, undue delay in rendering a decision or order is considered a less serious offense, punishable under Section 11(b) of the same Rule, either by (1) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months, or (2) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

3. ID.; ID.; CHARGE OF GROSS IGNORANCE OF THE LAW; WHEN THE LAW IS ELEMENTARY, NOT TO KNOW IT CONSTITUTES GROSS IGNORANCE OF THE LAW; LACK OF MALICIOUS INTENT IS NOT A DEFENSE.— However, we find respondent judge's handling of the cases against Blanco appallingly injudicious. In disregarding the rules, respondent judge showed gross ignorance, albeit without any malice or corrupt motive. The lack of malicious intent, however, cannot completely free respondent judge from liability. A judge owes it to himself and his office to know by heart basic legal principles and to harness his legal know-how correctly and justly. When a judge displays an utter unfamiliarity with the law and the rules, he erodes the confidence of the public in the courts. Ignorance of the law by a judge can easily be the mainspring

of injustice. As an advocate of justice and a visible representation of the law, a judge is expected to be proficient in the interpretation of our laws. When the law is elementary, not to know it constitutes gross ignorance of the law.

4. ID.; ID.; ID.; FAILURE TO REFER THE ESTAFA CHARGES FOR PRELIMINARY INVESTIGATION CONSTITUTES GROSS IGNORANCE OF THE LAW; IMPOSABLE PENALTY.— Respondent judge displayed gross ignorance of the Rules of Court in failing to refer the pertinent estafa charges against Blanco for preliminary investigation. Gross ignorance of the law or procedure is classified as a serious charge under Section 8, Rule 140 of the Rules of Court and may be sanctioned by: (1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, *Provided, however*, That the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

5. ID.; ID.; PENALTY OF FINE IMPOSED FOR UNDUE DELAY IN THE RESOLUTION OF A MOTION AND GROSS IGNORANCE OF THE LAW.— Considering that respondent judge is retiring in less than one year and the fact that this is his first administrative offense of this nature, we find the aggregate fine of ₱25,000.00 for undue delay in the resolution of a motion and gross ignorance of the law appropriate.

R E S O L U T I O N

TINGA, *J.*:

This is an administrative complaint filed by Rolando V. Blanco against Judge Teresito A. Andoy of the Metropolitan Trial Court of Cainta, Rizal, charging the latter with gross incompetence, gross misconduct, and violation of the New Code of Judicial Conduct for the Philippine Judiciary.

In his verified Letter-complaint[1] dated 23 July 2007, petitioner Ramon V. Blanco (Blanco) narrated that on 14 January 2008 an affidavit-complaint for five counts each of estafa and violation of Batas Pambansa Blg. 22 (B.P. 22) was filed against him by Hemisphere Drug Corporation (Hemisphere), represented by Domingo Vicente (Vicente). The complaint was subscribed and sworn before respondent judge, leading Blanco to conclude that the latter had "already persuaded, induced or influenced the issuance of a criminal offense" against him and that he had thereby been deprived of due process.

Since the cases filed against him have then been pending for more than four (4) years, Blanco filed on 13 October 2006 an "*Ex Parte* Very Urgent Motion to Resolve and to Grant Motion for Admission to be Considered Terminated the Cases Against Him and be Granted an Amicable Settlement and a Motion to Dismiss." Hemisphere filed its comment/opposition to which Blanco filed a reply on 16 January 2007. However, it was only on 1 October 2007 that respondent judge issued an order denying the motion.

Blanco further alleged that no preliminary investigation was conducted in the cases filed against him because Hemisphere connived with respondent judge for its representative, Vicente, to file on its own behalf the Information verified by respondent judge.

In his Comment[2] dated 18 October 2007, respondent judge insisted that Blanco's allegations are baseless and absurd. He claimed that Blanco was not deprived of due process because the procedure for the filing of complaints for estafa and violation of B.P. Blg. 22 was followed. Furthermore, he averred that there was no way he could have connived with Hemisphere to Blanco's prejudice, as he hardly knew Hemisphere's representative. He, however, admitted that it was only in his Order dated 1 October 2007 that he was finally able to resolve Blanco's motion.

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[1] *Rollo*, pp. 2-11.

[2] *Id*. at 109-116.

Blanco reiterated his charges against respondent judge in his Comment/Opposition[3] dated 8 November 2007.

In its Report and Recommendation[4] dated 14 January 2008, the Office of the Court Administrator (OCA) recommended that respondent judge be held guilty of undue delay in rendering an order or decision and be accordingly fined in the amount of ₱1,000.00 in view of the fact that he had only less than a year remaining in his service. The OCA also recommended the dismissal of the charges of gross incompetence, grave misconduct, violation of the New Code of Judicial Conduct and palpable violation of the Constitution.

Unquestionably, delay in the disposition and resolution of cases constitutes a serious violation of the parties' right to a speedy disposition of their grievances in court.[5] No less than the Constitution, in Section 15(1), Article VIII, mandates that lower courts must dispose of their cases promptly and decide them within three (3) months from the date they are submitted for decision or resolution or from the filing of the last pleading, brief or memorandum required by the Rules of Court or by the court concerned. A judge's delay in resolving pending motions and incidents within the prescribed period constitutes a violation of Rule 3.05 of the Code of Judicial Conduct requiring judges to dispose of court business promptly.[6]

In this case, Blanco's "*Ex Parte* Very Urgent Motion to Resolve and to Grant Motion for Admission to be Considered Terminated the Cases Against Him and be Granted an Amicable Settlement and a Motion to Dismiss" was deemed submitted for resolution on 16 January 2007, since the last pleading submitted relative to the motion was filed on this date. However, as admitted by respondent judge, the motion was acted upon only on 1 October

[3] *Id.* at 142-157.

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

[5] *Office of the Court Administrator v. Judge Avelino*, A.M. No. MTJ-05-1606, December 9, 2005, 477 SCRA 915.

[6] *Arles v. Beldia*, A.M. No. RTJ-05-1964, November 29, 2005, 476 SCRA 298, 302-303.

2007, more than five (5) months after the period for resolving pending incidents mandated by the Constitution had elapsed.

Under Section 9, Rule 140 of the Rules of Court, undue delay in rendering a decision or order is considered a less serious offense, punishable under Section 11(b) of the same Rule, either by (1) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months, or (2) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

More than the delay in the resolution of Blanco's pending motion, however, what caught the Court's attention is respondent judge's admission that due to inadvertence, the court "proceeded with the Estafa cases in the same way it handled the Violation of B.P. Blg. 22 cases up to the arraignment and preliminary conference stage."[7] In other words, no preliminary investigation was conducted despite the fact that in three of the charges for estafa,[8] the penalties corresponding to the amounts involved exceed four (4) years, two (2) months and one (1) day, in which case, the conduct of a preliminary investigation is required under Section 1, Rule 112 of the Rules of Court. Respondent judge sought to remedy this "inadvertence" in his Order[9] dated 11 October 2007, in which he endorsed Criminal Case Nos. 21804, 21807 and 21808 to the Office of the Provincial Prosecutor of Rizal for the requisite preliminary investigation.

However, we find respondent judge's handling of the cases against Blanco appallingly injudicious. In disregarding the rules, respondent judge showed gross ignorance, albeit without any malice or corrupt motive. The lack of malicious intent, however, cannot completely free respondent judge from liability.[10] A judge owes it to himself and his office to know by heart basic legal principles and to harness his legal know-how correctly and justly. When a judge displays an utter unfamiliarity with the law and

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[7] *Rollo*, p. 115; Comment of respondent judge.

[8] Criminal Case Nos. 21804, 21807 and 21808 respectively involve the amounts of ₱15,765.75, ₱14,011.23 and ₱20,551.10.

[9] *Rollo*, pp. 129-136.

[10] *Lu v. Judge Siapno*, 390 Phil. 489, 496-497 (2000).

the rules, he erodes the confidence of the public in the courts. Ignorance of the law by a judge can easily be the mainspring of injustice. As an advocate of justice and a visible representation of the law, a judge is expected to be proficient in the interpretation of our laws. When the law is elementary, not to know it constitutes gross ignorance of the law.[11]

Respondent judge displayed gross ignorance of the Rules of Court in failing to refer the pertinent estafa charges against Blanco for preliminary investigation. Gross ignorance of the law or procedure is classified as a serious charge under Section 8, Rule 140 of the Rules of Court and may be sanctioned by: (1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, *provided, however,* that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[12]

Considering that respondent judge is retiring in less than one year and the fact that this is his first administrative offense of this nature, we find the aggregate fine of ₱25,000.00 for undue delay in the resolution of a motion and gross ignorance of the law appropriate.

WHEREFORE, respondent Judge Teresito A. Andoy of the Metropolitan Trial Court of Cainta, Rizal is found *GUILTY* of gross ignorance of procedure and undue delay in the resolution of a motion in Criminal Case Nos. 21797-21801. He is *FINED* in the amount of ₱25,000.00 with a *STERN WARNING* that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

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[11] *Re: Report on the Complaint of Judge Dolores L. Español*, A.M. No. MTJ-01-1358, November 11, 2004, 442 SCRA 13, 44.

[12] Rules of Court, Rule 140, Sec. 11(A).

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

FIRST DIVISION

[A.M. No. P-07-2372. July 23, 2008]
(Formerly OCA IPI No. 02-1500-P)

MARICHU T. GOFORTH, *complainant, vs.* **TOMAS C. HUELAR, JR., Officer-in-Charge, Regional Trial Court, Branch 11, San Jose, Antique,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; SHOULD ENSURE ORDERLY AND EFFICIENT RECORD MANAGEMENT IN THE COURT.— Rule 41, Section 10 (d) of the Rules of Court provides that clerks of court (in the lower courts) are mandated to transmit the records of the case to the appellate court within 30 days from the perfection of the appeal. In this case, respondent transmitted the records only on September 23, 2002 or more than three years from the time the notice of appeal was approved. He could not feign ignorance nor free himself of any liability as complainant herself had made several personal follow-ups with him since 1999, to no avail. As officer-in-charge tasked with the duties of a clerk of court, respondent performed delicate administrative functions necessary to the prompt and proper dispensation of justice. He should not have slept on the job as his position required competence and efficiency. Respondent's argument that it was his staff who delayed the transmittal of the records was lame. He could not shrug off responsibility for the actuations of the people under

his administrative supervision. He had the duty to ensure orderly and efficient record management in the court and to effectively manage the personnel under him. Their infraction was his as well.

2. ID.; ID.; ID.; AN ORDER OF THE SUPREME COURT IS NOT TO BE CONSTRUED AS A MERE REQUEST, NOR SHOULD IT BE COMPLIED WITH PARTIALLY, INADEQUATELY OR SELECTIVELY.— Respondent proudly heralded his 33 years of government service yet was totally unaware of his duties under the law. His accountability was also compounded by the fact that he ignored this Court's directive to file his comment on time. This omission showed disrespect to the Court, an act only too deserving of reproof. An order or resolution of this Court is not to be construed as a mere request, nor should it be complied with partially, inadequately or selectively.

3. ID.; ID.; ID.; GROSS NEGLIGENCE; CLASSIFIED AS GRAVE OFFENSE; IMPOSABLE PENALTY; DEFIANCE TO THE ORDERS OF THE SUPREME COURT IS PUNISHABLE WITH DISMISSAL, SUSPENSION OR FINE.— In sum, respondent committed gross negligence in the performance of his duties. His infraction was a grave offense under the Uniform Rules in Administrative Cases in the Civil Service. It is punishable with dismissal, suspension or fine as warranted by the circumstances. Likewise, the same penalty may be imposed on him for his indifference or defiance to the orders of this Court. Considering, however, that he already retired from the service in February 2005, the penalty of dismissal or suspension can no longer be imposed on him.

R E S O L U T I O N

CORONA, *J.*:

In an affidavit-complaint,[1] Marichu T. Goforth charged respondent Tomas C. Huelar, Jr., officer-in-charge of the Regional Trial Court (RTC), Branch 11 of San Jose, Antique, with

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

negligence for failing to promptly transmit court records to the Court of Appeals (CA).

On January 19, 1999, Judge Nery G. Duremdes, the RTC's presiding judge, promulgated his decision on a petition for reconstitution of original certificate of title[2] filed by the complainant. On February 12, 1999, the Solicitor General filed a notice of appeal. On February 23, 1999, Judge Duremdes granted it and directed respondent to transmit the records of the case to the CA.

Complainant followed it up with respondent several times and was assured that the records would be transmitted immediately. However, it was only on September 23, 2002[3] that they were actually forwarded to the CA.

On November 6, 2002, the Office of the Court Administrator (OCA) furnished respondent a copy of the complaint for his comment. Respondent did not file his comment.

On April 29, 2003, the OCA again required respondent to comply otherwise the case would be submitted for decision.[4] However, respondent retired from the service in February 2005 without complying with the Court's directive.

On August 31, 2006, respondent finally filed his comment. He explained that the delay in the transmittal of the records could not be attributed to him but to his subordinates who prepared them. He learned of the delay only when the complainant went to see him. After their meeting, he claimed he immediately instructed his staff to forward the documents to the CA. In his 33 years of government service, he said this was the first time he was ever slapped with an administrative complaint.

In a memorandum,[5] the OCA found:

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[2] LRC CAD Case No. 954.

[3] Over three years from the time the RTC ordered the transmittal of the records to the CA.

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

[5] Dated January 2, 2007. *Rollo*, pp. 42-46.

Based on the foregoing, it is clear that respondent was grossly negligent in the performance of his duties for his failure to promptly transmit the records of [the case] to the [CA]. Under the Civil Service Rules, gross negligence is classified as a grave offense punishable by dismissal. Moreover, indifference or defiance to the [Court's] orders or resolutions may be punished with dismissal, suspension, or fine as warranted by the circumstances. Considering, however, that respondent has already retired from the service on February 2005, a fine of ₱10,000 is commensurate.

WHEREFORE, it is respectfully submitted for the consideration of the Honorable Court that respondent [Thomas C.] Huelar, Jr., in his capacity as then Officer-in-Charge of [the] RTC, Branch 11, San Jose, Antique, is **GUILTY** of GROSS NEGLIGENCE in the performance of his duties and indifference or defiance to the Court's orders or resolution and a **FINE** of ₱10,000.00 be deducted from his retirement benefit[s].

We adopt the OCA's recommendation.

Rule 41, Section 10 (d)[6] of the Rules of Court provides that clerks of court (in the lower courts) are mandated to transmit the records of the case to the appellate court within 30 days from the perfection of the appeal. In this case, respondent transmitted the records only on September 23, 2002 or more than three years from the time the notice of appeal was approved. He could not feign ignorance nor free himself of any liability as complainant herself had made several personal follow-ups with him since 1999, to no avail.

As officer-in-charge tasked with the duties of a clerk of court, respondent performed delicate administrative functions necessary to the prompt and proper dispensation of justice. He should not have slept on the job as his position required competence and efficiency.[7]

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[6] SEC. 10. *Duty of the clerk of court of the lower court upon perfection of the appeal.* — Within thirty (30) days after the perfection of all the appeals…it shall be the duty of the clerk of court of the lower court:

xxx xxx xxx

(d) To transmit the records to the appellate court.

[7] *Obañana, Jr. v. Ricafort,* A.M. No. MTJ-04-1545, 27 May 2004, 429 SCRA 223.

Respondent's argument that it was his staff who delayed the transmittal of the records was lame. He could not shrug off responsibility for the actuations of the people under his administrative supervision. He had the duty to ensure orderly and efficient record management in the court and to effectively manage the personnel under him.[8] Their infraction was his as well.

Respondent proudly heralded his 33 years of government service yet was totally unaware of his duties under the law. His accountability was also compounded by the fact that he ignored this Court's directive to file his comment on time. This omission showed disrespect to the Court, an act only too deserving of reproof.[9] An order or resolution of this Court is not to be construed as a mere request, nor should it be complied with partially, inadequately or selectively.[10]

In sum, respondent committed gross negligence in the performance of his duties. His infraction was a grave offense under the Uniform Rules in Administrative Cases in the Civil Service. It is punishable with dismissal, suspension or fine as warranted by the circumstances. Likewise, the same penalty may be imposed on him for his indifference or defiance to the orders of this Court.[11] Considering, however, that he already retired from the service in February 2005, the penalty of dismissal or suspension can no longer be imposed on him.

WHEREFORE, respondent Tomas C. Huelar, Jr. is hereby found *GUILTY* of gross negligence and indifference to this Court's directives. Accordingly, he is *FINED* Fifteen Thousand Pesos (₱15,000), to be deducted from his retirement benefits.

Let a copy of this resolution be forwarded to the Office of Administrative Services so that respondent's retirement and other

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[8] *Id*.

[9] *Lumapas v. Tamin*, A.M. No. RTJ-99-1519, 26 June 2003, 405 SCRA 30.

[10] *Id*.

[11] *Id*.

benefits, less the fine imposed, may be released as soon as possible.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. P-08-2459. July 23, 2008]
(Formerly A.M. No. 07-12-308-MTCC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **SERAFIN S. BASCO, Court Interpreter II, MTCC, Branch 2, Antipolo City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CHARGE OF HABITUAL TARDINESS; MORAL OBLIGATIONS, PERFORMANCE OF HOUSEHOLD CHORES, TRAFFIC PROBLEM, AND HEALTH, DOMESTIC AND FINANCIAL CONCERNS ARE NOT SUFFICIENT REASONS TO EXCUSE HABITUAL TARDINESS.— Civil Service Memorandum Circular No. 23, Series of 1998 describes habitual tardiness as follows: Any 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 (2) consecutive months during the year. In 2007, Basco had been late at least or for more than ten times for the consecutive months of January to June. It is clear that Basco is guilty of habitual tardiness. The explanation submitted by Basco that his tardiness is mainly due to heavy traffic is not

tenable. Be it stressed that moral obligations, performance of household chores, traffic problems and health, domestic and financial concerns are not sufficient reasons to excuse habitual tardiness.

2. ID.; ID.; ID.; ID.; REQUIRED TO OBSERVE PRESCRIBED OFFICE HOURS AND THE EFFICIENT USE OF EVERY MOMENT THEREOF FOR PUBLIC SERVICE.— Basco fell short of the stringent standard of conduct demanded of everyone connected with the administration of justice. By reason of the nature and functions of the Judiciary where he belongs, its employees must be role models in the faithful observance of the constitutional canon that public office is a public trust. Inherent in this mandate is the observance of prescribed office hours and the efficient use of every moment thereof for public service, if only to recompense the Government, and ultimately the people who shoulder the cost of maintaining the Judiciary. Thus, to inspire public respect for the justice system, court officials and employees are at all times behooved to strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible.

3. ID.; ID.; ID.; ID.; PENALTY OF REPRIMAND IMPOSED UPON THE RESPONDENT FOR HABITUAL TARDINESS.— Section 52(c)(4), Rule VI of Civil Service Circular No. 19, Series of 1999 on the Revised Uniform Rules on Administrative Cases in the Civil Service, provides: C. The following are Light Offenses with corresponding penalties: … 4. Frequent unauthorized tardiness (Habitual Tardiness) 1st Offense - Reprimand, 2nd Offense - Suspension 1-30 days, 3rd Offense - Dismissal. xxx It appearing that this is Basco's first offense, the penalty of reprimand is appropriate.

R E S O L U T I O N

TINGA, *J.*:

Before us is an administrative matter which concerns the habitual tardiness of Serafin S. Basco (Basco), court interpreter II of the Municipal Trial Court in Cities of Antipolo City, Branch 2.

In a Report [1] dated 14 August 2007, Hermogena F. Bayani, chief judicial staff officer of the Office of Administrative Services, Office of the Court Administrator (OCA), certified that Basco has incurred tardiness as follows:

January 2007	12 times
February 2007	14 times
March 2007	15 times
April 2007	10 times
May 2007	14 times
June 2007	13 times

In his Letter[2] dated 6 October 2007, Basco expressed his regret for his tardiness but attributed the same to heavy traffic that he would encounter in his daily travel from his residence in Pasig City to his place of work. He also avers that he personally signs in and that he has not been remiss in his duties. Basco also points out that he had wanted to avail of the flexible working hour scheme under Civil Service Circular No. 14, Series of 1989 and OCA Circular No. 99-2003 but was discouraged by his Clerk of Court as their presiding judge might not favor such arrangement. As such, he often incurred tardiness.

The OCA found that Basco's explanation did not merit such consideration as to justify his habitual tardiness, and recommends that he be reprimanded with a warning that a repetition of the same or similar offense will warrant the imposition of a more severe penalty.

The Court adopts the OCA's findings and recommendations.

Civil Service Memorandum Circular No. 23, Series of 1998 describes habitual tardiness as follows:

Any employee shall be considered habitually tardy if he incurs tardiness, regardless of the number of minutes, ten (10) times a

[1] *Rollo*, p. 2.

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

month for at least two (2) months in a semester or at least two (2) consecutive months during the year.

In 2007, Basco had been late at least or for more than ten times for the consecutive months of January to June. It is clear that Basco is guilty of habitual tardiness. The explanation submitted by Basco that his tardiness is mainly due to heavy traffic is not tenable. Be it stressed that moral obligations, performance of household chores, traffic problems and health, domestic and financial concerns are not sufficient reasons to excuse habitual tardiness.[3]

Basco fell short of the stringent standard of conduct demanded of everyone connected with the administration of justice. By reason of the nature and functions of the Judiciary where he belongs, its employees must be role models in the faithful observance of the constitutional canon that public office is a public trust. Inherent in this mandate is the observance of prescribed office hours and the efficient use of every moment thereof for public service, if only to recompense the Government, and ultimately the people who shoulder the cost of maintaining the Judiciary. Thus, to inspire public respect for the justice system, court officials and employees are at all times behooved to strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible.[4]

Section 52(c)(4), Rule VI of Civil Service Circular No. 19, Series of 1999 on the Revised Uniform Rules on Administrative Cases in the Civil Service, provides:

C. The following are Light Offenses with corresponding penalties:

. . . . . .

[3] Re: Habitual Tardiness of Mrs. Natividad M. Calingao, Clerk III, RTC, Br. 255, Las Piñas City, A.M. No. P-05-2080, 5 October 2005, 472 SCRA 88, 90.

[4] Re: *Habitual Tardiness of Ma. Socorro E. Arnaez*, Court Stenographer III, RTC, Br. 18, Cebu City, A.M. No. P-04-1867 (Formerly A.M. No. 04-6-355-RTC), 23 September 2005, 470 SCRA 604, 606-607.

4. Frequent unauthorized tardiness (Habitual Tardiness)

1st Offense - Reprimand

2nd Offense - Suspension 1-30 days

3rd Offense - Dismissal

. . . . . .

It appearing that this is Basco's first offense, the penalty of reprimand is appropriate.[5]

WHEREFORE, Serafin S. Basco, Court Interpreter II of the Municipal Trial Court in Cities of Antipolo City, Branch 2, is found guilty of habitual tardiness and is hereby *REPRIMANDED* with a stern warning that a repetition of the same or similar offense shall be dealt with more severely.

SO ORDERED.

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

[5] *Office of the Court Administrator v. Cunanan,* A.M. No. P-05-2050 (Formerly A.M. No. 05-7-418-RTC), 10 March 2006, 484 SCRA 234, 237; *Re: Habitual Tardiness of Mrs. Natividad M. Calingao,* Clerk III, RTC, Br. 255, Las Piñas City, A.M. No. P-05-2080, 5 October 2005, 472 SCRA 88, 91; *Re: Habitual Tardiness of Ma. Socorro E. Arnaez,* Court Stenographer III , RTC, Br. 18, Cebu City, A.M. No. P-04-1867 (Formerly A.M. No. 04-6-355-RTC), 23 September 2005, 470 SCRA 604, 608; *Office of the Court Administrator v. Baguio,* A.M. No. P-04-1880 (Formerly A.M. No. 04-6-353-RTC) 18 March 2005, 453 SCRA 593, 597; *Re: Habitual Tardiness of Julie M. Maycacayan,* RTC, Br. 165, Pasig City, A.M. No. P-04-1847 (Formerly A.M. No. 04-5-286-RTC), 27 August 2004, 437 SCRA 192, 195.

SECOND DIVISION

[A.M. No. RTJ-08-2101. July 23, 2008]
(Formerly OCA-I.P.I. No. 07-2763-RTJ)

EMIL J. BIGGEL, *complainant, vs.* **JUDGE FERNANDO VIL. PAMINTUAN, Regional Trial Court, Branch 3, Baguio City,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS JUDGES; REQUIRED TO DISPOSE OF COURT BUSINESS PROMPTLY; DELAY IN RESOLVING PENDING MOTIONS AND INCIDENTS CONSTITUTES A VIOLATION OF THE CODE OF JUDICIAL CONDUCT.— Undue delay in the disposition of cases and motions erodes the faith and confidence of the people in the judiciary and unnecessarily blemishes its stature. No less than the Constitution mandates that lower courts must dispose of their cases promptly and decide them within three months from the filing of the last pleading, brief or memorandum required by the Rules of Court or by the Court concerned. In addition, a judge's delay in resolving, within the prescribed period, pending motions and incidents constitutes a violation of Rule 3.05 of the Code of Judicial Conduct requiring judges to dispose of court business promptly.

2. ID.; ID.; ID.; AN UNWARRANTED SLOW DOWN IN THE DISPOSITION OF CASES ERODES THE FAITH AND CONFIDENCE OF THE PEOPLE IN THE JUDICIARY, LOWERS ITS STANDARDS AND BRINGS IT INTO DISREPUTE.— There should be no more doubt that undue inaction on judicial concerns is not just undesirable but more so detestable especially now when our all-out effort is directed towards minimizing, if not totally eradicating the perennial problem of congestion and delay long plaguing our courts. The requirement that cases be decided within the reglementary period is designed to prevent delay in the administration of justice, for obviously, justice delayed is justice denied. An unwarranted slow down in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute.

3. ID.; ID.; ID.; FAILURE TO ACT WITH DISPATCH CONSTITUTES UNDUE DELAY.—In the instant case, complainant filed an urgent motion for reinvestigation on 5 January 2006. Respondent judge issued an Order dated 9 January 2006 directing Public Prosecutor Tabangin to file a comment within ten (10) days from receipt of the motion. As the public prosecutor failed to file a comment, respondent judge reset the hearing to 1 March 2006 instead of submitting the motion for resolution. On 7 March 2006, respondent judge denied the urgent motion for reinvestigation. Hence, complainant moved for reconsideration on 23 March 2006. Respondent judge then directed the public prosecutor to file a comment on said motion. Despite the public prosecutor's failure to file the required comment and complainant's several motions for resolution, respondent judge granted the reinvestigation only on 26 July 2006—clearly beyond the mandated period. Notably, respondent judge not only delayed the submission for resolution of the motion for reinvestigation but also delayed the submission of the motion for reconsideration for resolution. Respondent judge's failure to act with dispatch constitutes undue delay punishable under Section 9 of Rule 140 of the Rules of Court xxx.

APPEARANCES OF COUNSEL

Chaves Hechanova & Lim Law Offices for complainant.

R E S O L U T I O N

TINGA, *J.*:

This is an administrative complaint against respondent judge Fernando Vil. Pamintuan of the Regional Trial Court of Baguio City, Branch 3, for manifest partiality, gross misconduct, ignorance of the law and unjust and malicious delay in the resolution of incidents in Criminal Case No. 25383-R entitled "*People of the Philippines v. Emil Biggel,*" a case for estafa.

In a verified Complaint[1] dated 5 September 2006, complainant narrated that after the complaint for estafa had been filed against

[1] *Rollo,* pp. 8-14.

him, the assistant city prosecutor issued a resolution, subsequently approved by the city prosecutor, recommending the filing of an information in court with a recommended bail of ₱60,000.00. Complainant stated that this was made without the benefit of a preliminary investigation and a subpoena sent to him as the Assistant City Prosecutor had relied on the bare assertions of private complainant's counsel in the criminal case that complainant had no address on record. Thereafter, the recommended bail was increased to ₱600,000.00 by the City Prosecutor allegedly on request.

Thus, complainant's counsel filed a motion for reinvestigation before the sala of respondent judge which was set for hearing on 13 January 2006, praying that the criminal case be remanded to the Prosecutor's Office of Baguio City for the conduct of the requisite preliminary investigation. On 9 January 2006, respondent judge issued an order directing Public Prosecutor Raymond Tabangin to file his comment on the motion. He also rescheduled the hearing of the motion to 25 January 2006. On the rescheduled date of hearing, in view of Public Prosecutor Tabangin's failure to file a comment, respondent judge reset the hearing to 1 March 2006 as well as gave Public Prosecutor Tagudar, who was new in the case, time to file her comment.

On 21 February 2006, complainant's counsel filed a manifestation and motion praying that his motion for reinvestigation be deemed submitted for resolution as Public Prosecutor Tagudar failed to file the required comment. On 1 March 2006, complainant's counsel again manifested that since the prosecution had failed to file its comment, the motion should be deemed submitted for resolution. The parties were then brought inside the judge's chambers and upon respondent judge's prodding, complainant's counsel agreed to the request of Public Prosecutor Tabangin, who had reappeared in the case, that he be given another period of five (5) days or until 6 March 2006 to file his comment. Complainant was likewise given the same period of time to file his reply upon receipt of the comment.

On 6 March 2006, Public Prosecutor Tabangin filed his comment which complainant received on 10 March 2006. In

said comment, the public prosecutor contended that there was no legal infirmity in the certification issued by Assistant City Prosecutor Centeno which stated that the accused's (complainant in this administrative matter) "not (being) a permanent resident of the Philippines tends to indicate that the address so given was only a temporary one" and that "therefore with that basis it could be assumed that accused cannot be subpoenaed."[2] The public prosecutor likewise contended that the certification issued by the Assistant City Prosecutor that a preliminary investigation had been conducted should be presumed correct pursuant to the well-entrenched presumption of regularity in the performance of official duties.

Immediately thereafter, on 7 March 2006, respondent judge issued an order denying the motion for reinvestigation without awaiting complainant's reply to the comment. In view of this incident, on 23 March 2006, complainant filed a motion for inhibition and motion for reconsideration of the order denying the motion for reinvestigation. On 17 April 2006, respondent judge denied the motion for his inhibition and directed Public Prosecutor Tabangin to file his comment to the motion for reconsideration.

On 11 May 2006, complainant filed a manifestation and motion praying that his motion for reconsideration be deemed submitted for resolution in view of the failure of the public prosecutor to file his comment. On 26 May 2006, complainant filed a motion for early resolution of his motion for reconsideration. However, despite several inquiries into the status of said motion, the motion remained unresolved, for which reason complainant filed on 19 June 2006 a motion reminding the court that his motion for reconsideration had not been acted upon.

On 24 July 2006, complainant filed a motion to lift the hold departure order/resolve the motion for reconsideration. On 26 July 2006, complainant received a copy of the Order dated 14 July 2006 granting his motion for reconsideration and directing the public prosecutor to conduct the reinvestigation within thirty (30) days.

[2] *Id*. at 10.

On 4 August 2006, complainant received the Public Prosecutor's comment on his motion to lift the hold departure order,[3] complainant's reply to which was filed on 16 August 2006. On 29 August 2006, complainant filed a motion to resolve to no avail.

In his Comment[4] dated 9 November 2006, respondent judge pointed out that he had already voluntarily inhibited himself from the criminal case on 26 September 2006, or before receipt of the instant administrative complaint. He moreover stated that it was his pairing judge who had issued the warrant of arrest in the criminal case as he was on leave at the time. In addition, he claimed that he was not responsible for the increase of the amount of bail but rather for its reduction to ₱300,000.00, and that upon his return to office on 19 December 2006, he set the arraignment of complainant on 25 January 2007.

Anent complainant's motion for reinvestigation, respondent judge explained that Public Prosecutor Tabangin appeared in court only on behalf of Public Prosecutor Tagudar who was then on an extended leave. Naturally, he stated, as Public Prosecutor Tabangin failed to file his comment, he decided to await Public Prosecutor Tagudar's comment and reset the arraignment to 1 March 2007.

Respondent judge bewailed complainant's insistence on having his motions resolved immediately though filed via the mails. He contended that such is not the official filing method, thus his hesitation to calendar the motions in view of the possibility that the other party might not have yet received the motions.

Respondent judge stated that he had exercised his discretion in calling the parties in his chambers to spare complainant's counsel the humiliation of receiving his remarks in public and with the end in view of resolving the conflict amicably. He also explained that he had given the public prosecutor extra time to file the required comment to enable the latter to familiarize himself with the case. He also justified the denial of the motion

[3] *Id.* at 32-36.

[4] *Id.* at 66-75.

for reinvestigation, stating that absent grave abuse of discretion, regularity is presumed in the performance of duties of a public officer.

As regards complainant's motion for reconsideration, respondent judge reasoned out that he had to await Public Prosecutor Tabangin's comment, which was eventually filed on 4 July 2006. In said comment, the public prosecutor expressed his willingness to have a reinvestigation in the interest of justice and fair play. Respondent judge pointed out that the resolution granting the motion for reinvestigation was made on 14 July 2006, or only ten (10) days after receipt of the comment.

Lastly, respondent judge contended that the motion to lift the hold departure order could not be resolved based on the pleadings alone, it being adversarial in nature as it affects the parties' rights and must be resolved with extreme caution.

In a Report[5] dated 3 December 2007, the Office of the Court Administrator (OCA) found respondent judge guilty of undue delay in rendering an order. Accordingly, the OCA recommended that he be meted a fine in the amount of ₱20,000.00.

In a Resolution[6] dated 28 January 2008, the Court noted the report of the OCA and directed the parties to manifest their willingness to submit the case for resolution on the basis of the pleadings filed. In his Manifestation dated 26 February 2008, complainant manifested that he was submitting the case for resolution on the basis of the pleadings filed.[7] Respondent manifested the same willingness in his Manifestation dated 12 March 2008.[8]

The Court finds the OCA's recommendation to be in order.

Undue delay in the disposition of cases and motions erodes the faith and confidence of the people in the judiciary and

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

[6] *Id.* at 95.

[7] *Id.* at 98-99.

[8] *Id.* at 111-116.

unnecessarily blemishes its stature. No less than the Constitution mandates that lower courts must dispose of their cases promptly and decide them within three months from the filing of the last pleading, brief or memorandum required by the Rules of Court or by the Court concerned. In addition, a judge's delay in resolving, within the prescribed period, pending motions and incidents constitutes a violation of Rule 3.05 of the Code of Judicial Conduct requiring judges to dispose of court business promptly.[9]

There should be no more doubt that undue inaction on judicial concerns is not just undesirable but more so detestable especially now when our all-out effort is directed towards minimizing, if not totally eradicating the perennial problem of congestion and delay long plaguing our courts. The requirement that cases be decided within the reglementary period is designed to prevent delay in the administration of justice, for obviously, justice delayed is justice denied. An unwarranted slow down in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute.[10]

In the instant case, complainant filed an urgent motion for reinvestigation on 5 January 2006. Respondent judge issued an Order dated 9 January 2006 directing Public Prosecutor Tabangin to file a comment within ten (10) days from receipt of the motion. As the public prosecutor failed to file a comment, respondent judge reset the hearing to 1 March 2006 instead of submitting the motion for resolution. On 7 March 2006, respondent judge denied the urgent motion for reinvestigation. Hence, complainant moved for reconsideration on 23 March 2006. Respondent judge then directed the public prosecutor to file a comment on said motion. Despite the public prosecutor's failure to file the required comment and complainant's several motions for resolution, respondent judge granted the reinvestigation only on 26 July 2006—clearly beyond the mandated period. Notably, respondent judge not only delayed the submission for resolution of the motion for reinvestigation but also delayed the submission of the motion for reconsideration for resolution.

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[9] *Gonzales v. Judge Hidalgo,* 449 Phil. 336, 341 (2003).

[10] *Atty. Beltran, Jr. v. Atty. Paderanga,* 455 Phil. 227, 234 (2003).

Respondent judge's failure to act with dispatch constitutes undue delay punishable under Section 9 of Rule 140[11] of the Rules of Court, which reads:

SEC. 9. Less Serious Charges.—*Less serious charges include*:

1. Undue delay in rendering a decision or order, or in transmitting the records of a case;

xxx xxx xxx

Section 11 (B) of the same Rule provides the penalty as follows:

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00."

For the record, in OCA IPI No. MTJ-98-1115, respondent judge was preventively suspended pending resolution of the case for oppression and acts unbecoming of a judge. In A.M. No. RTJ-02-1691, respondent judge was suspended for one (1) year for gross ignorance of the law, gross violation of the constitutional rights of the accused, arrogance and violation of the Canons of Judicial Ethics. The records of the OCA also reveal that in A.M. No. RTJ-99-1483, respondent judge was fined in the sum of ₱10,000.00 and was reprimanded as well for violations of Canons 2 and 3 of the Code of Judicial Ethics amounting to grave misconduct, conduct unbecoming of an officer of the judiciary and conduct prejudicial to the best interest of the service. Lastly, in A.M. No. RTJ-99-1450, respondent judge was admonished for violation of Canon 3, Rule 3.04 of the Code of Judicial Conduct.

WHEREFORE, the Court finds Judge Fernando Vil. Pamintuan of the Regional Trial Court of Baguio City, Branch 3, guilty of violating Rule 3.05 of the Code of Judicial Conduct and imposes

[11] The Court resolved to approve the amendment of Rule 140 of the Rules of Court regarding the discipline of Justices and Judges in A.M. No. 01-8-10-SC dated 11 September 2001.

upon him a FINE in the amount of ₱20,000.00, with a *STERN WARNING* that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 147778. July 23, 2008]

PHILIPPINE STOCK EXCHANGE, INC. and the MEMBERS OF ITS BOARD OF GOVERNORS, *petitioners, vs.* **THE MANILA BANKING CORPORATION and the SECURITIES INVESTIGATION CLEARING DEPARTMENT HEARING PANEL consisting of the Hon. Hearing Officers ENRIQUE L. FLORES, JR., ALBERTO P. ATAS, and YSOBEL S. YASAY-MURILLO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; THE DENIAL OF A MOTION TO DISMISS CANNOT BE QUESTIONED THEREIN.— At the outset, the Court notes that upon the denial of their motion to dismiss by the SICD Hearing Panel, petitioners filed a petition for *certiorari* with the SEC *en banc*. An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case, because it leaves something to be done by the court before the case is finally decided on the merits. The general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari*

which is a remedy designed to correct errors of jurisdiction and not errors of judgment. Neither can a denial of a motion to dismiss be the subject of an appeal unless and until a final judgment or order is rendered. In order to justify the grant of the extraordinary remedy of *certiorari*, the denial of the motion to dismiss must have been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. The same does not obtain here.

2. ID.; CRIMINAL PROCEDURE; COMPLAINT; IF THE COURT DOUBTS THE TRUTH OF THE FACTS AVERRED, IT MUST NOT DISMISS THE COMPLAINT BUT MUST REQUIRE AN ANSWER AND PROCEED TO HEAR THE CASE ON THE MERITS.— We cannot fault the SICD Hearing Panel in requiring a more in-depth and thorough determination of issues raised before it. After all, the allegations in the *mandamus* petition sufficiently stated a cause of action against the petitioners. Verily, the complaint should contain a concise statement of ultimate facts. Ultimate facts refer to the principal, determinative, constitutive facts upon which rest the existence of the cause of action. The term does not refer to details of probative matter or particulars of evidence which establish the material elements. Section 6 of the SEC Revised Rules of Procedure merely requires, thus: SECTION 6. Complaint - The complaint shall contain the names and residences of the parties, a concise statement of the ultimate facts constituting the complainant's cause or causes of action. It shall specify the relief/s sought, but it may add a general prayer further or other relief/s as may be deemed just and equitable. In a number of cases, this Court has repeatedly held that so rigid is the prescribed norm that if the Court should doubt the truth of the facts averred, it must not dismiss the complaint but require an answer and proceed to hear the case on the merits.

3. ID.; COURTS; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER IS CONFERRED BY LAW AND IS DETERMINED BY THE ALLEGATIONS OF THE COMPLAINT IRRESPECTIVE OF WHETHER THE PLAINTIFF IS ENTITLED TO ALL OR SOME OF THE CLAIMS OR RELIEFS ASSERTED THEREIN; CASE AT BAR.— It is axiomatic that jurisdiction over the subject matter is conferred by law and is determined by the allegations of the complaint or the petition irrespective of whether the plaintiff

is entitled to all or some of the claims or reliefs asserted therein. The three tribunals below are unanimous in appreciating TMBC's cause of action against petitioners and that the same falls within the ambit of Section 5(a) of P.D. 902-A, as aptly ratiocinated by the CA in its ruling, xxx. These allegations would suffice to constitute a cause of action against petitioners. That petitioners have a valid defense is another matter. At any rate, matters such as the propriety of the refusal of TMBC's membership to PSE and veracity of the assertion that MSE Seat No. 97 is separate and distinct from PSE Seat No. 29, among others, are best ventilated during trial. They require evidentiary proof and support that can be better threshed out in a full blown trial on the merits. These matters, indeed, would not yet go into the question of the absence of a cause of action as a ground to dismiss.

4. ID.; SPECIAL CIVIL ACTIONS; *MANDAMUS*; THE PERFORMANCE OF AN OFFICIAL ACT OR DUTY CANNOT BE COMPELLED BY *MANDAMUS*; EXCEPTION; PRESENT IN CASE AT BAR.— As to the propriety of *mandamus* as a remedy, petitioners claim it was not their ministerial duty to acknowledge the proprietary, legal or naked ownership of TMBC over PSE Seat No. 29. True, the Court has invariably ruled that generally, the performance of an official act or duty, which necessarily involves the exercise of discretion or judgment, cannot be compelled by *mandamus*. However, the Court has also declared that the general rule does not apply in cases where there is gross abuse of discretion, manifest injustice, or palpable excess of authority. These exceptions apply to the present case.

5. COMMERCIAL LAW; SECURITIES AND EXCHANGE COMMISSION; SECURITIES REGULATION CODE; JURISDICTION OF THE SECURITIES AND EXCHANGE COMMISSION INVOLVING INTRA-CORPORATE DISPUTES IS TRANSFERRED TO THE REGIONAL TRIAL COURT.— On a final note, on July 18, 2000, prior to the promulgation of the assailed CA decision, Republic Act No. 8799 otherwise known as The Securities Regulation Code was enacted and upon its effectivity, the SEC's jurisdiction over this case was transferred to the courts of general jurisdiction or the Regional Trial Courts.

APPEARANCES OF COUNSEL

Rodrigo Berenguer & Guino for petitioners.
Puyat Jacinto & Santos for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

By this petition for review on *certiorari*, petitioners seek the reversal of the November 20, 2000 Decision[1] of the Court of Appeals (CA) in *CA-G.R. SP No. 58111*, as reiterated in its Resolution[2] of April 4, 2001, upholding the March 7, 2000 order of the Securities and Exchange Commission (SEC) *en banc* in SEC Case No. 08-98-6075, which in turn sustained the order issued by its Securities Investigation and Clearing Department (SICD) Hearing Panel in SEC Case No. 08-98-6075 denying petitioners' motion to dismiss the *Petition for Mandamus with Claim for Damages* lodged thereat by respondent The Manila Banking Corporation (TMBC).

The facts:

On October 1, 1980, TMBC acquired Manila Stock Exchange (MSE) Seat No. 97, registered in the name of Roberto K. Recio (Recio) , through an execution sale which arose from a levy on execution to satisfy a loan obligation of Recio to TMBC. Thereafter, TMBC requested MSE to record its ownership of MSE Seat No. 97 in MSE's membership books. Initially, MSE refused to register TMBC in its membership books and contested the latter's ownership of said seat. According to MSE, its by-laws allow only individuals or corporations engaged primarily in the business of stocks and bonds brokers and dealers in securities to be a member or to hold a seat in the MSE. In the end, TMBC settled for a mere acknowledgment from MSE of its

[1] Penned by Associate Justice Renato C. Dacudao (ret.), with Associate Justices Salome A. Montoya and Merceditas Gozo-Dadole, concurring; *rollo*, pp. 78-87.

[2] *Id.*, at 40.

legal or naked ownership of, or proprietary right over, MSE Seat No. 97 which was done by MSE through its Acknowledgment Letter dated August 19, 1996.

Before the aforementioned acknowledgment of MSE's title, particularly on July 17, 1992, the Philippine Stock Exchange, Inc. (PSEI) was incorporated unifying the MSE and the Makati Stock Exchange (MKSE) into one *exchange*. On April 16, 1994, the PSEI issued a certificate of membership to Recio as Member No. 29.

Believing that MSE Seat No. 97 became PSE Seat No. 29 of the unified *exchanges* and that the certificate of membership to PSEI was issued to Recio on the basis of his previous ownership of MSE Seat No. 97, TMBC sought to rectify the PSEI's listing of Recio as a member without any reservation or annotation therein that TMBC owns proprietary rights over PSE Seat No. 29. Armed with MSE's acknowledgment of its legal ownership or naked title over MSE Seat No. 97, TMBC sought PSEI's recognition of its legal ownership of PSE Seat No. 29. However, TMBC's efforts were met with PSEI's repeated refusal.

This was the state of things when TMBC lodged a *Petition for Mandamus with Claim for Damages*, at the SEC SICD, against herein petitioners PSEI and its Board of Governors. The case was docketed as SEC Case No. 08-98-6075. The petition prayed that the SEC order the PSEI to acknowledge TMBC's proprietary interest or legal or naked ownership of PSE Seat No. 29 to enable TMBC to register said seat to a qualified nominee or otherwise sell the same to a qualified vendee.

Petitioners filed a motion to dismiss the aforesaid action on the following grounds: the SEC had no jurisdiction to try and hear the same; the petition failed to state TMBC's cause of action against petitioners; and the remedy of *mandamus* was improper.

In the order dated June 14, 1999, the SEC through its SICD Hearing Panel denied said motion to dismiss. The subsequent motion for reconsideration of the said order was also denied in the order dated September 16, 1999.

Thereafter, petitioners elevated the case to the SEC *en banc* by way of a petition for *certiorari*. Armed with the same arguments, petitioners sought to annul and set aside the twin orders of the SICD Hearing Panel.

On March 7, 2000, the SEC *en banc* issued an Order[3] denying the petition, thus:

WHEREFORE, PREMISES CONSIDERED, the instant Petition for *Certiorari*, with a prayer for the issuance of a Temporary Restraining Order and/or preliminary injunction is hereby DENIED.

SO ORDERED.

In time, petitioners filed with the CA a petition for review with prayer for the issuance of a temporary restraining order and writ of preliminary injunction maintaining the same grounds and urging the CA to annul and set aside the *en banc* order of the SEC and ultimately, order the dismissal of TMBC's *mandamus* petition against them.

As stated at the threshold hereof, the CA, in the herein challenged decision dated November 20, 2000, dismissed the petition for lack of merit, to wit:

All told, the SEC committed no reversible errors in issuing the assailed orders.

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

SO ORDERED.[4]

Their motion for reconsideration having been denied by the CA in its resolution of April 4, 2000,[5] petitioners are now before the Court praying for the nullification of the CA decision dated November 20, 2000 and for the dismissal of the petition filed by TMBC docketed as SEC Case No. 08-98-6075 reiterating the same arguments.

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[3] *Rollo*, pp.238-241.

[4] *Supra*, note 1.

[5] *Rollo*, p. 89.

At the outset, the Court notes that upon the denial of their motion to dismiss by the SICD Hearing Panel, petitioners filed a petition for *certiorari* with the SEC *en banc*. An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case, because it leaves something to be done by the court before the case is finally decided on the merits. The general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari* which is a remedy designed to correct errors of jurisdiction and not errors of judgment. Neither can a denial of a motion to dismiss be the subject of an appeal unless and until a final judgment or order is rendered.[6] In order to justify the grant of the extraordinary remedy of *certiorari*, the denial of the motion to dismiss must have been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.[7] The same does not obtain here.

The SEC *en banc* correctly sustained the SICD Hearing Panel's denial of petitioners' motion to dismiss. We quote with approval the findings of the SEC *en banc* on this matter:

> The hearing panel held that although it entertains doubts as to the truth of the facts averred, it shall not dismiss the complaint. We believe that the hearing panel exercised its judgment within its proper limits in issuing said order. On the contrary, the factual issues of the case are not merely confined to the question of membership, but also to the existence of the devices and schemes amounting to fraud as alleged by the petitioner below [TMBC]. If it is convinced that there are factual issues which should be discussed in the answer and ventilated during the trial on the merits, such as whether or not the transferor of the MSE was a PSE member, the rights of the successor-in-interest of a purported member of the PSE, Inc., and the evidence supporting the allegations of herein respondent [TMBC] regarding bad faith and fraud committed by PSE against TMBC, it

[6] Rule XVI, *SECTION 1*. Decision, Order or Ruling Subject to Appeal. Only final decisions, orders or rulings shall be subject to appeal to the Commission *en banc*.

No interlocutory or incidental order shall stay the progress of an action, nor shall it be subject of appeal to the Commission *en banc* until a final decision, order or ruling is rendered for one party or the other, except as provided in Rule XV hereof.

is within the limits of its power considering the fact that there are evidence supporting its ruling. (*Words in brackets ours.*)

We cannot fault the SICD Hearing Panel in requiring a more in-depth and thorough determination of issues raised before it. After all, the allegations in the *mandamus* petition sufficiently stated a cause of action against the petitioners. Verily, the complaint should contain a concise statement of ultimate facts. Ultimate facts refer to the principal, determinative, constitutive facts upon which rest the existence of the cause of action. The term does not refer to details of probative matter or particulars of evidence which establish the material elements.[8] Section 6 of the SEC Revised Rules of Procedure merely requires, thus:

> SECTION 6. Complaint - The complaint shall contain the names and residences of the parties, a concise statement of the ultimate facts constituting the complainant's cause or causes of action. It shall specify the relief/s sought, but it may add a general prayer further or other relief/s as may be deemed just and equitable.

In a number of cases,[9] this Court has repeatedly held that so rigid is the prescribed norm that if the Court should doubt the truth of the facts averred, it must not dismiss the complaint but require an answer and proceed to hear the case on the merits.

It is axiomatic that jurisdiction over the subject matter is conferred by law and is determined by the allegations of the complaint or the petition irrespective of whether the plaintiff is entitled to all or some of the claims or reliefs asserted therein. The three tribunals below are unanimous in appreciating TMBC's cause of action against petitioners and that the same falls within the ambit of Section 5(a) of P.D. 902-A,[10] as aptly ratiocinated by the CA in its ruling, thus:

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[7] *Bernardo v. CA*, 388 Phil. 793 (2000); *Diaz v. Diaz*, 387 Phil. 314 (2000).

[8] *Diana M. Barcelona v. Court of Appeals and Tadeo R. Bengzon*, G.R. No. 130087, September 24, 2003, 412 SCRA 41, 48.

[9] *Republic Bank v. Cuaderno*, G.R. No. L-22399, 19 SCRA 677(1967); *Boncato vs. Siasan*, G.R. No. L-29094, September 4, 1985, 138 SCRA 414; *Sumalinong vs. Doronio*, G.R. No. L-42281, April 6, 1990, 184 SCRA 187.

[10] Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other

In the present case, it is our perception that what respondent TMBC alleged to be the device and scheme utilized by petitioners, was in the petition expounded exhaustively enough as to intelligently inform the petitioner about the overt acts therein referred to as constituting the device or scheme. For this reason, the SEC committed no error in refusing to dismiss the petition filed before it. xxx [T]he petition bristles with recitals of facts and statements demonstrating petitioners' perpetration of devices and schemes amounting to fraud.

xxx A careful study of the petition filed with the SEC by respondent TMBC reveals that the factual allegations therein set forth sufficiently make out a case of fraud, misrepresentation and bad faith against petitioners. Among the salient allegations were: (1) that the MSE had already recognized the legal or naked ownership of respondent TMBC to MSE Seat No. 97, yet PSE, acting through its board of Governors, composed of members of the MSE, unjustifiably refused to recognize the corresponding seat in the PSE; (2) that TMBC's predecessor-in-interest, Mr. Roberto K. Recio was issued a Certificate of Membership by the PSE; and (3) that Mr. Recio was consistently listed as member of the PSE in the PSE's Monthly Report.

These allegations would suffice to constitute a cause of action against petitioners. That petitioners have a valid defense is another matter. At any rate, matters such as the propriety of the refusal of TMBC's membership to PSE and veracity of the assertion that MSE Seat No. 97 is separate and distinct from PSE Seat No. 29, among others, are best ventilated during trial. They require evidentiary proof and support that can be better threshed out in a full blown trial on the merits. These matters, indeed, would not yet go into the question of the absence of a cause of action as a ground to dismiss.[11]

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forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

a) Devices and schemes employed by or any act of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, members of associations or organizations registered with the commission.

[11] *Equitable Philippine Commercial International Bank and Rafael B. Buenaventura v. Hon. Court of Appeals and Santa Rosa Mining Co., Inc.*, G.R. No. 143556, March 16, 2004, 425 SCRA 544, 553.

As to the propriety of mandamus as a remedy, petitioners claim it was not their ministerial duty to acknowledge the proprietary, legal or naked ownership of TMBC over PSE Seat No. 29. True, the Court has invariably ruled that generally, the performance of an official act or duty, which necessarily involves the exercise of discretion or judgment, cannot be compelled by *mandamus*. However, the Court has also declared that the general rule does not apply in cases where there is gross abuse of discretion, manifest injustice, or palpable excess of authority.[12] These exceptions apply to the present case. As aptly observed by the CA and we quote:

> It is beyond cavil that the MSE had already recognized the legal or naked ownership of private respondent to MSE Seat No. 97, but for reasons only known to them, the PSE Board of Governors, who are members of the MSE, adamantly refused to recognize the corresponding seat in the PSE. In fact, it is not seriously disputed that MSE Seat No. 97 became PSE Seat No. 29 upon the latter's incorporation. Petitioners' dubious claim that they could not acknowledge the proprietary interest of respondent TMBC over the seat since allegedly even respondent Roberto K. Recio was not a recognized member due to his failure to so apply is belied by the facts. For one thing Mr. Recio was issued a Certificate of Membership by the PSE. For another, Mr. Recio's name has consistently appeared as a member of the PSE in the PSE's Monthly Report. Given these facts, it cannot be gainsaid that petitioner's refusal to acknowledge respondent TMBC's proprietary right over PSE Seat No. 29 was grossly unjust and tyrannical and, therefore controllable by the extraordinary writ of *mandamus*.

In fine, the Court finds no reversible error committed by the CA in affirming the order of the SEC and in rendering the herein challenged decision.

On a final note, on July 18, 2000, prior to the promulgation of the assailed CA decision, Republic Act No. 8799 otherwise

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[12] *Roque v. Office of the Ombudsman,* 366 Phil. 568 (1999) citing *Angchangco, Jr. v. Ombudsman,* G.R. No. 122728, 13 February 1997, 268 SCRA 301; *First Philippine Holdings Corporation v. Sandiganbayan,* 323 Phil. 36 (1996); *Kant Kwong v. Presidential Commission on Good Government, No.* 79484, 7 December 1987, 156 SCRA 222.

known as The Securities Regulation Code was enacted and upon its effectivity, the SEC's jurisdiction over this case was transferred to the courts of general jurisdiction or the Regional Trial Courts.[13]

WHEREFORE, the petition is *DENIED* and the assailed decision and resolution of the CA are *AFFIRMED*.

Costs against the petitioners.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 150025. July 23, 2008]

SPS. NARCISO BARNACHEA and JULITA BARNACHEA (now heirs of deceased Julita Barnachea), *petitioners, vs.* **HON. COURT OF APPEALS, HON. OSCAR C. HERRERA, JR., Presiding Judge, RTC Branch 20, Malolos, Bulacan, HON., HORACIO T. VIOLA, Presiding Judge, MTC Pulilan, Bulacan, and SPS. AVELINO and PRISCILLA IGNACIO,** *respondents.*

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[13] 5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT; UNLAWFUL DETAINER; DISTINGUISHED FROM FORCIBLE ENTRY; CASE AT BAR INVOLVES UNLAWFUL DETAINER.— The actions for forcible entry and unlawful detainer are similar because they are both summary actions where the issue is purely physical possession. Other than these commonalities, however, they possess dissimilarities that are clear, distinct, and well established in law. In forcible entry, (1) the plaintiff must prove that he was in prior physical possession of the property until he was deprived of possession by the defendant; (2) the defendant secures possession of the disputed property from the plaintiff by means of force, intimidation, threat, strategy or stealth; hence, his possession is unlawful from the beginning; (3) the law does not require a previous demand by the plaintiff for the defendant to vacate the premises; and (4) the action can be brought only within one-year from the date the defendant actually and illegally entered the property. In marked contrast, unlawful detainer is attended by the following features: (1) prior possession of the property by the plaintiff is not necessary; (2) possession of the property by the defendant at the start is legal but the possession becomes illegal by reason of the termination of his right to possession based on his or her contract or other arrangement with the plaintiff; (3) the plaintiff is required by law to make a demand as a jurisdictional requirement; and (4) the one-year period to bring the complaint is counted from the date of the plaintiff's last demand on the defendant. Under these standards, we do not hesitate to declare the Court of Appeals in error when it held that the present case involves forcible entry rather than unlawful detainer. A plain reading of the complaint shows the respondents' positions that the petitioners were in prior possession of the disputed property; that the respondents allowed them to occupy the disputed property by tolerance; that the respondents eventually made a demand that the petitioners vacate the property (on August 26, 1998, which demand the petitioners received on August 31, 1998); and that the petitioners refused to vacate the property in light of the defenses they presented. Separately from the complaint, the respondents characterized the action they filed against the petitioners in the MTC as an unlawful detainer when

they stated in their memorandum that "*as alleged in the complaint, what was filed by the respondents [was] an ejectment suit for unlawful detainer*."

2. ID.; ID.; ID.; A PERSON WHO OCCUPIES LAND OF ANOTHER AT THE LATTER'S TOLERANCE OR PERMISSION, WITHOUT ANY CONTRACT BETWEEN THEM IS NECESSARILY BOUND BY AN IMPLIED PROMISE THAT HE WILL VACATE UPON DEMAND, FAILING WHICH A SUMMARY ACTION FOR EJECTMENT IS THE PROPER REMEDY.— A critical point for us in arriving at our conclusion is the complete absence of any allegation of force, intimidation, strategy or stealth in the complaint with respect to the petitioners' possession of the respondents' property. While admittedly no express contract existed between the parties regarding the petitioners' possession, the absence does not signify an illegality in the entry nor an entry by force, intimidation, strategy or stealth that would characterize the entry as forcible. It has been held that a person who occupies land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy. The status of the defendant is analogous to that of a lessee or tenant whose terms has expired but whose occupancy continues by tolerance of the owner.

3. ID.; ID.; ID.; RULING IN MUNOZ CASE (G.R. No. 102693, SEPTEMBER 23, 1992) IS INAPPLICABLE TO CASE AT BAR.— To be sure, we are aware of the *Munoz v. Court of Appeals* ruling that the CA relied upon to reach the conclusion that the present case involves forcible entry, not unlawful detainer. What the CA apparently misread in *Munoz* was the allegation of stealth in the complaint; anchored on this finding, the Court concluded that the defendant's possession was illegal from the beginning so that there could be no possession by tolerance. The allegation of stealth, of course, is not present in the present case. On the contrary, tolerance was alleged in the ejectment complaint itself. Thus, there is no reason for the *Munoz* ruling to apply to the present case; there is no basis nor occasion to conclude that the respondents filed a forcible entry case.

4. ID.; ID.; ID.; ONE-YEAR PRESCRIPTIVE PERIOD, RECKONING POINT.— The petitioners' jurisdictional argument cannot succeed as the respondents' ejectment complaint was filed within the one-year period for bringing an action for unlawful detainer or forcible entry that Section 1, Rule 70 of the Rules of Court requires. xxx The one-year period within which to commence an ejectment proceeding is a prescriptive period as well as a jurisdictional requirement. Hence, Article 1155 of the Civil Code on the manner of reckoning the prescriptive period must necessarily come into play. Under this Article, the filing of a complaint in court interrupts the running of prescription of actions. As an action for unlawful detainer, the one-year prescription period started running after August 31, 1998 – the date of receipt of the respondents' demand letter. The period ran for almost two months until it was interrupted on October 20, 1998 when the respondents filed their ejectment complaint. This complaint, however, was dismissed on December 8, 1999. Upon this dismissal, the prescriptive period again began to run for about four months when another interruption intervened – the revival of the complaint on April 5, 2000. Evidently, under these undisputed facts, the period when the prescriptive period effectively ran does not add up to the one-year prescriptive period that would jurisdictionally bar the ejectment case.

5. ID.; ID.; A PENDING CIVIL ACTION INVOLVING OWNERSHIP OF THE SAME PROPERTY DOES NOT JUSTIFY THE SUSPENSION OF THE EJECTMENT PROCEEDINGS; EXCEPTION; NOT PRESENT IN CASE AT BAR.— The issue in an unlawful detainer case is limited to physical possession. When a claim of ownership is used as a *basis for de facto* possession or to *assert a better possessory right*, the court hearing the case may provisionally rule on the issue of ownership. As a rule, however, *a pending civil action involving ownership of the same property* does not justify the suspension of the ejectment proceedings. Only in rare cases has this Court allowed a suspension of the ejectment proceedings and one of these is in the case of *Amagan v. Marayag* that the petitioners cite. To quote from *Amagan* – [i]ndisputably, the execution of the MCTC Decision would have resulted in the demolition of the house subject of the ejectment suit; thus, by parity of reasoning, considerations of equity require suspension of the ejectment proceedings. xxx [L]ike *Vda. de*

> *Legaspi*, the respondent's suit is one of unlawful detainer and not of forcible entry, and most certainly, the ejectment of petitioners would mean a demolition of their house, a matter that is likely to create "confusion, disturbance, inconvenience and expenses" mentioned in the said exceptional case. xxx In the absence of a concrete showing of compelling equitable reasons at least comparable and under circumstances analogous to *Amagan*, we cannot override the established rule that a pending civil action for ownership shall not *ipso facto* suspend an ejectment proceeding. Additionally, to allow a suspension on the basis of the reasons the petitioners presented in this case would create the dangerous precedent of allowing an ejectment suit to be suspended by an action *filed in another court by parties who are not involved or affected by the ejectment suit.*

APPEARANCES OF COUNSEL

Pantaleon Law Office for petitioners.

Yambao Chua Bacani & Associates for private respondents.

D E C I S I O N

BRION, *J.*:

Before us is the Petition for Review by *Certiorari* filed by the spouses Narciso and Julita Barnachea[1] (*petitioners*) against the spouses Avelino and Priscilla Ignacio (*respondents*), rooted in the ejectment complaint the respondents filed against the petitioners before the Municipal Trial Court (*MTC*) of Pulilan, Bulacan. The petition prays that we nullify the Decision[2] of the Court of Appeals (*CA*) and its Resolution[3] denying the motion

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[1] Per the Court's Resolution dated July 30, 2003, the petitioner Julita Barnachea's death on June 14, 2003 was noted and the substitution of her heirs as parties-in-interest was granted; *rollo*, p. 97.

[2] Penned by Associate Justice Romeo A. Brawner (deceased), with Associate Justice Remedios A. Salazar-Fernando and Associate Justice Rebecca De Guia-Salvador, concurring; dated May 30, 2001; *rollo*, pp. 33-40.

[3] Dated September 11, 2001; *rollo*, pp. 42-43.

for reconsideration, and that we suspend the ejectment proceedings in light of a pending action for quieting of title involving the disputed property.

BACKGROUND FACTS

The respondents filed their complaint for ejectment against the petitioners before the MTC on October 20, 1998. The subject matter of the complaint were lots titled in respondent Avelino Ignacio's name (Subdivision Lot 16 covered by TCT No. 86821, and Subdivision Lot 17 covered by TCT No. 86822), which lots are adjacent to the property that the petitioners own and occupy. These properties were originally part of a piece of land owned by a certain Luis Santos and subsequently inherited by his daughter Purificacion Santos Imperial. The land was subdivided and transferred to tenant-farmers Santiago Isidro (EP No. A-050545 with TCT No. T-188-EP) and Procopio de Guzman (EP No. 445440 with TCT No. T-185-EP). The property that the petitioners own and occupy was derived from the land transferred to Santiago Isidro. Respondent Ignacio's properties were derived, on the other hand, from the land originally transferred to Procopio de Guzman.

The complaint was dismissed on December 8, 1999, but was revived on April 5, 2000. The petitioners received summons on April 13, 2000 and, instead of filing a new Answer, filed on April 18, 2000 a Motion for Extension of Time to File Answer which the MTC denied on May 5, 2000. The petitioners responded to this denial by filing a motion for reconsideration on May 23, 2000. Meanwhile, the respondents filed a Motion for the Issuance of a Writ of Execution dated May 24, 2000, which the petitioners received on May 26, 2000.

To avert the implementation of the writ of execution, the petitioners filed a Notice of Appeal. The MTC issued a subpoena dated June 5, 2000 setting the hearing on the petitioners' Motion for Reconsideration and the respondents' Motion for Issuance of Writ of Execution on June 19, 2000. The petitioners subsequently filed a Compliance that prayed, among others, that the pending resolution on the incident and the Notice of Appeal be deemed to have been filed *ex abundanti cautela.*

The respondents, for their part, filed a Manifestation and Motion praying, among others, that the petitioner's Motion for Reconsideration of the May 5, 2000 Order be denied for being moot and academic.

On July 21, 2000, the MTC issued an order declaring the petitioners' Motion for Reconsideration abandoned because of the Notice of Appeal they previously filed. Thereafter, the MTC forwarded the entire record of Civil Case No. 818 to the Regional Trial Court, Branch 20 (*RTC Branch 20*), Malolos, Bulacan. On August 24, 2000, petitioners submitted their Appeal Memorandum to the RTC Branch 20 which affirmed the MTC decision on September 20, 2000.

On October 5, 2000, the petitioner Julita's sister, Leticia, representing herself to be the sole owner of EP No. A-050545 (TCT No. T-188-EP), filed a Petition for Quieting of Title with the Regional Trial Court, Branch 19 (*RTC Branch 19*), Malolos, Bulacan, docketed as Civil Case No. 694-M-2000. On October 9, 2000, prior to their receipt of the RTC Branch 20's September 20, 2000 decision, the petitioners filed an Urgent Motion for the Suspension of Proceedings (referred to for purposes of this decision as the *urgent motion*).

RTC Branch 20 denied on October 17, 2000 the petitioners' *urgent motion* and their subsequent Motion for Reconsideration. The petitioners brought the denials to the *CA via* a petition for *certiorari* under Rule 65 of the Rules of Court on the issue of ***"whether the pendency of an action involving the issue of ownership is sufficient basis for [the] suspension of an ejectment proceeding between the same parties and relating to the same subject matter".***

THE CA'S DECISION

The CA denied the petition and the petitioners' subsequent motion for reconsideration, essentially on the grounds that (1) the issue in an ejectment suit is limited to the physical possession of real property and is separate and distinct from the issue of ownership and possession *de jure* that either party may set forth in his or her pleading; (2) the pendency of an action for

reconveyance of title over the same property or for annulment of deed of sale does not divest the MTC of its jurisdiction to try the forcible entry or unlawful detainer case before it, and that ejectment actions generally cannot be suspended pending the resolution of a case for quieting of title between the same parties over the same subject property; and (3) the case does not fall under the exception provided by the case of *Amagan v. Marayag* ,[4] where the Court allowed the suspension of ejectment proceedings because of strong reasons of equity applicable to the case – the demolition of the petitioner's house unless the proceedings would be suspended. The CA ruled that the petitioners' reliance on *Amagan* was inappropriate because the said case only applies to unlawful detainer actions while the petitioners' ejectment suit is an action for forcible entry. To the CA, the initial tolerance on the part of the private respondents did not convert the nature of their ejectment suit from forcible entry into unlawful detainer, following the reasoning this Court applied in *Munoz v. Court of Appeals*.[5]

ASSIGMENT OF ERRORS

The petitioners impute the following error to the CA:

> [T]he Honorable Court of Appeals erred when it ruled that the said ejectment proceeding was not a suit for illegal detainer but one of forcible entry, thus, denied application to the exceptional rule on suspension of ejectment proceedings, at any stage thereof, until the action on ownership is finally settled.[6]

From this general assignment of error, the petitioners submitted in their memorandum the following specific issues for our resolution:

1) whether or not the ejectment case filed by the respondents against petitioners with the MTC of Pulilan is for unlawful detainer or for forcible entry;

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[4] G.R. No. 138377, February 28, 2000, 326 SCRA 581.

[5] G.R. No. 102693, September 23, 1992, 214 SCRA 216.

[6] *Rollo*, p.16.

2) whether the MTC of Pulilan had validly acquired and exercised jurisdiction over the ejectment case considering that the complaint was filed beyond one year from the demand to vacate the subject premises; and

3) whether or not the ejectment proceedings should be suspended at any stage until the action on ownership of the disputed portion of the subject property is finally settled.

OUR RULING

We find the petition without merit.

1. Nature of the Action before the MTC.

The best indicator of what the plaintiff in an ejectment case intends with respect to the nature of his or her complaint can be found in the complaint itself. In this case, the complaint states:[7]

"That plaintiffs are the registered owners in fee simple of several residential lots identified as lots 16 and 17 covered by Certificate of Title Nos. 86821 and 86822 issued in the name of the spouses by the Register of Deeds of Bulacan, with a total aggregate area of 254 square meters situated at Cutcut, Pulilan, Bulacan. Copy of the said titles are hereto attached and marked as Annex "A" and "A-1"

"That in a portion of the lots 16 and 17, a portion of the house of the defendants was erected and built thus usurping the said portion and this was made known to the defendants when the plaintiffs caused the relocation of the subject lots, however, considering that the latter were not yet in need of that portion, they allowed the former to stay on the portion by tolerance;

"That last July 1998, when the plaintiffs were in the process of fencing the boundary of their lots, to their surprise, they were not allowed by the defendants to extend the fence up to the portions they illegally occupied;

"That despite the advice given to them by several Geodetic Engineers commissioned by both the plaintiffs and the herein defendants, for them to give way and allow the plaintiffs to fence

[7] *Id.*, pp. 59-60

their lot, same proved futile as they stubbornly refused to surrender possession of the subject portion;

The actions for forcible entry and unlawful detainer are similar because they are both summary actions where the issue is purely physical possession.[8] Other than these commonalities, however, they possess dissimilarities that are clear, distinct, and well established in law.[9]

In forcible entry, (1) the plaintiff must prove that he was in prior physical possession of the property until he was deprived of possession by the defendant; (2) the defendant secures possession of the disputed property from the plaintiff by means of force, intimidation, threat, strategy or stealth; hence, his possession is unlawful from the beginning; (3) the law does not require a previous demand by the plaintiff for the defendant to vacate the premises; and (4) the action can be brought only within one-year from the date the defendant actually and illegally entered the property.[10]

In marked contrast, unlawful detainer is attended by the following features: (1) prior possession of the property by the plaintiff is not necessary; (2) possession of the property by the defendant at the start is legal but the possession becomes illegal by reason of the termination of his right to possession based on his or her contract or other arrangement with the plaintiff; (3) the plaintiff is required by law to make a demand as a jurisdictional requirement; and (4) the one-year period to bring the complaint is counted from the date of the plaintiff's last demand on the defendant.[11]

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[8] *Go v. Court of Appeals* G.R. No. 142276, August 14, 2001, 362 SCRA 755, 766 citing *University Physicians Services, Inc. vs. Court of Appeals*, 233 SCRA 86.

[9] The actions for forcible entry and unlawful detainer are distinct actions defined by Rule 70, Sec. 1 of the Rules of Court cited in the later portion of this Decision.

[10] *Dela Cruz v. CA*, G.R. No. 139442, December 6, 2006, 510 SCRA 103, 115.

[11] See *Munoz v. Court of Appeals*, *supra* note 5. See also *Rivera v. Rivera*, 405 SCRA 466 and *Panganiban v. Pilipinas Shell Petroleum Corporation*, 395 SCRA 624.

Under these standards, we do not hesitate to declare the Court of Appeals in error when it held that the present case involves forcible entry rather than unlawful detainer. A plain reading of the complaint shows the respondents' positions that the petitioners were in prior possession of the disputed property; that the respondents allowed them to occupy the disputed property by tolerance; that the respondents eventually made a demand that the petitioners vacate the property (on August 26, 1998, which demand the petitioners received on August 31, 1998); and that the petitioners refused to vacate the property in light of the defenses they presented. Separately from the complaint, the respondents characterized the action they filed against the petitioners in the MTC as an unlawful detainer when they stated in their memorandum that "*as alleged in the complaint, what was filed by the respondents [was] an ejectment suit for unlawful detainer*."[12]

A critical point for us in arriving at our conclusion is the complete absence of any allegation of force, intimidation, strategy or stealth in the complaint with respect to the petitioners' possession of the respondents' property. While admittedly no express contract existed between the parties regarding the petitioners' possession, the absence does not signify an illegality in the entry nor an entry by force, intimidation, strategy or stealth that would characterize the entry as forcible. It has been held that a person who occupies land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy. The status of the defendant is analogous to that of a lessee or tenant whose terms has expired but whose occupancy continues by tolerance of the owner.[13]

To be sure, we are aware of the *Munoz v. Court of Appeals*[14] ruling that the CA relied upon to reach the conclusion that the

[12] *Rollo,* p. 124.

[13] See *Vda. De Cachuela v. Francisco,* No. L-31985, June 25, 1980, 98 SCRA 172, 174, citing *Calubayan v. Pascual,* 21 SCRA 146.

[14] *Supra* note 5.

present case involves forcible entry, not unlawful detainer. What the CA apparently misread in *Munoz* was the allegation of stealth in the complaint; anchored on this finding, the Court concluded that the defendant's possession was illegal from the beginning so that there could be no possession by tolerance. The allegation of stealth, of course, is not present in the present case. On the contrary, tolerance was alleged in the ejectment complaint itself. Thus, there is no reason for the *Munoz* ruling to apply to the present case; there is no basis nor occasion to conclude that the respondents filed a forcible entry case.

2. The Jurisdictional Issue – Was the Ejectment Complaint Seasonably Filed?

We point out at the outset that what the petitioners directly appealed to this Court is the appellate court's affirmation of the RTC's refusal to suspend the ejectment proceedings based on the quieting of title case the petitioners cited. Hence, we are not reviewing the merits of the main ejectment case, particularly the question of the MTC's jurisdiction, as these aspects of the case were not appealed to us. If we touch the jurisdictional aspect of the case at all, it is only for purposes of fully responding to the parties' arguments.

The petitioners' jurisdictional argument cannot succeed as the respondents' ejectment complaint was filed within the one-year period for bringing an action for unlawful detainer or forcible entry that Section 1, Rule 70 of the Rules of Court requires. Section 1 specifically states:

> Section 1. Who may institute proceedings, and when.
>
> Subject to the provisions of the next succeeding section, a person deprived of the possession 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.

On the basis of this provision, the petitioners argue that the respondents' cause of action – whether for forcible entry or for unlawful detainer – had prescribed when the ejectment complaint was filed on April 5, 2000. They point out that the last demand letter (the reckoning date for unlawful detainer[15]) was dated Aug. 26, 1998 and was received by the petitioners on August 31, 1998; the complaint was only filed on April 5, 2000 or more than 1 year after August 31, 1998. On the other hand, if the action had been for forcible entry, the prescriptive period commenced on the discovery of the usurpation and the computation period would have commenced either during the relocation survey of the lots or in July 1998 when the respondents were prevented from fencing the disputed property.

The one-year period within which to commence an ejectment proceeding is a prescriptive period as well as a jurisdictional requirement. Hence, Article 1155 of the Civil Code on the manner of reckoning the prescriptive period must necessarily come into play. Under this Article, the filing of a complaint in court interrupts the running of prescription of actions. As an action for unlawful detainer, the one-year prescription period started running after August 31, 1998 – the date of receipt of the respondents' demand letter. The period ran for almost two months until it was interrupted on October 20, 1998 when the respondents filed their ejectment complaint. This complaint, however, was dismissed on December 8, 1999. Upon this dismissal, the prescriptive period again began to run for about four months when another interruption intervened – the revival of the complaint on April 5, 2000. Evidently, under these undisputed facts, the period when the prescriptive period effectively ran does not add up to the one-year prescriptive period that would jurisdictionally bar the ejectment case.

[15] *Development Bank of the Philippines v. Canonoy*, G.R. No. L-29422, September 30, 1970, 35 SCRA 197, 201.

3. Suspension of the Ejectment Proceedings until Resolution of the Ownership Issue.

The issue in an unlawful detainer case is limited to physical possession. When a claim of ownership is used as a *basis for de facto* possession or to *assert a better possessory right*, the court hearing the case may **provisionally** rule on the issue of ownership. As a rule, however, *a pending civil action involving ownership of the same property* does not justify the suspension of the ejectment proceedings. Only in rare cases has this Court allowed a suspension of the ejectment proceedings and one of these is in the case of *Amagan v. Marayag*[16] that the petitioners cite. To quote from *Amagan* –

> [i]ndisputably, the execution of the MCTC Decision would have resulted in the demolition of the house subject of the ejectment suit; thus, by parity of reasoning, considerations of equity require suspension of the ejectment proceedings. xxx [L]ike *Vda. de Legaspi*, the respondent's suit is one of unlawful detainer and not of forcible entry, and most certainly, the ejectment of petitioners would mean a demolition of their house, a matter that is likely to create "confusion, disturbance, inconvenience and expenses" mentioned in the said exceptional case.
>
> Necessarily, the affirmance of the MCTC Decision would cause the respondent to go through the whole gamut of enforcing it by physically removing the petitioners from the premises they claim to have been occupying since 1937. (Respondent is claiming ownership only of the land, not of the house) Needlessly, the litigants as well as the courts will be wasting much time and effort by proceeding at a stage wherein the outcome is at best temporary, but the result of enforcement is permanent, unjust and probably irreparable.[17]

However, we do not find these same circumstances present in this case for the reasons we shall discuss in detail below.

First. In *Amagan,* the party refusing to vacate the disputed premises (or the *deforciant* in the action for unlawful detainer)

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[16] *Supra* note 4.

[17] *Id.,* p. 593

was the same party seeking to quiet his title. In the present case, the petitioners are not parties to the civil action (for quieting of title) whose result they seek to await; the plaintiff in the quieting of title case is Leticia, the petitioner Julita's sister. No proof whatsoever was offered to show that petitioner Julita is asserting her own title to the property; there is only the allegation that Leticia was appointed as the representative of Julita and the other heirs of Isidro in their various recourses at law to vindicate their landowners' rights.[18] The respondents in fact actively disputed petitioner Julita's identification with the quieting of title case in their Comment since Leticia claimed to be the sole owner of TCT No. T-188-EP in her action to quiet title. The respondents also pointed to the document entitled "*Kasulatan ng Pagmamana ng Lupa sa Labas ng Hukuman na May Pagtalikod sa Bahagi*" executed on May 27, 1995, showing that Julita had relinquished her share over TCT No. T-188-EP in favor of her sister Leticia. A desperation argument the petitioners advanced in their Memorandum is that the *Kasulatan* was only executed "pursuant to the agrarian reform policy proscribing the parceling of the awarded landholding into smaller units to preserve its viability."[19] In other words, the petitioners are disavowing, for purposes of this case, the representation they made in completing their submission before the agrarian reform authorities. We cannot of course recognize this line of argument as justification for the suspension of the ejectment proceedings as the petitioners are bound by their representations before the agrarian reform authorities and cannot simply turn their back on these representations as their convenience requires. No less decisive against the petitioners' argument for suspension is the decision itself of RTC Branch 19 that the respondents attached to their Comment. This decision shows that Civil Case No. 694-M-2000, instead of being a case for quieting of title, is in fact a mere boundary dispute.[20]

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[18] See *rollo*, pp. 15-16, 65

[19] *Id.*, p. 131, citing p. 19 of the Petition.

[20] *Id.*, pp.79-82

Second. In *Amagan*, the MCTC decision involved the demolition of the petitioners' house – a result that this Court found to be "permanent, unjust and probably irreparable"; in the present case, only a portion of the petitioners' house is apparently affected as the petitioners occupy the lot adjoining the disputed property. Significantly, the height, width and breadth of the portion of the house that would be affected by the execution of the RTC Branch 20 decision does not appear anywhere in the records, thus, unavoidably inviting suspicion that the potential damage to the petitioners is not substantial. More important than the fact of omission is its implication; the omission constitutes a missing link in the chain of equitable reasons for suspension that the petitioners wish to establish. Thus, the equitable consideration that drove us to rule as we did in *Amagan* does not obtain in the present case.

In the absence of a concrete showing of compelling equitable reasons at least comparable and under circumstances analogous to *Amagan*, we cannot override the established rule that a pending civil action for ownership shall not *ipso facto* suspend an ejectment proceeding. Additionally, to allow a suspension on the basis of the reasons the petitioners presented in this case would create the dangerous precedent of allowing an ejectment suit to be suspended by an action *filed in another court by parties who are not involved or affected by the ejectment suit.*

WHEREFORE, premises considered, we hereby *DISMISS* the petition for lack of merit. Costs against the petitioners.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 154577. July 23, 2008]

EL CID PAGURAYAN, ANTONIO SOLOMON, ANGELITO REÑOSA and VILMA RAMOS DATOON, for themselves and as representatives of the tenants, occupants and builders in good faith of the Don Domingo Neighborhood Association, *petitioners, vs.* **LEONARDO T. REYES, DOLORES SORIANO-CARANGUIAN, DOMITILA SORIANO-SANCHEZ, DOMINADOR SORIANO, DELFIN SORIANO, DANIEL SORIANO, DAMASO SORIANO, DIOSDADO SORIANO and the HEIRS OF DOMINGO SORIANO,*** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; LEASE; CONTRACT OF LEASE; NATURE.— A contract of lease is a consensual, bilateral, onerous and commutative contract by which the owner temporarily grants the use of his property to another who undertakes to pay the rent. Being a consensual contract, it is perfected at the moment there is a meeting of the minds on the thing and the cause and consideration which are to constitute the contract. Without the agreement of both parties, no contract of lease can be said to have been created or established. Nobody can force an owner to lease out his property if he is not willing.

2. REMEDIAL LAW; JUDGMENT; EXECUTION AND SATISFACTION OF JUDGMENTS; PURCHASER IN THE EXECUTION SALE IS ENTITLED TO THE FRUITS OF THE PROPERTY AFTER THE EXPIRATION OF THE REDEMPTION PERIOD.— Under Section 34, Rule 39 of the old Rules of Court, respondent Reyes, as the purchaser in the execution sale, was allowed to receive the rentals if the purchased properties were occupied by tenants. Moreover, as

* The Presiding Judge Adrian N. Pagalilauan of the Regional Trial Court, Tuguegarao, Cagayan, Branch 5 and the Court of Appeals were originally impleaded as public respondents. However, they were excluded pursuant to Rule 45, Section 4 of the Rules of Court.

the owner of the properties after the expiration of the redemption period, he was entitled to their fruits.

3. ID.; ID.; ID.; THE WRITS OF POSSESSION AND DEMOLITION CAN BE ENFORCED AGAINST THE LESSEES OF THE JUDGMENT DEBTORS.— Petitioners never held the properties adversely to (but in fact derived their rights from) the judgment debtors, the Sorianos. Since they were the lessees of the judgment debtors against whom the writs of possession and demolition could unquestionably be enforced, the said writs could (and can) be enforced against them as well.

APPEARANCES OF COUNSEL

Cayosa Fernan- Cayosa Law Offices for petitioners.

Reyes Francisco & Associates Law Office for respondents.

R E S O L U T I O N

CORONA, *J.*:

This is a petition for review on *certiorari*[1] of the January 31, 2002 decision[2] and August 5, 2002 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 44378.

On February 4, 1974, respondent Leonardo T. Reyes filed a complaint for specific performance and damages against respondents Dolores Soriano *et al*. (hereinafter referred to as the Sorianos) in the then Court of First Instance of Tuguegarao, Cagayan, Branch V, docketed as Civil Case No. 2136. On June 5, 1975, a decision was rendered in favor of respondent Reyes. To satisfy the judgment, the deputy provincial sheriff of Cagayan

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Ma. Alicia Austria-Martinez (now Supreme Court Associate Justice) and Roberto A. Barrios (deceased) of the First Division of the Court of Appeals; *rollo*, pp. 33-47.

[3] Associate Justice Austria-Martinez was replaced by Associate Justice Edgardo P. Cruz in the Special Former First Division; *id*., pp. 48-49.

levied on three parcels of land belonging to the Sorianos. The properties consisted of residential and commercial lots located around the Don Domingo public market, Tuguegarao, Cagayan, covered by TCT Nos. T-50744 (Lot No. 3-A), T-52072 (Lot No. 3747-G-1) and T-49633. The levied properties were sold in a public auction wherein respondent Reyes was the sole and highest bidder. Since the Sorianos never exercised their right of redemption, a deed of absolute sale covering the properties was issued to respondent Reyes.

On October 14, 1982, the Sorianos filed a complaint for declaration of nullity of the auction sale and certificate of sheriff's sale with damages in the Regional Trial Court (RTC) of Tuguegarao, Cagayan, Branch 5, docketed as Civil Case No. 3093. In a decision dated October 3, 1988, the RTC upheld the validity of the deed of sale and certificate of sheriff's sale.[4] The CA[5] and this Court[6] affirmed it and the decision became final and executory on July 27, 1992.

Thereafter, respondent Reyes filed a motion for execution and the issuance of a writ of possession in the RTC.[7] On February 22, 1993, the RTC granted the motion.[8] On October 18, 1995, the RTC issued a resolution ordering that a writ of possession be issued to respondent Reyes and *commanding the lessees of the subject lots to pay their rentals to him.*[9] On November 26, 1996, a writ of execution was issued.[10] Because petitioners El Cid Pagurayan *et al.*, as occupants of the lots, refused to vacate

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[4] Penned by Judge Hilarion L. Aquino; *id*., pp. 192-209.

[5] Docketed as CA-G.R. CV No. 20012 and the decision was rendered on June 19, 1991; id., p. 35.

[6] Docketed as G.R. No. 101568. On April 1, 1992, we denied the petition with finality; *id*.

[7] Filed on November 18, 1992; *id*., p. 218.

[8] The Sorianos appealed to the CA but the latter ultimately decided in favor of respondent Reyes; *id*., p. 219.

[9] *Id*., pp. 213-214.

[10] *Id*., pp. 217-220.

and remove their improvements,[11] a writ of demolition followed on March 19, 1997.[12]

Consequently, petitioners sought to intervene and to quash the writ of demolition.[13] The RTC, in a resolution dated May 26, 1997, denied this motion.[14] It held that, since petitioners were lessees of the judgment debtors (the Sorianos), they could not be deemed to be third parties holding the property adversely, hence their rights ended when that of their lessor ceased.[15] On May 30, 1997, an *alias* writ of demolition was issued.[16]

On June 10, 1997, petitioners filed a petition for *certiorari* under Rule 65 of the Rules of Court docketed as CA-G.R. SP No. 44378 assailing the May 26, 1997 RTC resolution and May 30, 1997 *alias* writ of demolition. On June 11, 1997, the CA issued a temporary restraining order. On July 2, 1997, the CA issued a resolution directing the issuance of a writ of preliminary injunction[17] enjoining the implementation of the assailed resolution and writ. Respondent Reyes questioned this resolution in this Court in G.R. No. 129750. We denied the petition for lack of merit on December 21, 1999. Thereafter, proceedings in CA-G.R. SP No. 44378 continued.

On January 31, 2002, the CA rendered a decision denying the petition for *certiorari* and denied reconsideration in a resolution dated August 5, 2002. It held that petitioners were the agents/ lessees of the Sorianos and that the October 18, 1995 resolution commanding them to pay rent to respondent Reyes did not

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[11] They alleged that they were mostly subsistence *talipapa* vendors, peddlers, wage earners and entrepreneurs in and around the Don Domingo public market; *id.*, p. 8.

[12] *Id.*, p. 231.

[13] *Id.*, pp. 233-238.

[14] Penned by Judge Adrian N. Pagalilauan; *id.*, pp. 242-256.

[15] *Id.*, pp. 106-108, citing *Malonzo v. Mariano*, G.R. No. 53998, 31 May 1989, 173 SCRA 667, 673-674 and Section 17, Rule 39 of the old Rules of Court (now Section 16).

[16] *Id.*, pp. 259-262.

[17] Upon the filing of petitioners of a bond in the amount of ₱200,00.00; *id.*, p. 39.

automatically create a lessor-lessee relationship between them. Respondent Reyes was entitled to the fruits of the properties as the purchaser and lawful owner thereof.[18]

Hence this petition.[19]

Were petitioners mere agents of the Sorianos or were they lessees of respondent Reyes? If they were only the agents of the Sorianos who were the judgment debtors in Civil Case No. 3093, they were bound by the judgment rendered against the former. However, if they could be considered the lessees of respondent Reyes, then they could not be ejected via mere writs of execution and demolition.[20]

Petitioners admit that they were the "tenants, occupants and builders in good faith" of the land formerly owned by the Sorianos.[21] However, they claim that, as early as 1992, they had been paying rent to respondent Reyes. They argue that the fact that he accepted their payments established and confirmed the lessor-lessee relationship between them. Furthermore, in a letter dated October 26, 1994, respondent Reyes' counsel informed them that they should pay their rent to his client as lawful owner.[22] Therefore, they assert, they no longer derived

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[18] *Id.*, p. 46; see also Section 34, Rule 39 of the old Rules of Court (now Section 32).

[19] In a resolution dated August 15, 2005, the Court dispensed with the filing of comment of the Sorianos who no longer had any interest in the case; *id.*, p. 351.

[20] Petitioners also raised the issue of the applicability of RA 7279 (or the Urban Development and Housing Act of 1992) to their case. This was raised for the first time in petitioners' motion for reconsideration filed in the CA (*Id.*, p. 306). It is settled jurisprudence that an issue which was neither averred in the complaint nor raised during the trial in the lower courts cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice, and due process (*Roman Catholic Archbishop of Manila v. CA*, G.R. No. 123321, 3 March 1997, 269 SCRA 145, 153, citations omitted). Besides, this would entail factual determinations which we cannot pass upon.

[21] *Rollo*, p. 10.

[22] *Id.*, p. 123.

their right of occupancy from the Sorianos but from respondent Reyes himself.[23]

Respondent Reyes counters that, as purchaser of the properties in an execution sale, he was entitled to the rent.[24] Thus, his acceptance thereof did not create a contract of lease between him and petitioners. He avers that he never intended to establish a lease contract with petitioners.[25]

The petition is devoid of merit.

A contract of lease is a consensual, bilateral, onerous and commutative contract by which the owner temporarily grants the use of his property to another who undertakes to pay the rent.[26] Being a consensual contract, it is perfected at the moment there is a meeting of the minds on the thing and the cause and consideration which are to constitute the contract.[27] Without the agreement of both parties, no contract of lease can be said to have been created or established.[28] Nobody can force an owner to lease out his property if he is not willing.

Respondent Reyes maintains that he never entered into a contract of lease with petitioners. The only proof presented by petitioners of the alleged lease was Reyes' acceptance of rentals from them but respondent Reyes insists that he was entitled to receive those rentals as the owner of the properties.

We agree with respondent Reyes. Under Section 34, Rule 39 of the old Rules of Court, respondent Reyes, as the purchaser in the execution sale, was allowed to receive the rentals if the purchased properties were occupied by tenants. Moreover,

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[23] *Id*., pp. 19-20.

[24] He quotes Section 34, Rule 39 of the old Rules of Court.

[25] *Rollo*, pp. 301-302.

[26] *Chua Tee Dee v. Court of Appeals*, G.R. No. 135721, 27 May 2004, 429 SCRA 418, 434, citing *Lim Si v. Lim*, 98 Phil. 868, 870 (1956).

[27] *Bugatti v. Court of Appeals*, 397 Phil. 376, 395 (2000), citing Vitug, *Compendium of Civil Law and Jurisprudence*, 1993 edition, 653-654.

[28] *Lim Si v. Lim*, *supra* note 26 at 870-871.

as the owner of the properties after the expiration of the redemption period, he was entitled to their fruits.[29]

Petitioners never held the properties adversely to (but in fact derived their rights from) the judgment debtors, the Sorianos. Since they were the lessees of the judgment debtors against whom the writs of possession and demolition could unquestionably be enforced, the said writs could (and can) be enforced against them as well.[30]

WHEREFORE, the petition is hereby *DENIED.*

Costs against petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 160352. July 23, 2008]

REPUBLIC OF THE PHILIPPINES, represented by Department of Labor and Employment (DOLE), *petitioner, vs.* **KAWASHIMA TEXTILE MFG., PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR ORGANIZATION; REPUBLIC ACT NO. 9481; NOT APPLICABLE TO THE CASE AT BAR; REPUBLIC

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[29] *See Samartino v. Raon,* G.R. No. 131482, 3 July 2002, 383 SCRA 664, 674.

[30] *Malonzo v. Mariano, supra* note 15.

ACT NO. 9481 NOT GIVEN RETROSPECTIVE EFFECT.— The key to the closure that petitioner seeks could have been Republic Act (R.A.) No. 9481. Sections 8 and 9 thereof provide: Section 8. Article 245 of the Labor Code is hereby amended to read as follows:"Art. 245. *Ineligibility of Managerial Employees to Join any Labor Organization; Right of Supervisory Employees.* - xxx Section 9. A new provision, Article 245-A is inserted into the Labor Code to read as follows: "Art. 245-A. *Effect of Inclusion as Members of Employees Outside the Bargaining Unit.* - xxx Moreover, under Section 4, a pending petition for cancellation of registration will not hinder a legitimate labor organization from initiating a certification election, *viz*: Sec. 4. A new provision is hereby inserted into the Labor Code as Article 238-A to read as follows: "Art. 238-A. *Effect of a Petition for Cancellation of Registration.* - xxx Furthermore, under Section 12 of R.A. No. 9481, employers have no personality to interfere with or thwart a petition for certification election filed by a legitimate labor organization, to wit: xxx. Sec. 12. A new provision, Article 258-A is hereby inserted into the Labor Code to read as follows: "Art. 258-A. *Employer as Bystander*. - xxx **However**, R.A. No. 9481 took effect only on June 14, 2007; hence, it applies only to labor representation cases filed on or after said date. As the petition for certification election subject matter of the present petition was filed by KFWU on January 24, 2000, R.A. No. 9481 cannot apply to it. There may have been curative labor legislations that were given retrospective effect, but not the aforecited provisions of R.A. No. 9481, for otherwise, substantive rights and interests already vested would be impaired in the process. Instead, the law and rules in force at the time of the filing by KFWU of the petition for certification election on January 24, 2000 are R.A. No. 6715, amending Book V of Presidential Decree (P.D.) No. 442 (Labor Code), as amended, and the Rules and Regulations Implementing R.A. No. 6715, as amended by Department Order No. 9, series of 1997.

2. ID.; ID.; ID.; ANY MINGLING BETWEEN THE SUPERVISORY AND RANK-AND-FILE EMPLOYEES IN ITS MEMBERSHIP CANNOT AFFECT THE LEGITIMACY OF THE LABOR ORGANIZATION.— Then came *Tagaytay Highlands Int'l. Golf Club, Inc. v. Tagaytay Highlands Employees Union-PGTWO* in which the core issue was whether mingling affects the legitimacy of a labor organization and its right to file a petition for certification election. This time, given the altered legal milieu, the Court

abandoned the view in *Toyota* and *Dunlop* and reverted to its pronouncement in *Lopez* that while there is a prohibition against the mingling of supervisory and rank-and-file employees in one labor organization, the Labor Code does not provide for the effects thereof. Thus, the Court held that after a labor organization has been registered, it may exercise all the rights and privileges of a legitimate labor organization. Any mingling between supervisory and rank-and-file employees in its membership cannot affect its legitimacy for that is not among the grounds for cancellation of its registration, unless such mingling was brought about by misrepresentation, false statement or fraud under Article 239 of the Labor Code. In *San Miguel Corp. (Mandaue Packaging Products Plants) v. Mandaue Packing Products Plants-San Miguel Packaging Products-San Miguel Corp. Monthlies Rank-and-File Union-FFW,* the Court explained that since the 1997 Amended Omnibus Rules does not require a local or chapter to provide a list of its members, it would be improper for the DOLE to deny recognition to said local or chapter on account of any question pertaining to its individual members. More to the point is *Air Philippines Corporation v. Bureau of Labor Relations,* which involved a petition for cancellation of union registration filed by the employer in 1999 against a rank-and-file labor organization on the ground of mixed membership: the Court therein reiterated its ruling in *Tagaytay Highlands* that the inclusion in a union of disqualified employees is not among the grounds for cancellation, unless such inclusion is due to misrepresentation, false statement or fraud under the circumstances enumerated in Sections (a) and (c) of Article 239 of the Labor Code. All said, while the latest issuance is R.A. No. 9481, the 1997 Amended Omnibus Rules, as interpreted by the Court in *Tagaytay Highlands*, *San Miguel* and *Air Philippines,* had already set the tone for it. *Toyota* and *Dunlop* no longer hold sway in the present altered state of the law and the rules. Consequently, the Court reverses the ruling of the CA and reinstates that of the DOLE granting the petition for certification election of KFWU.

3. ID.; ID.; ID.; AN EMPLOYER CANNOT INTERFERE WITH, THE PETITION FOR CERTIFICATION ELECTION BY FILING A MOTION TO DISMISS OR AN APPEAL FROM IT.— Except when it is requested to bargain collectively, an employer is a mere bystander to any petition for certification election; such proceeding is non-adversarial and merely investigative, for the purpose thereof is to determine which

organization will represent the employees in their collective bargaining with the employer. The choice of their representative is the exclusive concern of the employees; the employer cannot have any partisan interest therein; it cannot interfere with, much less oppose, the process by filing a motion to dismiss or an appeal from it; not even a mere allegation that some employees participating in a petition for certification election are actually managerial employees will lend an employer legal personality to block the certification election. The employer's only right in the proceeding is to be notified or informed thereof. The amendments to the Labor Code and its implementing rules have buttressed that policy even more.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Cabio Law Office and Associates for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.:*

The Republic of the Philippines assails by way of Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, the December 13, 2002 Decision[1] of the Court of Appeals (CA), which reversed the August 18, 2000 Decision[2] of the Department of Labor and Employment (DOLE), and reinstated the May 17, 2000 Order[3] of Med-Arbiter Anastacio L. Bactin, dismissing the petition of Kawashima Free Workers Union-PTGWO Local Chapter No. 803 (KFWU) for the conduct of a certification election in Kawashima Textile Mfg. Phils., Inc. (respondent); and the October 7, 2003 CA Resolution[4] which denied the motion for reconsideration.

[1] Penned by Associate Justice Rebecca de Guia-Salvador and concurred in by Associate Justices Rodrigo V. Cosico and Regalado E. Maambong; *rollo*, p. 25.

[2] *Id.* at 53.

[3] *Id.* at 43.

[4] *Id.* at 37.

The relevant facts are of record.

On January 24, 2000, KFWU filed with DOLE Regional Office No. IV, a Petition for Certification Election to be conducted in the bargaining unit composed of 145 rank-and-file employees of respondent.[5] Attached to its petition are a Certificate of Creation of Local/Chapter [6] issued on January 19, 2000 by DOLE Regional Office No. IV, stating that it [KFWU] submitted to said office a Charter Certificate issued to it by the national federation Phil. Transport & General Workers Organization (PTGWO), and a Report of Creation of Local/Chapter.[7]

Respondent filed a Motion to Dismiss[8] the petition on the ground that KFWU did not acquire any legal personality because its membership of mixed rank-and-file and supervisory employees violated Article 245 of the Labor Code, and its failure to submit its books of account contravened the ruling of the Court in *Progressive Development Corporation v. Secretary, Department of Labor and Employment*.[9]

In an Order dated May 17, 2000, Med-Arbiter Bactin found KFWU's legal personality defective and dismissed its petition for certification election, thus:

> We scrutinize the facts and evidences presented by the parties and arrived at a decision that at least two (2) members of [KFWU], namely: Dany I. Fernandez and Jesus R. Quinto, Jr. are supervisory employees, having a number of personnel under them. Being supervisory employees, they are prohibited under Article 245 of the Labor Code, as amended, to join the union of the rank and file employees. Dany I. Fernandez and Jesus R. Quinto, Jr., Chief Engineers of the Maintenance and Manufacturing Department, respectively, act as foremen to the line engineers, mechanics and other non-skilled workers and responsible [for] the preparation and organization of maintenance shop fabrication and schedules, inventory and control

[5] CA *rollo*, p. 66.

[6] *Id*. at 67.

[7] *Id*. at 68.

[8] *Id*. at 61-65.

[9] G.R. No. 96425, February 4, 1992, 205 SCRA 802.

of materials and supplies and tasked to implement training plans on line engineers and evaluate the performance of their subordinates. The above-stated actual functions of Dany I. Fernandez and Jesus R. Quinto, Jr. are clear manifestation that they are supervisory employees.

xxx xxx xxx

Since petitioner's members are mixture of rank and file and supervisory employees, petitioner union, at this point [in] time, has not attained the status of a legitimate labor organization. Petitioner should first exclude the supervisory employees from its membership before it can attain the status of a legitimate labor organization. The above judgment is supported by the decision of the Supreme Court in the Toyota Case[10] wherein the High Tribunal ruled:

> "As respondent union's membership list contains the names of at least twenty seven (27) supervisory employees in Level Five Positions, the union could not prior to purging itself of its supervisory employee members, attain the status of a legitimate labor organization. Not being one, it cannot possess the requisite personality to file a petition for certification election." (Underscoring omitted.)

xxx xxx xxx

Furthermore, the commingling of rank and file and supervisory employees in one (1) bargaining unit cannot be cured in the exclusion-inclusion proceedings [at] the pre-election conference. The above ruling is supported by the Decision of the Supreme Court in *Dunlop Slazenger (Phils.), Inc. vs. Honorable Secretary of Labor and Employment, et al.*, G.R. No. 131248 dated December 11, 1998[11] x x x.

xxx xxx xxx

WHEREFORE, premises considered, the petition for certification election is hereby dismissed for lack of requisite legal status of petitioner to file this instant petition.

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[10] *Toyota Motor Philippines Corporation v. Toyota Motor Philippines Corporation Labor Union*, 335 Phil. 1045 (1997).

[11] 360 Phil. 306 (1998).

SO ORDERED.[12] (Emphasis supplied)

On the basis of the aforecited decision, respondent filed with DOLE Regional Office No. IV a Petition for Cancellation of Charter/Union Registration of KFWU,[13] the final outcome of which, unfortunately, cannot be ascertained from the records.

Meanwhile, KFWU appealed[14] to the DOLE which issued a Decision on August 18, 2000, the dispositive portion of which reads:

WHEREFORE, the appeal is GRANTED. The Order dated 17 May 2000 of the Med-Arbiter is REVERSED and SET ASIDE. Accordingly, let the entire records of the case be remanded to the office of origin for the immediate conduct of certification election, subject to the usual pre-election conference, among the rank-and-file employees of Kawashima Textile Manufacturing Philippines, Inc. with the following choices:

1. Kawashima Free Workers Union-PTGWO Local Chapter No. 803; and

2. No union.

Pursuant to Rule XI, Section 11.1 of the New Implementing Rules, the employer is hereby directed to submit to the office of origin the certified list of current employees in the bargaining unit for the last three months prior to the issuance of this decision.

SO DECIDED.[15]

The DOLE held that Med-Arbiter Bactin's reliance on the decisions of the Court in *Toyota Motor Philippines Corporation v. Toyota Motor Philippines Corporation Labor Union*[16] and *Dunlop Slazenger, Inc. v. Secretary of Labor and Employment*[17]

[12] CA *rollo*, pp. 29-30.

[13] *Id*. at 70.

[14] *Id*. at 49.

[15] *Rollo*, p. 55.

[16] *Supra* note 10.

[17] *Supra* note 11.

was misplaced, for while Article 245 declares supervisory employees ineligible for membership in a labor organization for rank-and-file employees, the provision did not state the effect of such prohibited membership on the legitimacy of the labor organization and its right to file for certification election. Neither was such mixed membership a ground for cancellation of its registration. Section 11, Paragraph II, Rule XI of Department Order No. 9 "provides for the dismissal of a petition for certification election based on lack of legal personality of a labor organization only on the following grounds: (1) [KFWU] is not listed by the Regional Office or the Bureau of Labor Relations in its registry of legitimate labor organizations; or (2) [KFWU's] legal personality has been revoked or cancelled with finality."[18] The DOLE noted that neither ground existed; on the contrary, KFWU's legal personality was well-established, for it held a certificate of creation and had been listed in the registry of legitimate labor organizations.

As to the failure of KFWU to file its books of account, the DOLE held that such omission was not a ground for revocation of union registration or dismissal of petition for certification election, for under Section 1, Rule VI of Department Order No. 9, a local or chapter like KFWU was no longer required to file its books of account.[19]

Respondent filed a Motion for Reconsideration[20] but the DOLE denied the same in its September 28, 2000 Resolution.[21]

However, on appeal by respondent, the CA rendered the December 13, 2002 Decision assailed herein, reversing the August 18, 2000 DOLE Decision, thus:

Since respondent union clearly consists of both rank and file and supervisory employees, it cannot qualify as a legitimate labor organization imbued with the requisite personality to file a petition for certification election. This infirmity in union

[18] *Rollo,* p. 54.

[19] *Id*.

[20] CA *rollo,* p. 39.

[21] *Id*. at 36.

membership cannot be corrected in the inclusion-exclusion proceedings during the pre-election conference.

Finally, contrary to the pronouncement of public respondent, the application of the doctrine enunciated in *Toyota Motor Philippines Corporation vs. Toyota Motor Philippines Corporation Labor Union* was not construed in a way that effectively denies the fundamental right of respondent union to organize and seek bargaining representation x x x.

For ignoring jurisprudential precepts on the matter, the Court finds that the Undersecretary of Labor, acting under the authority of the Secretary of Labor, acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

WHEREFORE, premises considered, the Petition is hereby GRANTED. The Decision dated 18 August 2000 of the Undersecretary of Labor, acting under the authority of the Secretary, is hereby REVERSED and SET ASIDE. The Order dated 17 May 2000 of the Med-Arbiter dismissing the petition for certification election filed by Kawashima Free Workers Union-PTGWO Local Chapter No. 803 is REINSTATED.

SO ORDERED.[22] (Emphasis supplied)

KFWU filed a Motion for Reconsideration[23] but the CA denied it.

The Republic of the Philippines (petitioner) filed the present petition to seek **closure** on two issues:

First, whether a mixed membership of rank-and-file and supervisory employees in a union is a ground for the dismissal of a petition for certification election in view of the amendment brought about by D.O. 9, series of 1997, which deleted the phraseology in the old rule that "[t]he appropriate bargaining unit of the rank-and-file employee shall not include the supervisory employees and/or security guards;" and

Second, whether the legitimacy of a duly registered labor organization can be collaterally attacked in a petition for a certification

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[22] *Rollo*, pp. 33-34.

[23] CA *rollo*, p. 213.

election through a motion to dismiss filed by an employer such as Kawashima Textile Manufacturing Phils., Inc.[24]

The petition is imbued with merit.

The key to the closure that petitioner seeks could have been Republic Act (R.A.) No. 9481.[25] Sections 8 and 9 thereof provide:

Section 8. Article 245 of the Labor Code is hereby amended to read as follows:

> "Art. 245. *Ineligibility of Managerial Employees to Join any Labor Organization; Right of Supervisory Employees.* - Managerial employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in the collective bargaining unit of the rank-and-file employees but may join, assist or form separate collective bargaining units and/or legitimate labor organizations of their own. The rank and file union and the supervisors' union operating within the same establishment may join the same federation or national union."

Section 9. A new provision, Article 245-A is inserted into the Labor Code to read as follows:

> "Art. 245-A. *Effect of Inclusion as Members of Employees Outside the Bargaining Unit.* - **The inclusion as union members of employees outside the bargaining unit shall not be a ground for the cancellation of the registration of the union. Said employees are automatically deemed removed from the list of membership of said union**." (Emphasis supplied)

Moreover, under Section 4, a pending petition for cancellation of registration will not hinder a legitimate labor organization from initiating a certification election, *viz*:

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[24] *Rollo*, p. 14.

[25] An Act Strengthening the Workers' Constitutional Right to Self-Organization, Amending for the Purpose Presidential Decree No. 442, as Amended, Otherwise Known as the Labor Code of the Philippines, which lapsed into law on May 25, 2007 without the signature of the President, in accordance with Article VI, Section 27 (1) of the Constitution.

Sec. 4. A new provision is hereby inserted into the Labor Code as Article 238-A to read as follows:

> "Art. 238-A. *Effect of a Petition for Cancellation of Registration.* - **A petition for cancellation of union registration shall not suspend the proceedings for certification election nor shall it prevent the filing of a petition for certification election**.
>
> In case of cancellation, nothing herein shall restrict the right of the union to seek just and equitable remedies in the appropriate courts." (Emphasis supplied)

Furthermore, under Section 12 of R.A. No. 9481, employers have no personality to interfere with or thwart a petition for certification election filed by a legitimate labor organization, to wit:

Sec. 12. A new provision, Article 258-A is hereby inserted into the Labor Code to read as follows:

> "Art. 258-A. *Employer as Bystander*. - In all cases, whether the petition for certification election is filed by an employer or a legitimate labor organization, **the employer shall not be considered a party thereto with a concomitant right to oppose a petition for certification election. The employer's participation in such proceedings shall be limited to: (1) being notified or informed of petitions of such nature; and (2) submitting the list of employees during the pre-election conference should the Med-Arbiter act favorably on the petition**." (Emphasis supplied)

However, R.A. No. 9481 took effect only on June 14, 2007;[26] hence, it applies only to labor representation cases filed on or

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[26] Sec. 15. *Effectivity Clause.* - This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in at least two newspapers of general circulation.

R.A. No. 9481 was published in Malaya and Business Mirror, two newspapers of general circulation, on May 30, 2007, and took effect 15 days thereafter, or on June 14, 2007. However, it is noted that DOLE has not issued implementing rules.

after said date.[27] As the petition for certification election subject matter of the present petition was filed by KFWU on January 24, 2000,[28] R.A. No. 9481 cannot apply to it. There may have been curative labor legislations[29] that were given retrospective effect,[30] but not the aforecited provisions of R.A. No. 9481, for otherwise, substantive rights and interests already vested would be impaired in the process.[31]

Instead, the law and rules in force at the time of the filing by KFWU of the petition for certification election on January 24, 2000 are R.A. No. 6715,[32] amending Book V of Presidential

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[27] *San Miguel Corporation Employees Union-Phil. Transport and General Workers Organization v. San Miguel Packaging Products Employees Union-Pambansang Diwa ng Manggagawang Pilipino*, G.R. No. 171153, September 12, 2007, 533 SCRA 125.

[28] *Supra* note 5.

[29] Of retroactive effect are: a) laws expressly made retrospective in application, except in cases of ex post facto laws (*United States. v. Diaz Conde*, 42 Phil. 766 [1922]) or impairment of obligation of contract (*Asiatic Petroleum, Co. v. Llanes*, 49 Phil. 466 [1926]); b) procedural laws, prescribing rules and forms of procedures of enforcing rights or obtaining redress for their invasion (*Romero v. Court of Appeals*, G.R. No. 142803, November 20, 2007, 537 SCRA 643; *Subido, Jr. v. Sandiganbayan*, 334 Phil. 346 [1997]); (c) curative statutes which cure errors and irregularities and validate judicial or administrative proceedings, acts of public officers, or private deeds and contracts that otherwise would not produce their intended consequences due to some statutory disability or failure to comply with technical rules (*Government of the Philippine Islands v. Municipality of Binalonan*, 32 Phil. 634 [1915]); (e) laws interpreting others; (f) laws creating new rights (*Bona v. Briones*, 38 Phil. 276 [1918]); and (g) penal statutes insofar as they favor the accused who is not a habitual criminal (Article 22, Revised Penal Code).

[30] *Enriquez Security Services, Inc. v. Cabotaje*, G.R. No. 147993, July 21, 2006, 496 SCRA 169; *Rufina Patis v. Alusitain*, 478 Phil. 544 (2004). See also *Batong Buhay Gold Mines, Inc. v. Dela Serna*, 370 Phil. 872 (1999), citing *Briad Agro Development v. Dela Cerna*, G.R. No. 82805, November 9, 1989, 179 SCRA 269.

[31] *Land Bank of the Philippines v. De Leon*, 447 Phil. 495, 503 (2003).

[32] An Act to Extend Protection to Labor, Strengthen the Constitutional Rights of Workers to Self-Organization, Collective Bargaining and Peaceful Concerted Activities, and Foster Industrial Peace and Harmony, effective March 21, 1989.

Decree (P.D.) No. 442 (Labor Code),[33] as amended, and the Rules and Regulations Implementing R.A. No. 6715,[34] as amended by Department Order No. 9, series of 1997.[35]

It is within the parameters of R.A. No. 6715 and the Implementing Rules that the Court will now resolve the two issues raised by petitioner.

If there is one constant precept in our labor laws – be it Commonwealth Act No. 213 (1936),[36] R.A. No. 875 (1953),[37] P.D. No. 442 (1974), Executive Order (E.O.) No. 111 (1986)[38] or R.A. No. 6715 (1989) - it is that only a legitimate labor organization may exercise the right to be certified as the exclusive representative of all the employees in an appropriate collective bargaining unit for purposes of collective bargaining.[39] What

[33] The Labor Code of the Philippines, effective November 1, 1974.

[34] Approved on May 24, 1989.

[35] Effective June 21, 1997.

[36] An Act to Define and Regulate Legitimate Labor Organizations; approved on November 21, 1936.

[37] An Act Proposing Industrial Peace and Other Purposes, effective June 17, 1953.

[38] Amending Certain Provisions of the Labor Code of the Philippines, as amended; effective March 3, 1997, but applied retroactively in *Briad Agro Development v. Dela Cerna*, *supra* note 28.

[39] Commonwealth Act No. 213 provides:

Sec. 2. All associations which are duly organized and registered with, and permitted to operate by, the Department of Labor, shall have the right to collective bargaining with employers x x x. The registration of, and the issuance of a permit to any legitimate labor organization shall entitle it to all the rights and privileges granted by law.

R.A. No. 875 provides:

Sec. 24. Rights of Labor Organizations. — A legitimate labor organization shall have the right — (a) To act as the representative of its members for the purpose of collective bargaining, pursuant to Section Three of this Act; (b) To be certified as the exclusive representative of the employees in a collective bargaining unit, as provided in Section Twelve (a) x x x.

P.D. No. 442 as amended by E.O. No. 111 and, thereafter, R.A. No. 6715, provides:

has varied over the years has been the degree of enforcement of this precept, as reflected in the shifting scope of administrative and judicial scrutiny of the composition of a labor organization before it is allowed to exercise the right of representation.

One area of contention has been the composition of the membership of a labor organization, specifically whether there is a mingling of supervisory and rank-and-file employees and how such questioned mingling affects its legitimacy.

It was in R.A. No. 875, under Section 3, that such questioned mingling was first prohibited,[40] to wit:

> Sec. 3. *Employees' right to self-organization*. – Employees shall have the right to self-organization and to form, join or assist labor organizations of their own choosing for the purpose of collective bargaining through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection**. Individuals employed as supervisors shall not be eligible for membership in a labor organization of employees under their supervision but may form separate organizations of their own.** (Emphasis supplied)

Nothing in R.A. No. 875, however, tells of how the questioned mingling can affect the legitimacy of the labor organization. Under Section 15, the only instance when a labor organization loses its legitimacy is when it violates its duty to bargain collectively; but there is no word on whether such mingling would also result in loss of legitimacy. Thus, when the issue of whether the membership of two supervisory employees impairs the legitimacy of a rank-and-file labor organization came before the Court *En Banc* in *Lopez v. Chronicle Publication Employees Association*,[41] the majority pronounced:

Section 17. *Article 242 of the same Code* is amended to read as follows:

"Article 242. Rights of legitimate labor organizations. - A legitimate labor organization shall have the right: "(a) To act as the representative of its members for the purpose of collective bargaining; "(b) To be certified as the exclusive representative of all the employees in an appropriate collective bargaining unit for purposes of collective bargaining x x x.

[40] Commonwealth Act No. 213 contained no provision on the matter.

[41] 120 Phil. 1490 (1964).

It may be observed that nothing is said of the effect of such ineligibility upon the union itself or on the status of the other qualified members thereof should such prohibition be disregarded. Considering that the law is specific where it intends to divest a legitimate labor union of any of the rights and privileges granted to it by law, **the absence of any provision on the effect of the disqualification of one of its organizers upon the legality of the union, may be construed to confine the effect of such ineligibility only upon the membership of the supervisor. In other words, the invalidity of membership of one of the organizers does not make the union illegal, where the requirements of the law for the organization thereof are, nevertheless, satisfied and met.**[42] (Emphasis supplied)

Then the Labor Code was enacted in 1974 without reproducing Sec. 3 of R.A. No. 875. The provision in the Labor Code closest to Sec. 3 is Article 290,[43] which is deafeningly silent on the prohibition against supervisory employees mingling with rank-and-file employees in one labor organization. Even the Omnibus Rules Implementing Book V of the Labor Code[44] (Omnibus Rules) merely provides in Section 11, Rule II, thus:

Sec. 11. *Supervisory unions and unions of security guards to cease operation*. – All existing supervisory unions and unions of security guards shall, upon the effectivity of the Code, cease to operate as such and their registration certificates shall be deemed automatically cancelled. However, existing collective agreements with such unions, the life of which extends beyond the date of effectivity of the Code shall be respected until their expiry date insofar as the economic benefits granted therein are concerned.

Members of supervisory unions who do not fall within the definition of managerial employees shall become eligible to

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[42] *Id*. at 1494.

[43] Art. 290. *Coverage and employees' rights to self-organization*. – All persons employed in commercial, industrial, agricultural, religious, charitable, educational institutions, or enterprises, whether engaged for profit or not, shall have the right to self-organization and to form, join or assist labor organizations for purposes of collective bargaining.

After several amendments and renumbering of P.D. No. 442, Art. 290 thereof later became Art. 243.

[44] Approved on January 19, 1975.

join or assist the rank and file organization. The determination of who are managerial employees and who are not shall be the subject of negotiation between representatives of supervisory union and the employer. If no agreement is reached between the parties, either or both of them may bring the issue to the nearest Regional Office for determination. (Emphasis supplied)

The obvious repeal of the last clause of Sec. 3, R.A. No. 875 prompted the Court to declare in *Bulletin v. Sanchez*[45] that supervisory employees who do not fall under the category of managerial employees may join or assist in the formation of a labor organization for rank-and-file employees, but they may not form their own labor organization.

While amending certain provisions of Book V of the Labor Code, E.O. No. 111 and its implementing rules[46] continued to recognize the right of supervisory employees, who do not fall under the category of managerial employees, to join a rank-and-file labor organization.[47]

Effective 1989, R.A. No. 6715 restored the prohibition against the questioned mingling in one labor organization, *viz*:

Sec. 18**.** *Article 245 of the same Code*, as amended, is hereby further amended to read as follows

> "Art. 245. Ineligibility of managerial employees to join any labor organization; right of supervisory employees. Managerial employees are not eligible to join, assist or form any labor organization. **Supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own.**" (Emphasis supplied)

Unfortunately, just like R.A. No. 875, R.A. No. 6715 omitted specifying the exact effect any violation of the

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[45] 228 Phil. 600, 611 (1986). See also *United Pepsi-Cola Supervisory Union v. Laguesma*, 351 Phil. 244, 279 (1998).

[46] Approved on March 26, 1987.

[47] Section 11, Rule II, Book V of the Rules and Regulations Implementing the Labor Code remained untouched.

prohibition would bring about on the legitimacy of a labor organization.

It was the Rules and Regulations Implementing R.A. No. 6715 (1989 Amended Omnibus Rules) which supplied the deficiency by introducing the following amendment to Rule II (Registration of Unions):

> Sec. 1. *Who may join unions*. – x x x **Supervisory employees and security guards shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own**; Provided, that those supervisory employees who are included in an existing rank-and-file bargaining unit, upon the effectivity of Republic Act No. 6715, shall remain in that unit x x x. (Emphasis supplied)

and Rule V (Representation Cases and Internal-Union Conflicts) of the Omnibus Rules, *viz*:

> Sec. 1. *Where to file*. – A petition for certification election may be filed with the Regional Office which has jurisdiction over the principal office of the employer. The petition shall be in writing and under oath.
>
> Sec. 2. *Who may file*. – Any legitimate labor organization or the employer, when requested to bargain collectively, may file the petition.
>
> The petition, when filed by a legitimate labor organization, shall contain, among others:
>
> xxx xxx xxx
>
> **(c) description of the bargaining unit which shall be the employer unit unless circumstances otherwise require; and provided further, that the appropriate bargaining unit of the rank-and-file employees shall not include supervisory employees and/or security guards.** (Emphasis supplied)

By that provision, any questioned mingling will prevent an otherwise legitimate and duly registered labor organization from exercising its right to file a petition for certification election.

Thus, when the issue of the effect of mingling was brought to the fore in *Toyota*,[48] the Court, citing Article 245 of the Labor Code, as amended by R.A. No. 6715, held:

> Clearly, based on this provision, a labor organization composed of both rank-and-file and supervisory employees is no labor organization at all. It cannot, for any guise or purpose, be a legitimate labor organization. Not being one, **an organization which carries a mixture of rank-and-file and supervisory employees cannot possess any of the rights of a legitimate labor organization, including the right to file a petition for certification election for the purpose of collective bargaining.** It becomes necessary, therefore, **anterior to the granting of an order allowing a certification election, to inquire into the composition of any labor organization whenever the status of the labor organization is challenged on the basis of Article 245 of the Labor Code.**
>
> xxx xxx xxx
>
> In the case at bar, as respondent union's membership list contains the names of at least twenty-seven (27) supervisory employees in Level Five positions, the union could not, prior to purging itself of its supervisory employee members, attain the status of a legitimate labor organization. Not being one, it cannot possess the requisite personality to file a petition for certification election.[49] (Emphasis supplied)

In *Dunlop*,[50] in which the labor organization that filed a petition for certification election was one for supervisory employees, but in which the membership included rank-and-file employees, the Court reiterated that such labor organization had no legal right to file a certification election to represent a bargaining unit composed of supervisors for as long as it counted rank-and-file employees among its members.[51]

It should be emphasized that the petitions for certification election involved in *Toyota* and *Dunlop* were filed on November

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[48] *Supra* note 10.

[49] *Id*. at 1053, 1055.

[50] *Supra* note 11.

[51] *Id*. at 312.

26, 1992 and September 15, 1995, respectively; hence, the 1989 Rules was applied in both cases.

But then, on June 21, 1997, the 1989 Amended Omnibus Rules was further amended by Department Order No. 9, series of 1997 (1997 Amended Omnibus Rules). Specifically, the requirement under Sec. 2(c) of the 1989 Amended Omnibus Rules - that the petition for certification election indicate that the bargaining unit of rank-and-file employees has not been mingled with supervisory employees - was removed. Instead, what the 1997 Amended Omnibus Rules requires is a plain description of the bargaining unit, thus:

Rule XI
Certification Elections

x x x

Sec. 4. *Forms and contents of petition*. - The petition shall be in writing and under oath and shall contain, among others, the following: x x x (c) The description of the bargaining unit.[52]

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[52] As further amended by DOLE Department Order No. 40 s. 2003, approved on February 14, 2003, the Omnibus Rules now requires the following documents to support a petition for certification election:

Section 4. Form and contents of petition. - The petition shall be in writing, verified under oath by the president of petitioning labor organization. Where the petition is filed by a federation or national union, it shall verified under oath by the president or its duly authorized representative. The petition shall contain the following: (a) the name of petitioner, its address, and affiliation if appropriate, the date and number of its certificate of registration. If the petition is filed by a federation or national union, the date and number of the certificate of registration or certificate of creation of chartered local; (b) the name, address and nature of employer's business; (c) the description of the bargaining unit; (d) the approximate number of employees in the bargaining unit; (e) the names and addresses of other legitimate labor unions in the bargaining unit; (f) a statement indicating any of the following circumstances: 1) that the bargaining unit is unorganized or that there is no registered collective bargaining agreement covering the employees in the bargaining unit; 2) if there exists a duly registered collective bargaining agreement, that the petition is filed within the sixty-day freedom period of such agreement; or 3) if another union had been previously recognized voluntarily or certified in a valid certification, consent or run-off election, that the petition is filed outside the one-year period from entry of voluntary recognition or conduct of certification or run-off election

In *Pagpalain Haulers, Inc. v. Trajano,*[53] the Court had occasion to uphold the validity of the 1997 Amended Omnibus Rules, although the specific provision involved therein was only Sec. 1, Rule VI, to wit:

> Sec. 1. *Chartering and creation of a local/chapter*.- A duly registered federation or national union may directly create a local/ chapter by submitting to the Regional Office or to the Bureau two (2) copies of the following: a) a charter certificate issued by the federation or national union indicating the creation or establishment of the local/chapter; (b) the names of the local/chapter's officers, their addresses, and the principal office of the local/chapter; and (c) the local/ chapter's constitution and by-laws; provided that where the local/chapter's constitution and by-laws is the same as that of the federation or national union, this fact shall be indicated accordingly.
>
> All the foregoing supporting requirements shall be certified under oath by the Secretary or the Treasurer of the local/chapter and attested to by its President.

which does not require that, for its creation and registration, a local or chapter submit a list of its members.

Then came *Tagaytay Highlands Int'l. Golf Club, Inc. v. Tagaytay Highlands Employees Union-PGTWO*[54] in which the core issue was whether mingling affects the legitimacy of a labor organization and its right to file a petition for certification election. This time, given the altered legal milieu, the Court abandoned the view in *Toyota* and *Dunlop* and reverted to its pronouncement in *Lopez* that while there is a prohibition against the mingling of supervisory and rank-and-file employees in one labor organization, the Labor Code does not provide for the effects thereof.[55] Thus, the Court held that after a labor

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and no appeal is pending thereon; (g) in an organized establishment, the signature of at least twenty-five percent (25%) of all employees in the appropriate bargaining unit shall be attached to the petition at the time of its filing; and (h) other relevant facts.

[53] 369 Phil. 617, 624 (1999).

[54] 443 Phil. 841 (2003).

[55] *Id.* at 850.

organization has been registered, it may exercise all the rights and privileges of a legitimate labor organization. Any mingling between supervisory and rank-and-file employees in its membership cannot affect its legitimacy for that is not among the grounds for cancellation of its registration, unless such mingling was brought about by misrepresentation, false statement or fraud under Article 239 of the Labor Code.[56]

In *San Miguel Corp. (Mandaue Packaging Products Plants) v. Mandaue Packing Products Plants-San Miguel Packaging Products-San Miguel Corp. Monthlies Rank-and-File Union-FFW*,[57] the Court explained that since the 1997 Amended Omnibus Rules does not require a local or chapter to provide a list of its members, it would be improper for the DOLE to deny recognition to said local or chapter on account of any question pertaining to its individual members.[58]

More to the point is *Air Philippines Corporation v. Bureau of Labor Relations*,[59] which involved a petition for cancellation of union registration filed by the employer in 1999 against a rank-and-file labor organization on the ground of mixed membership:[60] the Court therein reiterated its ruling in *Tagaytay Highlands* that the inclusion in a union of disqualified employees is not among the grounds for cancellation, unless such inclusion is due to misrepresentation, false statement or fraud under the circumstances enumerated in Sections (a) and (c) of Article 239 of the Labor Code.[61]

All said, while the latest issuance is R.A. No. 9481, the 1997 Amended Omnibus Rules, as interpreted by the Court in *Tagaytay Highlands*, *San Miguel* and *Air Philippines*, had already set

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[56] *Id*. at 853-854.

[57] G.R. No. 152356, August 16, 2005, 467 SCRA 107.

[58] *Id*. at 124. Note that while the issue of mingling was raised, the Court saw no point to resolve it in said case for the DOLE had settled the same with finality in favor of the labor organization, *id*. at 132.

[59] G.R. No. 155395, June 22, 2006, 492 SCRA 243.

[60] *Id*. at 246.

[61] *Id*. at 249-250; citing the minute resolution *SPI Technologies v. Department of Labor and Employment*, G.R. No. 137422, March 8, 1999.

the tone for it. *Toyota* and *Dunlop* no longer hold sway in the present altered state of the law and the rules.

Consequently, the Court reverses the ruling of the CA and reinstates that of the DOLE granting the petition for certification election of KFWU.

Now to the second issue of whether an employer like respondent may collaterally attack the legitimacy of a labor organization by filing a motion to dismiss the latter's petition for certification election.

Except when it is requested to bargain collectively,[62] an employer is a mere bystander to any petition for certification election; such proceeding is non-adversarial and merely investigative, for the purpose thereof is to determine which organization will represent the employees in their collective bargaining with the employer.[63] The choice of their representative is the exclusive concern of the employees; the employer cannot have any partisan interest therein; it cannot interfere with, much less oppose, the process by filing a motion to dismiss or an appeal from it;[64] not even a mere allegation that some employees participating in a petition for certification election are actually managerial employees will lend an employer legal personality to block the certification election.[65] The employer's only right in the proceeding is to be notified or informed thereof.[66]

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[62] Art. 258. *When an employer may file petition.* - When requested to bargain collectively, an employer may petition the Bureau for an election. If there is no existing certified collective bargaining agreement in the unit, the Bureau shall, after hearing, order a certification election.

[63] *Belyca Corp. v. Ferrer-Calleja*, G.R. No. 77395, November 29, 1988, 168 SCRA 184, 197.

[64] *Laguna Autorparts Manufacturing Corporation v. Office of the Secretary, Department of Labor and Employment*, G.R. No. 157146, April 29, 2005, 457 SCRA 730, 742.

[65] *Philippine Telegraph and Telephone Corp. v. Laguesma*, G.R. No. 101730, June 17, 1993, 223 SCRA 452, 456.

[66] *SMC Quarry 2 Workers Union-February Six Movement (FSM) Local Chapter No. 1564 v. Titan Megabags Industrial Corporation*, G.R. No. 150761, May 19, 2004, 428 SCRA 524, 528; *San Miguel Foods, Inc. v. Laguesma*, 331 Phil. 362, 374 (1996).

The amendments to the Labor Code and its implementing rules have buttressed that policy even more.

WHEREFORE, the petition is *GRANTED*. The December 13, 2002 Decision and October 7, 2003 Resolution of the Court of Appeals and the May 17, 2000 Order of Med-Arbiter Anastacio L. Bactin are *REVERSED* and *SET ASIDE*, while the August 18, 2000 Decision and September 28, 2000 Resolution of the Department of Labor and Employment are *REINSTATED*.

No costs.

SO ORDERED.

Quisumbing,[*] *Ynares-Santiago (Chairperson), Nachura,* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 160653. July 23, 2008]

JESUSITO D. LEGASPI, doing business under the name and style of J.D. Legaspi Construction, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, represented by Social Security System (SSS),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; VENUE OF PERSONAL ACTIONS; GENERAL RULE; RESTRICTIVE STIPULATIONS ON VENUE DISTINGUISHED FROM PERMISSIVE STIPULATIONS.— As a general rule, venue of personal actions is governed by Section 2, Rule 4 of the

[*] In lieu of Justice Minita V. Chico-Nazario, per Special Order No. 508 dated June 25, 2008.

Rules of Court, to wit: Sec. 2. *Venue of personal actions*. – All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant, where he may be found, at the election of the plaintiff. The parties, however, are not precluded from agreeing in writing on an exclusive venue, as qualified by Section 4 of the same rule. Written stipulations as to venue may be restrictive in the sense that the suit may be filed only in the place agreed upon, or merely permissive in that the parties may file their suit not only in the place agreed upon but also in the places fixed by law. As in any other agreement, what is essential is the ascertainment of the intention of the parties respecting the matter.

2. ID.; ID.; ID.; RESTRICTIVE STIPULATIONS ON VENUE; ABSENT QUALIFYING OR RESTRICTIVE WORDS, THE STIPULATION SHOULD BE DEEMED AS MERELY AN AGREEMENT ON AN ADDITIONAL FORUM, NOT AS LIMITING VENUE TO THE SPECIFIED PLACE.— As regards *restrictive* stipulations on venue, jurisprudence instructs that it must be shown that such stipulation is exclusive. In the absence of qualifying or restrictive words, such as "exclusively," "waiving for this purpose any other venue," "shall only" preceding the designation of venue, "to the exclusion of the other courts," or words of similar import, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place. In the present case, the Construction Agreement provides: xxx The venue is specific- Quezon City - and accompanied by the words "the CONTRACTOR hereby expressly waiving any other venue," which connote exclusivity of the designated venue. These terms clearly stipulate exclusively the venue where actions arising from the Construction Agreement should be filed.

3. ID.; ID.; CAUSE OF ACTIONS; ALLEGATIONS IN A COMPLAINT, WHEN SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION; CASE AT BAR.— A motion to dismiss based on lack of cause of action hypothetically admits the truth of the allegations in the complaint. The allegations in a complaint are sufficient to constitute a cause of action against the defendants if, hypothetically admitting the facts alleged, the court can render a valid judgment upon the same in accordance

with the prayer therein. The complaint filed by petitioner sets forth the ultimate facts upon which his claim for price adjustment is based. Respondent's allegation that petitioner is not entitled to it is a matter of defense, properly raised in an answer which will then be accordingly threshed out in full-blown proceedings. Thus, the CA was correct when it ruled that the complaint does not have to establish or allege facts proving the existence of a cause of action at the outset, as this will have to be done at the trial on the merits of the case.

APPEARANCES OF COUNSEL

Zamora Poblador Vasquez & Bretaña for petitioner.

The Solicitor General for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.:*

Jesusito D. Legaspi, as owner and manager of J.D. Legaspi Construction (petitioner), entered into a Construction Agreement with the Social Security System (respondent) in June 1997 for the construction of a four-storey building in Baguio City which will serve as respondent's branch office. The contract price was ₱88,348,533.74.

In an unfortunate turn of events, the Philippine peso collapsed as against the U.S. Dollar in 1997.[1] Thus, the cost of imported materials which petitioner was contracted to use and install on the project shot up, and petitioner incurred expenses more than the original contract price. Petitioner had several meetings with respondent's representatives during which he informed them of his difficulty in meeting his obligations under the contract due to the devaluation of peso. After several failed meetings, petitioner sent a letter to respondent requesting an adjustment in the contract price, which was denied by respondent. This constrained petitioner to file a complaint for payment of sum

[1] Also known as the 1997-1998 Asian Financial Crisis.

of money plus damages with the Regional Trial Court (RTC) of Makati City, docketed as Civil Case No. 00-1354.

Instead of filing an answer, respondent, represented by the Office of the Solicitor General, filed a Motion to Dismiss on the grounds that venue was improperly laid and petitioner had no cause of action. On the ground of improper venue, it was respondent's argument that the Construction Agreement provided that all actions may be brought before the proper court in Quezon City and that petitioner waived any other venue.

Respondent also contended that petitioner's allegations in his Complaint stated no cause of action. According to respondent, petitioner sought to amend the contract by increasing the stipulated contract price; however, this cannot be done since amendments or modifications are not allowed in bidded government contracts, specially since the contract expressly provided for a "no escalation" clause. Respondent also argued that an adjustment of the price would be disadvantageous to the government.

In its Order[2] dated July 18, 2001, the RTC denied respondent's Motion to Dismiss. It was the RTC's ruling that the venue was properly laid since petitioner's action was not based on the Construction Agreement which was faithfully complied with by petitioner; rather, it was a collection suit for the increase in the price of imported materials and equipment furnished and installed to complete the construction. The RTC also ruled that petitioner's cause of action was based on Article 1267 of the Civil Code[3] provision on price adjustment and not on the terms and conditions of the Construction Agreement. The RTC was also of the view that respondent's claim of lack of cause of action should be properly raised and proved in a regular trial and not merely by pleadings.[4]

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[2] *Rollo*, pp. 166-168.

[3] Article 1267. When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part.

[4] *Rollo*, p. 167.

Respondent moved to reconsider the Order but this was denied by the RTC in an Order[5] dated September 25, 2001.

Respondent then filed a petition for *certiorari* with the Court of Appeals (CA), and in the assailed Decision[6] dated August 26, 2003, respondent's petition was granted and the RTC was ordered to dismiss Civil Case No. 00-1354, to wit:

> WHEREFORE, the writ of *certiorari* prayed for is hereby GRANTED, and the respondent trial court is ordered to DISMISS the complaint of JESUSITO D. LEGASPI in Civil Case No. 00-1354, without prejudice to the filing of said complaint in the proper court.
>
> SO ORDERED.[7]

Petitioner sought reconsideration of the assailed Decision, which was denied by the CA in its Resolution dated October 27, 2003.[8]

Hence, the present petition for review on *certiorari* under Rule 45 of the Rules of Court, raising as sole ground, *viz*:

> THE HONORABLE COURT OF APPEALS PLAINLY ERRED AND ACTED CONTRARY TO EXISTING LAW AND JURISPRUDENCE IN ORDERING THE DISMISSAL OF THE CIVIL CASE BEFORE THE COURT *A QUO* CONSIDERING THAT VENUE IS PROPERLY LAID.[9]

Petitioner insists that the venue provision in the Construction Agreement does not apply. He argues that his cause of action does not arise from the agreement, nor was it for the performance of any of the obligations under the agreement. According to petitioner, his action was for additional payment due to the extraordinary devaluation of the peso at the time; and is based on Article 1267 of the Civil Code, not on any provision of the

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[5] *Id.* at 184-185.

[6] Penned by Associate Justice Mariano C. del Castillo, with Associate Justices Bernardo P. Abesamis and Arturo D. Brion (now a Member of the Court), concurring; CA *rollo*, pp. 484-492.

[7] *Id.* at 491-492.

[8] *Id.* at 515.

[9] *Rollo*, pp. 15-16.

Construction Agreement. Petitioner believes that his action is personal in nature such that Section 2, Rule 4 of the Rules of Court applies, and he has the option to file the same where he or respondent resides.

Respondent counters that petitioner's claim, while anchored on Article 1267 of the Civil Code, emanated from the Construction Agreement; hence, the restrictive provision on venue applies. Respondent also reiterates its argument that petitioner does not have any cause of action against respondent.

As a general rule, venue of personal actions is governed by Section 2, Rule 4 of the Rules of Court, to wit:

> Sec. 2. *Venue of personal actions*. – All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant, where he may be found, at the election of the plaintiff.

The parties, however, are not precluded from agreeing in writing on an exclusive venue, as qualified by Section 4 of the same rule. Written stipulations as to venue may be restrictive in the sense that the suit may be filed only in the place agreed upon, or merely permissive in that the parties may file their suit not only in the place agreed upon but also in the places fixed by law. As in any other agreement, what is essential is the ascertainment of the intention of the parties respecting the matter.[10]

As regards *restrictive* stipulations on venue, jurisprudence instructs that it must be shown that such stipulation is exclusive. In the absence of qualifying or restrictive words, such as "exclusively," "waiving for this purpose any other venue," "shall only" preceding the designation of venue, "to the exclusion of the other courts," or words of similar import, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place.[11]

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[10] *Unimasters Conglomeration, Inc. v. Court of Appeals*, 335 Phil. 415, 424 (1997).

[11] *Auction in Malinta, Inc. v. Luyaben*, G.R. No. 173979, February 12, 2007, 515 SCRA 569, 572-573.

In the present case, the Construction Agreement provides:

ARTICLE XIV – JUDICIAL REMEDIES

All actions and controversies that may arise from this Agreement involving but not limited to demands for the specific performance of the obligations as specified in the clauses contained herein and/or as resolved or interpreted by the CLIENT pursuant to the third paragraph of Article I hereof may be brought by the parties before the proper courts in Quezon City where the main office of the CLIENT is located, **the CONTRACTOR hereby expressly waiving any other venue**.

xxx xxx xxx[12] (Emphasis supplied)

The venue is specific - Quezon City - and accompanied by the words "the CONTRACTOR hereby expressly waiving any other venue," which connote exclusivity of the designated venue. These terms clearly stipulate exclusively the venue where actions arising from the Construction Agreement should be filed.

Petitioner, however, contends that the case does not arise from the Construction Agreement; hence, it may be filed in Makati City, which is his place of residence.

Contrary to petitioner's contention, the allegations in his complaint indubitably show that his cause of action arose from the Construction Agreement, *viz*:

12. Defendant should be ordered to pay the just and fair price for the construction of its building in Baguio, considering that the foreign currency crisis that hit the country was manifestly beyond the contemplation of the parties. Hence, a re-negotiation of the contract price would be just and reasonable under the circumstances.

13. Plaintiff's request for price adjustment is based on Article 1267 of the New Civil Code, which states:

xxx xxx xxx

15. Clearly, the 65% increase in price for the imported components of the project was manifestly beyond the contemplation of the parties. Hence, plaintiff's request for price adjustment should not be considered as falling under the prohibition stated in Article III of

[12] *Rollo,* p. 55.

the Construction Agreement. Following the principle enunciated in Article 1267 of the Civil Code, plaintiff should be released from the obligation to complete the project at the original contract price, specifically by granting plaintiff a price adjustment in the amount equivalent to the difference between the unit prices as stated in the plans and the actual cost of the purchase.[13]

Petitioner's claim for price adjustment rests on the basic operative facts that the Construction Agreement originally pegged the contract price at ₱88, 348,533.74, and that the devaluation of the peso in 1997 brought about an increase in the costs of imported materials and furnishings to be used in the construction.

Petitioner also alleges in his Complaint that his request for price adjustment should not be considered as falling under the prohibition clause in Article III of the Construction Agreement, to wit:

ARTICLE III - CONTRACT PRICE

The CLIENT shall pay the CONTRACTOR for the full, faithful and complete performance of the works called for under this Agreement, a fixed amount of EIGHTY EIGHT MILLION THREE HUNDRED FORTY EIGHT THOUSAND FIVE HUNDRED THIRTY THREE PESOS AND 74/100 (₱88,348,533.74), Philippine Currency, the manner of payment of which shall be in accordance with Article V hereof subject to the retention of six percent (6%) withholding tax to be remitted directly by the CLIENT to the Bureau of Internal Revenue. The Contract price shall not be subject to escalation. All costs and expenses over and above thereof, except as provided for in Article IV shall be for the account of the CONTRACTOR.[14]

Ineluctably, the allegations in the Complaint relating to petitioner's request for price adjustment clearly originate from the Construction Agreement. Article 1267 of the Civil Code is merely the law upon which petitioner's claim for price adjustment is anchored. What is essential is the factual substance of his claim, as alleged in the Complaint, which should be taken into

[13] *Id*. at 98-99.

[14] *Id*. at 48.

account in determining whether or not it arose from the Construction Agreement.

As correctly ruled by the CA which the Court adopts as its own:

> Although the court was correct in holding that Mr. Legaspi's prayer for price adjustment is anchored on the Civil Code, the controversy in this case started when J.D. Legaspi Construction claimed difficulty of performance due to change of circumstances. In effect, Mr. Legaspi is assailing the "no escalation clause" of the project cost indicated in the contract. If the action proceeds, the court in determining whether Mr. Legaspi has the right to claim will necessarily have to determine the intent of the parties in assuming the contractual risks by necessarily referring to the Construction Agreement. Undoubtedly, Mr. Legaspi's action refers to a dispute arising out of and relating to the provisions of the Agreement. Therefore, the venue stipulation will have to be applied.[15]

The Court also agrees with the CA that petitioner has a cause of action against respondent.

A motion to dismiss based on lack of cause of action hypothetically admits the truth of the allegations in the complaint. The allegations in a complaint are sufficient to constitute a cause of action against the defendants if, hypothetically admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer therein.[16] The complaint filed by petitioner sets forth the ultimate facts upon which his claim for price adjustment is based. Respondent's allegation that petitioner is not entitled to it is a matter of defense, properly raised in an answer which will then be accordingly threshed out in full-blown proceedings. Thus, the CA was correct when it ruled that the complaint does not have to establish or allege facts proving the existence of a cause of action at the outset, as this will have to be done at the trial on the merits of the case.[17]

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[15] CA *rollo*, pp. 490-491.

[16] *Philippine Bank of Communications v. Trazo*, G.R. No. 165500, August 30, 2006, 500 SCRA 242, 256.

[17] *Universal Aquarius Inc. v. Q.C. Human Resources Management Corporation*, G.R. No. 155990, September 12, 2007, 533 SCRA 38, 47.

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

Costs against petitioner.

SO ORDERED.

Quisumbing,[*] *Ynares-Santiago (Chairperson), Nachura,* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 160717. July 23, 2008]

FELICISIMA LUMBRE *y* SARITA, FLORDELIZA VINA *y* LUMBRE, RICARDO LUMBRE *y* SARITA, PRISCILLA S. LUMBRE, LUZVIMINDA SILLA *y* LUMBRE, EMETERIA SILLA *y* LUMBRE, EMILIA S. LUMBRE, ANICIA ARGANA *y* LUMBRE, CLEMENTE BELONDO and CONRADO CANTADA, *petitioners, vs.* **COURT OF APPEALS (First Division) and FLORANTE I. FRANCISCO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUISITES TO PROSPER; NOT PRESENT IN CASE AT BAR.— The extraordinary writ of *certiorari* may be issued only where it is clearly shown that there is patent and gross abuse of discretion as to amount to an evasion of positive duty or to 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 personal hostility. Thus, *certiorari* as a special civil action

[*] In lieu of Justice Minita V. Chico-Nazario, per Special Order No. 508 dated June 25, 2008.

can prosper only when the following requisites concur: (a) a tribunal, a board or an officer exercising judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (b) there is no appeal or plain, speedy and adequate remedy in the ordinary course of law for annulling or modifying the proceeding. Both requisites are absent in this case.

2. ID.; APPEALS; ORDINARY APPEALED CASES BEFORE THE COURT OF APPEALS; APPELLANT'S BRIEF; NON-FILING THEREOF, A GROUND FOR DISMISSAL OF THE APPEAL.— There is no grave abuse of discretion on the part of the CA. The CA properly dismissed the appeal on account of petitioners' failure to file an appellant's brief. This is in accordance with Section 7, Rule 44 of the Rules of Court, which imposes upon the appellant the duty to file an appellant's brief in ordinary appealed cases before the CA xxx. Non-filing of an appellant's brief or a memorandum of appeal is one of the explicitly recognized grounds to dismiss the appeal, as provided in Section 1(e) of Rule 50 of the Rules of Court: xxx.

3. ID.; ID.; ID.; ID.; ID.; RATIONALE.— This Court in *Pineda v. Arcalas*, citing *Enriquez v. Court of Appeals*, provided the rationale for requiring an appellant's brief: [T]he appellant's brief is mandatory for the assignment of errors is vital to the decision of the appeal on the merits. This is because on appeal only errors specifically assigned and properly argued in the brief or memorandum will be considered, except those affecting jurisdiction over the subject matter as well as plain and clerical errors. Otherwise stated, an appellate court has no power to resolve an unassigned error, which does not affect the court's jurisdiction over the subject matter, save for a plain or clerical error.

4. ID.; ID.; ID.; ID.; DISMISSAL OF THE APPEAL FOR NON-FILING THEREOF, PROPER.— Petitioners and their counsel do not deny their procedural infractions, but they ask this Court's indulgence to relax the rules. Unfortunately for petitioners, their plea is not entirely for this Court to decide. If we grant this prayer, we would effectively be faulting the CA for its faithful compliance with the rules of procedure. The 1997 Rules of Civil Procedure, specifically Rules 44 and 50 which are designed for the proper and prompt disposition

of cases before the CA, truly cannot be ignored. The rules provide for a system under which suitors may be heard in the correct form and manner at the prescribed time in an orderly confrontation before a judge whose authority is acknowledged. We cannot simply turn a blind eye to, and tolerate, the transgressions of these rules; to do so would be a disavowal of our own pronouncements. In sum, we cannot attribute grave abuse of discretion to the CA which merely followed the said rules in dismissing the appeal.

5. ID.; ID.; ID.; ID.; MOTION FOR EXTENSION OF TIME FOR FILING A BRIEF, NOT ALLOWED; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— With respect to motions for extension, our ruling in *Bergonia v. Merrera* is instructive: Section 12 of Rule 44 of the Rules of Court provides that an extension of time for the filing of a brief shall not be allowed, except when there is good and sufficient cause, and only when the motion is filed before the expiration of the extension sought. From time to time, a request for extension becomes necessary when an advocate needs more time to study the client's position. Generally, such request is addressed to the sound discretion of the court. Lawyers, who, for one reason or another, decide to dispense with the filing of the required pleading, should promptly manifest this intent to the court. It is necessary for them to do so in order to prevent delay in the disposition of the case. Those who file motions for extension in bad faith misuse the legal process, obstruct justice, and thus become liable to disciplinary action. A lawyer who requests an extension must do so in good faith and with a genuine intent to file the required pleading within the extended period. In granting the request, the court acts on the presumption that the applicant has a justifiable reason for failing to comply with the period allowed. Without this implied trust, the motion for extension will be deemed to be a mere ruse to delay or thwart the appealed decision. The motion will thus be regarded as a means of preventing the judgment from attaining finality and execution and of enabling the movant to trifle with procedure and mock the administration of justice. Given these circumstances, along with the obviously rehashed excuses of petitioners' counsel, we find the petition completely devoid of merit. Diligence is required not only from lawyers but also from their clients.

6. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT A SUBSTITUTE FOR THE LOST OR LAPSED REMEDY OF APPEAL.— The instant petition is a wrong remedy because of the availability of an appeal. After the CA denied their Motion for Reconsideration, petitioners allowed the reglementary period for filing an appeal to lapse, opting instead to file this Petition for *Certiorari*. Well-settled is the rule that *certiorari* is not a substitute for the lost or lapsed remedy of appeal. Although there are instances when *certiorari* may be allowed despite the availability of appeal, in this case we find no compelling reasons to do so, particularly because the issue raised clearly pertains to the wisdom and soundness of the assailed CA Resolutions, which should have been assailed before this Court via a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure.

7. ID.; JUDGMENTS; FINAL AND EXECUTORY; BEYOND THE PURVIEW OF THE SUPREME COURT TO ACT UPON.— Furthermore, the petition was filed way beyond the 15-day reglementary period within which to file the petition for review under Rule 45. Accordingly, the assailed Resolutions of the CA had already become final and executory and beyond the purview of this Court to act upon.

8. ID.; APPEAL; A STATUTORY RIGHT WHICH MAY BE EXERCISED ONLY WITHIN THE PRESCRIBED LIMITS.— Finally, if it appears that the consequences for incurring procedural infractions before the CA and for pursuing the wrong remedial tack are ostensibly harsh, it should be remembered that there is no innate right to appeal. Appeal is a statutory right, which may be exercised only within the prescribed limits. The 1997 Rules of Civil Procedure provides for a rational and orderly method by which appeal can be pursued, and even contingency remedial measures if appeal can no longer be timely pursued. For the failure to duly comply with the said Rules and to undertake a timely appeal despite the existence of such remedy, the petitioners must bear the consequences.

9. ID.; RULES OF PROCEDURE; MAY NOT BE IGNORED TO SUIT THE CONVENIENCE OF A PARTY.— Once again, we stress that the rules of procedure exist for a noble purpose, and to disregard such rules in the guise of liberal construction

> would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation. To the contrary, they help provide for the orderliness vital to our system of justice. Indeed, public order and our system of justice are well served by a conscientious observance by the parties of the procedural rules.

APPEARANCES OF COUNSEL

Eleonor A. Maravilla-Ona for petitioners.

Moreno Law Office for private respondent.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court, praying that the Court of Appeals (CA) be directed by this Court to admit petitioners' Appeal Brief and to reinstate petitioners' appeal. CA Resolution[2] dated April 22, 2003, dismissed the appeal of petitioners in CA-G.R. CV No. 75119, and its Resolution[3] dated September 25, 2003 in the same case, denied their Motion for Reconsideration.[4]

The antecedents are as follows:

On December 15, 1992, private respondent Florante I. Francisco (Florante) filed a case for Quieting of Title with Damages[5] against petitioners Felicisima Lumbre *y* Sarita, Flordeliza Vina *y* Lumbre,

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[1] *Rollo,* pp. 3-12.

[2] Penned by Associate Justice Danilo B. Pine, with Associate Justices Godardo A. Jacinto and Renato C. Dacudao, concurring; id. at 47-49.

[3] *Rollo,* p. at 13.

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

[5] Records (Vol. I), p. 1-9.

Ricardo Lumbre *y* Sarita, Priscilla S. Lumbre, Luzviminda Silla *y* Lumbre, Emeteria Silla *y* Lumbre, Emilia S. Lumbre, Anicia Argana *y* Lumbre, Clemente Belondo, and Conrado Cantada (petitioners) with the Regional Trial Court (RTC) of Imus, Cavite.

Florante alleged that he is the registered owner of a parcel of land known as Lot 7402-D of Subdivision Plan Psd-042106-054870 which is a portion of Lot 7402 (Fls-2285) of the Imus Friar Lands Estate, with an area of 13,090 square meters, situated in *Barangay* Paliparan, Dasmariñas, Cavite and covered by Transfer Certificate of Title (TCT) No. T-361460[6] (subject property). He claimed to have bought the subject property from his sister, Isabelita Francisco (Isabelita), on September 1, 1992, who in turn bought the subject property from one Ildefonso Maliksi on October 28, 1989. Florante further averred that his sister Isabelita had earlier demanded that petitioners vacate the subject property, but the latter claimed that they are the registered owners of the same.

Traversing Florante's allegations, petitioners claimed (1) that the parcel of land which is in their possession and covered by their respective TCTs,[7] particularly known as Lot 7571 consisting of 9,130 square meters, is different from the property subject of Florante's petition; (2) that they acquired their property from their predecessor-in-interest, one Tomas Lumbre, whose right may be traced to one Rufo Reyes who occupied the property since 1927 and who bought the same from the government through the Bureau of Lands on October 20, 1947; and (3) that sometime in February 1990, petitioners subdivided the property among themselves[8] and the corresponding TCTs were individually issued in their favor.

Trial on the merits ensued. Thereafter, in its Decision[9] dated June 7, 2002, the RTC ruled in favor of Florante, thus:

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[6] *Id*. at 10.

[7] TCT Nos. T-348674, T-348675, T-348676, T-348677, T-348678, T-348679, T-348680 and T-348681; Records (Vol. II), pp. 643-650.

[8] Deed of Subdivision; *id*. at 653.

[9] Records (Vol. II), pp. 708-716.

WHEREFORE, premises considered, this Court hereby renders judgment in favor of the plaintiff and against the defendants as follows:

1. Declaring Transfer Certificate of Title Nos. T-348674, T-348675, T-348676, T-348677, T-348678, T-348679, T-348680 and T-348681 issued in the names of defendants as null and void[;]
2. Declaring Transfer Certificate of Title No. T-361460 issued in the name of Florante I. Francisco to be valid and existing;
3. Ordering the defendants to vacate Lot 7402-D;
4. Ordering the defendants to pay plaintiff, jointly and severally, the sum of ₱100,000.00 as reasonable litigation expenses and attorney's fees;
5. Ordering the defendants to pay plaintiff, jointly and severally, the sum of ₱100,000.00 as actual and compensatory damages; and
6. To pay the costs of suit.

SO ORDERED.[10]

Aggrieved by the RTC decision, petitioners, on June 24, 2002, went to the CA on appeal.[11]

On October 23, 2002, petitioners' counsel received the CA's Notice to File Brief [12] dated October 16, 2002, which required the filing of the appellants' brief within forty-five (45) days from receipt of said notice pursuant to Section 7, Rule 44 of the 1997 Rules of Civil Procedure. On November 22, 2002, petitioners' counsel filed a Motion for Extension of Time to File Appellants' Brief[13] alleging that counsel has until December 7, 2002 within which to file said Brief; that in view of her daily court appearances and other equally important professional commitments, the said Brief could not be possibly filed on time; that considering the nature of the issues involved, she needs

[10] *Id*. at 715-716.

[11] Notice of Appeal; *id*. at 718.

[12] CA *rollo*, p. 64.

[13] *Id*. at 46-47.

additional time to intelligently prepare the required Brief; and that said Motion for Extension is not intended to delay the proceedings before the CA. Counsel prayed for an additional period of thirty (30) days from December 7, 2002, or until January 6, 2003, within which to file the Appellants' Brief.

In its Resolution[14] dated December 19, 2002, the CA granted the motion, giving petitioners an additional period of thirty (30) days within which to file the Appellants' Brief, as prayed for.

However, petitioners' counsel failed to file the Appellants' Brief on January 6, 2003. On January 28, 2003, Florante, invoking Rule 50 of the Rules of Civil Procedure, filed a Motion to Dismiss[15] the appeal for failure of petitioners to file the required Appellants' Brief.

On February 5, 2003, petitioners' counsel filed an unverified Motion to Admit Herein Attached Appellants' Brief [16] and the Appellants' Brief [17] itself. Counsel claimed that she was not able to submit said Brief because she needed more time for legal research in order to intelligently and comprehensively prepare the same, considering the nature of the issues involved. She further alleged that she had been pre-occupied with other cases of equal importance, daily court appearances and other professional commitments. As the non-filing of the said Brief on time is not intended to delay the proceedings, counsel prayed that, in the interest of substantial justice, the said Appellants' Brief be duly admitted.

On February 13, 2003, Florante filed his Opposition[18] to petitioners' Motion to Admit Appellants' Brief, pointing out that the grounds relied upon by petitioners' counsel are the very same grounds alleged in her earlier Motion for Extension to File said Brief. Florante opined that the underlying reason for

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[14] *Id*. at 49.

[15] *Id*. at 50-52.

[16] *Id*. at 53-54.

[17] *Id.* at 55-74.

[18] *Id*. at 86-88.

limiting the period to file a Brief or other pleadings under the Rules of Civil Procedure is to improve the administration of justice.

On February 17, 2003, petitioners filed their Reply[19] to the Opposition. Petitioners' counsel ratiocinated that the delay in filing the Appellants' Brief was mainly due to her desire to file a competent and luminous presentation of petitioners' case in order to unburden the CA of the trouble of reading the records of the case. Counsel also mentioned that the case was commenced way back in December 1992, and that she was already the fifth (5th) counsel to advocate the petitioners' cause; as such, she needed sufficient time to go over the voluminous records and to familiarize herself with the case in order to intelligently prepare the Appellants' Brief.

In the assailed Resolution dated April 22, 2003, the CA held:

> Thus, Rule 44, Section 7 provides that defendants-appellants must file their brief within forty-five (45) days from receipt of the letter/ notice from this Court. Defendants-appellants were further given an additional thirty (30) days to file their appeal brief. They had, therefore, a total of seventy-five (75) days to prepare a brief.
>
> While courts may exercise their equity jurisdiction and give a liberal interpretation to rules of procedure, as provided in Section 6, Rule 1 of the 1997 Rules of Civil Procedure, such jurisdiction should be exercised with extreme caution, lest it may defeat the very purpose of the rules of procedure, which is to facilitate the orderly administration of justice.
>
> THE FOREGOING CONSIDERED, the present motion to admit the attached [appellants'] brief is hereby **DENIED**. For failure of the defendants-appellants to file the required number of copies of their appeal brief within the time allowed by the 1997 Rules of Civil Procedure, and within the additional time granted by this Court, the instant appeal is accordingly **DISMISSED**, pursuant to Section 1(e), Rule 50 of the 1997 Rules of Civil Procedure.
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> SO ORDERED.[20]

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[19] *Id.* at 89-92.

[20] *Rollo*, pp. 48-49. (Citations omitted).

On May 23, 2003, petitioners filed their Motion for Reconsideration,[21] alleging that the RTC Decision which is the subject matter of the appeal, is contrary to law and proven facts, such that the dismissal of the appeal not on the merits but on mere technicalities would cause grave miscarriage of justice, as petitioners would lose the lands of which they are the registered owners and which they occupied for more than thirty (30) years. The CA, however, denied said Motion for Reconsideration in its Resolution[22] dated September 25, 2003, reiterating that despite the additional time given to the petitioners, they still failed to file their Brief on time.

Hence, this Petition claiming that the CA gravely abused its discretion, amounting to lack or excess of jurisdiction, when it denied petitioners' Motion to Admit Appellants' Brief and dismissed the appeal based purely on technicalities.

Reiterating their previous arguments that to sustain the CA's ruling would result in petitioners' loss of their property and that the slight relaxation of the rules would not in any way prejudice Florante's rights, petitioners maintain that the liberal construction of the rules is the controlling principle to effectuate substantial justice. Petitioners asseverate that Florante is capitalizing on petitioners' non-observance of the rules to claim ownership over the subject property even if his title is of dubious character. Petitioners also claim that they are the aggrieved parties in this case, as their previous counsel had abandoned them, leaving the task of pursuing their cause to their present counsel, who needed all the time to study the instant case. The non-filing of the Appellants' Brief on time was not deliberate or in disregard of the rules but a mere oversight, and thus, petitioners contend that litigations, as much as possible, should be decided on the merits and not on mere technicalities.[23]

Florante, on the other hand, submits that a special civil action of *certiorari* under Rule 65 is not the proper remedy in this

[21] *Supra* note 4.

[22] *Supra* note 3.

[23] Petitioners' Memorandum dated August 6, 2004; *rollo*, pp. 94-104.

case because (1) the CA did not act with grave abuse of discretion because in the two assailed Resolutions, the CA only enforced Section 1(e), Rule 50 of the Rules, which mandates that appeals be dismissed upon unreasonable failure of the appellants to file their Brief within the reglementary period; and (2) the instant petition is not directed against a mere interlocutory resolution or order but a final resolution of the CA that can be reviewed only on appeal pursuant to Rule 45 of the Rules of Civil Procedure, and the petition for *certiorari* should not be used as a substitute for lost appeal.[24] Finally, Florante argued that the petition failed to specify the acts constitutive of grave abuse of discretion on the part of the CA and that the failure of petitioners' counsel to file the brief on time was due to her ineffective time management, which cannot be used as a ground to reverse the CA's ruling.[25]

The core issue here is whether the CA acted with grave abuse of discretion in dismissing the appeal for petitioners' failure to file the appellants' brief seasonably.

The Petition lacks merit.

The extraordinary writ of *certiorari* may be issued only where it is clearly shown that there is patent and gross abuse of discretion as to amount to an evasion of positive duty or to 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 personal hostility.[26]

Thus, *certiorari* as a special civil action can prosper only when the following requisites concur: (a) a tribunal, a board or an officer exercising judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (b) there is no appeal or plain, speedy and adequate remedy in the ordinary course of law for annulling or modifying the proceeding.[27]

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[24] Florante's Comment dated January 28, 2004; *id*. at 63-67.

[25] Florante's Memorandum dated August 5, 2004; *id*. at 80-88.

[26] *Redeña v. Court of Appeals*, G.R. No. 146611, February 6, 2007, 514 SCRA 389, 403, citing *Lalican v. Vergara*, 276 SCRA 518 (1997).

[27] *Del Mar v. Court of Appeals*, 429 Phil. 19, 28 (2002).

Both requisites are absent in this case.

First. There is no grave abuse of discretion on the part of the CA. The CA properly dismissed the appeal on account of petitioners' failure to file an appellant's brief. This is in accordance with Section 7, Rule 44 of the Rules of Court, which imposes upon the appellant the duty to file an appellant's brief in ordinary appealed cases before the CA, thus:

SEC. 7. *Appellant's brief.* — It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

Non-filing of an appellant's brief or a memorandum of appeal is one of the explicitly recognized grounds to dismiss the appeal, as provided in Section 1(e) of Rule 50 of the Rules of Court:

SECTION 1. *Grounds for dismissal of appeal.* — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

xxx xxx xxx

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;

This Court in *Pineda v. Arcalas*,[28] citing *Enriquez v. Court of Appeals*,[29] provided the rationale for requiring an appellant's brief:

[T]he appellant's brief is mandatory for the assignment of errors is vital to the decision of the appeal on the merits. This is because on appeal only errors specifically assigned and properly argued in the brief or memorandum will be considered, except those affecting jurisdiction over the subject matter as well as plain and clerical errors. Otherwise stated, an appellate court has no power to resolve

[28] G.R. No. 170172, November 23, 2007, 538 SCRA 596, 605.

[29] 444 Phil. 419, 429 (2003).

an unassigned error, which does not affect the court's jurisdiction over the subject matter, save for a plain or clerical error.

Petitioners and their counsel do not deny their procedural infractions, but they ask this Court's indulgence to relax the rules. Unfortunately for petitioners, their plea is not entirely for this Court to decide. If we grant this prayer, we would effectively be faulting the CA for its faithful compliance with the rules of procedure. The 1997 Rules of Civil Procedure, specifically Rules 44 and 50 which are designed for the proper and prompt disposition of cases before the CA, truly cannot be ignored. The rules provide for a system under which suitors may be heard in the correct form and manner at the prescribed time in an orderly confrontation before a judge whose authority is acknowledged. We cannot simply turn a blind eye to, and tolerate, the transgressions of these rules;[30] to do so would be a disavowal of our own pronouncements. In sum, we cannot attribute grave abuse of discretion to the CA which merely followed the said rules in dismissing the appeal.

Petitioners seek liberality in the application of the rules. They conveniently forget that such liberality was, at the outset, accorded to them by the CA when the appellate court granted them an extension of thirty (30) days, giving their counsel a total of seventy-five (75) days to prepare said brief. Despite such leniency, counsel allowed the extended period to lapse without even filing another motion for extension. It took nearly a month from the lapse of the extended period before counsel filed an unverified Motion to Admit Herein Attached Appellants' Brief together with the said Brief, and only after Florante had already filed a Motion to Dismiss petitioners' appeal.[31]

With respect to motions for extension, our ruling in *Bergonia v. Merrera*[32] is instructive:

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[30] *Casim v. Flordeliza,* 425 Phil. 210, 219 (2002) (Citations omitted).

[31] *Asian Spirit Airlines (Airline Employees Cooperative) v. Bautista*, G.R. No. 164668, February 14, 2005, 451 SCRA 294, 299.

[32] 446 Phil. 1, 6-7 (2003).

Section 12 of Rule 44 of the Rules of Court provides that an extension of time for the filing of a brief shall not be allowed, except when there is good and sufficient cause, and only when the motion is filed before the expiration of the extension sought.

From time to time, a request for extension becomes necessary when an advocate needs more time to study the client's position. Generally, such request is addressed to the sound discretion of the court. Lawyers, who, for one reason or another, decide to dispense with the filing of the required pleading, should promptly manifest this intent to the court. It is necessary for them to do so in order to prevent delay in the disposition of the case. Those who file motions for extension in bad faith misuse the legal process, obstruct justice, and thus become liable to disciplinary action.

A lawyer who requests an extension must do so in good faith and with a genuine intent to file the required pleading within the extended period. In granting the request, the court acts on the presumption that the applicant has a justifiable reason for failing to comply with the period allowed. Without this implied trust, the motion for extension will be deemed to be a mere ruse to delay or thwart the appealed decision. The motion will thus be regarded as a means of preventing the judgment from attaining finality and execution and of enabling the movant to trifle with procedure and mock the administration of justice.

Given these circumstances, along with the obviously rehashed excuses of petitioners' counsel, we find the petition completely devoid of merit. Diligence is required not only from lawyers but also from their clients.[33]

Second. The instant petition is a wrong remedy because of the availability of an appeal. After the CA denied their Motion for Reconsideration, petitioners allowed the reglementary period for filing an appeal to lapse, opting instead to file this Petition for *Certiorari*. Well-settled is the rule that *certiorari* is not a substitute for the lost or lapsed remedy of appeal. Although there are instances when *certiorari* may be allowed despite the availability of appeal, in this case we find no compelling reasons to do so, particularly because the issue raised clearly pertains

[33] *Delos Santos v. Elizalde*, G.R. Nos. 141810 & 141812, February 2, 2007, 514 SCRA 14, 17.

to the wisdom and soundness of the assailed CA Resolutions,[34] which should have been assailed before this Court via a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure. Thus, on this score also, the petition should be dismissed.

Furthermore, the petition was filed way beyond the 15-day reglementary period within which to file the petition for review under Rule 45. Accordingly, the assailed Resolutions of the CA had already become final and executory and beyond the purview of this Court to act upon.[35]

Finally, if it appears that the consequences for incurring procedural infractions before the CA and for pursuing the wrong remedial tack are ostensibly harsh, it should be remembered that there is no innate right to appeal. Appeal is a statutory right, which may be exercised only within the prescribed limits. The 1997 Rules of Civil Procedure provides for a rational and orderly method by which appeal can be pursued, and even contingency remedial measures if appeal can no longer be timely pursued.[36] For the failure to duly comply with the said Rules and to undertake a timely appeal despite the existence of such remedy, the petitioners must bear the consequences.

Once again, we stress that the rules of procedure exist for a noble purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation. To the contrary, they

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[34] *Rosita L. Flaminiano a.k.a. Rose Flaminiano v. Hon. Arsenio P. Adriano, Pairing Judge (RTC, Branch 64, Tarlac City), et al.*, G.R. No. 165258, February 4, 2008.

[35] *AMA Computer College-Santiago City, Inc. v. Chelly P. Nacino, substituted by the Heirs of Chelly P. Nacino*, G.R. No. 162739, February 12, 2008.

[36] *Victory Liner, Inc. v. Malinias*, G.R. No. 151170, May 29, 2007, 523 SCRA 279, 299.

help provide for the orderliness vital to our system of justice. Indeed, public order and our system of justice are well served by a conscientious observance by the parties of the procedural rules.[37]

WHEREFORE, the petition is *DISMISSED*. Costs against petitioners.

SO ORDERED.

Quisumbing,[*] *Ynares-Santiago (Chairperson), Austria-Martinez,* and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 161690. July 23, 2008]

S.S. VENTURES INTERNATIONAL, INC., *petitioner, vs.* **S.S. VENTURES LABOR UNION (SSVLU) and DIR. HANS LEO CACDAC, in His capacity as Director of the Bureau of Labor Relations (BLR),** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNION; CANCELLATION OF UNION REGISTRATION, GROUNDS.— The right to form, join, or assist a union is specifically protected by Art. XIII, Section 3 of the Constitution and such right, according to Art. III, Sec. 8 of the Constitution and Art. 246 of the Labor Code, shall not be abridged. Once registered with the DOLE, a union is considered a legitimate labor organization endowed with the right and

[37] *Audi AG v. Mejia*, G.R. No. 167533, July 27, 2007, 528 SCRA 378, 385.

[*] In lieu of Associate Minita V. Chio-Nazario, per Special Order No. 508 dated June 25, 2008.

privileges granted by law to such organization. While a certificate of registration confers a union with legitimacy with the concomitant right to participate in or ask for certification election in a bargaining unit, the registration may be cancelled or the union may be decertified as the bargaining unit, in which case the union is divested of the status of a legitimate labor organization. Among the grounds for cancellation is the commission of any of the acts enumerated in Art. 239(a) of the Labor Code, such as fraud and misrepresentation in connection with the adoption or ratification of the union's constitution and like documents. The Court, has in previous cases, said that to decertify a union, it is not enough to show that the union includes ineligible employees in its membership. It must also be shown that there was misrepresentation, false statement, or fraud in connection with the application for registration and the supporting documents, such as the adoption or ratification of the constitution and by-laws or amendments thereto and the minutes of ratification of the constitution or by-laws, among other documents.

2. ID.; ID.; ID.; EMPLOYEES' WITHDRAWAL FROM UNION MEMBERSHIP AFTER THE FILING OF THE PETITION FOR CERTIFICATION ELECTION WILL NOT NULLIFY THE REGISTRATION OF THE UNION.— Essentially, Ventures faults both the BLR and the CA in finding that there was no fraud or misrepresentation on the part of the Union sufficient to justify cancellation of its registration. In this regard, Ventures makes much of, *first*, the separate hand-written statements of 82 employees who, in gist, alleged that they were unwilling or harassed signatories to the attendance sheet of the organizational meeting. We are not persuaded. As aptly noted by both the BLR and CA, these mostly undated written statements submitted by Ventures on March 20, 2001, or seven months after it filed its petition for cancellation of registration, partake of the nature of withdrawal of union membership executed after the Union's filing of a petition for certification election on March 21, 2000. We have in precedent cases said that the employees' withdrawal from a labor union made before the filing of the petition for certification election is presumed voluntary, while withdrawal after the filing of such petition is considered to be involuntary and does not affect the same. Now then, if a withdrawal from union membership done after a petition for certification election has been filed does not

vitiate such petition, is it not but logical to assume that such withdrawal cannot work to nullify the registration of the union? Upon this light, the Court is inclined to agree with the CA that the BLR did not abuse its discretion nor gravely err when it concluded that the affidavits of retraction of the 82 members had no evidentiary weight.

3. ID.; ID.; ID.; A UNION SHALL BE DENIED RECOGNITION AS A LEGITIMATE LABOR ORGANIZATION WHEN ITS APPLICATION IS INFECTED BY FALSIFICATION AND SERIOUS IRREGULARITIES.— It cannot be over-emphasized that the registration or the recognition of a labor union after it has submitted the corresponding papers is not ministerial on the part of the BLR. Far from it. After a labor organization has filed the necessary registration documents, it becomes mandatory for the BLR to check if the requirements under Art. 234 of the Labor Code have been sedulously complied with. If the union's application is infected by falsification and like serious irregularities, especially those appearing on the face of the application and its attachments, a union should be denied recognition as a legitimate labor organization. Prescinding from these considerations, the issuance to the Union of Certificate of Registration No. RO300-00-02-UR-0003 necessarily implies that its application for registration and the supporting documents thereof are *prima facie* free from any vitiating irregularities.

4. ID.; ID.; ID.; PROCEDURE FOR ACQUIRING OR LOSING UNION MEMBERSHIP AND THE DETERMINATION OF WHO ARE QUALIFIED OR DISQUALIFIED TO BE MEMBERS ARE MATTERS INTERNAL TO THE UNION AND FLOW FROM ITS RIGHT TO SELF-ORGANIZATION.— The assailed inclusion of the said 82 individuals to the meeting and proceedings adverted to is not really fatal to the Union's cause for, as determined by the BLR, the allegations of falsification of signatures or misrepresentation with respect to these individuals are without basis. The Court need not delve into the question of whether these 82 dismissed individuals were still Union members qualified to vote and affix their signature on its application for registration and supporting documents. Suffice it to say that, as aptly observed by the CA, the procedure for acquiring or losing union membership and the determination of who are qualified or

disqualified to be members are matters internal to the union and flow from its right to self-organization.

5. ID.; ID.; ID.; THE EMPLOYER LACKS THE LEGAL PERSONALITY TO CHALLENGE THE CERTIFICATION ELECTION.— In its Comment, the Union points out that for almost seven (7) years following the filing of its petition, no certification election has yet been conducted among the rank-and-file employees. If this be the case, the delay has gone far enough and can no longer be allowed to continue. The CA is right when it said that Ventures should not interfere in the certification election by actively and persistently opposing the certification election of the Union. A certification election is exclusively the concern of employees and the employer lacks the legal personality to challenge it. In fact, jurisprudence frowns on the employer's interference in a certification election for such interference unduly creates the impression that it intends to establish a company union.

6. ID.; ID.; RULES OF PROCEDURE; APPLICATION OF TECHNICAL RULES OF PROCEDURE IN LABOR CASES MAY BE RELAXED TO SERVE THE DEMANDS OF SUBSTANTIAL JUSTICE.— Ventures' allegations on forum shopping and the procedural lapse supposedly committed by the BLR in allowing a belatedly filed motion for reconsideration need not detain us long. Suffice it to state that this Court has consistently ruled that the application of technical rules of procedure in labor cases may be relaxed to serve the demands of substantial justice. So it must be in this case.

APPEARANCES OF COUNSEL

Legal Services Philippines for petitioner.
Ernesto R. Arellano for private respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Petitioner S.S. Ventures International, Inc. (Ventures), a PEZA-registered export firm with principal place of business at Phase I-PEZA-Bataan Export Zone, Mariveles, Bataan, is in the business

of manufacturing sports shoes. Respondent S.S. Ventures Labor Union (Union), on the other hand, is a labor organization registered with the Department of Labor and Employment (DOLE) under Certificate of Registration No. RO300-00-02-UR-0003.

On March 21, 2000, the Union filed with DOLE-Region III a petition for certification election in behalf of the rank-and-file employees of Ventures. Five hundred forty two (542) signatures, 82 of which belong to terminated Ventures employees, appeared on the basic documents supporting the petition.

On August 21, 2000, Ventures filed a Petition[1] to cancel the Union's certificate of registration invoking the grounds set forth in Article 239(a) of the Labor Code.[2] Docketed as Case No. RO300-0008-CP-002 of the same DOLE regional office, the petition alleged the following:

(1) The Union deliberately and maliciously included the names of more or less 82 former employees no longer connected with Ventures in its list of members who attended the organizational meeting and in the adoption/ratification of its constitution and by-laws held on January 9, 2000 in Mariveles, Bataan; and the Union forged the signatures of these 82 former employees to make it appear they took part in the organizational meeting and adoption and ratification of the constitution;

(2) The Union maliciously twice entered the signatures of three persons namely: Mara Santos, Raymond Balangbang, and Karen Agunos;

(3) No organizational meeting and ratification actually took place; and

(4) The Union's application for registration was not supported by at least 20% of the rank-and-file employees of Ventures, or

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[1] *Rollo*, pp. 68-77.

[2] Art. 239. GROUNDS FOR CANCELLATION OF UNION REGISTRATION. x x x (a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification.

418 of the total 2,197-employee complement. Since more or less 82 of the 500[3] signatures were forged or invalid, then the remaining valid signatures would only be 418, which is very much short of the 439 minimum (2197 total employees x 20% = 439.4) required by the Labor Code.[4]

In its *Answer with Motion to Dismiss*,[5] the Union denied committing the imputed acts of fraud or forgery and alleged that: (1) the organizational meeting actually took place on January 9, 2000 at the Shoe City basketball court in Mariveles; (2) the 82 employees adverted to in Ventures' petition were qualified Union members for, although they have been ordered dismissed, the one-year prescriptive period to question their dismissal had not yet lapsed; (3) it had complied with the 20%-member registration requirement since it had 542 members; and (4) the "double" signatures were inadvertent human error.

In its supplemental reply memorandum[6] filed on March 20, 2001, with attachments, Ventures cited other instances of fraud and misrepresentation, claiming that the "affidavits" executed by 82 alleged Union members show that they were deceived into signing paper minutes or were harassed to signing their attendance in the organizational meeting. Ventures added that some employees signed the "affidavits" denying having attended such meeting.

In a Decision dated April 6, 2001, Regional Director Ana C. Dione of DOLE-Region III found for Ventures, the dispositive portion of which reads:

> Viewed in the light of all the foregoing, this office hereby grants the petition. WHEREFORE, this office resolved to CANCEL Certificate of Registration No. [RO300-00-02-UR-0003] dated 28 February 2000 of respondent S.S. Ventures Labor Union-Independent.

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[3] Per the Union, 542 union members signed the petition for certification election.

[4] *Rollo*, p. 71.

[5] *Id.* at 78-82.

[6] *Id.* at 118-120.

So Ordered.[7]

Aggrieved, the Union interposed a motion for reconsideration, a recourse which appeared to have been forwarded to the Bureau of Labor Relations (BLR). Although it would later find this motion to have been belatedly filed, the BLR, over the objection of Ventures which filed a *Motion to Expunge*, gave it due course and treated it as an appeal.

Despite Ventures' motion to expunge the appeal,[8] the BLR Director rendered on October 11, 2002 a decision[9] in BLR-A-C-60-6-11-01, granting the Union's appeal and reversing the decision of Dione. The *fallo* of the BLR's decision reads:

> WHEREFORE, the appeal is hereby GRANTED. The Decision of Director Ana C. Dione dated 6 April 2001 is hereby REVERSED and SET ASIDE. S.S. Ventures Labor Union-Independent shall remain in the roster of legitimate labor organizations.
>
> SO ORDERED.[10]

Ventures sought reconsideration of the above decision but was denied by the BLR.

Ventures then went to the Court of Appeals (CA) on a petition for *certiorari* under Rule 65, the recourse docketed as CA-G.R. SP No. 74749. On October 20, 2003, the CA rendered a Decision,[11] dismissing Ventures' petition. Ventures' motion for reconsideration met a similar fate.[12]

Hence, this petition for review under Rule 45, petitioner Ventures raising the following grounds:

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[7] *Id*. at 127.

[8] *Id*. at 144-145.

[9] *Id*. at 146-154.

[10] *Id*. at 86.

[11] *Id*. at 52-59. Penned by Associate Justice Eliezer R. De Los Santos and concurred in by Associate Justices B.A. Adefuin-De La Cruz (now retired) and Jose C. Mendoza.

[12] Per CA Resolution dated January 19, 2004.

I.

PUBLIC RESPONDENT ACTED RECKLESSLY AND IMPRUDENTLY, GRAVELY ABUSED ITS DISCRETION AND EXCEEDED ITS JURISDICTION IN DISREGARDING THE SUBSTANTIAL AND OVERWHELMING EVIDENCE ADDUCED BY THE PETITIONER SHOWING THAT RESPONDENT UNION PERPETRATED FRAUD, FORGERY, MISREPRESENTATION AND MISSTATEMENTS IN CONNECTION WITH THE ADOPTION AND RATIFICATION OF ITS CONSTITUTION AND BY-LAWS, AND IN THE PREPARATION OF THE LIST OF MEMBERS WHO TOOK PART IN THE ALLEGED ORGANIZATIONAL MEETING BY HOLDING THAT:

A.

THE 87 AFFIDAVITS OF ALLEGED UNION MEMBERS HAVE NO EVIDENTIARY WEIGHT.

B.

THE INCLUSION OF THE 82 EMPLOYEES IN THE LIST OF ATTENDEES TO THE JANUARY 9, 2000 MEETING IS AN INTERNAL MATTER WITHIN THE AMBIT OF THE WORKER'S RIGHT TO SELF-ORGANIZATION AND OUTSIDE THE SPHERE OF INFLUENCE (OF) THIS OFFICE (PUBLIC RESPONDENT IN THIS CASE) AND THE PETITIONER.

II.

PUBLIC RESPONDENT ACTED RECKLESSLY AND IMPRUDENTLY, GRAVELY ABUSED ITS DISCRETION AND EXCEEDED ITS JURISDICTION IN IGNORING AND DISREGARDING THE BLATANT PROCEDURAL LAPSES OF THE RESPONDENT UNION IN THE FILING OF ITS MOTION FOR RECONSIDERATION AND APPEAL.

A.

BY GIVING DUE COURSE TO THE MOTION FOR RECONSIDERATION FILED BY THE RESPONDENT UNION DESPITE THE FACT THAT IT WAS FILED BEYOND THE REGLEMENTARY PERIOD.

B.

BY ADMITTING THE APPEAL FILED BY ATTY. ERNESTO R. ARELLANO AND HOLDING THAT THE SAME DOES NOT CONSTITUTE FORUM SHOPPING UNDER SUPREME COURT CIRCULAR NO. 28-91.

III.

PUBLIC RESPONDENT ACTED RECKLESSLY AND IMPRUDENTLY, GRAVELY ABUSED ITS DISCRETION AND EXCEEDED ITS JURISDICTION IN INVOKING THE CONSTITUTIONAL RIGHT TO SELF-ORGANIZATION AND ILO CONVENTION NO. 87 TO JUSTIFY THE MASSIVE FRAUD, MISREPRESENTATION, MISSTATEMENTS AND FORGERY COMMITTED BY THE RESPONDENT UNION.[13]

The petition lacks merit.

The right to form, join, or assist a union is specifically protected by Art. XIII, Section 3[14] of the Constitution and such right, according to Art. III, Sec. 8 of the Constitution and Art. 246 of the Labor Code, shall not be abridged. Once registered with the DOLE, a union is considered a legitimate labor organization endowed with the right and privileges granted by law to such organization. While a certificate of registration confers a union with legitimacy with the concomitant right to participate in or ask for certification election in a bargaining unit, the registration may be cancelled or the union may be decertified as the bargaining unit, in which case the union is divested of the status of a legitimate labor organization.[15] Among the grounds for cancellation is the commission of any of the acts enumerated in Art. 239(a)[16] of the Labor Code, such as fraud and misrepresentation in connection with the adoption or ratification of the union's

[13] *Rollo*, pp. 11-12.

[14] Sec. 3. The State shall afford full protection to labor x x x organized and unorganized x x x. It shall guarantee the rights of all workers in self-organization, collective bargaining and negotiation, and peaceful concerted activities x x x.

[15] 2 Azucena, *THE LABOR CODE* 197-198 (6th ed., 2007).

[16] *Supra* note 2.

constitution and like documents. The Court, has in previous cases, said that to decertify a union, it is not enough to show that the union includes ineligible employees in its membership. It must also be shown that there was misrepresentation, false statement, or fraud in connection with the application for registration and the supporting documents, such as the adoption or ratification of the constitution and by-laws or amendments thereto and the minutes of ratification of the constitution or by-laws, among other documents.[17]

Essentially, Ventures faults both the BLR and the CA in finding that there was no fraud or misrepresentation on the part of the Union sufficient to justify cancellation of its registration. In this regard, Ventures makes much of, *first*, the separate hand-written statements of 82 employees who, in gist, alleged that they were unwilling or harassed signatories to the attendance sheet of the organizational meeting.

We are not persuaded. As aptly noted by both the BLR and CA, these mostly undated written statements submitted by Ventures on March 20, 2001, or seven months after it filed its petition for cancellation of registration, partake of the nature of withdrawal of union membership executed after the Union's filing of a petition for certification election on March 21, 2000. We have in precedent cases[18] said that the employees' withdrawal from a labor union made before the filing of the petition for certification election is presumed voluntary, while withdrawal after the filing of such petition is considered to be involuntary and does not affect the same. Now then, if a withdrawal from union membership done after a petition for certification election has been filed does not vitiate such petition, is it not but logical to assume that such withdrawal cannot work to nullify the registration of the union? Upon this light, the Court is inclined to agree with the CA that the BLR did not abuse its discretion

[17] *Air Philippines Corporation v. Bureau of Labor Relations*, G.R. No. 155395, June 22, 2006, 492 SCRA 243, 250.

[18] *Oriental Tin Can Labor Union v. Secretary of Labor and Employment*, G.R. Nos. 116751 & 116779, August 28, 1998, 294 SCRA 640; *La Suerte Cigar and Cigarette Factory v. Director of Bureau of Labor Relations*, No. 55674, July 25, 1983, 123 SCRA 679.

nor gravely err when it concluded that the affidavits of retraction of the 82 members had no evidentiary weight.

It cannot be over-emphasized that the registration or the recognition of a labor union after it has submitted the corresponding papers is not ministerial on the part of the BLR. Far from it. After a labor organization has filed the necessary registration documents, it becomes mandatory for the BLR to check if the requirements under Art. 234[19] of the Labor Code have been sedulously complied with.[20] If the union's application is infected by falsification and like serious irregularities, especially those appearing on the face of the application and its attachments, a union should be denied recognition as a legitimate labor organization. Prescinding from these considerations, the issuance to the Union of Certificate of Registration No. RO300-00-02-UR-0003 necessarily implies that its application for registration and the supporting documents thereof are *prima facie* free from any vitiating irregularities.

Second, Ventures draws attention to the inclusion of 82 individuals to the list of participants in the January 9, 2000 organizational meeting. Ventures submits that the 82, being no longer connected with the company, should not have been counted as attendees in the meeting and the ratification proceedings immediately afterwards.

The assailed inclusion of the said 82 individuals to the meeting and proceedings adverted to is not really fatal to the Union's

[19] Art. 234. Requirements of registration.—Any applicant labor organization x x x shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements: (a) Fifty pesos (₱50.00) registration fee; (b) The names of its officers, x x x the minutes of the organizational meetings and the list of the workers who participated in such meetings; (c) the names of all its members comprising at least twenty percent (20%) of the employees in the bargaining unit where it seeks to operate; (d) x x x; and (e) Four (4) copies of the constitution and by-laws of the applicant union, minutes of its adoption or ratification, and the list of the members who participated in it.

[20] *Progressive Development Corp.-Pizza Hut v. Laguesma*, G.R. No. 115077, April 18, 1977, 271 SCRA 593, 599.

cause for, as determined by the BLR, the allegations of falsification of signatures or misrepresentation with respect to these individuals are without basis.[21] The Court need not delve into the question of whether these 82 dismissed individuals were still Union members qualified to vote and affix their signature on its application for registration and supporting documents. Suffice it to say that, as aptly observed by the CA, the procedure for acquiring or losing union membership and the determination of who are qualified or disqualified to be members are matters internal to the union and flow from its right to self-organization.

To our mind, the relevancy of the 82 individuals' active participation in the Union's organizational meeting and the signing ceremonies thereafter comes in only for purposes of determining whether or not the Union, even without the 82, would still meet what Art. 234(c) of the Labor Code requires to be submitted, to wit:

Art. 234. Requirements of Registration.—Any applicant labor organization x x x shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements:

xxx xxx xxx

(c) The names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate.

The BLR, based on its official records, answered the poser in the affirmative. Wrote the BLR:

It is imperative to look into the records of respondent union with this Bureau pursuant to our role as a central registry of union and CBA records under Article 231 of the Labor Code and Rule XVII of the rules implementing Book V of the Labor Code, as amended x x x.

In its union records on file with this Bureau, respondent union submitted the names of [542] members x x x. This number easily

[21] *Rollo*, pp. 153-154.

complied with the 20% requirement, be it 1,928 or 2,202 employees in the establishment. **Even subtracting the 82 employees from 542 leaves 460 union members, still within 440 or 20% of the maximum total of 2,202 rank-and-file employees.**

Whatever misgivings the petitioner may have with regard to the 82 dismissed employees is better addressed in the inclusion-exclusion proceedings during a pre-election conference x x x. **The issue surrounding the involvement of the 82 employees is a matter of membership or voter eligibility. It is not a ground to cancel union registration**. (Emphasis added.)

The bare fact that three signatures twice appeared on the list of those who participated in the organizational meeting would not, to our mind, provide a valid reason to cancel Certificate of Registration No. RO300-00-02-UR-0003. As the Union tenably explained without rebuttal from Ventures, the double entries are no more than "normal human error," effected without malice. Even the labor arbiter who found for Ventures sided with the Union in its explanation on the absence of malice.[22]

The cancellation of a union's registration doubtless has an impairing dimension on the right of labor to self-organization. Accordingly, we can accord concurrence to the following apt observation of the BLR: "[F]or fraud and misrepresentation [to be grounds for] cancellation of union registration under Article 239 [of the Labor Code], the nature of the fraud and misrepresentation must be grave and compelling enough to vitiate the consent of a majority of union members."[23]

In its Comment, the Union points out that for almost seven (7) years following the filing of its petition, no certification election has yet been conducted among the rank-and-file employees. If this be the case, the delay has gone far enough and can no longer be allowed to continue. The CA is right when it said that Ventures should not interfere in the certification election by actively and persistently opposing the certification election of the Union. A certification election is exclusively the

[22] *Id*. at 127.

[23] *Id*. at 152.

concern of employees and the employer lacks the legal personality to challenge it.[24] In fact, jurisprudence frowns on the employer's interference in a certification election for such interference unduly creates the impression that it intends to establish a company union.[25]

Ventures' allegations on forum shopping and the procedural lapse supposedly committed by the BLR in allowing a belatedly filed motion for reconsideration need not detain us long. Suffice it to state that this Court has consistently ruled that the application of technical rules of procedure in labor cases may be relaxed to serve the demands of substantial justice.[26] So it must be in this case.

WHEREFORE, the petition is *DENIED*. The Decision and Resolution dated October 20, 2003 and January 19, 2004, respectively, of the CA are *AFFIRMED*. S.S. Ventures Labor Union shall remain in the roster of legitimate labor organizations, unless it has in the meantime lost its legitimacy for causes set forth in the Labor Code. Costs against petitioner.

SO ORDERED.

Quisumbing (Chairperson), Ynares-Santiago,[*] *Carpio Morales* and *Tinga, JJ.,* concur.

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[24] *Oriental Tin Can Labor Union, supra* note 18, at 650.

[25] *San Miguel Foods, Inc.-Cebu B-Meg Feed Plant v. Laguesma*, G.R. No. 116172, October 10, 1996, 263 SCRA 68, 82.

[26] *Fiel v. Kris Security Systems, Inc.*, G.R. No. 155875, April 3, 2003, 400 SCRA 533, 536; *El Toro Security Agency, Inc. v. NLRC*, G.R. No. 114308, April 18, 1996, 256 SCRA 363, 366.

[*] Additional member as per Special Order No. 509 dated July 1, 2003.

SECOND DIVISION

[G.R. No. 164185. July 23, 2008]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **THE SANDIGANBAYAN (FOURTH DIVISION) and ALEJANDRO A. VILLAPANDO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; LOCAL GOVERNMENT CODE; APPOINTMENT OF LOSING CANDIDATE, LEGAL PROHIBITIONS.— The Sandiganbayan, Fourth Division held that the qualifications for a position are provided by law and that it may well be that one who possesses the required legal qualification for a position may be temporarily disqualified for appointment to a public position by reason of the one-year prohibition imposed on losing candidates. However, there is no violation of Article 244 of the Revised Penal Code should a person suffering from temporary disqualification be appointed so long as the appointee possesses all the qualifications stated in the law. There is no basis in law or jurisprudence for this interpretation. On the contrary, legal disqualification in Article 244 of the Revised Penal Code simply means disqualification under the law. Clearly, Section 6, Article IX of the 1987 Constitution and Section 94(b) of the Local Government Code of 1991 prohibits losing candidates within one year after such election to be appointed to any office in the government or any government-owned or controlled corporations or in any of their subsidiaries. xxx. Villapando's contention and the Sandiganbayan, Fourth Division's interpretation of the term legal disqualification lack cogency. Article 244 of the Revised Penal Code cannot be circumscribed lexically. Legal disqualification cannot be read as excluding temporary disqualification in order to exempt therefrom the legal prohibitions under Section 6, Article IX of the 1987 Constitution and Section 94(b) of the Local Government Code of 1991.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; DEMURRER TO EVIDENCE; GRANT THEREOF SHALL NOT BE DISTURBED ABSENT GRAVE ABUSE OF DISCRETION.— Although this Court held in the case of *People*

v. Sandiganbayan that once a court grants the demurrer to evidence, such order amounts to an acquittal and any further prosecution of the accused would violate the constitutional proscription on double jeopardy, this Court held in the same case that such ruling on the matter shall not be disturbed **in the absence of a grave abuse of discretion.**

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; EXPLAINED.— Grave abuse of discretion defies exact definition, but it generally refers to capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be 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 and hostility.

4. ID.; ID.; ID.; A JUDGMENT RENDERED WITH GRAVE ABUSE OF DISCRETION OR WITHOUT DUE PROCESS IS VOID, DOES NOT EXIST IN LEGAL CONTEMPLATION AND, CANNOT BE THE SOURCE OF AN ACQUITTAL.— Further, the Sandiganbayan, Fourth Division denied Villapando's Motion for Leave to File Demurrer to Evidence yet accommodated Villapando by giving him five days within which to inform it in writing whether he will submit his demurrer to evidence for resolution without leave of court. Notably, a judgment rendered with grave abuse of discretion or without due process is void, does not exist in legal contemplation and, thus, cannot be the source of an acquittal. The Sandiganbayan, Fourth Division having acted with grave abuse of discretion in disregarding the basic rules of statutory construction resulting in its decision granting Villapando's Demurrer to Evidence and acquitting the latter, we can do no less but declare its decision null and void.

5. CRIMINAL LAW; OTHER OFFENSES BY PUBLIC OFFICERS; UNLAWFUL APPOINTMENTS; TERM "LEGAL DISQUALIFICATION," CONSTRUED.— In this case, the Sandiganbayan, Fourth Division, in disregarding basic rules of statutory construction, acted with grave abuse of discretion. Its interpretation of the term legal disqualification in Article 244 of the Revised Penal Code defies legal cogency. Legal disqualification cannot be read as excluding temporary

disqualification in order to exempt therefrom the legal prohibitions under the 1987 Constitution and the Local Government Code of 1991. We reiterate the legal maxim *ubi lex non distinguit nec nos distinguere debemus*. Basic is the rule in statutory construction that where the law does not distinguish, the courts should not distinguish. There should be no distinction in the application of a law where none is indicated.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

D E C I S I O N

QUISUMBING, *J.*:

This petition for *certiorari* filed by the Office of the Ombudsman through the Office of the Special Prosecutor assails the May 20, 2004 Decision[1] of the Sandiganbayan, Fourth Division, in Criminal Case No. 27465, granting private respondent Alejandro A. Villapando's Demurrer to Evidence[2] and acquitting him of the crime of unlawful appointment under Article 244[3] of the Revised Penal Code.

The facts culled from the records are as follows:

During the May 11, 1998 elections, Villapando ran for Municipal Mayor of San Vicente, Palawan. Orlando M. Tiape (now deceased), a relative of Villapando's wife, ran for Municipal Mayor of Kitcharao, Agusan del Norte. Villapando won while Tiape lost. Thereafter, on July 1, 1998, Villapando designated Tiape as Municipal Administrator of the Municipality of San

[1] Sandiganbayan *rollo*, pp. 271-280.

[2] *Id*. at 246-252.

[3] Art. 244. *Unlawful appointments*. — Any public officer who shall knowingly nominate or appoint to any public office any person lacking the legal qualifications therefor, shall suffer the penalty of *arresto mayor* and a fine not exceeding 1,000 pesos.

Vicente, Palawan.[4] A Contract of Consultancy[5] dated February 8, 1999 was executed between the Municipality of San Vicente, Palawan and Tiape whereby the former employed the services of Tiape as Municipal Administrative and Development Planning Consultant in the Office of the Municipal Mayor for a period of six months from January 1, 1999 to June 30, 1999 for a monthly salary of ₱26,953.80.

On February 4, 2000, Solomon B. Maagad and Renato M. Fernandez charged Villapando and Tiape for violation of Article 244 of the Revised Penal Code before the Office of the Deputy Ombudsman for Luzon.[6] The complaint was resolved against Villapando and Tiape and the following Information[7] dated March 19, 2002 charging the two with violation of Article 244 of the Revised Penal Code was filed with the Sandiganbayan:

x x x

That on or about 01 July 1998 or sometime prior or subsequent thereto, in San Vicente, Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ALEJANDRO A. VILLAPANDO, a public officer, being then the Municipal Mayor of San Vicente, Palawan, committing the crime herein charged, in relation to and taking advantage of his official functions, conspiring and confederating with accused Orlando M. Tiape, did then and there wilfully, unlawfully and feloniously appoint ORLANDO M. TIAPE as a Municipal Administrator of San Vicente, Palawan, accused Alejandro A. Villapando knowing fully well that Orlando Tiape lacks the qualification as he is a losing mayoralty candidate in the Municipality of Kitcharao, Agusan del Norte during the May 1998 elections, hence is ineligible for appointment to a public office within one year (1) from the date of the elections, to the damage and prejudice of the government and of public interest.

CONTRARY TO LAW.[8]

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[4] Sandiganbayan *rollo,* p. 152.

[5] *Id.* at 159.

[6] *Id.* at 143-151.

[7] *Id.* at 1-3.

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

The Information was docketed as Criminal Case No. 27465 and raffled to the Fourth Division of the Sandiganbayan.

Upon arraignment on September 3, 2002, Villapando pleaded not guilty. Meanwhile, the case against Tiape was dismissed after the prosecution proved his death which occurred on July 26, 2000.[9]

After the prosecution rested its case, Villapando moved for leave to file a demurrer to evidence. The Sandiganbayan, Fourth Division denied his motion but gave him five days within which to inform the court in writing whether he will nonetheless submit his Demurrer to Evidence for resolution without leave of court.[10] Villapando then filed a Manifestation of Intent to File Demurrer to Evidence,[11] and was given 15 days from receipt to file his Demurrer to Evidence. He filed his Demurrer to Evidence[12] on October 28, 2003.

In a Decision dated May 20, 2004, the Sandiganbayan, Fourth Division found Villapando's Demurrer to Evidence meritorious, as follows:

> The Court found the "Demurrer to Evidence" ***impressed with merit.***
>
> Article 244 of the Revised Penal Code provides:
>
> > **Article 244.** *Unlawful appointments.*–Any public officer who shall knowingly nominate or appoint to any public office any person lacking the legal qualifications therefor, shall suffer the penalty of *arresto mayor* and a fine not exceeding 1,000 pesos. (underscoring supplied)
>
> A dissection of the above-cited provision [yields] the following elements, to wit:
>
> 1. the offender was a public officer;
>
> 2. accused nominated or appointed a person to a public office;

[9] *Id*. at 192-193.

[10] *Id*. at 231.

[11] *Id*. at 235-236.

[12] *Id*. at 246-252.

3. such person did not have the legal qualifications [therefor;] and,

4. the offender knew that his nominee or appointee did not have the legal qualifications at the time he made the nomination or appointment.

Afore-cited elements are hereunder discussed.

1. Mayor Villapando was the duly elected Municipal Mayor of San Vicente, Palawan when the alleged crime was committed.

2. Accused appointed Orlando Tiape as Municipal Administrator of the Municipality of San Vicente, Palawan.

3. There appears to be a dispute. This Court is now called upon to determine whether Orlando Tiape, at the time of [his] designation as Municipal Administrator, was lacking in legal qualification. Stated differently, does "legal qualification" contemplate the one (1) year prohibition on appointment as provided for in Sec. 6, Art. IX-B of the Constitution and Sec. 94 (b) of the Local Government Code, mandating that a candidate who lost in any election shall not, within one year after such election, be appointed to any office in the Government?

The Court answers in the negative.

In ascertaining the legal qualifications of a particular appointee to a public office, "there must be a law providing for the qualifications of a person to be nominated or appointed" therein. To illuminate further, Justice Rodolfo Palattao succinctly discussed in his book that the qualification of a public officer to hold a particular position in the government is provided for by law, which may refer to educational attainment, civil service eligibility or experience:

> As the title suggests, the offender in this article is a public officer who nominates or appoints a person to a public office. The person nominated or appointed is not qualified and his lack of qualification is known to the party making the nomination or appointment. The qualification of a public officer to hold a particular position in the government is provided by law. The purpose of the law is to ensure that the person appointed is competent to perform the duties of the office, thereby promoting efficiency in rendering public service.

> The qualification to hold public office may refer to educational attainment, civil service eligibility or experience. For instance, for one to be appointed as judge, he must be a lawyer. So if the Judicial and Bar Council nominates a person for appointment as judge knowing him to be not a member of the Philippine Bar, such act constitutes a violation of the law under consideration.

In this case, Orlando Tiape was allegedly appointed to the position of Municipal Administrator. As such, the law that provides for the legal qualification for the position of municipal administrator is ***Section 480, Article X of the Local Government Code***, to wit:

> "**Section 480**. *Qualifications, Terms, Powers and Duties.–* (a) No person shall be appointed administrator unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in public administration, law, or any other related course from a recognized college or university, and a first grade civil service eligible or its equivalent. He must have acquired experience in management and administration work for at least five (5) years in the case of the provincial or city administrator, and three (3) years in the case of the municipal administrator.
>
> xxx xxx xxx."

It is noteworthy to mention that the prosecution did not allege much less prove that Mayor Villapando's appointee, Orlando Tiape, lacked any of the qualifications imposed by law on the position of Municipal Administrator. Prosecution's argument rested on the assertion that since Tiape lost in the May 11, 1998 election, he necessarily lacked the required legal qualifications.

It bears stressing that temporary prohibition is not synonymous with absence or lack of legal qualification. A person who possessed the required legal qualifications for a position may be temporarily disqualified for appointment to a public position by reason of the one year prohibition imposed on losing candidates. Upon the other hand, one may not be temporarily disqualified for appointment, but could not be appointed as he lacked any or all of the required legal qualifications imposed by law.

4. Anent the last element, this Court deems it unnecessary to discuss the same.

WHEREFORE, finding the "Demurrer to Evidence" filed by Mayor Villapando with merit, the same is hereby **GRANTED**. Mayor Villapando is hereby **ACQUITTED** of the crime charged.

SO ORDERED.[13]

Thus, this petition by the Office of the Ombudsman, through the Office of the Special Prosecutor, representing the People of the Philippines.

Villapando was required by this Court to file his comment to the petition. Despite several notices, however, he failed to do so and in a Resolution[14] dated June 7, 2006, this Court informed him that he is deemed to have waived the filing of his comment and the case shall be resolved on the basis of the pleadings submitted by the petitioner.

Petitioner raises the following issues:

I.

WHETHER THE RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION IN INTERPRETING THAT THE "LEGAL DISQUALIFICATION" IN ARTICLE 244 OF THE REVISED PENAL CODE DOES NOT INCLUDE THE ONE YEAR PROHIBITION IMPOSED ON LOSING CANDIDATES AS ENUNCIATED IN THE CONSTITUTION AND THE LOCAL GOVERNMENT CODE.

II.

WHETHER THE RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION IN GIVING DUE COURSE TO, AND EVENTUALLY GRANTING, THE DEMURRER TO EVIDENCE.[15]

Simply, the issue is whether or not the Sandiganbayan, Fourth Division, acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

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[13] *Id*. at 275-279.

[14] *Rollo*, p. 97.

[15] *Id*. at 14.

Petitioner argues that the Sandiganbayan, Fourth Division acted with grave abuse of discretion amounting to lack or excess of jurisdiction because its interpretation of Article 244 of the Revised Penal Code does not complement the provision on the one-year prohibition found in the 1987 Constitution and the Local Government Code, particularly Section 6, Article IX of the 1987 Constitution which states no candidate who has lost in any election shall, within one year after such election, be appointed to any office in the government or any government-owned or controlled corporation or in any of their subsidiaries. Section 94(b) of the Local Government Code of 1991, for its part, states that except for losing candidates in barangay elections, no candidate who lost in any election shall, within one year after such election, be appointed to any office in the government or any government-owned or controlled corporation or in any of their subsidiaries. Petitioner argues that the court erred when it ruled that temporary prohibition is not synonymous with the absence of lack of legal qualification.

The Sandiganbayan, Fourth Division held that the qualifications for a position are provided by law and that it may well be that one who possesses the required legal qualification for a position may be temporarily disqualified for appointment to a public position by reason of the one-year prohibition imposed on losing candidates. However, there is no violation of Article 244 of the Revised Penal Code should a person suffering from temporary disqualification be appointed so long as the appointee possesses all the qualifications stated in the law.

There is no basis in law or jurisprudence for this interpretation. On the contrary, legal disqualification in Article 244 of the Revised Penal Code simply means disqualification under the law. Clearly, Section 6, Article IX of the 1987 Constitution and Section 94(b) of the Local Government Code of 1991 prohibits losing candidates within one year after such election to be appointed to any office in the government or any government-owned or controlled corporations or in any of their subsidiaries.

Article 244 of the Revised Penal Code states:

Art. 244. Unlawful appointments. — Any public officer who shall knowingly nominate or appoint to any public office any person lacking the legal qualifications therefore, shall suffer the penalty of arresto mayor and a fine not exceeding 1,000 pesos.

Section 94 of the Local Government Code provides:

SECTION 94. Appointment of Elective and Appointive Local Officials; Candidates Who Lost in Election. - (a) No elective or appointive local official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

Unless otherwise allowed by law or by the primary functions of his position, no elective or appointive local official shall hold any other office or employment in the government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

(b) Except for losing candidates in barangay elections, no candidate who lost in any election shall, within one (1) year after such election, be appointed to any office in the government or any government-owned or controlled corporations or in any of their subsidiaries.

Section 6, Article IX-B of the 1987 Constitution states:

Section 6. No candidate who has lost in any election shall, within one year after such election, be appointed to any office in the Government or any Government-owned or controlled corporations or in any of their subsidiaries.

Villapando's contention and the Sandiganbayan, Fourth Division's interpretation of the term legal disqualification lack cogency. Article 244 of the Revised Penal Code cannot be circumscribed lexically. Legal disqualification cannot be read as excluding temporary disqualification in order to exempt therefrom the legal prohibitions under Section 6, Article IX of the 1987 Constitution and Section 94(b) of the Local Government Code of 1991.

Although this Court held in the case of *People v. Sandiganbayan*[16] that once a court grants the demurrer to

[16] G.R. No. 140633, February 4, 2002, 376 SCRA 74.

evidence, such order amounts to an acquittal and any further prosecution of the accused would violate the constitutional proscription on double jeopardy, this Court held in the same case that such ruling on the matter shall not be disturbed ***in the absence of a grave abuse of discretion***.

Grave abuse of discretion defies exact definition, but it generally refers to capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be 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 and hostility.[17]

In this case, the Sandiganbayan, Fourth Division, in disregarding basic rules of statutory construction, acted with grave abuse of discretion. Its interpretation of the term legal disqualification in Article 244 of the Revised Penal Code defies legal cogency. Legal disqualification cannot be read as excluding temporary disqualification in order to exempt therefrom the legal prohibitions under the 1987 Constitution and the Local Government Code of 1991. We reiterate the legal maxim *ubi lex non distinguit nec nos distinguere debemus*. Basic is the rule in statutory construction that where the law does not distinguish, the courts should not distinguish. There should be no distinction in the application of a law where none is indicated.

Further, the Sandiganbayan, Fourth Division denied Villapando's Motion for Leave to File Demurrer to Evidence yet accommodated Villapando by giving him five days within which to inform it in writing whether he will submit his demurrer to evidence for resolution without leave of court.

Notably, a judgment rendered with grave abuse of discretion or without due process is void, does not exist in legal contemplation and, thus, cannot be the source of an acquittal.[18]

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[17] *People v. Court of Appeals*, G.R. No. 128986, June 21, 1999, 308 SCRA 687, 698.

[18] *Id.* at 690.

The Sandiganbayan, Fourth Division having acted with grave abuse of discretion in disregarding the basic rules of statutory construction resulting in its decision granting Villapando's Demurrer to Evidence and acquitting the latter, we can do no less but declare its decision null and void.

WHEREFORE, the petition is *GRANTED*. The Decision dated May 20, 2004 of the Sandiganbayan, Fourth Division, in Criminal Case No. 27465, granting private respondent Alejandro A. Villapando's Demurrer to Evidence and acquitting him of the crime of unlawful appointment under Article 244 of the Revised Penal Code is hereby declared *NULL and VOID*. Let the records of this case be remanded to the Sandiganbayan, Fourth Division, for further proceedings.

SO ORDERED.

Ynares-Santiago,[*] *Carpio Morales, Tinga,* and *Velasco, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 164266. July 23, 2008]

NOVER BRYAN SALVADOR *y* DE LEON, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; DIRECT EVIDENCE; NOT THE ONLY MATRIX WHEREFROM A TRIAL COURT MAY DRAW ITS

[*] Additional member in place of Associate Justice Arturo D. Brion who is on leave.

CONCLUSION AND FINDING OF GUILT.— Direct evidence of the crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. The rules of evidence allow a trial court to rely on circumstantial evidence to support its conclusion of guilt. Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. At times, resort to circumstantial evidence is imperative since to insist on direct testimony would, in many cases, result in setting felons free and deny proper protection to the community.

2. ID.; ID.; ID.; CIRCUMSTANTIAL EVIDENCE; REQUISITES TO BE SUFFICIENT FOR CONVICTION.— Section 4, Rule 133 of the Rules of Court, provides that circumstantial evidence is sufficient for conviction if the following requisites are complied with: (1) There is more than one circumstance; (2) The facts from which the inferences are derived are proven; and (3) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. All the circumstances must be consistent with one another, consistent, with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent. Thus, conviction based on circumstantial evidence can be upheld, provided that the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person.

3. CRIMINAL LAW; HOMICIDE; MOTIVE; HOW ESTABLISHED.— More importantly, intent to kill was duly established by the witnesses when they testified relative to the "peeping incident." Although there was no evidence or allegation of sexual advances, such incident manifested petitioner's evil motive. It is a rule in criminal law that motive, being a state of mind, is established by the testimony of witnesses on the acts or statements of the accused before or immediately after the commission of the offense, deeds or words that may express it or from which his motive or reason for committing it may be inferred. Motive and intent may be considered one and the same, in some instances, as in the present case.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IT IS UNNATURAL FOR A RELATIVE, WHO IS INTERESTED IN VINDICATING THE CRIME, TO

ACCUSE SOMEBODY ELSE OTHER THAN THE REAL CULPRIT.— The prosecution's evidence, especially the testimonies of the witnesses who happen to be the victim's relatives, was not weakened by the fact of such relationship. The Court notes that petitioner himself is a relative of the witnesses, *albeit* by affinity, being the husband of the victim's sister. It is unnatural for a relative, who is interested in vindicating the crime, to accuse somebody else other than the real culprit. For her/him to do so is to let the guilty go free. Where there is nothing to indicate that witnesses were actuated by improper motives on the witness stand, their positive declarations made under solemn oath deserve full faith and credence.

5. ID.; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE ACCORDED GREAT WEIGHT AND A HIGH DEGREE OF RESPECT.— We also reiterate the well-settled rule that this court accords great weight and a high degree of respect to factual findings of the trial court, especially when affirmed by the CA, as in the present case. Here, the RTC was unequivocally upheld by the CA, which was clothed with the power to review whether the trial court's conclusions were in accord with the facts and the relevant laws. The credibility given by the trial courts to prosecution witnesses is an important aspect of evidence which appellate courts can rely on, because of the trial courts' unique opportunity to observe the witnesses, particularly their demeanor, conduct, and attitude, during the direct and cross-examination by counsels.

6. CRIMINAL LAW; HOMICIDE; IMPOSABLE PENALTY; INDETERMINATE SENTENCE LAW; APPLICATION THEREOF TO CASE AT BAR.— In view of the foregoing, petitioner was correctly convicted of homicide punishable by *reclusion temporal*. Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty, absent any modifying circumstances, shall be taken from the full range of *prision mayor* and the maximum of which shall be taken from the medium period of *reclusion temporal*. Specifically, the indeterminate penalty that should be imposed is within the range of 6 years and 1 day to 12 years of *prision mayor*, as minimum; to 14 years, 8 months and 1 day to 17 years and 4 months of *reclusion temporal*, as maximum. Hence, a modification of

the penalty imposed by the trial court is in order. Instead of 8 years, 8 months and 1 day, the *minimum* term of the indeterminate penalty shall be 8 years and 1 day of *prision mayor;* while the *maximum* term shall be that imposed by the trial court.

7. ID.; ID.; CIVIL LIABILITIES OF ACCUSED-APPELLANT.— We affirm the award of ₱50,000.00 by way of indemnity *ex delicto* to the Zuñiga spouses. When death occurs as a result of a crime, the heirs of the deceased are entitled to such amount indemnity for death without need of any evidence or proof of damages. The court likewise correctly awarded ₱50,000.00 as moral damages because of their mental anguish and moral suffering caused by Arlene's death. The trial and appellate courts did not award actual damages, obviously because the victim's heirs failed to present proof of the expenses they incurred. However, it has been repeatedly held by this Court that where the amount of actual damages cannot be determined because of the absence of receipts to prove the same, temperate damages may be fixed at ₱25,000.00

APPEARANCES OF COUNSEL

Joselito B. Vallada & Marife T. Opulencia-Vallada for petitioner.

The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by petitioner Nover Bryan Salvador *y* De Leon, assailing the Court of Appeals (CA) Decision[1] dated February 26, 2004 which affirmed the Regional Trial Court[2]

[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Delilah Vidallon-Magtolis and Hakim S. Abdulwahid, concurring; *rollo*, pp. 48-56.

[2] Branch 172, Valenzuela City.

(RTC) Decision[3] dated October 26, 2001. Likewise assailed is the appellate court's Resolution[4] dated July 6, 2004 denying petitioner's motion for reconsideration.

The facts of the case follow:

Spouses Ernesto and Margarita Zuñiga had three daughters, namely: Marianne, Mary Ann and the victim Arlene. Mary Ann was married to the petitioner herein. The Zuñiga family, including Mary Ann and the petitioner were living together at 550 Coloong I, Valenzuela City. Their residence had three bedrooms – one for the Zuñiga spouses; the other for Marianne and Arlene; and the last for Mary Ann and the petitioner.

On September 20, 1997, the Zuñiga spouses, together with Marianne, went to Bulacan to attend the wake of Ernesto's mother; while Mary Ann with her new born child, and Arlene, stayed at their Valenzuela home. Petitioner, at that time, asked permission to attend a birthday party.[5]

At about 9:00 in the evening, petitioner, accompanied by Eduardo Palomares, returned home to get some karaoke tapes to be used at the birthday party. They thereafter went back to the party and stayed there until 12 midnight before heading back home.

At 4:30 in the morning, the following day, the Zuñiga spouses and Marianne arrived home. They opened the main door which was then locked. After preparing for sleep, Marianne proceeded to the room which she was sharing with Arlene. There she saw Arlene, who suffered stab wounds, already dead. After seeing Arlene's body, the Zuñiga spouses rushed to the room of Mary Ann and the petitioner. While Mary Ann proceeded to Arlene's room, petitioner stayed at the *sala* and cried. He was later seen embracing Mary Ann and telling her that he was innocent.[6]

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[3] Penned by Judge Floro P. Alejo; *rollo*, pp. 58-68.

[4] *Rollo*, p. 57.

[5] *Id.* at 59.

[6] *Id.*

At around 5:00 in the morning, police investigators arrived. The police found no forcible entry into the house; no valuables were missing; and no bloodstains in other parts of the house except Arlene's room. They likewise discovered, on top of the kitchen table, petitioner's underwear (briefs), gray t-shirt and short pants.[7] They further found hair strands on Arlene's bed. These pieces of evidence were brought to the laboratory for examination.

On September 21, 1997, Dr. Noel Minay (Dr. Minay), a medico-legal of the National Bureau of Investigation (NBI) conducted an autopsy of the deceased.[8] He found that Arlene suffered 21 stab wounds produced by a pointed instrument, one side of which was sharp like a *balisong* or a kitchen knife. He further declared the possibility that Arlene struggled with the assailant before she died.[9]

The NBI Forensic Biologist also examined petitioner's briefs, t-shirt and short pants, and found that the briefs and shirt were positive of type "O" human blood, Arlene's blood type.[10] The NBI Forensic Chemist, subsequently, conducted DNA Analysis on the following specimens:

1. One (1) dirty white Hanford brief[s];
2. One (1) light gray t-shirt with DKNY print infront;
3. Several strands of hair allegedly recovered in the bedroom of [the] victim;
4. Buccal swabs taken from the following:
    a. ERNESTO ZUÑIGA (victim's father)
    b. MARGARITA ZUÑIGA (victim's mother)
    c. NOVER BRYAN SALVADOR (suspect)[11]

[7] *Id.* at 60.

[8] Dr. Minay's findings were embodied in an Autopsy Report and Certificate of Post-Mortem Examination; folder of exhibits, pp. 10-13.

[9] *Rollo*, p. 62.

[10] *Id*.

[11] Exhibit "DDD", folder of exhibits, p. 49.

The examination of specimen no. 1 yielded a negative result for the presence of human DNA; while specimen nos. 2, 3, and 4 a-c, yielded positive results.[12]

Petitioner was thus charged with Homicide in an Information dated April 8, 1998, the accusatory portion of which reads:

> That on or about the 20th day of September, 1997, in Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause and with deliberate intent to kill, did then and there willfully, unlawfully and feloniously assault and stab one ARLENE ZUÑIGA, hitting on the different parts of her body, which led to the death of said Arlene Zuñiga.
>
> CONTRARY TO LAW.[13]

The aforementioned facts were established during the prosecution's presentation of evidence. It was further testified to by the witnesses that – petitioner owned a knife otherwise known as *balisong*, which he usually brought every time he went out. Ill motive was shown by petitioner's previous act of peeping through the bathroom and Arlene's room on two occasions – while she was taking a bath and while she was inside the room with Marianne.

For his part, all that the petitioner could offer was bare denial of the accusations against him.

On October 26, 2001, the RTC rendered a Decision finding the petitioner guilty of homicide. The dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered finding accused NOVER BRYAN SALVADOR *y* DE LEON guilty beyond reasonable doubt and as principal of the crime of homicide as defined and penalized under Article 249 of the Revised Penal Code, without any attending mitigating or aggravating circumstance, and, applying the Indeterminate Sentence Law, hereby sentences him to an indeterminate penalty of EIGHT (8) YEARS, EIGHT (8) MONTHS

[12] *Id*.

[13] Records, p. 1.

and ONE (1) DAY of *prision mayor*, as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of *reclusion temporal*, as maximum. The accused is further sentence (sic) to indemnify Spouses Ernesto and Margarita Zuñiga the amount of ₱50,000.00 for the death of Arlene Zuñiga and another amount of ₱50,000.00 as moral damages, both without subsidiary imprisonment in case of insolvency. The accused is further sentenced to pay the costs of suit.

SO ORDERED.[14]

The RTC considered the following circumstantial evidence sufficient to establish petitioner's guilt:

(1) The perpetrator did not use any force or destroy any portion of the house to get inside the house. This implies that the perpetrator is an occupant of the house. The accused was, during the time material to this case, residing with his in-laws. The allegation of the accused that the main door of the house was open when he returned to get the tape is difficult to believe. It is unthinkable that the remaining occupants of the house, namely, Arlene and Mary Ann, who are both female, would not take the necessary precaution for their own protection such as locking the door of the house. It is as difficult to suppose that the perpetrator of the crime would go to the house where his intended victim was sleeping without being sure that he could gain entry to the house or have the necessary instruments to open the door.

(2) There were no personal belongings missing in the house. This shows that the person who entered the room of the victim had no intention to steal. This fact can better be appreciated if we consider the evidence that the accused was caught many times peeping at Arlene during her lifetime; and that [bloodstains] were found not in the short pants of the accused but in his Hanford brief and T-shirt.

(3) The absence of [bloodstains] or spots in any other part of the house except the room of the victim. This indicates that the assailant must have cleaned the traces of blood inside the house. The facility and time to clean the area is more available to an assailant who was an occupant of the house or a member of the household.

(4) Prior to and up to the date of the commission of the crime on September 20 or 21, 1997[,] the accused was seen by his parents-

[14] *Rollo*, p. 68.

in-law Ernesto and Margarita Zuñiga and her sister-in-law Marianne and his friend Dondy Hiponia in many occasions to have in [his] possession a '*balisong*" or "*beinte* (sic) *nueve*." A "*balisong*" or "*beinte* (sic) *nueve*" is the tagalong name for a knife with folding blade. There is no reason for the Court to doubt the testimonies of said witnesses. Being close relatives and friend of the accused[,] they have no motive to fabricate a story against the accused or to implicate him to the commission of the crime charged. The claim of the accused that his father-in-law Ernesto Zuñiga is trying to implicate him [for] the killing of Arlene because his father-in-law disapproved his marrying Mary Ann, and that he accompanied his mother-in-law to the house of the mistress of his father-in-law is not supported by the facts of the case. The accused was allowed to stay in the house of the Zuñigas, an indication that he was acceptable to the family. The alleged mistress of Ernesto was not shown to exist, nor her supposed address revealed by the accused. The disappearance of said bladed weapon and the denial by the accused that he ever owned the same are intriguing because, according to expert testimony, the stab wounds sustained by the victim were produced by a pointed instrument one side of which is sharp like a "*balisong*" or "*beinte* (sic) *nueve*."

(5) The presence of human blood with type "O" in the t-shirt and brief of the accused, the finding that the blood type of the victim belongs to groupd (sic) "O," and the circumstance that the accused had suffered no scratches or wound from which to come blood to stain his T-shirt and brief are revealing and could only lead to the conclusion that the victim was the source of the blood found in the T-shirt and brief of the accused.

(6) The conclusion arrived at by Magsipoc that the DNA Profile of the [bloodstain] in the light gray t-shirt and the DNA Profile on the hair strands could come from the accused and the victim.

(7) The unusual behavior of the accused after the discovery of the dead body of Arlene betrayed the accused. Ernesto and Margarita Zuñiga testified that soon after the discovery of the death of Arlene[,] they immediately went to the room of the accused and his wife Mary Ann; that it took Margarita a hard time to awaken the accused; and that upon being awakened, the accused did not get (sic) inside the room where Arlene was and instead stayed and cried in the sala telling his wife that he was innocent even if nobody yet at that time was

pointing to him as the suspect. The actuation of the accused then was that of a perpetrator of the crime with troubled conscience.[15]

On appeal, the CA affirmed petitioner's conviction.[16] Hence, the present petition for review on *certiorari* anchored on the following grounds:

I

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR WHEN IT RULED THAT THE MOST CONVINCING EVIDENCE OF THE PROSECUTION IS THE RESULT OF THE DNA ANALYSIS CONDUCTED BY THE NBI FORENSIC CHEMIST.

II.

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR WHEN IT RULED THAT BY MEANS OF CIRCUMSTANTIAL EVIDENCE, IT WAS PROVEN AND ESTABLISHED BEYOND REASONABLE DOUBT THAT ACCUSED-APPELLANT WAS THE ONE RESPONSIBLE FOR THE DEATH OF ARLENE ZUÑIGA.

III.

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF HOMICIDE.[17]

The petition lacks merit.

Direct evidence of the crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. The rules of evidence allow a trial court to rely on circumstantial

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[15] *Id.* at 66-67.

[16] The dispositive portion of which reads:

WHEREFORE, foregoing premises considered, the appeal is hereby **DENIED** for having no merit in fact and in law. The decision of the trial court is hereby **AFFIRMED**. Costs against accused-appellant.

SO ORDERED. (*Id.* at 55.)

[17] *Rollo*, p. 156.

evidence to support its conclusion of guilt. Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. At times, resort to circumstantial evidence is imperative since to insist on direct testimony would, in many cases, result in setting felons free and deny proper protection to the community.[18]

Section 4, Rule 133 of the Rules of Court, provides that circumstantial evidence is sufficient for conviction if the following requisites are complied with:

(1) There is more than one circumstance;

(2) The facts from which the inferences are derived are proven; and

(3) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[19]

All the circumstances must be consistent with one another, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent. Thus, conviction based on circumstantial evidence can be upheld, provided that the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person.[20]

In the present case, both the trial and appellate courts considered these pieces of evidence in finding petitioner's guilt: 1) the non-employment of force in entering the scene of the crime; 2) no missing personal belongings; 3) the absence of bloodstains in other parts of the house except Arlene's room; 4) petitioner's ownership of a *balisong*, the same weapon used in stabbing the

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[18] *People v. Padua*, G.R. No. 169075, February 23, 2007, 516 SCRA 590, 600-601.

[19] *People v. Padua*, *id.* at 601; *Marturillas v. People*, G.R. No. 163217, April 18, 2006, 487 SCRA 273, 312; *People v. Yatar*, G.R. No. 150224, May 19, 2004, 428 SCRA 504, 517-518; *People v. Darilay*, 465 Phil 747, 767 (2004); *People v. Esponilla*, 452 Phil. 517, 532 (2003).

[20] *People v. Padua*, *supra* note 18.

victim; 5) the presence of type "O" human blood on petitioner's T-shirt and briefs; 6) the positive result of the DNA analysis using the bloodstains found in petitioner's shirt and briefs; and 7) petitioner's unusual behavior after the discovery of the victim's lifeless body.[21]

In his appeal before the CA and likewise in this present petition, petitioner questions the sufficiency of each and every circumstance enumerated above. He specifically points out the inconsistent findings of the NBI Forensic Chemist and those of the NBI Forensic Biologist.[22] As to the circumstance that there was no forcible entry to the house, he insists that the main door was not locked; and he, in fact, faults Arlene for not locking the door to her bedroom.[23] Petitioner adds that the connection between the alleged "peeping incident" and intent to kill was so remote; and thus insufficient to convict him.[24] He also persuades this Court to give credence to his testimony that he owned a *samurai* (double-bladed knife) and not a *balisong* (single-bladed) which thus negates his authorship of the crime, since it would be contrary to the medico-legal's findings that the weapon used was an instrument one side of which was sharp.[25] Petitioner further asserts that the absence of scratches, wounds and bruises on his body were more consistent with his innocence rather than his guilt, if we follow the court's conclusion that Arlene had a chance to struggle with him prior to his death.[26] Lastly, petitioner claims that if we were to believe the prosecution's version, it would be hard to imagine that Mary Ann (petitioner's wife), who was then in the other room, was not awakened.[27]

Prior to the fateful night when Arlene's lifeless body was discovered, several witnesses saw petitioner in possession of a

[21] *Rollo*, p. 194.

[22] *Id*. at 156-159.

[23] *Id*. at 159-160.

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

[25] *Id*. at 163-165.

[26] *Id*. at 165-167

[27] *Id*. at 171-172.

balisong. The NBI autopsy report, in turn, stated that the wounds sustained by Arlene were inflicted with the use of a weapon only one side of which was sharp (such as a *balisong*). After the discovery of the crime, the *balisong* was nowhere to be found. Hence, the trial court was correct in its conclusion that the *balisong* previously seen in petitioner's possession was the very weapon used in stabbing the victim. While petitioner admitted owning a different kind of weapon, he failed to produce it in court. As such, it remained a self-serving allegation that cannot be considered to exonerate him from liability.

As to petitioner's shirt and briefs, as correctly held by the trial court (and as affirmed by the appellate court), they were found to be stained with type "O" blood (the victim's blood type). Instead of questioning the absence of proof that he was not of the same blood type as the victim, petitioner should have presented evidence that he indeed has type "O" blood. The fact remains that petitioner offered no explanation why his shirt and briefs contained bloodstains. It is, therefore, correct to conclude that they were stained with the victim's blood.

Moreover, the absence of scratches and bruises on petitioner's body parts does not negate the trial court's conclusion that the victim had the chance to struggle with the petitioner. This is so because, at the time the petitioner attacked the victim between 1:00 and 4:00 in the morning, she was most likely asleep and was only awakened by the petitioner; she was, therefore, not in a position to offer strong resistance. This explains why such struggle produced no bruises and scratches.

The presence of petitioner's wife inside the house at that time does not likewise negate the commission of the crime. Considering that his wife was a nursing mother who definitely had sleepless nights, she could not be expected to be conscious of everything that happened outside her room.

More importantly, intent to kill was duly established by the witnesses when they testified relative to the "peeping incident." Although there was no evidence or allegation of sexual advances, such incident manifested petitioner's evil motive. It is a rule in criminal law that motive, being a state of mind, is established

by the testimony of witnesses on the acts or statements of the accused before or immediately after the commission of the offense, deeds or words that may express it or from which his motive or reason for committing it may be inferred.[28] Motive and intent may be considered one and the same, in some instances, as in the present case.

Lastly, the DNA analysis made by the NBI expert placed the petitioner at the scene of the crime. Such evidence was considered, together with the other circumstances discussed earlier. The individual pieces of evidence may not be sufficient to point to the accused as the author of the crime. However, when taken together, they are more than enough to establish beyond reasonable doubt that petitioner committed the crime of homicide. We would like to emphasize at this point that the peculiarity of circumstantial evidence is that the guilt of the accused cannot be deduced from scrutinizing just one particular piece of evidence. It is more like a puzzle which, when put together, reveals a remarkable picture pointing towards the conclusion that the accused is the author of the crime.[29]

The prosecution's evidence, especially the testimonies of the witnesses who happen to be the victim's relatives, was not weakened by the fact of such relationship. The Court notes that petitioner himself is a relative of the witnesses, *albeit* by affinity, being the husband of the victim's sister. It is unnatural for a relative, who is interested in vindicating the crime, to accuse somebody else other than the real culprit. For her/him to do so is to let the guilty go free.[30] Where there is nothing to indicate that witnesses were actuated by improper motives on the witness stand, their positive declarations made under solemn oath deserve full faith and credence.[31]

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[28] *People v. Yatar*, *supra* note 19, at 521.

[29] *People v. Esponilla*, *supra* note 19, at 532.

[30] *Marturillas v. People*, *supra* note 19, at 302.

[31] *Marturillas v. People*, *id*.; see *People v. Yatar, supra* note 19, at 513; *People v. Esponilla*, *supra* note 19, at 532.

We also reiterate the well-settled rule that this Court accords great weight and a high degree of respect to factual findings of the trial court, especially when affirmed by the CA, as in the present case. Here, the RTC was unequivocally upheld by the CA, which was clothed with the power to review whether the trial court's conclusions were in accord with the facts and the relevant laws.[32] The credibility given by the trial courts to prosecution witnesses is an important aspect of evidence which appellate courts can rely on, because of the trial courts' unique opportunity to observe the witnesses, particularly their demeanor, conduct, and attitude, during the direct and cross-examination by counsels.[33]

In view of the foregoing, petitioner was correctly convicted of homicide punishable by *reclusion temporal*. Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty, absent any modifying circumstances, shall be taken from the full range of *prision mayor* and the maximum of which shall be taken from the medium period of *reclusion temporal*.[34] Specifically, the indeterminate penalty that should be imposed is within the range of 6 years and 1 day to 12 years of *prision mayor*, as minimum; to 14 years, 8 months and 1 day to 17 years and 4 months of *reclusion temporal*, as maximum. Hence, a modification of the penalty imposed by the trial court is in order. Instead of 8 years, 8 months and 1 day, the *minimum* term of the indeterminate penalty shall be 8 years and 1 day of *prision mayor*;[35] while the *maximum* term shall be that imposed by the trial court.

An appeal in a criminal proceeding throws the whole case open for review. It then becomes the duty of this Court to

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[32] *Marturillas v. People*, *supra* note 19, at 297.

[33] *People v. Malngan*, G.R. No. 170470, September 26, 2006, 503 SCRA 294, 320-321; see also *Marturillas v. People*, *id*.

[34] *People v. Loreto*, 446 Phil. 592, 614 (2003).

[35] See *Resayo v. People*, G.R. No. 154502, April 27, 2007, 522 SCRA 391, 409; *Tuburan v. People*, 479 Phil. 1009, 1020 (2004).

correct any error in the appealed judgment, whether or not included in the assignment of errors.[36]

We affirm the award of ₱50,000.00 by way of indemnity *ex delicto* to the Zuñiga spouses. When death occurs as a result of a crime, the heirs of the deceased are entitled to such amount as indemnity for death without need of any evidence or proof of damages.[37] The court likewise correctly awarded ₱50,000.00 as moral damages because of their mental anguish and moral suffering caused by Arlene's death.

The trial and appellate courts did not award actual damages, obviously because the victim's heirs failed to present proof of the expenses they incurred. However, it has been repeatedly held by this Court that where the amount of actual damages cannot be determined because of the absence of receipts to prove the same, temperate damages may be fixed at ₱25,000.00.[38]

WHEREFORE, premises considered, the petition is hereby *DENIED*. The Decision of the Court of Appeals dated February 26, 2004 in CA-G.R. CR No. 26048 is *AFFIRMED* with *MODIFICATIONS*. Petitioner Nover Bryan Salvador *y* De Leon is hereby sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor,* as *minimum,* to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal,* as *maximum.* In addition to civil indemnity and moral damages, petitioner is ordered to pay spouses Ernesto and Margarita Zuñiga the sum of ₱25,000.00 as temperate damages.

SO ORDERED.

Quisumbing,[*] *Ynares-Santiago (Chairperson), Austria-Martinez,* and *Reyes, JJ.,* concur.

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[36] *Marturillas v. People*, *supra* note 19, at 314-315; *Cabuslay v. People*, G.R. No. 129875, September 30, 2005, 471 SCRA 241, 264.

[37] *Cabuslay v. People*, *id.*; *Nueva España v. People*, G.R. No. 163351, June 21, 2005, 460 SCRA 547, 555-556.

[38] *People v. Segnar, Jr.*, 467 Phil. 643, 655 (2004); *People v. Darilay*, *supra* note 19, at 770.

[*] In lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 508 dated June 25, 2008.

SECOND DIVISION

[G.R. No. 165482. July 23, 2008]

SOCIAL SECURITY COMMISSION and APOLONIO LAMBOSO, *petitioners, vs.* **FAR S. ALBA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL ISSUES ARE NOT WITHIN THE PROVINCE OF THE SUPREME COURT; EXCEPTION.— At the outset, the question of whether Far Alba had been Lamboso's employer, under the Social Security Act of 1954, prior to 1970 is a question of fact. And while generally, factual issues are not within the province of the Supreme Court, the rule is not without exceptions. Where there are conflicting and contradictory findings of fact, this Court has not hesitate to scrutinize the records to determine the facts for itself.

2. LABOR AND SOCIAL LEGISLATION; SOCIAL SECURITY ACT OF 1954, AS AMENDED; TERM "EMPLOYER," DEFINED.— Section 8(c), Social Security Act of 1954 (as amended by Presidential Decree [P.D.] No. 1202 and P.D. No. 1636) defines an employer as "any person, natural or juridical, domestic or foreign, who carries on in the Philippines any trade or business, industry, undertaking, or activity of any kind and uses the services of another person who is under his orders as regards the employment, except the Government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the Government." Section 8(d) defines an employee as "any person who performs services for an employer in which either or both mental and physical efforts are used and who receives compensation for such services where there is an employer-employee relationship."

3. ID.; ID.; ID.; PERSON ACTING IN THE INTEREST OF THE EMPLOYER, DIRECTLY OR INDIRECTLY, CAN BE HELD LIABLE FOR THE REMITTANCE OF SOCIAL SECURITY CONTRIBUTIONS.— Finally, the Court believes that Section 8(c) of the Social Security Act of 1954 is broad enough to include those persons acting directly or indirectly

in the interest of the employer. As pointed out by the Court of Appeals, that the said provision does not contain the definitive phrase contained in Article 212(e) of the Labor Code should not be taken to mean that administrators such as Far Alba, whose interests are closely linked with his father-employer, do not come within the purview of the law. If under Article 212(e), persons acting in the interest of the employer, directly or indirectly, are obliged to follow the government labor relations policy, it could be reasonably concluded that such persons may likewise be held liable for the remittance of SS contributions which is an obligation created by law and an is employee's right protected by law.

4. ID.; ID.; ACTIONS FOR REMITTANCE OF SOCIAL SECURITY MONTHLY CONTRIBUTIONS ARE NOT REQUIRED TO BE FILED AGAINST THE ESTATE BUT MUST BE CLAIMED AGAINST THE HEIRS OF THE ERRANT DECEDENT.— Having established Far Alba's accountability to the SSS for Lamboso's unremitted contributions from 1960 to 1970, a discussion on the propriety of filing a claim of such nature against the estate proceedings of Arturo Alba, Sr. becomes unnecessary. In any event, the Court sustains the jurisdiction of the Commission over disputes under the Social Security Act "with respect to coverage, benefits, contributions and penalties thereon or any other matter related thereto. Moreover, the Court agrees with the Commission's assertion that an action for remittance of SS monthly contributions is not a type of money claim which needs to be filed against the estate proceedings. In the case of *Vera, et al. v. Judge Fernandez,* the Court declared that claims by the government for unpaid taxes are not covered by the statute of non-claims as these are monetary obligations created by law. Even after the distribution of the estate, claims for taxes may be enforced against the distributees in proportion to their shares in the inheritance. Similarly, employers are required to remit the contributions to the SSS by mandate of law. As such, actions of this type should be treated in much the same way as taxes-that they are not required to be filed against the estate and that they be claimed against the heirs of the errant decedent.

5. ID.; LABOR STANDARDS; EMPLOYER-EMPLOYEE RELATIONSHIP; ESSENTIAL ELEMENTS; PRESENT IN CASE AT BAR.— The essential elements of an employer-employee relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power of control with regard to the means and methods by which the work is to be accomplished, with the power of control being the most determinative factor. Lamboso testified that he was selected and his services were engaged by Far Alba himself. Corollarily, Far Alba held the prerogative of terminating Lamboso's employment. Lamboso also testified in a direct manner that he had been paid his wages by Far Alba. This testimony was seconded by Lamboso's co-worker, Rodolfo Sales. Anent the power of control with regard to the work of the employee, the element refers merely to the existence of the power and not the actual exercise thereof. It is not essential for the employer to actually supervise the performance of duties of the employee; it is sufficient that the former has a right to wield the power.

6. ID.; LABOR CODE; TERM "EMPLOYER," DEFINED.— Third, not to be forgotten is the definition of an employer under Article 167(f) of the Labor Code which deals with employees' compensation and state insurance fund. The said provision of the law defines an employer as "any person, natural or juridical, employing the services of the employee." It also defines a person as "any individual, partnership, firm, association, trust, corporation or legal representative thereof." Plainly, Far Alba, as the *hacienda* administrator, acts as the legal representative of the employer and is thus an employer within the meaning of the law liable to pay the SS contributions.

APPEARANCES OF COUNSEL

The Commissioner Legal Staff (SSS) for petitioner.

Public Attorney's Office for A. Lamboso.

Marie Luise P. Alba for respondent.

D E C I S I O N

TINGA, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] dated 12 November 2004 are the Decision[2] dated 20 July 2004 of the Court of Appeals in CA-G.R. SP No. 72607 and its Resolution[3] dated 30 September 2004 reversing the Resolution[4] dated 28 November 2001 of the Social Security Commission (the Commission) in SSC Case No. 12-14618-96.

Following are the antecedents.

Sometime in 1991, petitioner Apolonio Lamboso (Lamboso) filed a claim for retirement benefit before the Social Security System (SSS). However, his claim was denied on the ground that he could not qualify for monthly pension under Republic Act (R.A.) No. 1161[5] (the Social Security Act of 1954) as he then had only thirty-nine (39) paid contributions. On 11 December 1996, Lamboso appealed the denial of his claim by filing a petition before the Commission wherein he alleged that he should be entitled to monthly retirement pension. He prayed for the adjustment of the date of his Social Security (SS) coverage and for the remittance of his delinquent monthly contributions.[6] On 28 November 2001, the Commission rendered its resolution, to wit:

Petitioner (Apolonio Lamboso) herein alleged that he worked in Hda. La Roca (owned by Far Alba) from 1960 to 1973 as '*cabo*,' in Hda. Alibasao from 1973 to 1979 as overseer and in Hda. Kamandag

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[1] *Rollo*, pp. 10-28.

[2] *Id*. at 30-41; penned by Associate Justice Vicente S.E. Veloso with the concurrence of Associate Justices Roberto A. Barrios and Amelita G. Tolentino.

[3] *Id.* at 43-45.

[4] CA *rollo*, pp. 18-20.

[5] AN ACT TO CREATE A SOCIAL SECURITY SYSTEM PROVIDING SICKNESS, UNEMPLOYMENT, RETIREMENT, DISABILITY AND DEATH BENEFITS FOR EMPLOYEES.

[6] *Rollo*, p. 11.

from 1979 to 1984; that the latter two (2) haciendas are both owned by Ramon S. Benedicto; and that when he filed a claim for retirement pension benefit with the SSS, however, the same was denied on the ground that he had 39 monthly contributions to his credit.

Private respondent Ramon S. Benedicto alleged that he was only a lessee of Hdas. Albasao and Kamandag; that when he took over as lessee thereof, there was no available records to support the petitioner's claim of employment; and that he, therefore, prays that the petition be dismissed for lack of cause of action.

Respondent Far Alba (Hda. La Roca) was *motu propio* declared in default on November 14, 1997 for failure to file his answer. On the other hand, public respondent SSS merely cited the provisions of Section 8 (d), 9, 12-B, 22 (a) and (b) and 24 (a) and (b) of R.A. [No.] 1161, as amended, by way of responsive pleading.

The petitioner reiterated the averments in his pleading in the Position Paper which he filed on November 20, 1998. He further averred that he received from Far Alba a monthly salary of ₱45.00 from 1960 to 1965 and ₱180.00 from 1965 to 1973 and from employer Ramon S. Benedicto, a monthly salary of ₱500.00 from 1973 to 1984; and that he was reported to the SSS for coverage in 1973 and only a total of 39 monthly contributions were remitted in his name.

In its Position Paper, public respondent SSS avers that Apolonio Lamboso, whose date of birth is April 10, 1930, was reported for SS coverage, effective April 1, 1970 by employer Far Alba (ID No. 07-0869300) on December 11, 1972; that he was, likewise, reported for [SSS] coverage effective May 1, 1980, by employer Kamandag Agri & Dev. Corp. (ID No. 07-2024250-4) on September 1, 1980; and that Apolonio Lamboso has only 39 monthly contributions (remitted in his favor by Far Alba) for the period January 1970 to March 1973, but none under Kamandag Agri[.] Dev. Corp.

Private respondent Ramon Benedicto, in his Position Paper dated September 6, 2000, avers that the petitioner was employed by him from 1973 to 1984 (1973 to 1979 in Hda. Alibasao and from 1979 to 1984 in Hda. Kamandag); and that all of his employment records were already destroyed and damaged by termites.

In the testimonial evidence for the petitioner presented on March 17 and June 15, 1999 and August 10, 2000, witnesses Rodolfo Sales, Falconeri Fierro and Romulo Fierro collectively corroborated the petitioner's employment with Far Alba from 1960 to April 1973 in Hda. La Roca and with employer Ramon Benedicto in Hdas. Alibasao and Kamandag from 1973 to 1984.

The failure on the part of respondent Far Alba to file his responsive pleading to the petition filed by petitioner Apolonio Lamboso strongly indicates lack or absence of evidence, by way of rebuttal, to the positive assertion of the petitioner regarding his employment with the former from 1960 to April 1973. Besides, defrauding respondent Far Alba reported Apolonio Lamboso to the SSS for coverage effective April 1, 1970 and this act of reporting is already an incontrovertible proof of employment.

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WHEREFORE, PREMISES CONSIDERED, this Commission hereby orders:

1. Respondent Far Alba to pay to the SSS the delinquent monthly contributions of Apolonio Lamboso from June 18, 1960 to April 1973 (based on his monthly salary of ₱45.00 from 1960 to 1965 and ₱180.00 from 1966 to April 1973) in the amount of ₱1,115.00, the 3% per month penalty due thereon in the amount of ₱12,387.57, computed as of December 5, 2001 and the damages under Section 24 (b) of R.A. [No.] 1161, as amended, in the amount of ₱4,895.38; and

2. Respondent Ramon Benedicto to pay to SSS the delinquent monthly contributions due the petitioner for the period May 1973 to 1984 (based on his monthly salary of ₱500.00) in the amount of ₱8,865.60, the 3 % per month penalty due thereon in the amount of ₱65,879.70, computed as of December 5, 2001 and that damages under Section 24 (b) of R.A. [No.] 1161, as amended, in the amount of ₱26,919.75

Should the respondents pay their respective contribution liabilities within sixty (60) days from receipt hereof, their other liabilities for the 3% per month penalty are deemed condoned pursuant to SSC Resolution No. 982-S.99.

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[7] *Id.* at 32-34.

The SSS, on the other hand, is ordered to pay Apolonio Lamboso his retirement benefit upon the filing of the claim therefor, subject to existing rules and regulations, and to inform this Commission of its compliance herewith.[7]

Herein respondent Far Alba moved for reconsideration of the Commission's resolution, citing lack of notice and denial of due process. The Commission denied the motion in an Order[8] dated 26 June 2002, stating as follows:

We find respondent Far Alba's motion for reconsideration utterly bereft of merit as the case records clearly show that summons was served upon herein respondent through his wife, Tina Alba, on September 15, 1997 as herein respondent was not at his residence at the time of service. After the lapse of the reglementary period within which to file his responsive pleading, this Commission *motu propio* declared him in default on November 14, 1997. Thus, when respondent Far Alba failed to file a motion to lift the default order until the promulgation of the questioned Resolution, he could not argue that he was deprived of due process that would warrant the reversal of the judgment.[9]

Alba subsequently filed a Petition for Review[10] under Rule 43 of the 1997 Rules of Civil Procedure before the Court of Appeals assigning the following errors allegedly committed by the Commission: (1) the Order of the Commission was rendered in violation of his constitutional rights to due process and equal protection; (2) he was not obligated by law to remit contributions to the SSS prior to 1970 and after 1973 in the absence of employer-employee relationship; and (3) Lamboso's claim had already prescribed.[11]

The Court of Appeals reversed and set aside both the resolution and the order of the Commission. It held that Far Alba cannot be considered as an employer of Lamboso prior to 1970 because

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

[9] *Rollo*, pp. 34-35.

[10] CA *rollo*, pp. 4-15.

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

as administrator of the family-owned *hacienda*, he is not an employer under Section 8(c) of the Social Security Act of 1954 who carries on a "trade or business, industry, undertaking or activity of any kind and uses the services of another person who is under his orders as regards the employment,"[12] unlike under Article 212(e) of the Labor Code which defines an employer as, among others, any person acting directly or indirectly in the interest of the employer. As such, the appellate court declared, Far Alba had no obligation to remit to SSS the monthly contributions of Lamboso prior to 1970. It also held that inasmuch as Far Alba had duly remitted Lamboso's monthly contributions to the SSS for the period of January 1970 to March 1973, which totaled 39 contributions, he as Lamboso's employer should be absolved from the adjudged liability.[13]

Furthermore, in its Resolution[14] denying the Commission's motion for reconsideration, the Court of Appeals stated that since it was Arturo Alba, Sr., Far Alba's father, who had failed to remit the SS contributions prior to 1970, Lamboso should have asserted his claim before the estate proceedings of his deceased employer in accordance with Section 5, Rule 86 of the Rules of Court.[15]

Now, before the Court, the Commission insists that the term "employer" under the Social Security Act of 1954 may be applied to Far Alba, the administrator-son of the owner, Arturo Alba, Sr., who is directly and actively involved in the operation of the agricultural undertaking. The Commission likewise asserts that a petition for the payment of SS contributions and SS retirement benefits may not be filed before the estate proceedings of the deceased employer as a claim of this nature is not a money claim arising from contract, express or implied, entered

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[12] Republic Act No. 1161 (1951), Sec. 8(c).

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

[14] *Supra* note 3.

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

[16] *Id*. at 208-220.

into by the decedent in his lifetime but is rather akin to claims for taxes which may be enforced against the decedent's executor, administrator or legal heirs within the prescriptive period of twenty (20) years as provided for in Section 22(b) of R.A. No. 8282 (the Social Security Act of 1997).[16]

In his Memorandum[17] dated 26 May 2006, Far Alba stresses that he was not Lamboso's employer prior to 1970 and that he neither had been the administrator of the *hacienda* because in 1960, he was in Manila studying law and was in fact admitted into the practice of the law the following year.[18] He agrees with the ruling of the Court of Appeals that the claim for the payment of SS contributions should have been filed before the estate proceedings of Arturo Alba, Sr.[19]

There is merit in the petition.

At the outset, the question of whether Far Alba had been Lamboso's employer, under the Social Security Act of 1954, prior to 1970 is a question of fact. And while generally, factual issues are not within the province of the Supreme Court, the rule is not without exceptions. Where there are conflicting and contradictory findings of fact, this Court will not hesitate to scrutinize the records to determine the facts for itself.[20]

Section 8(c), Social Security Act of 1954 (as amended by Presidential Decree [P.D.] No. 1202 and P.D. No. 1636) defines an employer as "any person, natural or juridical, domestic or foreign, who carries on in the Philippines any trade or business, industry, undertaking, or activity of any kind and uses the services of another person who is under his orders as regards the employment, except the Government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the Government." Section 8(d) defines

[17] *Id*. at 231-263.

[18] *Id*. at 244-245.

[19] *Id*. at 250-251.

[20] *Social Security System v. Court of Appeals*, 401 Phil. 132, 141 (2000).

an employee as "any person who performs services for an employer in which either or both mental and physical efforts are used and who receives compensation for such services where there is an employer-employee relationship."[21]

Far Alba denies having been Lamboso's employer before 1970. More than that, he denies having served as the *hacienda's* administrator before that year. These disavowals, however, are undermined by Lamboso's clear and direct testimony that Far Alba served as the *hacienda's* administrator from 1960 to 1965 and solely ran the place from 1965 onwards. Pertinently, Lamboso testified as follows:

ATTY. BAYLIN:

Q: And how many years did you work with Far Alba?
A: Thirteen (13) years.

Q: How many hectares is Hda. La Roca?
A: The total area is 318 hectares, however, the 214 was the area left to the two brothers.

Q: From whom did you receive your salary?
A: Far Alba himself.

Q: Personally?
A: Yes.

Q: You said that you worked with Far Alba from 1960 to 1973 and you worked with Ramon Benedicto from 1974 to 1985, how much was your salary when you worked with Ramon Benedicto?
A: Five Hundred Pesos (₱500.00) a month.

Q: Were there deductions made from your salary?
A: Yes, for SSS and medicare – ₱45.00 a month.[22]

ATTY. LOCSIN:

Q: Since this hacienda was originally owned by Arturo Alba, did you not work with Arturo Alba?

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[21] Republic Act No. 1161 (1954), Sec. 8 (d).

[22] CA *rollo*, p. 86.

A: I had worked with Arturo Alba since in [*sic*] 1960 he was the one who was working the hacienda together with Far Alba, who was his son.

Q: In what capacity was Far Alba working with Arturo Alba?
A: He was the administrator.

Q: You are saying then that your employer was Arturo Alba from 1960 to 1969 or sometime in 1970 when the property was partitioned?

A: My employers were both Arturo Alba and Far Alba from 1960 to 1965 because it was Far Alba who admitted me to work in the hacienda. In 1965[,] Arturo Alba got sick and the hacienda was ran solely by Far Alba.

Q: Let us make it clear. From 1960 to 1965[,] Far Alba was merely the administrator of the hacienda, is that correct?
A: Yes.[23]

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ATTY. LOCSIN:

Q: When the property was partitioned, with whom did you work?
A: With Far Alba still.

Q: You said that this 240 hectares was shared by the two brothers, was this 240 hectares also divided between them and each boundary definitely assigned to each other [*sic*] brother?
A: This 240 hectares was shared in common by the two brothers. It was only Nora who has her definite share and this 240 hectares was ran and managed by Far Alba.

Q: Do you know in what capacity [is] Far Alba running the hacienda pertaining to Arturo Alba, Jr.?
A: Because he was not a lessee but they were co-owners of that share and it was Far Alba who was managing that share.

Q: Do you know where Arturo Alba, Jr. was during the time that Far Alba was managing the hacienda?

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[23] *Id*. at 91.

A: He is living in their family compound and whenever Far Alba goes to the hacienda he usually accompanies.[24]

Significantly, Lamboso's testimony is corroborated by the testimony of his co-worker, Rodolfo Sales, as follows:

ATTY. BAYLIN:

Q: What is the name of the third *cabo*?
A: Mansueto Uriarte. He was a *cabo* in weeding.

Q: When did you start working at Hda. Tres Marias which was later named Hda. La Roca?
A: In 1963.

Q: Until what year did you work at Hda. La Roca?
A: Until 1968.

Q: When you were employed in 1963, was Apolonio Lamboso already working at Hda. Laroca?
A: When I arrived in that hacienda he was already there.

Q: Who owns this Hda. La Roca?
A: [Arturo Alba,] Sr.

Q: Do you know this person named Far Alba?
A: He is the administrator of the hacienda, the son of Arturo Alba, Sr.

Q: How many times in one month were you paid your salary?
A: Fifteenth and thirtieth of the month.

Q: From whom you received your salary?
A: Far Alba.

Q: Have you seen Apolonio Lamboso collecting his salary?
A: Yes, because we were together in receiving our salaries.

Q: Do you know if employees of Hda. La Roca were deducted of their premiums for SSS?
A: Yes, I know.

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[24] *Id.* at 93.

Q: In your case, were you deducted for SSS?
A: Yes, I was deducted.

Q: Are you aware if Apolonio Lamboso was also deducted?
A: Yes, the same. He was also deducted for premiums from his salaries.

Q: When you left in 1968, where was Apolonio Lamboso?
A: He stayed behind at Hda. La Roca.

ATTY. BAYLIN:

That will be all for the witness.[25]

Evidently, Far Alba had indeed served as Lamboso's employer from 1965 to 1970 or, at the very least, he had served as the *hacienda's* administrator before 1970. Now, the question is whether an administrator could be considered an employer within the scope of the Social Security Act of 1954.

We answer in the affirmative.

First, the Court observes that Far Alba was no ordinary administrator. He was no less than the son of the *hacienda's* owner and as such he was an owner-in-waiting prior to his father's death. He was a member of the owner's family assigned to actively manage the operations of the *hacienda*. As he stood to benefit from the *hacienda's* successful operation, he ineluctably took his job and his father's wishes to heart. As emphasized by the Commission his and the owner's interests in the business were plainly and inextricably linked by filial bond. He more than just acted in the interests of his father as employer, and could himself pass off as the employer, the one carrying on the undertaking.

Second, nomenclature aside, Far Alba was not merely an administrator of the *hacienda*. Applying the control test which is used to determine the existence of employer-employee relationship for purposes of compulsory coverage under the SSS law, Far Alba is technically Lamboso's employer.[26]

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

[26] *Social Security System v. Court of Appeals, supra* note 20.

The essential elements of an employer-employee relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power of control with regard to the means and methods by which the work is to be accomplished, with the power of control being the most determinative factor.[27]

Lamboso testified that he was selected and his services were engaged by Far Alba himself. Corollarily, Far Alba held the prerogative of terminating Lamboso's employment. Lamboso also testified in a direct manner that he had been paid his wages by Far Alba. This testimony was seconded by Lamboso's co-worker, Rodolfo Sales. Anent the power of control with regard to the work of the employee, the element refers merely to the existence of the power and not the actual exercise thereof. It is not essential for the employer to actually supervise the performance of duties of the employee; it is sufficient that the former has a right to wield the power.[28]

Third, not to be forgotten is the definition of an employer under Article 167(f) of the Labor Code which deals with employees' compensation and state insurance fund. The said provision of the law defines an employer as "any person, natural or juridical, employing the services of the employee." It also defines a person as "any individual, partnership, firm, association, trust, corporation or legal representative thereof." Plainly, Far Alba, as the *hacienda* administrator, acts as the legal representative of the employer and is thus an employer within the meaning of the law liable to pay the SS contributions.

Finally, the Court believes that Section 8(c) of the Social Security Act of 1954 is broad enough to include those persons acting directly or indirectly in the interest of the employer. As pointed out by the Court of Appeals, that the said provision does not contain the definitive phrase contained in Article 212(e) of the Labor Code should not be taken to mean that administrators

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[27] *Social Security System v. Court of Appeals*, *supra*.

[28] *MAM Realty Dev't. Corp. v. NLRC*, 314 Phil. 838, 842 (1995).

such as Far Alba, whose interests are closely linked with his father-employer, do not come within the purview of the law. If under Article 212(e), persons acting in the interest of the employer, directly or indirectly, are obliged to follow the government labor relations policy, it could be reasonably concluded that such persons may likewise be held liable for the remittance of SS contributions which is an obligation created by law and an is employee's right protected by law.

Having established Far Alba's accountability to the SSS for Lamboso's unremitted contributions from 1960 to 1970, a discussion on the propriety of filing a claim of such nature against the estate proceedings of Arturo Alba, Sr. becomes unnecessary.[29] In any event, the Court sustains the jurisdiction of the Commission over disputes under the Social Security Act "with respect to coverage, benefits, contributions and penalties thereon or any other matter related thereto.[30] Moreover, the

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[29] RULES OF COURT, Sec. 5 which states as follows:

Sec. 5. Claims which must be filed under the notice. If *not* filed, barred; exceptions. — All claims for money against the decedent, arising from contract, express or implied, whether the same be due, or not due, or contingent, all claims for funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants. Where an executor or administrator commences an action, or prosecutes an actions already commenced by the deceased in his lifetime, the debtor may set forth by answer the claims he has against the decedent, instead of presenting them independently to the court as herein provided, and mutual claims may be set off against each other in such action; and if final judgment is rendered in favor of the defendant, the amount so determined shall be considered the true balance against the estate, as though the claim had been presented directly before the court in the administration proceedings. Claims not yet due, or contingent, may be approved at their present value.

[30] SEC. 5. *Settlement of Disputes.* — (a) Any dispute arising under this Act with respect to coverage, benefits, contributions and penalties thereon or any other matter related thereto, shall be cognizable by the Commission, and any case filed with respect thereto shall be heard by the Commission, or any of its members, or by hearing officers duly authorized by the Commission and decided within the mandatory period of twenty (20) days after the submission

Court agrees with the Commission's assertion that an action for remittance of SS monthly contributions is not a type of money claim which needs to be filed against the estate proceedings. In the case of *Vera, et al. v. Judge Fernandez,*[31] the Court declared that claims by the government for unpaid taxes are not covered by the statute of non-claims as these are monetary obligations created by law. Even after the distribution of the estate, claims for taxes may be enforced against the distributees in proportion to their shares in the inheritance.[32] Similarly, employers are required to remit the contributions to the SSS by mandate of law. As such, actions of this type should be treated in much the same way as taxes—that they are not required to be filed against the estate and that they be claimed against the heirs of the errant decedent.

WHEREFORE, the petition is *GRANTED*. The Decision dated 20 July 2004 of the Court of Appeals in CA-G.R. SP No. 72607 and its Resolution dated 30 September 2004 insofar as they absolved respondent Far Alba from liability to remit to the Social Security System petitioner Apolonio Lamboso's monthly contributions prior to January 1970, are *REVERSED* and *SET ASIDE*. The Resolution dated 28 November 2001 of the Social Security Commission in SSC Case No. 12-14618-96 is *REINSTATED*.

SO ORDERED.

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

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of the evidence. The filing, determination and settlement of disputes shall be governed by the rules and regulations promulgated by the Commission.

[31] 178 Phil. 154 (1979).

[32] REGALADO, *REMEDIAL LAW COMPENDIUM*, Vol. II (Ninth Revised Edition), citing *Government v. Pamintuan*, 55 Phil. 13; See *Commissioner of Internal Revenue v. Pineda*, 128 Phil. 146 (1967).

EN BANC

[G.R. No. 166510. July 23, 2008]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **BENJAMIN "KOKOY" T. ROMUALDEZ and THE SANDIGANBAYAN (FIRST DIVISION),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; SANDIGANBAYAN'S RULING GRANTING THE MOTION TO QUASH THE INFORMATION SHALL, UPON FINALITY, BE REVIEWABLE BY APPEAL.—The Sandiganbayan ruling granting Romualdez' motion to quash the Information shall, upon finality, close and terminate the proceedings against Romualdez; hence, it is a final ruling that disposes of the case and is properly reviewable by appeal. The appeal, as Romualdez correctly maintains, is through Section 7 of Presidential Decree No. 1606 (as amended by Section 5 of Republic Act No. 8249), which provides that decisions and final orders of the Sandiganbayan are appealable to the Supreme Court by petition for review on *certiorari* raising pure questions of law in accordance with Rule 45.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; CANNOT BE A SUBSTITUTE FOR A LOST APPEAL; REMEDIES OF APPEAL AND *CERTIORARI* ARE MUTUALLY EXCLUSIVE AND NOT ALTERNATIVE OR SUCCESSIVE.— The purpose and occasion for the use of Rules 45 and 65 as modes of review are clearly established under the Rules of Court and related jurisprudence. Rule 45 provides for the broad process of appeal to the Supreme Court on pure errors of law committed by the lower court. Rule 65, on the other hand, provides a completely different basis for review through the extraordinary writ of *certiorari*. The writ is extraordinary because it solely addresses lower court actions rendered without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction. By express provision, Rule 65 is the proper remedy when there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. Thus, the

remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive; *certiorari* is not allowed when a party to a case fails to appeal a judgment or final order despite the availability of that remedy; a petition for *certiorari* cannot likewise be a substitute for a lost appeal.

3. ID.; ID.; ID.; WHEN MAY BE ALLOWED DESPITE THE AVAILABILITY OF APPEAL.— Cases on the choice between the Rule 45 and Rule 65 modes of review are not novel. Because of the spirit of liberality that pervades the Rules of Court and the interest of substantial justice that we have always believed should be upheld, we have had occasions to relax the strict rules regulating these modes of review. However, these occasions are few and far between and have always been attended by exceptional circumstances; otherwise, the exceptions would displace the general rule, rendering useless the distinctions painstakingly established through the years to foster procedural orderliness. In *Filoteo v. Sandiganbayan,* we allowed a Rule 65 petition, notwithstanding that the proper remedy is a Rule 45 appeal, to review a Sandiganbayan Decision *in view of the importance of the issues raised* in the case. We similarly allowed a review under Rule 65 in *Republic v. Sandiganbayan (Third Division)* and *Republic v. Sandiganbayan (Special First Division)* – cases on ill-gotten wealth – on the reasoning that the nature of the cases was endowed with public interest and involved public policy concerns. In the latter *Republic v. Sandiganbayan* case, we added that substantial justice to the Filipino people and to all parties concerned, not mere legalisms or perfection of form, should be relentlessly and firmly pursued. In the past, we have likewise allowed a similar treatment on the showing that an appeal was an inadequate remedy. That we can single out for special treatment cases involving grave abuse of discretion is supported by no less than the **second paragraph of Article VIII, Section 1** of the **1987 Constitution** which provides: Judicial power includes the duty of the courts of justice to settle actual controversy involving rights which are legally demandable and enforceable, and to **determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**. Under this provision, action on grave abuse of discretion is not only a power we can exercise; more than this, **it is a duty we must discharge**.

4. ID.; RULES OF PROCEDURE; DEVIATION FROM THE STRICT APPLICATION THEREOF, WHEN ALLOWED; A RULING THAT IS FATALLY DEFECTIVE ON JURISDICTIONAL GROUND MAY BE QUESTIONED WITHIN THE PERIOD FOR FILING A PETITION FOR *CERTIORARI* UNDER RULE 65, NOTWITHSTANDING THE LAPSE OF THE PERIOD OF APPEAL UNDER RULE 45.— In the spirit embodied in this constitutional provision and in the interest of substantial justice, we will not hesitate to deviate from the strict application of our procedural rules when grave abuse of discretion amounting to lack or excess of jurisdiction is properly and substantially alleged in a petition *filed after the lapse of the period for appeal under Rule 45 but prior to the lapse of the period for filing a Rule 65 petition*. Conceptually, no major deviation from the rules in fact transpires in doing this. Under established jurisprudence, decisions and rulings rendered without or with lack or excess of jurisdiction are null and void, subject only to the procedural limits on the right to question them provided under Rule 65. It is for this reason that a decision that lapses to finality fifteen (15) days after its receipt can still be questioned, within sixty (60) days therefrom, on jurisdictional grounds, although the decision has technically lapsed to finality. The only deviation in terms of strict application of the Rules is from what we have discussed above regarding the basic nature of a petition for *certiorari* as expressly laid down by Rule 65; it is available only when there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, and thus is not allowed as a substitute when a party fails to appeal a judgment or final order despite the availability of that remedy. Under these terms, if the Sandiganbayan merely *legally erred* while acting within the confines of its jurisdiction, then its ruling, even if erroneous, is properly the subject of a petition for review on *certiorari* under Rule 45, and any Rule 65 petition subsequently filed will be for naught. The Rule 65 petition brought under these circumstances is then being used as a substitute for a lost appeal. If, on the other hand, the Sandiganbayan ruling is *attended by grave abuse of discretion amounting to lack or excess of jurisdiction*, then this ruling is fatally defective on jurisdictional ground and we should allow it to be questioned within the period for filing a petition for *certiorari* under Rule 65, notwithstanding

the lapse of the period of appeal under Rule 45. To reiterate, the ruling's jurisdictional defect and the demands of substantial justice that we believe should receive primacy over the strict application of rules of procedure, require that we so act.

5. ID.; CRIMINAL PROCEDURE; MOTION TO QUASH; GROUNDS; THE FACTS CHARGED DO NOT CONSTITUTE AN OFFENSE; DETERMINATIVE TEST.— Romualdez' motion to quash that gave rise to the present case was anchored on Section 3 (a) of Rule 117 of the Revised Rules of Court which provides: Section 3. *Grounds*. - The accused may move to quash the complaint or information on any of the following grounds: (a) That the facts charged do not constitute an offense; x x x The determinative test in appreciating a motion to quash under this rule is the sufficiency of the averments in the information, that is, whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense as defined by law without considering matters *aliunde*. As Section 6, Rule 117 of the Rules of Criminal Procedure requires, the information only needs to state the ultimate facts; the evidentiary and other details can be provided during the trial.

6. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; WHEN PRESENT.— Whether the Sandiganbayan acted correctly, or committed errors of law while in the exercise of its jurisdiction, or gravely abused its discretion in quashing the information, are to be determined based on the application of the standards in evaluating a motion to quash, in light of the elements and terms of the offense with which the accused stands charged. The Sandiganbayan **acts correctly or commits errors of law depending on its conclusions** if – based solely on the "four corners" of the information as jurisprudence mandates, independently of any evidence whether *prima facie* or conclusive, and hypothetically assuming the truth of all the allegations in the Information – it rules on whether all the elements of the offense as defined by law are present. On the other hand, it **acts with grave abuse of discretion** if its ruling is a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction; or if it rules in an arbitrary or despotic manner by reason of passion or personal hostility; or if it acts in a manner 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 action outside the contemplation of law. Based on these considerations, we hold that the Sandiganbayan's actions grossly violated the defined standards. Its conclusions are based on considerations that either not appropriate in evaluating a motion to quash; are evidentiary details not required to be stated in an Information; are matters of defense that have no place in an Information; or are statements amounting to rulings on the merits that a court cannot issue before trial.

7. ID.; CRIMINAL PROCEDURE; INFORMATION; REQUIRES TO STATE ONLY THE ULTIMATE FACTS CONSTITUTING THE OFFENSE, NOT THE FINER DETAILS OF WHY AND HOW THE ILLEGAL ACTS ALLEGED AMOUNTED TO UNDUE INJURY OR DAMAGE.— To illustrate, in the first Resolution, the Sandiganbayan saw no basis for the allegation of damage and prejudice for the failure of the Information to state that Romualdez did not render service in the two positions which he occupied. The element of the offense material to the "damage and prejudice" that the Sandiganbayan refers to is the "undue injury" caused to the government by Romualdez' receipt of compensation for the incompatible positions that he could not simultaneously occupy. The allegation of "undue injury" in the Information, consisting of the extent of the injury and how it was caused, is complete. Beyond this allegation are matters that are already in excess of what a proper Information requires. To restate the rule, an Information only needs to state the ultimate facts constituting the offense, not the finer details of why and how the illegal acts alleged amounted to undue injury or damage – matters that are appropriate for the trial. Specifically, how the two positions of Romualdez were incompatible with each other and whether or not he can legally receive compensation for his two incompatible positions are matters of detail that the prosecution should adduce at the trial to flesh out the ultimate facts alleged in the Information. Whether or not compensation has been earned through proper and commensurate service is a matter in excess of the ultimate facts the Information requires and is **one that Romualdez, not the Information, should invoke or introduce into the case as a matter of defense**.In the context of ruling on a motion to quash, the allegation that

services were not rendered that the Sandiganbayan wished to require, not being a fact material to the elements of the offense, is **an extraneous matter that is appropriate for the Sandiganbayan to consider for** inclusion in the Information. For the Sandiganbayan to assume, too, and to conclude, that there was no damage and prejudice since there was no illegality in being compensated for actual services rendered, is to pass upon the merits of the case - a task premature for the Sandiganbayan to undertake at the motion-to quash stage of the case. **In so doing, the Sandiganbayan prematurely ruled on at least two matters**. First, the Sandiganbayan either assumed as correct, or admitted for purposes of the motion to quash, the defense allegation that Romualdez rendered services, when this is a disputed evidentiary matter that can only be established at the trial. Second, and as already mentioned above, the legal status of the receipt of compensation for each of two incompatible offices is, at best, legally debatable.

8. ID.; JUDGMENT; THE DECLARATION OF NULLITY OF THE DECISION OF THE SANDIGANBAYAN CONSIDERED PROPER WHERE THE ERRORS COMMITTED THEREOF WERE SO PATENT AND GROSS AS TO AN AMOUNT TO ACTION OUTSIDE THE CONTEMPLATION OF LAW.— In light of all these, we conclude that the Sandiganbayan grossly and egregiously erred in the considerations it made and in the conclusions it arrived at when it quashed the Information against Romualdez, *to the point of acting outside its jurisdiction through the grave abuse of discretion that attended its actions.* Its errors are so patent and gross as to amount to action outside the contemplation of law. Thus, the declaration of the nullity of the assailed Sandiganbayan Resolutions is in order.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Otilia Dimayuga-Molo for private respondent.

D E C I S I O N

BRION, *J.*:

We resolve the Petition for *Certiorari* filed under Rule 65 of the Revised Rules of Court by the People of the Philippines (*People*), assailing the Resolutions dated 22 June 2004[1] and 23 November 2004[2] of the Sandiganbayan in CRIMINAL CASE NO. 26916 entitled *People of the Philippines versus Benjamin "Kokoy" Romualdez*, on the ground of grave abuse of discretion and/or lack or excess of jurisdiction. The first assailed Resolution granted the motion to quash filed by private respondent Benjamin "Kokoy" Romualdez (*Romualdez*); the second assailed Resolution, on the other hand, denied the People's motion for reconsideration of the first assailed Resolution.

ANTECEDENTS

The Office of the Ombudsman (*Ombudsman*) charged Romualdez before the Sandiganbayan with violation of Section 3(e) of Republic Act No. 3019 (*RA 3019*), as amended, otherwise known as the Anti-Graft and Corrupt Practices Act. The Information[3] reads:

> That on or about and during the period from 1976 to February 1986 or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused Benjamin "Kokoy" Romualdez, a public officer being then the Provincial Governor of the Province of Leyte, while in the performance of his official function, committing the offense in relation to his Office, did then and there willfully, unlawfully and criminally with evident bad faith, cause undue injury to the Government in the following manner: accused public officer being

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[1] Penned by then Sandiganbayan Associate Justice, now Sandiganbayan Presiding Justice Diosdado M. Peralta, with Associate Justices Roland B. Jurado and Efren N. dela Cruz, concurring; *rollo*, pp. 45-53;

[2] Penned by Justice Peralta, with then Sandiganbayan Associate Justice Teresita Leonardo-de Castro (now a member of this Court) and Justice dela Cruz, concurring; *id.*, pp. 54-60.

[3] *Id.*, pp. 86-88.

then the elected Provincial Governor of Leyte and without abandoning said position, and using his influence with his brother-in-law, then President Ferdinand E. Marcos, had himself appointed and/or assigned as Ambassador to foreign countries, particularly the People's Republic of China (Peking), Kingdom of Saudi Arabia (Jeddah), and United States of America (Washington D.C.), knowing fully well that such appointment and/or assignment is in violation of the existing laws as the Office of the Ambassador or Chief of Mission is incompatible with his position as Governor of the Province of Leyte, thereby enabling himself to collect dual compensation from both the Department of Foreign Affairs and the Provincial Government of Leyte in the amount of Two Hundred Seventy-six Thousand Nine Hundred Eleven Dollars and 56/100 (US $276,911.56), US Currency or its equivalent amount of Five Million Eight Hundred Six Thousand Seven Hundred Nine Pesos and 50/100 (₱5,806,709.50) and Two Hundred Ninety-three Thousand Three Hundred Forty-eight Pesos and 86/100 (₱293,348.86) both Philippine Currencies, respectively, to the damage and prejudice of the Government in the aforementioned amount of ₱5,806,709.50.

CONTRARY TO LAW.

Romualdez moved to quash the information[4] on two grounds, namely: **(1)** *that the facts alleged in the information do not constitute the offense with which the accused was charged*; and **(2)** *that the criminal action or liability has been extinguished by prescription*. He argued that the acts imputed against him do not constitute an offense because: (a) the cited provision of the law applies only to public officers charged with the grant of licenses, permits, or other concessions, and the act charged – receiving dual compensation – is absolutely irrelevant and unrelated to the act of granting licenses, permits, or other concessions; and (b) there can be no damage and prejudice to the Government considering that he ***actually*** rendered services for the dual positions of Provincial Governor of Leyte and Ambassador to foreign countries.

To support his prescription argument, Romualdez posited that the 15-year prescription under Section 11 of RA 3019 had lapsed since the preliminary investigation of the case for an

[4] *Id.*, pp. 89-109.

offense committed *on or about and during the period from 1976 to February 1986* commenced only in May 2001 after a Division of the Sandiganbayan referred the matter to the Office of the Ombudsman. He argued that there was no interruption of the prescriptive period for the offense because the proceedings undertaken under the *1987 complaint* filed with the Presidential Commission on Good Government (*PCGG*) were null and void pursuant to the Supreme Court's ruling in *Cojuangco Jr. v. PCGG*[5] and *Cruz Jr* [sic].[6] He likewise argued that the Revised Penal Code provision[7] that prescription does not run when the offender is absent from the Philippines should not apply to his case, as he was charged with an offense not covered by the Revised Penal Code; the law on the prescription of offenses punished under special laws (Republic Act No. 3326) does not contain any rule similar to that found in the Revised Penal Code.

The People opposed the motion to quash on the argument that Romualdez is misleading the court in asserting that Section 3 (e) of RA 3019 does not apply to him when Section 2 (b) of the law states that corrupt practices may be committed by public officers who include "*elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government.*"[8] On the issue of prescription, the People argued that Section 15, Article XI of the Constitution provides that *the right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel,* and that prescription is a matter of technicality to which no one has a vested right. Romualdez filed a Reply to this Opposition.[9]

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[5] G.R. No. 92319, October 2, 1990, 190 SCRA 226, 257.

[6] Referring apparently to *Cruz, Jr. v. Sandiganbayan*, G.R. No.94595, February 26, 1991, 194 SCRA 474.

[7] Article 91.

[8] *Rollo*, pp. 110-113.

[9] *Id.*, pp. 114-119.

The Sandiganbayan granted Romualdez' motion to quash in the first Resolution assailed in this petition. The Sandiganbayan stated:

> We find that the allegation of damage and prejudice to the Government in the amount of ₱5,806,709.50 representing the accused's compensation is without basis, absent a showing that the accused did not actually render services for his two concurrent positions as Provincial Governor of the Province of Leyte and as Ambassador to the People's Republic of China, Kingdom of Saudi Arabia, and United States of America. The accused alleges in the subject Motion that he actually rendered services to the government. To receive compensation for actual services rendered would not come within the ambit of improper or illegal use of funds or properties of the government; nor would it constitute unjust enrichment tantamount to the damage and prejudice of the government.
>
> Jurisprudence has established what "evident bad faith" and "gross negligence" entail, thus:
>
> > In order to be held guilty of violating Section 3 (e), R. A. No. 3019, the act of the accused that caused undue injury must have been done with evident bad faith or with gross inexcusable negligence. ***But bad faith per se is not enough for one to be held liable under the law, the "bad faith" must be "evident".***
> >
> > xxx xxx xxx
> >
> > xxx. **"Gross negligence" is characterized by the want of even slight care, acting or omitting to act in a willful or omitting to act in a willful or intentional manner displaying a conscious indifference to consequences as far as other persons may be affected.** (Emphasis supplied)
>
> The accused may have been inefficient as a public officer by virtue of his holding of two concurrent positions, but such inefficiency is not enough to hold him criminally liable under the Information charged against him, given the elements of the crime and the standards set by the Supreme Court quoted above. At most, any liability arising from the holding of both positions by the accused may be administrative in nature.
>
> xxx xxx xxx

However, as discussed above, the Information does not sufficiently aver how the act of receiving dual compensation resulted to undue injury to the government so as to make the accused liable for violation of Section 3 (e) of R.A. No. 3019.[10]

The Sandiganbayan found no merit in Romualdez' prescription argument.

The People moved to reconsider this Resolution, citing *"reversible errors"* that the Sandiganbayan committed in its ruling.[11] Romualdez opposed the People's motion, but also moved for a partial reconsideration of the Resolution's ruling on prescription.[12] The People opposed Romualdez' motion for partial reconsideration.[13]

Thereafter, the Sandiganbayan denied *via* the second assailed Resolution[14] the People's motion for reconsideration under the following terms –

> The Court held in its Resolution of June 22, 2004, and so maintains and sustains, that assuming the averments of the foregoing information are hypothetically admitted by the accused, it would not constitute the offense of violation of Section 3 (e) of RA 3019 as the elements of (a) causing undue injury to any party, including the government, by giving unwarranted benefits, advantage or preference to such parties, and (b) that the public officer acted with manifest partiality, evident bad faith or gross inexcusable negligence, are wanting.
>
> As it is, a perusal of the information shows that pertinently, accused is being charged for: (a) having himself appointed as ambassador to various posts while serving as governor of the Province of Leyte and (b) for collecting dual compensation for said positions. As to the first, the Court finds that accused cannot be held criminally liable, whether or not he had himself appointed to the position of the ambassador while concurrently holding the position of provincial

[10] *Supra* note 1.

[11] *Rollo*, pp. 61-85.

[12] *Id.*, pp. 120-128.

[13] *Id.*, pp. 129-145.

[14] *Supra* note 2.

governor, because the act of appointment is something that can only be imputed to the appointing authority.

Even assuming that the appointee influenced the appointing authority, the appointee only makes a passive participation by entering into the appointment, unless it is alleged that he acted in conspiracy with his appointing authority, which, however, is not so claimed by the prosecution in the instant case. Thus, even if the accused's appointment was contrary to law or the constitution, it is the appointing authority that should be responsible therefor because it is the latter who is the doer of the alleged wrongful act. In fact, under the rules on payment of compensation, the appointing authority responsible for such unlawful employment shall be personally liable for the pay that would have accrued had the appointment been lawful. As it is, the appointing authority herein, then President Ferdinand E. Marcos has been laid to rest, so it would be incongruous and illogical to hold his appointee, herein accused, liable for the appointment.

Further, the allegation in the information that the accused collected compensation in the amounts of Five Million Eight Hundred Six Thousand Seven Hundred Nine Pesos and 50/100 (₱5,806,709.50) and Two Hundred Ninety-three Thousand Three Hundred Forty Eight Pesos and 86/100 (₱293,348.86) cannot sustain the theory of the prosecution that the accused caused damage and prejudice to the government, in the absence of any contention that receipt of such was tantamount to giving unwarranted benefits, advantage or preference to any party and to acting with manifest partiality, evident bad faith or gross inexcusable negligence. Besides receiving compensation is an incident of actual services rendered, hence it cannot be construed as injury or damage to the government.

It likewise found no merit in Romualdez' motion for partial reconsideration.

THE PETITION AND THE PARTIES' SUBMISSIONS

The People filed the present petition on the argument that the Sandiganbayan committed grave abuse of discretion in quashing the Information based on the reasons it stated in the assailed Resolutions, considering that:

a. Romualdez cannot be legally appointed as an ambassador of the Republic of the Philippines during his incumbency as

Governor of the Province of Leyte; thus, to draw salaries for the two positions is to cause undue injury to the government under Section 3 (e) of RA 3019;

b. Romualdez cannot receive compensation for his illegal appointment as Ambassador of the Republic of the Philippines and for his services in this capacity; thus, to so pay him is to make illegal payment of public funds and cause undue injury to the government under Section 3 (e) of RA 3019; and

c. The Sandiganbayan went beyond the ultimate facts required in charging a violation of Section 3 (e) of RA 3019 and delved into matters yet to be proven during trial.

Required to comment on the petition, Romualdez filed a Motion to Dismiss with Comment *Ad Cautelam*.[15] He argued that the filing of the present Rule 65 petition is improper, as a petition filed under Rule 45, instead of Rule 65, of the Revised Rules of Court is the proper remedy, considering that the assailed Resolutions are appealable. He cited in support of this contention the ruling that *an order granting a motion to quash, unlike one of denial, is a final order; it is not merely interlocutory and is therefore immediately appealable*.[16] He further argued that the present petition was belatedly filed, as the People filed it beyond the 15-day reglementary filing period for a Rule 45 petition. On the substantive issues raised in the petition, he argued that the factual averments in the Information do not constitute the offense charged and that the criminal action or liability has been extinguished by prescription.

The People, on the other hand, asserted in reply[17] that while a petition for *certiorari* under Rule 65 may be availed of only when there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law, or that *certiorari* is not a substitute for the lost remedy of an appeal, the rule may be

[15] *Rollo*, pp. 174-223.

[16] The respondent cited *Milo v. Salonga*, L-37007, July 20, 1987, 152 SCRA 113, as authority.

[17] *Rollo*, pp. 232-253.

relaxed when the issue raised is purely legal, when public interest is involved, and in case of urgency. It also argued that *certiorari* may also be availed of where an appeal would be slow, inadequate, and insufficient; and that it is within this Court's power to suspend or exempt a particular case from the operation of the rules when its strict application will frustrate rather than promote justice. Thus, the People asked for a review of the case based on substantial justice and the claimed merits of the instant petition.

Romualdez countered in his Rejoinder[18] that the assailed Resolutions, being final, can no longer be questioned, re-opened, or reviewed; that public policy and sound practice demand that at the risk of occasional errors, judgments of courts become final and irrevocable at some definite date fixed by law. Citing the express provision of Section 7 of Republic Act No. 1606, as amended by Republic Act No. 8249 (which provides that *decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on certiorari raising pure questions of law in accordance with Rule 45 of the Rules of Court)*, he argued that *certiorari* cannot be availed of because of the availability of appeal.

These submissions bring to the fore the threshold issue of whether the present petition may be given due course given the Rule 65 mode of review that the People used. As will be seen below, our examination of this threshold issue leads to the consideration of the grave abuse of discretion issue.

OUR RULING

The Threshold Issue

The Sandiganbayan ruling granting Romuldez' motion to quash the Information shall, upon finality, close and terminate the proceedings against Romuldez; hence, it is a final ruling that disposes of the case and is properly reviewable by appeal.[19]

[18] *Id.*, pp. 254-261.

[19] *People v. Sandiganbayan*, G.R. No. 156394, January 21, 2005, 449 SCRA 205, 216, citing *People v. Sandiganbayan,* 408 SCRA 672, 674 (2003) and *Africa v. Sandiganbayan,* 287 SCRA 408, 417 (1998).

The appeal, as Romualdez correctly maintains, is through Section 7 of Presidential Decree No. 1606 (as amended by Section 5 of Republic Act No. 8249), which provides that decisions and final orders of the Sandiganbayan are appealable to the Supreme Court by petition for review on *certiorari* raising pure questions of law in accordance with Rule 45.

Significantly, the People does not deny at all that the mode of review to question a Sandiganbayan final ruling is by way of Rule 45, as the above cited provision requires. It only posits that this requirement does not foreclose the use of a Rule 65 petition for *certiorari* premised on grave abuse of discretion when the issue is purely legal, when public interest is involved, or in case of urgency. In short, the People asks us to relax the application of the rules on the modes of review.

The purpose and occasion for the use of Rules 45 and 65 as modes of review are clearly established under the Rules of Court[20] and related jurisprudence.[21] Rule 45 provides for the broad process of appeal to the Supreme Court on pure errors of law committed by the lower court. Rule 65, on the other hand, provides a completely different basis for review through the extraordinary writ of *certiorari*. The writ is extraordinary because it solely addresses lower court actions rendered without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction. By express provision, Rule 65 is the proper remedy when there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. Thus, the remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive; *certiorari* is not allowed when a party to a case fails to appeal a judgment or final order despite the availability of that remedy; a petition for *certiorari* cannot likewise be a substitute for a lost appeal.[22]

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[20] See the provisions of the Revised Rules of Court on the mechanics of filing these petitions; for Appeals by *Certiorari*, Rule 45 and for Petition for *Certiorari*, Rule 65.

[21] See *People v. Sandiganbayan*, G.R. No. 168188-89, June 16, 2006, 491 SCRA 185.

[22] *Supra* note 19.

Cases on the choice between the Rule 45 and Rule 65 modes of review are not novel. Because of the spirit of liberality that pervades the Rules of Court[23] and the interest of substantial justice that we have always believed should be upheld,[24] we have had occasions to relax the strict rules regulating these modes of review. However, these occasions are few and far between and have always been attended by exceptional circumstances; otherwise, the exceptions would displace the general rule, rendering useless the distinctions painstakingly established through the years to foster procedural orderliness.

In *Filoteo v. Sandiganbayan*[25] we allowed a Rule 65 petition, notwithstanding that the proper remedy is a Rule 45 appeal, to review a Sandiganbayan Decision *in view of the importance of the issues raised* in the case. We similarly allowed a review under Rule 65 in *Republic v. Sandiganbayan (Third Division)*[26] and *Republic v. Sandiganbayan (Special First Division)*[27] – cases on ill-gotten wealth – on the reasoning that the nature of the cases was endowed with public interest and involved public policy concerns. In the latter *Republic v. Sandiganbayan* case, we added that substantial justice to the Filipino people and to all parties concerned, not mere legalisms or perfection of form, should be relentlessly and firmly pursued. In the past, we have likewise allowed a similar treatment on the showing that an appeal was an inadequate remedy.[28] That we can single out for special treatment cases involving grave abuse of discretion is supported by no less than the **second paragraph of Article VIII, Section 1** of the **1987 Constitution** which provides:

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[23] Revised Rules of Court, Rule 1, Section 6.

[24] See the *Solicitor General v. Metropolitan Manila Authority*, G.R. No. 102782, December 11, 1991, 204 SCRA 837, citing *Araneta v. Dinglasan*, 84 Phil 368.

[25] G.R. No. 79543, October 16, 1996, 263 SCRA 222.

[26] G.R. No. 113420, March 7, 1997, 269 SCRA 316.

[27] G.R. No. 152154, July 15, 2003, 407 SCRA 10.

[28] *Supra* note 19; See also *Presidential Commission on Good Government v. Sandiganbayan*, G.R. No. 100733, June 18, 1992, 210 SCRA 136, 148-149.

Judicial power includes the duty of the courts of justice to settle actual controversy involving rights which are legally demandable and enforceable, and to **determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.**

Under this provision, action on grave abuse of discretion is not only a power we can exercise; more than this, **it is a duty we *must* discharge**.

In the spirit embodied in this constitutional provision and in the interest of substantial justice, we will not hesitate to deviate from the strict application of our procedural rules when grave abuse of discretion amounting to lack or excess of jurisdiction is properly and substantially alleged in a petition *filed after the lapse of the period for appeal under Rule 45 but prior to the lapse of the period for filing a Rule 65 petition*. Conceptually, no major deviation from the rules in fact transpires in doing this. Under established jurisprudence, decisions and rulings rendered without or with lack or excess of jurisdiction are null and void,[29] subject only to the procedural limits on the right to question them provided under Rule 65.[30] It is for this reason that a decision that lapses to finality fifteen (15) days after its receipt can still be questioned, within sixty (60) days therefrom, on jurisdictional grounds, although the decision has technically lapsed to finality. The only deviation in terms of strict application of the Rules is from what we have discussed above regarding the basic nature of a petition for *certiorari* as expressly laid down by Rule 65; it is available only when there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, and thus is not allowed as a substitute when a party fails to appeal a judgment or final order despite the availability of that remedy.[31]

[29] *Albay I Cooperative, Inc. v. Martinez*, G.R. No. 95559, November 9, 1993, 227 SCRA 606.

[30] *Longino v. General*, G.R. No. 147956, February 16, 2005, 451 SCRA 423; see also *Sanchez v. Court of Appeals*, G.R. No. 108947, September 29, 1997, 279 SCRA 647.

[31] *Supra* note 19.

Under these terms, if the Sandiganbayan merely *legally erred* while acting within the confines of its jurisdiction, then its ruling, even if erroneous, is properly the subject of a petition for review on *certiorari* under Rule 45, and any Rule 65 petition subsequently filed will be for naught. The Rule 65 petition brought under these circumstances is then being used as a substitute for a lost appeal. If, on the other hand, the Sandiganbayan ruling is *attended by grave abuse of discretion amounting to lack or excess of jurisdiction*, then this ruling is fatally defective on jurisdictional ground and we should allow it to be questioned within the period for filing a petition for *certiorari* under Rule 65, notwithstanding the lapse of the period of appeal under Rule 45. To reiterate, the ruling's jurisdictional defect and the demands of substantial justice that we believe should receive primacy over the strict application of rules of procedure, require that we so act.

The Grave Abuse of Discretion Issue

Romualdez' motion to quash that gave rise to the present case was anchored on Section 3 (a) of Rule 117 of the Revised Rules of Court which provides:

> Section 3. *Grounds*. - The accused may move to quash the complaint or information on any of the following grounds:
>
> (a) That the facts charged do not constitute an offense;
>
> xxx xxx xxx

The determinative test in appreciating a motion to quash under this rule is the sufficiency of the averments in the information, that is, whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense as defined by law without considering matters *aliunde*.[32] As Section 6, Rule 117 of the Rules of Criminal Procedure requires, the

[32] *Poblete v. Sandoval*, G.R. No. 150610, March 25, 2004, 426 SCRA 346, 351.

information only needs to state the ultimate facts;[33] the evidentiary and other details can be provided during the trial.[34]

The legal provision under which Romuldez stands charged – Section 3 (e) of RA 3019 – on the other hand provides:

> Sec. 3. *Corrupt practices by public officers*. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practice of any public officer and are hereby declared to be unlawful:
>
> xxx xxx xxx
>
> (e) causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices of government corporations charged with the grant of licenses or permits or other concessions.

Reduced to its elements, a violation under this provision requires that:[35]

1. The accused must be a public officer discharging administrative, judicial or official functions;

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[33] Rule 117, Section 6 provides:

SEC. 6. *Sufficiency of complaint or information*. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint.

[34] See *Domingo v. Sandiganbayan*, G.R. No. 109376, January 20, 2000, 322 SCRA 655.

[35] See *Cabrera v. Sandiganbayan*, G.R. No. 162314-17, October 25, 2004, 441 SCRA 377, 386.

2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence in the discharge of his functions; and

3. His action caused undue injury to any party, including the government, or gave a private party unwarranted benefits, advantage or preference.

Whether the Sandiganbayan acted correctly, or committed errors of law while in the exercise of its jurisdiction, or gravely abused its discretion in quashing the information, are to be determined based on the application of the standards in evaluating a motion to quash, in light of the elements and terms of the offense with which the accused stands charged. The Sandiganbayan **acts correctly or commits errors of law depending on its conclusions** if – based solely on the "four corners" of the information as jurisprudence mandates,[36] independently of any evidence whether *prima facie* or conclusive, and hypothetically assuming the truth of all the allegations in the Information – it rules on whether all the elements of the offense as defined by law are present. On the other hand, it **acts with grave abuse of discretion** if its ruling is a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction; or if it rules in an arbitrary or despotic manner by reason of passion or personal hostility; or if it acts in a manner 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 action outside the contemplation of law.[37]

Our reading of the Information, based on the elements of the offense, shows us that the first element of the offense is reflected in the allegation that the "*accused BENJAMIN 'KOKOY' ROMUALDEZ, a public officer being then the Provincial Governor of the Province of Leyte, while in the performance of his official function, committing the offense in relation to*

[36] *Supra* note 31.

[37] See *Lalican v. Vergara*, G.R. No. 108619, July 31, 1997, 276 SCRA 518, and *Intestate Estate of Carmen de Luna v. Intermediate Appellate Court*, G.R. No. 72424, February 13, 1989, 170 SCRA 246.

his Office… ." In plain terms, the accused was then a public officer discharging official functions.

The second element appears in the averment that the "*accused… willfully, unlawfully and criminally* ***with evident bad faith*** *…*" and the more particular averment that "*accused public officer being then the elected Provincial Governor of Leyte and without abandoning said position, and using his influence with his brother-in-law, then President Ferdinand E. Marcos, had himself appointed and/or assigned as Ambassador to foreign countries, particularly the People's Republic of China (Peking), Kingdom of Saudi Arabia (Jeddah), and United States of America (Washington D.C.), knowing fully well that such appointment and/or assignment is in violation of the existing laws as the Office of the Ambassador or Chief of Mission is incompatible with his position as Governor of the Province of Leyte.*" In short, while being the elected Governor and in "evident bad faith," he had himself appointed to the incompatible position of ambassador.

Finally, the last element corresponds to the allegation that the "*accused… cause[d] undue injury to the Government*," supported further by the particular allegation "*thereby enabling himself to collect dual compensation from both the Department of Foreign Affairs and the Provincial Government of Leyte in the amount of Two Hundred Seventy-six thousand Nine Hundred Eleven Dollars and 56/100 (US $276,911.56), US Currency or its equivalent amount of Five Million Eight Hundred Six Thousand Seven Hundred Nine Pesos and 50/100 (₱5,806,709.50) and Two Hundred Ninety-three Thousand Three Hundred Forty-eight Pesos and 86/100 (₱293,348.86) both Philippine Currencies, respectively, to the damage and prejudice of the Government in the aforementioned amount of ₱5,806,709.50.*" Thus, attended by and as a result of the second element, the accused caused undue injury to the government by collecting dual compensation from the two incompatible positions he occupied.

In its first Resolution, the Sandiganbayan concluded that **(1)** "*the allegation of damage and prejudice to the Government*

. . . is without basis, absent a showing that the accused did not actually render services for his two concurrent positions. . . and that **(2)** *[T]he accused alleges in the subject Motion that he actually rendered service to the government. To receive compensation for actual services rendered would not come within the ambit of improper or illegal use of funds or properties.*"[38] After citing jurisprudence defining evident bad faith and gross negligence, it went on to state that **(3)** *the accused may have been inefficient as a public officer by virtue of his holding of two concurrent positions, but such inefficiency is not enough to hold him criminally liable under the Information charged against him, given the elements of the crime and the standards set by the Supreme Court … At most, any liability arising from the holding of both positions by the accused may be administrative in nature.*"[39] [underscoring supplied]

In the second Resolution, on the other hand, the Sandiganbayan concluded: **(1)** on the allegation that Romualdez had himself appointed as Ambassador while concurrently serving as Provincial Governor, that it "*finds that accused cannot be held criminally liable, whether or not he had himself appointed to the position … because the act of appointment is something that can only be imputed to the appointing authority … Even assuming that the appointee influenced the appointing authority, the appointee only makes a passive participation by entering into the appointment, unless it is alleged that he acted in conspiracy with his appointing authority …*";[40] and **(2)** on the matter of dual compensation, that *the allegation … cannot sustain the theory of the prosecution that the accused caused damage and prejudice to the government, in the absence of any contention that receipt of such was tantamount to giving unwarranted benefits, advantage or preference to any party and to acting with manifest partiality, evident bad faith or gross excusable negligence; besides, receiving compensation is an incident*

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[38] See the first assailed Resolution, quoted at pp. 4-5 of this Decision.

[39] *Id*.

[40] See the Second assailed Resolution, quoted at pp. 4-5 of this Decision.

of actual services rendered, hence it cannot be construed as injury or damage to the government."[41]

To put our discussions in perspective, we are not here primarily engaged in evaluating the motion to quash that Romualdez filed with the Sandiganbayan. Rather, we are evaluating – on the basis of the standards we have defined above – the propriety of the action of the Sandiganbayan in quashing the Information against Romualdez.

Based on these considerations, we hold that the Sandiganbayan's actions grossly violated the defined standards. Its conclusions are based on considerations that either not appropriate in evaluating a motion to quash; are evidentiary details not required to be stated in an Information; are matters of defense that have no place in an Information; or are statements amounting to rulings on the merits that a court cannot issue before trial.

To illustrate, in the first Resolution, the Sandiganbayan saw no basis for the allegation of damage and prejudice for the failure of the Information to state that Romualdez did not render service in the two positions which he occupied. The element of the offense material to the "damage and prejudice" that the Sandiganbayan refers to is the "undue injury" caused to the government by Romualdez' receipt of compensation for the incompatible positions that he could not simultaneously occupy. **The allegation of "undue injury" in the Information, consisting of the extent of the injury and how it was caused, is complete. Beyond this allegation are matters that are already in excess of what a proper Information requires**. To restate the rule, an Information only needs to state the ultimate facts constituting the offense, not the finer details of why and how the illegal acts alleged amounted to undue injury or damage – matters that are appropriate for the trial. Specifically, how the two positions of Romualdez were incompatible with each other and whether or not he can legally receive compensation for his two incompatible positions are matters of detail that the

[41] *Id*.

prosecution should adduce at the trial to flesh out the ultimate facts alleged in the Information. Whether or not compensation has been earned through proper and commensurate service is a matter in excess of the ultimate facts the Information requires and is **one that Romualdez, not the Information, should invoke or introduce into the case as a matter of defense.**

From another perspective, the Sandiganbayan's view that the Information should have alleged that services were not rendered assumes that Romualdez can occupy two government positions and can secure compensation from both positions if services were rendered. At the very least, these are **legally erroneous assumptions** that are contrary to what the then prevailing laws provided. **Article XII (B), Section 4 of the 1973 Constitution** provides that:

> Unless otherwise provided by law, no elective official shall be eligible for appointment to any office or position during his tenure except as Member of the Cabinet.

On the other hand, **Presidential Decree No. 807 Providing for the Organization of the Civil Service Commission** states in its Section 44 that –

> Limitation on Appointment. – No elective official shall be eligible for appointment to any office or position during his term of office.

On the matter of double compensation, the **1973 Constitution** likewise has a specific provision – **Article XV, Section 5** – which states:

> SEC. 5. No elective or appointive public officer or employee shall receive additional or double compensation unless specifically authorized by law, nor accept, without the consent of the Batasang Pambansa, any present, emolument, office or title of any kind from any foreign state.

Neither the Sandiganbayan nor Romuladez has pointed to any law, and we are not aware of any such law, that would exempt Romualdez from the prohibition of the above-cited provisions.

In the context of ruling on a motion to quash, the allegation that *services were not rendered* that the Sandiganbayan wished to require, not being a fact material to the elements of the offense, is **an extraneous matter that is inappropriate for the Sandiganbayan to consider** for inclusion in the Information. That the Sandiganbayan has a fixation on this approach is patent from a reading of the second assailed Resolution when the Sandiganbayan, following the same line of thought, once more insisted that "*receiving compensation is an incident of actual services rendered, hence it cannot be construed as injury or damage to the government.*" Thus again, the Sandiganbayan grossly erred in the same manner it did in the first Resolution.

For the Sandiganbayan to assume, too, and to conclude, that there was no damage and prejudice since there was no illegality in being compensated for actual services rendered, is to pass upon the merits of the case – a task premature for the Sandiganbayan to undertake at the motion-to-quash stage of the case. **In so doing, the Sandiganbayan prematurely ruled on at least two matters.** First, the Sandiganbayan either assumed as correct, or admitted for purposes of the motion to quash, the defense allegation that Romualdez rendered services, when this is a disputed evidentiary matter that can only be established at the trial. Second, and as already mentioned above, the legal status of the receipt of compensation for each of two incompatible offices is, at best, legally debatable. The Sandiganbayan repeated this premature ruling on the merits of the case in its subsequent statement in the first Resolution that "*the accused may have been inefficient as a public officer by virtue of his holding of two concurrent positions, but such inefficiency is not enough to hold him criminally liable under the Information charged against him, given the elements of the crime and the standards set by the Supreme Court … At most, any liability arising from the holding of both positions by the accused may be administrative in nature.*"[42]

[42] See the first assailed Resolution, quoted at pp. 2-3 of this Decision.

Worse than the premature ruling it made in the above-quoted conclusion was the **patent speculation** that the Sandiganbayan undertook in considering "inefficiency" and arriving at its conclusion. Still much worse was its **misreading of what a violation of Section 3(e), R.A. 3019 involves**. Correctly understood, it is not the holding of two concurrent positions or the attendant efficiency in the handling of these positions, but the **causing of undue injury to the government that is at the core of a Section 3(e) violation**. The same misreading was evident when the Sandiganbayan stated in its second Resolution that *"the accused cannot be held criminally liable, whether or not he had himself appointed to the position of the ambassador, while concurrently holding the position of provincial governor, because the act of appointment is something that can only be imputed to the appointing authority."*

The Sandiganbayan fared no better and similarly gravely abused its discretion in the second Resolution when it concluded that that there could be no damage and prejudice to the government *"in the absence of any contention that receipt of such was tantamount to giving unwarranted benefits, advantage or preference to any party and to acting with manifest partiality, evident bad faith or gross excusable negligence."* That no allegation of "*giving unwarranted benefits, advantage or preference to any party"* appears in the Information is due obviously to the fact that this allegation is not necessary. **"Giving a private party unwarranted benefits, advantage or preference" is not an element that must necessarily be alleged to complete the recital of how Section 3 (e) is violated** because it is only *one of two alternative modes* of violating this provision, the other being causing *"undue injury to any party, including the government."* In short, the Information is complete solely on the basis of the "undue injury" allegation.

Even a cursory examination of the Information would show that an allegation of "evident bad faith" was expressly made, complete with a statement of how the bad faith was manifested, that is, "*being then the elected Provincial Governor of Leyte and without abandoning such position, and using his influence*

with his brother-in-law, then President Ferdinand E. Marcos, [Romualdez] had himself appointed and/or assigned as Ambassador to foreign countries...". Whether this allegation can be successfully proven by evidence or established through an analysis of the nature of the power of appointment remains to be seen **after trial, not at the motion-to-quash stage of the case**. At this earlier stage, all that is required is for this allegation to be an ultimate fact directly providing for an element of the offense.

In light of all these, we conclude that the Sandiganbayan grossly and egregiously erred in the considerations it made and in the conclusions it arrived at when it quashed the Information against Romualdez, **to the point of acting outside its jurisdiction through the grave abuse of discretion that attended its actions**. Its errors are so patent and gross as to amount to action outside the contemplation of law. Thus, the declaration of the nullity of the assailed Sandiganbayan Resolutions is in order.

WHEREFORE, premises considered, we hereby *GRANT* the petition and accordingly *ANNUL* the Sandiganbayan's Resolutions dated 22 June 2004 and 23 November 2004 in CRIM. CASE NO. 26916 entitled *People of the Philippines versus Benjamin "Kokoy" Romualdez*. The Sandiganbayan is hereby *ORDERED TO PROCEED* with the trial on the merits of the case on the basis of the Information filed. Costs against the private respondent Benjamin "Kokoy" Romualdez.

SO ORDERED.

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

Leonardo-de Castro, J., no part.

SECOND DIVISION

[G.R. No. 168546. July 23, 2008]

MICHAEL PADUA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUISITES TO PROSPER.— For *certiorari* to prosper, the following requisites must concur: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

2. ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, EXPLAINED.— "Without jurisdiction" means that the court acted with absolute lack of authority. There is "excess of jurisdiction" when the court transcends its power or acts without any statutory authority. "Grave abuse of discretion" implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction. In other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility, and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.

3. CRIMINAL LAW; PROBATION LAW; ANY PERSON CONVICTED OF DRUG TRAFFICKING, REGARDLESS OF THE PENALTY IMPOSED, CANNOT AVAIL OF THE PRIVILEGE OF PROBATION.— A review of the orders of the RTC denying Padua's petition for probation shows that the RTC neither acted without jurisdiction nor with grave abuse of discretion because it merely applied the law and adhered to principles of statutory construction in denying Padua's petition for probation. Padua was charged and convicted for violation of Section 5, Article II of Rep. Act No. 9165 for selling

dangerous drugs. It is clear under Section 24 of Rep. Act No. 9165 that any person convicted of drug trafficking cannot avail of the privilege of probation, to wit: SEC. 24. *Non-Applicability of the Probation Law for Drug Traffickers and Pushers*. – **Any person convicted for drug trafficking or pushing under this Act, regardless of the penalty imposed by the Court, cannot avail of the privilege granted by the Probation Law or Presidential Decree No. 968, as amended**. The law is clear and leaves no room for interpretation. Any person convicted for drug trafficking or pushing, regardless of the penalty imposed, cannot avail of the privilege granted by the Probation Law or P.D. No. 968. The elementary rule in statutory construction is that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says. If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or speech is the index of intention. Furthermore, there is the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure.

4. ID.; ID.; ID.; DRUG TRAFFICKERS AND PUSHERS WHO ARE MINORS AND FIRST TIME OFFENDERS ARE DISQUALIFIED FROM AVAILING OF THE PRIVILEGE GRANTED BY THE LAW ON PROBATION; RATIONALE.— Moreover, the Court of Appeals correctly pointed out that the intention of the legislators in Section 24 of Rep. Act No. 9165 is to provide stiffer and harsher punishment for those persons convicted of drug trafficking or pushing while extending a sympathetic and magnanimous hand in Section 70 to drug dependents who are found guilty of violation of Sections 11 and 15 of the Act. The law considers the users and possessors of illegal drugs as victims while the drug traffickers and pushers as predators. Hence, while drug traffickers and pushers, like Padua, are categorically disqualified from availing the law on probation, youthful drug dependents, users and possessors alike, are given the chance to mend their ways. The Court of Appeals also correctly stated that had it been the intention of the legislators to exempt from the application of Section 24 the

drug traffickers and pushers who are minors and first time offenders, the law could have easily declared so.

5. ID.; PENALTIES; SUSPENSION OF SENTENCE; SECTION 68 OF REPUBLIC ACT NO. 9344 AND SECTION 32 OF THE RULE ON JUVENILES IN CONFLICT WITH THE LAW BOTH PERTAIN TO SUSPENSION OF SENTENCE AND NOT PROBATION.— As for the second and third issues, Padua cannot argue that his right under Rep. Act No. 9344, the "Juvenile Justice and Welfare Act of 2006" was violated. Nor can he argue that Section 32 of A.M. No. 02-1-18-SC otherwise known as the "Rule on Juveniles in Conflict with the Law" has application in this case. Section 68 of Rep. Act No. 9344 and Section 32 of A.M. No. 02-1-18-SC both pertain to suspension of sentence and not probation.

6. ID.; ID.; ID.; SECTION 38 OF REPUBLIC ACT NO. 9344; NOT APPLICABLE WHERE THE OFFENDER HAS ALREADY REACHED 21 YEARS OF AGE.— Furthermore, suspension of sentence under Section 38 of Rep. Act No. 9344 could no longer be retroactively applied for petitioner's benefit. Section 38 of Rep. Act No. 9344 provides that once a child under 18 years of age is found guilty of the offense charged, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence. Section 40 of Rep. Act No. 9344, however, provides that once the child reaches 18 years of age, the court shall determine whether to discharge the child, order execution of sentence, or extend the suspended sentence for a certain specified period or until the child reaches the maximum age of 21 years. Petitioner has already reached 21 years of age or over and thus, could no longer be considered a child for purposes of applying Rep. Act 9344. Thus, the application of Sections 38 and 40 appears moot and academic as far as his case is concerned.

APPEARANCES OF COUNSEL

Cesar T. Ching for petitioner.

The Solicitor General for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review assails the Decision[1] dated April 19, 2005 and Resolution[2] dated June 14, 2005, of the Court of Appeals in CA-G.R. SP No. 86977 which had respectively dismissed Michael Padua's petition for *certiorari* and denied his motion for reconsideration. Padua's petition for *certiorari* before the Court of Appeals assailed the Orders dated May 11, 2004[3] and July 28, 2004[4] of the Regional Trial Court (RTC), Branch 168, Pasig City, which had denied his petition for probation.

The facts, culled from the records, are as follows:

On June 16, 2003, petitioner Michael Padua and Edgar Allan Ubalde were charged before the RTC, Branch 168, Pasig City of violating Section 5,[5] Article II of Republic Act

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[1] *Rollo*, pp. 18-24. Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa concurring.

[2] *Id*. at 26.

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

[4] CA *rollo*, p. 34.

[5] 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 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.

No. 9165,[6] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," for selling dangerous drugs.[7] The Information reads:

The Prosecution, through the undersigned Public Prosecutor, charges **Edgar Allan Ubalde *y* Velchez *a.k.a.* "Allan"** and **Michael Padua *y* Tordel *a.k.a.* "Mike"**, with the crime of violation of Sec. 5, Art. II, Republic Act No. 9165 in relation to R.A. [No.] 8369, Sec. 5 par. (a) and (i), committed as follows:

> On or about June 6, 2003, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, Edgar Allan Ubalde *y* Velchez and Michael Padua *y* Tordel, a minor, seventeen (17) years old, conspiring and confederating together and both of them mutually helping and aiding one another, not

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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.

[6] An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, and for Other Purposes, approved on June 7, 2002.

[7] *Rollo*, p. 19.

being lawfully authorized to sell any dangerous drug, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Roland A. Panis, a police poseur-buyer, one (1) folded newsprint containing 4.86 grams of dried marijuana fruiting tops, which was found positive to the tests for marijuana, a dangerous drug, in violation of the said law.

Contrary to law.[8]

When arraigned on October 13, 2003, Padua, assisted by his counsel *de oficio,* entered a plea of not guilty.[9]

During the pre-trial conference on February 2, 2004, however, Padua's counsel manifested that his client was willing to withdraw his plea of not guilty and enter a plea of guilty to avail of the benefits granted to first-time offenders under Section 70[10] of

[8] *Id*. at 27.

[9] *Id*. at 29.

[10] SEC. 70. *Probation or Community Service for a First-Time Minor Offender in Lieu of Imprisonment*. – Upon promulgation of the sentence, the court may, in its discretion, place the accused under probation, even if the sentence provided under this Act is higher than that provided under existing law on probation, or impose community service in lieu of imprisonment. In case of probation, the supervision and rehabilitative surveillance shall be undertaken by the Board through the DOH in coordination with the Board of Pardons and Parole and the Probation Administration. Upon compliance with the conditions of the probation, the Board shall submit a written report to the court recommending termination of probation and a final discharge of the probationer, whereupon the court shall issue such an order.

The community service shall be complied with under conditions, time and place as may be determined by the court in its discretion and upon the recommendation of the Board and shall apply only to violators of Section 15 of this Act. The completion of the community service shall be under the supervision and rehabilitative surveillance of the Board during the period required by the court. Thereafter, the Board shall render a report on the manner of compliance of said community service. The court in its discretion may require extension of the community service or order a final discharge.

In both cases, the judicial records shall be covered by the provisions of Sections 60 and 64 of this Act.

If the sentence promulgated by the court requires imprisonment, the period spent in the Center by the accused during the suspended sentence period shall be deducted from the sentence to be served.

Rep. Act No. 9165. The prosecutor interposed no objection.[11] Thus, the RTC on the same date issued an Order[12] stating that the former plea of Padua of not guilty was considered withdrawn. Padua was re-arraigned and pleaded guilty. Hence, in a Decision[13] dated February 6, 2004, the RTC found Padua guilty of the crime charged:

> *In view of the foregoing*, the Court finds accused Michael Padua *y* Tordel guilty of [v]iolation of Sec. 5 Art. II of R.A. No. 9165 in relation to R.A. No. 8369 Sec. 5 par. (a) and (i) thereof, and therefore, sentences him to suffer an indeterminate sentence of six (6) years and one (1) day of *Prision Mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum and a fine of Five Hundred Thousand Pesos (₱500,000.00).
>
> No subsidiary imprisonment, however, shall be imposed should [the] accused fail to pay the fine pursuant to Art. 39 par. 3 of the Revised Penal Code.
>
> SO ORDERED.[14]

Padua subsequently filed a Petition for Probation[15] dated February 10, 2004 alleging that he is a minor and a first-time offender who desires to avail of the benefits of probation under Presidential Decree No. 968[16] (P.D. No. 968), otherwise known as "The Probation Law of 1976" and Section 70 of Rep. Act No. 9165. He further alleged that he possesses all the qualifications and none of the disqualifications under the said laws.

The RTC in an Order[17] dated February 10, 2004 directed the Probation Officer of Pasig City to conduct a Post-Sentence Investigation and submit a report and recommendation within

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[11] *Rollo*, pp. 19-20.

[12] *Id*. at 30.

[13] *Id*. at 31-32. Penned by Judge Leticia Querubin Ulibarri.

[14] *Id*. at 32.

[15] *Id*. at 33.

[16] ESTABLISHING A PROBATION SYSTEM, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES, done on July 24, 1976.

[17] *Rollo*, p. 34.

60 days from receipt of the order. The City Prosecutor was also directed to submit his comment on the said petition within five days from receipt of the order.

On April 6, 2004, Chief Probation and Parole Officer Josefina J. Pasana submitted a Post-Sentence Investigation Report to the RTC recommending that Padua be placed on probation.[18]

However, on May 11, 2004, public respondent Pairing Judge Agnes Reyes-Carpio issued an Order denying the Petition for Probation on the ground that under Section 24[19] of Rep. Act No. 9165, any person convicted of drug trafficking cannot avail of the privilege granted by the Probation Law. The court ruled thus:

> Before this Court now is the Post-Sentence Investigation Report (PSIR) on minor Michael Padua *y* Tordel prepared by Senior Parole and Probation Officer Teodoro Villaverde and submitted by the Chief of the Pasig City Parole and Probation Office, Josefina J. Pasana.
>
> In the aforesaid PSIR, Senior PPO Teodoro Villaverde recommended that minor Michael Padua *y* Tordel be placed on probation, anchoring his recommendation on Articles 189 and 192 of P.D. 603, otherwise known as the Child and Welfare Code, as amended, which deal with the suspension of sentence and commitment of youthful offender. Such articles, therefore, do not find application in this case, the matter before the Court being an application for probation by minor Michael Padua *y* Tordel and not the suspension of his sentence.
>
> On the other hand, Section 70 is under Article VIII of R.A. 9165 which deals with the Program for Treatment and Rehabilitation of Drug Dependents. Sections 54 to 76, all under Article VIII of R.A. 9165 specifically refer to violations of either Section 15 or Section 11. Nowhere in Article VIII was [v]iolation of Section 5 ever mentioned.

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[18] CA *rollo*, pp. 22-26.

[19] SEC. 24. *Non-Applicability of the Probation Law for Drug Traffickers and Pushers.* — Any person convicted for drug trafficking or pushing under this Act, regardless of the penalty imposed by the Court, cannot avail of the privilege granted by the Probation Law or Presidential Decree No. 968, as amended.

More importantly, while the provisions of R.A. 9165, particularly Section 70 thereof deals with Probation or Community Service for First- Time Minor Offender in Lieu of Imprisonment, the Court is of the view and so holds that minor Michael Padua *y* Tordel who was charged and convicted of violating Section 5, Article II, R.A. 9165, cannot avail of probation under said section in view of the provision of Section 24 which is hereunder quoted:

> "Sec. 24. Non-Applicability of the Probation Law for Drug Traffickers and Pushers. – Any person convicted for drug trafficking or pushing under this Act, regardless of the penalty imposed by the Court, cannot avail of the privilege granted by the Probation Law or Presidential Decree No. 968, as amended." (underlining supplied)

WHEREFORE, premises considered, the Petition for Probation filed by Michael Padua y Tord[e]l should be, as it is hereby **DENIED**.

SO ORDERED.[20]

Padua filed a motion for reconsideration of the order but the same was denied on July 28, 2004. He filed a petition for *certiorari* under Rule 65 with the Court of Appeals assailing the order, but the Court of Appeals, in a Decision dated April 19, 2005, dismissed his petition. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, the petition is hereby **DENIED** for lack of merit and ordered **DISMISSED**.

SO ORDERED.[21]

Padua filed a motion for reconsideration of the Court of Appeals decision but it was denied. Hence, this petition where he raises the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE DENIAL OF THE PETITION FOR PROBATION WHICH DEPRIVED PETITIONER'S RIGHT AS A MINOR UNDER

[20] *Rollo*, pp. 37-38.

[21] *Id*. at 23-24.

ADMINISTRATIVE ORDER NO. [02-1-18-SC] OTHERWISE KNOWN AS [THE] RULE ON JUVENILES IN CONFLICT WITH THE LAW.

II.

WHETHER OR NOT [THE] ACCUSED['S] RIGHT [TO BE RELEASED UNDER RECOGNIZANCE] HAS BEEN VIOLATED OR DEPRIVED IN THE LIGHT OF R.A. 9344 OTHERWISE KNOWN AS AN ACT ESTABLISHING A COMPREHENSIVE JUVENILE JUSTICE AND WELFARE SYSTEM, CREATING THE JUVENILE JUSTICE AND WELFARE COUNCIL UNDER DEPARTMENT OF JUSTICE APPROPRIATING FUNDS THEREFOR AND OTHER PURPOSES.[22]

The Office of the Solicitor General (OSG), representing public respondent, opted to adopt its Comment[23] as its Memorandum. In its Comment, the OSG countered that

I.

THE TRIAL COURT AND THE COURT OF APPEALS HAVE LEGAL BASIS IN APPLYING SECTION 24, ARTICLE II OF R.A. 9165 INSTEAD OF SECTION 70, ARTICLE VIII OF THE SAME LAW.

II.

SECTION 32 OF A.M. NO. 02-1-18-SC OTHERWISE KNOWN AS THE "*RULE ON JUVENILES IN CONFLICT WITH THE LAW*" HAS NO APPLICATION TO THE INSTANT CASE.[24]

Simply, the issues are: (1) Did the Court of Appeals err in dismissing Padua's petition for *certiorari* assailing the trial court's order denying his petition for probation? (2) Was Padua's right under Rep. Act No. 9344,[25] the "Juvenile Justice and Welfare

[22] *Id*. at 97.

[23] *Id*. at 48-71.

[24] *Id*. at 55, 64.

[25] AN ACT ESTABLISHING A COMPREHENSIVE JUVENILE JUSTICE AND WELFARE SYSTEM, CREATING THE JUVENILE JUSTICE AND WELFARE COUNCIL UNDER THE DEPARTMENT OF JUSTICE, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES, approved on April 28, 2006.

Act of 2006," violated? and (3) Does Section 32[26] of A.M. No. 02-1-18-SC otherwise known as the "Rule on Juveniles in Conflict with the Law" have application in this case?

As to the first issue, we rule that the Court of Appeals did not err in dismissing Padua's petition for *certiorari*.

For *certiorari* to prosper, the following requisites must concur: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[27]

[26] SEC. 32. *Automatic Suspension of Sentence and Disposition Orders*.– The sentence shall be suspended without need of application by the juvenile in conflict with the law. The court shall set the case for disposition conference within fifteen (15) days from the promulgation of sentence which shall be attended by the social worker of the Family Court, the juvenile, and his parents or guardian *ad litem*. It shall proceed to issue any or a combination of the following disposition measures best suited to the rehabilitation and welfare of the juvenile:

1. Care, guidance, and supervision orders;
2. Community service orders;
3. Drug and alcohol treatment;
4. Participation in group counseling and similar activities;
5. Commitment to the Youth Rehabilitation Center of the DSWD or other centers for juveniles in conflict with the law authorized by the Secretary of the DSWD.

The Social Services and Counseling Division (SSCD) of the DSWD shall monitor the compliance by the juvenile in conflict with the law with the disposition measure and shall submit regularly to the Family Court a status and progress report on the matter. The Family Court may set a conference for the evaluation of such report in the presence, if practicable, of the juvenile, his parents or guardian, and other persons whose presence may be deemed necessary.

The benefits of suspended sentence shall not apply to a juvenile in conflict with the law who has once enjoyed suspension of sentence, or to one who is convicted of an offense punishable by death, *reclusion perpetua* or life imprisonment, or when at the time of promulgation of judgment the juvenile is already eighteen (18) years of age or over.

[27] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, G.R. No. 156067, August 11, 2004, 436 SCRA 123, 133.

"Without jurisdiction" means that the court acted with absolute lack of authority. There is "excess of jurisdiction" when the court transcends its power or acts without any statutory authority. "Grave abuse of discretion" implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction. In other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility, and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[28]

A review of the orders of the RTC denying Padua's petition for probation shows that the RTC neither acted without jurisdiction nor with grave abuse of discretion because it merely applied the law and adhered to principles of statutory construction in denying Padua's petition for probation.

Padua was charged and convicted for violation of Section 5, Article II of Rep. Act No. 9165 for selling dangerous drugs. It is clear under Section 24 of Rep. Act No. 9165 that any person convicted of drug trafficking cannot avail of the privilege of probation, to wit:

SEC. 24. *Non-Applicability of the Probation Law for Drug Traffickers and Pushers.* – **Any person convicted for drug trafficking or pushing under this Act, regardless of the penalty imposed by the Court, cannot avail of the privilege granted by the Probation Law or Presidential Decree No. 968, as amended.** (Emphasis supplied.)

The law is clear and leaves no room for interpretation. Any person convicted for drug trafficking or pushing, regardless of the penalty imposed, cannot avail of the privilege granted by the Probation Law or P.D. No. 968. The elementary rule in statutory construction is that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must

[28] *Id*.

be taken to mean exactly what it says.[29] If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or speech is the index of intention.[30] Furthermore, there is the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure.[31]

Moreover, the Court of Appeals correctly pointed out that the intention of the legislators in Section 24 of Rep. Act No. 9165 is to provide stiffer and harsher punishment for those persons convicted of drug trafficking or pushing while extending a sympathetic and magnanimous hand in Section 70 to drug dependents who are found guilty of violation of Sections 11[32]

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[29] *Baranda v. Gustilo*, No. 81163, September 26, 1988, 165 SCRA 757, 770.

[30] R. AGPALO, *Statutory Construction* 124 (5th ed., 2003).

[31] *Id*.

[32] SEC. 11 *Possession of Dangerous Drugs*.— The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the decree or purity thereof:

(1) 10 grams or more of opium;

(2) 10 grams or more of morphine;

(3) 10 grams or more of heroin;

(4) 10 grams or more of cocaine or cocaine hydrochloride;

(5) 50 grams or more of methamphetamine hydrochloride or "shabu";

(6) 10 grams or more of marijuana resin or marijuana resin oil;

(7) 500 grams or more of marijuana; and

(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy," paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamide (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

and 15[33] of the Act. The law considers the users and possessors of illegal drugs as victims while the drug traffickers and pushers as predators. Hence, while drug traffickers and pushers, like Padua, are categorically disqualified from availing the law on

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Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[33] SEC. 15. *Use of Dangerous Drugs*. – A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine from Fifty thousand pesos (₱50,000.00) to Two hundred thousand pesos (₱200,000.00): *Provided*, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply.

probation, youthful drug dependents, users and possessors alike, are given the chance to mend their ways.[34] The Court of Appeals also correctly stated that had it been the intention of the legislators to exempt from the application of Section 24 the drug traffickers and pushers who are minors and first time offenders, the law could have easily declared so.[35]

The law indeed appears strict and harsh against drug traffickers and drug pushers while protective of drug users. To illustrate, a person arrested for using illegal or dangerous drugs is meted only a penalty of six months rehabilitation in a government center, as minimum, for the first offense under Section 15 of Rep. Act No. 9165, while a person charged and convicted of selling dangerous drugs shall suffer life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00) under Section 5, Rep. Act No. 9165.

As for the second and third issues, Padua cannot argue that his right under Rep. Act No. 9344, the "Juvenile Justice and Welfare Act of 2006" was violated. Nor can he argue that Section 32 of A.M. No. 02-1-18-SC otherwise known as the "Rule on Juveniles in Conflict with the Law" has application in this case. Section 68[36] of Rep. Act No. 9344 and Section 32 of A.M. No. 02-1-18-SC both pertain to suspension of sentence and not probation.

Furthermore, suspension of sentence under Section 38[37] of Rep. Act No. 9344 could no longer be retroactively applied for

[34] *Rollo*, pp. 22-23.

[35] *Id*. at 23.

[36] SEC. 68. Children Who Have Been Convicted and are Serving Sentence. - Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. They shall be immediately released if they are so qualified under this Act or other applicable law.

[37] SEC. 38. Automatic Suspension of Sentence. - Once the child who is under eighteen (18) years of age at the time of the commission of the offense

petitioner's benefit. Section 38 of Rep. Act No. 9344 provides that once a child under 18 years of age is found guilty of the offense charged, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence. Section 40[38] of Rep. Act No. 9344, however, provides that once the child reaches 18 years of age, the court shall determine whether to discharge the child, order execution of sentence, or extend the suspended sentence for a certain specified period **or until the child reaches the maximum age of 21 years**. Petitioner has already reached 21 years of age or over and thus, could no longer be considered a child[39] for purposes of applying Rep. Act 9344. Thus, the application of Sections 38 and 40 appears moot and academic as far as his case is concerned.

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is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: Provided, however, That suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

[38] SEC. 40. Return of the Child in Conflict with the Law to Court. - If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.

[39] SEC. 4. Definition of Terms. - The following terms as used in this Act shall be defined as follows:

xxx xxx xxx

(e) "Child" refers to a person under the age of eighteen (18) years.

WHEREFORE, the petition is *DENIED.* The assailed Decision dated April 19, 2005 and the Resolution dated June 14, 2005 of the Court of Appeals are *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 168667. July 23, 2008]

SPOUSES ALFREDO D. VALMONTE and MARIA LOURDES A. VALMONTE, *petitioners, vs.* **CLARITA ALCALA, JOHN DOE or JANE DOE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PLEADINGS AND PRACTICES; VERIFICATION; GENERALLY NOT REQUIRED UNLESS REQUIRED BY LAW OR BY THE RULES OF COURT.— Generally, a pleading is not required to be verified unless required by law or by the Rules of Court. One such requirement is found in Section 1 of Rule 42 which requires a party appealing from a decision of the RTC rendered in the exercise of its appellate jurisdiction to file a **verified petition for review** with the CA. Verification, when required, is intended to secure an assurance that the allegations of a pleading are true and correct; are not speculative or merely imagined; and have been made in good faith. To achieve this purpose, the verification of a pleading is made through an affidavit or sworn statement confirming that the affiant has read the pleading whose allegations are true and correct of the affiant's personal knowledge or based on authentic records.

2. ID.; ID.; ID.; ID.; CASE AT BAR.— Apparently, the CA concluded that no real verification, as above required, had been undertaken

since the CA Petition was dated March 31, 2005 while the Verification/Certification carried an earlier date — March 17, 2005; the petition "*was still inexistent*" when the Verification/ Certification was executed. We find this conclusion erroneous for the following reasons: *First*, the variance in dates does not necessarily contradict the categorical declaration made by petitioners in their affidavit that they read and understood the c*ontents* of the pleading. The petitioners' claim in this regard is that they read a copy of the CA Petition through an electronic mail (*e-mail*) sent to them by their lawyers. We find this claim, under the circumstances more fully discussed below, to be a reasonable explanation of why a variance in dates existed. We should not lose sight of the reality that pleadings are prepared and signed by the counsel at the instructions of the client; the latter merely provides the supporting facts of the pleading and, as needed, verifies that the allegations are true and correct. In short, the pleading and the verification are prepared separately and a variance in their dates is a matter that may satisfactorily be explained. To demand the litigants to read the *very same document* that is to be filed before the courts is too rigorous a requirement; what the Rules require is for a party to read the *contents* of a pleading without any specific requirement on the form or manner in which the reading is to be done. That a client may read the contents of a pleading without seeing *the same pleading to be actually filed with the court* is, in these days of *e-mails* and other technological advances in communication, not an explanation that is hard to believe. Apparently in this case, counsel sent a copy of the draft petition by *e-mail* and finalized it as soon as it was approved by the petitioners. The latter, on the other hand, complied with their end not only by approving the terms of the petition, but also by sending a copy of their sworn statement (as yet unauthenticated) in order to file the petition soonest, thereby complying with the required timeliness for the filing of the petition. To our mind, beyond the manner of these exchanges, what is important is that efforts were made to satisfy the objective of the Rule — to ensure good faith and veracity in the allegations of a pleading — thereby allowing the courts to act on the case with reasonable certainty that the petitioners' real positions have been pleaded.

3. ID.; ID.; VERIFICATION REQUIREMENT; EQUITABLE AND RELAXED APPLICATION OF THE RULES THEREON

WARRANTED IN CASE AT BAR.— *Second,* the "circumstances" we mentioned above refer to the petitioners' unique situation as parties residing overseas who are litigating locally through their local counsel. While these overseas litigants are not excused from complying with our Rules such as the strict observance of the periods for appeal and the verification requirement, we must take into account the attendant realities brought into play because they are suing from overseas or *via* long distance communications with their counsel. In the verification requirement, there are added formalities required for the acceptance in the Philippines of statements sworn overseas before foreign notaries; we require their authentication by our consulates. This is a process whose completion time may vary depending, among others on various factors such as the location of the requesting party from the consulate; the peculiarities of foreign laws on notaries; the volume of transactions in a consulate, noting particularly the time of year when the authentication is requested; and the mode of sending the authenticated documents to the Philippines. Apparently compelled by one or a combination of these reasons, the petitioners in fact manifested when they filed their petition (on March 31, 2005) that they were submitting a photostatic copy of the Verification/Certification executed in Washington on March 17, 2005 since the original was still with the Philippine Consulate in San Francisco for authentication. We take judicial notice that the petitioners' request for authentication coincided with the observance of the Holy Week - a traditional period of prayer and holidays in the Philippines, for the Philippines' foreign embassies and consulates, and even for Filipinos overseas. We find it significant that, conformably with their Manifestation, the petitioners' counsel filed on April 8, 2005 the duly sworn and authenticated Verification as soon as counsel received it. Under these circumstances, there is every reason for an equitable and relaxed application of the rules to the petitioners' situation.

4. ID.; ID.; ID.; NON-COMPLIANCE THEREWITH IS A FORMAL RATHER THAN A JURISDICTIONAL DEFECT.— *Fourth,* we note that most of the material allegations set forth by petitioners in their CA Petition are already in their complaint for unlawful detainer filed before the MTC on April 26, 2002. Attached to the complaint was a Verification/Certification dated March 18, 2002 (authenticated by the Philippine Consulate in

San Francisco on March 27, 2002) in which petitioners declared under oath that they had caused the preparation of the complaint through their lawyers and had read and understood the allegations of the complaint. The material facts alleged in the CA Petition are likewise stated in the records of the case, as part of the findings of facts made by the MTC and the RTC. *Verification as to the truth of these facts in the petition for review before the CA was, therefore, strictly a redundancy; its filing remained a necessity only because the Rules on the filing of petition for review before the CA require it.* This consideration could have led to a more equitable treatment of the petitioners' failure to strictly comply with the Rules, additionally justified by the fact that *the failure to comply with the rules on verification is a formal rather than a jurisdictional defect.*

5. ID.; ID.; ID.; VARIANCE BETWEEN THE DATES THE PARTIES EXECUTED THE VERIFICATION/ CERTIFICATION ABROAD AND THE COURT OF APPEALS' PETITION, NOT FATAL.—In sum, we find sufficient to rule — under the circumstances of this case — that the CA committed a reversible error when it, dismissed the petition for failure to strictly follow the verification requirements. Stated otherwise, we do not consider the variance between the dates as fatal to the petitioners' case because the variance did not necessarily lead to the conclusion that no verification was made, or that the verification was false. More importantly, the variance totally lost significance after the petitioners sent from the US and submitted to the CA the required Verification/Certification in compliance with their previously manifested intent. As this Court noted in a case where compliance with a certificate of non-forum shopping was at issue, the fact that the Rules require strict compliance merely underscores its mandatory nature; it cannot be dispensed with or its requirements altogether disregarded, but it does not thereby interdict substantial compliance with its provisions under justifiable circumstances, as we find in this case.

APPEARANCES OF COUNSEL

J.P. Villanueva and Associates for petitioners.

Joseph C. Cerezo for respondents.

D E C I S I O N

BRION, *J.*:

This Petition for Review on *Certiorari*[1] asks us to set aside two Court of Appeals (*CA*) resolutions issued in CA–G.R. No. 88918: the *first*, issued on April 8, 2005,[2] dismissed the Petition for Review filed by the spouses Alfredo Valmonte and Maria Lourdes Valmonte (the *petitioners*); and the *second*, issued on June 20, 2005,[3] denied the petitioners' motion for reconsideration.

BACKGROUND FACTS

The present controversy traces its roots to the ejectment suit filed by the petitioners against Clarita Alcala (the *respondent*) before the Metropolitan Trial Court (*MTC*), Branch 4, in Manila.

The petitioners alleged that they are the unregistered owners of Apartment No. 1411 located at Echabelita Street, Paco, Manila, as the petitioner Maria Lourdes is one of the heirs and successors-in-interests of Cornelio Arreola and Antonina Pascua, the registered owners of the property.[4]

Since the petitioners were migrating to the United States, they offered Apartment No. 1411 for lease to the respondent at the rate of ₱1,500.00 per month beginning January 1980; the latter accepted the offer. The lease contract, initially verbal, was consummated by the respondent's payment of two (2) months' rental fees and the petitioners' delivery to the respondent of the keys to Apartment No.1411.[5]

Due to the respondent's subsequent failure to pay the agreed rentals despite written demand, the petitioners filed a complaint

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[1] Filed under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justice Rosmari D. Carandang and Associate Justice Monina Arevalo-Zenarosa, concurring; *rollo*, pp. 61-62.

[3] *Id.*, pp. 117-119.

[4] *Id.*, p. 94.

[5] *Id.*, pp. 133-134.

for unlawful detainer against her on April 26, 2002 before the MTC.[6] As the petitioners were already US residents at that time, they signed the required Verification/Certification of Non-Forum Shopping[7] of their complaint before a notary public in the state of Washington on March 18, 2002, and had this Verification/Certification authenticated by the Philippine Consulate General in San Francisco on March 27, 2002.[8]

The respondent contended in her defense that the petitioners had no cause of action against her; she was already the rightful owner of Apartment No. 1411 by virtue of a sale between her and petitioners,[9] as evidenced by the Memorandum of Agreement dated August 8, 1987.[10]

On April 25, 2003, the MTC ruled in the petitioners' favor.[11] The respondent appealed the MTC decision to the Regional Trial Court (*RTC*), Branch 50, Manila, which reversed the MTC ruling in its decision dated November 3, 2004. [12]

The petitioners responded to the reversal by filing a **Petition for Review**[13] (*CA Petition*) with the CA on **March 31, 2005**. On the same date, they also formally manifested[14] with the CA that – to comply with the verification and certification requirements under Sections 1 and 2 of Rule 42 of the Rules of Court – they were in the meantime submitting a photostatic copy of the **Verification/Certification** (executed and notarized in the State of Washington on **March 17, 2005**) as the original was still in the Philippine Consulate in San Francisco for authentication. They promised to submit the original document

[6] *Id.*, pp. 132-141.

[7] *Id.*, p. 141.

[8] *Id.*, p. 139.

[9] *Id.*, pp. 142-149.

[10] *Id.*, p. 219.

[11] *Id.*, pp. 100-106.

[12] *Id.*, pp. 92-98.

[13] *Id.*, pp. 63-91.

[14] *Id.*, pp. 292-299.

as soon as the consulate completed the authentication process. Indeed, on April 8, 2005, petitioners submitted to the CA the original authenticated Verification/Certification and moved that the appellate court consider the submission as full compliance with the verification requirements of the Rules.[15]

Meanwhile, the CA issued a **Resolution dated April 8, 2005** *(April 8 Resolution)* **dismissing the petition due to the petitioners' failure to attach the complaint, the answer, the position papers filed with the MTC, the memorandum filed with the RTC, and other material portions of the record** supporting the allegations of the petition. The petitioners received a copy of this April 8 Resolution on April 15, 2005.

On April 28, 2005, the petitioners moved for the reconsideration[16] of the April 8 Resolution, attaching thereto the missing pleadings. The CA denied the motion in its **Resolution dated June 20, 2005**[17] reasoning that:

> Notwithstanding the petitioners' superficial explanation for their failure to attach the pertinent portions of the record, **this Court could have granted the motion since petitioners attached, nonetheless, other relevant documents to the Motion, if not for the observation that while the verification/certification was purportedly executed on March 17, 2005, the petition is dated March 31, 2005. Petitioners could not have actually read and understood the petition or attested to the truth of the contents thereof because at the time they executed the verification/ certification, the petition was still inexistent.**
>
> WHEREFORE, in view of the foregoing, the petitioners' Motion for Reconsideration is hereby DENIED for lack of merit. [Emphasis supplied]

The petitioners now come before this Court on the claim that the dismissal of their petition by the CA is a reversible error that we should rectify.

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[15] *Id.*, pp. 300-306.

[16] *Id.*, pp. 120-131.

[17] *Supra*, note 3.

ASSIGNMENT OF ERROR

The petitioners assert that the CA's conclusion, drawn from the variance between the dates of the Verification/Certification they executed abroad and the CA Petition, is erroneous; the variance does not mean that they did not actually read the petition before this was filed in court.

THE COURT'S RULING

We find the petition meritorious. The CA's conclusion results from an overly technical reading of the verification requirements, and from a failure to appreciate the circumstances of parties litigating in Philippine courts while they are overseas.

Generally, a pleading is not required to be verified unless required by law or by the Rules of Court.[18] One such requirement is found in Section 1 of Rule 42 which requires a party appealing from a decision of the RTC rendered in the exercise of its appellate jurisdiction to file a **verified petition for review** with the CA.

Verification, when required, is intended to secure an assurance that the allegations of a pleading are true and correct; are not speculative or merely imagined; and have been made in good faith.[19] To achieve this purpose, the verification of a pleading is made through an affidavit or sworn statement confirming that the affiant has read the pleading whose allegations are true and correct of the affiant's personal knowledge or based on authentic records.[20]

Apparently, the CA concluded that no real verification, as above required, had been undertaken since the CA Petition was dated March 31, 2005 while the Verification/Certification carried an earlier date – March 17, 2005; the petition *"was still inexistent"* when the Verification/Certification was executed.

We find this conclusion erroneous for the following reasons:

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[18] RULES OF COURT, Rule 7, Sec. 4.

[19] *Bank of the Philippine Islands v. Court of Appeals*, G.R. No. 146923, April 30, 2003, 402 SCRA 449, 454.

[20] *Supra,* note 18.

First, the variance in dates does not necessarily contradict the categorical declaration made by petitioners in their affidavit that they read and understood the *contents* of the pleading. The petitioners' claim in this regard is that they read a copy of the CA Petition through an electronic mail *(e-mail*) sent to them by their lawyers.[21] We find this claim, under the circumstances more fully discussed below, to be a reasonable explanation of why a variance in dates existed. We should not lose sight of the reality that pleadings are prepared and signed by the counsel at the instructions of the client; the latter merely provides the supporting facts of the pleading and, as needed, verifies that the allegations are true and correct. In short, the pleading and the verification are prepared separately and a variance in their dates is a matter that may satisfactorily be explained. To demand the litigants to read the *very same document* that is to be filed before the courts is too rigorous a requirement; what the Rules require is for a party to read the *contents* of a pleading without any specific requirement on the form or manner in which the reading is to be done. That a client may read the contents of a pleading without seeing *the same pleading to be actually filed with the court* is, in these days of *e-mails* and other technological advances in communication, not an explanation that is hard to believe. Apparently in this case, counsel sent a copy of the draft petition by *e-mail* and finalized it as soon as it was approved by the petitioners. The latter, on the other hand, complied with their end not only by approving the terms of the petition, but also by sending a copy of their sworn statement (as yet unauthenticated) in order to file the petition soonest, thereby complying with the required timeliness for the filing of the petition. To our mind, beyond the manner of these exchanges, what is important is that efforts were made to satisfy the objective of the Rule – to ensure good faith and veracity in the allegations of a pleading – thereby allowing the courts to act on the case with reasonable certainty that the petitioners' real positions have been pleaded.[22]

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[21] *Rollo,* p. 292.

[22] *Quimpo v. Dela Victoria*, G.R. No. L-31822, July 31, 1972, 46 SCRA 139, 144, citing *Villasanta v. Bautista*, 36 SCRA 160, 170-171 [1970].

Second, the "circumstances" we mentioned above refer to the petitioners' unique situation as parties residing overseas who are litigating locally through their local counsel. While these overseas litigants are not excused from complying with our Rules such as the strict observance of the periods for appeal and the verification requirement, we must take into account the attendant realities brought into play because they are suing from overseas or *via* long distance communications with their counsel. In the verification requirement, there are added formalities required for the acceptance in the Philippines of statements sworn overseas before foreign notaries; we require their authentication by our consulates.[23] This is a process whose completion time may vary depending, among others, on various factors such as the location of the requesting party from the consulate; the peculiarities of foreign laws on notaries; the volume of transactions in a consulate, noting particularly the time of year when the authentication is requested; and the mode of sending the authenticated documents to the Philippines. Apparently compelled by one or a combination of these reasons, the petitioners in fact manifested when they filed their petition (on March 31, 2005) that they were submitting a photostatic copy of the Verification/Certification executed in Washington on March 17, 2005 since the original was still with the Philippine Consulate in San Francisco for authentication.[24] We take judicial notice that the petitioners' request for authentication coincided with the observance of the Holy Week – a traditional period of prayer

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[23] Rule 132, Sec. 24 of the RULES OF COURT states: *Proof of Official Record.* — The record of public documents referred to in paragraph (a) of section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has custody. **If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul-general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines station in the foreign country in which the record is kept, and authenticated by the seal of his office**. [Emphasis supplied]

[24] *Supra*, note 14.

and holidays in the Philippines, for the Philippines' foreign embassies and consulates, and even for Filipinos overseas.[25] We find it significant that, conformably with their Manifestation, the petitioners' counsel filed on April 8, 2005 the duly sworn and authenticated Verification as soon as counsel received it. Under these circumstances, there is every reason for an equitable and relaxed application of the rules to the petitioners' situation.

Third, we discern utmost good faith on the part of the petitioners when they filed their Manifestation about their problem, intent, and plan of compliance with the verification requirement. They in fact stated early on through this Manifestation that their verification had been executed on March 17, 2005 in Washington, that is, at a date much earlier than the filing of their petition and manifestation. Unfortunately, the CA failed to note the variance in dates at the earliest opportunity; thus, the CA dismissed the petition on some other ground, [26] only to hark back later on to the variance in dates in their reconsideration of the earlier dismissal. Given this good faith and the early disclosure, it was basically unfair for the CA – who had earlier overlooked the variance in dates – to subsequently make this ground the basis of yet another dismissal of the petition. The CA – after overlooking the variance in dates at the first opportunity – should have at least asked for the petitioners' explanation on why the variance should not be an additional ground for the dismissal of the petition, instead of reflecting in their order on reconsideration that it could have granted the motion for reconsideration based on attachments already made, but there existed another reason – the variance in dates – for maintaining the dismissal of the petition.

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[25] The request for authentication was received by the Philippine Consulate Office in San Francisco on March 22, 2005. March 24 and 25, 2005 (Maundy Thursday and Good Friday, respectively) are considered Regular Non-Working Holidays pursuant to R.A. No. 9177, while March 26, 2005 (Black Saturday) was declared as special non-working day pursuant to Proclamation No. 808, series of 2005. The verification/certification was authenticated on March 28, 2005, and received by petitioners on April 5, 2005.

[26] The Resolution of April 8, 2005 dismissed the petition for failure to attach material portions of the records that would support the allegations in the petition; *supra,* note 2.

Fourth, we note that most of the material allegations set forth by petitioners in their CA Petition are already in their complaint for unlawful detainer filed before the MTC on April 26, 2002. Attached to the complaint was a Verification/ Certification[27] dated March 18, 2002 (authenticated by the Philippine Consulate in San Francisco on March 27, 2002) in which petitioners declared under oath that they had caused the preparation of the complaint through their lawyers and had read and understood the allegations of the complaint. The material facts alleged in the CA Petition are likewise stated in the records of the case, as part of the findings of facts made by the MTC and the RTC. *Verification as to the truth of these facts in the petition for review before the CA was, therefore, strictly a redundancy; its filing remained a necessity only because the Rules on the filing of a petition for review before the CA require it.* This consideration could have led to a more equitable treatment of the petitioners' failure to strictly comply with the Rules, additionally justified by the fact that *the failure to comply with the rules on verification is a formal rather than a jurisdictional defect*.[28]

In sum, we find sufficient justification to rule – under the circumstances of this case – that the CA committed a reversible error when it dismissed the petition for failure to strictly follow the verification requirements. Stated otherwise, we do not consider the variance between the dates as fatal to the petitioners' case because the variance did not necessarily lead to the conclusion that no verification was made, or that the verification was false. More importantly, the variance totally lost significance after the petitioners sent from the US and submitted to the CA the required Verification/Certification in compliance with their

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[27] *Supra,* note 7.

[28] *Uy v. Land Bank of the Philippines,* G.R. No. 136100, July 24, 2000, 336 SCRA 419. See also: *Sy vs. Habacon-Garayblas,* G.R. No. MTJ-93, December, 21, 1993, 228 SCRA 644; *Buenaventura vs. Halili-Uy,* G.R. No. L-28156, March 31, 1987, 149 SCRA 22; *Quimpo vs. Dela Victoria,* G.R. L-31822, July 31, 1972, 46 SCRA 139; *Valino vs. Munoz,* G.R. No. L-26151, October 22, 1970, 35 SCRA 413; *Republic vs. Lee Wai Lam,* G.R. No. 22607, July 30, 1969, 28 SCRA 1043.

previously manifested intent. As this Court noted in a case where compliance with a certificate of non-forum shopping was at issue, the fact that the Rules require strict compliance merely underscores its mandatory nature; it cannot be dispensed with or its requirements altogether disregarded, but it does not thereby interdict substantial compliance with its provisions under justifiable circumstances, as we find in this case. [29]

WHEREFORE, we hereby *GRANT* the Petition. The CA Resolutions dated April 8, 2005 and June 20, 2005 in CA G.R. No. 88918 are *REVERSED* and *SET ASIDE*. The case is *REMANDED* to the CA for appropriate proceedings under CA-GR No. 88918.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 168985. July 23, 2008.]

ACCESSORIES SPECIALIST, INC., ARTS 21 CORPORATION, and TADAHIKO HASHIMOTO, *petitioners, vs.* **ERLINDA B. ALABANZA, for and in behalf of her deceased husband, JONES B. ALABANZA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEALS; MONEY CLAIMS; THREE-YEAR PRESCRIPTIVE

[29] *Huntington Steel Products, Inc. v. National Labor Relations Commission*, G.R. No. 158311, November 17, 2004, 442 SCRA 551, 559.

PERIOD; PROMISSORY ESTOPPEL IS AN EXCEPTION THEREON; PROMISSORY ESTOPPEL, EXPLAINED.— Based on the findings of facts of the LA, it was ASI which was responsible for the delay in the institution of the complaint. When Jones filed his resignation, he immediately asked for the payment of his money claims. However, the management of ASI promised him that he would be paid immediately after the claims of the rank-and-file employees had been paid. Jones relied on this representation. Unfortunately, the promise was never fulfilled even until the time of Jones' death. In light of these circumstances, we can apply the principle of promissory estoppel, which is a recognized exception to the three-year prescriptive period enunciated in Article 291 of the Labor Code. Promissory estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon, as in fact it was relied upon, and if a refusal to enforce it would virtually sanction the perpetration of fraud or would result in other injustice. Promissory estoppel presupposes the existence of a promise on the part of one against whom estoppel is claimed. The promise must be plain and unambiguous and sufficiently specific so that the court can understand the obligation assumed and enforce the promise according to its terms.

2. ID.; ID.; ID.; ID.; ID.; ID.; REQUISITES OF PROMISSORY ESTOPPEL; PRESENT IN CASE AT BAR.— In order to make out a claim of promissory estoppel, a party bears the burden of establishing the following elements: (1) a promise was reasonably expected to induce action or forbearance; (2) such promise did, in fact, induce such action or forbearance; and (3) the party suffered detriment as a result. All the requisites of promissory estoppel are present in this case. Jones relied on the promise of ASI that he would be paid as soon as the claims of all the rank-and-file employees had been paid. If not for this promise that he had held on to until the time of his death, we see no reason why he would delay filing the complaint before the LA. Thus, we find ample justification not to follow the prescriptive period imposed under Article 291 of the Labor Code. Great injustice will be committed if we will brush aside the employee's claims on a mere technicality, especially when it was petitioner's own action that prevented respondent from interposing the claims within the required period.

3. ID.; ID.; ID.; POSTING OF BOND IS INDISPENSABLE TO THE PERFECTION OF AN APPEAL IN CASES INVOLVING MONETARY AWARDS FROM THE DECISION OF THE LABOR ARBITER.— Article 223 of the Labor Code mandates that in case of a judgment of the LA involving a monetary award, an appeal by the employer to the NLRC 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*. The posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the LA. The intention of the lawmakers to make the bond a mandatory requisite for the perfection of an appeal by the employer is clearly limned in the provision that an appeal by the employer may be perfected "*only upon the posting of a cash or surety bond*." The word "*only*" makes it perfectly plain that the lawmakers intended the posting of a cash or surety bond by the employer to be the essential and exclusive means by which an employer's appeal may be perfected. The word "*may*" refers to the perfection of an appeal as optional on the part of the defeated party, but not to the compulsory posting of an appeal bond, if he desires to appeal. The meaning and the intention of the legislature in enacting a statute must be determined from the language employed; and where there is no ambiguity in the words used, then there is no room for construction.

4. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE BOND REQUIREMENT RENDERS THE DECISION OF THE LABOR ARBITER FINAL AND EXECUTORY.— The filing of the bond is not only mandatory but also a jurisdictional requirement that must be complied with in order to confer jurisdiction upon the NLRC. Non-compliance therewith renders the decision of the LA final and executory. This requirement is intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It is intended to discourage employers from using an appeal to delay or evade their obligation to satisfy their employees' just and lawful claims.

5. ID.; ID.; ID.; ID.; THE FINDING OF THE NATIONAL LABOR RELATIONS COMMISSION OF THE ABSENCE OF

SUFFICIENT JUSTIFICATION FOR THE REDUCTION OF THE AMOUNT OF THE APPEAL BOND IS GENERALLY CONCLUSIVE ABSENT BAD FAITH.— In the instant case, the failure of petitioners to comply with the requirement of posting a bond equivalent in amount to the monetary award is fatal to their appeal. Section 6 of the New Rules of Procedure of the NLRC mandates, among others, that no motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award. The NLRC has the full discretion to grant or deny their motion to reduce the amount of the appeal bond. The finding of the NLRC that petitioners did not present sufficient justification for the reduction thereof is generally conclusive upon this Court absent a showing that the denial was tainted with bad faith.

6. ID.; ID.; ID.; PERFECTION OF AN APPEAL IN THE MANNER AND WITHIN THE PERIOD PERMITTED BY LAW IS MANDATORY AND JURISDICTIONAL.— Furthermore, we would like to reiterate that appeal is not a constitutional right, but a mere statutory privilege. Thus, parties who seek to avail themselves of it must comply with the statutes or rules allowing it. Perfection of an appeal in the manner and within the period permitted by law is mandatory and jurisdictional. The requirements for perfecting an appeal must, as a rule, be strictly followed. Such requirements are considered indispensable interdictions against needless delays and are necessary for the orderly discharge of the judicial business. Failure to perfect the appeal renders the judgment of the court final and executory. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision.

7. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF ADMINISTRATIVE AND QUASI-JUDICIAL BODIES ARE ACCORDED WEIGHT AND RESPECT.— The propriety of the monetary award of the LA is already binding upon this Court. As we have repeatedly pointed out, petitioners' failure to perfect their appeal in the manner and period required by the rules makes the award final and executory. Petitioners' stance that there was no sufficient basis for the award of the payment of withheld wages, separation pay and 13th month pay must fail. Such matters are questions of facts requiring the presentation

of evidence. Findings of facts of administrative and quasi-judicial bodies, which have acquired expertise on specific matters, are accorded weight and respect by the Court. They are deemed final and conclusive, unless compelling reasons are presented for us to digress therefrom.

APPEARANCES OF COUNSEL

Lorenzo B. Castillo for petitioners.
Estrada & Associates Law Offices for respondent.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated April 15, 2005 and the Resolution[2] dated July 12, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 84206.

The Facts

The facts of the case, as narrated in the Decision of the CA:

On September 27, 2002, private respondent Erlinda B. Alabanza (Erlinda, for brevity), for and in behalf of her husband Jones B. Alabanza (Jones, for brevity) filed a complaint against petitioners Accessories Specialists, Inc. (ASI, for brevity) also known as ARTS 21 Corporation, and Tadahiko Hashimoto for non-payment of salaries, separation pay, and 13th month pay.

In her position paper, respondent Erlinda alleged, among others, that her husband Jones was the Vice-President, Manager and Director of ASI. Jones rendered outstanding services for the petitioners from 1975 to October 1997. On October 17, 1997, Jones was compelled by the owner of ASI, herein petitioner Tadahiko Hashimoto, to file his involuntary resignation on the ground that ASI allegedly suffered

[1] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Perlita J. Tria Tirona and Jose C. Reyes, Jr., concurring; *rollo*, pp. 38-47.

[2] *Rollo*, p. 49.

losses due to lack of market and incurred several debts caused by a slam in the market. At the time of his resignation, Jones had unpaid salaries for eighteen (18) months from May 1995 to October 1997 equivalent to ₱396,000.00 and US$38,880.00. He was likewise not paid his separation pay commensurate to his 21 years of service in the amount of ₱462,000.00 and US$45,360.00 and 13th month pay amounting to ₱33,000.00. Jones demanded payment of his money claims upon resignation but ASI informed him that it would just settle first the money claims of the rank- and-file employees, and his claims will be paid thereafter. Knowing the predicament of the company, Jones patiently waited for his turn to be paid. Several demands were made by Jones but ASI just kept on assuring him that he will be paid his monetary claims. Jones died on August 5, 2002 and failed to receive the same.

On the other hand, the petitioners contend that Jones voluntarily resigned on October 31, 1997. Thus, Erlinda's cause of action has already prescribed and is forever barred on the ground that under Article 291 of the Labor Code, all money claims arising from an employer-employee relationship shall be filed within three (3) years from the time the cause of action accrues. Since the complaint was filed only on September 27, 2002, or almost five (5) years from the date of the alleged illegal dismissal of her husband Jones, Erlinda's complaint is now barred.

On September 14, 2003, Labor Arbiter Reynaldo V. Abdon rendered a decision ordering the petitioners to pay Erlinda the amount of ₱693,000.00 and US$74,040.00 or its equivalent in peso or amounting to a total of ₱4,765,200.00 representing her husband's unpaid salaries, 13th month pay, and separation pay, and five [percent] (5%) on the said total award as attorney's fees.

On October 10, 2003, the petitioners filed a notice of appeal with motion to reduce bond and attached thereto photocopies of the receipts for the cash bond in the amount of ₱290,000.00, and appeal fee in the amount of ₱170.00.

On January 15, 2004, public respondent NLRC issued an order denying the petitioner's motion to reduce bond and directing the latter to post an additional bond, and in case the petitioners opted to post a surety bond, the latter were required to submit a joint declaration, indemnity agreement and collateral security within ten (10) days from receipt of the said order, otherwise their appeal shall be dismissed. The pertinent portion of such order reads:

> After a review however of respondents-appellants[‘] instant motion, We find that the same does not proffer any valid or justifiable reason that would warrant a reduction of the appeal bond. Hence, the same must be denied.
>
> WHEREFORE, respondents-appellants are hereby ordered to post a cash or surety bond in the amount equivalent to the monetary award of Four Million Seven Hundred Sixty-Five Thousand and Two Hundred Pesos (₱4,765,200.00) granted in the appealed Decision (less the Two Hundred and Ninety Thousand Pesos [₱290,000.00] cash bond already posted), and joint declaration, indemnity agreement and collateral security in case respondents-appellants opted to post a surety bond, as required by Art. 223 of the Labor Code as amended and Section 6, Rule VI of the NLRC New Rules of Procedure as amended within an unextendible period of ten (10) calendar days from receipt of this Order; otherwise, the appeal shall be dismissed for non-perfection thereof.
>
> SO ORDERED.

On February 19, 2004, the petitioners moved for a reconsideration of the said order. However, the public respondent in its resolution dated March 18, 2004 denied the same and dismissed the appeal of the petitioners, thus:

> The reduction of appeal bond is not a matter of right but rests upon our sound discretion. Thus, after We denied respondents-appellants[‘] Motion to Reduce [B]ond, they should have immediately complied with our 15 January 2004 Order directing them to post an additional cash or surety bond in the amount equivalent to the judgment award less the cash bond already posted within the extended period of ten (10) days. In all, respondents had twenty (20) days, including the ten (10)-day period, prescribed under Article 223 of the Labor Code and under Section 6, Rule VI of the NLRC New Rules of Procedure, within which to post a cash or surety bond. To seek a reconsideration of our 15 January 2004 order is tantamount to seeking another extension of the period within which to perfect an appeal, which is however, not allowed under Section 7, Rule VI of the NLRC Rule. x x x
>
> xxx xxx xxx

> WHEREFORE, premises considered, the Motion for Reconsideration filed by respondents-appellants is hereby DENIED and the instant appeal DISMISSED for non-perfection thereof.
>
> SO ORDERED.

On April 22, 2004, the aforesaid resolution became final and executory. Thus, herein private respondent Erlinda filed a motion for execution.

On May 31, 2004, the petitioners filed an opposition to the said motion for execution. On June 11, 2004, Labor Arbiter Reynaldo Abdon issued an order directing the issuance of a writ of execution.[3]

On May 28, 2004, petitioners filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA and prayed for the issuance of a temporary restraining order (TRO) and a writ of preliminary injunction. On June 30, 2004, the CA issued a TRO directing the respondents, their agents, assigns, and all persons acting on their behalf to refrain and/or cease and desist from executing the Decision dated September 14, 2003 and Resolution dated March 18, 2004 of the Labor Arbiter (LA).

On April 15, 2005, the CA issued the assailed Decision dismissing the petition. Petitioner filed a motion for reconsideration. On July 12, 2005, the CA issued the assailed Resolution denying the motion for reconsideration for lack of merit.

On September 8, 2005, petitioners posted the instant petition presenting the following grounds in support of their arguments: 1) the cause of action of respondent has already prescribed; 2) the National Labor Relations Commission (NLRC) gravely abused its discretion when it dismissed the appeal of petitioners for failure to post the complete amount of the appeal bond; and 3) the monetary claim was resolved by the LA with uncertainty.

The Issues

The following are the issues that should be resolved in order to come up with a just determination of the case:

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[3] *Id.* at 39-42.

I. Whether the cause of action of respondents has already prescribed;

II. Whether the posting of the complete amount of the bond in an appeal from the decision of the LA to the NLRC is an indispensable requirement for the perfection of the appeal despite the filing of a motion to reduce the amount of the appeal bond; and

III. Whether there were sufficient bases for the grant of the monetary award of the LA to the respondent.

The Ruling of the Court

We resolve to deny the petition.

I

Petitioners aver that the action of the respondents for the recovery of unpaid wages, separation pay and 13th month pay has already prescribed since the action was filed almost five years from the time Jones severed his employment from ASI. Jones filed his resignation on October 31, 1997, while the complaint before the LA was instituted on September 29, 2002. Petitioners contend that the three-year prescriptive period under Article 291[4] of the Labor Code had already set-in, thereby barring all of respondent's money claims arising from their employer-employee relations.

Based on the findings of facts of the LA, it was ASI which was responsible for the delay in the institution of the complaint. When Jones filed his resignation, he immediately asked for the payment of his money claims. However, the management of ASI promised him that he would be paid immediately after the claims of the rank-and-file employees had been paid. Jones relied on this representation. Unfortunately, the promise was never fulfilled even until the time of Jones' death.

[4] ART. 291. *MONEY CLAIMS.* – All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

In light of these circumstances, we can apply the principle of promissory estoppel, which is a recognized exception to the three-year prescriptive period enunciated in Article 291 of the Labor Code.

Promissory estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon, as in fact it was relied upon, and if a refusal to enforce it would virtually sanction the perpetration of fraud or would result in other injustice.[5] Promissory estoppel presupposes the existence of a promise on the part of one against whom estoppel is claimed. The promise must be plain and unambiguous and sufficiently specific so that the court can understand the obligation assumed and enforce the promise according to its terms.[6]

In order to make out a claim of promissory estoppel, a party bears the burden of establishing the following elements: (1) a promise was reasonably expected to induce action or forbearance; (2) such promise did, in fact, induce such action or forbearance; and (3) the party suffered detriment as a result.[7]

All the requisites of promissory estoppel are present in this case. Jones relied on the promise of ASI that he would be paid as soon as the claims of all the rank-and-file employees had been paid. If not for this promise that he had held on to until the time of his death, we see no reason why he would delay filing the complaint before the LA. Thus, we find ample justification not to follow the prescriptive period imposed under Article 291 of the Labor Code. Great injustice will be committed if we will brush aside the employee's claims on a mere technicality, especially when it was petitioner's own action that prevented respondent from interposing the claims within the required period.[8]

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[5] *Ramos v. Central Bank of the Philippines*, No. L-29352, October 4, 1971, 41 SCRA 565.

[6] *National Power Corporation v. Hon. Alonzo-Legasto*, G.R. No. 148318, November 22, 2004, 443 SCRA 342, 371.

[7] *Mendoza v. Court of Appeals*, 412 Phil. 14, 29 (2001).

[8] *Ludo & Luym Corporation v. Saornido*, 443 Phil. 554 (2003).

II

Petitioners argue that the NLRC committed grave abuse of discretion in dismissing their appeal for failure to post the complete amount of the bond. They assert that they cannot post an appeal bond equivalent to the monetary award rendered by the LA due to financial incapacity. They say that strict enforcement of the NLRC Rules of Procedure [9] that the appeal bond shall be equivalent to the monetary award is oppressive and would have the effect of depriving petitioners of their right to appeal.[10]

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[9] The applicable NLRC Rules of Procedure in this case is the one that took effect on January 1, 2000, as amended by Resolution No. 01-02, Series of 2002, otherwise known as the New Rules of Procedure of the National Labor Relations Commission.

A revised NLRC Rules of Procedure was promulgated in 2005.

[10] The LA in its Order dated January 15, 2004 and Resolution dated March 18, 2004, ratiocinated Sections 6 and 7 of the New Rules of Procedure of the National Labor Relations Commission, *viz*.:

SECTION 6. BOND. *In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond. The appeal bond shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.*

In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court, and shall be accompanied by:

a) a joint declaration under oath by the employer, his counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case.

b) a copy of the indemnity agreement between the employer-appellant and bonding company; and

c) a copy of security deposit or collateral securing the bond.

A certified true copy of the bond shall be furnished by the appellant to the appellee who shall verify the regularity and genuineness thereof and immediately report to the Commission any irregularity.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal.

No motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award.

Article 223 of the Labor Code mandates that in case of a judgment of the LA involving a monetary award, an appeal by the employer to the NLRC 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.*

The posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the LA.[11] The intention of the lawmakers to make the bond a mandatory requisite for the perfection of an appeal by the employer is clearly limned in the provision that an appeal by the employer may be perfected "*only upon the posting of a cash or surety bond*." The word *"only"* makes it perfectly plain that the lawmakers intended the posting of a cash or surety bond by the employer to be the essential and exclusive means by which an employer's appeal may be perfected. The word *"may"* refers to the perfection of an appeal as optional on the part of the defeated party, but not to the compulsory posting of an appeal bond, if he desires to appeal. The meaning and the intention of the legislature in enacting a statute must be determined from the language employed; and where there is no ambiguity in the words used, then there is no room for construction.[12]

The filing of the bond is not only mandatory but also a jurisdictional requirement that must be complied with in order to confer jurisdiction upon the NLRC.[13] Non-compliance therewith

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The filing of the motion to reduce bond without compliance with the requisites in the preceding paragraph shall not stop the running of the period to perfect an appeal. (Emphasis supplied.)

Section 7. **No extension of Period.** – No motion or request for extension of the period within which to perfect an appeal shall be allowed.

[11] *Quiambao v. NLRC*, 324 Phil. 455, 461 (1996).

[12] *Viron Garments Manufacturing Co., Inc. v. NLRC*, G.R. No. 97357, March 18, 1992, 207 SCRA 339, citing *Provincial Board of Cebu v. Presiding Judge of Cebu Court of First Instance,* 171 SCRA 1 (1989).

[13] Section 4 of the New Rules of Procedure of the National Labor Relations Commission requires the posting of cash or surety bond as a requisite for the perfection of the appeal, *viz.*:

renders the decision of the LA final and executory.[14] This requirement is intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It is intended to discourage employers from using an appeal to delay or evade their obligation to satisfy their employees' just and lawful claims.[15]

In the instant case, the failure of petitioners to comply with the requirement of posting a bond equivalent in amount to the monetary award is fatal to their appeal. Section 6 of the New Rules of Procedure of the NLRC mandates, among others, that no motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award. The NLRC has the full discretion to grant or deny their motion to reduce the amount of the appeal bond. The finding of the NLRC that petitioners did not present sufficient justification for the reduction thereof is generally conclusive upon this Court absent a showing that

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SECTION 4. ***REQUISITES FOR PERFECTION OF APPEAL***. a) The appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be verified by appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, with proof of payment of the required appeal fee and the *posting of a cash or surety bond as provided in Section 6 of this Rule*; shall be accompanied by memorandum of appeal in three (3) legibly typewritten copies which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for, and a statement of the date when the appellant received the appealed decision, resolution or order and a certificate of non-forum shopping with proof of service on the other party of such appeal. A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal.

b) The appellee may file with the Regional Arbitration Branch or Regional Office where the appeal was filed, his answer or reply to appellant's memorandum of appeal, not later than ten (10) calendar days from receipt thereof. Failure on the part of the appellee who was properly furnished with a copy of the appeal to file his answer or reply within the said period may be construed as a waiver on his part to file the same.

c) Subject to the provisions of Article 218, once the appeal is perfected in accordance with these Rules, the Commission shall limit itself to reviewing and deciding specific issues that were elevated on appeal. (Emphasis supplied.)

[14] *Quiambao v. NLRC, supra* note 11.

[15] *Viron Garments Manufacturing Co., Inc. v. NLRC, supra* note 12.

the denial was tainted with bad faith.

Furthermore, we would like to reiterate that appeal is not a constitutional right, but a mere statutory privilege. Thus, parties who seek to avail themselves of it must comply with the statutes or rules allowing it. Perfection of an appeal in the manner and within the period permitted by law is mandatory and jurisdictional. The requirements for perfecting an appeal must, as a rule, be strictly followed. Such requirements are considered indispensable interdictions against needless delays and are necessary for the orderly discharge of the judicial business. Failure to perfect the appeal renders the judgment of the court final and executory. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision.[16]

III

The propriety of the monetary award of the LA is already binding upon this Court. As we have repeatedly pointed out, petitioners' failure to perfect their appeal in the manner and period required by the rules makes the award final and executory. Petitioners' stance that there was no sufficient basis for the award of the payment of withheld wages, separation pay and 13th month pay must fail. Such matters are questions of facts requiring the presentation of evidence. Findings of facts of administrative and quasi-judicial bodies, which have acquired expertise on specific matters, are accorded weight and respect by the Court. They are deemed final and conclusive, unless compelling reasons are presented for us to digress therefrom.

WHEREFORE, in view of the foregoing, the petition is *DENIED* for lack of merit. The Decision dated April 15, 2005 and the Resolution dated July 12, 2005 of the Court of Appeals in CA-G.R. SP No. 84206 are hereby *AFFIRMED*.

SO ORDERED.

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[16] *Cuevas v. Bais Steel Corporation*, 439 Phil. 793, 805 (2002).

Quisumbing,[*] *Ynares-Santiago, Austria-Martinez* and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 169691. July 23, 2008]

PEDRITO SALMORIN, *petitioner, vs.* **DR. PEDRO ZALDIVAR,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; DISTINCTION BETWEEN THE JURISDICTION OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATORY BOARD AND THE REGULAR TRIAL COURTS WITH RESPECT TO FORCIBLE ENTRY AND UNLAWFUL DETAINER CASES AND CASE INVOLVING TENANCY RELATIONS.— The Department of Agrarian Reform Adjudication Board has primary and exclusive jurisdiction over agrarian related cases, *i.e.*, rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation and use of all agricultural lands covered by the Comprehensive Agrarian Reform Law and other related agrarian laws, or those cases involving the ejectment and dispossession of tenants and/or leaseholders. On the otherhand, Section 33 (2) of Batas Pambansa Blg. 129, as amended by Republic Act 7691, provides that exclusive original jurisdiction over cases of forcible entry and unlawful detainer is lodged with the metropolitan trial courts, municipal trial courts and MCTCs.

2. ID.; ID.; RESPONDENT'S COMPLAINT CONCERNED THE UNLAWFUL DETAINER BY PETITIONER OF THE

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[*] In lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 508 dated June 25, 2008.

SUBJECT LOT; THE MATTER IS PROPERLY WITHIN THE JURISDICTION OF THE REGULAR COURTS AND THE ALLEGATION OF TENANCY DID NOT AUTOMATICALLY DEPRIVE THE TRIAL COURT OF ITS JURISDICTION.— It is well-settled that the jurisdiction of a court over the subject matter of the action is determined by the material allegations of the complaint and the law, irrespective of whether the plaintiff is entitled to recover all or some of the claims or reliefs sought therein. In his complaint, Zaldivar alleged the following: (1) he possessed the subject lot; (2) he instituted Salmorin as administrator thereof; (3) Salmorin failed to administer the subject lot by not having the vacant areas thereof planted; (4) for Salmorin's failure to administer the subject lot, Salmorin's service as administrator was terminated; (5) he advised Salmorin through registered mail to leave or vacate the subject lot and (6) Salmorin refused to vacate the subject lot without justification. Thus, Zaldivar's complaint concerned the unlawful detainer by Salmorin of the subject lot. This matter is properly within the jurisdiction of the regular courts. The allegation of tenancy in Salmorin's answer did not automatically deprive the MCTC of its jurisdiction. In **Hilado et al. v. Chavez et al., we ruled: [T]hat the jurisdiction of the court over the nature of the action and the subject matter thereof cannot be made to depend upon the defenses set up in the court or upon a motion to dismiss**. Otherwise, the question of jurisdiction would depend almost entirely on the defendant. xxx The [MTCC] does not lose its jurisdiction over an ejectment case by the simple expedient of a party raising as defense therein the alleged existence of a tenancy relationship between the parties. But it is the duty of the court to receive evidence to determine the allegations of tenancy. If after hearing, tenancy had in fact been shown to be the real issue, the court should dismiss the case for lack of jurisdiction.

3. ID.; ID.; TENANCY RELATIONS; THERE MUST BE SUBSTANTIAL EVIDENCE ADEQUATE TO PROVE THE ELEMENT OF SHARING OF HARVEST.— Tenancy is a legal relationship established by the existence of particular facts as required by law. In this case, the RTC and CA correctly found that the third and sixth elements, namely, consent of the landowner and sharing of the harvests, respectively, were

absent. We find no compelling reason to disturb the factual findings of the RTC and the CA. The fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy. There must be substantial evidence on record adequate to prove the element of sharing. Moreover, in *Rivera v. Santiago*, we stressed: [T]hat it is not unusual for a landowner to receive the produce of the land from a caretaker who sows thereon. The fact of receipt, without an agreed system of sharing, does not *ipso facto* create a tenancy.

4. ID.; ID.; CERTIFICATIONS ISSUED BY MUNICIPAL AGRARIAN REFORM OFFICERS ARE NOT BINDING ON THE COURTS.— Salmorin's attempt to persuade us by way of a certification coming from the Barangay Agrarian Reform Committee attesting that he was a bona fide tenant of Zaldivar deserves scant consideration. Certifications issued by municipal agrarian reform officers are not binding on the courts. This rule was articulated in *Bautista v. Mag-isa vda. de Villena*: In a given locality, merely preliminary or provisional are the certifications or findings of the secretary of agrarian reform (or of an authorized representative) concerning the presence or the absence of a tenancy relationship between the contending parties; hence, such certifications do not bind the judiciary.

5. ID.; ID.; THE AGRICULTURAL SHARE TENANCY WAS DECLARED CONTRARY TO PUBLIC POLICY AND WAS ABOLISHED BY THE PASSAGE OF R.A. 3844 OR THE COMPRENHESIVE AGRARIAN REFORM LAW.— We note that agricultural share tenancy was declared contrary to public policy and, thus, abolished by the passage of R.A. 3844, as amended. Share tenancy exists: [W]henever two persons agree on a joint undertaking for agricultural production wherein one party furnishes the land and the other his labor, with either or both contributing any one or several of the items of production, the tenant cultivating the land personally with the aid of labor available from members of his immediate farm household, and the produce thereof to be divided between the landholder and the tenant. In alleging that he is a tenant of Zaldivar, Salmorin (in his affidavit dated April 26, 2000) relates that their arrangement was for him to do all the cultivation and that the expenses therefore will be deducted from the harvest. The rest of the harvest will be divided equally between himself and

Zaldivar. If Salmorin's version was to be believed, their arrangement was clearly one of agricultural share tenancy. For being contrary to law, Salmorin's assertion should not be given merit.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Ramon M. Salvani, Jr. for respondent.

R E S O L U T I O N

CORONA, *J.*:

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner Pedrito Salmorin assails the January 31, 2005 decision[1] and September 8, 2005 resolution[2] of the Court of Appeals (CA).

On July 15, 1989, respondent Dr. Pedro Zaldivar, as legal possessor[3] of Lot No. 7481-H[4] situated in Mapatag, Hamtic, Antique, entered into an agreement (*Kasugtanan*)[5] with Salmorin designating him as administrator of the lot with a monthly salary of ₱150. Salmorin allegedly did not comply with the terms of the *Kasugtanan* when he failed to till the vacant areas.[6] This compelled Zaldivar to terminate his services and eject him from the lot. When Salmorin refused to vacate the property, Zaldivar filed a complaint for unlawful detainer against him in the Municipal Circuit Trial Court (MCTC) of Tobias Fornier-Anini-y-Hamtic.

[1] Penned by Associate Justice Sesinando E. Villon and concurred by Associate Justices Isaias P. Dicdican and Ramon M. Bato, Jr. of the Twentieth Division of the Court of Appeals. *Rollo*, pp. 140-147.

[2] *Id*., pp. 138-139.

[3] He possessed the lot in question in representation of his wife, Viola Sumagpao, who was an heir of the owner Lourdes Sumagpao.

[4] With an area of 15.4360 hectares.

[5] *Rollo*, p. 63.

[6] *Id*., p. 141.

The complaint was docketed as Civil Case No. 229-H.

In his answer, Salmorin alleged the existence of a tenancy relationship between him and Zaldivar. Thus, he claimed that the case was an agrarian matter over which the MCTC had no jurisdiction.

After an examination of the position papers submitted by the parties, the MCTC found that the case was in the nature of an agrarian dispute and dismissed the case for lack of jurisdiction.

Zaldivar appealed to the Regional Trial Court (RTC) of San Jose, Antique which ruled in his favor. The RTC found that the consent of the landowner and sharing of the harvest, which were requisites for the existence of a tenancy relationship,[7] did not exist. Thus, it ruled that the MCTC had jurisdiction over the case and ordered the reinstatement of Civil Case No. 229-H.

Salmorin appealed the RTC decision to the CA but the latter upheld the decision of the RTC. He now seeks a reversal of the RTC and CA decisions.

Salmorin argues that the regular court had no jurisdiction over the case and Zaldivar had no right to possess the subject property.

We disagree.

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[7] In the case of *Hidalgo v. Rosales*, 144 Phil. 312 (1970), we held that Section 4 of RA 3844, as amended, expressly outlawed agricultural share tenancy for being contrary to public policy and decreed its abolition. In anticipation of the expiration of share tenancy contracts – whether by contractual stipulation or the tenant's exercise of his option to elect the leasehold system instead or by virtue of their nullity – occurring before the proclamation of the locality as a land reform area, the tenant shall continue in possession of the land for cultivation and "there shall be presumed to exist a leasehold relationship under the provisions of this Code."

In 1971, RA 6389 (An Act Amending RA 3844, as amended) was passed. Section 4 thereof expressly provided for the automatic conversion of existing share tenancies to agricultural leaseholds upon its (RA 6389's) effectivity on September 10, 1971.

On one hand, the Department of Agrarian Reform Adjudication Board has primary and exclusive jurisdiction over agrarian related cases, *i.e.*, rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation and use of all agricultural lands covered by the Comprehensive Agrarian Reform Law and other related agrarian laws, or those cases involving the ejectment and dispossession of tenants and/or leaseholders.[8] On the other, Section 33 (2) of Batas Pambansa Blg. 129, as amended by Republic Act 7691, provides that exclusive original jurisdiction over cases of forcible entry and unlawful detainer is lodged with the metropolitan trial courts, municipal trial courts and MCTCs.

It is well-settled that the jurisdiction of a court over the subject matter of the action is determined by the material allegations of the complaint and the law, irrespective of whether the plaintiff is entitled to recover all or some of the claims or reliefs sought therein.[9]

In his complaint, Zaldivar alleged the following:

(1) he possessed the subject lot;

(2) he instituted Salmorin as administrator thereof;

(3) Salmorin failed to administer the subject lot by not having the vacant areas thereof planted;

(4) for Salmorin's failure to administer the subject lot, Salmorin's service as administrator was terminated;

(5) he adviced Salmorin through registered mail to leave or vacate the subject lot and

(6) Salmorin refused to vacate the subject lot without justification.

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[8] 2003 Rules of Procedure of the Department of Agrarian Reform Adjudication Board, Rule II, Section 1.

[9] *Heirs of Magpily v. De Jesus*, G.R. No. 167748, 8 November 2005, 474 SCRA 366, 372 citing *Sumawang v. De Guzman*, G.R. No. 150106, 8 September 2004, 437 SCRA 622, 627.

Thus, Zaldivar's complaint concerned the unlawful detainer by Salmorin of the subject lot. This matter is properly within the jurisdiction of the regular courts. The allegation of tenancy in Salmorin's answer did not automatically deprive the MCTC of its jurisdiction. In *Hilado et al. v. Chavez et al.*,[10] we ruled:

> [T]hat **the jurisdiction of the court over the nature of the action and the subject matter thereof cannot be made to depend upon the defenses set up in the court or upon a motion to dismiss**. Otherwise, the question of jurisdiction would depend almost entirely on the defendant. xxx The [MTCC] does not lose its jurisdiction over an ejectment case by the simple expedient of a party raising as defense therein the alleged existence of a tenancy relationship between the parties. But it is the duty of the court to receive evidence to determine the allegations of tenancy. If after hearing, tenancy had in fact been shown to be the real issue, the court should dismiss the case for lack of jurisdiction. (emphasis supplied; citations omitted)

Contrary to the findings of the MCTC, both the RTC and the CA found that there was no tenancy relationship between Salmorin and Zaldivar. A tenancy relationship cannot be presumed.[11] In *Saul v. Suarez*,[12] we held:

> There must be evidence to prove the tenancy relations such that all its indispensable elements must be established, to wit: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent by the landowner; (4) the purpose is agricultural production; (5) there is personal cultivation; and (6) there is sharing of the harvests. All these requisites are necessary to create tenancy relationship, and the absence of one or more requisites will not make the alleged tenant a *de facto* tenant.

All these elements must concur. It is not enough that they are alleged. To divest the MCTC of jurisdiction, these elements must all be shown to be present.[13]

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[10] G.R. No. 134742, 22 September 2004, 438 SCRA 623, 641.

[11] *Supra* note 9 at 373.

[12] G.R. No. 166664, 20 October 2005, 473 SCRA 628, 634.

[13] *Rivera v. Santiago*, G.R. No. 146501, 28 August 2003, 410 SCRA 113, 123.

Tenancy is a legal relationship established by the existence of particular facts as required by law. In this case, the RTC and CA correctly found that the third and sixth elements, namely, consent of the landowner and sharing of the harvests, respectively, were absent. We find no compelling reason to disturb the factual findings of the RTC and the CA.

The fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy.[14] There must be substantial evidence on record adequate to prove the element of sharing. Moreover, in *Rivera v. Santiago*,[15] we stressed:

> [T]hat it is not unusual for a landowner to receive the produce of the land from a caretaker who sows thereon. The fact of receipt, without an agreed system of sharing, does not *ipso facto* create a tenancy.

Salmorin's attempt to persuade us by way of a certification coming from the Barangay Agrarian Reform Committee attesting that he was a bona fide tenant of Zaldivar deserves scant consideration. Certifications issued by municipal agrarian reform officers are not binding on the courts. This rule was articulated in *Bautista v. Mag-isa vda. de Villena*:[16]

> In a given locality, merely preliminary or provisional are the certifications or findings of the secretary of agrarian reform (or of an authorized representative) concerning the presence or the absence of a tenancy relationship between the contending parties; hence, such certifications do not bind the judiciary.

We note that agricultural share tenancy was declared contrary to public policy and, thus, abolished by the passage of RA 3844, as amended. Share tenancy exists:

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[14] *Heirs of Magpily v. De Jesus*, *supra* note 9 citing *VHJ Construction and Development Corporation v. CA*, G.R. No. 128534, August 13, 2004, 436 SCRA 392, 399.

[15] *Supra* note 13 at 125.

[16] G.R. No. 152564, 13 September 2004, 438 SCRA 259, 271.

[W]henever two persons agree on a joint undertaking for agricultural production wherein one party furnishes the land and the other his labor, with either or both contributing any one or several of the items of production, the tenant cultivating the land personally with the aid of labor available from members of his immediate farm household, and the produce thereof to be divided between the landholder and the tenant.[17]

In alleging that he is a tenant of Zaldivar, Salmorin (in his affidavit dated April 26, 2000)[18] relates that their arrangement was for him to do all the cultivation and that the expenses therefore will be deducted from the harvest. The rest of the harvest will be divided equally between himself and Zaldivar. If Salmorin's version was to be believed, their arrangement was clearly one of agricultural share tenancy. For being contrary to law, Salmorin's assertion should not be given merit.

Since the MCTC has jurisdiction over Civil Case No. 229-H, we will refrain from discussing the right of Zaldivar to possess Lot No. 7481-H as it is more correctly the subject of the appropriate action in the trial court.

WHEREFORE, the petition is hereby *DENIED*. The January 31, 2005 and September 8, 2005 resolution of the Court of Appeals are *AFFIRMED*. Civil Case No. 229-H is hereby *REINSTATED*. The case is *REMANDED* to the Municipal Circuit Trial Court of Tobias Fornier-Anini-y-Hamtic which is directed to proceed with and finish the case as expeditiously as possible.

Costs against petitioner.

SO ORDERED.

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

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[17] Republic Act No. 3844 (1963), Sec. 166 (25).

[18] *Rollo,* pp. 91-92.

FIRST DIVISION

[G.R. No. 170934. July 23, 2008]

NATIONAL POWER CORPORATION, *petitioner, vs.* **EAST ASIA UTILITIES CORPORATION and CEBU PRIVATE POWER CORPORATION,** *respondents.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; FINDINGS OF ADMINISTRATIVE OR REGULATORY AGENCIES ON MATTERS WITHIN THEIR TECHNICAL AREA OF EXPERTISE ARE GENERALLY ACCORDED NOT ONLY RESPECT BUT FINALITY IF SUCH FINDINGS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.— We find no reason to modify or reverse the findings of the Energy Regulatory Board (ERB) and the ERC. Under the decision in ERB Case No. 96-118, which approved the allowable rates for the charges on services provided by NPC to its customers, it is undisputed that there is no provision which allows NPC to charge Power Delivery Service (PDS) charges on Ancillary Service (AS) separately from AS charges. On the contrary, the AS charges already cover all costs necessary to provide the same. As correctly pointed out by respondents, there are two separate tariffs for transmission and AS. NPC's customers are charged for both Power Delivery (actual usage of the line in transport) and AS Charges (maintenance of grid reliability). Accordingly, PDS charges are only applicable to IPPs using the transmission facilities in transporting power while AS are required in maintaining grid reliability. Consequently, an IPP need not pay PDS charges if its facilities are embedded in the distribution network but must, however, pay for AS necessary for maintaining grid reliability. To charge respondents for AS and PDS charges on AS would be tantamount to double charging. The findings of administrative or regulatory agencies on matters within their technical area of expertise are generally accorded not only respect but finality if such findings are supported by substantial evidence. Specifically, the matter of rate-fixing calls for a technical examination and a specialized review of specific details which the courts are

ill-equipped to enter; hence, such matters are primarily entrusted to the administrative or regulating authority. In the case at bar, the ERC (then the ERB) is the agency tasked by law to fix, determine and prescribe the rates being charged by NPC to its customers. In accordance with this mandate, the ERC approved the rates and the guidelines that NPC must comply with in charging its customers. In the absence of grave abuse of discretion on the part of the ERC, its finding that there is no basis to assess respondents for PDS charges on AS is binding on this Court.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Sugay Law Office for respondents.

D E C I S I O N

PUNO, *C.J.*:

This is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the Decision dated December 14, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 77600, entitled "*National Power Corporation v. East Asia Utilities Corporation and Cebu Private Power Corporation*." Said Decision affirmed *in toto* the Decision dated June 28, 2001 rendered by the then Energy Regulatory Board (ERB) in ERB Case No. 99-51 (ERB Decision), as modified by the Order dated March 28, 2003 issued by the then Energy Regulatory Commission (ERC) in ERC Case No. 2001-557 (ERC Order).

The undisputed facts of the case, as summarized by the CA, are as follows:

Petitioner National Power Corporation (NPC) is a government-owned and controlled corporation created and existing by virtue of Republic Act 6395, as amended. On the other hand, respondents East Asia Utilities Corporation (EAUC) and Cebu Private Power Corporation (Cebu Power) are private corporations duly organized under the existing laws of the Republic of the Philippines.

[1] *Rollo*, pp. 11-86.

The respondents EAUC and Cebu Power and the petitioner NPC are the complainants and respondent, respectively, in ERB Case No. 99-51 entitled *"East Asia Utilities Corporation and Cebu Private Power Corporaiton vs. National Power Corporation."*

Respondents are both independent power producers (IPPs) duly accredited with the Department of Energy (DOE) as operators of diesel power generating units. Both had secured the approval of the then Energy Regulatory Board (ERB) to sell their excess power to the Visayan Electric Company, Inc. (VECO) under ERB Cases Nos. 94-26 and 97-05. While respondent EAUC is a registered ecozone utility enterprise of the Mactan Economic Processing Zone (MEPZ) which wheels its excess capacity to VECO using its own 69 KV sub-transmission line, respondent Cebu Power sells its entire generating capacity to VECO using a direct connection to VECO's 69 KV grid through its Ermita Substation.

Sometime in 1999, the petitioner billed respondent EAUC as PDS tariffs the amount of ₱29,069,294.93 for the period covering December 26, 1998 to April 15, 1999. Respondent EAUC paid under protest the total amount billed, out of which the sum of ₱17,551,912.59 is being contested. Petitioner also billed respondent Cebu Power as PDS tariffs the amount of ₱3,032,509.08 for the period covering March 26, 1999 to April 25, 1999. Respondent Cebu Power paid under protest the total amount billed and contested ₱1,324,275.31 thereof.

Despite respondents' protestations, petitioner NPC continued to bill the former with what they claimed as inapplicable/contested tariffs. Fearing that the said unauthorized billings by the petitioner NPC would continuously amplify and escalate to their prejudice, the respondents filed on August 24, 1999 a complaint in the then ERB against petitioner NPC for a refund/credit and/or collection of inapplicable/unauthorized tariffs with prayer for a cease and desist order and/or preliminary injunction.

The petitioner NPC filed its comment on said complaint. It averred that the Power Delivery Services (PDS) that it provides and for which respondent EAUC is being charged of refer to the one associated with the firm Load Following and Frequency Regulation (LFFR) and Spinning Reserve (SR) services. It also averred that the use of its transmission and sub-transmission facilities is the reason why it charges PDS under the approved tariffs for Open Access Transmission Services (AOTS) and Ancillary Services (AS). Also, the PDS charges

were applied to the respondents in conjunction with the AS provided to them. Petitioner further averred that it applied the approved PDS charges only to a certain percentage of the billing capacities of the IPPS, *i.e.*, 13.2% of the billing capacities in conjunction with the provision of the firm LFFR and SR while additional PDS charges were applied when back-up power services were requested. Furthermore, petitioner averred that the PDS charges are applicable to transmission customers which are embedded generation not for the transfer of power and energy from the generating resources to the load but for the delivery to the generation-based AS being provided by it; that the provision of AS would not be possible unless its transmission and sub-transmission facilities are used; that non-payment of the PDS charges by embedded generation would be less than fair and short of discriminatory to its other customers even as the same would not reflect its true cost of service; that the energy supplied in relation to the provision of non-firm back-up power service requires the consumption of fuel for conversion to electrical energy; that while the 'Peso per kW' charges are similar to its demand charge, the customer is likewise required to pay for the corresponding energy consumption; that there is no question that such energy was delivered inasmuch as the back-up power was delivered as scheduled for a definite period of time; that the Energy Imbalance and Back-up Energy Charge are actually charges for the energy delivered and consumed by the transmission customer or its load and, if the said charges are not paid, petitioner would not be able to recover its variable costs; that with regards to over-generation, part of the stipulation and agreement approved by ERB in ERB Case No. 96-118 provide that it shall not pay the transmission customer for over-deliveries; that in accordance with its prior agreement with respondent EAUC's representatives in Cebu, it was agreed that respondent EAUC would continue to charge VECO for the entire production of respondent EAUC to avoid confusion; that the same virtually makes petitioner NPC pay respondent EAUC (in terms of electricity) for over-deliveries in violation of the stipulation and agreement; that it was agreed that respondent EAUC shall reimburse petitioner for over-deliveries in the form of Over-Generation Charges using applicable rates as if electricity was still sold to VECO; that it does not prevent respondent EAUC from selling as much as it wants to VECO provided that it schedules such deliveries; and that any excess requirement of VECO is already the (existing) market of respondent and should not be expropriated by any other supplier, inadvertently or otherwise, in violation of any existing contract executed by the parties.

On January 11, 2000, respondents EAUC and Cebu Power filed a reply to petitioner's comment with Motion to Reiterate Prayer for the Issuance of a Cease and Desist Order and/or Writ of Preliminary Injunction against the petitioner. Respondents contended that petitioner cannot and must not charge its transmission customers rates that have not been approved by ERB in ERB Case No. 96-118; that the Tariff Structure and Stipulation and Agreement as embodied in the Decision of ERB in ERB Case No. 96-118 consists of the Tariffs for Transmission and Ancillary Services; that under the Transmission Tariff, petitioner adopted the 'Postage Stamp Methodology' while, under the Ancillary Services, it used the 'Marginal Capacity Cost Method'; that in the power delivery of the petitioner, it is but just and proper for it to charge its customers for both Power Delivery (actual usage of the line in transport) and Ancillary Services Charges (maintenance of grid reliability); that in case of IPPs, however, petitioner cannot use the assertion that the transmission facilities are used to provide ancillary services; that justice and equity demand that customers be made to pay only for services that are actually rendered, *i.e*. that they pay for the transmission line used in transporting power and for the ancillary services required in maintaining grid reliability; that under the existing regulatory framework, petitioner is allowed to recover all its costs, also known as revenue requirement, but must not be allowed to 'Double Recover' its cost by charging at the same time separate amounts for PDS, Ancillary Services and Power Delivery Service for Ancillary Services; that the PDS is not an automatic component of the Ancillary Services, thus, PDS is only applicable to IPPs using the transmission facilities in transporting power while Ancillary Services are required in maintaining grid reliability; that consequently, an IPP need not pay PDS if its facilities are embedded in the distribution network but must, however, pay for Ancillary Services necessary for maintaining grid reliability; that there is no such thing as PDS for Ancillary Services; that an IPP which is not using the transmission system to transport power should not be made to pay for PDS; that it is totally unfair on the part of an IPP to assist respondent in maintaining the grid yet pay for PDS where actual line flows do not exist; that the Open Access Transmission Services (OATS) and Ancillary Services Tariffs as approved by the ERB do not include the Energy Imbalance Charge and Back-up Energy Charge and, consequently, petitioner cannot charge an IPP a fee/tariff which is not approved by the ERB; and that they are in no way questioning the legally [sic] and/or wisdom

of the tariffs/charges imposed by ERB in ERB Case No. 96-118 but rather the applicability of the same to a particular class of customers.

During the proceedings in ERB Case No. 99-51, the respondents adduced in evidence the testimonies of their Executive Vice President and General Manager, Mr. John V. Alcordo and Mr. Arthur Evangelista, respectively, and some documentary evidence marked as Exhibits "A" to "HH". For its part, petitioner NPC adduced in evidence the testimonies of its Utility Economics Manager, Jesusito Sulit, and its Transmission Service Bureau Head, Mr. Mario Pangilinan, and some documentary evidence marked as Exhibits "1" to "8".

ERB then ruled that the core issue which was to be passed upon by it is whether or not the respondents, as IPP's embedded in the distribution network of VECO (as the distribution company), are liable to pay petitioner NPC the following:

(a) The firm Power Delivery Services Charges corresponding to the Load Following and Frequency Regulation and Spinning Reserve ancillary services provided by petitioner, or what respondents refer to as 'Transmission for Internal Generation';

(b) The rate for Back-up (Bu, kW) Service prescribed [by] ERB in its June 11, 1997 Decision in ERB Case No. 96-118 in relation to the non-firm Back-up (Bu, kW) Service purchased by respondents from the petitioner;

(c) The energy related service received by respondents in relation to the provision of non-firm Back-up (Bu, kW) Service by petitioner;

(d) The rate for Load Following and Frequency Regulation Service and Spinning Reserve Service relative to the provision of Back-up (Bu, kW) Service by petitioner; and

(e) The rate for Power Delivery Service relative to the provision of Back-up (Bu, kW) Service by petitioner.

On June 28, 2001, after a thorough hearing and review of both parties' evidence, the ERB rendered a decision, the dispositive portion of which reads as follows:

> "WHEREFORE, considering all the foregoing, this Board hereby directs:
>
> 1. Respondent to CEASE and DESIST from charging complainants the Power Delivery Service charges corresponding

to the Ancillary Services, *i.e.*, firm Load Following and Frequency Regulation Service and Spinning Reserve Service, being availed of by them, or what complainants refer to a[s] "Transmission for Internal Generation" charges, and to REFUND all amounts collected by reason thereof to the complainants who, if they so desire, may opt to credit or apply the same to their future billings from the respondent;

2. Respondent to SUBMIT to this Board, for approval, a proposed rate for non-firm Back-up (Bu, kW) Service, together with the supporting documents used in the determination of the said rate, within thirty (30) days from receipt of this decision. It must be emphasized that in computing for the said rate, the base data to be used should refer to the year 1995, the test year used in determining the tariffs for the OATS and the other ancillary services. Pending approval of the proposed rate, respondent may continue to charge the firm Back-up (Bu, kW) Service rate prescribed in the board's Decision in ERB Case No. 96-11[8]. Any amount corresponding to the difference between the rate presently charged by respondent and the rate for non-firm Back-up Service to be finally approved by the Board shall be refunded to or credited to future billings of the complainants, at the option of the latter.

3. Respondent to CEASE and DESIST from charging complainants the commercial rate for the energy supplied in relation to the provision of non-firm Back-up (Bu, kW) Service, and to instead bill complainants therefore at the computed monthly average One Day Power Sales (ODPS) rate multiplied by the energy involved. Any sum representing the difference between the commercial rate and the computed monthly ODPS rate shall be refunded to or credited to future billings of the complainants, at the option of the latter.

4. Respondent to continue to charge, and complainants to continue to pay the Power Delivery Service (PDS) rate in connection with the provision of non-firm Back-up (Bu, kW) Service.

5. Respondent to CEASE and DESIST from charging complainants the rates for Load Following and Frequency Regulation (LFFR) Service and Spinning Reserve (SR) Service relative to the provision of Back-up (Bu, kW) Service, and to REFUND all amounts collected by reason thereof to the

complainants who, if they so desire, may choose to credit or apply the same to their future billings from the respondent.

6. Respondent to submit to this Board for approval rules and regulations implementing the tariffs for the OATS and ancillary services to enable the Board to conduct a review of all existing billing determinants applied by respondent in computing its charges relative to the provision of Power Delivery Services and Ancillary Services to its customers.

With respect to the interest on the refundable amount being sought by complainants, the Board finds no justification to grant the same and so hereby denies complainants' request therefore.

"SO ORDERED."

Respondents, not fully satisfied with the above-quoted decision, sought for a reconsideration thereof with the Energy Regulatory Commission (ERC) which replaced the then ERB relative to the dissenting opinions of former board member Alberto A. Dosayla and former chairperson Melinda L. Ocampo as regard[s] Item 1 of the dispositive portion of ERB's decision in ERB Case No. 99-51 alleging that the dissenting opinions therein of the aforementioned former board members are null and void. The appeal was docketed as ERC Case No. 2001-557.

On March 28, 2003, the ERC issued an order modifying the defunct ERB's decision in ERB Case No. 99-51. The dispositive portion of the said order reads as follows:

"WHEREFORE, the foregoing premises considered, the questioned Decision dated June 28, 2001 is hereby modified as follows:

1) Respondent is directed to CEASE and DESIST from charging complainants the Power Delivery Service charges corresponding to the Ancillary Services, *i.e.*, firm Loading Following and Frequency Regulation Service and Spinning Reserve Service, being availed of by them, or what complainants refer to as "Transmission for Internal Generation" charges, and to REFUND all amounts collected by reason thereof to the complainants who, if they so desire, may opt to credit or apply the same to their future billings from the respondent. Parties are hereby further directed to submit data and

computations on the amount charged, as well as the scheme on how the refund/credit should be made. Said computations should cover only the period until September 25, 2002 in view of the unbundling of NPC's rates on September 26, 2002.

2) Respondent is directed to REFUND the amount corresponding to the difference between the rates actually charged to complainants until September 25, 2001 for non-firm Back-up (Bu, kW) Service and the rates authorized by the ERB in ERB Case No. 96-118 (OATS).

3) Respondent is directed to CEASE and DESIST from charging complainants the commercial rate for the energy supplied in relation to the provision of non-firm Back-up (Bu, kW) Service, and to instead bill complainants at the computed monthly average One Day Power Sales (ODPS) rate multiplied by the energy involved. Any sum representing the difference between the commercial rate and the computed monthly average ODPS rate (until September 26, 2002) shall be refunded to or credited to future billings of the complaints [sic], at the option of the latter.

4) Respondent is authorized to continue to charge and complainants are directed to continue to pay the Power Delivery Service (PDS0 [sic] rate in connection with the provision of non-firm Back-up (Bu, KW) Service.

5) Respondent is directed to submit to the Commission proofs to support its claim that it delivered to complainants more than the actual coincidental peak of the Transmission Customer's load share.

The complainants' prayer regarding the interest on the refundable amount is hereby DENIED for lack of merit.

"SO ORDERED."[2]

Aggrieved thereby, petitioner National Power Corporation (NPC) filed a petition for review with the CA. On December 14, 2005, the CA rendered a Decision[3] affirming in *toto* the ERB Decision, as modified by the ERC Order.

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[2] *Id.* at 37-45.

[3] *Id.* at 37-50.

Hence, the instant petition, raising the issue of:

WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION DATED JUNE 28, 2001 OF THE ERB AND THE ORDER DATED MARCH 28, 2003 OF THE ERC THAT RESPONDENTS ARE NOT SUBJECT TO POWER DELIVERY SERVICE CHARGES FOR ANCILLARY SERVICES.[4]

It is undisputed that respondents East Asia Utilities Corporation (EAUC) and Cebu Private Power Corporation (Cebu Power) are both independent power producers (IPPs) which specifically supply generated power directly to Visayan Electric Company, Inc. (VECO), pursuant to an authority granted to them by the then ERB in ERB Case Nos. 9429 and 97-05.

Petitioner argues that the contested PDS charges refer to the one associated with Load Following and Frequency Regulation (LFFR)[5] and Spinning Reserve (SR)[6];[7] that PDS charges are applicable to transmission customers which are embedded generators (such as EAUC and Cebu Power whose facilities are embedded within the transmission/distribution system of a distribution company *i.e.*¸ VECO) not for the transfer of power and energy from the generating resources to the load but for the delivery to the generation-based ancillary services being provided by it;[8] that the liability of respondents arises from the

[4] *Id.* at 24.

[5] Section 3(g), Article 1, Guidelines Implementing Executive Order No. 473 for the Segregation and Unbundling of the Power Tariffs of the National Power Corporation and Electric Distribution Utilities, dated December 22, 1998, defines "Load Following and Frequency Regulation" as "the provisions of generating capacity necessary to adjust total system generation over short periods of time (*e.g.* minutes) to match system load changes that result from random fluctuations in total Transmission System Load."

[6] Section 3(n), Article 1, Guidelines Implementing Executive Order No. 473 for the Segregation and Unbundling of the Power Tariffs of the National Power Corporation and Electric Distribution Utilities, dated December 22, 1998, defines "Spinning Reserve" as "the provision of generating capacity necessary to respond immediately to infrequent, but usually large, failures of generating units or transmission plants."

[7] *Rollo,* p. 39.

fact that they are continuously connected to the whole grid which must be maintained to prevent its collapse or rapid decay, hence, that respondents do not use NPC's transmission lines in transporting electricity to its customer is of no moment;[9] and that in availing of LFFR and SR, a concomitant capacity in the grid/transmission system had to be likewise reserved in order to accommodate and effectively provide such ancillary services.[10]

We hold that petitioner's contentions are without merit.

The then ERB was created under Executive Order No. 172, dated May 8, 1987. Pursuant to Republic Act (RA) No. 7638 or the "Department of Energy Act of 1992," the ERB was tasked to determine, fix and prescribe the rates being charged by NPC to its customers.

Section 18 of RA No. 7638 states:

xxx xxx xxx

The power of the NPC to determine, fix, and prescribe the rates being charged to its customers under Section 4 of the [sic] Republic Act No. 6395, as amended, xxx are hereby transferred to the Energy Regulatory Board. The Board shall exercise its new powers only after due notice and hearing and under the same procedure provided for in Executive Order No. 172.[11]

Pursuant to this mandate, on June 11, 1997, the ERB approved the Open Access Transmission Services (OATS) tariffs and Ancillary Services (AS) tariffs in ERB Case No. 96-118, entitled "In Re: Application for Approval of the Open Access Transmission Tariff (OATT) and Tariff for Ancillary Services for Private Sector Generation Facility," to allow the non-discriminatory use of NPC's transmission grid by private sector generating facilities and electric utilities.[12]

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[8] *Id.*

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

[10] *Id.* at 31.

[11] Republic Act No. 7638 (1992), Sec. 18.

[12] Executive Order No. 473 (1998).

ERB Case No. 96-118 segregated or unbundled the ancillary services (such as the LFFR and SR) from the basic transmission and subtransmission services to promote competition and efficiency in their supply. Prior to ERB Case No. 96-118, the NPC had been traditionally providing electric power service to customers whereby the generation, transmission, and distribution of electric power are integrated or combined and charged as a single tariff.

Under Executive Order No. 473, dated April 17, 1998, the ERB was further tasked to formulate and adopt the necessary guidelines to identify, segregate and "unbundle" the different components of the electricity tariff that NPC is charging its customers with the end in view of transparency and accountability. Thus, on December 22, 1998, the ERB issued the "Guidelines Implementing Executive Order No. 473 for the Segregation and Unbundling of the Power Tariffs of the National Power Corporation and the Electric Distribution Utilities" (Implementing Guidelines). The Implementing Guidelines provide that the different charges on services provided by NPC must conform to the decision in ERB Case No. 96-118.

Its relevant portions state:

SECTION 2. Power Delivery Services. — The rate for the Power Delivery Service shall include transmission and sub-transmission charges, including return.

A. Transmission Charge. — This shall refer to the rate to be charged for the use of NPC's transmission facilities from the point/s of delivery to the point/s of receipt.

The transmission charge shall conform to the decision in ERB Case No. 96-118 entitled "In Re: Application for Approval of the Open Access Transmission Tariff (OATT) and Tariff for Ancillary Services for Private Sector Generation Facility" and-subsequent decisions related thereto.

B. Sub-Transmission Charge. — This shall refer to the rate to be charged for the use of NPC's sub-transmission lines from the point/s of delivery to the point/s of receipt.

The sub-transmission charge shall conform to the decision in ERB Case No. 96-118 (SUPRA) and subsequent decisions related thereto.

SECTION 3. Ancillary Services Charges. — This shall refer to the rates to be charged for the ancillary services including the costs of services necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice. Said charges shall include rates for load following and frequency regulation, spinning reserve, and back-up power.

The ancillary services charges shall also conform to the decision in ERB Case No. 96-118 (SUPRA) and subsequent decisions related thereto.[13]

In its Decision, the ERB discussed the nature and components of the OATS and AS and their corresponding tariffs embodied in ERB Case No. 96-118, and held as follows:

Proceeding now to the issue of whether or not complainants herein as PSGFs [Private Sector Generation Facilities], which are embedded in the distribution network of VECO, are liable to pay the Power Delivery Service (PDS) charges corresponding to the Ancillary Services purchased by them, or what complainants refer to as "Transmission for Internal Generation," in addition to the charges they are paying for such Ancillary Services, the Board believes and so holds that they are not liable. In serving the load of VECO, complainants are not making use of respondent's transmission facilities. Since the transmission facilities of respondent are not being used in delivering complainants' power generation to VECO, it follows that respondent has no right to charge complainants the rates for the PDS set by the Board. To do so would run counter to the basic principle in rate-making that a utility can charge rates only for services that are actually rendered to its customers.

The ancillary services availed of by complainants from the respondent, i.e., Load Following and Frequency Regulation (LFFR) and Spinning Reserve (SR), are, as we have discussed earlier, intended to maintain the integrity and reliability of the grid. **The rates for these services are separate and distinct from the basic transmission service or PDS, even though such services are a**

[13] Article II, Guidelines Implementing Executive Order No. 473 for the Segregation and Unbundling of the Power Tariffs of the National Power Corporation and Electric Distribution Utilities, dated December 22, 1998.

necessary adjunct to the basic transmission service or PDS. More importantly, the rates for these ancillary services, as determined in our Decision of June 11, 1997 in ERB Case No. 96-118 already covered all costs necessary to provide such services to respondent's customers. This is so notwithstanding the claim of respondent NPC that the provision of these ancillary services would not be possible unless its transmission and subtransmission facilities are used. Moreover, when the rates for the PDS were set by this Board using the Postage Stamp Methodology, the revenue requirement needed by respondent NPC during the test year used was divided by the system peak load, which indicates that to allow respondent to charge an additional PDS rate for the ancillary services in question even if the same were applied to 13.2% only of the billing capacities of the independent power producers (IPPs), as averred by respondent, **would be tantamount to double charging or over-recovery of costs.** It may be mentioned that the application of PDS charges to 13.2% of the billing capacities of IPPs appears to be a unilateral action on the part of respondent and constitutes an implied admission that such charges are without basis for if indeed respondent is convinced of the propriety of imposing PDS charges on the questioned ancillary services, then it could have just applied the PDS charges specifically approved by the Board. **To reiterate, the rates for ancillary services have, in our aforesaid decision, been unbundled from respondent's rates for basic transmission and subtransmission service, notwithstanding the fact that such services are necessary adjunct to the basic transmission and subtransmission service**.[14] (Emphasis added.)

In resolving petitioner's motion for reconsideration, the ERC, which replaced the then ERB by virtue of RA No. 9136 or the "Electric Power Industry Reform Act of 2001," reached the same conclusion as follows:

x x x However, the same does not hold true with regard to the PDS or wheeling charges for LFFR and SR. **Complainants should not be charged for it since there is no such thing as PDS for LFFR and SR.** Once this reserve is utilized, it is automatically delivered and registered as an added demand and not as a reserve. The actual power that flows thru the line is equal to the supply or power generated and is also equal to the demand or load. This is the

[14] *Rollo*, pp. 68-69.

principle used in the design of the PDS, to recover the Transmission Cost based on peak demand only and not to recover the Transmission Cost based on peak demand plus LFFR and SR.[15] (Emphasis added.)

We find no reason to modify or reverse the above findings of the ERB and the ERC.

Under the decision in ERB Case No. 96-118, which approved the allowable rates for the charges on services provided by NPC to its customers, it is undisputed that there is no provision which allows NPC to charge PDS charges on AS separately from AS charges. On the contrary, the AS charges already cover all costs necessary to provide the same.

As correctly pointed out by respondents, there are two separate tariffs for transmission and AS. NPC's customers are charged for both Power Delivery (actual usage of the line in transport) and AS Charges (maintenance of grid reliability).[16] Accordingly, PDS charges are only applicable to IPPs using the transmission facilities in transporting power while AS are required in maintaining grid reliability.[17] Consequently, an IPP need not pay PDS charges if its facilities are embedded in the distribution network but must, however, pay for AS necessary for maintaining grid reliability.[18] To charge respondents for AS and PDS charges on AS would be tantamount to double charging.

The findings of administrative or regulatory agencies on matters within their technical area of expertise are generally accorded not only respect but finality if such findings are supported by substantial evidence.[19] Specifically, the matter of rate-fixing calls for a technical examination and a specialized review of specific details which the courts are ill-equipped to enter; hence,

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[15] *Id.* at 80-81.

[16] *Id.* at 55-56.

[17] *Id.* at 56.

[18] *Id.*

[19] *Manila Electric Company, Inc. v. Genaro Lualhati, et al.*, G.R. Nos. 166769 and 166818, December 6, 2006, 510 SCRA 455, 477.

such matters are primarily entrusted to the administrative or regulating authority.[20]

In the case at bar, the ERC (then the ERB) is the agency tasked by law to fix, determine and prescribe the rates being charged by NPC to its customers. In accordance with this mandate, the ERC approved the rates and the guidelines that NPC must comply with in charging its customers. In the absence of grave abuse of discretion on the part of the ERC, its finding that there is no basis to assess respondents for PDS charges on AS is binding on this Court.

IN VIEW WHEREOF, the petition is *DENIED*. The decision of the Court of Appeals is affirmed.

Costs against petitioner.

SO ORDERED.

Carpio, Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

EN BANC

[G.R. No. 172580. July 23, 2008]

LOURDESITA M. BIBAS, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN (VISAYAS) and COMMISSION ON AUDIT, REGIONAL OFFICE NO. VI,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE LACK OF PARTICIPATORY NEGLIGENCE OF A PARTY AND THE SERIOUSNESS OF THE PENALTY IMPOSED MAY PERSUADE THE COURT TO RELAX PROCEDURAL

[20] *Id.*

RULES AS WELL AS THE TIME-HONORED RULE REGARDING THE BINDING EFFECT OF COUNSEL'S NEGLIGENCE.— There have thus been instances when lack of participatory negligence of a party and the seriousness of the penalty imposed on it persuaded the Court to relax procedural rules as well as the time-honored rule regarding the binding effect of counsel's negligence. Alongside these considerations, the question of whether a case is meritorious, at least on its face, carries much weight in determining whether a relaxation of the rules is warranted. Indeed, it would hardly make much sense to allow a late or improperly filed appeal and disregard the rule on the binding effect of counsel's negligence when it is evident that a party is, at all events, unable to present a convincing case on the merits. In such instances, allowing the appeal to run its course would be a mere waste of time, both for the parties and the appellate court. *Aguilar v. Court of Appeals* is instructive: If the incompetence, ignorance or inexperience of counsel is so great and the error committed as a result thereof is so serious that the client, **who otherwise has a good cause**, is prejudiced and denied his day in court, the litigation **may be reopened** to give the client another chance to present his case. In a criminal proceeding, where certain evidence was not presented because of counsel's error or incompetence, the defendant in order to secure a new trial **must satisfy the court that he has a good defense and that the acquittal would in all probability have followed the introduction of the omitted evidence**. What should guide judicial action is that a party be given the fullest opportunity to establish the merits of his action or defense rather than for him to lose life, liberty, honor or property on mere technicalities.

2. ID.; ID.; ID.; A RELAXATION OF THE PROCEDURAL RULES AND THE RULE ON THE BINDING EFFECT OF COUNSEL'S NEGLIGENCE IS NOT JUSTIFIED IN CASE AT BAR.— Petitioner admits that "[t]he merits of [her] case have been ventilated well enough both in the Petition itself and the Reply to the Comments of [the] COA" which she filed with this Court. If she fails then to present a strong case through the pleadings she has submitted to this Court, there would be no point remanding her case to the appellate court. As will be shown below, petitioner has failed to do just that. Neither then the procedural rules nor the rule on the binding effect of counsel's negligence should be relaxed.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY; OMBUDSMAN'S REFUSAL TO CREDIT PETITIONER'S EXPLANATION FOR THE SHORTAGE IS SUPPORTED BY SUBSTANTIAL EVIDENCE.— The Court finds that the Ombudsman's refusal to credit petitioner's explanation for the shortage is supported by substantial evidence. While petitioner had claimed, both in her November 25, 2002 letter mentioned earlier and in the August 3, 2001 Joint Affidavit she and Cashier IV Marivic S. Vingson executed, that her failure to account for the shortage was due to inadvertent loss of payrolls, the Ombudsman was persuaded otherwise by the Certification of the Office of the City Accountant of Silay City that no payrolls for the year 2000 were missing. Thus the Certification reads: xxx xxx xxx This is to certify that all payrolls for salaries and wages for the calendar year 2000 were fully paid, all accounted for and duly recorded in the books, original copies of said payrolls were received by this office as evidenced by the attached summary. This is to further certify that there were no lost payrolls as per our records for the calendar year 2000. Issued this 2nd day of June, 2004 at Silay City. xxx xxx xxx Petitioner assails the correctness of the Certification for, by her claim, the payrolls for the year 2000 were already with the COA at the time the Certification was issued. Petitioner's claim, besides being bare, is weak, for the Office of the City Accountant could have issued the certification based on records in its possession, other than the year 2000 payrolls themselves, showing that no payrolls were missing for that year.

4. ID.; ID.; ID.; ID.; PETITIONER'S CLAIM THAT SHE HAD ACTUALLY NO SHORTAGE BECAUSE THE SALARIES OF THE EMPLOYEES WERE IN FACT DISBURSED IS SPECIOUS.— The Court finds petitioner's assertion to be specious, albeit for reasons that vary from those stated by the Ombudsman. Petitioner claims that she had actually no shortage because the salaries of the employees were in fact disbursed. The underlying assumption of this claim is that her failure to account was only due to the alleged loss of payrolls — in other words, a mere failure to sufficiently document her actual disbursements. This, however, is what she is supposed to prove, for the import of the above-quoted Certification is that petitioner's shortage did **not** arise from a mere failure to document it. The COA does not in fact dispute that the salaries

of employees were all paid, as the Certification reflects. What the COA found is that, even taking into account such fact that all salaries were paid, petitioner's cash advances still exceeded her settlements. When petitioner, therefore, tried to account for this discrepancy by explaining that she completely disbursed all employees' salaries but merely lost some of the supporting documents, her explanation was clearly unsatisfactory as it failed to address the point at issue.

5. ID.; ID.; ID.; ID.; PETITIONER IS STILL LIABLE FOR DISHONESTY BECAUSE THE ADMINISTRATIVE CASE AGAINST HER HAS NOT PRESCRIBED, REGARDLESS OF THE PERIOD COVERED BY THE NOVEMBER 6, 2002 AUDIT.— While petitioner goes to great lengths to prove that the audit period only extended back to June 6, 2002, she fails to state the legal basis for the conclusion she derives therefrom — that she could no longer be held liable for Dishonesty with respect to the shortage incurred in the year 2000. **Regardless of the period covered by the November 6, 2002 audit**, *however, petitioner is still liable for* **Dishonesty because the administrative case against her has not prescribed**. In *Filipino v. Macabuhay*, a case that also involved an administrative complaint before the Ombudsman, the Court ruled: Section 20 of R.A. No. 6770, otherwise known as The Ombudsman Act of 1989, states: Sec. 20. *Exceptions.* — **The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that***:* xxx xxx xxx **(5) The complaint was filed after one (1) year from the occurrence of the act or omission complained of**. Petitioner argues that based on the abovementioned provision, respondent's complaint is barred by prescription considering that it was filed more than one year after the alleged commission of the acts complained of. Petitioner's argument is without merit. **The use of the word "may" clearly shows that it is directory in nature and not mandatory as petitioner contends**. When used in a statute, it is permissive only and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty which may be enforced. **Applying Section 20(5), therefore, it is discretionary upon the Ombudsman whether or not to conduct an investigation on a complaint even if it was filed after one year from the occurrence of the act**

or omission complained of. In fine, the complaint is not barred by prescription. *A fortiori*, the above ruling applies in the present case. The present complaint, which was filed with the Ombudsman on **April 22, 2003**, involves not only petitioner's failure to refund her shortage incurred in the year 2000, but also her misrepresentation that her shortage was only due to the loss of payrolls — an allegation which she proffered in the August 3, 2001 Joint Affidavit she executed with Cashier IV Marivic S. Vingson and in her **November 25, 2002** letter to State Auditor Velmonte-Portal. AT ALL EVENTS, petitioner's assertion that the audit period only extended back to June 6, 2002 is not persuasive.

6. ID.; ID.; ID.; ID.; THE OMBUDSMAN'S FINDING THAT PETITIONER HAS NOT SATISFACTORILY ACCOUNTED FOR HER ADMITTED SHORTAGE IS BASED ON SUBSTANTIAL EVIDENCE AND MAY NO LONGER BE DISTURBED.— The merits of petitioner's plea thus depends on whether she has satisfactorily accounted for her admitted shortage of ₱989,461.10. As priorly discussed, the Ombudsman's finding that she has not done so is based on substantial evidence, hence, it may not be disturbed. A finding of guilt in an administrative case would 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. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. This is different from the degree of proof required in criminal proceedings, which calls for a finding of guilt beyond reasonable doubt. x x x

APPEARANCES OF COUNSEL

Raul G. Bito-On for petitioner.

Walter F. Menez for COA.

D E C I S I O N

CARPIO MORALES, *J.*:

Lourdesita M. Bibas (petitioner) assails *via* this petition for review the Court of Appeals Resolution of June 16, 2005 dismissing her original action for *certiorari* and Resolution of April 6, 2006 denying her motion for reconsideration. Subject of petitioner's petition before the appellate court was the August 3, 2004 Order of the Office of the Ombudsman in Visayas (Ombudsman) finding her guilty of Dishonesty and dismissing her from government service.

Prior to her dismissal, petitioner was Disbursing Officer II in the City Treasurer's Office, Silay City. One of her duties as such included releasing of salaries for regular and casual employees of the Silay City government. Before each payday, she and her fellow disbursing officers would secure cash advances to defray the salaries, and after disbursement, they would present to their immediate supervisors the payrolls and remaining funds left in their possession. The supervisors would then issue the corresponding receipt for the returned funds.

On November 6, 2002, State Auditors Sheila S. Velmonte-Portal (Sheila) and Rogelio D. Acot (Acot) examined the cash and accounts of petitioner – the period covered by the audit is disputed by the parties. After the audit examination, Sheila sent to petitioner a demand letter inadvertently dated November 15, 2001 – the correct date being November 15, 2002 – stating thus:

xxx xxx xxx

This is to inform you that in the examination of your cash and accounts as Disbursing Officer of Silay City on November 6, 2002, it was found that your cash was short by ₱990,341.10. This shortage was arrived at as follows:

Accountability	Cash Advance
Unliquidated balance as of 5/31/02	₱ 993,337.35
Balance per last cash exam June 6/02	383,328.91
June 6-Nov. 6	11,525,082.55
Sub-total	12,901,748.81
Credits to Accountability:	
Settlements June 6 – Nov. 6	11,728,822.71
Balance of Accountability	1,172,926.10
Cash & valid cash items produced by You & counted by us	182,585.00
Shortage	**₱ 990,341.10**

In view of this, demand is hereby made of you to produce immediately the missing funds stated above. Also, please submit to us, within seventy-two (72) hours, a written explanation why this shortage occurred.

xxx xxx xxx[1] (Emphasis and underscoring supplied)

By letter of November 25, 2002, petitioner explained that sometime in November 2000, she misplaced two bundles of paid payrolls in the amounts of ₱498,161.58 and ₱491,300; that, every now and then, Commission on Audit (COA) personnel would borrow her cash book and sometimes even her paid vouchers and payrolls for checking and verification; that she discovered the loss of the two bundles after an audit conducted in November 2000, hence, she reported the same to their Treasurer and their City Accountant Arsenal who both advised her to look for them; and that having failed despite exhaustive efforts to locate the payrolls, she decided to execute an affidavit of loss.

Her assertion that the payrolls were paid, and her veiled suggestion that the persons actually responsible for the loss of the payrolls were COA personnel notwithstanding, petitioner admitted her fault in the same letter of November 25, 2002, stating that she "cannot finger point at anybody but it was all due to [her] carelessness and negligence that all of these things

[1] *Rollo*, p. 55.

happened." She thus asked for a chance to settle the amount at an opportune time and appealed for a compromise to pay it against her monthly salary.

By letter of **January 7, 2003**, Sheila amended the amount of shortage in the cash and accounts of petitioner indicated in the November 15, 2002 letter to petitioner, explaining thus:

xxx xxx xxx

This is to inform you that we are amending the amount of the shortage we have previously demanded from you *from ₱990,341.10 to ₱989,461.10*. The ₱880.00 difference was due to late posting of your October 18 refund of ₱880.00 per OR # 0014951 by the Accounting Department.

Accountability/Cash Advances

Balance per last cash exam Jan. 19/00	₱ 0.00
Jan. 20 – Dec. 31/00	30,927,341.91
Jan. 1 – Dec. 31/01	33,701,037.87
Jan. 1 – Nov. 6/02	26,666,949.56
TOTAL	₱91,295,329.34
Less: Credits to Accountability/ Liquidation and/or cash settlements:	
Jan. 20 – Dec. 31/00	₱ 29,937,880.81
Jan. 1 – Dec. 31/01	33,701,037.87
Jan. 1 – Nov. 6/02	26,484,364.56
TOTAL	₱ 90,123,283.24
Balance of Accountability	₱ 1,172,046.10
Less: Cash and valid cash items produced by you and counted by us	182,585.00
Shortage	**₱ 989,461.10**

xxx xxx xxx[2] (Italics in the original; underscoring supplied)

This letter merited no reply from petitioner.

Sheila and Acot's report on the results of the November 6, 2002 audit, together with the Joint Affidavit dated March 18, 2003, was forwarded on April 22, 2003 by the COA to the

[2] *Id.* at 57.

Ombudsman for evaluation. The case was, after evaluation, docketed by the Ombudsman as OMB-V-A-03-0239-E, for Dishonesty.

By Decision of March 17, 2004, the Ombudsman, crediting petitioner's defense that her failure to account for the shortage was due to her inadvertent misplacement of the two bundles of payrolls, held her liable merely for Conduct Prejudicial to the Best Interest of the Service and imposed the penalty of six months suspension without pay.

Upon motion for reconsideration of the COA, however, the Ombudsman modified its Decision, by the challenged Order of August 3, 2004, finding petitioner guilty of Dishonesty and imposing upon her the penalty of dismissal from the service. Petitioner's motion for reconsideration of this Order was denied by the Ombudsman by Order of October 25, 2004.

Petitioner thereupon filed a petition for *certiorari* with the Court of Appeals which, by Resolution of June 16, 2005, dismissed it outright on procedural grounds, namely, an original action for *certiorari* was the wrong remedy, the proper remedy being appeal; petitioner failed to state the date she received the assailed orders; only photocopies of the assailed orders were submitted; and there was no explanation why service was not done personally.

Petitioner's motion for reconsideration of the appellate court's June 16, 2005 Resolution was denied by Resolution of April 6, 2006 for having been filed twenty-two (22) days late. Against petitioner's contention that the reglementary period should be counted from the day she personally obtained a copy of the June 16, 2005 Resolution when she visited her then counsel, and not the date when her counsel received copy thereof, the Court of Appeals echoed the rule that notice to counsel is notice to the client.

Hence, the present petition praying for the setting aside of the above-mentioned resolutions of the Court of Appeals and for the remand of the case to the appellate court for review on the merits. In the alternative, the petition prays that the decision of the Ombudsman be reversed.

To the petition the COA through counsel and the Ombudsman through the Office of the Solicitor General filed their respective comments.

In issue in this controversy is whether the Court of Appeals erred in dismissing petitioner's action for *certiorari* by a strict application of procedural rules and of the rule that negligence of counsel is binding on the client.

Without disputing the procedural lapses that led to the dismissal of her petition by the appellate court, petitioner proffers that a relaxation of the Rules is warranted given that 1) her case involves the penalty of dismissal from the service, 2) her petition is clearly meritorious, and 3) the lapses were solely attributable to her former counsel's negligence.

Petitioner cites *Baylon v. Fact-finding Intelligence Bureau*[3] which held that the rule that a client is bound by the mistakes of counsel may be relaxed when its application would result in serious injustice. In that case, the Court considered the seriousness of the administrative penalty involved, which was suspension from public office. That was not the only circumstance, however, which the Court took into account, *viz*:

> We find attendant in the case at bar transcendental considerations which outweigh rules of procedure thereby providing justification for the suspension of their application. **Petitioner's evidence and arguments in support of her claim of innocence of the charge of grave misconduct have indeed cast doubt on the veracity of the Ombudsman's factual conclusions** in the subject administrative case against her. We cannot thus simply brush aside petitioner's protestations of lack of administrative culpability for the sake of sticking to technicalities when **the merits of her cause are crying out for proper judicial determination.**

The tardiness of the appeal of petitioner before the Court of Appeals undoubtedly stemmed from her counsel's *faux pas* in the remedy pursued to assail the Ombudsman's questioned Memorandum Reviews. In the normal course of things, petitioner would have been covered by the general rule that a client is bound by the negligence

[3] G.R. No. 150870, December 11, 2002; 394 SCRA 21.

or mistakes of his counsel. Yet, the **patent merits** of petitioner's cause for the nullification of her suspension from public office nag the Court towards the realization that to deny her the instant petition now based merely on the fiction that the counsel's negligence binds the client is to unjustly seal petitioner's fate without the benefit of a review of the correctness and justness of her imposed administrative liability. Hers, thus, is a case of an extremely different kind; the exception to the rule on the effects of the counsel's mistake or negligence, for the application of the rule would result in serious injustice to petitioner. **Especially in this case where she had nothing to do with her counsel's mistake and negligence**, thus clearly falling within the ambit of the reasons provided for by *Ginete* for the relaxation of the rules.[4] (Emphasis and underscoring supplied)

Petitioner likewise cites *Ginete v. Court of Appeals*[5] wherein the therein petitioners challenged the dismissal by the appellate court of their appeal for their failure to file their Appellants' Brief on time despite the extension given. In directing the appellate court to admit the Appellants' Brief, this Court held that "the lawyer's negligence without any participatory negligence on the part of petitioners is a sufficient reason to set aside the resolutions of the Court of Appeals."[6] This ruling should, however, be read in the context of the other statements of the Court in the same case, to wit:

> In this Court's perusal of the records of the case, **it appears that the lower court disregarded and misappreciated certain documents presented by petitioners in proving filiation** as allowed by the Civil Code and the Rules of Court. Second, it seems to have misapplied the established presumptions in cases of marriage and filiation. Third, **the forgery of the signature of the Notary Public in one of the questioned Deeds of Sale appears to have been clearly established by petitioners** and unsatisfactorily and insufficiently rebutted by private respondents.
>
> **In view of these circumstances**, this Court finds it imperative for the Court of Appeals to review the findings of fact made by the

[4] *Id.* at 31-32.

[5] G.R. No. 127596, September 24, 1998, 296 SCRA 38.

[6] *Id.* at 53.

trial court. For while this Court may review factual findings of the lower court, it will not preempt the Court of Appeals in reviewing the same and reappreciating the evidence presented by petitioners to resolve factual questions.

Prior resolution of the aforecited issues is necessary in order to determine the question of original ownership over the subject parcels of land which in turn would resolve the question of succession. Said questions pertain to factual matters that could best be resolved by the Court of Appeals which is mandated to examine and review the findings of fact made by the lower court.

The demands of substantial justice and fair play make it absolutely necessary for the court to completely, judiciously and satisfactorily resolve said questions of fact. Failure to give due course to the appeal and to resolve those questions might give rise to the impression that the courts may be fostering and promoting injustice **if and when the appellants' or petitioners' case turns out to be meritorious.**[7] (Emphasis and underscoring supplied)

There have thus been instances when lack of participatory negligence of a party and the seriousness of the penalty imposed on it persuaded the Court to relax procedural rules as well as the time-honored rule regarding the binding effect of counsel's negligence. Alongside these considerations, the question of whether a case is meritorious, at least on its face, carries much weight in determining whether a relaxation of the rules is warranted. Indeed, it would hardly make much sense to allow a late or improperly filed appeal and disregard the rule on the binding effect of counsel's negligence when it is evident that a party is, at all events, unable to present a convincing case on the merits. In such instances, allowing the appeal to run its course would be a mere waste of time, both for the parties and the appellate court.

Aguilar v. Court of Appeals[8] is instructive:

If the incompetence, ignorance or inexperience of counsel is so great and the error committed as a result thereof is so serious that

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[7] *Id*. at 55-56.

[8] 320 Phil. 456, 462 (1995), citing Agpalo, Ruben E., Legal Ethics (1980 ed.), pp. 282-284.

the client, **who otherwise has a good cause**, is prejudiced and denied his day in court, the litigation **may be reopened** to give the client another chance to present his case. In a criminal proceeding, where certain evidence was not presented because of counsel's error or incompetence, the defendant in order to secure a new trial **must satisfy the court that he has a good defense and that the acquittal would in all probability have followed the introduction of the omitted evidence**. What should guide judicial action is that a party be given the fullest opportunity to establish the merits of his action or defense rather than for him to lose life, liberty, honor or property on mere technicalities. (Emphasis and underscoring supplied)

Interestingly, petitioner admits that "[t]he merits of [her] case have been ventilated well enough both in the Petition itself and the Reply to the Comments of [the] COA" which she filed with this Court.[9] If she fails then to present a strong case through the pleadings she has submitted to this Court, there would be no point remanding her case to the appellate court. As will be shown below, petitioner has failed to do just that. Neither then the procedural rules nor the rule on the binding effect of counsel's negligence should be relaxed.

Petitioner nevertheless asserts that the dispute lies, not on the fact that there is a shortage in her accounts, but on when and how this shortage came about. She reiterates her claim that the shortage occurred in November 2000 – when she lost those bundles of payroll – and contrasts her own version of events with that of the COA which maintains that it uncovered the shortage during the audit of November 2002, covering a period that extended back to January 2000.

Petitioner denies that the audit period extended that far back, however, proffering that the period was only from June 6 to November 6, 2002, and that the extended period alleged by the COA was a mere insidious scheme to bring the time when the shortage occurred – which was November 2000 – within the coverage of the audit period. On this premise, she posits that the November 6, 2002 audit uncovered no shortage on her part.

[9] *Rollo*, p. 206.

Actually, the parties do not dispute that the shortage was incurred in the year 2000 and not in the period of June 6 – November 6, 2002. What is disputed is the credibility of petitioner's explanation for the shortage and whether the shortage was covered by the audit conducted in November 6, 2002.

The Court finds that the Ombudsman's refusal to credit petitioner's explanation for the shortage is supported by substantial evidence.

While petitioner had claimed, both in her November 25, 2002 letter mentioned earlier and in the August 3, 2001 Joint Affidavit she and Cashier IV Marivic S. Vingson executed, that her failure to account for the shortage was due to inadvertent loss of payrolls, the Ombudsman was persuaded otherwise by the Certification of the Office of the City Accountant of Silay City that no payrolls for the year 2000 were missing. Thus the Certification reads:

xxx xxx xxx

This is to certify that all payrolls for salaries and wages for the calendar year 2000 were fully paid, all accounted for and duly recorded in the books, original copies of said payrolls were received by this office as evidenced by the attached summary.

This is to further certify that there were no lost payrolls as per our records for the calendar year 2000.

Issued this 2nd day of June, 2004 at Silay City.

xxx xxx xxx[10]

Petitioner assails the correctness of the Certification for, by her claim, the payrolls for the year 2000 were already with the COA at the time the Certification was issued. Petitioner's claim, besides being bare, is weak, for the Office of the City Accountant could have issued the certification based on records in its possession, other than the year 2000 payrolls themselves, showing that no payrolls were missing for that year.

[10] *Id*. at 65.

Petitioner goes on to assert that despite her admitted shortage due to the loss of payrolls, she could not have had an actual shortage because the salaries of employees were in fact disbursed by her. In support thereof, she points to the fact that no employee was known to have complained about non-receipt of salary for that period. While the Ombudsman initially cited this circumstance as a basis for clearing petitioner of the charge of Dishonesty, its perspective changed when it resolved COA's motion for reconsideration, as mentioned above. In its Order of August 3, 2004, it stated that petitioner's argument was no longer persuasive "because it is disclosed that she used the excess of her cash advances to meet employees' salary and cover her tracks," giving credence to the Statement of Accountability submitted by COA showing that as early as April 30, 2000 up to October 31, 2000 petitioner had an average excess cash advance of ₱1,000,000.[11]

The Court finds petitioner's assertion to be specious, albeit for reasons that vary from those stated by the Ombudsman.

Petitioner claims that she had actually no shortage because the salaries of the employees were in fact disbursed. The underlying assumption of this claim is that her failure to account was only due to the alleged loss of payrolls – in other words, a mere failure to sufficiently document her actual disbursements. This, however, is what she is supposed to prove, for the import of the above-quoted Certification is that petitioner's shortage did **not** arise from a mere failure to document it.

The COA does not in fact dispute that the salaries of employees were all paid, as the Certification reflects. What the COA found is that, even taking into account such fact that all salaries were paid, petitioner's cash advances still exceeded her settlements. When petitioner, therefore, tried to account for this discrepancy by explaining that she completely disbursed all employees' salaries but merely lost some of the supporting documents, her explanation was clearly unsatisfactory as it failed to address the point at issue.

In another vein, petitioner posits that she could not be held liable for the shortage because the audit of November 6, 2002

[11] *Id.* at 58 and 132.

covered only the period beginning June 6, 2002, thereby excluding the shortage incurred back in the year 2000. Petitioner underscores the fact that, in the period of June 6 to November 6, 2002, her settlements in the amount of ₱11,728,822.71 even exceeded her accountability in the form of cash advances amounting to ₱11,525,082.55, pursuant to the figures stated in the November 15, 2002 letter of the COA.

While petitioner goes to great lengths to prove that the audit period only extended back to June 6, 2002, she fails to state the legal basis for the conclusion she derives therefrom – that she could no longer be held liable for Dishonesty with respect to the shortage incurred in the year 2000.

Regardless of the period covered by the November 6, 2002 audit, however, petitioner is still liable for Dishonesty because the administrative case against her has not prescribed. In *Filipino v. Macabuhay*,[12] a case that also involved an administrative complaint before the Ombudsman, the Court ruled:

> Section 20 of R.A. No. 6770, otherwise known as The Ombudsman Act of 1989, states:
>
> Sec. 20. *Exceptions*. - **The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:**
>
> xxx xxx xxx
>
> **(5) The complaint was filed after one (1) year from the occurrence of the act or omission complained of.** (Emphasis supplied)
>
> Petitioner argues that based on the abovementioned provision, respondent's complaint is barred by prescription considering that it was filed more than one year after the alleged commission of the acts complained of.
>
> Petitioner's argument is without merit.

The use of the word "may" clearly shows that it is directory in nature and not mandatory as petitioner contends. When used in a statute, it is permissive only and operates to confer discretion;

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[12] G.R. No. 158960, November 24, 2006; 508 SCRA 50, 57-58.

while the word "shall" is imperative, operating to impose a duty which may be enforced. **Applying Section 20(5), therefore, it is discretionary upon the Ombudsman whether or not to conduct an investigation on a complaint even if it was filed after one year from the occurrence of the act or omission complained of.** In fine, the complaint is not barred by prescription. (Emphasis and underscoring supplied)

A fortiori, the above ruling applies in the present case. The present complaint, which was filed with the Ombudsman on **April 22, 2003**, involves not only petitioner's failure to refund her shortage incurred in the year 2000, but also her misrepresentation that her shortage was only due to the loss of payrolls – an allegation which she proffered in the August 3, 2001 Joint Affidavit she executed with Cashier IV Marivic S. Vingson and in her **November 25, 2002** letter to State Auditor Velmonte-Portal. As found by the Ombudsman in its Order of August 3, 2004:

> Dishonesty is defined as an "intentional violation of truth" (18 Corpus Juris [CJ] 1140). **It must be evident that there is a disposition on the part of respondent to misrepresent or defraud.** The[r]e must be at least a showing of a deliberate intent to commit falsehood. (CSC Resolution No. 944794)
>
> A re-evaluation of the records of the case readily shows that **there exists substantial evidence for Dishonesty against the respondent. For one, respondent's main contention that she lost two bundles of payroll in the year 2000 resulting in her failure to liquidate the ₱989,461.10 is no longer persuasive** since there is a certification of the Office of the Silay City Accountant that no payroll for the year 2000 was lost or missing. For another, the claim that she had no shortage in her accountabilities as no employee complained about non-receipt of salary is likewise no longer effective because it is disclosed that she used the excess of her cash advances to meet employees' salary and cover her tracks. Moreover, she admitted having incurred a shortage in her accountabilities.
>
> **This, and respondent's failure to produce the missing funds constitute Dishonesty.**[13] (Emphasis and underscoring supplied)

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

At all events, petitioner's assertion that the audit period only extended back to June 6, 2002 is not persuasive.

Petitioner cites the above-quoted November 15, 2002 letter of the COA, specifically the statements "Balance per last cash exam June 6/02" and "June 6-Nov. 6" which to her show that an audit examination was conducted on June 6, 2002 and that the November 6, 2002 audit covered only the period of June 6 to November 6, 2002.

While the November 15, 2002 letter would indicate that an audit was conducted on June 6, 2002, the same letter implies that this audit covered only the very short period of June 1 to June 6, 2002, since the item "Balance per last cash exam June 6/02" is separate from "Unliquidated balance as of 5/31/02." Thus, assuming *arguendo* that an audit was conducted on June 6, 2002, the same appears only to be minor in nature. It would not negate the claim of the COA that the period covered by the November 6, 2002 audit extended as far back as January 2000, for the results of the June 6, 2002 audit may simply have been incorporated in the computation during the more extensive November 6, 2002 audit.

Petitioner further asserts that since the usual practice of the COA was to conduct an audit at least once every six months, the November 6, 2002 audit could not have covered the year 2000. The COA, however, has proffered a plausible explanation, *viz*: "Although ideally, COA auditors should conduct cash examinations at least every six (6) months, however, the interval period may be extended especially when there are other important tasks which needs to be prioritized and/or for lack of manpower which is a prevalent condition in almost all government offices."[14]

Respecting petitioner's claim that the January 7, 2003 amendatory letter was merely an insidious scheme to make it appear that petitioner's shortage in the year 2000 was covered by the November 6, 2002 audit, the same fails.

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[14] *Id*. at 94.

Even the earlier November 15, 2002 letter would already reveal that the audit of November 6, 2002 was not concerned exclusively with the period of June 6 to November 6, 2002, for it **explicitly** took into account the outstanding balance as of **May 31**, 2002 in the amount of ₱993,337.35 and the balance computed in the "cash exam" of June 6, 2002 amounting to ₱383,328.91. It was precisely because these figures were taken into account that petitioner was found to have a shortage of ₱990,341.10 as stated in that letter.

The subsequent letter of January 7, 2003 did not, it bears noting, amend any of those figures as being incorrect. Rather, as stated in the first paragraph thereof, it merely updated the total shortage in view of the "late posting of [petitioner's] October 18 refund of ₱880 per OR #0014951 by the Accounting Department." **While the computation that followed differed from that appearing in the earlier letter, the two can be harmonized. The later computation merely placed petitioner's outstanding liability in the larger context of her recorded accountabilities and settlements beginning January 2000.**

Hence, it may be gathered from the January 7, 2003 letter that petitioner's cash advances from January 1 to November 6, **2002** totalled ₱26,666,949.56 and her liquidation and cash settlements for the same period yielded the same amount – if the amount of ₱182,585 under "Cash and valid cash items produced by you and counted by us" is added to the ₱26,484,364.56 appearing as credits to petitioner's accountability for that period. For January 1 to December 31, **2001**, petitioner's cash advances also equaled her liquidation and cash settlements, thus canceling each other out.

For January 20 to December 31, **2000**, however, the total cash advances of petitioner in the amount of ₱30,927,341.91 is **₱989,461** greater than her liquidation and cash settlements of ₱29,937,880.81. Thus, it may be gathered that the balance for which petitioner is now being held accountable was incurred back in the year 2000.

Both the November 15, 2002 and January 7, 2003 letters, therefore, consistently reflect that petitioner's shortage was not

incurred during the period of June 6 to November 6, 2002 **and that this shortage was, nonetheless, taken into account in computing petitioner's outstanding liability as of November 6, 2002**. The January 7 letter was only more precise that the shortage was incurred in the year 2000, whereas the earlier letter subsumed this shortage under "Unliquidated balance as of 5/31/02." The January 7, 2003 letter could thus not have been an insidious scheme that petitioner makes it out to be.

The merits of petitioner's plea thus depends on whether she has satisfactorily accounted for her admitted shortage of ₱989,461.10. As priorly discussed, the Ombudsman's finding that she has not done so is based on substantial evidence, hence, it may not be disturbed.

> A finding of guilt in an administrative case would 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. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. This is different from the degree of proof required in criminal proceedings, which calls for a finding of guilt beyond reasonable doubt. x x x[15]

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

Nachura, J., no part.

Chico-Nazario, J., on leave.

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[15] *Laxina, Jr. v. Office of the Ombudsman*, G.R. No. 153155, September 30, 2005, 471 SCRA 542, 555.

SECOND DIVISION

[G.R. No. 175479. July 23, 2008]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **BIENVENIDO PAYOT, JR.** ***y*** **SALABAO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; VICTIM'S CREDIBILITY, UNQUESTIONABLY UPHELD; CASE AT BAR.— It should be reiterated that in a rape case, what is most important is the credible testimony of the victim. A medical examination and a medical certificate are merely corroborative and are not indispensable to a prosecution for rape. The court may convict the accused based solely on the victim's credible, natural and convincing testimony. In this case, both the courts are in agreement that AAA was candid, natural, forthright and unwavering in her testimony that Payot raped her. AAA's credibility is strengthened by the absence of evidence showing that she had any ill motive in testifying against Payot.

2. ID.; ID.; ID.; EVALUATION OF CREDIBILITY OF WITNESSES IS A MATTER BEST LEFT TO THE DISCRETION OF THE TRIAL COURT.— Dr. Referente's report and testimony revealed that she found two old, healed hymenal lacerations at 3 o'clock and 6 o'clock positions. It should be noted that the examination was made in September 1999, a couple of months after the rape incident occurred in July 1999. The presence of such healed lacerations is consistent with and corroborative of AAA's testimony that she had indeed been raped by Payot months before the date of the examination. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. And when the consistent and forthright testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisite of carnal knowledge has been established.

3. ID.; ID.; DEFENSE OF ALIBI; NEGATED BY PHYSICAL IMPOSSIBILITY AND THE POSITIVE AND UNMISTAKABLE IDENTIFICATION OF APPELLANT.—

AAA categorically said that Payot inserted his penis into her vagina. This assertion is supported by Dr. Referente's testimony. It should be pointed out that the trial court found AAA's testimony to be truthful, *viz.:* xxx complainant has been living with the family of the accused since she was 8 years old. In other words, having stayed in accused's house for eight (8) years, as she was allegedly 16 years of age when the incident took place, it cannot be denied that she has been clothed, fed and treated like accused's own children. It is, therefore, highly unthinkable that complaining witness would just fabricate a charge as serious as rape, if it is not true that she became a victim of accused's lecherous act. xxx xxx xxx Nevertheless, assuming arguendo that private complainant was scolded or reprimanded and that she was angry at him, such a circumstance, the Court opines, is not sufficient reason for her to fabricate a charge of rape. It is a settled principle that the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimony. Unless, the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected.

4. ID.; ID.; WHETHER APPELLANT USED HIS RIGHT HAND OR LEFT HAND IN WIELDING THE WEAPON IS A MINOR INCONSISTENCY THAT DOES NOT DIMINISH THE RELIABILITY AND DEPENDABILITY OF THE VICTIM'S TESTIMONY.— Having been positively and unmistakably identified by AAA as her rapist, Payot's weak defenses of denial and alibi cannot prosper. The settled jurisprudence is that categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying thereon, prevails over the defenses of denial and alibi which, if not substantiated by clear and convincing proof, as in the case at bar, constitute self-serving evidence undeserving of weight in law. Alibi, like denial, is also inherently weak and easily fabricated. For this defense to justify an acquittal, the following must be established: the presence of the appellant in another place at the time of the commission of the offense and the physical impossibility for him to be at the scene of the crime. These requisites have not

been met. Payot claims that he was at a friend's house on the occasion of the rape. Considering, however, that his friend's house is a mere ten-minute walk or about a hundred meters away from his own house where the rape was committed, it would have still been physically possible for him to be present at the scene of the crime at the time of its consummation.

5. CRIMINAL LAW; RAPE; PRESENCE OF HEALED LACERATIONS IS CONSISTENT WITH AND CORROBORATIVE OF VICTIM'S TESTIMONY THAT SHE HAD INDEED BEEN RAPED BY APPELLANT MONTHS BEFORE THE DATE OF MEDICAL EXAMINATION.— Anent the contention that AAA was telling a lie when she said that Payot used his left hand to hold the bolo, the Court agrees with the appellate court that this deserves scant consideration. The fact that Payot is right-handed does not absolutely cancel the possibility that at the time of the incident, he used his left hand to wield the weapon. In any event, this inconsistency, if it is at all, does not diminish the reliability and dependability of AAA's testimony.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TINGA, *J.*:

On automatic review is the Decision[1] dated 12 August 2003 of the Regional Trial Court of Cabadbaran, Agusan del Norte convicting appellant Bienvenido Salabao Payot, Jr. (Payot) of raping AAA.[2] The dispositive portion of the decision provides:

WHEREFORE, in the light of all the foregoing, the Court finds the accused Bienvenido Payot, Jr. *y* Salabao **GUILTY** beyond

[1] CA *rollo*, pp. 19-39; penned by Executive Judge Orlando F. Doyon.

[2] The real name of the victim is withheld per R.A. No. 7610 and R.A. No. 9262. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

reasonable doubt of the crime of rape as charged in the Information. Accordingly, he is hereby sentenced to suffer imprisonment of ***RECLUSION [PERPETUA]***, to pay the offended party [AAA], the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as exemplary damages, to suffer the accessory penalties provided for by law and to pay the costs.

In the service of his sentence, accused is entitled to the full time during which he has undergone preventive imprisonment, conformably to Article 29 of the Revised Penal Code, as amended.

The accused shall serve his sentence entirely at the Davao Prison and Penal Farm, Panabo City.

IT IS SO ORDERED.[3]

Payot was charged with rape in an Information dated 14 December 1999, to wit:

That on or about the 17th day of July,[*sic*] 1999, at 1:00 o'clock in the afternoon, more or less at Barangay Jaliobong, Kitcharao, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, the accused, by means of force and intimidation did then and there[,] willfully, unlawfully and feloniously have carnal knowledge of the complainant, [AAA], a woman[,] 16 years of age.

CONTRARY TO LAW: (Art. 335, Revised Penal Code as amended by R.A. [No.] 7659).[4]

At his arraignment on 14 February 2000, Payot, with the assistance of his counsel entered a plea of not guilty.[5] Thereafter, trial on the merits ensued. The prosecution presented the victim, AAA, and Dr. Arsenia Referente (Dr. Referente), the physician who conducted an examination on AAA.

AAA testified that Payot is her elder sister's husband and that since she was 8 years old, she had been living with him together with her elder sister,[6] her younger brother and Payot's two children.

[3] CA *rollo*, pp. 38-39.

[4] *Id.* at 10.

[5] Records, p. 67.

[6] TSN, 12 September 2000, p. 4.

AAA narrated that on 17 July 1999, after having taken their lunch together, her sister and brother went up to the mountain to harvest bananas while the two children went to sleep in one room and she in another. AAA was awakened by the pressing weight of Payot over her body, and she realized that her skirt had already been pulled up and her panties rolled down to her knees. Payot, wearing only a vest and without his underwear on, held down AAA's waist with his hands, inserted his penis into AAA's vagina and made push-and-pull movements. Payot also kissed her on the neck. AAA could not shout for help and was unable to break free as Payot was then holding a bolo with his left hand. AAA felt pain in her vagina, and later on sensed a milky substance come out of Payot's penis as if the latter had urinated inside her. AAA cried afterward. AAA also testified that the nearest house was about 75 meters away.[7]

A couple of months after the incident, AAA left for her friend's, BBB's,[8] house to ask for help and in order to be away from Payot. BBB accompanied AAA to the Department of Social Welfare and Development which reported the incident to the police. She was then examined by Dr. Referente.[9]

Dr. Referente testified that she found two old healed hymenal lacerations in AAA's genitalia at 3 o'clock and 6 o'clock positions.[10] She stated that the lacerations could have been caused by the insertion of a hard object into the vagina, possibly an erect male genital organ. She explained that the lacerations could not have been caused by masturbation or by insertion of a finger into the vagina. She, however, said that the forceful insertion of two fingers, all together measuring more than three centimeters, into the vagina might produce lacerations of such nature.[11] She issued a medico-legal report containing these findings.[12]

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[7] TSN, 12 September 2000, pp. 4-8, 19-25.

[8] See note 2.

[9] TSN, 12 September 2000, pp. 25-26.

[10] TSN, 18 May 2001, pp. 6- 7, 9-10.

[11] TSN, 18 May 2001, pp. 13-14.

[12] Exhibits A and A-1.

The defense presented two witnesses, namely, appellant Payot himself and his friend, Urbano Sandulan (Sandulan).

Payot denied the charges against him and interposed the defense of alibi. He testified that at noon time of 17 July 1999, he had lunch with his family, AAA and her brother at his residence. At around 12:30 p.m., he asked permission from his wife to go to the barrio but before leaving, he instructed his wife to harvest some bananas. He left and headed for the house of Caridad Damian (Caridad), which is approximately ten (10) minutes away by foot, where he watched the television until 2:00 p.m. He then went to the house of Rudy Mosende for a drink of *tuba* and stayed there until 3:00 p.m. after which, he proceeded to go home.[13]

Payot also testified that he could not have held a bolo with his his left hand, contrary to AAA's testimony, because he had always used his right hand for writing and for carrying weapons. He likewise stated that he had more than once caught AAA in their house kissing her lesbian ("*tomboy*") friend in June 1999 for which he scolded the duo. He claimed that AAA resented this and the latter's lesbian friend allegedly angrily warned him to be careful as someday he would regret doing what he had done. Payot moreover averred that there had been instances in the past when AAA's lesbian friend slept over in their house, but after several reprimands AAA no longer slept at their house and slept instead at her lesbian friend's house.[14]

Sandulan testified that at around 12:30 p.m. on 17 July 1999, he was heading for Payot's house to remind the latter about their bible-sharing activity for the evening; he met Payot on his way but since the latter was then on his way to the barrio, he (Sandulan) suggested that they go to the barrio together. They parted ways at Caridad's house where Payot had planned on watching the television. Sandulan then proceeded to Rudy Mosende's house, right across Caridad's house, also to remind

[13] TSN, 28 September 2001, pp. 4-6; TSN, 11 January 2002, p. 3; TSN, 12 August 2002, p. 12.

[14] TSN, 28 September 2001, pp. 7-10.

Mosende of the activity that evening which was going to be held at Payot's house. While there, Mosende offered him a glass of *tuba*. During his stay at Mosende's house, Sandulan allegedly could tell that Payot likewise remained at Caridad's house. Sandulan left for home at 1:45 p.m. and on his way, saw Payot coming from Caridad's house and taking the direction to Mosende's.[15]

Upholding AAA's version of the events, the trial found Payot guilty in this wise:

> x x x the conclusion is ineluctable that the lacerations were caused by an erect penis. In fact when she testified, Dr. Referente confirmed that the lacerations could have been caused by an erect penis.
>
> Now, it may be asked: When was the occasion that complaining witness had sexual intercourse?
>
> According to her, the intercourse on 17 July 1999 was her first. Prior to this date and even after that, there is showing that she had carnal knowledge by any other men. Thus, there can be no doubt, therefore, that the erect penis of accused caused the 3:00 o'clock and 6:00 o'clock lacerations in her vagina.
>
> The insinuation by the defense that the lacerations could have been caused by the insertion of a finger or fingers is farfetched. According to the physician, the insertion of a finger or fingers with consent cannot cause laceration. Fingers can cause laceration only if inserted with force.
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> xxx xxx xxx
>
> And since the defense has not presented an indicium of evidence that complaining witness [AAA] was actuated by improper motive to falsely testify against the accused, her declaration is worthy of belief and credence x x x
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> xxx xxx xxx

Aside from insinuating that a lesbian caused complaining witness's lacerations, accused also interposed the defense of alibi by alleging that at the time of the commission of the crime, he was at the house of Caridad Damian viewing T.V. But trite

[15] TSN, 16 September 2002, pp. 4-6, 10.

as it is, the Court has to impress upon the accused once again the doctrine that alibi is the weakest defense an accused can concoct. It cannot prevail over the positive identification of the accused. The shopworn rule is that for alibi to prosper, it is not enough to show that accused was at some place else at the time of the commission of the crime, it must also be proved by clear and convincing evidence that it was physically impossible for him to have been at the scene of the crime of its commission and commit the crime.

As shown by the defense, the house of Caridad Damian is only about 300 meters from the house of accused where the crime was committed. Thus, it was not physically impossible for him to be at the *locus delicti* at the time the crime was committed and commit the crime.

The defense also wanted to impress upon the Court that the offense could not have been committed inside accused's house because at that time, his wife, children and private complainant's younger brother were present then. Although the victim testified that only the children of the accused were still in the house at the time and that they were sleeping in the other room, as accused's wife and her younger brother, Anselmo Enoy, were out in the mountain harvesting bananas, it is not impossible for accused to have committed the offense.

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The prosecution has established beyond a shadow of doubt that accused has carnal knowledge of the private complainant at about 1:30 o'clock in the afternoon of 17 July 1999. It has also established that the carnal knowledge was by means of force and intimidation as he has a sharp bolo then in his possession.

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Whenever rape is committed with the use of a deadly weapon, the penalty shall be *reclusion perpetua* to death. This is provided for under Article 266-B of the Revised Penal Code, as amended. There being neither mitigating nor aggravating circumstance shown, the minimum thereof or *reclusion perpetua*, should be the appropriate penalty.

Under the first circumstance of Article 266-B, the death penalty could have been imposed upon the accused as he may be considered a guardian or relative by affinity within the fourth degree and that the offended party is a minor. Although minority is alleged in the

Information, there is, however, no proof that the private complainant is really a minor. The circumstances of being a guardian or relative by affinity within the fourth degree were not also alleged in the Information. Therefore, the death penalty cannot be imposed.[16]

The judgment was elevated to the Court for automatic review. In a Resolution[17] dated 16 March 2005 of the Court in G.R. No. 161770,[18] the case was transferred to the Court of Appeals for intermediate review pursuant to the Court's ruling in *People v. Efren Mateo*.[19]

In a Decision[20] dated 7 June 2006, the Court of Appeals affirmed the judgment of conviction. The appellate court held that the prosecution was able to prove Payot's guilt beyond reasonable doubt and that AAA's testimony was clear, candid and straightforward and, thus worthy of faith and belief. Moreover, the appellate court found no ill-motive on AAA's part to falsely charge Payot with the crime of rape. In addition, medical findings supported AAA's testimony of forcible defloration.[21]

The appellate court gave scant consideration to Payot's contention that being right-handed, he could not have held the bolo using his left hand. It stated that Payot's being right-handed does not mean that he could not wield a bolo with his left hand. As regards Payot's defense of alibi, it maintained that even assuming that he indeed had been at Caridad's house, it would not have been physically impossible for him to be at his residence at the time of the commission of the offense as Damian's house was just nearby.[22]

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[16] CA *rollo*, pp. 32-38.

[17] *Id*. at 106.

[18] The docket number of the instant case when first elevated to the Court.

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

[20] *Rollo*, pp. 5-20; penned by Associate Justice Ramon R. Garcia with the concurrence of Associate Justices Romulo V. Borja and Antonio L. Villamor.

[21] *Id*. at 14, 16.

[22] *Id*. at 17, 19.

The appellate court affirmed the award of civil indemnity in the amount of ₱50,000.00 and, in addition, awarded another ₱50,000.00 as moral damages and deleted the grant of exemplary damages in view of the absence of aggravating circumstances.[23]

In the Court's Resolution[24] dated 5 February 2007, the parties were required to submit their respective supplemental briefs. Payot, through the Public Attorney's Office, manifested that he will adopt all the issues and discussion in his appellant's brief[25] dated 16 April 2002.[26] The Office of the Solicitor General likewise manifested that it will adopt the discussions in its appellee's brief[27] dated 11 February 2005 as its supplemental brief.[28]

The case is again before this Court for final disposition.

After a careful and meticulous review of the records of the case, the Court finds no reason to overturn the findings of facts of and conclusions commonly reached by the trial court and the Court of Appeals. The Court thus affirms Payot's guilt.

Payot reiterates his assertion that the prosecution failed to prove his guilt beyond reasonable doubt. He insists that during the time of the alleged rape, he was at Caridad's house watching television. He also contends that AAA's allegation that he threatened her with a bolo using his left hand is a mere fabrication as he had always been right-handed.

Payot's contentions are bereft of merit.

First, it should be reiterated that in a rape case, what is most important is the credible testimony of the victim. A medical examination and a medical certificate are merely corroborative and are not indispensable to a prosecution for rape. The court

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[23] *Id*. at 20.

[24] *Id*. at 22.

[25] CA *rollo*, pp. 54-66.

[26] *Rollo*, pp. 23-25; dated 19 March 2007.

[27] CA *rollo*, pp. 91-105.

[28] *Rollo*, pp. 26-28; dated 30 March 2007.

may convict the accused based solely on the victim's credible, natural and convincing testimony.[29] In this case, both the courts are in agreement that AAA was candid, natural, forthright and unwavering in her testimony that Payot raped her. AAA's credibility is strengthened by the absence of evidence showing that she had any ill motive in testifying against Payot.

Second, Dr. Referente's report and testimony revealed that she found two old, healed hymenal lacerations at 3 o'clock and 6 o'clock positions. It should be noted that the examination was made in September 1999, a couple of months after the rape incident occurred in July 1999. The presence of such healed lacerations is consistent with and corroborative of AAA's testimony that she had indeed been raped by Payot months before the date of the examination. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration.[30] And when the consistent and forthright testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisite of carnal knowledge has been established.[31]

Third, AAA categorically said that Payot inserted his penis into her vagina.[32] This assertion is supported by Dr. Referente's testimony.[33]

It should be pointed out that the trial court found AAA's testimony to be truthful, *viz.*:

> x x x complainant has been living with the family of the accused since she was 8 years old. In other words, having stayed in accused's house for eight (8) years, as she was allegedly 16 years of age when the incident took place, it cannot be denied that she has been clothed, fed and treated like accused's own children. It is, therefore, highly

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[29] *People v. Boromeo*, G.R. No. 150501, 3 June 2004, 430 SCRA 533, 541.

[30] *People v. Limio*, G.R. Nos. 148804-06, 27 May 2004, 429 SCRA 597, 609.

[31] *Supra* at 610-611.

[32] TSN, 12 September 2000, p. 6.

[33] TSN, 18 May 2001, pp. 6-7, 9-10, 13.

unthinkable that complaining witness would just fabricate a charge as serious as rape, if it is not true that she became a victim of accused's lecherous act.

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Nevertheless, assuming *arguendo* that private complainant was scolded or reprimanded and that she was angry at him, such a circumstance, the Court opines, is not sufficient reason for her to fabricate a charge of rape.[34]

It is a settled principle that the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimony. Unless, the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected.[35]

Against the overwhelming evidence of the prosecution, Payot merely interposed the defenses of denial and alibi. He claimed that on the occasion of the rape, he was somewhere else and could not have been at the scene of the crime.

Having been positively and unmistakably identified by AAA as her rapist, Payot's weak defenses of denial and alibi cannot prosper. The settled jurisprudence is that categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying thereon, prevails over the defenses of denial and alibi which, if not substantiated by clear and convincing proof, as in the case at bar, constitute self-serving evidence undeserving of weight in law.[36]

Alibi, like denial, is also inherently weak and easily fabricated. For this defense to justify an acquittal, the following must be

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[34] CA *rollo*, pp. 33-34.

[35] *People v. Serrano*, G.R. No. 137480, 28 February 2001, 353 SCRA 161, 169-171.

[36] *People v. Moralde*, 443 Phil. 369, 383 (2003).

established: the presence of the appellant in another place at the time of the commission of the offense and the physical impossibility for him to be at the scene of the crime. These requisites have not been met.[37] Payot claims that he was at a friend's house on the occasion of the rape. Considering, however, that his friend's house is a mere ten-minute walk or about a hundred meters[38] away from his own house where the rape was committed, it would have still been physically possible for him to be present at the scene of the crime at the time of its consummation.[39]

Anent the contention that AAA was telling a lie when she said that Payot used his left hand to hold the bolo, the Court agrees with the appellate court that this deserves scant consideration. The fact that Payot is right-handed does not absolutely cancel the possibility that at the time of the incident, he used his left hand to wield the weapon. In any event, this inconsistency, if it is at all, does not diminish the reliability and dependability of AAA's testimony.

In sum, the guilt of Payot was proven beyond reasonable doubt. The Court therefore affirms his conviction for rape in Criminal Case No. 99-77.

With respect to Payot's civil liability, the Court affirms the award of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages in favor of AAA, she being a victim of simple statutory rape.[40]

WHEREFORE, the Decision dated 7 June 2006 of the Court of Appeals in C.A.-G.R.-CR-HC No. 00230 is *AFFIRMED*.

SO ORDERED.

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

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[37] *Id*.

[38] TSN, 11 January 2002, p. 3.

[39] *Rollo*, pp. 19-20.

[40] *People v. Escultor*, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA

SECOND DIVISION

[G.R. No. 177144. July 23, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DIOSDADO CODILAN *y* PALAJURIN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT OF CREDIBILITY OF WITNESSES AND THEIR TESTIMONIES ARE BEST UNDERTAKEN BY TRIAL COURTS BY REASON OF THEIR OPPORTUNITY TO OBSERVE THE WITNESSES AND THEIR DEMEANOR DURING THE TRIAL.— The trial court, which had the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies. Its findings are accorded great respect unless it overlooked or misconstrued some substantial facts which, if considered, might affect the result of the case, which circumstance does not obtain in this case.

2. CRIMINAL LAW; RAPE; MEDICAL FINDINGS OF INJURIES IN THE VICTIM'S GENITALIA ARE NOT ESSENTIAL TO CONVICT THE ACCUSED OF RAPE BECAUSE PROOF OF HYMENAL LACERATIONS IS NOT AN ELEMENT OF RAPE.— That there were no lacerations in AAA's hymen and that her hymen was intact do not necessarily negate the commission of rape. It is well settled that medical findings of injuries in the victim's genitalia are not essential to convict the accused of rape because proof of hymenal lacerations is not an element of rape. What is essential is that there was penetration, however slight, of the labia minora, which circumstance was proven beyond doubt in this case by the testimony of AAA, and that of BBB insofar as the December incident is concerned. It bears noting that the medico-legal officer admitted that despite her findings, it was not impossible for penetration to have been made. That the physical examination of AAA was done only in February 1999 or two months after the last incident also strongly militates against the presence

of any traces of injury as the appellate court correctly observed. Given the tender age of AAA, the healing process could probably have already obliterated any telltale signs of sexual assault at the time of the examination.

3. **ID.; ID.; SINCE THE SPECIAL QUALIFYING CIRCUMSTANCES OF RELATIONSHIP AND MINORITY WERE NOT ALLEGED IN THE INFORMATION, THE TRIAL COURT PROPERLY CONVICTED APPELLANT OF SIMPLE RAPE.—** As for the conviction of appellant for simple rape, the same is consistent with Article 266-B of the Revised Penal Code and the settled rule that both the special qualifying circumstances of relationship and minority must not only be alleged in the information but must likewise be proved during the trial. As both these circumstances were not concurrently alleged and proved, appellant can only be convicted of simple rape. The Informations alleged that appellant was the stepfather of AAA. As reflected earlier, the evidence presented during the trial showed that he was AAA's uncle by affinity within the third civil degree. The minority of AAA, on the other hand, though alleged in the Informations, was not proved by independent evidence, documentary or otherwise. In decisions of this Court, it has been stressed that even if the defense does not contest the minority of the victim, or such minority is stipulated by the parties, it is still incumbent upon the prosecution to prove the victim's age with absolute certainty. In light then of the prosecution's failure to correctly allege AAA's relationship to appellant and to prove her minority, the penalty of *reclusion perpetua*, a single and indivisible penalty, was correctly imposed.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office for accused-appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

On review is the November 29, 2006 Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 02383 affirming, with modification, the May 16, 2001 Decision[2] of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 11, which found Diosdado Codilan (appellant) guilty beyond reasonable doubt of two counts of rape and two counts of acts of lasciviousness.

Except as to the dates of the commission of the offenses – September, October, November, and December 1998 – each of the four Informations[3] charging appellant in Criminal Case Nos. 1487-M-99 to 1490-M-99 reads as follows:

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That in or about the month of . . ., 1998, in the municipality of San Jose del Monte, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused taking advantage of the virginal innocence of his stepdaughter [AAA] who is eight (8) years old, did then and there willfully, unlawfully and feloniously, by means of threats and intimidation have carnal knowledge of [AAA], against her will and without her consent.[4]

xxx xxx xxx (Underscoring supplied)

On arraignment, appellant pleaded not guilty to the charges.[5]

Through the testimony of AAA, the prosecution established as follows:

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[1] *Rollo*, pp. 3-28. Penned by Justice Andres B. Reyes, Jr. then chairperson of the CA Ninth Division, and concurred in by Justices Hakim S. Abdulwahid and Mariflor P. Punzalan Castillo.

[2] CA *rollo*, pp. 26-30.

[3] Records, pp. 2-3; 9-10; 13-14; and 17-18.

[4] *Id*. at 13.

[5] *Ibid*. Arraignment sheet signed by the accused on September 3, 1999.

On the dates of the incidents, AAA was playing near the house of appellant, whom she calls "*Tatay*," in Gumaok West, San Jose Del Monte, Bulacan during which appellant – her uncle by affinity[6] – pulled her towards a room of his house, and once inside, he perpetrated the acts complained of consisting of licking her genitalia and inserting his penis into her vagina.

Fearing appellant's threats that he would kill her if she divulged what he had done to her, AAA kept her travails to herself. She was, however, later prompted to narrate appellant's dastardly acts when she was confronted by appellant's daughter "Ate Bing Bing," her first cousin, the latter's mother and her (AAA's) father being siblings. It turned out that "Ate Bing Bing's" then 12-year-old daughter BBB (appellant's granddaughter) had witnessed the December 1998 incident and divulged it to her mother in February 1999.

AAA thereupon executed on February 25, 1999 a sworn statement detailing the assaults made upon her by appellant. BBB also executed on February 26, 1999 a sworn statement in which she corroborated AAA's narration of the incident that occurred in December 1998.[7] Like AAA, BBB echoed the contents of her sworn statement at the witness stand.

Through Dr. Ida De Pedro Daniel who conducted the physical examination of AAA on February 20, 1999, the prosecution also established that the examination showed that AAA's hymen was intact and no extra-genital injuries were noted on her body.

In defense, appellant claimed that the charges against him were fabricated by his own daughter, BBB's mother, who did not want him to return home after serving his eight-year prison sentence for illegal possession of firearms. His daughter, he added, held a grudge against him because he had hit her with a broom and had an altercation with her husband over the latter's change of religious affiliation.

By Decision of May 16, 2001, the trial court convicted appellant of two counts of rape and two counts of acts of

[6] Appellant is married to the sister of AAA's father.

[7] Exhibit "B", Folder of Exhibits.

lasciviousness, the latter for the acts committed in September[8] and November 1998.[9] Thus the trial court disposed:

> WHEREFORE, judgment is hereby rendered, as follows:
>
> 1. In Criminal Case No. 1487-M-99, this Court finds the accused GUILTY beyond reasonable doubt of Acts of Lasciviousness under Art. 336 of the Revised Penal Code and hereby sentences him to a prison term ranging from four (4) months and one (1) day of *arresto mayor* as minimum up to six (6) years of *prision correccional* as maximum and to pay the private complainant the amount of ₱20,000.00 as moral damages;
>
> 2. In Criminal Case No. 1488-M-99, this Court finds the accused GUILTY beyond reasonable doubt of Rape under Arts. 266-A and 266-B of the Revised Penal Code and hereby sentences him to suffer the penalty of *Reclusion Perpetua* and to pay the private complainant the amount of ₱100,000.00 as moral damages;
>
> 3. In Criminal Case No. 1489-M-99, this Court finds the accused GUILTY beyond reasonable doubt of Acts of Lasciviousness under Art. 336 of the Revised Penal Code and hereby sentences him to a prison term ranging from four (4) months and one (1) day of *arresto mayor* as minimum up to six (6) years of *prision correccional* as maximum and to pay the private complainant the amount of ₱20,000.00 as moral damages; and
>
> 4. In Criminal Case No. 1490-M-99, this Court finds the accused guilty beyond reasonable doubt of Rape under Arts. 266-A(d) and 266-B of the Revised Penal Code and hereby sentences him to suffer the penalty of *Reclusion Perpetua* and to pay the private complainant the amount of ₱100,000.00 as moral damages.[10] (Underscoring supplied)

On appeal to the Court of Appeals, appellant faulted the trial court in giving weight and credence to the testimonies of the

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[8] Criminal Case No. 1487-M-99.

[9] Criminal Case No. 1489-M-99.

[10] Records, pp. 116-117.

prosecution witnesses and in convicting him of two counts of rape.

Modifying the trial court's decision, the appellate court awarded AAA for each count of rape civil indemnity in the amount of ₱50,000, reduced the award of moral damages to ₱50,000, and awarded exemplary damages of ₱25,000.

In awarding exemplary damages, the appellate court considered the aggravating circumstance of relationship, appellant being AAA's uncle by affinity, hence, a relative within the third civil degree.

On the assailed credibility of AAA and the other prosecution witnesses, the appellate court cited settled jurisprudence that (1) the offended party's testimony, if credible, is sufficient to sustain a conviction, and (2) appellate courts will generally not disturb the findings of the trial court as the latter is in a better position to determine the credibility of witnesses whom it heard and whose deportment and manner of testifying it observed during trial.

These jurisprudential rules, the appellate court held, are particularly significant given its finding that AAA was merely eight years old at the time the offenses were committed. Like the trial court, the appellate court found AAA's testimony candid and straightforward to merit full faith and credit. It further found AAA's answers during the rigorous and at times misleading cross-examination to be clear and unflinching.

Respecting the medical findings which, appellant insisted, contradicted the charges of rape, the appellate court stressed that mere entry of the penis into the lips of the female genital organ, even without rupture or laceration of the hymen, suffices to convict the perpetrator of rape. For the hymen may be so elastic, it explained, as to stretch without laceration during intercourse, hence, the absence of lacerations in the hymen does not disprove sexual abuse especially when the victim is of tender age.

The appellate court further stressed that the physical examination of AAA took place several months after the occurrence of the incidents, hence, it was highly probable that traces of extra-genital injuries may have already disappeared at the time of the examination.

Moreover, the appellate court stated that lack of extra-genital injuries could also be explained by the fact that AAA did not resist the sexual advances of her uncle who, because of his moral ascendancy and the threats he made on her, had cowed her into submission and silence.

While the rapes committed in October and December 1998 were proven beyond reasonable doubt, the appellate court concurred with the trial court's finding that the incidents in September and November of the same year were not sufficiently established to amount to rape, hence, its affirmance of the trial court's conviction of appellant only for acts of lasciviousness. Amplifying its affirmance, the appellate court noted that AAA did not state that she felt pain during those two incidents, unlike the two others in which she recalled having felt pain in the genital area. And so the appellate court surmised that the organ of appellant failed to touch, but merely grazed, AAA's labia or pudendum.

On the penalties imposed, the appellate court found that the trial court's conviction of appellant only for simple rape with respect to the October and December incidents was proper.

While the appellate court noted that AAA claimed that she was eight years old at the time the incidents were committed, it found no independent evidence to conclusively establish the same.

Respecting the relationship of appellant to AAA, the appellate court noted that what was established is that appellant is an uncle by affinity, he being married to her father's sister; and while this relationship is within the third civil degree, the Informations referred to appellant as AAA's stepfather.

The Court finds appellant's appeal to be bereft of merit.

Indeed, the trial court, which had the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies.[11] Its findings are accorded great respect unless it overlooked or misconstrued

[11] *People v. Fernandez*, G.R. No. 176060, October 5, 2007, 535 SCRA 159, 162-163; *People v. Watiwat,* 457 Phil. 411, 421 (2003); *People v. Esperanza*, 453 Phil. 54, 67 (2003).

some substantial facts which, if considered, might affect the result of the case,[12] which circumstance does not obtain in this case.

As the transcripts of stenographic notes reflect, AAA's account of her harrowing experiences was candid and straightforward; and her answers during the rigorous cross-examination were definite and categorical as to the fact that appellant had molested her. Of the October incident, she testified on direct examination:

Public Pros.:

Q You stated earlier that the second time that he abused you was October, 1998, where did it happen?

A In their house, ma'am.

Q In the same place where he abused you in September 1998?

A Yes, ma'am.

Q Why were you there in October when this incident took place?

A We were playing with his nieces, ma'am.

Q As you were playing with his nieces, what happened?

A He lifted me towards his room, ma'am.

Q What time was it when this happened in October, 1998?

A I cannot recall, ma'am.

Q Was it morning, noontime, afternoon or nighttime?

A Also noontime, ma'am.

Q This time in October 1998 when he lifted you inside his room, were there other persons inside his house?

A None, ma'am.

Q You said that he lifted you towards his room, when you were already in his room, what happened?

A He touched my private parts then he inserted his penis into my vagina and then he lipped [*sic*] my private parts, ma'am.

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[12] *People v. Fernandez*, *ibid.*; *People v. Ariola*, 418 Phil. 808, 816 (2001).

Q What did you feel when he inserted his penis into your vagina?

A It was painful, ma'am.

Q What happened after that?

A None, ma'am.

Q What did you do?

A I told him that I will just urinate, ma'am, but I did not go back anymore.

Q Did you report this incident that took place in October, 1998 to anybody?

A I did not tell anyone because he threatened me that he will kill me if I will tell anybody about that.[13] (Underscoring supplied)

And on cross-examination, she testified:

Q You mean, Ate Bing Bing when she asked you about what the accused did to you in front of your parents, that was the first time that she asked you about that?

A Yes, sir.

Q Your father and mother they were around when Ate Bing Bing asked you?

A Yes, sir.

Q Now, exactly what were the words used by Ate Bing Bing when she asked you?

A Ate Bing Bing asked me what Tatay did to me?

Q Do you know of any reason why Ate Bing Bing asked you that question?

A None, sir.

Q And of course, you denied that the accused did anything to you, is it [*sic*] not ?

A No, sir.

[13] Transcript of Stenographic Notes (TSN), November 24, 1999, pp. 7-8.

Q What did you answer to your Ate Bing Bing?

A I told her what Tatay did to me, sir.[14] (Underscoring supplied)

AAA's account of the December incident, on the other hand, was corroborated by BBB whose testimony was clear and straightforward as well. Thus BBB narrated:

Fiscal:

Q While you were outside the house of your lolo, do you remember any unusual incident that you witnessed?

A Yes, sir.

Q What was that unusual incident?

A While I was outside the house near the window, I heard somebody shouting "*Aray ko po, tama na po*," then I peeped thru the window and I saw my lolo Diosdado with his shorts pulled down and [AAA] was also without shorts lying down and I saw my lolo, as if he is inserting his penis into the vagina of [AAA].

Q What was the relative position of your lolo as compared to [AAA] when you saw this incident?

A He was lying face down, sir.

Q And where was [AAA] when you saw your lolo "*nakadapa*"?

A My lolo was lying on top, sir.

Court:

Q Were they in bed?

A Yes, Your Honor.

xxx xxx xxx

Fiscal:

Q What did you do, if any, when you saw them?

A I went inside the house and I slowly opened the door and I saw Tatay immediately stood up while [AAA] seated herself and I noticed that her shorts was [*sic*] slightly pulled down.

[14] TSN, January 12, 2000, p. 8.

They were surprised upon seeing me, sir.

Q And did you tell anybody about the incident that you witnessed?

A None yet, sir.

Q Up to now, have you told anybody about it?

A Yes, sir.

Q And who is that to whom you confided the incident?

A I told it to my mother, sir.

Court:

Q When your grandfather, the accused here, saw you, what did he do?

A As if he was talking to [AAA], Your Honor.

Court:

Q How about you, what did you do when you opened the door and saw [AAA] and your grandfather already seated?

A I brought [AAA] outside, Your Honor.

Q Did you talk to [AAA] after you brought her outside?

A Not at the moment, Your Honor.

Q What do you mean "*Hindi po kaagad*"?

A I talked to her after several days, Your Honor.

Q Did [AAA] tell you anything when you brought her outside?

A Yes, Your Honor.

Q What did she tell you?

A She confided to me what happened to her even before that date, Your Honor.[15] (Underscoring supplied)

That there were no lacerations in AAA's hymen and that her hymen was intact do not necessarily negate the commission of rape.

[15] TSN, June 14, 2000, pp. 7-9.

It is well settled that medical findings of injuries in the victim's genitalia are not essential to convict the accused of rape because proof of hymenal lacerations is not an element of rape.[16] What is essential is that there was penetration, however slight, of the labia minora,[17] which circumstance was proven beyond doubt in this case by the testimony of AAA, and that of BBB insofar as the December incident is concerned. It bears noting that the medico-legal officer admitted that despite her findings, it was not impossible for penetration to have been made.[18]

That the physical examination of AAA was done only in February 1999 or two months after the last incident also strongly militates against the presence of any traces of injury as the appellate court correctly observed. Given the tender age of AAA, the healing process could probably have already obliterated any telltale signs of sexual assault at the time of the examination.

As for the conviction of appellant for simple rape, the same is consistent with Article 266-B of the Revised Penal Code[19] and the settled rule that both the special qualifying circumstances of relationship and minority must not only be alleged in the information but must likewise be proved during the trial.[20] As

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[16] *People v. Opeliña*, 458 Phil.1001, 1012 (2003); *People v. De Taza*, 457 Phil. 635, 664 (2003); *People v. Rizaldo*, 439 Phil. 528, 537 (2002); *People v. Managaytay*, 364 Phil. 800, 807 (1999).

[17] *People v. De Taza*, ibid.; *People v. Osing*, 402 Phil. 343, 354 (2001).

[18] TSN, October 25, 2000, p. 8.

[19] The pertinent provision of Article 266-B of the RPC reads:

Article 266-B. Penalties. x x x

xxx xxx xxx

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1. When the victim is under eighteen (18) years of age *and* the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim. (Emphasis supplied)

xxx xxx xxx.

[20] *People v. Barcena*, G.R. No. 168737, February 16, 2006, 482 SCRA 543, 556; *People v. Watiwat*, *supra* note 11 at 428; *People v. Esperanza*,

both these circumstances were not concurrently alleged and proved, appellant can only be convicted of simple rape.

The Informations alleged that appellant was the stepfather of AAA. As reflected earlier, the evidence presented during the trial showed that he was AAA's uncle by affinity within the third civil degree.

The minority of AAA, on the other hand, though alleged in the Informations, was not proved by independent evidence, documentary or otherwise. In decisions of this Court, it has been stressed that even if the defense does not contest the minority of the victim,[21] or such minority is stipulated by the parties,[22] it is still incumbent upon the prosecution to prove the victim's age with absolute certainty.

In light then of the prosecution's failure to correctly allege AAA's relationship to appellant and to prove her minority, the penalty of *reclusion perpetua*, a single and indivisible penalty, was correctly imposed.

As to the incidents in September and November 1998, indeed, the evidence does not prove with moral certainty that rape was committed. The deeds committed were, therefore, properly appreciated only as acts of lasciviousness.

Finally, the appellate court correctly awarded civil indemnity of ₱50,000[23] for each count of rape, its imposition upon a finding of a commission thereof[24] being mandatory in accordance with current jurisprudence.

As for the award of moral damages which the appellate court reduced to ₱50,000 for each count of rape, the same is also in

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supra note 11 at 75-76; *People v. Ferrera*, 441 Phil. 439, 443 (2002); *People v. Ariola*, *supra* note 12 at 823.

[21] *People v. Ferrera*, *ibid*.; *People v. Cula*, 358 Phil. 742, 757 (2000); *People v. Javier*, 370 Phil. 128, 148 (1999).

[22] *People v. Sajolga*, 436 Phil. 327, 339 (2002).

[23] *People v. Fernandez, ibid*.

[24] *People v. Rizaldo*, 439 Phil. 528, 537 (2002); *People v. Fernandez*, 426 Phil. 168, 176 (2002).

order in accordance with current jurisprudence, which amount is automatically granted in a rape case without need of further proof other than the fact of its commission. For it is assumed that a rape victim has actually suffered moral injuries entitling her to such an award.[25]

The award of exemplary damages is in order too, the presence of the aggravating circumstance of relationship [26] being considered for the imposition of exemplary damages.

WHEREFORE, the challenged decision of the Court of Appeals is *AFFIRMED* with modifications. As modified, the dispositive portion of the Decision reads as follows:

Appellant, Diosdado Codilan *y* Palajurin, is found guilty beyond reasonable doubt of Rape in Criminal Case Nos. 1488-M-99 and 1490-M-99 and is accordingly sentenced to suffer in each case the penalty of *reclusion perpetua* and to pay also in each case the private complainant, AAA, ₱50,000 as civil indemnity, ₱50,000 as moral damages, and ₱25,000 as exemplary damages.

Appellant is likewise found guilty beyond reasonable doubt of Acts of Lasciviousness in Criminal Case Nos. 1487-M-99 and 1489-M-99 and is accordingly sentenced in each case to suffer a prison term ranging from four (4) months and one (1) day of arresto mayor as minimum, to six (6) years of prision correccional as maximum, and to pay the private complainant, AAA, the amount of ₱20,000 as moral damages.

SO ORDERED.

Quisumbing (Chairperson), Ynares-Santiago,[*] *Tinga,* and *Velasco, Jr., JJ.* concur.

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[25] *People v. Cabalquinto,* G.R. No. 167693, September 19, 2006, 502 SCRA 419, 435; *People v. Manalo*, 444 Phil. 655, 674 (2003); *People v. Mangila*, 382 Phil. 473, 487 (2000).

[26] Vide *People v. Catubig,* 416 Phil. 102 (2001); *People v. Ferrera*, *supra* note 20 at 444 and *People v. Nerio*, 418 Phil. 311, 340 (2001).

[*] Additional member per Special Order No. 509 dated July 1, 2008 in lieu of Justice Arturo D. Brion who is on leave.

EN BANC

[G.R. No. 178256. July 23, 2008]

DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, *petitioner, vs.* **ROLANDO S. CRUZ,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; RIGHTS AND PRIVILEGES; RIGHT TO COMPENSATION; THE COURT'S RULING IN *MAMARIL V. CIVIL SERVICE COMMISSION* THAT A GOVERNMENT EMPLOYEE WHO WAS DISMISSED FROM SERVICE IN GOOD FAITH IS NOT ENTITLED TO BACKWAGES WHEN REINSTATED IS APPLICABLE IN CASE AT BAR FOLLOWING THE SALUTARY DOCTRINE OF *STARE DECISIS ET NON QUIETA MOVERE* WHICH MEANS "TO ADHERE TO PRECEDENTS, AND NOT UNSETTLE THINGS WHICH ARE ESTABLISHED."— *Mamaril* is binding and applicable to the present case following the salutary doctrine of *stare decisis et non quieta movere* which means "to adhere to precedents, and not to unsettle things which are established." Under the doctrine, when the Supreme Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties and property are the same. The doctrine of *stare decisis* is based upon the legal principle or rule involved and not upon the judgment which results therefrom. In this particular sense *stare decisis* differs from *res judicata* which is based upon the judgment. The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions, thus: Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied

to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue. It bears stressing that the facts of the present case and those of *Mamaril* are the same. Clearly, in the light of *Mamaril*, which the Court follows as a precedent, the DOTC did not effect Cruz's termination with bad faith and, consequently, **no backwages can be awarded in his favor**. It is the Court's duty to apply the previous ruling in *Mamaril* to the instant case. Once a case has been decided one way, any other case involving exactly the same point at issue, as in the present case, should be decided in the same manner.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated June 23, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 80353 and the CA Resolution[2] dated June 4, 2007 which denied petitioner's Motion for Reconsideration.

The material antecedents that spawned the present controversy are the same with *Mamaril v. Civil Service Commission.*[3] Thus, the Court adopts and quotes the facts therein stated:

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[1] Penned by Associate Justice Ruben T. Reyes (now Associate Justice of this Court) and concurred in by Associate Justices Josefina Guevara-Salonga and Fernanda Lampas-Peralta, *rollo,* p. 47.

[2] *Rollo,* p. 57.

[3] G.R. No. 164929, April 10, 2006, 487 SCRA 65.

On December 19, 2000, then [Department of Transportation and Communications (DOTC)] Secretary Vicente C. Rivera, Jr. requested the Civil Service Commission (CSC) to attest that at least two of the four [Department Legislative Liaison Specialist (DLLS)] positions in the DOTC be made permanent. The request was granted by the CSC by Resolution No. 01-0233 dated January 23, 2001.

Upon verbal query by DOTC Director Carina S. Valera (Director Valera), then CSC Chairman Corazon Alma de Leon advised the DOTC that the incumbents of the formerly coterminous DLLS positions had no vested right to occupy the already permanent DLLS positions, and that they were not automatically appointed thereto; and the positions which were made permanent could only be filled up by following existing CSC rules and regulations as well as DOTC policies and guidelines on the appointment of personnel.

By letter of January 29, 2001, DOTC Assistant Secretary for Administrative and Legal Affairs Wilfredo Trinidad (Trinidad) sought from the CSC a written confirmation of its Chairman's above-said advice. Pending receipt of a reply from the CSC, Trinidad sent separate letters dated February 22, 2001 to [Erneliza Z. Mamaril] and Rolando Cruz, the other incumbent of the two DLLS positions, advising each of them as follows:

> The change of the nature of the DLLS position which you held, from coterminous to permanent pursuant to CSC Resolution No. 010233 dated 23 January 2001 did not automatically make you the holder of the now permanent DLLS position. This interpretation was confirmed by Director Carina S. Valera with the then CSC Chairman de Leon.
>
> As your appointment was of cotermin[o]us nature, your services automatically terminated with the non-existence of the cotermin[o]us position and the advent of the new appointing authority.
>
> When the new DLLS permanent positions are authorized to be filled up, you can apply therefor. In the meantime, you may seek appointment to any other vacant position that suits your qualifications. Needless to say, selection in any case will follow the usual process in accordance with the DOTC guidelines and the CSC rules and regulations.

Acting on the above-said query of Trinidad, the CSC, by Resolution No. 01-0502 dated February 22, 2001 which was received at his

office on March 9, 2001 and by the DOTC Personnel Division on March 12, 2001, ruled that "the two occupants of the two DLLS positions are *ipso facto* appointed to such positions under permanent status if they meet the minimum requirements of the said positions.

In light of the contrary advice previously given by the former CSC Chairman de Leon, the DOTC, by letter of April 27, 2001, sought clarification on CSC Resolution No. 01-0502.

By Resolution No. 01-1409 issued on August 20, 2001, the CSC modified Resolution No. 01-0502 by declaring that "the **previous incumbents** of the two Department Legislative Liaison Specialist (DLLS) positions **were no longer existing employees as of the date said positions were declared by the Commission as career** in CSC Resolution No. 01-0233 dated January 23, 2001," and that "DOTC Secretary Pantaleon D. Alvarez may now appoint who will occupy these newly created DLLS positions x x x."

xxx xxx xxx

[Mamaril] and Cruz filed a Motion for Reconsideration of CSC Resolution No. 01-1409. By Resolution of November 26, 2002, the CSC issued Resolution No. 02-1504 reconsidering and setting aside CSC Resolution No. 01-1409. [Mamaril and Cruz were] thus reinstated to [their] former position[s] on November 26, 2002.

The DOTC filed a Motion for Reconsideration of CSC Resolution No. 02-1504 which was denied, by Resolution No. 03-1019 dated September 26, 2003. In the same Resolution, the CSC declared that [Mamaril] and Cruz are not entitled to back salaries from the time they were separated from the service up to their date of reinstatement.

[Mamaril] thus filed a Motion for Reconsideration of said Resolution No. 03-1019 only insofar as the CSC held that she was not entitled to backwages. By Resolution No. 04-0279 issued on March 18, 2004, the CSC denied [Mamaril's] Motion for Reconsideration.[4] (Emphasis supplied)

Cruz and Mamaril filed separate petitions for review with the CA assailing Resolution No. 03-1019 only insofar as the CSC held that they were not entitled to backwages, docketed as CA-G.R. SP No. 80353 and CA-G.R. SP No. 83314, respectively.

[4] *Supra* note 3, at 67-69.

In a Resolution[5] dated May 14, 2004, the CA dismissed CA-G.R. SP No. 83314 for lack of verification and certification against forum shopping. When Mamaril's Motion for Reconsideration was denied in the CA Resolution dated August 6, 2004, she filed a Petition for Review on *Certiorari* with this Court, docketed as G.R. No. 164929.

On April 10, 2006, the Court *en banc* rendered a Decision[6] denying Mamaril's petition, finding it to be procedurally and substantially without merit. The Decision became final and executory, and entry of judgment was made of record on May 25, 2006.

Meanwhile, on June 23, 2003, the CA rendered a Decision[7] in CA-G.R. SP No. 80353, setting aside CSC Resolution No. 03-1019 dated September 26, 2003, and ordering the DOTC to pay Cruz his back salaries from the date of his dismissal up to his actual reinstatement. While the CA viewed the dismissal as having been attended with good faith, it nonetheless held that Cruz was entitled to backwages since prevailing jurisprudence supports the award of backwages to illegally dismissed civil servants, finding inapplicable the DOTC cited case of *Octot v. Ybañez*.[8]

The DOTC filed a Motion for Reconsideration but it was denied by the CA in its Resolution[9] dated June 4, 2007.

Hence, the present petition on the following grounds:

I

THE COURT OF APPEALS COMMITTED A GRAVE ERROR IN HOLDING THAT PETITIONER'S GOOD FAITH IN TERMINATING RESPONDENT DID NOT PRECLUDE THE LATTER FROM RECEIVING BACK SALARIES IN HIS FAVOR.

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[5] *Rollo*, p. 87.

[6] *Supra* note 3.

[7] *Supra* note 1.

[8] No. L-48643, January 18, 1982, 111 SCRA 79, 83.

[9] *Supra* note 2.

II

THE COURT OF APPEALS COMMITTED A GRAVE ERROR WHEN IT FAILED TO APPLY IN THE INSTANT CASE THE RULING IN *OCTOT VS. YBAÑEZ*, 111 SCRA 79 (1982) THAT "IN THE ABSENCE OF PROOF THAT [A GOVERNMENT AGENCY] ACTED IN BAD FAITH AND WITH GRAVE ABUSE OF DISCRETION, [A DISMISSED GOVERNMENT EMPLOYEE] IS NOT ENTITLED TO BACKWAGES AND CONSEQUENTLY CANNOT CLAIM FOR DAMAGES.

III

THE COURT OF APPEALS ERRED IN NOT APPLYING THE RULE THAT A PUBLIC OFFICIAL IS NOT ENTITLED TO ANY COMPENSATION IF HE HAS NOT RENDERED ANY SERVICES.[10]

The DOTC contends that a government employee who was dismissed from service in good faith is not entitled to back salaries upon his reinstatement, relying on the Court's application of *Octot* in *Mamaril*; the assailed Decision should be set aside under the doctrine of *stare decisis*, since the facts in *Mamaril* and the present case are exactly the same.

On the other hand, Cruz contends that his dismissal was effected in bad faith since he was terminated without awaiting the reply of the CSC to the query of DOTC regarding his employment status; *Octot* is inapplicable because prevailing jurisprudence supports the award of backwages for a maximum period of five years to an illegally dismissed employee.

The Court finds for the petitioner DOTC.

As stated at the outset, the pivotal question of whether a government employee who was dismissed from service in good faith is entitled to back salaries upon his reinstatement has already been resolved in the negative in *Mamaril*, thus:

> The general proposition is that a public official is not entitled to any compensation if he has not rendered any service. As he works, so shall he earn. Compensation is paid only for service actually or constructively rendered.

[10] *Rollo*, p. 70.

[Mamaril's] services were actually terminated on September 1, 2001, after the CSC issued Resolution No. 01-1409 dated August 20, 2001 declaring that "the previous incumbents of the two Department Legislative Liaison Specialist (DLLS) positions were no longer existing employees as of the date said positions were declared by the Commission as career." She was, however, reinstated on November 26, 2002 after the CSC issued on even date Resolution No. 02-1504 setting aside Resolution No. 01-1409.

Octot v. Ybañez instructs that the good faith or bad faith and grave abuse of discretion in the dismissal or termination of the services of a government employee come into play in the determination of the award of back salaries upon his reinstatement. In said case, the therein petitioner, a security guard in the Regional Health Office No. VII, Cebu City who had been convicted of libel by a trial court, was summarily dismissed pursuant to Presidential Decree No. 6 and LOI Nos. 14 and 14-A issued by then President Marcos directing heads of departments and agencies of the government to weed out undesirable government officials and employees, specifically those who were facing charges or were notoriously undesirable on the ground of dishonesty, incompetence or other kinds of misconduct defined in the Civil Service Law. The therein petitioner was eventually acquitted of the criminal charge. Hence, his request for reinstatement was granted but not his claim for back salaries from the date of his dismissal. This Court, through then Chief Justice Teehankee, held:

> In the absence of proof that respondent Regional Director acted in **bad faith** and with **grave abuse of discretion**, petitioner is not entitled to backwages and consequently cannot claim for damages. In the case at bar, the record manifests that respondents officials were not motivated by ill will or personal malice in dismissing petitioner but only by their **desire to comply with the mandates of Presidential Decree No. 6.** (Emphasis and underscoring supplied)

The denial of the award of back salaries, absent a showing of bad faith and/or grave abuse of discretion in the termination of the services of a government employee who was reinstated, was reiterated in *Clemente v. Commission on Audit, Acting Director of Prisons v. Villaluz,* and *Echeche v. Court of Appeals.*

[Mamaril], however, invokes the rulings in *Tañala v. Legaspi*, *De Guzman v. Civil Service Commission*, *Gabriel v. Domingo*, *Del*

Castillo v. Civil Service Commission to the effect that when an official or employee was illegally dismissed and his reinstatement is ordered, for all legal purposes he is considered as not having left his office and, therefore, is entitled to all rights and privileges that accrue to him by virtue of the office.

To begin with, [Mamaril] cannot be considered to have been illegally dismissed. Her services were terminated effective September 1, 2001 by the DOTC in light of the CSC August 20, 2001 Resolution.

At any rate, no parity of circumstances in the above-cited cases invoked by [Mamaril] obtains in the case at bar.

In *Tañala*, payment of back salaries upon reinstatement was ordered upon acquittal in a criminal case of the regular employee of the government who had been suspended as a result of the filing of said case. *De Guzman* involved a proscribed abolition of office, hence, payment of back salaries was ordered upon reinstatement of the separated employee. In *Del Castillo*, the therein petitioner was preventively suspended and later dismissed for grave misconduct. He was eventually exonerated. He was thus ordered reinstated. He thereafter filed a "Motion for Clarificatory Relief" praying for an award of backwages. Noting that the CSC did not object to the payment of backwages and the Solicitor General in fact recommended the payment thereof, this Court granted the motion.

In *Gabriel*, the therein petitioner was holding a permanent position of Motor Vehicle Registrar I at the Motor Vehicles Office, later renamed the Land Transportation Commission. In 1979, the Land Transportation Commission was reorganized, renaming *plantilla* positions. The therein petitioner's position was changed to Transportation District Supervisor, but since another had been appointed thereto, he filed a protest. During the pendency of his protest, he was extended a casual appointment but his services were "in effect terminated" three days later, drawing him to file a complaint for illegal termination of services which reached the CSC. The CSC eventually found that the issuance to the therein petitioner of a casual appointment which resulted in the termination of his services was illegal and that he was more qualified than the one appointed to his renamed position of Transportation District Supervisor. The CSC accordingly directed his appointment to his former position. He was appointed alright but to a lower position. He later filed a claim for backwages which was denied by the Commission on Audit but which this Court ordered granted.

In all these cases, the suspensions and/or dismissals were held unjustified, the therein petitioners having been either exonerated from the charges-bases of suspension or dismissal or were victims of proscribed abolition of office or issuance of appointment to a different position which soon after resulted in dismissal therefrom.

That the DOTC's termination of [Mamaril's] services in accordance with the August 20, 2001 Resolution of the CSC was not attended with bad faith and/or grave abuse of discretion, it cannot, under the facts and circumstances of the case, be gainsaid.[11]

Mamaril is binding and applicable to the present case following the salutary doctrine of *stare decisis et non quieta movere* which means "to adhere to precedents, and not to unsettle things which are established."[12] Under the doctrine, when the Supreme Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties and property are the same.[13] The doctrine of *stare decisis* is based upon the legal principle or rule involved and not upon the judgment which results therefrom. In this particular sense *stare decisis* differs from *res judicata* which is based upon the judgment.[14]

The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions, thus:

Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere.* Stand

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[11] *Supra*, note 3 at 73-76.

[12] *Confederation of Sugar Producers Association, Inc. v. Department of Agrarian Reform (DAR)*, G.R. No. 169514, March 30, 2007, 519 SCRA 582, 618, citing Black's Law Dictionary, Fifth Edition.

[13] *Confederation of Sugar Producers Association, Inc. v. Department of Agrarian Reform (DAR), supra* note 12, citing *Horne v. Moody*, 146 S.W.2d 505 (1940).

[14] *Id.* at 618-619.

by the decisions and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[15]

It bears stressing that the facts of the present case and those of *Mamaril* are the same. Clearly, in the light of *Mamaril*, which the Court follows as a precedent, the DOTC did not effect Cruz's termination with bad faith and, consequently, **no backwages can be awarded in his favor**. It is the Court's duty to apply the previous ruling in *Mamaril* to the instant case. Once a case has been decided one way, any other case involving exactly the same point at issue, as in the present case, should be decided in the same manner.[16]

WHEREFORE, the petition is *GRANTED*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 80353 are *REVERSED and SET ASIDE*. Resolution No. 03-1019 dated September 26, 2003 and Resolution No. 04-0279 dated March 18, 2004 issued by the Civil Service Commission are *REINSTATED*.

SO ORDERED.

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

Reyes, J., no part.

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[15] *Id*. at 619, citing *Ty v. Banco Filipino Savings & Mortgage Bank*, G.R. No. 144705, November 15, 2005, 475 SCRA 65, 75-76.

[16] *Manila Electric Company, Inc. v. Lualhati*, G.R. No. 166769, and *Energy Regulatory Commission v. Lualhati*, G.R. No. 166818, December 6, 2006, 510 SCRA 455, 471; *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*, G.R. No. 149834, May 2, 2006, 488 SCRA 538, 545.

SECOND DIVISION

[G.R. No. 178836. July 23, 2008]

ELVIRA "ELVIE" JOSON, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; IT IS NOT THE FUNCTION OF THE COURT TO WEIGH AND SIFT THROUGH THE EVIDENCE PRESENTED BELOW; ONLY QUESTIONS OF LAW MAY BE RAISED IN A PETITION FOR ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT.— To begin with, this Court does not have the duty or function of weighing and sifting through the evidence presented below. As a rule, only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Questions of fact are not proper subjects in such mode of appeal. Not one of the exceptions laid down by jurisprudence is present in this case. Moreover, findings of fact of the Court of Appeals affirming those of the trial court are accorded great respect, even finality, by this Court.

2. CRIMINAL LAW; SWINDLING (ESTAFA); ELEMENTS OF ESTAFA THROUGH FALSE PRETENSES OR FRAUDULENT ACTS.— Under Article 315, paragraph 2 (a) of the Revised Penal Code, swindling or estafa by false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud is committed by "using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business, or imaginary transactions, or by other similar deceits." The elements of estafa under this penal provision are: (1) the accused defrauded another by means of deceit and (2) damage or prejudice capable of pecuniary estimation is caused to the offended party or third party.

3. ID.; ID.; ID.; FRAUD AND DECEIT SHOWN BY THE INDUCEMENT WITH ASSURANCE ON THE COMPLAINANT THAT THEIR INVESTMENT IN

PUBLICLY TRADED STOCKS WOULD YIELD RETURNS OF 6% INTEREST PER MONTH; LURED BY THE FALSE PROMISE OF QUICK FINANCIAL GAINS, COMPLAINANT READILY TURNED OVER HER MONEY TO PETITIONER AND HER CO-CONSPIRATORS.— In the case of *People v. Menil, Jr.*, the Court has defined fraud and deceit in this wise: Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. On the other hand, deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury. It was proven beyond reasonable doubt that Elvira and her co-conspirators employed fraud and deceit on Elizabeth to induce her to invest with them. The inducement was their assurance to Elizabeth that the latter's investment in publicly traded stocks would yield returns of 6% interest per month. Lured by the false promise of quick financial gains, Elizabeth readily turned over her money to Elvira and her co-conspirators.

4. ID.; ID.; ID.; IT IS ABUNDANTLY CLEAR THAT THE PROFITS WHICH PETITIONER AND HER CO-CONSPIRATORS PROMISED TO THE COMPLAINANT WILL NOT MATERIALIZE.— The denial of Elvie that she knew or had met Elizabeth cannot stand against the straightforward and explicit testimony of the latter, who had identified the former as one of the persons who enticed her to part with her money and invest it in the stock market upon the representation that a 6% monthly rate of return would be given to her. In fact, it was Elvira who convinced Elizabeth to make an additional investment on 3 December 1997 upon the promise that a bonus would accrue in her favor after her 29 November 1997 investment. Elvira even issued her own checks to Elizabeth.

> And being a co-conspirator in the crime, the fact that Elvira did not sign the receipt for the money invested does not cast doubt on her culpability as she was the one who actually received the money. Even at times when Benjamin was not around when Elizabeth made her investments, it was Elvira who filled in and issued the blank receipts already containing Benjamin's signature. It has been held by this Court that where one states that the future profits or income of an enterprise shall be a certain sum, but he actually knows that there will be none, or that they will be substantially less than he represents, the statements constitute an actionable fraud where the hearer believes him and relies on the statement to his injury. In the present case, it is abundantly clear that the profits which Elvira and her co-conspirators promised to Elizabeth would not be realized.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.

The Solicitor General for respondent.

D E C I S I O N

TINGA, *J.*:

An information[1] for estafa was filed against the spouses Elvira Joson (Elvira) and Benjamin Joson (Benjamin), and Elvira's mother, Susan Sunga. Only Elvira was arrested and tried before

[1] Records, pp. 1-2. The dispositive portion of the information in Criminal Case No. 99-170819 reads:

> That sometime in February, 1997, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously defraud ELIZABETH B. PANCHO in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representations which they made to the said ELIZABETH B. [PANCHO] to the effect that they are engaged in a financing business and that if she would invest with them, they would give her a 6% to 7% monthly interest which will be regularly renewed every three months with the interest being paid either [in] cash or in postdated checks on

the Regional Trial Court (RTC) of Manila, Branch 20. She pleaded not guilty at the arraignment.[2]

The following facts are borne by the prosecution's evidence consisting of the testimony of Elizabeth Pancho (Elizabeth).

Elizabeth was lured by all the accused into making a series of stock investments totaling ₱610,000.00, with a promise of 6% to 7% interest payment per month. Each investment would mature in three (3) months. This assertion is corroborated by receipts[3] signed by Elizabeth and Benjamin and postdated bank checks,[4] some of which were issued by Elvira herself.

On 29 November 1997, Elizabeth gave ₱150,000.00 to the spouses Joson, for which Benjamin issued a receipt and a postdated check.[5] Elvira was the one who received the money

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their investment and by means of other deceits of similar import, induced and succeeded in inducing the said ELIZABETH B. PANCHO to give and deliver, as in fact she gave and delivered the amount of ₱ 610,000.00, on the strength of said manifestations and representations, the said accused well knowing that the same were false and untrue and were made solely to obtain, as in fact, they did obtain the said amount of ₱ 610,000.00, which once in their possession, with intent to defraud, they misappropriated, misapplied and converted the said amount to their own personal use and benefit, to the damage and prejudice of the said ELIZABETH B. PANCHO in the aforesaid amount of ₱ 610,000.00, Philippines currency.

Contrary to law.

[2] *Id.* at 7.

[3] Index of Exhibits, pp. 1, 3-4, 6-7. Except for the dates, amount invested, and interest rate, the pro forma receipt reads:

Received from Elizabeth B. Pancho the sum of ₱ (amount invested) for the use of trading stocks publicly listed in the Philippine Stock Exchange (PSE). The term is monthly @ 6% per month (the receipt dated 3 December 1997 gives a 7% interest rate for the first month) due on (maturity date— 3 months from date of investment).

Sgd. Sgd.

ELIZABETH B. PANCHO BENJAMIN L. JOSON

Date: (Date of execution/investment)

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

[5] TSN, 8 May 2000, pp. 2-4.

from Elizabeth.[6] Elvira convinced Elizabeth to invest in December as a bonus would be given. Thus, on 3 December 1997, Elizabeth invested another ₱150,000.00 with the spouses Joson. Again Elvira received the money and Benjamin issued the receipt and the check for the transaction.[7] Elizabeth made further investments of ₱200,000.00 on 10 January 1998 and ₱85,000.00 on 14 January 1998. In these transactions, Elvira was the one who received the money from Elizabeth and it was she who also typed the entries in the blank receipts and checks which already bore the signature of Benjamin.[8] According to Elizabeth she first invested ₱25,000.00 with Benjamin on 22 October 1997, as evidenced by a receipt and a check issued by Benjamin. It was only in this October transaction that Elvira had no participation at all.[9]

On 22 January 1998, Elizabeth went to the house of the spouses Joson to encash the check which was then already due, but she was told by Benjamin that the interest payment would be temporarily stopped because their money was frozen in the stock market. Elizabeth demanded the return of her capital; she even cried and pleaded with them to return even just half of it. Elvira issued three (3) checks for ₱15,000.00 each. Elvira signed the checks in front of Elizabeth.[10] No receipt or proof that her money was invested in the stock market was given to her.[11] Out of her ₱610,000.00 investment, only ₱79,500.00 was returned to her.[12] Benjamin executed a promissory note dated 1 February 1998[13] wherein he undertook to pay ₱75,000.00 on or before 14 April 1998, and the balance of ₱535,000.00 in installment on various dates.[14]

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[6] *Id.* at 4.

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

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

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

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

[11] *Id.* at 9.

[12] *Id.* at 11.

[13] Index of Exhibits, pp. 27-28.

[14] TSN, 8 May 2000, pp. 13-14.

In her defense, Elvira denied having ever known Elizabeth.[15] And as part of her testimony, the defense presented brokerage receipts[16] which showed that Benjamin bought and sold stocks on various dates.[17] Benjamin told Elvira that he was not able to pay the investors because of the 1997 Asian economic crisis.

The RTC found Elvira guilty beyond reasonable doubt of estafa.[18] A notice of appeal to the Court of Appeals was filed.[19]

In a Decision dated 28 February 2007, the Court of Appeals affirmed the RTC's judgment of conviction but modified the penalty.[20] Applying the Indeterminate Sentence Law, the appellate court sentenced Elvira to an indeterminate penalty of four (4) years and two (2) months of *prision correccional* as the minimum penalty, to twenty (20) years of *reclusion temporal* as the maximum penalty.[21]

The Motion for Reconsideration[22] was denied by the Court of Appeals in a Resolution dated 20 April 2007.[23] Hence, the present petition.

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[15] TSN, 18 April 2005, pp. 3-4.

[16] Index of Exhibits, pp. 11-26.

[17] TSN, 18 April 2005, 4-9.

[18] Record, pp. 68-72. Penned by Judge Marivic T. Balisi-Umali. The dispositive portion of the decision reads as follows:

> Premises considered, the Court finds accused Elvira Joson guilty beyond reasonable doubt of the crime charged and she is hereby sentenced to suffer the penalty of six (6) years and one (1) day of *prision correctional* as minimum to eighteen (18) years of *reclusion temporal* as maximum, to pay ELIZABETH PANCHO ₱530,500.00 as civil liability and to pay cost.
>
> SO ORDERED. (*Id.* at 72)

[19] *Id.* at 74.

[20] *Rollo*, pp. 71-86. The decision was penned by Associate Justice Fernanda Lampas Peralta, and concurred in by Associate Justices Edgardo Cruz and Normandie Pizarro.

[21] *Id.* at 85-86.

[22] *Id.* at 87-90.

[23] *Id.* at 104.

The lone issue presented for resolution is whether or not Elvira was correctly found guilty beyond reasonable doubt of estafa by the RTC and the Court of Appeals.

To begin with, this Court does not have the duty or function of weighing and sifting through the evidence presented below. As a rule, only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Questions of fact are not proper subjects in such mode of appeal.[24] Not one of the exceptions laid down by jurisprudence[25] is present in this case. Moreover, findings of fact of the Court of Appeals affirming those of the trial court are accorded great respect, even finality, by this Court.[26]

[24] *Perez v. Court of Appeals*, 374 Phil. 388, 409-410 (1999).

[25] *Fuentes v. CA*, 335 Phil. 1163, 1168-1169, (1997). In this cited case, the Court said that the findings of fact of the CA could admit of review:

(1) when the factual findings of the Court of Appeals and the trial court are contradictory;
(2) when the findings are grounded entirely on speculation, surmises, or conjectures;
(3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;
(4) when there is grave abuse of discretion in the appreciation of facts;
(5) when the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;
(6) when the judgment of the Court of Appeals is premised on a misapprehension of facts;
(7) when the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;
(8) when the findings of fact are themselves conflicting;
(9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and
(10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.

[26] *De la Cruz v. CA*, 333 Phil. 126, 135 (1996). See also *Castillo v. Court of Appeals*, 329 Phil. 150, 159 (1996); *Verdejo v. Court of Appeals*, G.R. No. 106018, 5 December 1994, 238 SCRA 781, 784; *Navallo v. Sandiganbayan*, 18 July 1994, 234 SCRA 175, 185-186,; *People v. Cabalhin*, G.R. No. 100204, 28 March 1994, 231 SCRA 486, 496; *Lim v. Court of Appeals*, 3 February 1994, 229 SCRA 616, 621; and *Tay Chun Suy v. Court of Appeals*, G.R. No. 93640, 7 January 1994, 229 SCRA 151, 156.

A detailed review of the records shows that the courts *a quo* were correct in finding Elvira guilty as charged. We find no reason to disturb the RTC's findings and conclusions, affirmed no less by the Court of Appeals, that she was indeed part of the conspiracy to bilk Elizabeth of her money.

Under Article 315, paragraph 2(a) of the Revised Penal Code, swindling or estafa by false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud is committed by "using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business, or imaginary transactions, or by other similar deceits." The elements of estafa under this penal provision are: (1) the accused defrauded another by means of deceit and (2) damage or prejudice capable of pecuniary estimation is caused to the offended party or third party.[27]

It is not disputed that the accused failed to pay the expected returns on Elizabeth's investment, and neither did they return the actual amount of her investments. What needs to be determined therefore is whether or not the element of defraudation by means of deceit has been established beyond reasonable doubt.

In the case of *People v. Menil, Jr.*,[28] the Court has defined fraud and deceit in this wise:

> Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. On the other hand, deceit

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[27] *De la Cruz v. CA*, 333 Phil. 126, 138 (1996), citing *People v. Bautista*, 241 SCRA 216, 222, 9 February 1995.

[28] 394 Phil. 433, 452 (2000). See also *People v. Romero*, G.R. No. 112985, 21 April 1999, 365 Phil. 531, 540-541; *Sim Jr. v. Court of Appeals*, G.R. No. 159280, 18 May 2004, 428 SCRA 459, 468.

is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.

It was proven beyond reasonable doubt that Elvira and her co-conspirators employed fraud and deceit on Elizabeth to induce her to invest with them. The inducement was their assurance to Elizabeth that the latter's investment in publicly traded stocks would yield returns of 6 % interest per month. Lured by the false promise of quick financial gains, Elizabeth readily turned over her money to Elvira and her co-conspirators.

The denial of Elvie that she knew or had met Elizabeth cannot stand against the straightforward and explicit testimony of the latter, who had identified the former as one of the persons who enticed her to part with her money and invest it in the stock market upon the representation that a 6% monthly rate of return would be given to her. In fact, it was Elvira who convinced Elizabeth to make an additional investment on 3 December 1997 upon the promise that a bonus would accrue in her favor after her 29 November 1997 investment.[29] Elvira even issued her own checks to Elizabeth.[30] And being a co-conspirator in the crime, the fact that Elvira did not sign the receipt for the money invested does not cast doubt on her culpability as she was the one who actually received the money.[31] Even at times when Benjamin was not around when Elizabeth made her investments, it was Elvira who filled in and issued the blank receipts already containing Benjamin's signature.[32]

It has been held by this Court that where one states that the future profits or income of an enterprise shall be a certain sum, but he actually knows that there will be none, or that they will be substantially less than he represents, the statements constitute an actionable fraud where the hearer believes him and relies on

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[29] TSN, 8 May 2000, p. 5.

[30] *Id.* at 10-11. See also Index of Exhibits, pp. 2, 5.

[31] *Id.* at 3-5.

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

the statement to his injury.[33] In the present case, it is abundantly clear that the profits which Elvira and her co-conspirators promised to Elizabeth would not be realized.

As to the penalty, the Court of Appeals was correct in its application of the Indeterminate Sentence Law.[34] The Court held in a catena of cases that in computing the penalty for estafa, the fact that the amounts involved exceed ₱22,000.00 should not be considered in the initial determination of the indeterminate penalty; instead the matter should be taken as analogous to modifying circumstances in the imposition of the maximum term of the full indeterminate sentence.[35] Since the penalty prescribed by law for *estafa*,[36] if the amount of fraud is over ₱12,000.00 but does not exceed ₱22,000.00, is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* in its minimum to medium periods. Thus, the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months while the maximum term of the indeterminate sentence should at least be six (6) years and one (1) day because the amounts involved exceeded ₱22,000.00, plus one (1) year for each additional ₱10,000.00.

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[33] *People v. Balasa*, 356 Phil. 362, 387 (1998).

[34] Act No. 4103, Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

[35] *People v. Hernando*, 335 Phil. 242, 257 (1997); *People v. Benemerito*, 332 Phil. 710, 730 (1996); *People v. Gabres*, 335 Phil. 242, 257 (1997); *People v. Menil, Jr.*, 394 Phil. 433, 459-460 (2000); *People v. Logan*, 414 Phil. 113, 127-128 (2001); *People v. Gallardo*, 436 Phil. 698, 716 (2002); *Garcia v. People*, 451 Phil. 713, 724 (2003); *Vasquez v. People*, G.R. No. 159255, 28 January 2008, 542 SCRA 520, 526-528.

[36] REVISED PENAL CODE, Art. 315.

The maximum penalty should not exceed twenty years. In connection with the accessory penalties which may be imposed and for the purpose of the other provisions of the Revised Penal Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.[37]

The Court's application of the penalty imposed under Article 315 of the Revised Penal Code in relation to the Indeterminate Sentence Law is in consonance with the legislative intent to favor the defendant in a criminal case with a view to shorten his term of imprisonment. The purpose of the law is "to uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness."[38]

WHEREFORE, the decision of the Court of Appeals in CA-G.R. CR No. 29906 is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

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[37] *Supra* note 35.

[38] *People v. Ducosin*, 59 Phil. 109, 117 (1933); *People v. Oñate*, 168 Phil. 212-222 (1977); *People v. Nang Kay*, 88 Phil. 515, 519 (1951).

EN BANC

[G.R. No. 179245. July 23, 2008]

RASH C. ROQUE, *petitioner, vs.* **COURT OF APPEALS, CIVIL SERVICE COMMISSION, THE HON. SECRETARY JOSE D. LINA, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG),** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; GRAVE MISCONDUCT; THE COURT OF APPEALS CORRECTLY SUSTAINED THE CIVIL SERVICE COMMISSION'S DECISION FINDING PETITIONER GUILTY OF GRAVE MISCONDUCT FOR VIOLATING THE PROCEDURE FOR THE PROCUREMENT OF SUPPLIES, AND FOR APPROVING THE DISBURSEMENT VOUCHERS WITHOUT THE CERTIFICATION FROM AN ACCOUNTANT.— The Court of Appeals also correctly sustained the CSC's Decision finding petitioner guilty of grave misconduct for violating the procedure for the procurement of supplies, and for approving the Disbursement Vouchers without the certification from the Accountant. Roque claims good faith since his approval of the Disbursement Vouchers, though without the signature of the Accountant, is supported by papers bearing the signature of the Accountant. This is devoid of merit. The authority of the Head of Office to approve the Disbursement Voucher is dependent on the certifications of the Budget Officer, the Accountant and the Treasurer on the principle that it would be improbable for the Head of Office to check all the details and conduct physical inspection and verification of all papers considering the voluminous paperwork attendant to his office. Without the certification, the Head of Office is duty-bound to inspect the voluminous records to verify the contents of the documents needing his approval. It needs emphasis that the approval of the Disbursement Voucher means the release of public funds, as in this case, for payment of the supplies to the supplier. In the instant case, Roque approved the Disbursement Vouchers despite the lack of the Accountant's

certification. He failed to perform his duty of ascertaining whether it is proper for him to approve the Disbursement Vouchers before he approves the same. This is not a mere oversight which the Commission may easily disregard. His act constitutes Grave Misconduct which warrants his dismissal from the service.

2. ID.; ID.; ID.; ID.; PETITIONER WAS NOT DENIED DUE PROCESS OF LAW.— The Court agrees with the finding of the Court of Appeals that petitioner was not denied due process of law, thus: . . . [P]etitioner cannot successfully invoke denial of due process since he was given the opportunity to be heard. The facts obtaining in the case at bar sufficiently show that petitioner was given ample opportunity to be heard. The then Secretary Lina ordered petitioner to file his answer [to] the formal charge within ten (10) days from receipt thereof and to state whether he elects to have a formal investigation. Further, petitioner was advised that he may avail of the assistance of the counsel of his choice and was apprised that his failure to submit an answer would be construed as a waiver thereof. Petitioner opted not to file his answer on the ground that the formal charge did not allege new matters and to re-submit his counter-affidavit in the complaint, BFP-NCR 4th Quarter Anomalies Transaction would only be repetitious and redundant. When the case was set for preliminary conferences, on December 2, 2003 and December 9, 2003, neither petitioner nor his counsel appeared despite receipt of notices. Obviously, petitioner was not denied of due process. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusation against him constitute the minimum requirements of due process. The opportunity to defend his interests in due course was given to petitioner but [he] failed to do so; hence, petitioner has no reason to complain for it is this opportunity to be heard that makes up the essence of due process.

3. ID.; ID.; ID.; ID.; PETITIONER'S VOLUNTARY DISREGARD OF ESTABLISHED RULES IN THE PROCUREMENT OF SUPPLIES CONSTITUTE GRAVE MISCONDUCT.— Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." The misconduct is grave if it involves any of the additional elements of corruption, **willful**

intent to violate the law or to disregard established rules, which must be established by substantial evidence. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The Court agrees with the Court of Appeals that there is substantial evidence that petitioner's act constituted grave misconduct, as petitioner voluntarily disregarded established rules in the procurement of supplies. The Court of Appeals found, thus: . . . [T]here is no showing that petitioner conducted verifications on the supporting papers of the Disbursement Vouchers. Instead, he claimed that he was in good faith in approving them as the supporting papers bore the signature of the Accountant . . . This Court is of the opinion that the approval of more than one disbursement voucher without the necessary certification of the accountant casts doubt on the claim of petitioner that he was in good faith . . . Unmistakably, the intent to violate the law or flagrant disregard of established rule is manifest in the matter under consideration. It could have been different if only one disbursement voucher is involved. As regards petitioner's acts of disobeying and/or countermanding the lawful orders of his superiors, the Court agrees with the Court of Appeals that such acts can be classified as gross insubordination punishable with suspension for six months and one day to one year for the first offense, and dismissal for the second offense.

4. ID.; ID.; ID.; ID.; PENALTY OF DISMISSAL WITH PREJUDICE, UPHELD.— The Court of Appeals correctly found petitioner guilty of grave misconduct for manifest intent to disregard established rules in the procurement of supplies. Under Sec. 22, Rule IV of the Omnibus Civil Service Rules and Regulations, grave misconduct is classified as a grave offense and penalized with dismissal for the first offense. The penalty of dismissal carries with it forfeiture of retirement benefits excluding leave credits, and disqualification from reemployment in the government service. Despite dismissal from the service, petitioner, as a government employee, is entitled to the leave credits that he has earned during the period of his employment.

APPEARANCES OF COUNSEL

Vicente D. Millora for petitioner.
The Solicitor General for respondents.

D E C I S I O N

PER CURIAM:

This is a petition for review on *certiorari*[1] of the Decision of the Court of Appeals in CA-G.R. SP No. 93349 promulgated on May 29, 2007, and its Resolution promulgated on August 9, 2007. The Decision of the Court of Appeals affirmed the Resolutions of the Civil Service Commission (CSC) dated July 20, 2004 and December 13, 2005, dismissing petitioner Rash C. Roque from the public service for grave misconduct.

This case arose from an alleged anomaly in the procurement of various supplies, materials or equipment for the Fourth Quarter of Calendar Year (CY) 2002 of the Bureau of Fire Protection-National Capital Region (BFP-NCR).

On December 16, 2002, the BFP-NCR Prequalifications, Bids and Awards Committee (PBAC) issued several resolutions supposedly pursuant to a sealed canvass bidding, recommending the award and contract to deliver various supplies, materials and equipment to the purported winning bidders. Petitioner Roque, as the Regional Director of the BFP-NCR, approved the awards and issued the corresponding Notices of Award to the following bidders:

1. Rakish General Merchandise for ₱420,000 worth of battery solution and for ₱475,900.15 worth of barricade tapes;
2. Mitoni Business Ventures for ₱473,661.82 worth of computer units and spare parts and for ₱477,989.28 worth of various office supplies;
3. Rich River Commercial for ₱478,282.91 worth of Good Year tires;
4. Lubhag Enterprises for ₱208,707.25 worth of various electrical supplies and for ₱405,235.98 worth of janitorial supplies;

[1] Under Rule 45 of the Rules of Court.

5. A. Rouge Printing Corporation for ₱459,798.55 worth of computer units and accessories; and

6. Miralles Trading for ₱473,695.04 worth of computer supplies.[2]

Chief Inspector Rolando Biazon of the Logistics Section issued the corresponding Purchase Orders to the suppliers after he inspected and accepted the delivery of supplies. The checks in payments for these supplies were signed by petitioner and the Chief of Finance Service Unit, Danilo dela Peña, and were given to the suppliers who, in turn, negotiated said checks with the Land Bank of the Philippines, Cubao Branch, on December 27, 2002, January 3, 2003 and January 6, 2003.

On January 2, 2003, complainants Supt. Ariel A. Barayuga, District Fire Marshal; Supt. Ramon O. Giron, Chief of Administrative Branch; and Ruben U. Pascua, Regional Supply Accountable Officer, who are all officers of the BFP-NCR, reported to Fire Chief Francisco Senot that there was an anomaly in the purchase of supplies for the fourth quarter of CY 2002.

The complainants alleged that the BFP-NCR Regional Office received an Advice Sub-Allotment and a Notice of Transfer of Cash Allocation from the BFP Central Office only sometime in the second week of December 2002, but by December 27, 2002, the bidding was completed and the purported winning bidders were able to encash their checks in payment of their products.

They further alleged that SFO2 Cabungcal, OIC Regional Supply Accountable Officer, was authorized to sign the documents relative to the procurement of supplies for the fourth quarter of CY 2002, in lieu of complainant Pascua. Moreover, complainants were intrigued by the fact that the fourth quarter operational support fund was released to BFP-NCR ahead of the third quarter operational fund, which remained unliquidated.

Lastly, complainants alleged that petitioner authorized Biazon to pay in advance the funds for minor maintenance of fire trucks in the amount of more or less ₱750,000.

[2] CA Decision, *rollo*, p. 203.

Fire Chief Senot immediately acted on the complaint and issued an order creating an investigation and inventory team to inspect the BFP-NCR stockroom where the supplies were stored. Upon learning about the Order, petitioner requested that the ocular inspection be held in abeyance until verification of Pascua's motive in filing the complaint against him. Petitioner alleged that Pascua had a personal grudge against him because he discovered Pascua's gross deficits in gasoline, diesel and other petroleum products.

On January 5, 2003, the team proceeded to inspect the stockroom, but Biazon refused to open it allegedly upon petitioner's instruction. However, when no team member was around, Biazon surreptitiously tried to open the stockroom using the keys in his possession. In order to preserve the contents of the stockroom, a monitoring team from the Central Office was detailed to watch the stockroom around the clock.

On January 21, 2003, Department of Interior and Local Government (DILG) Undersecretary Marius Corpus instructed Senior Superintendent Romero, Chief of Internal Affairs Services, to open the stockroom despite Biazon's refusal. Eventually, the stockroom was opened with the help of Cabungcal.

After an inventory, the team discovered that twelve (12) computer units were delivered to the BFP-NCR which were reportedly inspected and accepted by Biazon on December 23, 2002. Biazon explained that payments were made prior to delivery of the items and he submitted the corresponding delivery receipts to the team. It was discovered that the delivered units were withdrawn several days after the delivery.

On January 22, 2003, Sr. Supt. Romero sent a radio message directing all district, city, and municipal fire marshals under petitioner's supervision to submit on or before January 23, 2003 the list of supplies, materials and equipment received by their respective offices for the fourth quarter of CY 2002, indicating the respective dates of delivery. On January 23, 2003, Fire Chief Senot relayed the radio message to the Office of the Regional Fire Marshal with a note that the same was for strict compliance.

On the other hand, petitioner issued a memorandum cancelling the directives on the list of inventory sent to him. He also issued another memorandum directing his staff and the district, city, and municipal fire marshals under his supervision to hold in abeyance compliance with the radio messages. He further issued a memorandum directing complainant Giron to refrain from further issuing any memorandum or radio message without his approval. He sought the court's intercession by filing a petition for prohibition with a prayer for the issuance of a temporary restraining order to stop Sr. Supt. Romero from further conducting an investigation.

On January 27, 2003, DILG Secretary Jose D. Lina, Jr. issued Department Order No. 2003-59 relieving petitioner as Regional Fire Marshal/Assistant Regional Director (RFM/ARD) and placing him on "DS" at Headquarters Service Support Unit, BFP-National Office, in the exigency of the service.

On February 12, 2003, the team reported the result of the investigation finding, thus:

1. No actual bidding transpired in the procurement of the supplies.
2. Petitioner merely directed the members of the PBAC to sign the resolutions and the abstracts of Canvass/Bid.
3. The Commission on Audit was not notified of the supposed bidding.
4. Petitioner entered into contract with the suppliers wherein the supplies were overpriced by more or less ₱1,067,025.50 to the prejudice of the government.
5. The electrical supplies, barricade tapes and computer parts which were reported to have been paid and delivered were not in the stockroom.

The team recommended that petitioner and other BFP officials involved in the anomaly be charged with grave misconduct for violation of the rules on procurement of supplies, for deliberate disobedience to the lawful order of higher authorities and for suppression of evidence.

On February 14, 2003, DILG Secretary Lina issued Department Order No. 2003-146 creating a committee to conduct a preliminary investigation of the case against petitioner, Danilo D. Mayuga, Ester P. Adordionicio, Danilo V. Pinion, Marco M. Manaois, Rolando G. Biazon, Willie G. Cabungcal, Efren P. Guardiano, Danilo C. dela Peña, Fennimore V. Jaudian, Sixto C. Bautista and Edgardo P. Antonio, who are all employees of the BFP-NCR.

The committee directed the respondents to submit their counter-affidavits within 15 days from receipt of notice.

In his counter-affidavit, petitioner denied the allegations against him and elected the conduct of a formal investigation. He alleged that it was presumed that the members of the PBAC regularly performed their duties relative to the conduct of a public bidding, such as the issuance of a resolution recommending the award of contracts to the successful bidders. As head of BFP-NCR, he had the authority to award the contracts to the winning bidders pursuant to the PBAC resolution. He stated that the allegation that the supplies were overpriced was based on suspicion, surmise and conjecture. He justified his approval of the payment of the supplies on the basis of supporting certifications of proper authorities and stated that even though the signature of the accountant did not appear on some checks, the accountant's signature on all other papers sufficed. He denied that there was suppression of evidence, that he refused to allow the team to open the stockroom and that he instructed Biazon not to open it.

DILG Secretary Lina found a *prima facie* case against petitioner. On June 30, 2003, petitioner was charged with grave misconduct in that he:

1. Caused the procurement of supplies, materials and equipment intended for the BFP, NCR for the Fourth Quarter (2002) in violation of law and rules on procurement;

2. Made it appear that a sealed bidding was conducted when there was none;

3. Directed the members of the PBAC to sign resolutions and abstract of bids in his office;

4. Failed to notify the COA of the alleged opening of the bids;

5. Signed the Notice of Awards;

6. Approved the payment of supplies, materials and equipment when he knew that there was no Certification of Supply Availability Inquiry and Certification of Availability of Funds issued by the Regional Accountant and that the items were not yet fully delivered;

7. Disobeyed orders of superiors and countermanded the same; and

8. Suppressed evidence.[3]

Petitioner was directed to submit his Answer within ten days from receipt of the Order, but he did not file an Answer.

On November 24, 2003, the committee issued an order setting the case for preliminary hearing on December 2, 2003. The order was received by petitioner's counsel on November 25, 2003, but neither petitioner nor his counsel appeared on the date set. The preliminary hearing was reset to December 9, 2003. The Order was received by petitioner's counsel on December 3, 2003, but again neither petitioner nor his counsel appeared. Hence, petitioner was declared to have waived his right to present evidence.

On December 11, 2003, the counsel for complainant filed a motion for early resolution of petitioner's case.

On January 21, 2004, Secretary Lina issued a decision finding petitioner guilty of grave misconduct for all the acts he was charged to have committed, and dismissing him from the service. Petitioner's motion for reconsideration was denied.

Petitioner appealed DILG Secretary Lina's decision to the CSC. On July 20, 2005, the CSC issued Resolution No. 050947 finding petitioner guilty of grave misconduct for approving the payment of supplies without a certification from the Accountant

[3] *Rollo,* pp. 68-69.

that funds were available and for disobeying and/or countermanding the lawful orders of his superiors.

The dispositive portion of Resolution No. 050947 reads:

WHEREFORE, the appeal of Rash C. Roque is hereby **DISMISSED**. Accordingly, the Decision of Department of the Interior and Local Government Secretary Jose D. Lina dated January 21, 2004 finding Roque **GUILTY** of Grave Misconduct with a penalty of dismissal from the service is **AFFIRMED**. Roque is also imposed the accessory penalties of perpetual disqualification from re-entering the government service, forfeiture of retirement benefits and cancellation of Civil Service eligibility pursuant to the Uniform Rules on Administrative Cases in the Civil Service.

Let a copy of this Resolution be forwarded to the Office of the Ombudsman for its appropriate action and the GSIS for the implementation of the accessory penalty of forfeiture of retirement benefits.[4]

Petitioner's motion for reconsideration was denied by the CSC in Resolution No. 051850 dated December 13, 2005.

Petitioner filed a petition for review of the CSC decision before the Court of Appeals. On May 29, 2007, the Court of Appeals rendered a decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant petition is **DISMISSED** and the assailed Resolution Nos. 05-0947 and 05-1850 dated July 20, 2004 and December 13, 2005, respectively, of public respondent commission are **AFFIRMED**.[5]

Petitioner's motion for reconsideration was denied for lack of merit by the Court of Appeals in a Resolution dated August 9, 2007.

Hence, this petition.

The issues are:

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[4] *Id*. at 146.

[5] *Id*. at 214.

1. WHETHER OR NOT THE COURT OF APPEALS ERRED IN SUSTAINING THE DECISION OF THE CIVIL SERVICE COMMISSION AS PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW WAS ALLEGEDLY VIOLATED.
2. WHETHER OR NOT PETITIONER COMMITTED GRAVE MISCONDUCT WARRANTING HIS DISMISSAL FROM THE SERVICE.

Petitioner contends that the Decision of the DILG Secretary did not take into consideration his counter-affidavit which should have been adopted as his Answer; hence, the decision of the DILG, which was upheld by the CSC and the Court of Appeals, dismissing him from the service is null and void for depriving him of his constitutional right to due process of law.

Petitioner also alleges that the Decision of the DILG Secretary was based on the documents attached to the charge, and there is no showing that they were identified, much less formally offered in evidence. Hence, they cannot be considered competent evidence to support a valid decision.

Petitioner further argues that considering the gravity of the penalty which is dismissal from the service of one who has rendered faithful service to the government for decades, the decision should have been immediately set aside if only to afford him a full opportunity to properly defend himself. However, the CSC simply adopted the dismissal order of the DILG Secretary, and the Court of Appeals affirmed the decision of the CSC.

The arguments of petitioner lack merit.

As a rule, the uniform finding of fact of the CSC and the Court of Appeals is conclusive upon this Court. Our task in an appeal by petition for review on *certiorari* as a jurisdictional matter, is limited to reviewing errors of law that might have been committed by the Court of Appeals.[6]

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[6] *Dadulo v. Court of Appeals*, G.R. No. 175451, April 13, 2007, 521 SCRA 357.

The Court agrees with the finding of the Court of Appeals that petitioner was not denied due process of law, thus:

> . . . [P]etitioner cannot successfully invoke denial of due process since he was given the opportunity to be heard. The facts obtaining in the case at bar sufficiently show that petitioner was given ample opportunity to be heard. The then Secretary Lina ordered petitioner to file his answer [to] the formal charge within ten (10) days from receipt thereof and to state whether he elects to have a formal investigation. Further, petitioner was advised that he may avail of the assistance of the counsel of his choice and was apprised that his failure to submit an answer would be construed as a waiver thereof. Petitioner opted not to file his answer on the ground that the formal charge did not allege new matters and to re-submit his counter-affidavit in the complaint, BFP-NCR 4th Quarter Anomalies Transaction would only be repetitious and redundant. When the case was set for preliminary conferences, on December 2, 2003 and December 9, 2003, neither petitioner nor his counsel appeared despite receipt of notices.
>
> Obviously, petitioner was not denied of due process. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusation against him constitute the minimum requirements of due process. The opportunity to defend his interests in due course was given to petitioner but [he] failed to do so; hence, petitioner has no reason to complain for it is this opportunity to be heard that makes up the essence of due process.
>
> The non-submission of [an] answer by the petitioner to the formal charge does not mean the he [was] denied due process. It bears stressing that the Investigative Committee accepted the counter-affidavit of petitioner to the complaint albeit the same was belatedly filed. The acceptance is in accord with the basic rule of administrative law that technical rules of procedure are liberally applied to administrative agencies exercising quasi-judicial functions. As such, the counter-affidavit formed part of the records of the case which can be considered by the deciding authority.
>
> A perusal of the *rollo* of the case shows that the committee has indeed considered the counter-affidavit but unfortunately the committee found that the allegations therein were not enough to controvert the factual matters found by the committee that led to the administrative charge for grave misconduct. There is no doubt

Secretary Joey Lina considered the counter-affidavit. This can be gleaned from his decision to wit:

> After evaluating the xxx Fact Finding Report which has remained uncontroverted, together with the other pertinent documents attached to the records of the case, this Office finds Respondent Roque culpable of the administrative offense of Grave Misconduct xxx.

In affirming the decision of Secretary Joey Lina, public respondent commission likewise took into consideration the counter-affidavit, but again, public respondent commission found that the contentions of petitioner failed to controvert the fact finding report of the committee. On our part, the counter-affidavit is pure denial. The Supreme Court in a litany of cases has ruled that denial, if unsubstantiated by clear and convincing evidence is a self-serving assertion that deserves no weight in law.[7]

The Court of Appeals also correctly sustained the CSC's Decision finding petitioner guilty of grave misconduct for violating the procedure for the procurement of supplies, and for approving the Disbursement Vouchers without the certification from the Accountant. The CSC Decision stated:

. . . [T]he Commission finds Roque guilty of Grave Misconduct for approving the payment of supplies without a Certification from the Accountant that funds are available. As provided in the Local Government Code of 1991, the General Appropriations Act and other pertinent laws and rules, the procurement of supplies is dependent on the availability of funds evidenced by the issuance of an Advice of Sub-Allotment and Notice of Transfer of Cash Allocation by the Central Finance Office of the agency to the procuring unit. Upon the establishment of fund availability, the basic procedures for the procurement of supplies are, as follows:

1) **Preparation of Purchase Request.** The Head of Office needing the supplies prepares a Purchase Request certifying the necessity of the purchase for official use and specifying the project where the supplies are to be used. Every Purchase Request must be accompanied by a certificate signed by the local Budget Officer, the local Accountant, and the local

[7] *Rollo*, pp. 208-210.

Treasurer showing that an appropriation therefor exists, that the estimated amount of such expenditure has been obligated, and that the funds are available for the purpose, respectively.

2) **Approval of the Purchase Request.** The Head of Office or department concerned who has administrative control of the appropriation against which the proposed expenditure is chargeable approves the Purchase Request.

3) **Endorsement of the PBAC for bidding.** The PBAC advertises the invitation to bid and the notice or prequalification, conducts the opening of bids, prepares the Abstract of Bids, conducts the evaluation of bids, undertakes post-qualification proceedings, and recommends to the Head of Office the award of contracts to the successful bidder. The Head of Office issues the Notice of Award.

4) **Preparation of Certificate of Availability of Funds.** The Chief Accountant certifies that funds have been duly appropriated/allotted for the purpose of entering into a contract involving expenditures of public funds and that the amount necessary to cover the proposed contract for the current fiscal year is available.

5) **Preparation of Purchase Order.** The Head of Office approves the Purchase Order which is a document evidencing a transaction for the purchase of supplies.

6) **Delivery of Purchase Order.** The Purchase Order is delivered to the supplier within a reasonable time after its approval.

7) **Delivery of Items.** The supplier delivers the supplies in accordance with the specifications, terms and conditions provided in the Purchase Order.

8) **Inspection of Items.** The inspector inspects and verifies the purchases made by the agency for conformity with the specifications in the order.

9) **Preparation of Certificate of Acceptance.** Acceptance of deliveries may be made only if the supplies and materials delivered conform to the standards and specification stated in the contract.

10) Preparation of the Voucher. The Budget Officer, the Accountant and the Treasurer certify that all documents are complete and proper. The Head of Office approves the Disbursement Voucher for the release of check for payment.

As can be gleaned from the foregoing procedures, the participation of the Head of Office consists in the approval of the Purchase Request, Purchase Order, and the Disbursement Voucher and in the award of the contract to the successful bidder. As Head of the Regional Office, Roque has authority to approve and sign the Notice of Award based on the PBAC Resolution and the Disbursement Voucher upon certification of the Budget officer, the Accountant and that Treasurer that all supporting documents are complete and proper.

Roque claims good faith since his approval of the Disbursement Vouchers, though without the signature of the Accountant, is supported by papers bearing the signature of the Accountant. This is devoid of merit. The authority of the Head of Office to approve the Disbursement Voucher is dependent on the certifications of the Budget Officer, the Accountant and the Treasurer on the principle that it would be improbable for the Head of Office to check all the details and conduct physical inspection and verification of all papers considering the voluminous paperwork attendant to his office. Without the certification, the Head of Office is duty-bound to inspect the voluminous records to verify the contents of the documents needing his approval. It needs emphasis that the approval of the Disbursement Voucher means the release of public funds, as in this case, for payment of the supplies to the supplier. In the instant case, Roque approved the Disbursement Vouchers despite the lack of the Accountant's certification. He failed to perform his duty of ascertaining whether it is proper for him to approve the Disbursement Vouchers before he approves the same. This is not a mere oversight which the Commission may easily disregard. His act constitutes Grave Misconduct which warrants his dismissal from the service.[8]

Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[9] The misconduct is grave if it

[8] *Id.* at 143-145.

[9] *Civil Service Commission v. Ledesma*, G.R. No. 154521, September 30, 2005.

involves any of the additional elements of corruption, **willful intent to violate the law or to disregard established rules**, which must be established by substantial evidence.[10] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[11]

The Court agrees with the Court of Appeals that there is substantial evidence that petitioner's act constituted grave misconduct, as petitioner voluntarily disregarded established rules in the procurement of supplies. The Court of Appeals found, thus:

> . . . [T]here is no showing that petitioner conducted verifications on the supporting papers of the Disbursement Vouchers. Instead, he claimed that he was in good faith in approving them as the supporting papers bore the signature of the Accountant. . . This Court is of the opinion that the approval of more than one disbursement voucher without the necessary certification of the accountant casts doubt on the claim of petitioner that he was in good faith. . . Unmistakably, the intent to violate the law or flagrant disregard of established rule is manifest in the matter under consideration. It could have been different if only one disbursement voucher is involved.[12]

As regards petitioner's acts of disobeying and/or countermanding the lawful orders of his superiors, the Court agrees with the Court of Appeals that such acts can be classified as gross insubordination punishable with suspension for six months and one day to one year for the first offense, and dismissal for the second offense.

In fine, the Court of Appeals correctly found petitioner guilty of grave misconduct for manifest intent to disregard established rules in the procurement of supplies. Under Sec. 22, Rule IV of the Omnibus Civil Service Rules and Regulations, grave misconduct is classified as a grave offense and penalized with dismissal for the first offense. The penalty of dismissal carries with it forfeiture of retirement benefits excluding leave credits,[13] and disqualification

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[10] *Ibid*.

[11] *Supra*, note 6.

[12] *Rollo*, pp. 212-213.

[13] *Igoy v. Soraino*, A.M. No. 2001-9-SC, July 14, 2005, 495 SCRA 1.

from reemployment in the government service. Despite dismissal from the service, petitioner, as a government employee, is entitled to the leave credits that he has earned during the period of his employment.[14]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. SP No. 93349 promulgated on May 29, 2007 and its Resolution promulgated on August 9, 2007 are hereby *AFFIRMED*.

No costs.

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.

FIRST DIVISION

[G.R. No. 180832. July 23, 2008]

JEROME CASTRO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; DOUBLE JEOPARDY; WHEN APPLICABLE.— No person shall be twice put in jeopardy of punishment for the same offense. This constitutional mandate is echoed in Section 7 of Rule 117 of the Rules of Court which provides: Section 7. *Former conviction or acquittal; double jeopardy*. — When an accused has been

[14] *Id*. at 6.

convicted or acquitted or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or in information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information. xxx xxx xxx Under this provision, double jeopardy occurs upon (1) a valid indictment (2) before a competent court (3) after arraignment (4) when a valid plea has been entered and (5) when the accused was acquitted or convicted or the case was dismissed or otherwise terminated without the express consent of the accused. Thus, an acquittal, whether ordered by the trial or appellate court, is final and unappealable on the ground of double jeopardy.

2. ID.; ID.; ID.; ID.; EXCEPTION TO THE RULE ON DOUBLE JEOPARDY; RATIONALE BEHIND THE EXCEPTION.— The only exception is when the trial court acted with grave abuse of discretion or, as we held in *Galman v. Sandiganbayan*, when there was mistrial. In such instances, the OSG can assail the said judgment in a petition for *certiorari* establishing that the State was deprived of a fair opportunity to prosecute and prove its case. The rationale behind this exception is that a judgment rendered by the trial court with grave abuse of discretion was issued without jurisdiction. It is, for this reason, void. Consequently, there is no double jeopardy.

3. ID.; ID.; ID.; ID.; SINCE THE OFFICE OF THE SOLICITOR GENERAL DID NOT RAISE ERRORS OF JURISDICTION, THE COURT OF APPEALS ERRED IN TAKING COGNIZANCE OF ITS PETITION FOR *CERTIORARI* AND IN REVIEWING THE FACTUAL FINDINGS OF THE REGIONAL TRIAL COURT.— In this case, the OSG merely assailed the RTC's finding on the nature of petitioner's statement, that is, whether it constituted grave or slight oral defamation. The OSG premised its allegation of grave abuse of discretion on the RTC's "erroneous" evaluation and assessment of the evidence presented by the parties. What the OSG therefore questioned were errors of judgment (or those

involving misappreciation of evidence or errors of law). However, a court, in a petition for *certiorari*, cannot review the public respondent's evaluation of the evidence and factual findings. Errors of judgment cannot be raised in a Rule 65 petition as a writ of *certiorari* can only correct errors of jurisdiction (or those involving the commission of grave abuse of discretion). Because the OSG did not raise errors of jurisdiction, the CA erred in taking cognizance of its petition and, worse, in reviewing the factual findings of the RTC. We therefore reinstate the RTC decision so as not to offend the constitutional prohibition against double jeopardy.

4. ID.; ID.; ID.; ID.; PETITIONER COULD HAVE BEEN LIABLE ONLY FOR DAMAGES.— Petitioner could have been liable for damages under Article 26 of the Civil Code: Article 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief: xxx xxx xxx (3) *Intriguing to cause another to be alienated from his friends*; xxx xxx xxx Petitioner is reminded that, as an educator, he is supposed to be a role model for the youth. As such, he should always act with justice, give everyone his due and observe honesty and good faith.

APPEARANCES OF COUNSEL

Medialdea Ata Bello & Guevarra for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

CORONA, *J.*:

This petition for review on *certiorari*[1] emanated from the complaint for grave oral defamation[2] filed by Albert P. Tan against petitioner Jerome Castro.

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[1] Under Rule 45 of the Rules of Court.

[2] REVISED PENAL CODE, Art. 358 provides:

The facts follow.

On November 11, 2002, Reedley International School (RIS) dismissed Tan's son, Justin Albert (then a Grade 12 student), for violating the terms of his disciplinary probation.[3] Upon Tan's request, RIS reconsidered its decision but imposed "non-appealable" conditions such as excluding Justin Albert from participating in the graduation ceremonies.

Aggrieved, Tan filed a complaint in the Department of Education (Dep-Ed) for violation of the Manual of Regulation of Private Schools, Education Act of 1982 and Article 19 of the Civil Code[4] against RIS. He alleged that the dismissal of his son was undertaken with malice, bad faith and evident premeditation. After investigation, the Dep-Ed found that RIS' code violation point system allowed the summary imposition of unreasonable sanctions (which had no basis in fact and in law). The system therefore violated due process. Hence, the Dep-Ed nullified it.[5]

Meanwhile, on November 20, 2002, the Dep-Ed ordered RIS to readmit Justin Albert without any condition.[6] Thus, he was able to graduate from RIS and participate in the commencement ceremonies held on March 30, 2003.

After the graduation ceremonies, Tan met Bernice C. Ching, a fellow parent at RIS. In the course of their conversation, Tan

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Article 358. *Slander.* Oral defamation shall be punished by *arresto mayor* in its maximum period to *prision correccional* in its minimum period if it is of a serious and insulting nature; otherwise, the penalty shall be *arresto menor* or a fine not exceeding 200 pesos.

[3] Letter of RIS directress Nellie Aquino-Ong to Mr. and Mrs. Albert Tan. *Rollo*, p. 301. According to RIS, Justin Albert accumulated 34 code violations including public display of affection and conduct unbecoming of a gentleman. The maximum number of code violation was 25.

[4] Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

[5] Dep-Ed decision penned by Corazon D. Santiago, Director IV. Dated July 28, 2003. *Rollo*, pp. 321-331.

[6] Letter of Dep-Ed Director IV Corazon D. Santiago. *Id.*, p. 141.

intimated that he was contemplating a suit against the officers of RIS in their personal capacities, including petitioner who was the assistant headmaster.

Ching telephoned petitioner sometime the first week of April and told him that Tan was planning to sue the officers of RIS in their personal capacities. Before they hung up, petitioner told Ching:

> Okay, you too, take care and be careful talking to [Tan], that's dangerous.

Ching then called Tan and informed him that petitioner said "talking to him was dangerous."

Insulted, Tan filed a complaint for grave oral defamation in the Office of the City Prosecutor of Mandaluyong City against petitioner on August 21, 2003.

On November 3, 2003, petitioner was charged with grave oral defamation in the Metropolitan Trial Court (MeTC) of Mandaluyong City, Branch 60[7] under the following Information:

> That on or about the 13th day of March, 2003 in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named [petitioner], with deliberate intent of bringing ATTY. ALBERT P. TAN, into discredit, dishonor, disrepute and contempt, did then and there, willfully, unlawfully and feloniously speak and utter the following words to Ms. Bernice C. Ching:
>
> "OK, YOU TOO, YOU TAKE CARE AND BE CAREFUL TALKING TO [TAN], THAT'S DANGEROUS."
>
> and other words of similar import of a serious and insulting nature.
>
> CONTRARY TO LAW.

Petitioner pleaded not guilty during arraignment.

The prosecution essentially tried to establish that petitioner depicted Tan as a "dangerous person." Ching testified that petitioner warned her that talking to Tan was dangerous. Tan,

[7] Docketed as Criminal Case No. 93541.

on the other hand, testified that petitioner's statement shocked him as it portrayed him as "someone capable of committing undesirable acts." He added that petitioner probably took offense because of the complaint he filed against RIS in the Dep-Ed.

For his defense, petitioner denied harboring ill-feelings against Tan despite the latter's complaint against RIS in the Dep-Ed. Although he admitted conversing with Ching (whom he considered as a close acquaintance) on the telephone a few days after RIS' 2003 commencement exercises, petitioner asserted that he never said or insinuated that Tan or talking to Tan was dangerous. On cross-examination, however, he did not categorically deny the veracity of Ching's statement.

The MeTC found that Ching's statements in her affidavit and in open court were consistent and that she did not have any motive to fabricate a false statement. Petitioner, on the other hand, harbored personal resentment, aversion and ill-will against Tan since the Dep-Ed compelled RIS to readmit his son. Thus, the MeTC was convinced that petitioner told Ching talking to Tan was dangerous and that he uttered the statement with the intention to insult Tan and tarnish his social and professional reputation.

In a decision dated December 27, 2005, the MeTC found petitioner guilty beyond reasonable doubt of grave oral defamation:[8]

> WHEREFORE, judgment is hereby rendered finding accused, Jerome Castro **GUILTY** beyond reasonable doubt of the crime of Grave Oral Defamation, sentencing him therefore, in accordance to Article 358(1) of the Revised Penal Code and applying the Indeterminate Sentence Law to suffer the penalty of imprisonment of 1 month and 1 day of *arresto mayor* as minimum to 4 months and 1 day of *arresto mayor* as maximum.

On appeal, the Regional Trial Court (RTC) affirmed the factual findings of the MeTC. However, in view of the animosity between

[8] Decision penned by Judge Lizabeth Gutierrez-Torres. *Rollo*, pp. 214-221.

the parties, it found petitioner guilty only of slight oral defamation. But because Tan filed his complaint in the Office of the City Prosecutor of Mandaluyong City only on August 21, 2003 (or almost five months from discovery), the RTC ruled that prescription had already set in; it therefore acquitted petitioner on that ground.[9]

On April 19, 2007, the Office of the Solicitor General (OSG) filed a petition for *certiorari* in the Court of Appeals (CA) assailing the decision of the RTC.[10] It contended that the RTC acted with grave abuse of discretion when it downgraded petitioner's offense to slight oral defamation. The RTC allegedly misappreciated the antecedents which provoked petitioner to utter the allegedly defamatory statement against Tan.

The CA found that the RTC committed grave abuse of discretion when it misapprehended the totality of the circumstances and found petitioner guilty only of slight oral defamation. Thus, the CA reinstated the MeTC decision.[11]

Petitioner moved for reconsideration but it was denied.[12] Hence, this recourse.

Petitioner basically contends that the CA erred in taking cognizance of the petition for *certiorari* inasmuch as the OSG raised errors of judgment (*i.e.*, that the RTC misappreciated the evidence presented by the parties) but failed to prove that the RTC committed grave abuse of discretion. Thus, double jeopardy attached when the RTC acquitted him.

We grant the petition.

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[9] Decision penned by Judge Rizalina T. Capco-Umali of the RTC of Mandaluyong City, Branch 212. Dated November 20, 2006. *Id.*, pp. 438-448.

[10] Docketed as CA-G.R. SP No. 98649.

[11] Decision penned by Associate Justice Remedios A. Salazar-Fernandez and concurred by Associate Justices Rosalinda Asuncion-Vicente and Enrico A. Lanzanas (retired) of the Seventh Division of the Court of Appeals. Dated August 29, 2007. *Rollo*, pp. 56-63.

[12] Resolution dated December 5, 2007. *Id.*, p. 65.

No person shall be twice put in jeopardy of punishment for the same offense.[13] This constitutional mandate is echoed in Section 7 of Rule 117 of the Rules of Court which provides:

> Section 7. *Former conviction or acquittal; double jeopardy.* – When an accused has been convicted or acquitted or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or in information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.
>
> xxx xxx xxx

Under this provision, double jeopardy occurs upon (1) a valid indictment (2) before a competent court (3) after arraignment (4) when a valid plea has been entered and (5) when the accused was acquitted or convicted or the case was dismissed or otherwise terminated without the express consent of the accused.[14] Thus, an acquittal, whether ordered by the trial or appellate court, is final and unappealable on the ground of double jeopardy.[15]

The only exception is when the trial court acted with grave abuse of discretion or, as we held in *Galman v. Sandiganbayan*,[16] when there was mistrial. In such instances, the OSG can assail the said judgment in a petition for *certiorari* establishing that the State was deprived of a fair opportunity to prosecute and prove its case.[17]

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[13] CONSTITUTION, Art. III, Sec. 21.

[14] *Metropolitan Bank and Trust Co. v. Veridiano,* 427 Phil. 795, 803 (2001).

[15] *People v. Velasco,* 394 Phil. 517, 554-556 (2000).

[16] 228 Phil. 42 (1986).

[17] *Yuchengco v. Court of Appeals,* 427 Phil. 11, 24 (2002).

The rationale behind this exception is that a judgment rendered by the trial court with grave abuse of discretion was issued without jurisdiction. It is, for this reason, void. Consequently, there is no double jeopardy.

In this case, the OSG merely assailed the RTC's finding on the nature of petitioner's statement, that is, whether it constituted grave or slight oral defamation. The OSG premised its allegation of grave abuse of discretion on the RTC's "erroneous" evaluation and assessment of the evidence presented by the parties.

What the OSG therefore questioned were errors of judgment (or those involving misappreciation of evidence or errors of law). However, a court, in a petition for *certiorari*, cannot review the public respondent's evaluation of the evidence and factual findings.[18] Errors of judgment cannot be raised in a Rule 65 petition as a writ of *certiorari* can only correct errors of jurisdiction (or those involving the commission of grave abuse of discretion).[19]

Because the OSG did not raise errors of jurisdiction, the CA erred in taking cognizance of its petition and, worse, in reviewing the factual findings of the RTC.[20] We therefore reinstate the RTC decision so as not to offend the constitutional prohibition against double jeopardy.

At most, petitioner could have been liable for damages under Article 26 of the Civil Code [21]:

Article 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

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[18] *Id*.

[19] *Yuchengco v. Court of Appeals, supra* note 17 at 23.

[20] See *People v. Velasco, supra* note 15 at 560-561.

[21] This action would have been a complaint for damages based on a quasi-delict, subject to Article 1146 of the Civil Code.

xxx xxx xxx

(3) Intriguing to cause another to be alienated from his friends;

xxx xxx xxx

Petitioner is reminded that, as an educator, he is supposed to be a role model for the youth. As such, he should always act with justice, give everyone his due and observe honesty and good faith.[22]

WHEREFORE, the petition is hereby *GRANTED*. The August 29, 2007 decision and December 5, 2007 resolution of the Court of Appeals in CA-G.R. SP No. 98649 are *REVERSED* and *SET ASIDE*. The November 20, 2006 decision of the Regional Trial Court of Mandaluyong City, Branch 212 is *REINSTATED*. Petitioner Jerome Castro is *ACQUITTED* of slight oral defamation as defined and penalized in Article 358 of the Revised Penal Code.

No pronouncement as to costs.

SO ORDERED.

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

[22] CIVIL CODE, Art. 19, *supra* note 4.

THIRD DIVISION

[G.R. No. 181086. July 23, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ALFREDO NATAN,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; STATUTORY RAPE; COMMITTED IN CASE AT BAR.— We affirm the findings of the trial court and the Court of Appeals that appellant is guilty of statutory rape. Under paragraph 3, Article 335 of the Revised Penal Code, statutory rape is committed by having carnal knowledge of a woman below 12 years of age. In this specie of rape, neither force by the man nor resistance from the woman forms an element of the crime and apparent consent thereto will be of no avail, any more than in the case of a child who may actually consent but who by law is conclusively held incapable of legal consent. The law presumes that the victim on account of her tender years, does not and cannot have a will of her own. The heart of the matter is the violation of a child's incapacity to discern evil from good. In the instant case, it was proven that appellant had carnal knowledge of Maria who was then under 12 years of age.

2. ID.; ID.; ID.; INCONSISTENCIES ALLEGED BY APPELLANT ARE MINOR AND IRRELEVANT; THE PRECISE TIME OF COMMISSION IS NOT AN ESSENTIAL ELEMENT OF THE CRIME.— The alleged inconsistencies mentioned by appellant are minor and irrelevant. Whether it was appellant or Maria who removed her panty does not detract from the established fact that she was raped. Moreover, the precise time of commission is not an essential element of the crime. What is important is the unfaltering declaration by the victim that she was raped and her positive identification of the appellant as the perpetrator of the crime. In any event, minor lapses are to be expected when a person is recounting details of a humiliating experience which are painful to recall. The victim was testifying in open court in the presence of strangers, about an extremely intimate matter not normally talked about in public.

Such circumstances may be expected to cause the witness' narration to be less than letter-perfect.

3. ID.; ID.; ID.; APPLICABLE PENALTY IN CASE AT BAR.— The trial court found appellant guilty of statutory rape punishable under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, and imposed on him the death penalty. On appeal, the appellate court lowered the penalty to *reclusion perpetua* in view of Republic Act No. 9346 or the Anti-Death Penalty Law. It also awarded exemplary damages in the amount of ₱25,000.00 and increased the award of moral damages to ₱75,000.00 on the ground that qualified rape was committed. The trial court and the Court of Appeals might have overlooked the fact that the crime imputed against appellant was committed in 1992, or before the effectivity of R.A. No. 7659 on December 31, 1993. Thus, the fact that the victim was below seven years old when raped cannot be appreciated as a special aggravating circumstance for the purpose of imposing the penalty of death under R.A. No. 7659. The proper imposable penalty is still *reclusion perpetua*. It must be recalled that prior to December 31, 1993, the imposition of the death penalty has been suspended. Moreover, the Complaint did not specifically state the age of the victim as "below 7 years". Instead, it alleged that the victim was 11 years of age.

4. ID.; CIVIL LIABILITY; CIVIL INDEMNITY AND MORAL DAMAGES; AWARDED IN CASE AT BAR.— The awards of moral damages and civil indemnity should be modified. Civil indemnity is mandatory upon the finding of the fact of rape. It is automatically imposed upon the accused without need of proof other than the fact of the commission of rape. It is distinct and should not be denominated as moral damages which are based on different jural foundations and assessed by the court in the exercise of sound discretion. In the instant case, the victim is entitled to an award of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages. In criminal offenses, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. There being none in the instant case, the award of exemplary damages is without basis.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF VICTIMS OF TENDER AGE ARE CREDIBLE, MORE SO IF THEY ARE WITHOUT

ANY MOTIVE TO FALSELY TESTIFY AGAINST THEIR OFFENDER.— "Testimonies of victims of tender age are credible, more so if they are without any motive to falsely testify against their offender. Their revelations that they were raped, coupled with their willingness to undergo public trial where they could be compelled to describe the details of the assault on their dignity xxx, cannot be easily dismissed as concoctions. It would be the height of moral and psychological depravity if they were to fabricate sordid tales of sexual defloration (which could put him behind bars for the rest of his life) if they were not true."

APPEARANCES OF COUNSEL

The Solicitor General for appellee.

Public Attorney's Office for appellant.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Defilers of women are an especially despicable ilk of evil men, and more so those who would inflict their lasciviousness upon innocent and defenseless children. They are filthier than the slime where they belong. Whatever punishment imposed on them can never expiate their loathsome offense.[1] Rape is not a simple physical violation. It debases a woman's dignity, leaving a stigma on her honor and scarring her psyche for life.[2]

This case involves a crime of rape committed in 1992 against "Maria," a 6-year old girl. After suffering in silence for more than five years, Maria found courage and filed a complaint for rape against herein appellant Alfredo Natan on September 9, 1997, the accusatory portion of which reads:

That sometime on the month of June or July 1992 at around 5:30 o'clock in the afternoon, in the municipality of Inopacan, Province

[1] *People v. Desuyo*, G.R. No. 71173, August 9, 1988, 164 SCRA 210.

[2] *People v. Agunos*, 375 Phil. 315, 326 (1999).

of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation, willfully, unlawfully and feloniously did lie and succeeded in having carnal knowledge with "Maria," a minor of 11 years old, in a grassy spot beside a caimito tree, against her will and consent.

CONTRARY TO LAW.[3]

Appellant pleaded not guilty when arraigned.

During trial, "Maria" testified that sometime in June or July of 1992 at around 5:30 in the afternoon, appellant who is her godfather, arrived at their house and brought her to Inopacan Central School in Inopacan, Leyte. Appellant who was holding a knife ordered "Maria" to remove her panty. Thereafter, he kissed and embraced her and tried to insert his penis into her vagina but he failed to penetrate her. Appellant warned the victim not to tell anyone about what happened or she would be killed.

Five days later, appellant returned to the victim's house and brought her to an isolated place in Brgy. Tinago, Inopacan, Leyte. Appellant undressed "Maria" and while in a standing position, proceeded to have carnal knowledge of her. Appellant again threatened Maria with bodily harm if she would tell her parents about what happened. Thereafter, appellant sexually assaulted the victim on several occasions.

On July 25, 1997, "Maria" was at the house of her Uncle Johnny but she immediately left upon the arrival of appellant. When she returned, she learned that her cousin "Gina" was sexually abused by appellant. At that time, "Maria" decided to inform her Uncle Johnny of the beastly acts also committed on her by appellant, who in turn informed her grandmother.

Dr. Antonina Ruiz, the resident physician at Western Leyte Provincial Hospital, conducted an examination on "Maria." She noted healed hymenal lacerations in her genitals which she opined could be caused by a penis or any hard object.

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[3] CA *rollo*, p. 8.

The defense presented appellant as its lone witness. He denied having raped "Maria." He alleged that he was not present at the crime scene at the time of its commission; that in June, 1992, he was in Tacloban City and in July, 1992, he was in Samar; that the complaint against him was filed because the offended party and her family had a grudge against him; that sometime in 1991, he boxed Allan Simbahon, a brother of "Maria's" mother, during an altercation.

The trial court lent credence to the version of the prosecution. It found the narration of the victim candid, sincere and clear. It disregarded appellant's defense of alibi noting that Inopacan could be traversed by car in two hours, hence it was not physically impossible for the appellant to be present at the crime scene.

The trial court also found no ill motive on the part of the victim or her family in filing the suit; and that it was unthinkable for a victim who was a minor to fabricate the rape charge and to undergo the rigors of physical examination and public trial only because of hatred or ill-feelings.

On October 17, 2003, the Regional Trial Court of Hilongos, Leyte, Branch 18, rendered judgment finding appellant guilty as charged. The dispositive portion of the Decision, reads:

> WHEREFORE, after painstakingly considering all the foregoing this court found the accused ALFREDO NATAN @ "BLACKIE" GUILTY BEYOND REASONABLE DOUBT of the crime of STATUTORY RAPE under Article 335 of the Revised Penal Code As Amended, and hereby sentences him to suffer the penalty of DEATH and to pay the victim the amount of Php50,000.00 as moral damages; Php75,000.00 as civil indemnity and Php20,000.00 as exemplary damages.
>
> IN THE SERVICE OF HIS SENTENCE, accused is hereby credited with the full time of his preventive imprisonment if he agree in writing to abide by the same rules and regulations upon convicted prisoners otherwise he will only be entitled to 4/5 of the same.
>
> SO ORDERED.[4]

[4] *Id*. at 39. Penned by Judge Ephrem S. Abando.

On appeal, appellant alleged that Maria was inconsistent as to whether it was appellant or herself who removed her panty; and also as to when appellant brought her to Brgy. Tinago where she was raped the second time.

On June 28, 2007, the Court of Appeals rendered judgment[5] affirming with modification the decision of the trial court. The dispositive portion of the Decision, reads:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the appeal filed in this case and AFFIRMING the decision of the lower court with the MODIFICATION that the accused-appellant is hereby sentenced to suffer the penalty of *reclusion perpetua*, together with all the accessory penalties provided by law, and that the awards of moral damages and exemplary damages are hereby increased to ₱75,000.00 and ₱25,000.00, respectively.
>
> SO ORDERED.[6]

The appellate court found the inconsistencies cited by the defense minor and irrelevant. It also observed that the victim was steadfast in her identification of the appellant as the person who defiled her.

Hence, the instant petition.

On February 27, 2008, the Court notified the parties to file their respective supplemental briefs, if they so desire, within 30 days from notice. To date, none of the parties has filed their supplemental briefs. They are therefore deemed to have waived their right to file the same.

We affirm the findings of the trial court and the Court of Appeals that appellant is guilty of statutory rape. Under paragraph 3, Article 335 of the Revised Penal Code, statutory rape is committed by having carnal knowledge of a woman below 12 years of age. In this specie of rape, neither force by

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[5] *Id*. at 116-125. Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Antonio L. Villamor and Stephen C. Cruz.

[6] *Id*. at 124.

the man nor resistance from the woman forms an element of the crime and apparent consent thereto will be of no avail, any more than in the case of a child who may actually consent but who by law is conclusively held incapable of legal consent. The law presumes that the victim on account of her tender years, does not and cannot have a will of her own. The heart of the matter is the violation of a child's incapacity to discern evil from good.[7] In the instant case, it was proven that appellant had carnal knowledge of Maria who was then under 12 years of age.[8]

The alleged inconsistencies mentioned by appellant are minor and irrelevant. Whether it was appellant or Maria who removed her panty does not detract from the established fact that she was raped. Moreover, the precise time of commission is not an essential element of the crime. What is important is the unfaltering declaration by the victim that she was raped and her positive identification of the appellant as the perpetrator of the crime.[9]

In any event, minor lapses are to be expected when a person is recounting details of a humiliating experience which are painful to recall. The victim was testifying in open court in the presence of strangers, about an extremely intimate matter not normally talked about in public. Such circumstances may be expected to cause the witness' narration to be less than letter-perfect.[10]

Besides, "testimonies of victims of tender age are credible, more so if they are without any motive to falsely testify against their offender. Their revelations that they were raped, coupled with their willingness to undergo public trial where they could be compelled to describe the details of the assault on their dignity x x x, cannot be easily dismissed as concoctions. It would be

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[7] *People v. Sayat*, G.R. Nos. 102773-77, June 8, 1993, 223 SCRA 285, 291.

[8] The prosecution formally offered "Maria's" birth certificate which showed that she was born on July 26, 1986.

[9] See *People v. Mayo*, G.R. No. 170636, April 27, 2007.

[10] *People v. Sayat*, *supra* note 7 at 292.

the height of moral and psychological depravity if they were to fabricate sordid tales of sexual defloration (which could put him behind bars for the rest of his life) if they were not true."[11]

On the applicable penalty: The trial court found appellant guilty of statutory rape punishable under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659,[12] and imposed on him the death penalty. On appeal, the appellate court lowered the penalty to *reclusion perpetua* in view of Republic Act No. 9346 or the Anti-Death Penalty Law. It also awarded exemplary damages in the amount of ₱25,000.00 and increased the award of moral damages to ₱75,000.00 on the ground that qualified rape was committed.

The trial court and the Court of Appeals might have overlooked the fact that the crime imputed against appellant was committed in 1992, or before the effectivity of R.A. No. 7659 on December 31, 1993. Thus, the fact that the victim was below seven years old when raped cannot be appreciated as a special aggravating circumstance for the purpose of imposing the penalty of death under R.A. No. 7659. The proper imposable penalty is still *reclusion perpetua*.[13] It must be recalled that prior to December 31, 1993, the imposition of the death penalty has been suspended. Moreover, the Complaint did not specifically state the age of the victim as "below 7 years." Instead, it alleged that the victim was 11 years of age.

The awards of moral damages and civil indemnity should be modified. Civil indemnity is mandatory upon the finding of the fact of rape. It is automatically imposed upon the accused without need of proof other than the fact of the commission of rape. It is distinct and should not be denominated as moral damages which are based on different jural foundations and

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[11] *People v. Abellera*, G.R. No. 166617, July 3, 2007.

[12] An Act To Impose The Death Penalty on Certain Heinous Crimes, Amending For That Purpose The Revised Penal Code, As Amended, Other Special Laws, And For Other Purposes.

[13] See *People v. Santos*, G.R. Nos. 131103 & 143472, June 29, 2000, 334 SCRA 655, 671.

assessed by the court in the exercise of sound discretion.[14] In the instant case, the victim is entitled to an award of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages.[15] In criminal offenses, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances.[16] There being none in the instant case, the award of exemplary damages is without basis.

WHEREFORE, the appealed judgment finding appellant Alfredo Natan guilty of the crime of rape is *AFFIRMED*. Appellant is sentenced to suffer the penalty of *reclusion perpetua* and to pay the victim "Maria" the amount of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages.

Costs against appellant.

SO ORDERED.

Quisumbing,[*] *Austria-Martinez, Nachura,* and *Reyes, JJ.,* concur.

EN BANC

[G.R. No. 182701. July 23, 2008]

EUSEBIO EUGENIO K. LOPEZ, *petitioner, vs.* **COMMISSION ON ELECTIONS and TESSIE P. VILLANUEVA,** *respondents.*

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[14] *People v. Larena*, 368 Phil. 614, 635-636 (1999).

[15] *People v. Santos*, *supra* note 13 at 671.

[16] CIVIL CODE, Art. 2230.

[*] Designated in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 508 dated June 25, 2008.

SYLLABUS

1. POLITICAL LAW; CITIZENSHIP; CITIZENSHIP RETENTION AND RE-ACQUISITION ACT (R.A. 9225); EXPLICITLY PROVIDES THAT SHOULD ONE SEEK ELECTIVE PUBLIC OFFICE, HE SHOULD FIRST "MAKE A PERSONAL AND SWORN RENUNCIATION OF ANY AND ALL FOREIGN CITIZENSHIP BEFORE ANY PUBLIC OFFICER AUTHORIZED TO ADMINISTER OATH."— Petitioner was born a Filipino but he deliberately sought American citizenship and renounced his Filipino citizenship. He later on became a dual citizen by re-acquiring Filipino citizenship. More importantly, the Court's 2000 ruling in *Valles* has been superseded by the enactment of R.A. No. 9225 in 2003. R.A. No. 9225 expressly provides for the conditions before those who re-acquired Filipino citizenship may run for a public office in the Philippines. Section 5 of the said law states: Section 5. **Civil and Political Rights and Liabilities**.— Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions: xxx xxx xxx (2) **Those seeking elective public office in the** Philippines shall meet the qualification for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, **make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath**. Petitioner re-acquired his Filipino citizenship under the cited law. This new law explicitly provides that should one seek elective public office, he should first "make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath".

2. ID.; ID.; ID.; ID.; PETITIONER FAILED TO COMPLY WITH THE PROVISION OF R.A. 9225 REQUIRING RENUNCIATION UNDER OATH OF ANY AND ALL FOREIGN CITIZENSHIP BEFORE SEEKING ELECTIVE PUBLIC OFFICE.— Petitioner failed to comply with this requirement. We quote with approval the COMELEC observation on this point: While respondent was able to regain his Filipino Citizenship by virtue of the Dual Citizenship Law when he took

his oath of allegiance before the Vice Consul of the Philippine Consulate General's Office in Los Angeles, California, the same is not enough to allow him to run for a public office. The above-quoted provision of law mandates that a candidate with dual citizenship must make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath. **There is no evidence presented that will show that respondent complied with the provision of R.A. No. 9225**. Absent such proof we cannot allow respondent to run for Barangay Chairman of Barangay Bagacay. For the renunciation to be valid, it must be contained in an affidavit duly executed before an officer of law who is authorized to administer an oath. **The affiant must state in clear and unequivocal terms that he is renouncing all foreign citizenship for it to be effective. In the instant case, respondent Lopez's failure to renounce his American citizenship as proven by the absence of an affidavit that will prove the contrary leads this Commission to believe that he failed to comply with the positive mandate of law.** For failure of respondent to prove that he abandoned his allegiance to the United States, this Commission holds him disqualified from running for an elective position in the Philippines. While it is true that petitioner won the elections, took his oath and began to discharge the functions of Barangay Chairman, his victory can not cure the defect of his candidacy. Garnering the most number of votes does not validate the election of a disqualified candidate because the application of the constitutional and statutory provisions on disqualification is not a matter of popularity.

APPEARANCES OF COUNSEL

Jagna-an Belloga Agot & Associates for petitioner.
The Solicitor General for public respondent.

R E S O L U T I O N

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

A Filipino-American or any dual citizen cannot run for any elective public position in the Philippines unless he or she personally swears to a renunciation of all foreign citizenship at the time of filing the certificate of candidacy.

This is a petition for *certiorari* under Rule 65, in relation to Rule 64 of the Rules on Civil Procedure assailing the (1) Resolution[1] and (2) Omnibus Order[2] of the Commission on Elections (COMELEC), Second Division, disqualifying petitioner from running as Barangay Chairman.

Petitioner Eusebio Eugenio K. Lopez was a candidate for the position of Chairman of Barangay Bagacay, San Dionisio, Iloilo City in the synchronized Barangay and Sangguniang Kabataan Elections held on October 29, 2007.

On October 25, 2007, respondent Tessie P. Villanueva filed a petition[3] before the Provincial Election Supervisor of the Province of Iloilo, praying for the disqualification of petitioner on the ground that he is an American citizen, hence, ineligible from running for any public office. In his Answer,[4] petitioner argued that he is a dual citizen, a Filipino and at the same time an American, by virtue of Republic Act (R.A.) No. 9225, otherwise known as the Citizenship Retention and Re-acquisition Act of 2003.[5] He returned to the Philippines and resided in Barangay Bagacay. Thus, he said, he possessed all the qualifications to run for Barangay Chairman.

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[1] SPA 07-198 (BGY), signed by Rene V. Sarmiento, as Presiding Commissioner, and Nicodemo T. Ferrer, as Commissioner; *rollo*, pp. 16-20.

[2] Signed by Jose A.R. Melo, as Chairman, and Romeo A. Brawner, Rene V. Sarmiento, and Nicodemo T. Ferrer, as Commissioners.

[3] *Rollo*, pp. 31-35.

[4] *Id.* at 36-37.

[5] Also known as the Dual Citizenship Law.

After the votes for *Barangay* Chairman were canvassed, petitioner emerged as the winner.[6]

On February 6, 2008, COMELEC issued the assailed Resolution granting the petition for disqualification, disposing as follows:

> WHEREFORE, premises considered, the instant Petition for Disqualification is GRANTED and respondent Eusebio Eugenio K. Lopez is DISQUALIFIED from running as *Barangay* Chairman of Barangay Bagacay, San Dionisio, Iloilo.
>
> SO ORDERED.[7]

In ruling against petitioner, the COMELEC found that he was not able to regain his Filipino citizenship in the manner provided by law. According to the poll body, to be able to qualify as a candidate in the elections, petitioner should have made a personal and sworn renunciation of any and all foreign citizenship. This, petitioner failed to do.

His motion for reconsideration having been denied, petitioner resorted to the present petition, imputing grave abuse of discretion on the part of the COMELEC for disqualifying him from running and assuming the office of *Barangay* Chairman.

We dismiss the petition.

Relying on *Valles v. Commission on Elections*,[8] petitioner argues that his filing of a certificate of candidacy operated as an effective renunciation of foreign citizenship.

We note, however, that the operative facts that led to this Court's ruling in *Valles* are substantially different from the present case. In *Valles*, the candidate, Rosalind Ybasco Lopez, was a dual citizen by accident of birth on foreign soil.[9] Lopez was born of Filipino parents in Australia, a country which follows

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[6] *Rollo*, pp. 6, 19.

[7] *Id.* at 20.

[8] G.R. No. 137000, August 9, 2000, 337 SCRA 543.

[9] See *Mercado v. Manzano*, G.R. No. 135083, May 26, 1999, 307 SCRA 630.

the principle of *jus soli*. As a result, she acquired Australian citizenship by operation of Australian law, but she was also considered a Filipino citizen under Philippine law. She did not perform any act to swear allegiance to a country other than the Philippines.

In contrast, petitioner was born a Filipino but he deliberately sought American citizenship and renounced his Filipino citizenship. He later on became a dual citizen by re-acquiring Filipino citizenship.

More importantly, the Court's 2000 ruling in *Valles* has been superseded by the enactment of R.A. No. 9225[10] in 2003. R.A. No. 9225 expressly provides for the conditions before those who re-acquired Filipino citizenship may run for a public office in the Philippines. Section 5 of the said law states:

> Section 5. ***Civil and Political Rights and Liabilities***. – Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:
>
> xxx xxx xxx
>
> (2) **Those seeking elective public office in the** Philippines shall meet the qualification for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, **make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath.** (Emphasis added)

Petitioner re-acquired his Filipino citizenship under the cited law. This new law explicitly provides that should one seek elective public office, he should first "make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath."

Petitioner failed to comply with this requirement. We quote with approval the COMELEC observation on this point:

> While respondent was able to regain his Filipino Citizenship by virtue of the Dual Citizenship Law when he took his oath of allegiance before the Vice Consul of the Philippine Consulate General's Office

[10] See note 5.

in Los Angeles, California, the same is not enough to allow him to run for a public office. The above-quoted provision of law mandates that a candidate with dual citizenship must make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath. **There is no evidence presented that will show that respondent complied with the provision of R.A. No. 9225**. Absent such proof we cannot allow respondent to run for *Barangay* Chairman of Barangay Bagacay.

For the renunciation to be valid, it must be contained in an affidavit duly executed before an officer of law who is authorized to administer an oath. **The affiant must state in clear and unequivocal terms that he is renouncing all foreign citizenship for it to be effective. In the instant case, respondent Lopez's failure to renounce his American citizenship as proven by the absence of an affidavit that will prove the contrary leads this Commission to believe that he failed to comply with the positive mandate of law**. For failure of respondent to prove that he abandoned his allegiance to the United States, this Commission holds him disqualified from running for an elective position in the Philippines.[11] (Emphasis added)

While it is true that petitioner won the elections, took his oath and began to discharge the functions of Barangay Chairman, his victory can not cure the defect of his candidacy. Garnering the most number of votes does not validate the election of a disqualified candidate because the application of the constitutional and statutory provisions on disqualification is not a matter of popularity.[12]

In sum, the COMELEC committed no grave abuse of discretion in disqualifying petitioner as candidate for Chairman in the *Barangay* elections of 2007.

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.

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

[11] *Rollo,* p. 19.

[12] See *Reyes v. Commission on Elections*, G.R. No. 52699, May 15, 1980, 97 SCRA 500.

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